

Part F

Courts and Civil Proceedings

Judges and Court Administration

Maryland Legal Services Corporation Fund

The Maryland Legal Services Corporation (MLSC) receives and distributes funds to nonprofit grantees that provide legal assistance to eligible clients in civil cases. MLSC is funded in part from surcharges on civil cases, which are established by the State Court Administrator. The current maximum surcharge is \$10 for cases filed in circuit court and \$2 for cases filed in District Court. In fiscal 2003, MLSC received \$2.3 million from civil case surcharges.

Senate Bill 316 (passed) increases the maximum surcharge on civil cases filed in circuit court to \$25. For cases filed in District Court, the surcharge increases to a maximum of \$5 for summary ejectment cases and \$10 for all other civil cases. Assuming the maximum surcharges are imposed and the number of cases in which the surcharges are imposed is constant, funding for MSLC will increase by approximately \$5 million annually beginning in fiscal 2005.

Public Defender Caseload Initiative

The fiscal 2005 budget includes \$1.7 million to continue the initiative begun last year to reduce excessive Public Defender caseloads. The new funds will be used for 68.5 new positions and account for a significant portion of the \$3,516,588 or 5.7 percent increase in the appropriation for the Office of the Public Defender over the fiscal 2004 working appropriation. The first-year focus of the caseload initiative was to phase in staffing to reduce caseloads in Baltimore City and address the need for attorneys in the District Court and juvenile courts in rural areas. Year two of the caseload initiative will address the need for attorneys in the District Court and juvenile courts in the metropolitan/suburban counties as well as in Baltimore City.

The agency's caseloads initiative has three components: (1) reducing excessive public defender caseloads to comply with American Bar Association standards; (2) establishing a funding/staffing formula linked to Maryland specific caseload standards; and (3) installing a case management system to improve case management and provide accurate caseload/workload data to increase accountability and streamline the budget process.

Compensation of Judges

Judges

The Judicial Compensation Commission recommends judicial salary levels. The General Assembly may amend a joint resolution from the commission to decrease, but not to increase, any of the commission's salary recommendations.

In January 2004, the commission recommended that judges' salaries for fiscal 2005 through 2008 be increased during that period by (1) \$30,000 for judges serving on the Court of Appeals; (2) \$25,000 for judges serving on the Court of Special Appeals and the Chief Judge of the District Court; (3) \$20,000 for circuit court judges; and (4) \$15,000 for District Court judges. The proposed increases would have been phased in as follows: 15 percent in fiscal 2005, 25 percent in fiscal 2006, 30 percent in fiscal 2007, and 30 percent in fiscal 2008.

The General Assembly rejected the commission's recommendations by amending [House Joint Resolution 1 \(passed\)](#), keeping judicial salaries at their current levels.

Civil Actions and Procedures

Medical Malpractice

Recently, national attention has focused on what some are calling a medical malpractice insurance crisis. There is evidence in at least some parts of the country to support the claim that medical malpractice insurance is becoming unaffordable and/or unavailable, especially for individuals practicing in certain high-risk specialties such as obstetrics, neurosurgery, and orthopedic surgery. Certain areas have seen steep premium increases, the withdrawal of major insurance companies from the medical malpractice market, insurer-instituted moratoriums on the issuance of new policies, the closure of trauma centers and hospital maternity wards, the elimination of obstetrics from OB/GYN practices, an exodus of physicians from certain geographic areas, and increases in early retirements among physicians.

In 2003, the federal General Accounting Office (GAO) published a report that studied the extent of increases in medical malpractice insurance rates, analyzed the factors contributing to these increases, and identified any market changes that might make this period of rising insurance premiums different from previous such periods. GAO found that the largest contributor to increased premium rates was insurer losses on medical malpractice claims. Other contributing factors include decreased investment income, artificially low premium rates adopted while insurers competed for market share during boom years, and higher overall costs due largely to increased reinsurance rates for medical malpractice insurers.

Other states have been considering a variety of measures in response to the reduced availability of medical malpractice insurance and the steep increases in rates. These initiatives include tort reform measures such as caps on noneconomic and punitive damages, limits on

health care provider liability, changes to statutes of limitations and collateral source rules, and abolition of joint and several liability. Other measures include changes to physician discipline statutes and increased regulation of insurers.

