

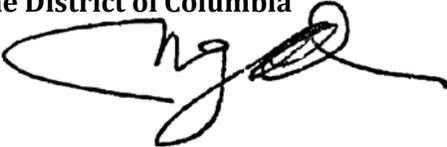
Government of the District of Columbia  
Office of the Chief Financial Officer



**Natwar M. Gandhi**  
Chief Financial Officer

**MEMORANDUM**

**TO:** The Honorable Philip H. Mendelson  
Chairman, Council of the District of Columbia

**FROM:** Natwar M. Gandhi  
Chief Financial Officer 

**DATE:** October 5, 2012

**SUBJECT:** Fiscal Impact Statement – “Uniform Real Property Transfer on Death Act of 2012”

**REFERENCE:** Bill 19-753, Draft Committee Print Shared with the Office of Revenue Analysis on September 14, 2012

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**Conclusion**

Funds are sufficient in the FY 2013 through FY 2016 budget and financial plan to implement the bill.

**Background**

There are many ways to transfer a property upon the death of its owner including wills, trusts, deeds, and life estates. If the transfer is through a will, the property goes through the probate process and the personal representative for the estate ensures the property is transferred to the named beneficiary. The length of the probate process ranges from months to years depending on the nature of the estate, its obligations, and the number and relationship of beneficiaries.

The bill establishes a real property transfer on death (TOD) deed as a nonprobate transfer. An individual, before his or her death, can record a TOD deed that allows the rights to property to be transferred to one or more beneficiaries upon death. The beneficiary does not need to receive or accept notice that a TOD deed has been recorded. A unique feature of a TOD deed is that it can be revoked at any time before the transferor’s death.<sup>1</sup> When the beneficiary receives the property, he or she assumes all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is subjected at the time of the transferor’s death. The beneficiary is

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<sup>1</sup> Revocation can occur by recording an additional TOD deed, submitting a separate revocation form, or another deed that expressly revokes the TOD. It must be revoked by all transferors.

The Honorable Philip H. Mendelson

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also liable<sup>2</sup> to the decedent's probate estate up to the value of any nonprobate transfers received if the value of the estate is insufficient to satisfy claims against it. However, this liability depends upon a written request from the probate estate's personal representative.

The bill provides sample forms for the Recorder of Deeds to utilize for both the creation of a TOD deed and the revocation of the deed.

### **Financial Plan Impact**

Funds are sufficient in the FY 2013 through FY 2016 budget and financial plan to implement the bill. The Recorder of Deeds will be able to implement the bill with existing resources.

It is important to note the bill can reduce the District's real property tax collections because, as opposed to the probate process, it does not force transfer of a title at the time the property is inherited. Under the proposed transfer process through a TOD deed, there is no guarantee the Recorder of Deeds will be notified of a resident's death or that the property title will transfer to the beneficiary. This is because the TOD deed does not make the beneficiary responsible for the property until title is transferred, so if it is not carefully monitored, tax bills could go unpaid. Additionally, the beneficiary could control the property without transferring the title, and continue to take advantage of a homestead or senior deduction where one may no longer be warranted. Lastly, the bill does not make it clear when and if transfer taxes<sup>3</sup> will be due on the property.

However, the potential negative impact cannot be reliably estimated due to the unpredictable nature of the number of TOD deeds and frequency of misuse, but the revenue loss is expected to be negligible. Additionally, the impact would most likely be a delay, and not a loss of revenues: if a beneficiary does not go through the process of re-titling the property, he or she would not be able to refinance the mortgage or obtain a home equity line of credit against the property. Similarly, when the property is sold, the person would find themselves liable for any back taxes owed for taking unfair advantage of any homeowner deductions. This could dissuade potential fraud from the TOD deed process and temper any negative effects on District revenues.

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<sup>2</sup> Liability is first assumed by a transferee designated in the will, then by the trustee of the estate as established in an estate plan, and then, lastly, by any other nonprobate transfers proportional to value received.

<sup>3</sup> D.C. Official Code § 42-1102 exempts from transfer taxes transfers between spouses, parent and child, grandparent and grandchildren, or domestic partners.