# Part F
# Courts and Civil Proceedings

## Judges and Court Administration

### Judicial Compensation

The Judicial Compensation Commission, established in 1980, is required to review judicial salaries and pensions and make recommendations to the Governor and the General Assembly once every four years. A joint resolution incorporating the salary recommendations must be introduced in each house of the General Assembly by the fifteenth day of the session following the commission's proposals. The General Assembly may amend the joint resolution to decrease, but not to increase, any of the salary recommendations, and it may not reduce the salary of a judge below current levels. Failure by both houses of the General Assembly to adopt or amend a joint resolution within 50 calendar days after its introduction results in the adoption of the salary recommendations. If the General Assembly rejects any of the commission's recommendations, the salaries of the judges remain unchanged, unless modified under other provisions of law.

In 2005, a four-year phased in salary plan recommended by the commission was implemented after the General Assembly did not adopt or amend the joint resolution containing the salary plan within 50 days after its introduction. In the fall of 2008, the commission finalized recommendations to increase the salaries of all Maryland judges by $39,858 over a four-year period. The commission's recommendations were incorporated in ***Senate Joint Resolution 4***/***House Joint Resolution 2*** ***(both failed)*** introduced in the 2009 session. Under the then current law, the commission was not scheduled to meet again until 2012.

***Senate Bill 307*** ***(Ch. 2)*** is an emergency measure that provides that for the 2009 session only, the failure of the General Assembly to act on the joint resolution of the Judicial Compensation Commission by the fiftieth day of the session may not be deemed to have made effective the salary increases recommended in the joint resolution. In recognition of the failure to take salary action for the Judiciary, the Act also alters the time period for the compensation commission to meet. Under the Act, the commission will meet again September 1, 2009, and every four years thereafter, aligning the schedule of the Judicial Compensation Commission with

the meeting schedules of the Governor's and General Assembly's compensation commissions. The Act rendered action on ***Senate Joint Resolution 4***/***House Joint Resolution 2*** unnecessary.

### Circuit Court Judgeships

At the suggestion of the Legislative Policy Committee, in 1979 the Chief Judge of the Court of Appeals began an annual procedure of formally certifying to the General Assembly the need for additional judges in the State. The annual certification is prepared based upon a statistical analysis of the work load of the courts and the comments of the circuit administrative judges and the Chief Judge of the District Court.

***Senate Bill 497*** ***(passed)*** alters the number of resident judges of the circuit courts by adding one additional judgeship each in Baltimore City, and in Anne Arundel, Baltimore, and Montgomery counties. The Maryland Judiciary's annual certification of need for additional judgeships certified the need for at least three judgeships in each of these jurisdictions. The bill is contingent on the appropriation of funds in the State budget for fiscal 2010 or 2011. The fiscal 2010 budget includes an appropriation of $621,274 to fund these judgeships, contingent on the enactment of ***Senate Bill 497***.

## Civil Actions and Procedures

### Local Government Tort Claims Act

The Local Government Tort Claims Act (LGTCA) limits the liability of a local government to $200,000 per individual claim and $500,000 per total claims that arise from the same occurrence for damages from tortious acts or omissions. By providing that a local government is liable for the tortious acts or omissions of its employees acting within the scope of employment, the LGTCA prevents local governments from asserting a common law claim of governmental immunity from liability for such acts of its employees.

An action for unliquidated damages against an entity covered by the LGTCA or its employees may not be brought unless notice of the claim meeting specific requirements is given within 180 days of the injury. Except for statutory notice requirements for Baltimore City, the LGTCA does not contain any specific provisions exclusively devoted to notice to a local government that is not a county. ***Senate Bill 974***/***House Bill 1378*** ***(both passed)*** clarify to whom notice must be given for claims under the LGTCA by creating a clear distinction between notice given to counties and notice given to other local governments under the LGTCA. Under the bill, if the defendant local government is a county, the notice must be given to the county commissioners or the county council, unless otherwise specified in statute. If the notice is to be given to a defendant local government that is not a county, the notice must be given to the corporate authorities of the defendant local government.