Until recently, the medical malpractice insurance industry in Maryland had not experienced the steep rate increases that had occurred in other states. However, in June 2003, the Medical Mutual Liability Insurance Society of Maryland, the insurance provider to most of the State's private practice physicians, requested a 28 percent rate increase in medical malpractice insurance premiums. On August 15, 2003, the Maryland Insurance Commissioner approved the rate increase. The new rates became effective January 1, 2004. Opponents of the rate increase argued that a 3.7 percent rate increase was sufficient and that Medical Mutual was seeking to set aside more money than it would likely need for malpractice claims.

Medical Mutual Liability Insurance Society of Maryland's direct written premiums for calendar 2004 are projected to be \$113.7 million to provide malpractice insurance to 6,200 physicians. Annual premiums range from about \$10,000 for a general practitioner to over \$100,000 for certain specialists such as obstetricians. Medical Mutual covers approximately 80 percent of private practice physicians. Many other physicians who are associated with or employed by hospitals or professional practice groups receive partial or full malpractice insurance subsidies from the hospitals or practice groups.

Medical Mutual's 28 percent increase and a predicted 40 percent increase next year prompted the introduction of a number of proposals during the 2004 session.

House Bill 1299 (failed), the product of a House of Delegates workgroup consisting of members of the Economic Matters Committee, the Health and Government Operations Committee, and the Judiciary Committee, would have established a 12-member Task Force on Medical Malpractice, consisting of six members of the Senate and six members of the House of Delegates. The task force would have been required to (1) assess the extent to which the cost of medical malpractice liability coverage for health care providers increased in recent years; (2) determine the causes of the increases; (3) study any aspect of the health care, insurance, or legal systems related to medical malpractice liability; and (4) make recommendations to address the increased costs of malpractice liability coverage. The task force was to report its findings and recommendations to the Governor and the General Assembly by December 15, 2004.

The bill also would have made the following changes:

- required that, in situations where arbitration of a malpractice claim had been waived, the claim be subject to mediation;
- expanded the definition of "health care provider" under the health claims arbitration statute to include a medical day care center, hospice care program, assisted living program, and freestanding ambulatory care facility;
- modified the collateral source rule;

- required the filing of a supplemental certificate of a qualified expert after the completion of mediation and discovery;
- required that actions to recover damages against a health care provider's insurer for failure to settle a claim be brought in the same county in which a health care malpractice action was brought against the health care provider;
- required an arbitration panel or circuit court to itemize by specified categories any damages awarded; and
- required each insurer providing professional liability insurance to a health care provider in the State to report certain information to the Maryland Insurance Commissioner, and the Commissioner to compile and report this information to the General Assembly by September 1 of each year.

Senate Bill 193/House Bill 287 (both failed), which were proposed by the Administration, would have reduced the cap on noneconomic damages from \$635,000 (with a \$15,000 increase on October 1 of each year) to \$500,000 for medical injuries; revised procedures for determining medical expenses; required the use of annuities for future economic and noneconomic damages in excess of \$250,000; and established procedures under which a defendant could make an offer of judgment to an adverse party and recover attorney's fees and costs if the judgment entered is not more favorable than the offer.

SLAPP Suits

The term "SLAPP" is an acronym for "strategic lawsuit against public participation." SLAPP suit laws protect individuals and groups, many with few assets, from defending costly legal challenges to their lawful exercise of such constitutionally protected rights as free speech, assembly, and the right to petition the government. Challenged activities may include writing letters to the editor, circulating petitions, organizing and conducting peaceful protests, reporting unlawful activities, speaking at public meetings, and similar actions. Plaintiffs in these lawsuits, who typically have far greater resources than the defendants, do not necessarily want to win the case but rather to cause the defendants to devote such significant resources to defending it that they are unable to continue the challenged activities.

Senate Bill 464/House Bill 930 (both passed) provide immunity from civil liability to a defendant in a SLAPP suit who acts without constitutional malice in exercising constitutionally protected rights of free speech, free press, the right of assembly, and the right to petition the government. A defendant in an alleged SLAPP suit may move to dismiss the suit, or move to stay all court proceedings until the matter about which the defendant communicated to the government, or to the public at large, is resolved. A person acts with "constitutional malice" if the person makes a statement that the person knows is false, or acts with reckless disregard as to whether or not the statement is false.

Small Claims – Limited Liability Company (LLC) Member or Employee

A small claims action is a civil action for money in which the amount claimed does not exceed \$5,000 exclusive of interest, costs, and attorney's fees. These actions are filed in District Court.

Current law generally prohibits an individual who is not admitted to the bar from representing clients in a Maryland court. *Senate Bill 70 (passed)* authorizes a member of an LLC, or an employee designated by a member, to appear in court on behalf of the LLC. Comparable authority had previously been granted to corporations, partnerships, and sole proprietorships. LLCs are hybrids of corporations and partnerships that combine benefits of each. They shield owners from personal liability, as do corporations. However, like partnerships, profits pass directly to the owners without taxation of the entity itself.

