Part F
Courts and Civil Proceedings

Judges and Court Administration

District Court Commissioners – Jurisdiction

District Court commissioners are judicial officers, appointed by the administrative judge of each district with the approval of the Chief Judge of the District Court. Commissioners review applications for statements of charges to determine whether probable cause exists to issue a charging document, warrant, or criminal summons. They advise arrested individuals of their rights at initial appearance hearings and determine whether the individual will be given bond, committed to jail, or released on personal recognizance. Commissioners also have the authority to issue interim peace orders and interim protective orders.

There are more than 250 District Court commissioners. Commissioners must be residents of the counties in which they serve. The Chief Judge of the District Court may assign a commissioner to serve temporarily in a county that borders the commissioner's county of residence. This assignment may only be made in extraordinary circumstances and may not exceed 30 days. ***Senate Bill 58 (passed)/House Bill 87 (Ch. 40)*** authorize District Court commissioners to exercise the powers of office in any county to which they are assigned by the Chief Judge of the District Court, or the Chief Judge's designee, and to serve temporarily in any county in the State without the need for an emergency designation by the Chief Judge.

Attorneys

State Board of Law Examiners

The State Board of Law Examiners, subject to the authority of the Court of Appeals, regulates admissions to the Bar of Maryland. The board generates revenues from bar examination and application fees. The examination fee is set by the Court of Appeals but is capped at $150 by statute. Other fees, such as the application fee, also are set by the Court of Appeals but are not subject to any statutory limits.

Senate Bill 514 ***(passed)*** increases the maximum examination fee, as set by the Court of Appeals, that an applicant for admission to the bar must pay to the board. For fiscal 2009, the maximum fee is $250; for fiscal 2010 and thereafter, the maximum fee is $400. The bill also states the intent of the General Assembly that the expenditures of the board be covered by fee revenue to the extent possible. A more detailed discussion of this bill may be found under Part H – Business and Economic Issues of this *90 Day Report.*

Payment of Taxes and Unemployment Insurance Contributions

The Client Protection Fund of the Bar of Maryland reimburses claimants for losses caused by theft of funds by members of the Maryland Bar, acting either as attorneys or as fiduciaries. About 33,000 lawyers pay annual fees to support the fund.

Senate Bill 493 ***(passed)*** requires that the fund annually provide to the Comptroller a list of lawyers who have paid annual fees to the fund during the previous fiscal year. If the Comptroller determines that a lawyer has not paid all undisputed taxes and unemployment insurance contributions and the lawyer does not make payment or provide for payment in a satisfactory manner, the Comptroller may refer the matter to Bar Counsel for disciplinary action. For a more detailed discussion of this bill, see the subpart "Miscellaneous Taxes" within Part B – Taxes of this *90 Day Report*.

Civil Actions and Procedures

Maryland Uniform Interstate Depositions and Discovery Act

The National Conference of Commissioners on Uniform State Laws recommended the Uniform Interstate Depositions and Discovery Act to clarify issues that arise with respect to interstate discovery, *i.e.*, a deposition or a production of documents or both.

Senate Bill 103 ***(passed)***/***House Bill 88*** ***(Ch. 41)*** set forth procedures to be followed by a circuit court clerk with respect to a foreign subpoena issued from another state, the District of Columbia, or any territory or possession of the United States. A party requesting issuance of a subpoena in this State is required to submit a foreign subpoena to a circuit court clerk for the county in which the deposition or production of documents is sought to be conducted.

When a foreign subpoena is submitted to a clerk, the clerk must promptly issue a subpoena for service on the individual named in the foreign subpoena. The subpoena is required to incorporate the terms used in the foreign subpoena and include or be accompanied by the names and contact information of all counsel and unrepresented parties. The subpoena must be served in compliance with the Maryland Rules. The Maryland Rules governing discovery and subpoenas in civil actions apply to subpoenas issued under the bills. However, a request for the issuance of a subpoena does not constitute an appearance by an attorney in a court of this State.

Service of Process on Nonresident Drivers

Senate Bill 413 ***(passed)*** establishes that, by exercising the privilege to drive in this State, a nonresident driver appoints the Motor Vehicle Administration (MVA) as agent to receive a subpoena, summons, or other process that is directed to the nonresident driver and is issued in an action that is related to an accident or collision involving a motor vehicle driven by the nonresident driver and in which the nonresident driver is named a party.

Service of process on the nonresident driver is valid if (1) service is made by personal delivery and leaving of a copy of the process with MVA, with a certification of the last known address of the nonresident driver; (2) a fee for service of process is paid to MVA; (3) MVA sends a copy of the process by certified mail, return receipt requested, to the nonresident driver at the driver's last known address; and (4) MVA files an affidavit of compliance with the clerk of the court in which the action is pending. MVA must provide a copy of the affidavit to the party seeking service who is required to send a copy of the affidavit to the motor vehicle insurer of the nonresident driver by certified mail, return receipt requested. When the certified mail return receipt is returned to MVA, MVA must deliver it to the party seeking service and keep a record of the date of its receipt and delivery to the party seeking service. MVA is authorized to establish and collect a fee to recover its costs.

Limitation on Arbitration – Consumer Insurance Contract

House Bill 577 ***(passed)*** establishes that any provision in an insurance contract with a consumer that requires binding or nonbinding arbitration is void and unenforceable as it limits or waives the right to a trial. The bill does not apply to a provision that establishes an appraisal process to determine the value of property.

Civil Jury Trials – Amount in Controversy

Under the English common law, parties to a civil case at law were entitled to a trial by jury regardless of the amount in controversy. Article 23 of the Declaration of Rights of Maryland preserves the right to a trial by jury in a civil case if the amount in controversy exceeds $10,000. Article 5 of the Declaration of Rights authorizes the General Assembly to adopt legislation to limit the right to a trial by jury to civil proceedings in which the amount in controversy exceeds $10,000. ***Senate Bill 404***/***House Bill 644*** ***(both failed)*** would have proposed a constitutional amendment to increase, from over $10,000 to over $20,000, the amount in controversy in civil proceedings in which the right to trial by jury may be limited by legislation. ***Senate Bill 403***/***House Bill 642*** ***(both failed)*** would have made statutory changes to implement the constitutional amendment by specifying that a party in a civil action may not request a jury trial if the amount in controversy does not exceed $20,000.

Immunity from Liability – AEDs

An automated external defibrillator (AED) is about the size of a laptop computer, and it analyzes a cardiac arrest victim's cardiac rhythm, charges to an appropriate energy level, and

delivers an electric charge, as directed by the operator, through adhesive pads placed on the victim's chest.

Chapter 167 of 1999, which created the AED Program, authorizes a facility to make AEDs available to victims of sudden cardiac arrest under a program administered by the Emergency Medical Services Board. ***Senate Bill 570*** ***(passed)*** revised the program. For further discussion of ***Senate Bill 570***, see the subpart "Public Health – Generally" within Part J – Health and Human Services of this *90 Day Report*.