## False Claims

Under the English common law, a private individual could bring a *qui tam* action in court on behalf of the Crown. If the individual was successful, he or she would receive a part of the penalty imposed. In the United States, the practice exists as a component of some whistleblower statutes. ***Senate Bill 830/House Bill 915* (both failed)**, modeled on the federal False Claims Act, would have implemented *qui tam* provisions under State law in cases involving false or fraudulent claims against the State. The bills would have (1) prohibited a person from knowingly making a false or fraudulent claim for money, property, or services against the State; (2) authorized a person to bring an action involving claims covered under the Act on behalf of the State; (3) permitted the State to intervene in and proceed with an action initiated on its behalf by a private person; (4) imposed penalties on persons found to be in violation of the Act; (5) entitled an individual who initiates an action on behalf of the State and who prevails in the action to a share of the proceeds; and (6) prohibited retaliatory actions by an employer against an employee for disclosure of the employer's participation in any violation of the bill's provisions. Similar Administration bills, ***Senate Bill 272*/*House Bill 304* (both failed)**, would have applied only to false claims against a State health plan or State health program.

## 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 and its effect on the cognitive and physical development of young children.

Several courts in other states have awarded damages based on collective liability theories devised to remedy the problem of product identification in some tort cases. For example, the California Supreme Court in *Sindell v. Abbott Laboratories*, 26 Cal. 3d 588 (1980) stated that defendants who were negligent in the production and marketing of a dangerous chemical known as DES should bear the cost of the injury, rather than imposing the cost on innocent plaintiffs, notwithstanding that the plaintiffs could not definitely identify which specific manufacturers actually produced the products that caused their injuries. In 2005, the Wisconsin Supreme Court applied a similar doctrine when it held that although the plaintiff could not prove which lead paint 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, *Stephen Thomas v. Clinton L. Mallett, et al.,* 701 N.W.2d 523 (Wis. 2005). Maryland courts have generally rejected liability theories that allow a plaintiff to recover based on a defendant's market share within an industry where that particular defendant's involvement in the plaintiff's injury is uncertain. *See*, *e.g.*, *Owens-Illinois, Inc. v. Zenobia*, 325 Md. 665 (1992).

***House Bill 1156* (failed)** would have changed the standard of liability in negligence and product liability actions involving lead-based paint in a residential building in Baltimore City by providing that proof that an individual manufacturer's lead pigment in lead-based paint caused the damage is not necessary and establishing the manner of apportionment of damages among multiple manufacturers found liable. The bill also would have created the Maryland Lead Restitution Fund, which 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 lead hazard elimination in properties in Baltimore City.

### Statute of Limitations in Civil Actions for Child Sexual Abuse

Generally a civil action must be filed within three years from the date it accrues unless another statutory provision provides a different period of time within which an action may be commenced. Under the "discovery rule," which is applicable generally in all actions, a cause of action accrues when the claimant in fact knew or reasonably should have known of the wrong. If a cause of action involves a minor, the statute of limitations is tolled until the minor reaches the age of majority, which is age 18. An action for damages arising out of an alleged incident of sexual abuse that occurred while the victim was a minor must be filed within seven years of the date that the victim attains the age of majority. ***Senate Bill 238*** ***(failed)*** would have extended the statute of limitations in these cases to 32 years from the date the victim attains the age of majority. The bill also would have revived an action that otherwise would be barred as of January 1, 2010, solely because of the statute of limitations, so long as the cause of action was commenced before January 1, 2012.

### 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. ***Senate Bill 469/House Bill 354*** ***(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 a trial by jury may be limited by legislation. ***Senate Bill 468/House Bill 355*** ***(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.