Exemptions from Execution

A person against whom a judgment has been entered, or who has filed a bankruptcy petition, is allowed to retain certain items that are not subject to the execution on the judgment or to creditor claims. *Senate Bill 515 (passed)* establishes new amounts for several categories of these items. In all instances the new level is double the current level:

- items necessary for the practice of any trade or profession, except those kept for sale, lease, or barter, \$5,000 instead of \$2,500;
- items held primarily for personal, family, or household use, \$1,000 instead of \$500;
- cash or property of any kind equivalent in value to \$6,000 instead of \$3,000, if within 30 days from the date of attachment or levy, the debtor elects to exempt cash or selected items of property in an amount not to exceed a cumulative value of \$6,000 instead of \$3,000; and
- in addition to the preceding items, in any bankruptcy proceeding brought pursuant to federal law, a debtor domiciled in the State may exempt the debtor's aggregate interest in real or personal property, not to exceed \$5,000 instead of \$2,500.

Federal law allows states to “opt-out” from federal bankruptcy code exemptions. The majority of states, including Maryland, have opted-out. Therefore, the exemptions provided under State law apply in a bankruptcy proceeding filed by a Maryland debtor. In addition to the items described above, State law provides exemptions for a variety of other property, including life insurance and annuities, money payable in the event of sickness, accident, injury, or death, and certain pension and retirement benefits.

Sales of Food, Drugs, Cosmetics, and Other Health-related Products

A person whose business or property has been injured or threatened with injury by a violation of the State's antitrust law may bring an action for damages, an injunction, or both against any person who committed the violation. The United States, the State, or any of the State's political subdivisions may bring such an action, regardless of whether it dealt directly or indirectly with the person who violated law. However, other indirect purchasers do not have standing to sue.

Senate Bill 470 (failed) would have authorized indirect purchasers to bring an action against a person who sold, distributed, or otherwise disposed of any drug, medicine, cosmetic, food, food additive, commercial feed, or medical device. To avoid duplicative damages, the bill would have allowed a seller or distributor to prove, as a complete or partial defense, that all or part of an alleged overcharge was passed on to another person who paid that overcharge.

Supersedeas Bonds

A defendant who appeals a judgment is required to post a bond, called a supersedeas bond, or other security, to stay execution of the judgment while the appeal is pending. When the judgment is for the recovery of money that is not otherwise secured, the amount of the bond ordinarily is the sum that will cover the whole amount of the judgment remaining unsatisfied, plus interest and costs.

If a defendant subject to a large damage award (such as a tobacco company) cannot afford to post a bond in the amount set by the court, the defendant may be forced to file bankruptcy to stay execution of the judgment during an appeal. *Senate Bill 339/House Bill 1436 (both failed)* would have limited the amount of a supersedeas bond required in an appeal from a judgment entered in favor of a plaintiff in a civil action.

Family Law

Marriage and Divorce

Same-sex Marriages

Background: In November 2003, the Massachusetts Supreme Judicial Court ruled that under the state constitution, same-sex couples have the right to marry. Massachusetts state officials were given 180 days to implement the ruling, which is scheduled to go into effect in May 2004. Subsequent to that decision, the Massachusetts legislature passed a proposed constitutional amendment that defines marriage as a legal union between a man and a woman. The amendment would, however, permit civil unions between members of the same sex.

Same-sex marriage is legal in the Canadian provinces of Ontario and British Columbia as well as Belgium and the Netherlands. Several countries, including Denmark, France, and Germany, and the state of Vermont, allow same-sex couples to join in "civil unions" that provide

many of the same rights and benefits as marriage. New Jersey has recently enacted a law that would recognize some domestic partnerships, including same-sex couples, and would confer some legal rights on same-sex couples that married couples enjoy. However, the law does not establish authority for same-sex civil unions. California also provides limited legal recognition to domestic partnerships.

By contrast, in 1996, Congress passed the “Defense of Marriage Act,” which defines marriage as a legal union between a man and a woman and authorizes states to deny recognition of a public act, record, or judicial proceeding of any other state respecting a relationship between persons of the same sex that is treated as a marriage under the laws of the other state. Approximately 39 states have passed defense of marriage acts, which deny recognition of same-sex marriages solemnized in another jurisdiction. Three states, including Maryland, enacted statutes before the 1996 federal law specifically defining marriage as a legal union only between a man and a woman.

