# Transfer-on-Death Deed
# Overview for Legal Professionals

July 30, 2026

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## Agenda

- About the Maryland Volunteer Lawyers Service (MVLS)
- What the Transfer on Death Deed (TODD) Legislation Accomplishes
- How the TODD Compares to the Life Estate Deed:
  - Legal function
  - Presumptions
  - Recording
  - Post-death procedures
  - Medicaid
- What this Means for Legal Professionals
- Forms and Guidance for the Public
- Questions & Answers

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# Housekeeping

- This training is being recorded
- The slides and a link to the recording will be shared with everyone who registered
- Questions will be addressed at the end
- Please use the Q&A feature to submit questions throughout the training
- This content is intended for legal professionals

**This presentation is not legal advice.**

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# This is a Work in Progress…

**In Scope**

- Purpose and design of the Transfer-on-Death Deed
- Our best understanding of how it will work in practice

**Out of Scope**

- Instruction on deed drafting
- In-depth discussion of life estate deeds
- In-depth discussion of Medicaid planning
- Implications for business properties

The Transfer-on-Death Deed Act is effective October 1, 2026

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# MVLS Mission

MVLS removes barriers to justice through free civil legal help, community engagement, and advocacy for equitable laws.

Our vision is for a fair legal system that is free of injustice and equitably serves underrepresented Marylanders.

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# MVLS Service Area

- Statewide, with exceptions:
  Montgomery, Prince George's, Allegany and Eastern Shore counties have their own pro bono programs, but often refer cases to MVLS due to lack of capacity
- Most MVLS pro bono cases are from Baltimore City and County as well as the surrounding Central Maryland counties.

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# MVLS Legal Areas

Family
- Adoption
- Divorce
- Custody
- Name Change & Gender Change
- Guardianship

Housing
- Landlord Tenant – security deposit return
- Foreclosure & Tax Sale
- Deeds

Estate
- Wills, Medical Directives, POAs
- Probate

Consumer
- Bankruptcy
- Debt Collection
- Contracts

Tax Controversy
- IRS
- Maryland Comptroller

Criminal Record Relief
- Expungement
- Shielding
- Vacatur

Special Education

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# Refresher: Life Estate Deeds

Splits ownership interest between:
- **Life Tenant**: guaranteed the right to use or live in the property while they are alive
- **Remainderman**: person or persons named in the deed who will automatically own the property when the life tenant passes away

Two Types:
- <u>With</u> Powers
  - Owner retains full power over property
- <u>Without</u> Powers
  - Remainderman has a vested interest
  - Owner cannot act without the remainderman's consent

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## Why MVLS Supports Access to Transfer-on-Death Deeds

- 40% of Marylanders cannot afford an attorney to meet their civil legal needs
- The home is the most valuable asset for many families
- Lack of access to estate planning tools for the family home results in:
  - Tangled titles
  - Loss of access to tax credits, homeowner assistance programs
  - Housing loss and instability
  - Loss of intergenerational wealth
- Black and Hispanic homeowners are disproportionately impacted

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## In the absence of the Transfer-on-Death Deed, we see…

- Quitclaim deeds – owner loses all control
- Owners adding children as co-owners
  - Often without naming type of ownership – resulting in owner's share not passing automatically as intended
- Poorly written deeds & AI-generated forms
- Unequal access to recording life estate deeds across Maryland
- No planning, leading to tangled titles families cannot resolve
- Housing loss

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# Transfer-on-Death Deed





## What the Transfer-on-Death Deed (TODD) Legislation Accomplishes

**Read the law**: HB 738/SB 651; Md. Code, Real Property § 14-1001, et seq.

**Reducing Barriers for Property Owners**

- Form Deed available that uses plain language.
- Allows the owner(s) to name a beneficiary for their real property, protecting their interest while they are alive.
- It can be recorded even if there are liens against the property.

**Fraud Protection**

- Deed is revocable, regardless of language on face of the deed.
- Must be recorded prior to death to be effective.