## Family Law

### Domestic Violence

#### Surrender of Firearms

From June 2007 to July 2008, 75 individuals in Maryland were killed as a result of domestic violence. Fifty-six percent of these deaths were attributable to firearms.

Federal law prohibits anyone who is subject to a domestic violence order of protection or who has been convicted of a misdemeanor crime of domestic violence from possessing, in any way affecting commerce, or from receiving, any firearm or ammunition that has been shipped or transported in interstate or foreign commerce. The federal law does not apply to orders issued

*ex parte* (which means the prohibition does not apply to those emergency, interim, or temporary orders that are issued without the presence of the respondent). The federal prohibition also only applies to orders that (1) specifically prohibit the respondent from harassing, stalking, or threatening an intimate partner or a child of the partner or respondent; and (2) include a finding that the respondent represents a credible threat to the physical safety of the partner or child or specifically prohibit the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury. Additionally, under Maryland law, it is a crime for a respondent against whom a final protective order has been issued to possess any regulated firearms (*i.e.*, handguns and assault rifles).

Under current law, if, after a hearing on a domestic violence petition for relief from abuse, whether *ex parte* or otherwise, a judge finds that there are reasonable grounds to believe a person eligible for relief has been abused, the judge may issue a temporary protective order, effective for seven days, to protect the person. A judge does not have the authority to order the respondent to surrender firearms as part of a temporary protective order. At the expiration of the temporary protective order, if a judge finds by clear and convincing evidence that abuse has occurred, the judge may grant a final protective order to protect the victim. A final protective order *may* order the respondent to surrender to law enforcement any firearm in the respondent's possession for the duration of the order.

***Senate Bill 267*/*House Bill 296* (both passed)** *require* a final protective order to order the respondent to surrender to law enforcement authorities any firearm in the respondent's possession and to refrain from possession of any firearm for the duration of the protective order.

***Senate Bill 268*/*House Bill 302* (both passed)** authorize a court, when issuing a temporary protective order, to order the respondent to surrender to law enforcement any firearm in the respondent's possession and to refrain from possession of any firearm for the duration of the temporary protective order if the abuse consisted of (1) the use of a firearm by the respondent against a person eligible for relief; (2) a threat by the respondent to use a firearm against a person eligible for relief; (3) serious bodily harm to a person eligible for relief caused by the respondent; or (4) a threat by the respondent to cause serious bodily harm to a person eligible for relief.

Each of the four bills require a law enforcement officer to provide to the respondent information on the process for retaking the firearm after the expiration of the order and to transport and store the firearm in a protective case, if one is available, and in a manner intended to prevent damage to the firearm during the time the protective order is in effect. The respondent may retake possession of the firearm at the expiration of the temporary protective order, unless the respondent is ordered to surrender the firearm in a protective order or the respondent is not otherwise entitled to own or possess the firearm. The respondent may retake possession of the firearm at the expiration of any final protective order, unless the protective order is extended or the respondent is not otherwise legally entitled to own or possess the firearm.

**Insurance of Handgun Permit**

In order to be issued a permit to carry a handgun by the Secretary of State Police, an applicant must meet statutory criteria, including a showing of a good and substantial reason to

wear, carry, or transport a handgun. A good and substantial reason includes a finding that the permit is necessary as a reasonable precaution against apprehended danger.

***Senate Bill 586*/*House Bill 359* *(both failed)*** would have required the Secretary of State Police to issue a handgun permit to a victim of domestic violence who has been issued a temporary or final protective order, assuming the individual met other statutory handgun permit requirements. Specifically, the bills would have added an individual who has been issued a temporary or final protective order to those individuals who, after meeting other statutory handgun permit requirements, are deemed to have a "good and substantial reason" to wear, carry, or transport a handgun.

## Protective Orders

### Enforcement

Chapters 395 and 396 of 2008 authorized 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 the 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. ***Senate Bill 714*/*House Bill 464* *(both passed)*** extend that authority to interim and temporary protective orders.

