

Part I

Financial Institutions, Commercial Law, and Corporations

Financial Institutions

Mortgage Originators

Under Maryland law, while mortgage lenders generally must be licensed by the Commissioner of Financial Regulation to engage in the mortgage lending business, their employees are not subject to regulation. To address increasing problems with mortgage origination by unscrupulous or untrained individuals, *Senate Bill 660/House Bill 1040 (both passed)* establish licensing requirements and other regulatory oversight of mortgage originators by the Commissioner of Financial Regulation.

With limited exceptions, the bills require an individual to obtain a license from the commissioner before acting as a mortgage originator. Under the bills, a mortgage originator is an employee of a mortgage lender who (1) is a mortgage broker or has or will have a net branch office at or out of which the employee works; (2) directly contacts prospective borrowers for the purpose of negotiating with or advising them about mortgage loan terms and availability; (3) works on a percentage basis as specified in the bills; and (4) is authorized to accept a loan application on the mortgage lender's behalf. The bills establish character and fitness, education, and experience qualifications for issuance of a license, investigation and license fees, and grounds for approving and denying a license application.

Senate Bill 660/House Bill 1040 authorize a person aggrieved by an action of a licensee in connection with a mortgage loan to file a complaint with the commissioner and require the commissioner to investigate the complaint. The bills specify when the commissioner may deny a license to an applicant or suspend or revoke a licensee's license and authorize the commissioner to issue cease and desist orders, issue orders to take affirmative corrective action, and impose civil penalties. A willful violation of the bills is a felony, and on conviction a violator is subject to a fine not exceeding \$25,000 or imprisonment not exceeding five years or both.

Fees and other revenues generated under the bills are to be deposited into the Mortgage Lender-Originator Fund established under the bills to be used to pay the costs of the

Commissioner of Financial Regulation in regulating the industry. Unless exempt under the bills, an individual must be licensed by January 1, 2007, to act as a mortgage originator.

Mortgage Lenders

Generally, a person may not act as a mortgage lender in the State unless the person is licensed by the Commissioner of Financial Regulation, specifically exempted from licensing requirements, or registered with the commissioner as a federally approved seller-servicer. A federally approved seller-servicer is a mortgage lender that has been approved to service loans by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, the United States Department of Veterans Affairs, or the United States Department of Housing and Urban Development (HUD).

Senate Bill 159 (passed) repeals the exemption from licensing requirements for federally approved seller-servicers. The bill is in response to a case involving the misconduct of a federally approved seller-servicer of subprime mortgages that was settled by the Federal Trade Commission and HUD. The case affected consumers nationwide, including Maryland residents. Because the seller-servicer was merely registered with the commissioner and not licensed, the commissioner's regulatory and enforcement authority was limited. Repeal of the exemption for federally approved seller-servicers will give the commissioner greater oversight over these entities, including examination and disciplinary authority.

The bill allows a federally approved seller-servicer that was exempt from having a mortgage lender license immediately prior to the effective date of the bill, October 1, 2005, to continue to service mortgage loans without a mortgage lender license until the commissioner approves or disapproves the seller-servicer's license application, but only if the seller-servicer applies for a license no later than 30 days after October 1, 2005.

Maryland Money Transmission Act

Under the Maryland Money Transmission Act, a person may not engage in the business of money transmission unless the person is licensed by the Commissioner of Financial Regulation or exempt from licensing requirements. Money transmission is the business of selling or issuing payment instruments or stored value devices or receiving money or monetary value for the transmission of money to another location. A stored value device is a card or other object used to transmit or pay money (1) that contains a means for storing information; (2) that is prefunded; and (3) the value of which is reduced after each use.

House Bill 1063 (passed) creates an exemption from the licensing requirements of the Maryland Money Transmission Act for accredited institutions of higher education in Maryland. The exemption will allow these institutions to offer a debit card as part of a student's identification card. Students who deposit money on account with an institution may then use their school identification cards to pay for goods and services on campus and at off-campus businesses that have contracted with the institution. According to the Maryland Independent

College and University Association, several of its member institutions offer or are considering offering these cards to students.