Senate Bill 579/House Bill 1134 ***(both passed)*** expand the circumstances under which an individual is immune from civil liability for providing automated external defibrillation. Specifically, the bills repeal the following eligibility requirements for civil immunity for conduct by individuals relating to the use of an AED: (1) the act or omission occurs while an individual is providing automated external defibrillation at an authorized facility; (2) the individual has successfully completed an AED training course and is authorized to provide automated external defibrillation; or (3) the individual is using an AED obtained by a prescription issued by a physician.

The individual must be acting in good faith and provide the assistance or aid in a reasonably prudent manner and without fee or other compensation. Immunity is not available if the conduct of the individual amounts to gross negligence, willful or wanton misconduct, or intentionally tortious conduct.

Liability of Lead Pigment Manufacturers

In 1978, lead-based paint was banned nationwide for consumer use by the federal government because of the dangers of lead poisoning. Several courts in other states have awarded damages in actions based on collective liability theories devised to remedy the problem of product identification in some tort cases. In 2005, the Wisconsin Supreme Court applied such a liability theory in a case involving lead-based paint and held that, although the plaintiff could not prove which manufacturer produced the paint that caused the lead poisoning, the suit could proceed on both negligence and strict liability theories against all manufacturers of lead paint that contributed to the risk. *Stephen Thomas v. Clinton L. Mallett, et al.*, 701 N.W.2d 523 (Wis. 2005). Maryland courts have generally rejected such liability theories that would allow a plaintiff to recover where that particular defendant's involvement in the plaintiff's injury is not proved to have been caused by that defendant.

House Bill 1241 ***(failed)*** would have changed the standard of liability in negligence, product liability, and other actions by providing that proof that an individual manufacturer's lead pigment in lead-based paint caused the damage is not necessary and providing for the manner of apportionment of damages among multiple manufacturers found liable. The bill also would have created the Maryland Lead Restitution Fund that would have consisted of funds received by the State for its claims against manufacturers of lead pigment and others in the lead paint industry for violations of State law. The fund would have been used primarily for lead abatement and

prevention programs, including the Maryland Department of the Environment's Lead Poisoning Prevention Program.

Family Law

Same-sex Marriage, Civil Unions, and Domestic Partnerships

Background

Maryland law provides that only a marriage between a man and a woman is valid in this State. In July 2004, nine same-sex couples filed suit in Baltimore City against the clerks of the circuit courts from five counties, contending that the State law banning same-sex marriage is unconstitutional. The plaintiffs alleged violation of the prohibition against discrimination based on sex under the Maryland Declaration of Rights, along with violations of due process and equal protection rights.

On January 30, 2006, the Circuit Court for Baltimore City held that the State statute defining marriage is unconstitutional and violates Article 46 of the Maryland Declaration of Rights because it discriminates based on gender against a suspect class and is not narrowly tailored to serve any compelling governmental interests. Article 46 of Maryland's Declaration of Rights is commonly referred to as Maryland "Equal Rights Amendment" and prohibits abridgment of equal rights under State law because of sex.

In September 2007, the Court of Appeals issued an opinion reversing the judgment of the circuit court and upholding that State's marriage statute. See *Conaway, et al. v. Deane, et al.,* 401 Md. 219 (2007). The court held that the Equal Rights Amendment was intended to prevent discrimination based on gender, not sexual orientation. The court found that the marriage statute does not discriminate on the basis of gender because it prohibits equally both men and women from marrying a person of the same sex. The court also determined that under constitutional principles, sexual orientation is not a suspect or quasi-suspect classification, nor is same-sex marriage a constitutionally protected fundamental right. Therefore, Maryland's statute will pass constitutional muster so long as it is rationally related to a legitimate governmental interest. The court held that the marriage statute is rationally related to the State's legitimate interest in fostering procreation and encouraging the traditional family structure. However, in conclusion, the court cautioned that the opinion "…should by no means be read to imply that the General Assembly may not grant and recognize for homosexual persons civil unions or the right to marry a person of the same sex." *Id.* at 325.

Legislative Responses

In response to the Court of Appeals ruling, a number of bills were introduced in the 2008 session. Some would have legalized same-sex marriage or conferred the rights and benefits of marriage on same-sex couples through civil unions or domestic partnerships. Other bills

would have submitted to the electorate a proposed constitutional amendment to ban same-sex marriage.

Senate Bill 290 (failed) and ***House Bill 351 (failed)*** would have altered the definition of a valid marriage by specifying that a marriage between two individuals who are not otherwise prohibited from marrying is valid in Maryland. ***House Bill 570 (failed)*** and ***House Bill 1112 (failed)*** would have established civil unions as the legally recognized union of two eligible individuals of the same sex and would have extended all the rights and responsibilities of marriage to parties to a civil union. Similarly, ***House Bill 1174 (failed)*** would have established domestic partnerships, akin to civil unions, for same-sex couples. ***Senate Bill 689/House Bill 848 (both failed)*** would have replaced the institution of marriage with the institution of domestic partnership for all couples, whether of the opposite or same gender. All qualifications, rights, and responsibilities applicable to marriage would have been transferred to the institution of domestic partnership.

The General Assembly also considered ***Senate Bill 169 (failed)*** and ***House Bill 1345 (failed)***, which would have amended the Maryland Constitution to establish that only a marriage between a man and a woman is valid in Maryland.

While not altering or affecting the definition of marriage in State law, ***Senate Bill 566 (passed)*** specifies that hospitals, nursing homes, and residential treatment centers are required to allow visitation by a patient's or resident's domestic partner and members of the domestic partner's family and establishes health care decision making rights. A more detailed discussion of this bill may be found under the Health Care Facilities and Regulation subpart of Part J – Health and Human Services of this *90 Day Report*.

Additionally, those persons in domestic partnerships or former domestic partnerships as specified in ***Senate Bill 597 (passed)*** qualify for an exemption from recordation and State and county transfer taxes for residential property used as a common residence. Evidence of the domestic partnership or former domestic partnership must be submitted to qualify for the exemption. A more detailed discussion of this bill may be found under the Property Tax subpart of Part B – Taxes of this *90 Day Report*.

Domestic Violence

Permanent Protective Order Following Imprisonment

In a domestic violence proceeding, if a judge finds by clear and convincing evidence that abuse has occurred, or if the respondent consents to the entry of a protective order, the judge may grant a final protective order to protect any person eligible for relief from abuse. All relief granted in a final protective order is effective for the period stated in the order, up to a maximum of 12 months. However, for good cause shown, a judge may extend the term of a protective order for six months beyond the specified period after giving notice to all affected persons eligible for relief and the respondent and after a hearing.

Senate Bill 393*/*House Bill 182* *(both passed) require a court to issue a new final protective order against an individual if (1) the individual was previously a respondent against whom a final protective order was issued; (2) the individual was convicted and served a term of imprisonment of at least five years for any of the following acts of abuse that led to the issuance of the final protective order: attempted murder in the first or second degrees; first degree assault; first or second degree rape; first or second degree sexual offense; or attempted rape or sexual offense in the first or second degree; and (3) the victim of the abuse who was the person eligible for relief in the original protective order requests the issuance of a new final protective order.