### Notification of Service

***House Bill 1196*** ***(passed***) provides for the notification to a petitioner for relief from domestic violence of the service of interim, temporary, or final protective order on the respondent. The bill requires a law enforcement officer to electronically notify the Department of Public Safety and Correctional Services of the service of an interim or temporary protective order on the respondent within two hours after the service. If the petitioner has requested notification of the service of a protective order, the department must (1) notify the petitioner of the service on the respondent of an interim or a temporary protective order within one hour after a law enforcement officer electronically notifies the department of the service; and (2) notify the petitioner of the service on the respondent of a final protective order within one hour after knowledge of service of the order on the respondent. The bill is contingent on the receipt of federal funds under the American Recovery and Reinvestment Act of 2009 and, if enacted, terminates December 31, 2011.

### Extension of Temporary Protective Order

If, after a hearing on a petition, whether *ex parte* or otherwise, a judge finds that there are reasonable grounds to believe a person eligible for relief has been abused, the judge may issue a temporary protective order. The temporary protective order is effective for a maximum of seven days after service of the order. A judge is authorized to extend the temporary protective order as needed to effectuate service of the order where necessary to provide protection or for other good cause. An extension of a temporary protective order may not exceed 30 days. ***Senate Bill 601*/*House Bill 98* *(both passed)*** authorize a judge to extend a temporary protective order

for up to six months, rather than up to 30 days, to effectuate service of the order where necessary to provide protection or for other good cause.

**Duration of Final – Subsequent Act of Abuse**

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, not to exceed 12 months. 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 811/House Bill 971 (both passed)*** extend, from one to two years, the maximum duration of a final protective order that is issued against a respondent for an act of abuse committed within one year after the date that a prior final protective order issued against the same respondent on behalf of the same person eligible for relief expires, if the final protective order was issued for a period of at least six months.

**Expungement of Records**

Court records, including those relating to a domestic violence proceeding, that are maintained by a court are presumed to be open to the public for inspection. Generally, a custodian of a court record must permit a person, who appears in person in the custodian's office, to inspect the record. The Judiciary's web site also includes a link to a database that provides public Internet access to information from case records maintained by the Judiciary. Maryland District Court traffic, criminal and civil case records and Maryland circuit court criminal and civil case records are available. Records can remain in the database indefinitely and are not removed except for court-ordered expungement. Subject to certain exceptions, a court record that is kept in electronic form is open to inspection to the same extent that the record is open to inspection in paper form.

In September 2008, there were 1667 final protective orders that were denied or dismissed for various reasons (*e.g.,* denied because the petitioner could not meet the burden of proof or the petitioner is not a person eligible for relief under the statute; dismissed because of lack of personal jurisdiction, lack of service, the petitioner failed to appear, or the petitioner requested dismissal). In October 2009, there were 1288 final protection orders denied or dismissed, and in December 2008, there were 1334 final protective orders denied.

***Senate Bill 467/House Bill 1181 (both failed)*** would have provided for the expungement of court records relating to domestic violence protective order proceedings if a domestic violence petition is denied or dismissed.

## Child Custody

### Relocation of Child

In any custody or visitation proceeding, the court may include as a condition of a custody or visitation order a requirement that either party provide advance written notice of at least 45 days to the court, the other party, or both, of the intent to relocate the permanent residence of the party or the child either within or outside the State. The court must waive the notice requirement on a showing that the notice would expose the child or either party to abuse or for any other good cause. If either party is required to relocate in less than the 45-day period specified in the notice requirement, the court may consider as a defense to any action brought for a violation of the requirement that (1) relocation was necessary due to financial or other extenuating circumstances; and (2) the required notice was given within a reasonable time after learning of the necessity to relocate.

***Senate Bill 299*** ***(passed)*** increases the number of days' notice (from 45 to 90) that a court may require a party to a custody or visitation order to give before relocating the residence of the party or the child. The bill also requires the court to set an expedited hearing if either party files a petition regarding a proposed relocation within 20 days of the written notice.