Defense of Marriage in Maryland: Since 1973, Maryland law has defined a valid marriage as that which takes place only between a man and a woman. ***Senate Bill 673/House Bill 16 (both failed)*** would have proposed an amendment to the Maryland Constitution defining valid marriage as a marriage between a man and a woman only. ***Senate Bill 746/House Bill 728 (both failed)*** would have specified that a marriage between persons of the same sex that is valid in another state or foreign jurisdiction is not valid in Maryland.

Marriage Ceremonies

House Bill 746 (passed) clarifies the definition of “judge” for the purpose of performing marriage ceremonies. The bill also establishes that the fee paid to the judge for performance of a marriage ceremony is nonrefundable and payable to the clerk before a marriage license is issued. The fee is \$30 in Cecil County and \$25 in any other county.

Divorce – Transfer of Family Use Personal Property

Under current law, when the court grants an annulment, or a limited or an absolute divorce, the court may resolve any dispute between the parties with respect to ownership of personal property or real property. However, except as specified, the court may not transfer ownership of personal or real property from one party to the other. When the court determines the ownership of personal or real property, the court may grant a decree that states what the ownership interest of each party is and, for property owned by both parties, order a partition, or a sale and division of the proceeds.

In a proceeding for annulment or absolute divorce, if there is a dispute as to what property is marital property, the court must resolve the dispute within specified time frames. Except as otherwise provided, the court is required to determine the value of all marital property.

After the court determines which property is marital property and its value, the court may transfer ownership interest in a pension, retirement, profit sharing, or deferred compensation plan from one party to either or both parties, or grant a monetary award, or both, as an adjustment of

the rights and equities of the parties concerning marital property, whether or not alimony is awarded.

Senate Bill 418/House Bill 836 (both passed) expand the type of property that may be transferred by a court in an annulment or divorce proceeding to include, subject to the consent of any lienholders, family use personal property. “Family use personal property” means tangible personal property acquired during the marriage, owned by one or both of the parties, and used primarily for family purposes. Family use personal property includes motor vehicles, furniture, furnishings, and household appliances. It does not include property acquired by inheritance or gift or excluded by valid agreement.

Child Support

Child Support Guidelines – Revision

In a proceeding to establish or modify child support, whether temporary or permanent, the court is required to use the child support guidelines. The basic child support obligation is established in accordance with a schedule provided in statute. The basic obligation is based on the number of children and is divided between parents in proportion to their adjusted actual incomes.

Senate Bill 328/House Bill 604 (both passed) revise the schedule of basic child support obligations used to calculate the amount of a child support award under child support guidelines. The bills adjust the monthly income for the self-support reserve to \$850 for low-income noncustodial parents and provide a basic child support obligation ranging from \$20 to \$150 per month, based on the resources and living expenses of the obligor and the number of children due support. The adoption or revision of the guidelines may be grounds for requesting a modification of a child support award if the use of the guidelines would result in a change of 25 percent or more in the award.

Driver’s License Suspension

Enactment of federal welfare reform in 1996 required all state child support enforcement programs to impose driver’s license, as well as professional and occupational license restrictions, on obligors who have not paid child support in a timely manner. *Senate Bill 329/House Bill 605 (both passed)* make it discretionary, rather than mandatory, for the Child Support Enforcement Administration to notify the Motor Vehicle Administration to suspend the obligor’s license when the obligor is 60 days or more out of compliance with the most recent court order in making child support payments and expand the grounds upon which a child support obligor can challenge a proposed suspension of the obligor’s driver’s license for failure to pay child support. The additional grounds include the following: (1) suspension of the obligor’s license or privilege to drive would be an impediment to the obligor’s current or potential employment or (2) suspension of the obligor’s license or privilege to drive would place an undue hardship on the obligor because of the obligor’s documented disability resulting in a verified inability to work or because of the obligor’s inability to comply with the court order.

Third Party Payments

Senate Bill 928 (passed) includes any third party payment paid to or for a minor child as a result of the obligor's disability, retirement, or other compensable claim, in the obligor's income for purposes of calculating the amount of child support under the child support guidelines. The bill then requires the amount paid to the child to be set off against the child support obligation.

Under current law, a noncustodial parent is not entitled to an automatic credit against the child support obligation equal to the amount of Social Security disability dependency payments received by the minor child. However, a court in its discretion may, if the circumstances warrant, adjust the amount of the parent's child support obligation to avoid an unjust or inequitable result. *Drummond v. Stak*, 350 Md. 502 (1998).