A new final protective order may contain only the relief that was granted in the original order requiring the respondent to refrain from abusing or threatening to abuse the person eligible for relief or refrain from contacting, attempting to contact, or harassing the person eligible for relief. Unless terminated at the request of the victim, a final protective order issued under the bills is permanent.

Enforcement of Protective Order

In 1998, the Office of the Attorney General issued an opinion on the meaning of the phrase "reasonable and necessary force" that is used on the standard protective order form when a judge awards temporary custody of a minor child pursuant to a protective order. See *83 Op. Att'y Gen. 80 (1998)*. The Attorney General concluded that the direction to law enforcement to use reasonable and necessary force was not authorized by the domestic violence statutes. A year later, the Attorney General issued another opinion on the same question. See *84 Op. Att'y Gen. 105 (1999)*. The Attorney General stated that the earlier opinion did not account for whether the court's inherent equitable powers could authorize such a direction to law enforcement. The Attorney General then concluded that the courts may have the requisite common law authority given the courts' broad grant of powers generally, the authority to act in a child's best interests, and the creation of a process to carry out its orders. However, the Attorney General suggested that an amendment to the domestic violence protective order statutes specifically conferring this authority would resolve any questions of a court's authority to issue an order to use reasonable and necessary force to enforce a custody award and the authority of law enforcement to execute such an order.

In response to this concern, ***Senate Bill 392*/*House Bill 183* *(both passed)*** authorize a judge who awards temporary custody of a minor child in a final protective order to order a law enforcement officer to use all reasonable and necessary force to return a minor child to the custodial parent at the time the final protective order is served or as soon as possible after entry of the order.

Children in Out-of-home Placements

Interstate Placement

Foster care is generally a federally based program, which must adhere to federal laws and conditions. The federal Safe and Timely Interstate Placement of Foster Children Act of 2006

encourages states to improve protections for children and holds them accountable for the safe and timely placement of children across state lines.

To comply with federal guidelines, ***Senate Bill 57 (Ch. 16)***/***House Bill 90 (passed)*** require a local department of social services and the juvenile court to consider both in-state and out-of-state placements in the development and evaluation of permanency plans for children in out-of-home placements. Additionally, the Act requires that at least every 12 months at a permanency planning or review hearing, the court consult on the record with the child in an age appropriate manner. The Act also increases from 7 to 10 the number of days' notice required to be given to a foster parent, preadoptive parent, or relative providing care regarding a permanency planning or review hearing, if practicable, and clarifies that these individuals have the right to be heard at those hearings.

Emergency Out-of-home Placement – Criminal History Records Check

State law requires criminal background investigations of certain individuals who work or volunteer with children. Among the individuals requiring a criminal history records check are an adult relative with whom a child is placed by a local department of social services, any adults living in that home, a parent or guardian of a child in an out-of-home placement, and any adult living in the home of that child's parent or guardian.

In order to minimize the amount of time a child placed by a local department of social services in an emergency out-of-home placement, due to the sudden unavailability of the child's primary caretaker, remains in a home with an adult with a criminal history, ***House Bill 265 (passed)*** authorizes the local department of social services to request an interim federal name-based check on an adult relative with whom the child is placed, any adult residing in that home, and any adult residing in the home of the child's parent or guardian.

The local department must immediately remove a child from an emergency out-of-home placement if an individual does not comply with requirements for a name-based check. In addition, within 15 days after receiving the results of an individual's name-based check, the local department of social services must submit a complete set of the individual's fingerprints to law enforcement for a complete criminal history records check.

Informal Kinship Care

In general, a public school student must attend the appropriate level public school in the attendance area of the student's permanent residence.

Senate Bill 77/***House Bill 169 (both passed)*** allow a child to attend a public school outside of the attendance area of the child's permanent residence if the child is living in the school's attendance area with a relative who is providing informal kinship care due to a serious family hardship. The relative must verify the informal kinship care relationship through a sworn affidavit.

For a more detailed discussion of this issue, see the subpart Education – Primary & Secondary within Part L – Education of this *90 Day Report*.

Children in Need of Assistance

Prohibition Against Consideration of Disabilities

A Child in Need of Assistance (CINA) is a child who requires court intervention because (1) the child was abused or neglected or has a developmental disability or a mental disorder; and (2) the child's parents, guardian, or custodian are unable or unwilling to give the proper care and attention to the child and the child's needs. ***Senate Bill 551*** ***(passed)*** prohibits a court, in determining whether to grant custody and guardianship of a CINA to a relative or a nonrelative, from considering a disability of the relative or nonrelative, unless the court finds that the disability causes a condition that is detrimental to the best interests of the child.

Under the bill, "disability" is defined as a physical impairment that substantially limits one or more of the major life activities of an individual. "Disability" does not include illegal use of or addiction to a controlled dangerous substance.

Safe Havens

Under Maryland's "safe haven" statute, a person who leaves an unharmed newborn with a responsible adult within a certain number of days after the birth of the newborn, as determined within a reasonable degree of medical certainty, and does not express an intent to return for the newborn is immune from civil liability or criminal prosecution for the act. ***Senate Bill 531***/***House Bill 1394*** ***(both passed)*** extend, from 3 to 10 days after birth, the time within which a person may leave an unharmed newborn with a responsible adult, without being subject to civil liability or criminal prosecution.

Disclosure of Medical Records

Chapter 503 of 2005 prohibits health care providers from providing medical information without a person's authorization unless the person has been given notice of the request and has 30 days to object. Under the CINA statute, a child placed in shelter care because the child is in danger in the home may not be continued in shelter care longer than 30 days unless the court finds after an adjudicatory hearing that continued shelter care is needed to provide for the safety of the child.

Because of the 30-day notice requirement, medical records that are often necessary to determine whether child abuse or neglect has occurred in a CINA case are not available to the court at the time of the adjudicatory hearing due to the abbreviated trial schedule in CINA cases. To address the unintentional impact of Chapter 503 of 2005 on CINA cases, ***House Bill 910*** ***(passed)*** authorizes the expedited disclosure of medical records in these cases. Specifically, the

bill reduces the timeframe from 30 to 15 days that a person in interest has to object to disclosure of a medical record that is requested for a CINA proceeding.

Child Support

Maryland Interstate Family Support Act

House Bill 786 ***(passed)*** revises Maryland's current Uniform Interstate Family Support Act (UIFSA), which governs the enforcement of child support orders that involve interstate jurisdiction, to include revisions proposed in 2001 by the National Conference of Commissioners on Uniform State Laws (NCCUSL).

The most significant substantive revisions to the current UIFSA statute include (1) clarifying provisions relating to the determination of the controlling order, particularly requiring a court to make a determination as to arrears owed under all past orders; (2) requiring a court to permit a nonresident party or witness to testify by telephone; (3) clarifying provisions relating to the duration of support to specifically list "duration of the obligation of support" as an example of a nonmodifiable term under UIFSA; (4) altering provisions relating to the modification of a support order to specifically add to the bases for modification of jurisdiction the consent of the parties to have the issuing state modify the order, even if no party continues to reside there; (5) authorizing a support enforcement agency to request a redirection of payments to the support enforcement agency in the state in which the obligee currently receives child support services; (6) facilitating the modification of orders across international borders by specifying the recognition of foreign support orders on the basis of comity; and (7) specifically addressing the issue of interest on arrears.