### Military Duty

The federal Soldiers and Sailors Relief Act protects the interests of active duty military personnel. Under this law (now the Servicemembers Civil Relief Act), federal court hearings may be stayed to protect the interests of active military personnel. The law requires at least a 90-day stay in a federal court or administrative hearing if requested by the service member. Additional stays may be granted at the discretion of the federal judge or hearing official. However, the federal law does not protect deployed military personnel regarding child custody and visitation proceedings in State courts.

***House Bill 422*** ***(passed)*** establishes special provisions for custody proceedings involving a parent subject to military deployment. The legislation specifies that any order or modification of an existing child custody or visitation order issued by a court during a term of a deployment of a parent must specifically reference the deployment of the parent. A parent who petitions the court for an order or modification of an existing order after returning from deployment must specifically reference the date of the end of the deployment in the petition. If the petition is filed within 30 days after the end of the deployment, the court must set a hearing on the petition on an expedited basis. On a finding that extenuating circumstances prohibited the filing of the petition within 30 days, the court may set a hearing on the petition on an expedited basis whenever the petition is filed.

Any custody or visitation order issued based on the deployment of a parent must require that (1) the other parent reasonably accommodate the leave schedule of the parent who is subject to the deployment; (2) the other parent facilitate opportunities for telephone and electronic mail contact between the parent who is subject to the deployment and the child during the time of

deployment; and (3) the parent who is subject to the deployment provide timely information regarding the parent's leave schedule to the other parent.

**Child Abduction by a Relative**

Abduction of a child by a parent or other relative was traditionally considered a family matter rather than a criminal matter. A parent who abducted or hid a child in violation of a lawful custody order could be cited for contempt of court, but any penalties imposed were usually not severe. In the 1960s and 1970s, a rapidly increasing divorce rate led to a correspondingly higher number of children who were subject to custody orders and also led to an increasing number of parental abductions, or "custodial interference" cases. The federal Parental Kidnapping Prevention Act was enacted in 1980 to help custodial parents whose children had been taken across state lines regain custody of those children. In the majority of states, including Maryland, penalties apply when a parent or another covered relative hides a child, whether or not that person has lawful custody.

***House Bill 267*** ***(passed)*** increases the penalty for a parent or relative convicted of abducting a child to another state or harboring, hiding, or detaining a child in another state for not more than 30 days from a maximum of 30 days imprisonment and/or a $250 fine to a maximum of one year imprisonment and/or a $1,000 fine. If the child is in another state for more than 30 days, the penalties are increased from a maximum of one year imprisonment and/or a $1,000 fine to a maximum of three years imprisonment and/or a fine of $2,500. If the child is taken or detained outside of the United States, the maximum term of imprisonment is increased from three to five years. The bill also adds as a required element for the crime of child abduction by a relative that the relative abduct, detain, or harbor the child with the intent to deprive the lawful custodian of custody of the child.

**Disability of Parent, Guardian, Custodian, or Party**

***Senate Bill 613/House Bill 689*** ***(passed)*** limit the relevance of a disability of a parent, guardian, custodian, or party in certain Child in Need of Assistance (CINA), custody, and visitation proceedings. Specifically the bills establish that, in making a disposition on a CINA petition, a disability of the child's parent, guardian, or custodian is relevant only to the extent that the court finds, based on evidence in the record, that the disability affects the ability of the parent, guardian, or custodian to give proper care and attention to the child and the child's needs. In determining whether to grant custody and guardianship of a CINA to a relative or nonrelative, a disability of the relative or nonrelative is relevant only to the extent that the court finds, based on evidence in the record, that the disability affects the best interest of the child. In any custody or visitation proceeding, a disability of a party is relevant only to the extent that the court finds, based on evidence in the record, that the disability affects the best interest of the child.