Commercial Law

Credit Regulation – Debt Management Services

In response to consumer complaints about debt adjustment services, the General Assembly passed the Maryland Debt Management Services Act in 2003. The Act established licensing requirements and other measures to regulate the debt management services industry. *House Bill 753 (passed)* expands regulatory oversight over debt management services providers by (1) prohibiting insider dealing, false advertising, and sales incentives to employees for enrolling consumers in debt management plans or agreements; (2) increasing the maximum amount of the bond a debt management services provider must post from \$350,000 to \$1,000,000; and (3) increasing the disclosures an applicant must make to receive a license. The bill also implements a sliding scale fee schedule based on annual gross revenue for initial and renewal licenses and clarifies that the Maryland Debt Management Services Act applies whether or not the debt management services provider has an office in Maryland.

Finally, the bill requires the Commissioner of Financial Regulation and the Attorney General jointly to (1) study the impact of the bill on consumers and debt management services providers, regulatory mechanisms used in other parts of the country, and the impact of authorizing for-profit entities to provide debt management services in the State; (2) recommend any appropriate changes to the Maryland Debt Management Services Act; and (3) report their findings and recommendations to the House Economic Matters Committee and the Senate Finance Committee by December 31, 2006.

Consumer Protection

Gift Certificates and Gift Cards – Expiration and Fees

Retail merchants increasingly have begun to restrict the time within which a person may redeem a gift certificate or gift card and to impose fees for dormancy or inactivity and for replacement, account maintenance, or other services. *Senate Bill 8 (passed)* establishes the conditions under which a gift certificate or gift card may be subject to expiration or fees.

Under the bill, a “gift certificate” is defined as a device constructed of paper, plastic, or any other material that is (1) sold or issued for a cash value that can be used to purchase goods or services; or (2) issued as a store credit for returned goods. Certain cards, certificates, and coupons are excluded from the definition, including prepaid calling cards and gift certificates given for free under an awards, loyalty, or promotional program. *Senate Bill 8* prohibits a person from selling or issuing a gift certificate that, within four years after it is purchased, is subject to expiration or a fee or charge of any kind. If the gift certificate will expire or be subject to a fee or charge after four years, these terms and conditions must be printed on the gift

certificate, on a sticker affixed to the gift certificate, or on an envelope containing the gift certificate. If a gift certificate is sold or issued in violation of the bill, the gift certificate shall be considered valid and may not be subject to any fee or charge.

Gift cards that are processed through a national credit or debit card service and may be used to purchase goods or services from multiple unaffiliated sellers of goods and services are excluded from the definition of a “gift certificate” and treated differently under *Senate Bill 8*. A gift card may be subject to expiration or a postsale fee, including a service fee, dormancy fee, account maintenance fee, cash-out fee, replacement fee, activation fee, or reactivation fee, if the expiration date and information about the fees are printed on the front or back of the gift card. If the disclosures are hidden by the gift card’s packaging, a written statement of the disclosures must be given to the purchaser. Special disclosure requirements are provided for gift cards sold or issued by electronic or telephonic means.

For both gift certificates and gift cards, the bill prohibits any change in a term or condition disclosed at the time of issuance or sale, unless the change benefits the consumer. A violation of any provision of the bill is an unfair or deceptive trade practice under the Maryland Consumer Protection Act, and, except for the criminal penalty, its enforcement and penalty provisions apply to any person that violates the provisions of *Senate Bill 8*.

The bill takes effect July 1, 2006, and does not apply to any gift certificate or gift card issued or sold before July 1, 2006.

Privacy of Social Security Numbers

Senate Bill 280/House Bill 56 (both passed) prohibit a person, except a unit of State or local government, from (1) publicly posting or displaying an individual’s Social Security number (SSN); (2) printing an individual’s SSN on a card required for the individual to access products or services provided by the person; (3) requiring an individual to transmit the individual’s SSN over the Internet unless the connection is secure or the individual’s SSN is encrypted; (4) initiating the transmission of an individual’s SSN over the Internet unless the connection is secure or the individual’s SSN is encrypted; or (5) requiring an individual to use the individual’s SSN to access an Internet web site unless a password, unique personal identification number, or other authentication device also is required to access the web site. Similarly, unless required by State or federal law, the bills prohibit such a person from (1) printing an individual’s SSN on material mailed to the individual; (2) including an individual’s SSN in material that is electronically transmitted to the individual unless the connection is secure or the individual’s SSN is encrypted; or (3) including an individual’s SSN in any material that is transmitted by facsimile to the individual.