Child Support Enforcement

Under the Federal Deficit Reduction Act of 2005, states must assess an annual $25 fee in child support cases in which the family has never received benefits under the temporary cash assistance (TCA) program and at least $500 in child support is collected within a federal fiscal year. The federal government will deduct 66 percent of the estimated revenue that could be generated from this fee from the State's Federal Financial Participation matching grant. Chapter 483 of 2007, which authorizes the Child Support Enforcement Administration to deduct from child support payments an annual collection fee of $25 from cases in which the family never received TCA and has received at least $500 in child support payments during the federal fiscal year, was enacted in response to this federal requirement. Chapter 483 of 2007 terminates on September 30, 2008.

Senate Bill 198 ***(passed)*** repeals the September 30, 2008 termination date of Chapter 483 of 2007. However, if the fee requirement contained in the federal Deficit Reduction Act is repealed, the bill terminates as of the effective date of repeal of the federal requirement. The bill also increases to $3,500 the amount of child support payments that a family is required to have received during the federal fiscal year before the Child Support Enforcement Administration is authorized to deduct the annual collection fee.

Miscellaneous

Child Care

Under current law, the State Superintendent of Schools may suspend the license of a child care center on an emergency basis as required to protect the health or safety of the child. After the issuance of an emergency suspension, a child care center may continue to operate for up to 72 hours, despite the severity of the violation.

The Maryland State Department of Education reports that during 2007, 18 emergency suspension actions were taken for reasons including health and safety issues (*i.e.*, mice and roach infestations or lack of running water); injurious treatment of children; lack of supervision; gross overcapacity; child sexual abuse allegations; and inappropriate child-to-staff ratios.

***Senate Bill 184* (passed)** requires a child care center to immediately cease operation on delivery of an emergency suspension notice. The emergency suspension remains in effect until the order is reversed or until the State Superintendent of Schools determines that the health, safety, or welfare of children is no longer threatened.

Counsel for Minors

Currently, in an action in which custody, visitation rights, or the support of a minor child is contested, the court may appoint a lawyer to serve as a child advocate attorney or a best interest attorney for the minor child. Lawyers appointed for minor children under these circumstances may not represent any party to the action. The court may impose counsel fees for such an appointment against "either or both parents."

In *Taylor v. Mandel*, 402 Md. 109 (2007), the maternal grandmother sought custody of or visitation with her grandchildren and requested the appointment of an attorney for the children. The parties in the action reached a settlement, and the circuit court required the maternal grandmother to pay a portion of the children's attorney's fees. The decision was affirmed by the Court of Special Appeals.

The Court of Appeals reversed those rulings, holding that the plain meaning of the term "parent" does not include grandparents. Therefore, the circuit court did not have authority to require the maternal grandmother or any nonparent to pay the attorney's fees because the term "parent" in the current statute authorizing the imposition of attorney's fees against either or both parents only permits the court to assess those fees against a mother or father.

In response, ***House Bill 149* (passed)** modifies the result in the *Taylor* case by authorizing a court to impose counsel fees for a child's attorney against one or more parties to an action in which custody, visitation rights, or the support of a minor child is contested.

Human Relations

Employment Discrimination

Chapters 176 and 177 of 2007 expanded the administrative and judicial remedies available in employment discrimination claims. As a result, a civil cause of action is available for employment discrimination claims. A complainant may elect to have the claims asserted in a complaint filed with the Maryland Human Relations Commission (MHRC) determined in a civil action brought by MHRC on the complainant's behalf if (1) MHRC finds the respondent has engaged in or is engaging in a discriminatory act; and (2) the parties have failed to reach an agreement for the remedy and elimination of the discriminatory act.

A complainant may also file a civil action if the complainant initially filed a complaint or an administrative charge alleging discrimination under federal, State, or local law and at least 180 days have elapsed since the filing of the complaint or charge. If a civil action is not elected or brought by the complainant, the case is heard before an administrative law judge.

On a judicial or administrative finding that the respondent has engaged in or is engaging in an unlawful employment practice, certain relief, including back pay, compensatory damages (within certain limitations), and attorney's fees may be awarded. Back pay is offset by interim earnings or amounts earned with reasonable diligence by the person or persons discriminated against.

The Attorney General's bill review letter for Senate Bill 678/HB 314 (Chapters 176 and 177 of 2007) raised several concerns. Specifically, the Attorney General noted that although the bills authorize MHRC and, under certain circumstances, a complainant to go to court to seek back pay, compensatory damages (within certain limitations), attorney's fees, and expert witness fees, the bills did not amend Article 49B, §17, which only prohibits the State from raising sovereign immunity as a defense against a salary award in an employment discrimination case. That provision of law does not waive sovereign immunity as a defense in a claim for compensatory damages and other monetary liability. Absent a waiver of sovereign immunity, the State and its agencies are immune from monetary liability. The Attorney General further noted that the Court of Appeals has said that, even where a statute specifically waives sovereign immunity, a suit may be maintained only where there are funds available for the satisfaction of the judgment or the agency has the power to raise funds to satisfy the judgment.

In response, ***Senate Bill 528***/***House Bill 399*** ***(both passed)*** address the concerns raised by the Attorney General regarding waiver of the State's sovereign immunity. The bills specify that the State may not raise sovereign immunity as a defense against any award made in an employment discrimination case. The bills require the State, if there are sufficient funds available, to pay any award made against the State under Article 49B as soon as practicable within 20 days after the award is final. If sufficient funds are not available, the affected State unit or officer must report the outstanding award to the Comptroller, who is required to keep and report to the Governor annually an accounting of all such awards. In addition, the bills require the Governor to include in the State budget sufficient money to pay all such awards and require

the Comptroller, on appropriation of money by the General Assembly, to authorize payment of all outstanding awards in the order of the date on which each award was made.

The bills make several other changes in the laws governing administrative and judicial relief in employment discrimination cases. The bills authorize a *respondent* in a discrimination complaint, in addition to the complainant, to elect to have the claims asserted in the complaint determined in a civil action brought on behalf of the complainant by the Maryland Human Relations Commission. The bills also provide that a civil action brought by a complainant automatically terminates any related proceeding before the commission. In addition, the bills require that a civil action brought by a complainant be filed within two years after the alleged act of discrimination. The bills also clarify that the offset against back pay awards is based on amounts "earnable" rather than amounts earned.

Long-term Care Insurance – Discrimination Based on Genetic Information

***Senate Bill 918*/*House Bill 29* (both passed)** prohibit a carrier or an insurance producer of a carrier that provides long-term care insurance from requesting or requiring a genetic test or using specified genetic information to (1) deny or limit long-term care insurance coverage; or (2) charge a different rate for the same long-term care insurance coverage. The prohibition does not apply if the use of genetic information is based on sound actuarial principles.

For a more detailed discussion of this issue, see the subpart "Health Insurance" within Part J – Health and Human Services of this *90 Day Report*.