Additionally, the bills prohibit (1) local departments of social services, guardians, or child placement agencies from withholding consent to an adoption solely because of a disability of the prospective adoptive parent; (2) a court from denying an adoption petition solely because of a disability of the petitioner; and (3) a child from being committed to the custody or

guardianship of a local department, and a local department from seeking custody of a child, solely because the child's parent or guardian has a disability.

## Child Support

### Medical Support

Under current law, a court may include in any child support order a provision requiring either parent to include the child in the parent's health insurance coverage if (1) health insurance is available through an employer or any form of group health insurance coverage; and (2) the child can be covered at a reasonable cost to the parent.

The federal Deficit Reduction Act of 2005 amended federal requirements regarding medical support for children and directed the Secretary of Health and Human Services to issue implementing regulations. The regulations are intended to increase the number of children who receive medical support, either through private health insurance or cash medical support. ***Senate Bill 70 (passed)*** is intended to ensure that State law conforms to these new federal requirements by requiring a court to include in any support order under Title IV, Part D of the Social Security Act (*i.e.*, cases in which the recipient is receiving Temporary Assistance for Needy Families (TANF) or has filed an application for support enforcement services) that is established or modified, a provision requiring one or both parents to include the child in the parent's health insurance coverage if (1) the parent can obtain health insurance coverage through an employer or any form of group health insurance coverage; (2) the child can be included at a "reasonable cost" to the parent; and (3) the health insurance coverage is "accessible" to the child. The cost of health insurance is deemed reasonable if the cost of adding the child to existing health insurance coverage, or the difference between self-only and family coverage does not exceed 5% of the actual income of the parent ordered to pay for the coverage. Coverage that insures primary care services located within the lesser of 30 miles or 30 minutes from the child's primary residence is considered to be accessible.

If health insurance is not available at a reasonable cost at the time a support order is established or modified, the court (1) may include a provision requiring one or both parents to include the child in the parent's health insurance coverage if heath insurance coverage at a reasonable cost becomes available in the future; and (2) shall include a provision requiring one or both parents to provide cash medical support in an amount not to exceed 5% of the actual income of the parent ordered to provide cash medical support at a reasonable cost. Court-ordered cash medical support must be added to the basic child support obligation calculated under the child support guidelines and divided by the parents in proportion to their adjusted income.

Cash medical support is defined as an amount paid toward the cost of health insurance provided by a public entity, by one or both parents through employment or otherwise, or for other medical costs not covered by insurance, including extraordinary medical expenses. In addition to requiring one or both parents to provide health insurance coverage, the court may order one or both parents to provide cash medical support in an amount not to exceed 5% of the

actual income of the parent ordered to provide cash medical support. Cash medical support must be added to the basic child support obligation calculated under the child support guidelines and divided by the parents in proportion to their adjusted actual incomes. The court may not order the obligee to pay cash medical support toward the cost of health insurance provided by a public entity for which the obligee does not pay a premium, including the Maryland Children's Health Program.

### Guidelines

Federal regulations require states to review their child support guidelines at least once every four years. In Maryland, the Child Support Enforcement Administration of the Department of Human Resources is required to review the child support guidelines to ensure the determination of appropriate child support award amounts and to report its findings and recommendations to the General Assembly. ***House Bill 1401 (failed)*** proposed several changes to the child support guidelines, including (1) revising the current guidelines to reflect more recent estimates of child-rearing expenditures; (2) expanding the guidelines to include monthly incomes of up to $30,000; (3) altering the definition of "actual income" and establishing a formula by which parents who have additional children living with them receive an adjustment in calculating the adjusted actual income; and (4) authorizing a court to consider all income and assets of each parent in determining whether a deviation from the guidelines is appropriate.

## Child Abuse and Neglect

### Birth Match Program

The Department of Human Resources maintains a "central registry" of which is a database containing information concerning its child abuse and neglect cases. The department may identify an individual in a central registry as responsible for abuse or neglect applies only if the individual has been found guilty of the criminal charge arising from the allegation or if the individual has been found responsible for the abuse or neglect and has unsuccessfully appealed the finding or failed to exercise appeal rights.