# What the Transfer-on-Death Deed (TODD) Legislation Accomplishes

**Read the law**: HB 738/SB 651; Md. Code, Real Property § 14-1001, et seq.

**Establishes Statutory Forms**

- Transfer-on-Death Deed Form
- Revocation Form
- Notification of Death Form

**What is Does NOT Do:**

X Change who is authorized to make deeds

X Replace the need to seek legal advice

X Replace life estate deeds

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# How Transfer-on-Death and Life Estate Deeds *with* Powers are the Same

- Good tool for estate planning – protects the homeowner's housing stability by not giving heirs power over property while they are alive
- Legal ownership of property passes automatically by operation of law
- No probate needed for the property
- Property may be left to multiple beneficiaries/remaindermen
- No impact on inheritance taxes
- Same fee to record the deed with Land Records
- Deed language can be customized/modified

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## How Transfer-on-Death and Life Estate Deeds Differ: The Big 5

1. A lay person should not draft a Life Estate deed.
2. A delivered Life Estate deed may be recorded after death whereas a Transfer-on-Death deed cannot.
3. The Transfer-on-Death deed can be recorded regardless of whether there are liens against your property. Rules for Life Estate deeds vary by county.
4. The deeds have different implications for Medicaid planning.
5. It is procedurally easier for a remainderman to inherit under a Life Estate deed.

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## How Transfer-on-Death and Life Estate Deeds Differ: Part 1

**Different Presumptions When the Deed is Silent**

Note: These provisions are written into the Form TODD

| | Transfer-on-Death Deed | Life Estate Deed |
|---|---|---|
| Co-ownership for beneficiaries: | Joint tenants with rights of survivorship | Tenants in common |
| Survival requirement for beneficiaries: | Yes | No |

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# How Transfer-on-Death and Life Estate Deeds Differ: Part 2

| Transfer-on-Death Deed | Life Estate Deed |
|---|---|
| • Can be completed by a lay person | • Should only be written by an attorney |
| • Transfer not effective until owner's death | • Present transfer of future interest |
| • Does not give the beneficiary any rights in the property while owner is alive | • May provide the remainderman with limited property rights while the life tenant is alive |
| • Fully revocable | • Depends how it is written |
| • Property transfer occurs only upon *owner's* death | • The life estate may be held by a non-owner (ex. owner creates life estate for spouse after second marriage, with remainder to children) |
| • Will not sever a joint tenancy if executed by only one joint owner | • Will sever a joint tenancy if executed by only one joint owner |
| • No impact on Medicaid eligibility | • Depends on type & timing. May be issue for Medicaid. |

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# Refresher: Recording Deeds

1. Execute the deed
2. Request a Lien Certificate (process and cost vary by county)
3. Address any unpaid liens (including water and property tax bills)
4. Complete the Maryland or Baltimore City Intake Sheet
5. Submit Intake sheet + Deed + Lien Certificate + Supporting Docs + Recording fee (and payment for applicable taxes) to Finance Office
6. After Finance Office approves, deed goes to Land Records Office

17 of Maryland's 24 counties require all public taxes, assessments, and charges be paid to record a Life Estate Deed with Powers.

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# How Transfer-on-Death and Life Estate Deeds Differ: Part 3