Individuals with Disabilities

***Senate Bill 577*/*House Bill 767* (both passed)** extend the rights and privileges afforded to blind, visually impaired, deaf, and hard of hearing individuals under current State law to all individuals with disabilities and the parents of minor children with disabilities.

The bills grant to all individuals with disabilities and the parents of minor children with disabilities the same rights of access to public places, accommodations, and conveyances, as well as housing accommodations, that are currently afforded to blind, visually impaired, deaf, and hard of hearing individuals. A parent of a minor with a disability who is accompanied by a service animal cannot be denied admittance or be required to pay extra compensation for the service animal.

For a more detailed discussion of this issue, see the subpart "The Disabled" within Part J - Health and Human Services of this *90 Day Report*.

Equal Pay

Chapter 3 of the 2004 special session established the Equal Pay Commission to study the extent of wage disparities in the public and private sectors. The commission was also charged with studying the factors that cause the disparities, including segregation within occupations, payment of lower wages for work in female-dominated occupations, child-rearing and household

responsibilities, and differences in education or experience. The commission was required to report on the consequences of the disparities and recommend actions to eliminate differential pay.

Based on the recommendations of the Equal Pay Commission, ***House Bill 1156*** ***(Ch. 114)*** requires an employer, including the State and local governments, to keep a record of the racial classification and gender of employees. The records must be kept in accordance with the requirements established by the Commissioner of Labor and Industry, who is authorized to analyze the records to study pay disparity issues. The commissioner is required to report to the General Assembly on the findings of this review by October 1, 2013. The Act terminates December 31, 2013.

For a more detailed discussion of this issue, see the subpart "Labor and Industry" within Part H – Business and Economic Issues of this *90 Day Report*.

Real Property

Foreclosure

Background

Since 2006, changes in the real estate market and the economy in general have led to a marked increase in foreclosure events both nationwide and in Maryland. Many such foreclosures have involved residential properties that have been financed through sub-prime loans and nonbank loan originators, leading to heightened concern regarding the lending practices that surround these nontraditional financing methods. In addition, the foreclosure process itself has come under increased scrutiny due to the speed at which most foreclosures take place. A number of related factors have combined to create what many refer to as a national "foreclosure crisis," which has prompted many federal and State government entities to focus their attention on the issue.

Due to good real estate market conditions prior to 2006, the traditional mortgage market had evolved from mortgages primarily originated and provided by local banks and financial institutions to mortgages originated through mortgage brokers for nonbank lenders. Through new products, such as "exotic" and other nontraditional mortgages, lenders began to ease borrowing restrictions to allow lower credit borrowers to qualify for mortgages, greatly expanding the sub-prime market. Sub-prime loans, which are higher-cost loans, provided opportunities for a wide range of higher-risk borrowers. Consumers with lower credit scores and higher loan-to-value and debt to income ratios found that they qualified for mortgages. Further, lenders made loans to customers based on less stringent or no income and asset verification requirements. With the influx of new loans, lenders began to package the loans and sell them to Wall Street as securities to investors. By packaging risky loans with traditional loans in order to spread the risk, investors found the low-risk securities to be attractive, allowing lenders to make even more loans.

During calendar 2006, the real estate market began a downturn as interest rates increased, housing sales slowed, and home prices declined. Terms of many of the "exotic" and other nontraditional loans included adjustable rates whereby the consumer pays a low interest rate for 2 or 3 years, followed by 27 or 28 years of higher interest rates that are generally tied to the market. As the low interest rate period ended, many borrowers then found that they were unable to make the higher monthly payments due after their interest rates reset. Furthermore, many borrowers also then realized that they were unable to refinance due to prepayment penalties or to sell their property due to, in some cases, lower property values or decreased demand. In addition, many investor-owners of rental property found that they were unable to obtain the rent needed to pay their mortgages and were unable to sell due to the depressed resale market.

It is unclear exactly how much of this situation is attributable to unethical lending practices and how much is a result of borrower risk-taking; however, it is evident that many lenders have filed for foreclosure as a result. As foreclosure filings have mounted, lenders have not received all expected payments from borrowers, forcing them to curtail the number of new loans, decrease the products available to borrowers with low credit scores, and tighten overall lending practices and standards. Wall Street investors have also responded by pulling out of the risky mortgage market, and the combination of these and other factors has led to a decrease in overall nationwide housing sales and home equity growth.

Opinions differ regarding the exact number of recent foreclosures in Maryland, as well as the severity of the situation, but all sources report a substantial recent increase in foreclosure activity in the State. In response to the foreclosure crisis in the State, Governor Martin O'Malley established the Homeownership Preservation Task Force in June 2007, headed by Raymond A. Skinner, Secretary of Housing and Community Development and Thomas E. Perez, Secretary of Labor, Licensing, and Regulation. The task force met several times throughout the interim and the recommendations in the final report of the task force were the basis for the Administration's package of four major initiatives introduced and adopted during the 2008 session, discussed below.

The Foreclosure Process in Maryland

Until this year, Maryland's foreclosure process, from the first foreclosure filing to final sale, had been among the shortest in the nation. Maryland is a quasi-judicial State, meaning that the authority for a foreclosure sale is derived from the mortgage or deed of trust, but a court has oversight over the foreclosure sale process. Most mortgages or deeds of trust include a "power of sale" (a provision authorizing a foreclosure sale of the property after a default) or an "assent to decree" (a provision declaring an assent to the entry of an order for a foreclosure sale after a default). Under the Maryland Rules, it was not necessary to serve process or hold a hearing prior to a foreclosure sale pursuant to a power of sale or an assent to a decree. Consumer advocates contended that the short timeframes and weak notice provisions in State law seriously limited a homeowner's options to avoid foreclosure by, for example, working out a payment plan with the lender or selling the house. In addition, filing a request for an injunction to stop the sale is expensive, time consuming, and not a realistic option for most homeowners.

***Senate Bill 216* (Ch. 1)/*House Bill 365* (Ch. 2)**, emergency legislation that took effect April 4, 2008, make a number of significant changes to the foreclosure process in Maryland for residential real property. "Residential property" is defined under the Acts to mean real property improved by four or fewer single-family dwelling units. Except under specified circumstances, the Acts prohibit the filing of an action to foreclose a mortgage or deed of trust on residential property until the later of 90 days after a default in a condition on which the mortgage or deed of trust states that a sale may be made or 45 days after the notice of intent to foreclose required under the Acts is sent.

Senate Bill 216*/*House Bill 365 require a secured party to send a written notice of intent to foreclose to the mortgagor or grantor and the record owner at least 45 days before the filing of an action to foreclose a mortgage or deed of trust on residential property. This notice must be sent by certified mail, postage prepaid, return receipt requested, and by first-class mail. A copy of the notice must also be sent to the Commissioner of Financial Regulation in the Department of Labor, Licensing, and Regulation. The notices must be in the form that the commissioner prescribes by regulation and contain the names and telephone numbers of the secured party, the mortgage servicer, the mortgage broker or originator, and an agent of the secured party who is authorized to modify the terms of the mortgage loan. The notice must also contain (1) the Maryland license number of the mortgage lender and mortgage originator; (2) the amount required to cure the default and reinstate the loan; and (3) any other information that the commissioner requires by regulation.