The prohibitions under *Senate Bill 280/House Bill 56* do not apply to (1) the collection, release, or use of an SSN as required by State or federal law; (2) the inclusion of an SSN in an application, form, or document sent by mail, electronically transmitted, or transmitted by facsimile under specified circumstances; (3) the use of an SSN for internal verification or administrative purposes; or (4) an interactive computer service provider’s or telecommunications provider’s transmission or routing or temporary storage of an SSN.

A person that used an individual's SSN before January 1, 2006, in a manner prohibited by the bills may continue to do so until January 1, 2009, if (1) the use is continuous; and (2) the person provides an annual disclosure form stating the individual's right to stop the use of the individual's SSN. A request to stop using an individual's SSN must be implemented within 30 days after receipt. A person may not deny products or services to an individual because of a request to stop using the individual's SSN.

The bills take effect January 1, 2006, and apply to all health insurance policies and contracts issued, delivered, or renewed on or after January 1, 2006. Policies or contracts in effect before January 1, 2006, must comply by January 1, 2007.

Immigration Consulting Services

House Bill 691 (passed) regulates the activities of persons who provide immigration consulting services in the State. The bill defines an "immigration consultant" as a person that provides nonlegal advice, guidance, information, or services to a client on an immigration matter for a fee and an "immigration matter" as any legal proceeding, filing, or action that affects the immigration status of a noncitizen and arises out of specified laws, executive orders, presidential proclamations, or actions of certain federal agencies.

Under the bill, an immigration consultant may not (1) provide legal advice or legal services concerning an immigration matter; (2) make a misrepresentation or false statement to persuade a client to use the immigration consultant's services; (3) make a statement that the immigration consultant can or will obtain special favors from or has special influence with specified federal agencies; (4) collect compensation for services not yet performed; (5) refuse to return documents supplied by, prepared by, or paid for by a client at the client's request; or (6) represent, advertise, or communicate that the immigration consultant possesses titles or credentials that would qualify the immigration consultant to provide legal advice or legal services.

In addition, *House Bill 691* requires an immigration consultant to execute a written contract with a client before providing any assistance. The bill requires an immigration consultant to post certain notices advising that the immigration consultant is not an attorney and may not provide legal forms, legal advice, or legal services. The bill also establishes criminal penalties and a private cause of action for an individual injured by a violation of the bill. The bill does not apply to licensed attorneys, persons authorized to provide immigration services under federal law, or law school clinics.

Hearing Aids – Cancellation of Purchase

Under the Maryland Hearing Aid Sales Act, a purchaser of a hearing aid may cancel the purchase for any reason within 30 days after delivery. On cancellation, the purchaser is entitled to a refund of the entire consideration paid, less (1) 10 percent for services; or (2) an amount, not exceeding 20 percent of the purchase price, equal to the seller's actual documented expenses for fitting, delivery, and return of the device to the manufacturer if these expenses exceed 10 percent.

Senate Bill 576/House Bill 1043 (both passed) require a seller of a hearing aid to bill any fee for diagnostic tests separately from any other charges and authorize the seller to exclude separately billed fees for diagnostic tests from the amount that must be refunded to the purchaser on cancellation. The bills also require a seller to include a statement of the total refundable amount in the notice of cancellation given to the purchaser at the time of the delivery of the hearing aid.

Enforcement Authority of the Consumer Protection Division

To enforce the Maryland Consumer Protection Act, the Consumer Protection Division in the Office of the Attorney General is authorized to include in a written assurance of discontinuance or settlement agreement a stipulation or condition requiring a violator or alleged violator of the Act to make restitution to a consumer and pay the division's investigation costs. In addition, the division may issue an order requiring a violator to cease and desist from a violation of the Act and to take affirmative action, including restitution of money or property. The cease and desist order may contain the same stipulations or conditions.