### Recording Process

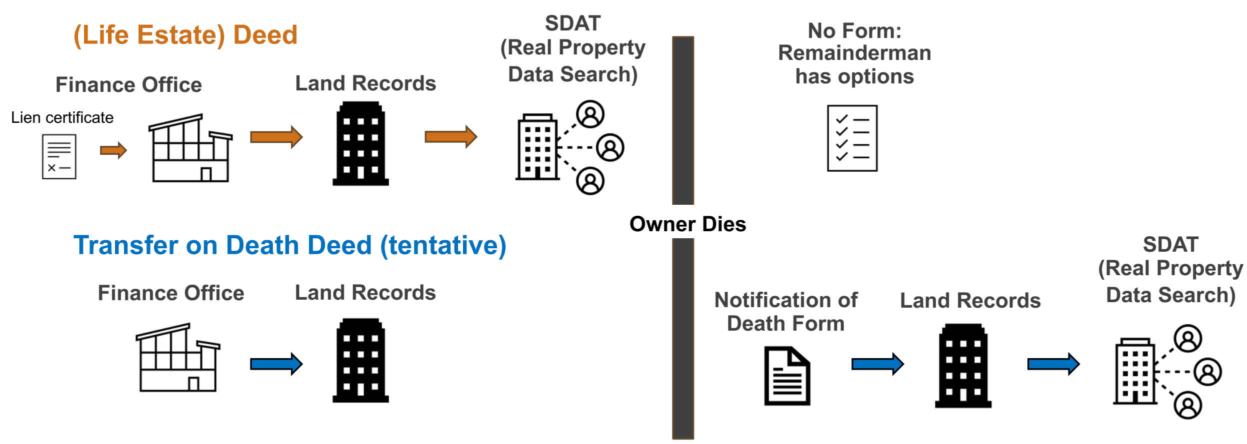
| Transfer-on-Death Deed | Life Estate Deed |
|---|---|
| • Must be recorded prior to owner's death | • Must be delivered prior to owner's death, but recording may be completed after death |
| • May be recorded statewide without a lien certificate | • Rules vary by county on whether a lien certificate is required for recording |
| • Deed will not be reflected in SDAT until Notification of Death Form is recorded | • Deed is reflected in SDAT records when it is initially recorded |





# Recording Process Differences

## **what we think will happen** - this is in Progress



# Recordation & Transfer Taxes

- No Consideration Deeds are <u>not</u> subject to taxation (regardless of deed type)
  - Md. Code, Tax - Property §§ 12-103(a), 13-203(a), and 13-412(a)(2)
- Likely to be uncommon for a transfer-on-death deed to have Consideration
- On the occasion where this is Consideration, an exemption likely applies:
  - TODD on primary or secondary residence of the transferor are exempt
    - Md. Code, Tax - Property §§ 12-108(ii), 13-207(a)(27), and 13-414
  - Transfers between people of numerous relations are exempt
    - Md. Code, Tax - Property § 12-108(c)-(d)





# Medicaid Eligibility & Estate Recovery

**Key Provisions**

**Md. Code, Real Property § 14-1004(a):** "A Transfer-on-Death Deed is nontestamentary."

**Md. Code, Real Property § 14-1005(b):** "A Transfer-on-Death Deed shall state that the transfer to the designated beneficiary is to occur at the transferor's death."

**Md. Code, Real Property § 14-1007(4):** "During a Transferor's life, a Transfer-on-Death Deed does not affect the transferor's or designated Beneficiary's eligibility for any form of public assistance."

**COMAR 10.09.24.08(F)(1):** "The following resources are excluded in determining financial eligibility for … institutionalized individual who intends to resume living in the individual's home:
(1) The home … **unless the person is institutionalized and has a life estate interest with full powers in the home**.

## Maryland Medicaid TOD Deed vs. Life Estate Deeds

Key Medicaid distinction: A Life estate without powers is a gifting problem. A life estate with powers is countable. A TOD deed is not a gift and is NOT countable.

| Life Estate Deed WITHOUT Powers LEWoP | Life Estate Deed WITH Powers LEWP | Transfer-on-Death Deed (The Clear Win) TODD |
|---|---|---|
| **Medicaid resource result:**<br>• Life tenant does not retain power to sell or transfer the whole property.<br>• Rule: residential, non-income-producing, non-rental MD life estate interest is countable, but FMV = $0.<br><br>**Penalty problem:**<br>• Gifting the remainder interest is a disposal for less than FMV.<br>• Penalty if created during the 5-year look-back.<br><br>**Probate and Medicaid Estate Recovery:**<br>• Avoids probate and MER (currently) but does not necessarily avoid TEFRA lien. | **Medicaid resource result:**<br>• Critical Problem with this option — fully countable.<br>• If the life tenant retains full or partial sale/transfer powers, the house is considered fully available by Medicaid.<br>• Manual: the "full current equity value" is countable, including home property.<br>• This applies even where intent-to-return would have excluded the home if it were not in the life estate.<br><br>**No Penalty Problem b/c no present gift:**<br><br>**Probate and Medicaid Estate Recovery:**<br>• Avoids probate and MER (currently) but does not necessarily avoid TEFRA lien. | **Medicaid resource result:**<br>• Critical Problem Presented by LEWP avoided.<br><br>**Statutory protection:**<br>During the transferor's life, RP § 14-1007 says a TOD deed does not:<br>• affect transferor rights;<br>• affect public-assistance eligibility;<br>• create a legal or equitable interest in a beneficiary.<br><br>**No Penalty Problem b/c no present gift:**<br><br>**Probate and Medicaid Estate Recovery:**<br>• Avoids probate and MER (currently) but does not necessarily avoid TEFRA lien. |