Some states, including Michigan, have implemented "birth match" programs that link information from a central registry with birth data. Michigan's Family Independence Agency is alerted whenever there is a birth in a family where children have previously been removed for abuse or neglect and the parental rights have been terminated. Information is then forwarded to child protective services that visit the newborn's family and perform an assessment.

***Senate Bill 421*/*House Bill 144* (both passed)**, Maryland's version of a birth match program, require the Executive Director of the Social Services Administration in the Department of Human Resources to provide the Secretary of Health and Mental Hygiene with identifying information regarding individuals who have had their parental rights terminated and have been identified as responsible for abuse or neglect in a central registry.

The Secretary must provide the Executive Director with birth record information for a child born to an individual whose identifying information has been provided to the Secretary

within the previous five years. If the Executive Director receives birth record information for a child born to an individual whose identifying information has been provided as described above, the Executive Director must (1) verify the identity of the birth parent; and (2) notify the local department of social services of the county in which the child resides so that the local department may review its records and, when appropriate, provide an assessment of the family and offer services if needed.

### Citizens Review Board for Children

The Citizens Review Board for Children (CRBC) must (1) examine the policies, procedures, and practices of State and local agencies; and (2) by reviewing specific cases, evaluate the extent to which State and local agencies are effectively discharging their child protection responsibilities in accordance with the State child welfare plan, federal child protection standards, and any other criteria the State board considers important to ensure the protection of children. Additionally, there must be at least one local board of review in each county. CRBC reviews and coordinates the activities of the local review boards and reviews policy issues, procedures, legislation, resources, and barriers relating to out-of-home placement and the establishment of permanency for children.

Currently, at least one review is required within the first 12 months after a child enters an out-of-home placement and subsequent reviews are required when the court, the local department of social services, an interested person, or the local board raises a concern that the local board may address through its findings and recommendations. ***Senate Bill 933*/*House Bill 1337* (both passed)** alter the existing duties of CRBC and local boards of review. Specifically, the bills require the Department of Human Resources and CRBC to adopt regulations requiring that local boards review case based on priorities agreed upon the department and CRBC as stated in a memorandum of agreement. Additionally, local boards are required to report on the following when reporting to the juvenile court and the local department of social services on each minor child whose case is reviewed: (1) the identification of barriers to achieve timely permanency; (2) whether the child is receiving appropriate services to achieve the stated permanency goal; and (3) any reasonable efforts made towards promoting the child's relationship with individuals who will play a lasting, supporting role in the child's life.

## Termination of Parental Rights

In ruling on a petition for guardianship of a child, a juvenile court must give primary consideration to the health and safety of the child and consideration to all other factors needed to determine whether the termination of parental rights is in a child's best interests. In *In Re: Adoption of Rashawn Kevon H.*, 402 Md. 477 (2007), the Court of Appeals recognized an implicit presumption that the interest of a child is best met by continuing the parental relationship. This presumption is based on the fundamental constitutional right of parents to raise their children without undue influence by the State. The presumption may be rebutted only by clear and convincing evidence that a parent is either unfit or that exceptional circumstances exist that would make the continued relationship detrimental to the child's best interest. In addition to consideration of the factors currently specified in statute, a court is required to make

clear and specific findings based on the evidence with respect to each of the factors. A trial court must determine expressly whether the findings are sufficient either to show that a parent is unfit or that exceptional circumstances exist that would make continuation of the parental relationship detrimental to the child's best interest.

The *Rashawn* case was remanded in order for the trial court to make and articulate clear and specific findings with respect to each of the relevant statutory factors. ***Senate Bill 58 (passed)*** codifies the *Rashawn* opinion by establishing that after the consideration of existing statutory factors, a juvenile court, in order to grant guardianship of a child without parental consent and over the child's objections, must also find by clear and convincing evidence that a parent is unfit to remain in a parental relationship with the child or that exceptional circumstances exist that make a continuation of the parental relationship detrimental to the best interests of the child such that terminating the parent's rights is in the child's best interest.