Senate Bill 216*/*House Bill 365 require that an order to docket or a complaint to foreclose a mortgage or deed of trust on residential property contain specified information and be accompanied by specified documents. A copy of the order to docket or complaint and all other papers filed with it must be served by either personal delivery of the papers to the mortgagor or grantor, or by leaving the papers with a resident of suitable age and discretion at the mortgagor's or grantor's dwelling house or usual place of abode. If at least two good faith efforts to complete service of process on different days have not succeeded, the plaintiff may effect service by (1) filing an affidavit with the court describing the good faith efforts to complete service; (2) mailing a copy of the order to docket or complaint and all accompanying papers by certified mail, return receipt requested, and first-class mail to the mortgagor's or grantor's last known address; and (3) posting a copy of the order to docket or complaint and all accompanying papers in a conspicuous place on the property subject to the mortgage or deed of trust. The individual making service of process must file proof of service with the court in accordance with the Maryland Rules.

The Acts prohibit a foreclosure sale of residential property from occurring until at least 45 days after service of process is made. Notice of the time, place, and terms of a foreclosure sale of residential property must be published in a newspaper of general circulation at least once a week for three successive weeks, with the first publication at least 15 days before the sale and the last not more than one week before the sale. In addition, the mortgagor or grantor of a mortgage or deed of trust has the right to cure a default and reinstate the loan at any time up to one business day before a foreclosure sale occurs by paying all past due payments, penalties, and fees. Upon request, and within a reasonable time, the secured party or the secured party's

authorized agent must notify the mortgagor or grantor or the individual's attorney of the amount necessary to cure the default and reinstate the loan, as well as instructions for delivering the payment.

Lastly, the Acts require a mortgage, deed of trust, or any other instrument securing a mortgage loan on residential property to contain the name and Maryland license number of the mortgage originator and the mortgage lender, if those persons are not exempt under Maryland law. The commissioner is required to adopt regulations to implement this provision of the Acts, primarily for facilitating the use of the commissioner's new computer database to track information on mortgage licensees.

Mortgage Fraud Protection

Generally, mortgage fraud refers to any action made with the intent to misrepresent information in order to obtain a mortgage loan. The Federal Bureau of Investigation (FBI) reports that mortgage fraud is one of the fastest growing financial crimes in the United States, primarily due to an increased reliance on third-party mortgage brokers by traditional mortgage lenders.

In fiscal 2007, the Commissioner of Financial Regulation received approximately 30 mortgage fraud complaints and initiated another 67 mortgage fraud investigations. Thus far in fiscal 2008, the commissioner has received approximately 20 mortgage fraud complaints and has opened an additional 203 mortgage fraud investigations. A substantial number of the 203 investigations in the current fiscal year are related to the actions of a company known as the Metropolitan Money Store and have been turned over to the FBI for prosecution. Prior to this year, mortgage fraud was not a crime specifically defined by statute in Maryland. Although mortgage fraud previously could have been prosecuted as theft by deception, the Maryland Homeownership Preservation Task Force found that prosecuting these cases under the general theft statute is cumbersome and difficult to explain to juries. ***Senate Bill 217* (Ch. 3)**/***House Bill 360* (Ch. 4)** create a comprehensive mortgage fraud statute with criminal penalties and authorize the Attorney General, a State's Attorney, and the Commissioner of Financial Regulation to take action to enforce the statute. The Acts are emergency measures, effective April 4, 2008.

Senate Bill 217/***House Bill 360*** define "mortgage fraud" as any action by a person made with the intent to defraud that involves:

- knowingly making, using, or facilitating the use of any deliberate misstatement, misrepresentation, or omission during the mortgage lending process with the intent that it will be relied upon by a mortgage lender, borrower, or any other party to the lending process;

- receiving any proceeds or any other funds in connection with a mortgage closing that the person knows resulted from the aforementioned actions;

- conspiring to violate either of the preceding provisions; or

- filing or causing to be filed in the land records in the county where a residential real property is located any document relating to a mortgage loan that the person knows to contain a deliberate misstatement, misrepresentation, or omission.

Under the Acts, the "mortgage lending process" includes the solicitation, application, origination, negotiation, servicing, underwriting, signing, closing, and funding of a mortgage loan, as well as the notarizing of any document in connection with a mortgage loan.

Senate Bill 217/***House Bill 360*** prohibit mortgage fraud, as defined above, and specify, for purposes of venue, the jurisdiction in which violations will be considered to have occurred. In addition, the Acts authorize the Attorney General or the Commissioner of Financial Regulation to seek an injunction to prohibit a person from engaging or continuing to engage in violations. The Acts also allow a court to enter any order or judgment necessary to (1) prevent the use of a prohibited practice; (2) restore to a person any money, real property, or personal property acquired from the person by means of any prohibited practice; or (3) appoint a receiver in the case of a willful violation.

Under the Acts, the Attorney General and a State's Attorney are authorized to conduct the criminal investigation and prosecution of all cases of mortgage fraud and must promptly report convictions to the unit of State government that has regulatory jurisdiction over the business activities of the person convicted. The Acts make mortgage fraud a felony, punishable by a fine of up to $5,000, imprisonment for up to 10 years, or both. If the victim is a vulnerable adult as defined by the Criminal Law Article, the maximum fine is $15,000 and the maximum period of imprisonment is 15 years. If a violation involves a pattern of mortgage fraud or a conspiracy to engage in a pattern of mortgage fraud, the maximum fine is $100,000 and the maximum imprisonment is 20 years. In addition to a fine, imprisonment, or both, a convicted person must pay restitution to any person damaged by the violation. All real or personal property used in or derived from a violation is subject to forfeiture to the State.

Senate Bill 217/***House Bill 360*** establish procedures for the forfeiture of property obtained through mortgage fraud. Property subject to forfeiture includes (1) property used or intended for use in the course of a violation of the Mortgage Fraud Law; (2) property derived from or realized through a violation of the Mortgage Fraud Law; and (3) proceeds of both preceding types of property.

Property or an interest in property may not be forfeited if the owner establishes by a preponderance of the evidence that the violation of the Mortgage Fraud Law was committed without the owner's actual knowledge. Property used as the principal family residence generally may not be forfeited under the Acts except under certain circumstances.

Finally, ***Senate Bill 217***/***House Bill 360*** allow victims of mortgage fraud to bring private actions seeking damages and attorney's fees from alleged violators. If the court finds that the defendant has violated the provisions of the Acts, the court may award damages of up to three times the amount of actual damages.