### Why MD Medicaid cannot easily change this by Medicaid Manual or COMAR

COMAR 10.09.24.08(F)(1) and the Manual govern resource availability. "The following resources are excluded in determining financial eligibility for … institutionalized individual who intends to resume living in the individual's home: (1) The home … **unless the person is institutionalized and has a life estate interest with full powers in the home.**

But RP § 14-1007 controls the property law and Medicaid effect of a TOD deed, saying: **"During a transferor's life, a transfer-on-death deed does not … affect the transferor's or designated beneficiary's eligibility for any form of public assistance."**

MD can't use COMAR and MDH can't use eligibility guidance to a TOD retained interest the same as they treat a LEWP retained interest where the statute says none exists. Changing this result requires a change in governing law.

### Bottom line for Medicaid practitioners

**Life estate with powers = countable home, regardless of intent to return home.**

**TOD deed: non countable and avoids MER. Intent to return home avoids TEFRA lien unless State Medical Evaluation determines that intent to return home is not realistic after Notice and opportunity for a hearing. COMAR 10.09.24.15A-2(2)(b).**

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# Beware of Tax-Property § 14-1008

- A missed edit during amendment process creates unintended ambiguity
- Subsection (a) indicates an inter vivos deed only revokes a Transfer-on-Death Deed if <u>recorded prior to the transferor's death</u>
- Subsection (d) indicates the section does not limit the effectiveness of an inter vivos transfer
- If intending to sell a property subject to a Transfer-on-Death Deed, consider prompting homeowner to record a Revocation when property goes under contract

**Stay Tuned**

There will be an effort to fix this error in the 2027 legislative session.

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# Which Deed to Use as an Attorney?

Considerations:

- Medicaid planning
- Is the client's death imminent?
- Does the client's property have liens the owner cannot pay?
- Likelihood a client will want to change the deed on their own in the future

**Remember**: Either type of deed can be customized. You need not use the Form Transfer-on-Death Deed





# Should I Use the Form Deed?

**Probably Not** BUT be sure to comply with the law.

- The Form Transfer-on-Death Deed is barebones & built with presumptions.
- We add value for our clients by drafting more thorough deeds
- Transfer on Death Deeds have an extra drafting requirement and limitation:
  - Must state that the transfer is to occur at the owner's/transferor's death – RP § 14-1005(b)
  - Revocable regardless of what the deed says – RP § 14-1004(b)

# Forms Will be Available Oct 1, 2026

**Transfer-on-Death Deed User Guide**

- October 1, 2026 - Anticipated publication date on People's Law Library website
- Forms comply with statute & include enhancements
- Developed with input by various stakeholders with goal to release only one set of Forms

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# Form Transfer on Death Deed

# Page 1

No Lien Sheet Required
No Consideration
No Transfer or Recordation Taxes

**Return to Address:**

Owner Name

Address

City State Zip

## Transfer-on-Death Deed Form

**Notice to Owner:** You should carefully read all information on this form and the Instructions to Complete a Transfer-on-Death Deed. You may want to consult a lawyer before using this form.

This form is for current property owners. If not all current owners are signing this form, your name has changed since you acquired the property, or you wish to name multiple people to own the property in the future, consultation with a lawyer is **strongly** advised. Use of this form for more complex situations than provided for in the form may have unintended consequences.

**This form must be notarized and recorded in each county (or Baltimore City) in which the property is located before your death, or it will not be effective**. The notary public cannot be a relative of any beneficiary or owner. Please attach and record additional pages if the requested information does not fit on this form.