Children in Need of Assistance and Adoption

Children in Need of Assistance

Out-of-home Placements: The Social Services Administration of the Department of Human Resources (DHR) is required to establish an out-of-home placement program for minor children who are (1) placed in a local department of social services' custody for not more than 180 days by a parent or legal guardian under a voluntary placement agreement; (2) abused, abandoned, neglected, or dependent, if a juvenile court determines continued residence in the child's home is contrary to the child's welfare and commits the child to the local department's custody or guardianship; or (3) placed in an out-of-home placement by a local department under a voluntary placement agreement.

In developing a permanency plan for a child in an out-of-home placement, the local department of social services must give primary consideration to the child's best interests. The local department must consider (1) the child's safety and health in the parent's home; (2) the child's attachment and emotional ties to natural parents and siblings; (3) the child's emotional attachment to the current caregiver and caregiver's family; (4) the length of time the child lived with the current caregiver; and (5) the potential harm if the child remains in State custody for an excessive period of time.

Senate Bill 711 (passed) alters the factors that a local department of social services is required to consider in determining a permanency plan for a child in an out-of-home placement to give priority to placing the child in the jurisdiction where the child's parent or guardian resides. The bill also requires the Special Secretary for the Office for Children, Youth, and Families, in consultation with DHR, the Department of Health and Mental Hygiene, and the Department of Juvenile Services to conduct a study of out-of-home placements.

Adoption

Certificates of Birth: Under the federal Child Citizenship Act of 2000, many foreign-born, adopted children acquire U.S. citizenship immediately upon entering this country.

Many other children acquire U.S. citizenship after residing in this country. Under Maryland law, these children with U.S. citizenship are not eligible to obtain a Maryland certificate of foreign birth. **House Bill 211 (passed)** clarifies Maryland law regarding the criteria for issuing a birth certificate for a person born outside of the United States. It also repeals the requirement that in order for the State to issue a certificate of foreign birth, the adopted person in question cannot be a U.S. citizen.

Search, Contact, and Reunion Services – Siblings: Since 1998, the Social Services Administration of DHR has been required to provide adoption search, contact, and reunion services. “Search, contact, and reunion services” means services (1) to locate adopted individuals and biological parents of adopted individuals; (2) to assess the mutual desire for communication or disclosure of information between adopted individuals and biological parents of adopted individuals; and (3) to provide, or provide referral to, counseling for adopted individuals and biological parents of adopted individuals. Biological parents of adopted individuals at least 21 years of age and adopted individuals themselves who are at least 21 years of age are currently allowed to apply for these services through the use of an approved confidential intermediary. However, birth siblings of adoptees and adoptees are excluded from actively searching for each other. **House Bill 232 (passed)** expands the adoption search, contact, and reunion services program within DHR to include siblings who have been adopted and who are at least 21 years old.

Child Custody

Uniform Child Custody Jurisdiction and Enforcement Act

Senate Bill 269/House Bill 400 (both passed) repeal the Maryland Uniform Child Custody Jurisdiction Act and adopt the Maryland Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), which was promulgated by the Uniform Law Commissioners in 1997 and has been adopted in 35 states. The bills reconcile State law with the federal Parental Kidnapping Prevention Act, limit child custody jurisdiction to one state, and address interstate enforcement of child custody orders. The new UCCJEA is intended to accomplish the same uniformity for custody and visitation determinations that exists in interstate child support with the promulgation of the Uniform Interstate Family Support.

Domestic Violence

Protective Order – Penalty

House Bill 1148 (passed) applies the criminal penalties for noncompliance with the relief granted in a final protective order to a respondent who fails to surrender any firearms in the respondent’s possession to a law enforcement agency.

Child Care

Child Care Center Licenses

Current law requires DHR to inspect each registered family day care home before issuing an initial registration and at least once every two years thereafter. An unannounced inspection is required in any year that an initial or renewal inspection has not taken place. Under current law, a child care center may obtain an initial one-year license and must renew the license every year. *Senate Bill 62 (passed)* extends the renewal time for family child care home registrations and child care center licenses. The bill requires announced inspections before a license is issued and at least every two years thereafter. Unannounced inspections of family day care homes and child care centers must be conducted at least once every 12 months to determine if child care is safe and appropriate.

Human Relations

Hate Crimes

Senate Bill 698/House Bill 365 (both failed) would have expanded the prohibition against committing a hate crime to include hate crimes based on a person's sexual orientation. The bill defined "sexual orientation" to mean the identification of an individual as to male or female homosexuality, heterosexuality, or bisexuality.