In a 2004 decision (*Consumer Protection Division v. George*, 383 Md. 505 (2004)), the Maryland Court of Appeals found that the authority of the division to require a violator to take affirmative action does not authorize the division to require the violator to post a bond or disclose financial information to aid in the division's enforcement of a cease and desist order. *Senate Bill 857/House Bill 507 (both passed)* clarify and enhance the division's enforcement authority by (1) altering the stipulations and conditions that may be contained in a written assurance of discontinuance or settlement agreement to include requirements to pay economic damages, post a performance bond or other security, and provide information to the division that is appropriate to assist the public in obtaining relief or to prevent future violations; and (2) more clearly restating that a cease and desist order may contain any stipulation or condition authorized for a written assurance of discontinuance or settlement agreement. The bills also establish criteria the division must consider in determining the amount of security to be posted by a violator or alleged violator.

Commercial Law – Generally

Maryland Uniform Electronic Transactions Act – Use of Electronic Postmarks

The Maryland Uniform Electronic Transactions Act (UETA), adopted in the 2000 session, governs transactions between parties conducted by electronic means and the validity of electronic signatures and records. Under UETA, a record or signature may not be denied legal effect or enforceability solely because it is in electronic form. If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered in an electronic record capable of retention by the recipient at the time received.

House Bill 487 (passed) amends UETA to provide that a legal requirement to send, communicate, or transmit a record by registered or certified mail may be satisfied by an

electronic record that (1) is addressed properly or otherwise directed properly to an information processing system designated by the recipient; (2) either enters an information processing system outside the sender’s control or a region of an information processing system under the recipient’s control; (3) is postmarked with a postal authority’s electronic postmark; and (4) is authenticated by an electronic postmark. The bill provides that an electronic record is subject to the same legal protections as the U.S. mail if it meets these requirements and the U.S. Postal Service is the postal authority that postmarked the electronic record. Finally, the bill clarifies that use of an electronic postmark for serving legal process is not authorized by the bill.

An electronic postmark is a service offered by the U.S. Postal Service, through its partner Authentidate, Inc., that verifies the times and dates when electronic mail is sent and received and the contents of the electronic mail. Since it is much less costly than certified or registered mail, potential savings from its use could be significant for businesses and government agencies required to send many communications by certified or registered mail.

Equipment Dealer Contract Act

House Bill 1333 (passed) substantially revises the Maryland Equipment Dealer Contract Act, which governs suppliers and dealers in heavy construction equipment. The bill provides increased protection for local dealers when supply contracts are entered into, transferred, or terminated. The bill defines the term “good cause,” specifies the circumstances under which good cause exists, and prohibits a supplier from terminating, canceling, failing to renew, or substantially changing the competitive circumstances of a contract with a dealer without good cause. While a supplier generally may take any of these actions without giving a dealer notice or a right to cure a deficiency if good cause exists, a supplier must give a dealer at least 90 days’ notice and a 60-day right to cure if the action is based on the dealer’s failure to capture the share of the market specified in the contract.

In addition, the bill:

- requires a supplier to repurchase the dealer’s inventory when a contract is terminated unless the dealer chooses to keep it;
- specifies the amounts the supplier must pay for various kinds of inventory and requires the supplier to pay for inventory shipping costs;
- requires a supplier to repurchase inventory from the heir of a deceased dealer or deceased majority stockholder of a corporation operating as a dealer at the option of the heir;
- establishes exceptions to the repurchase requirements for certain dealer inventory;
- specifies procedures and time limits for processing and paying warranty claims for parts or services made by a dealer; and

- establishes various rights of dealers and remedies for a person injured by a violation of the bill, including the right to bring a civil action for monetary damages, injunctive relief, attorney's fees, and court costs.

Legislation similar to *House Bill 1333* has been adopted in several states, including Virginia, North Carolina, and New York.