**Identifying Information**

Owner(s) Making This Deed:

| | |
|---|---|
| Printed Name | Mailing Address |
| Printed Name | Mailing Address |

Property Address: ______________________________

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# Form Transfer on Death Deed

# Page 2

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Printed Name

Printed Name

Property Addr

Legal Description of the Property: *The legal description is not the same as the property address. If it does not fit in this space, attach an extra page. See instructions for more info.*

__________________________________________________________

Recording Reference for Current Deed (Recommended): *Provide this information for the existing deed to show the Owner(s) named above are current owner(s) of the property.*

Book/Liber #: _________

Page/Folio #: _________

Date of Deed: ______________

County (or Baltimore City) where Deed is recorded: _____________________

**Beneficiaries**

**Note:** If this form names multiple primary beneficiaries or alternate beneficiaries and does not indicate a different form of ownership, the property will be transferred to them as joint tenants with rights of survivorship.

Primary Beneficiary or Beneficiaries

I designate the following beneficiary or beneficiaries, if the beneficiary or beneficiaries survive me.

Printed Name | Mailing Address

Printed Name (Optional) | Mailing Address

Alternate Beneficiary — Optional

If my primary beneficiary or beneficiaries do not survive me, I designate the following alternate beneficiary if that beneficiary survives me.

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# Form Transfer on Death Deed

# Page 3

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Printed Name

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**Transfer on Death**

At my death, I transfer my interest in the described property to the beneficiaries as designated above.

Before my death, I have the full right to revoke this deed.

**Signature of Owner or Owners Making This Deed**

Signature | Date

Printed Name

Signature | Date

Printed Name

**Preparer's Statement**

I hereby certify that I prepared this revocable Transfer-on-Death Deed, and I am an Owner, Primary Beneficiary, or Alternate Beneficiary named in the deed.

Signature | Printed Name

OR

I hereby certify that I prepared this revocable Transfer-on-Death Deed, and I am an attorney duly admitted to practice law before the Supreme Court of Maryland.

Signature | Printed Name

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# Form Transfer on Death Deed

# Page 4

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**Certification of Occupancy Status**

Select the option below that correctly describes the property's occupancy status:

**Note:** "Principal residence" refers to the place where a person lives for more than half of the time. A person can only have one principal residence. A "secondary residence" is a property a person occasionally occupies in addition to their principal residence.

**Option 1: Principal Residence**

___ At least one owner lives at this property as their **principal residence**.

OR

**Option 2: Secondary Residence**

___ No owner lives at this property as their principal residence, but an owner occupies the property as their **secondary residence**.

OR

**Option 3: Not Owner-Occupied**

___ No owner occupies the property as a primary or secondary residence.

**Acknowledgment**

State of _________________ County of _________________

This record was acknowledged before me on the ___ day of _____________, 20___, by _________________________________.

_____________________________
Signature of Notarial Officer

My Commission Expires: _____________

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# Revocation Form

- Form document for owner to use to revoke a transfer-on-death deed
- Must be recorded prior to owner's death

**Return to Address:**

Owner Name
Address
City State Zip

**Revocation of a Transfer-on-Death Deed**

**Notice to Owner:** This revocation must be recorded in each county (or Baltimore City) in which the property is located before you die or it will not be effective. This revocation is effective only as to the interests in the property of the owner who signs this revocation.

**Identifying Information**

Owner or Owners of Property Making This Revocation:

| | |
|---|---|
| Printed Name | Mailing Address |
| Printed Name | Mailing Address |

**Property Address**: ______________________________

**Legal Description of the Property**:

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# Notification of Death Form

- Optional Form
- Necessary for beneficiary's name to appear in real property records
- Recording reference requested
- Requests info from Death Certificate
- Includes occupancy affidavit

**Return to Address:**

_______________
Beneficiary Name
_______________
Address
_______________
City State Zip

**Transfer-on-Death Deed Notification of Death**

The undersigned hereby affirms, under the penalties of perjury, that the following is true regarding a Transfer-on-Death Deed recorded on the property identified below:

*Please complete this form for each owner whose death is being reported.*

**Name of Deceased Owner**: _______________

**Complete Address of Property**, as it appears in Records of Maryland State Department of Assessments and Taxation (SDAT) (**Required**):

_______________

_______________

**SDAT Tax Identification Number**: _______________
**Note:** You can find the Tax ID number on your property tax bill or SDAT's website.