Slavery

Senate Joint Resolution 4/House Joint Resolution 4 (both failed) would have supported a resolution pending in the U.S. House of Representatives, which acknowledges the fundamental injustice and inhumanity of slavery, establishes a commission to consider reparations for African Americans, and is intended to educate Americans about the history of slavery and its current repercussions.

House Bill 898 (failed) would have required the Governor to apologize on behalf of the citizens of Maryland for the State's history of slavery, its long-held silence in the face of slavery, and the atrocities committed under slavery in the State. The apology would have been required to be made on September 22, 2004, the 142nd anniversary of the Emancipation Proclamation.

Religious Freedom

House Bill 1050 (failed) would have authorized an individual who prays in a public place to refer to a specific deity or religious leader, without being subject to criticism or censure by a State, county, or municipal official because of the individual's reference to a specific deity or religious leader.

Senate Joint Resolution 2/House Joint Resolution 5 (both failed) would have requested the U.S. Congress to pass legislation declaring that the power to (1) display the Ten Commandments; (2) recite the Pledge of Allegiance; and (3) recite the national motto, on or within property owned or administered by a state or political subdivision, is among the powers reserved to the states by the Tenth Amendment of the U.S. Constitution.

Minority Ownership of Automobile Dealerships

House Bill 342 (failed) would have established a task force to study the automobile industry in Maryland to determine why there are so few minority-owned dealerships in the State. The task force would have compiled statistics on the number of minority-owned dealerships in Maryland, compared the number of minorities who purchase automobiles to the number of minority-owned dealerships, and made recommendations on methods to increase the number of minority-owned dealerships.

Real Property

Lead Poisoning Prevention

Chapter 114 of 1994 enacted the “Reduction of Lead Risk in Housing Law.” The law provides limited liability relief for owners of rental property built before 1950 or certain other residential rental property in exchange for the reduction of lead hazards in these older rental properties and limited compensation of children poisoned by lead. By December 31, 1995, the owner of an affected property must have registered the property with the Maryland Department of the Environment. At each change in occupancy, before the next tenant occupies the property, an owner must satisfy the risk reduction standard by passing a test for lead contaminated dust or performing specified lead hazard reduction treatments and having the property inspected. An affected property is exempt from the risk reduction standards under specified conditions.

House Bill 1245 (passed) makes several changes designed to increase compliance with the reduction of lead risk in housing law and to preserve the stock of available, affordable housing.

The bill requires the owner of residential real property, before a local government authorizes or certifies the property to be rented or leased, to state in writing under penalty of perjury (1) that the property is not an affected property under the lead risk reduction provisions; or (2) if the property is an affected property, that the property is registered with the department and the inspection certificate number for the property.

The bill also requires a landlord wishing to repossess an affected property because of a tenant’s failure to pay rent to include in the written complaint (1) a statement that the landlord has registered the affected property as required and renewed the registration and (2) the inspection certificate number.

Alternatively, the landlord must include a statement that the landlord is unable to provide an inspection certificate number because (1) the landlord has requested that the tenant allow access to the property to perform remedial work; (2) the landlord has offered to relocate the tenant if the work would disturb the interior surface paint and pay the tenant's reasonable relocation expenses; and (3) the tenant has refused to allow access or refused to vacate the property so that the required work can be done.

In a civil action in which a property owner's immunity under the reduction of lead risk in housing law is challenged, the bill requires the court to (1) allow discovery limited solely to the issue of immunity; (2) determine whether there are any material issues of disputed fact as to whether the owner is entitled to immunity; (3) hold an evidentiary hearing on any issues of material fact, which must, on request of any party, be before a jury; and (4) determine as a matter of law whether the owner is entitled to immunity.

Condominiums, Cooperative Housing Corporations, and Homeowners Associations

Display of U.S. Flag

House Bill 1017 (passed) authorizes a homeowner or tenant to display on the premises of a residence one portable, removable flag of the United States, regardless of any deed, covenant, restriction, bylaw, or any other document concerning the display of flags or decorations on residential real property. The bill prohibits the terms of any document or agreement from prohibiting or unduly restricting the right of a homeowner or tenant to display such a flag. The bill applies to all residential real property.

Electronic Transmission of Notices and Votes

Senate Bill 568/House Bill 878 (both passed) authorize a cooperative housing corporation, a council of unit owners of a condominium, or a board of directors or governing body of a homeowners association, notwithstanding language contained in the entity's governing documents, to provide notice of a meeting or deliver information to a member or owner by electronic transmission if (1) the entity's governing body gives the entity the authority to do so; (2) the member or owner gives the entity prior written authorization to do so; and (3) an officer or agent of the corporation, council, or association certifies in writing that it has provided notice or delivered material or information as authorized by the member or owner.