Foreclosure Rescue Scams

Chapter 509 of 2005 was enacted to address the growing problem of foreclosure "rescue" scams. In these types of scams, unscrupulous companies and individuals take advantage of homeowners who are facing foreclosure. These persons search the court records for foreclosure actions and then contact homeowners and offer to help them avoid foreclosure. The Financial Regulation Enforcement Unit of the Department of Labor, Licensing, and Regulation has been investigating and unearthing foreclosure "rescue" scams and characterizes the general schemes as follows:

- The Phantom Helper: This scam involves a person who agrees to "negotiate" on behalf of the homeowner for an up-front fee. The fee is paid, the homeowner is told not to contact the lender, and the scammer does nothing and absconds with the fee. The homeowner is then in foreclosure or has lost the home to foreclosure sale.

- The Bait and Switch: The scammer induces the homeowner to sign over title so that the scammer can save the home and promises to return title at a date certain. The former homeowner, now a tenant, is evicted in rent court.

- Lease Buy-back: The scammer induces the homeowner to transfer title to a straw-investor with the promise that homeowners will be able to take back the home after some period. The scammer refinances the mortgage and pulls out 100 percent of the equity. The homeowner can no longer afford the mortgage. The straw-investor also may be unaware of the refinancing and fails to make payment or cannot afford payment on the new mortgage, and the home goes to foreclosure. The initial homeowner loses the home and all equity while the straw-investor ends up with a foreclosure on his or her credit record.

Chapter 509 of 2005 was designed to provide some protection for homeowners who deal with foreclosure "rescuers." It requires that "foreclosure consultants" enter into consulting contracts with homeowners that lay out the terms of their agreements, give disclosures, and afford basic consumer protections such as a three-day rescission period. ***Senate Bill 218 (Ch. 5)***/***House Bill 361 (Ch. 6)*** are additional emergency measures effective April 4, 2008. The Acts designate Title 7, Subtitle 3 of the Real Property Article as the "Protection of Homeowners in Foreclosure Act" and add this subtitle to the list of provisions under the Consumer Protection Act the violation of which constitutes an unfair or deceptive trade practice. The Acts also specify that the law applies to residences in default and not simply residences in foreclosure. A "residence in default" is defined by the Acts as residential real property in the State on which the mortgage is at least 60 days in default.

Foreclosure consultants are prohibited under the Acts from engaging in, arranging, promoting, promising, soliciting, participating in, assisting with, or carrying out a "foreclosure rescue transaction." A foreclosure rescue transaction is defined as a transaction in which a residence in default is conveyed by a homeowner who retains a legal or equitable interest in all or part of the property and that is designed or intended by the parties to prevent or delay

foreclosure proceedings, either actual or anticipated. Furthermore, a foreclosure consultant may not receive a commission, regardless of how described, for the sale of a residence in default that exceeds 8 percent of the sales price. The Acts also prohibit foreclosure consultants from receiving any money to be held in escrow or on a contingent basis on behalf of the homeowner. The required contents of a foreclosure consulting contract are modified to include additional disclosures and notices.

The Acts subject title insurers, licensed title insurance producers, and licensed mortgage brokers to the provisions of the law. A person who holds or services a mortgage loan secured by a residence in default is exempted while the person performs servicing, collection, and loss mitigation activities in regard to that mortgage loan, provided the mortgage loan did not arise as a result of a foreclosure consulting contract. The exemptions for licensed mortgage lenders and licensed real estate brokers, associate brokers, and real estate salepersons are retained, but are subject to additional conditions.

Senate Bill 218/***House Bill 361*** require a foreclosure consultant who provides real estate brokerage services to be licensed as such. The consultant must present a copy of the license to a homeowner before a foreclosure consulting contract is executed. The Acts require a specific notice to be provided to the homeowner along with any contract for the sale or transfer of a residence in default that is included in a foreclosure consulting contract or arranged by a foreclosure consultant. Under the Acts, such sale or transfer of a residence in default may not be carried out using a quit claim deed. If a tenancy agreement is included in a contract for the sale or transfer of a residence in default, the Acts require a purchaser to provide a homeowner with a specific document about the tenancy. The purchaser must provide the homeowner with a signed and dated copy of the statement about tenancy immediately upon execution of the contract. Under the Acts, the time during which the homeowner may cancel the contract does not begin to run until the purchaser has complied with these requirements.

Senate Bill 218/***House Bill 361*** grant the Commissioner of Financial Regulation concurrent jurisdiction with the Attorney General to investigate, enforce, and enjoin action in cases involving violations of the law. The Acts also requires that the commissioner receive notice containing the name and address of any person convicted under the statute, along with a copy of the judgment, within 30 days of the conviction.

The fourth component of the Administration's legislative package to address the foreclosure crisis deals with credit regulation, ***Senate Bill 270 (Ch. 7)***/***House Bill 363 (Ch. 8)***. For a detailed discussion of this issue, see the subpart "Commercial Law – Credit Regulation" within Part I – Financial Institutions, Commercial Law, and Corporations of this *90 Day Report*.

Common Ownership Communities

Condominiums, homeowners associations, and cooperative housing corporations, collectively referred to as common ownership communities (COCs), continue to be the focus of a large number of bills introduced each session. Many such bills introduced during this session were prompted by recommendations of the final report of the Task Force on Common

Ownership Communities, issued in December 2006. A number of these bills were referred to interim study by the House Environmental Matters Committee, including ***House Bill 988*** (approval requirements for COC expenditures), ***House Bill 993*** (COC assessments and reserves), ***House Bill 1053*** **(**(COC fidelity bond coverage), ***House Bill 1402*** (requirements for condominium proposed annual budgets), ***House Bill 1420*** (submission of condominium lien disputes), ***House Bill 1496*** (condominium property insurance and unit repair), and ***House Bill 1515*** (condominium ownership classes vote percentages).

One of the findings of the task force was that many older COCs are severely restricted in the frequency with which they may modify their governing documents, as well as the percentage of owners required to approve such changes. ***Senate Bill 101***/***House Bill 1129*** ***(both passed)*** authorize a governing document of a homeowners association created before January 1, 1960, to be amended at least once every five years, unless a greater frequency is allowed in the document, by the affirmative vote of lot owners having at least two-thirds of the votes in the development, or a lower percentage if required in the governing document.

Property insurance and the repair of damaged property is another significant concern for COCs. ***House Bill 646*** ***(passed)*** increases the amount of a condominium unit owner's financial responsibility for the property insurance deductible of the council of unit owners in situations where the cause of damage or destruction originated in the owner's unit, from a maximum of $1,000 to a maximum of $5,000. The amount of the deductible that is a common expense is correspondingly increased from the amount exceeding $1,000 to the amount exceeding $5,000. As under current law, if the cause of damage or destruction originates from a common element, the deductible is a common expense.

Landlord and Tenant

Landlords are required by State law to follow specific procedures in order to evict tenants who fail to pay rent or otherwise breach the terms of a lease. However, when a tenant is deceased with no apparent next of kin, repossessing and renting the unit can be problematic. ***House Bill 452*** ***(passed)*** addresses the situation where a tenant has died without a will and without next of kin. In order to file for an eviction in such cases, the bill requires the landlord to certify to the court in the written complaint that, to the best of the landlord's knowledge, the tenant is deceased, intestate, and without next of kin. Under the bill, property or income from property that a landlord holds for such a tenant is presumed abandoned according to State law. The bill permits service of process in these situations to be achieved by a sheriff's delivery to any named persons found on the property or at another known address, or, if no such persons are found, by affixing an attested copy of the summons conspicuously upon the property. The affixing of the summons upon the property is conclusively presumed to be a sufficient service to all persons to support the entry of a default judgment for possession of the premises, together with court costs, in favor of the landlord, but it is not sufficient service to support a default judgment in favor of the landlord for the amount of rent due.