**Recording Reference of the Transfer-on-Death Deed**:

Book/Liber #: _________
Page/Folio #: _________
Date of Deed: _________
County (or Baltimore City) where Deed is recorded: _________

**Transfer-on-Death Deed Owner Information**

Date of Owner's Death: _________
State where Death Certificate was issued: _________
Death Certificate File or Registration Number: _________

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# How We Are Messaging to Property Owners

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# Planned Resources for the Public

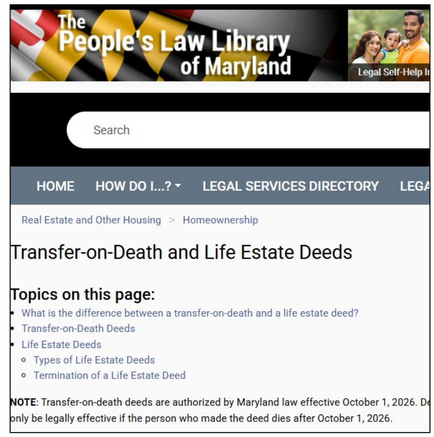
**People's Law Library of Maryland**

- https://www.peoples-law.org/

**Transfer-on-Death Deed Guide**

**Educational Presentations**

**Video Tutorials**

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# Contents of the Deed Guide *Coming Oct 1

**Forms**

- Transfer-on-Death Deed Form
- Transfer-on-Death Deed Revocation Form
- Notification of Death Form

**Instructions**

- How to Use Each Form
- How to Record a Legal Document

**Answers to Frequently Asked Questions**

**Contact Info for Legal Services**

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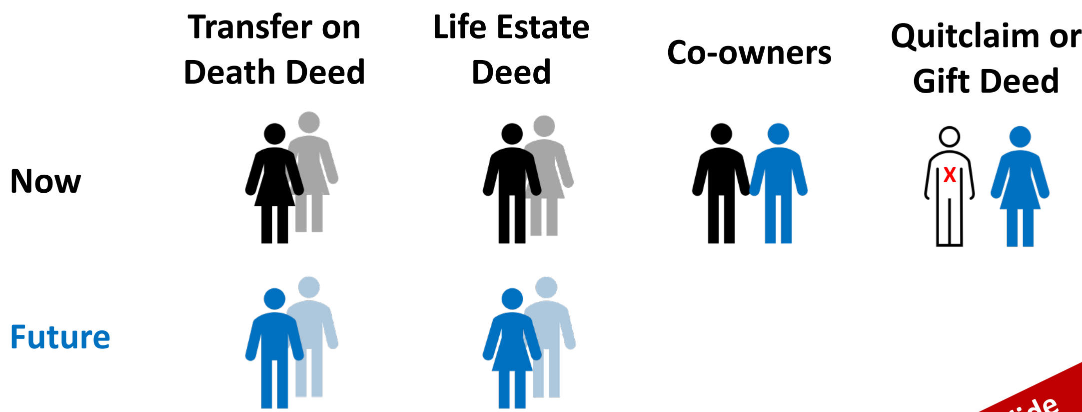
# How it Differs from Other Types of Deeds



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# It's Not the Best Option for Everyone

A transfer-on-death deed is not right for everyone!

If you can access an attorney, please seek legal advice.

Meeting with a qualified attorney remains the best method for protecting yourself, your property, and your legacy.



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## Red Flags You Should Seek Assistance

- Your name is not on the current deed
- Your current legal name is different than your name on the deed
- You own the property with other individuals whose goals are different than yours
- You want to name multiple people to inherit your property together
- You have been told your death is imminent.
- After reviewing the resources, you still have questions.



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## How to Make a Transfer-on-Death Deed

1. **Locate your current deed**
2. **Locate the Transfer on Death Deed Guide (recommended)**

   *Coming Soon*: Find the Forms and instructions on the People's Law Library website
3. **Complete the Transfer-on-Death Deed Form**
4. **Sign the Deed in front of a Notary**
5. **Record the Deed**

   It must be filed in the Land Records office in the county or city where the property is located while you are alive.