The bills authorize a board of directors of a cooperative housing corporation, a council of unit owners of a condominium, or a board of directors or other governing body of a homeowners association, notwithstanding language contained the entity's governing documents, to authorize a member or owner to submit a vote or proxy by electronic transmission if the electronic transmission contains information that verifies that the vote or proxy is authorized by the member or owner. If the governing documents require voting by secret ballot and the anonymity of voting by electronic transmission cannot be guaranteed, voting by electronic transmission is permitted if the option of casting anonymous printed ballots is available.

Books and Records

Senate Bill 567/House Bill 879 (both passed) establish uniform standards for access to the books and records of cooperative housing corporations, condominiums, and homeowners associations. The bills require all books and records kept by or on behalf of a cooperative housing corporation to be made available for examination and copying by a member, a member's mortgagee, and their agents or attorneys during normal business hours, after reasonable notice.

For both cooperative housing corporations and condominiums, the bills authorize books and records to be withheld from public inspection to the extent that they concern (1) personnel records; (2) an individual's medical or financial records; (3) records relating to business transactions that are currently in negotiation; (4) written advice of legal counsel; or (5) minutes of a closed meeting of the governing body. The bills also authorize a reasonable charge on a person who desires to review or copy the books and records of a cooperative housing corporation or condominium.

The bills add the minutes of a closed meeting of the governing body to the books and records that a homeowners association may withhold from public inspection.

Deletion of Recorded Covenants and Restrictions

Senate Bill 692/House Bill 1042 (both passed) authorize a homeowners association to delete a recorded covenant or restriction that restricts ownership based on race, religious belief, or national origin from a deed or other declaration of property in a development if at least 85 percent of the lot owners in the development agree to the deletion. If a deed or other declaration expressly provides for a method of amendment or deletion, a homeowners association may use either method for deleting the covenants or restrictions. The governing body of a homeowners association must record the amendment with the clerk of the court in the jurisdiction in which the development is located.

Annual Charges

House Bill 566 (passed) requires a homeowners association that has authority to levy an annual charge on a development that contains at least 13,000 acres and has a population of at least 80,000 to base its annual charge on the phased-in assessment value of the property. The bill provides that any increase of more than 10 percent over the previous year's assessed value must be considered an unexpected windfall which is to be rebated or credited to the property owners in the following year. The bill does not require the windfall to be rebated or credited if the governing body certifies that the revenues from the annual charges are insufficient to pay outstanding bond obligations.

The bill also clarifies that the valuation of real property for the purposes of any private contract or covenant that was entered into or imposed prior to July 1, 1978, for the purpose of providing funds for public facilities or services through the imposition of payments or charges based on valuations made by the State for real property purposes is required to be 50 percent of the phased-in value of property.

The bill takes effect June 1, 2004, and applies retroactively to all annual charges imposed by a homeowners association made on or after January 1, 2003.

The only homeowners association that meets the requirements of the bill in terms of acreage and population is the Columbia Association in Howard County. Approximately 90,000 people reside in Columbia.

Disclosure Requirements – Chesapeake Bay Critical Area

Chapter 794 of 1984 established the Chesapeake Bay Critical Area Protection Program in the Department of Natural Resources to foster more sensitive development activity in a consistent and uniform manner along shoreline areas of the Chesapeake Bay and its tributaries. Chapter 433 of 2002 expanded the Chesapeake Bay Critical Area Law to include the Atlantic Coastal Bays and their tributaries. Under the program, development in the critical area is limited based on a local jurisdiction's critical area program. These restrictions, depending on the location of the property, may include limits on forest clearing, limits on impervious surfaces, setback requirements, and limits on housing densities.

Senate Bill 482/House Bill 1030 (both passed) require a contract or an addendum to a contract for the sale of real property to contain in conspicuous type a specific disclosure to buyers advising the buyers of the possibility that the property may fall within the Chesapeake and Atlantic Coastal Bays Critical Area.

Recordation of Deeds

House Bill 180 (Ch. 40) streamlines the deed recordation process by repealing the requirement that all deeds be presented at the local assessment office prior to recordation. Eleven counties currently use a "two-step" recordation process under which an instrument presented for recording in the land records must be endorsed with the certificate of the county tax collector and accompanied by an intake sheet. The clerk of the circuit court then sends a copy of the instrument and the intake sheet to the assessment office. The Act expands this streamlined process statewide, effective July 1, 2005.