Mobile Home Parks

The number of households in Maryland that reside in mobile homes has declined steadily in past decades, and continues to decline. According to the U.S. Census Bureau, in 1990 there were 55,992 such households in Maryland. By 2000, there were 43,462, and by 2006 there were 38,421. As development has increased, mobile home park owners have found it increasingly more profitable to sell their land for development rather than continue to operate parks, as a typical mobile home park resident pays between $200 and $700 per month in rent. The dislocation of mobile home park residents due to park closings across the State prompted the introduction of several bills this session, including ***House Bill 555*** ***(failed)***, which would have placed a number of restrictions on mobile home park owners who wish to close a park. The bill would have required park owners to file proposed changes in land use with local zoning authorities prior to any such changes, and simultaneously deliver notice of the proposal to affected park residents. In addition, park owners would have been required to provide each dislocated park resident with relocation assistance valued at either $2,500 or $5,000, depending on when notice of the closing was given.

Local legislation was also introduced to address mobile home park issues in specific counties. ***Senate Bill 798***/***House Bill 816*** ***(both passed)*** require a mobile home park owner in St. Mary's County who is applying for a change in land use for a park to submit a plan with the application that provides alternative arrangements for each park resident. In addition, the bills provide that if a park's land use is to be changed, the park owner must send to the county commissioners a copy of the one-year prior written notice of termination required under current law. ***House Bill 1382*** ***(failed)*** would have required a mobile home park owner in Howard County to notify park residents and the director of the county department of housing and community development of intent to sell the park and would have required the park owner to allow the residents to purchase the park under specific conditions.

Other Real Property Issues

Solar Collector Systems – Easements and Restrictions on Use

Current law states that it is in the public interest to promote solar energy projects by providing State grants, loans, and other financial assistance. Problems can occur for property owners who have or wish to install solar energy systems, however, when the location for such a system on their property is blocked from adequate access to direct sunlight. ***House Bill 117*** ***(passed)*** permits property owners who have installed or intend to install solar collector systems to negotiate to obtain a solar easement that must be recorded in writing. In real property law, an easement can generally be described as the right to use or prevent the use of another person's real property for a specific purpose. An easement holder does not have the right to possess the property affected by the easement, but the easement can be transferred to another holder and generally cannot be terminated unilaterally by the owner of the affected property. The bill requires that any written instrument creating a solar easement include (1) a description of the dimensions of the easement expressed in measurable terms; (2) the restriction placed on

vegetation, structures, and other objects that would impair the passage of sunlight through the easement; and (3) the terms under which the easement may be revised or terminated.

House Bill 117 also states that a restriction on use may not impose or act to impose an unreasonable limitation on the installation of a solar collector system on the roof or exterior walls of improvements, provided that the property owner owns or has the right to exclusive use of the roof or exterior walls. A "restriction on use" includes any covenant, restriction, or condition contained in a deed, declaration, contract, bylaws or rules of a condominium or homeowners association, security instrument, or any other instrument affecting the transfer or sale of real property or any other instrument in real property. The bill does not apply to a restriction on use on historic property that is in, or determined by the Director of the Maryland Historical Trust to be eligible for inclusion in, the Maryland Register of Historical Properties.

Construction Contracts – Retention Proceeds

Generally, a contractor or subcontractor who performs work under a construction contract is entitled to prompt payment for services rendered under the contract. Current State regulations prohibit State agencies from retaining more than 5 percent for a State construction contract if the contractor has furnished 100 percent payment security and 100 percent performance security. In addition, State regulations prohibit a contractor under a State construction from retaining payments due to a subcontractor that exceed the percentage of progress payments retained from the contractor. ***Senate Bill 313*** ***(passed)*** extends these restrictions to private construction contracts, limiting to 5 percent the percentage of a construction contract that an owner can retain to guarantee that a contractor completes the work required by the contract if the contractor has provided 100 percent performance and payment security. The bill also states that if an owner retains less than 5 percent of a contract from a contractor, the contractor may not retain more than that amount from a subcontractor. The bill does provide, however, that additional amounts may be withheld if a contractor's or subcontractor's performance warrants. The bill exempts contracts of less than $250,000 and any projects funded wholly or partially by or through the Department of Housing and Community Development.

Maryland Contract Lien Act – Time for Filing an Action to Foreclose

Under the Maryland Contract Lien Act, a person seeking to create a lien as a result of a breach of contract must give written notice, within two years of the breach, to the person against whose property the lien is intended to be imposed. Within 30 days after service of the notice, the person served may file a complaint in circuit court to determine whether probable cause exists to establish a lien. If the court orders a lien or the property owner fails to file a complaint, the person seeking to create a lien may file a statement of lien in the land records. A lien may be enforced and foreclosed by the lien holder in the same manner, and subject to the same requirements, as the foreclosure of mortgages or deeds of trust on property containing a power or sale or an assent to a decree. Generally, liens against real property take priority in the order in which they are recorded. ***House Bill 645*** ***(passed)*** extends the time during which any action to foreclose a lien may be brought, from 3 to 12 years, following recordation of the statement of lien.

Estates and Trusts

Uniform Power of Attorney Act

A Uniform Durable Power of Attorney Act drafted by National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1979 and amended in 1987 was enacted in 43 states, the District of Columbia, and the U.S. Virgin Islands. In 2006, a new Uniform Power of Attorney Act was drafted, approved, and recommended for enactment in all states because, according to NCCUSL, states had incorporated numerous nonuniform provisions, causing divergence and confusion. The 2006 Act was drafted based on a national review of state power of attorney legislation, a national survey sent to state bar associations and other pertinent organizations, and input from various other sources. According to NCCUSL, the 2006 Act serves as a codification of state legislative trends and collective best practices and enhances the usefulness of durable powers of attorney while protecting the principal, the agent, and those who deal with the agent. ***Senate Bill 87*/*House Bill 412* *(both failed)*** would have adopted the 2006 Uniform Power of Attorney Act in Maryland.

Qualifications of Orphans' Court Judges

Under the Maryland Constitution, orphans' court judges must be citizens of the State and residents of the city or county for which they are elected for the 12 months preceding the election. A proposed constitutional amendment, ***House Bill 387* *(failed)***, would have allowed the General Assembly, on request by the governing body of a county or Baltimore City by resolution, to prescribe qualifications for orphans' court judges in addition to the qualifications required by the Maryland Constitution, but not qualifications more stringent than those prescribed in the constitution for judges in other courts. As amended in the Senate, the crossfiled bill, ***Senate Bill 293* *(failed)***, would have applied only to the judges of the Orphans' Court for Baltimore City. The bills would not have applied to Montgomery and Harford counties, where circuit court judges sit as the orphans' court.