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# Wrapping Up

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## How to Support Homeowners & Reduce Errors

**Remain Diligent in Your Practice**

**Help Monitor Implementation & Provide Feedback**

- Be careful not to spread misinformation & correct it when you can.
- Please inform key stakeholders of any issues you observe. Do not assume others are aware of a problem that needs to be addressed.

**Provide Community Education**

- Help deliver free educational presentations in your community

**Take Pro Bono Deed & Estate Planning Cases**

- Reduce the number of property owners changing their deed on their own.

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# Take a Case Through our Pro Bono Portal

### Mother Passed & Need To Clean Up Title

Client needs help with estate administration and deed change. Client is on deed with deceased husband and mother. Husband's share passed automatically, client is only child of mother. Only mother's estate should need to be administered. Client resides in and maintains property. She would like to clean up title so that she can start planning to pass property on to next generation. House valued at $296k.

| Location: | Ref. #: | Case Type: |
|---|---|---|
| Baltimore County | 26-0300719 | Estates |

Learn More | Share Case

### Our Son Passed Unexpectedly Without Having An Estate Plan In Place!

Client is seeking assistance with creating an estate following the unexpected passing of her 34-year-old son in 06-2025. Client's son did not own any significant assets, but he shared the same name as his father, resulting in client and her husband receiving creditor bills intended for their son. Client would like to open an estate to resolve these issues. No one will contest.

| Location: | Ref. #: | Case Type: |
|---|---|---|
| Montgomery | 26-0298607 | Estates |

Learn More | Share Case

### Thinking Ahead For My Family

Client seeks assistance with drafting of will. Client would like his spouse to inherit his home, vehicle, and bank accounts. Client would like his nephew to be the executor of the will. Client is married and has 4 adult children.

| Location: | Ref. #: | Case Type: |
|---|---|---|
| Baltimore County | 26-0298541 | Estates |

Learn More | Share Case

### Husband Passed; Picking Up The Pieces

Client seeking assistance with estate administration and deed change following recent passing of her husband. Client is looking to get name on property. She is unclear what other assets that might exist as this was not something she discussed with her husband, so she will need help locating assets. Husband had no children and client was legally married to him at time of passing. *Client's first language is Urdu and does not speak English*. MVLS can provide interpreter service. House worth $285,500 with $150k left on mortgage. No contest.

| Location: | Ref. #: | Case Type: |
|---|---|---|
| Baltimore County | 26-0297452 | Estates |

Learn More | Share Case

### Executing Mother's Wishes

Client is looking to probate to transfer title to her mother's home. Client is only sibling and the PR in the will, and has already opened estate. Client will need assistance with filings. Client has a judgment entered against them personally, so volunteer should be aware to counsel them about how that could affect the asset (home) going forward. Home valued at $155,400 with mortgage owed about $67k.

| Location: | Ref. #: | Case Type: |
|---|---|---|
| Baltimore City | 26-0293562 | Estates |

Learn More | Share Case

### Family Property; Title Fractured

Client seeks assistance to probate the estates of his mother and uncle to preserve his family home for future generations. At an MVLS clinic, client learned the deed is more fractured than anyone in the family was aware. The home is valued at $113,000, with each estate passing only a portion of the property. No mortgage. MVLS staff attorney will be available to mentor.

| Location: | Ref. #: | Case Type: |
|---|---|---|
| Baltimore City | 26-0292931 | Estates |

Learn More | Share Case

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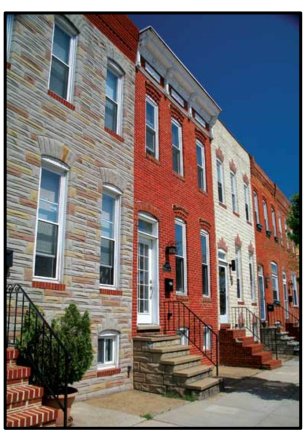
# Pro Bono Representation is Key to Preserving Family Homes



## SIGN UP TO VOLUNTEER!

Join us during Office Hours on **August 7 at 1 pm** to learn more.

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# Questions



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