Abandoned Property

In Maryland, property generally is presumed abandoned if it is left unclaimed for three years. Under the Maryland Uniform Disposition of Property Act, a person holding abandoned property must report certain information about the property to the Comptroller, including the nature of the property and the property's presumed owner. Within 180 days after the report's filing, the Comptroller must publish a notice in a newspaper naming the presumed owner and the holder of the property and stating the means by which the owner may claim the property. The Comptroller then must send a notice about the property to the presumed owner's last known address. Two bills passed during the 2005 session make changes to the abandoned property law.

House Bill 206 (passed) alters the period within which the Comptroller must publish notice of the abandoned property. Under the bill, publication must take place within 365, instead of 180, days after the person holding the abandoned property files a report on the property with the Comptroller.

House Bill 190 (passed) establishes \$100 as the minimum value of abandoned property for which a notice must be sent to the property's presumed owner. Currently, the notice must be sent regardless of the property's value. The \$100 threshold value corresponds to the value of abandoned property for which the Comptroller must publish notice.

State Antitrust Exemption for Business of Insurance

The Maryland Antitrust Act generally prohibits a person from engaging in various activities intended to restrain trade or competition in commerce. The Act is intended to complement federal antitrust laws and, in construing the Act, State courts are directed to follow the guidance of federal courts in interpreting federal law dealing with the same or similar matters.

House Bill 788 (passed) narrows the current State law exemption for the business of insurance to track the exemption under federal antitrust laws. The bill exempts from the application of the Maryland Antitrust Act the activity of an insurer, insurance producer, public adjuster, insurance advisor, or rating organization that is (1) regulated by the Maryland Insurance Commissioner; or (2) authorized by State law. Unless authorized under the Insurance Article of the Annotated Code of Maryland, the exemption does not cover a person who (1) agrees to rig bids, allocate customers or territory, boycott, coerce, or intimidate; or (2) engages in an act of bid rigging, customer or territorial allocation, boycott, coercion, or intimidation.

Corporations and Associations

Corporations and Real Estate Investment Trusts – Miscellaneous Provisions

House Bill 958 (passed) specifies how a corporation may file a certificate of notice with the State Department of Assessments and Taxation (SDAT) in order for the corporation to provide notice of matters outside its corporate charter and makes various changes to the laws governing indemnification of a director of a corporation, alteration of a corporation's name or par value of its stock, the issuance of stock and shares of beneficial interest for the purpose of qualifying as a real estate investment trust (REIT), and the reporting requirements for a REIT.

The bill authorizes a corporation to file a certificate of notice for record with SDAT describing (1) an action by the corporation, its board of directors, or its stockholders; (2) facts ascertainable outside the corporation's charter; (3) the expiration of the corporation's period of existence; or (4) any other information the corporation determines should be disclosed. The certificate of notice may not affect the corporation's charter or any rights or liabilities of its stockholders.

The bill expands the expenses for which a director must be reimbursed to include those incurred in defending a claim, issue, or matter in a proceeding the director has successfully defended. The bill also allows a corporation's charter to limit the ability of a majority of the entire board of directors to change the name of the corporation or change the name or par value of any class of stock without action by the stockholders.

In addition, *House Bill 958* repeals the limit on the number of persons to whom a corporation may issue shares of its stock or to whom a REIT may issue shares of beneficial interest without consideration for the purpose of qualifying as a REIT under the Internal Revenue Code. Finally, the bill repeals the requirement that a REIT prepare an annual report of its operations.

Recordation of Documents

On the filing of various charters, certificates, and other documents with SDAT by a corporation, limited liability company, partnership, or limited partnership, SDAT is required to (1) endorse on the document its acceptance of the document for record and the date and time of acceptance; (2) promptly record the document; and (3) return the original document to the business organization, its attorney, or its agent. *House Bill 159 (passed)* alters this requirement by providing that, unless the business organization, its attorney, or its agent declines the return of an original document, SDAT must return the document on payment of a \$5 nonrefundable processing fee. Under the bill, the fee collected must be credited to the special fund established to help pay costs associated with SDAT's charter document processing unit.

Filing Fees

When a notice of change of the name or address of a resident agent of a corporation is filed with SDAT, it must collect a \$25 nonrefundable processing fee. *House Bill 1549 (passed)* establishes a maximum fee of \$30,000 for a bulk filing of notices of changes of the names or addresses of resident agents.