Condemnation

Senate Bill 275/House Bill 386 (both passed) establish a Task Force on Business Owner Compensation in Condemnation Proceedings. The task force will study (1) the concept of business goodwill, with a focus on small business goodwill, and the appropriateness of developing a method to determine its value to calculate compensation in condemnation proceedings; (2) the feasibility of requiring condemning agencies to study the impact of condemnation on businesses; (3) the appropriateness of establishing a fund to provide financial assistance for affected businesses; (4) the feasibility of shortening the condemnation process to lessen uncertainty for businesses; (5) the appropriateness of making a legislative proposal on business owner compensation in condemnation proceedings applicable statewide or only in

Baltimore City; and (6) the circumstances in which condemnation can be used. The bills require the task force to report to the Governor and the General Assembly by December 31, 2005.

Interest on Security Deposits

Generally, a landlord is required to pay 4 percent simple interest, accruing at six-month intervals, on a tenant's security deposit and maintain all security deposits in branches of federally insured financial institutions doing business in the State. The deposits must be in interest-bearing accounts, and the accounts must be devoted exclusively to security deposits. A landlord may also hold the security deposits in insured certificates of deposit at branches of federally insured financial institutions doing business in the State or in securities issued by the federal government or the State.

Senate Bill 372/House Bill 723 (both passed) alter the amount of interest a landlord must pay a tenant upon return of the tenant's security deposit from 4 to 3 percent per annum.

Estates and Trusts

Maryland Uniform Disclaimer of Property Interests Act

Senate Bill 541/House Bill 1348 (both passed) adopt the revised Uniform Disclaimer of Property Interests Act (UDPIA) promulgated by the National Conference of Commissioners on Uniform State Laws in 1999. UDPIA establishes rules for disclaimers of property interests created by will, intestacy, or the exercise of testamentary powers of appointment. A disclaimer, when effective, treats the interest as if it had never been granted. UDPIA replaces the previous uniform act adopted in 1978.

The bills specify what interests may be disclaimed, the time when disclaimers are effective, and the effect on the distribution of disclaimed property interests. Generally, an heir in an intestate estate, a devisee of a will, a beneficiary of a trust or other nontestamentary transfer, a joint tenant in a joint tenancy with right of survivorship, a trustee of a trust, or any other fiduciary acting in a fiduciary capacity may disclaim a property interest under the bill. Any interest that may come to a person entitled to disclaim may be disclaimed, including a distribution of property in a probate estate, property due under a trust instrument, the property rights of a joint tenant at the death of another joint tenant, or the beneficiary rights following any other kind of nontestamentary or nonprobate transfer at death.

Small Trusts – Termination by Corporate Fiduciaries

Current State law allows a trust with a fair market value of \$50,000 or less to be terminated without a court order by a corporate fiduciary acting as a trustee if the trustee determines that termination is in the best interest of the beneficiaries and the governing instrument does not expressly prohibit termination of the trust regardless of its size. The limit on the fair market value of a trust that may be terminated without a court order has not been

increased since the current law was originally enacted in 1991 (Ch. 170). *Senate Bill 153/House Bill 617 (both passed)* increase to \$100,000 the maximum amount of the fair market value of a trust that a corporate fiduciary may terminate without a court order. The bill also repeals the registered mail option for sending notice of a proposal to terminate a trust and sending a written objection to any such proposal.

Personal Representatives – Permanent Residents

Senate Bill 646 (passed) expands the class of individuals eligible for appointment as a personal representative of an estate to include a person who is a noncitizen, permanent resident of the United States and is (1) an ancestor of the decedent; (2) a descendant of the decedent; or (3) a sibling of the decedent. Previously, the personal representative status could only be granted to a non-citizen if the person was the spouse of the decedent and a permanent resident of the United States.

Election for Modified Administration – Trusts

Effective for decedents dying on or after October 1, 1997, special provisions for modified administration were enacted towards the goal of limiting the role of the register of wills and the orphans' court in the administration of certain smaller, less complex estates. The purpose of the provision was to encourage expeditious closing of an estate and distribution of assets. To this end, the formal inventory and account provisions under normal administration were replaced by the less rigorous final report.

Senate Bill 686 (passed) alters the circumstances under which modified administration may be elected. To qualify for the election, all trustees of each trust that is a residuary legatee of a testate decedent must be limited to the decedent's personal representative, surviving spouse, or children. The bill repeals a requirement that the trust be created in the will and clarifies that the trust must be a residuary legatee.