### Marriage

A marriage ceremony may be performed in Maryland by any religious official of a body or order authorized by rules or custom to perform a marriage ceremony, a clerk of court, a deputy clerk of court designated by the county administrative judge for the county circuit court, or a judge. ***Senate Bill 870 (passed)*** expands the definition of "judge" to include a judge of the United States Tax Court and specifies that such a judge of the United States Tax Court may perform marriage ceremonies in Maryland.

## Human Relations

### Revision of Article 49B

***House Bill 51 (Ch. 120)*** is a nonsubstantive code revision bill that revises, restates, and recodifies State laws relating to prohibitions against various forms of discrimination, remedies for unlawful discrimination, and the Maryland Commission on Human Relations. It repeals most of the provisions of Article 49B (Human Relations Commission) of the Annotated Code of Maryland and adds a new title, designated as "Title 20. Human Relations," to the State Government Article. ***House Bill 52 (Ch. 121)*** corrects cross-references to Article 49B throughout the Annotated Code and makes a technical correction. ***House Bill 53 (passed)*** makes substantive changes in the new Title 20 of the State Government Article to address issues flagged for consideration by the General Assembly in the revisor's notes in ***House Bill 51***, including repealing obsolete and unconstitutional provisions, conforming the protected classes in provisions prohibiting discrimination, and filling in gaps and correcting errors in provisions relating to enforcement. ***House Bill 54 (passed)*** clarifies that provisions authorizing certain complainants to elect or file a civil action apply only to alleged unlawful employment practices and not to all discriminatory acts.

## Employment Discrimination

### Discriminatory Compensation Claims

In *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007), the U.S. Supreme Court held that a complainant claiming pay discrimination under federal law must allege discriminatory pay decisions that occurred within the applicable period for filing a charge with the Equal Employment Opportunity Commission (EEOC). Since Ms. Ledbetter based her complaint on discriminatory acts that occurred long before she filed her charge with the EEOC, she was not entitled to relief.

***Senate Bill 368*/*House Bill 288* (Chs. 56 and 57)** respond to that decision by authorizing the recovery of back pay for up to two years preceding the filing of a complaint under State law for employment discrimination based on an unlawful employment practice that occurred outside the statute of limitations for filing a complaint but was similar or related to an unlawful practice with regard to discrimination in compensation that occurred during the complaint filing period. The Acts specify that an unlawful employment practice with respect to discrimination in compensation occurs when (1) a discriminatory compensation decision or other practice is adopted; (2) an individual becomes subject to a discriminatory compensation decision or other practice; or (3) an individual is affected by the application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting wholly or partly from the discriminatory decision or other practice. The Acts mirror language in recent federal legislation, the *Lilly Ledbetter Fair Pay Act of 2009*, which was signed by the President on January 29, 2009.

### Individuals with Disabilities

Under the Americans with Disabilities Act (ADA), an employer is required to make a reasonable accommodation to the known disability of a qualified applicant or employee if it would not impose an "undue hardship" on the operation of the employer's business. "Undue hardship" is defined as an action requiring significant difficulty or expense when considered in light of an employer's size, financial resources, and the nature and structure of its operation. Reasonable accommodations may include making existing facilities used by employees more readily accessible, modifying work schedules, adjusting or modifying examinations or training materials, and providing qualified readers or interpreters.

***Senate Bill 670*/*House Bill 393* (both passed)** are designed to make State law more consistent with the ADA and to codify existing caselaw and regulations. The bills expand the definition of "disability" applicable to provisions of law relating to employment discrimination. Under the bills, "disability" includes a record of having a physical or mental impairment or being regarded as having a physical or mental impairment. The bills prohibit an employer from failing or refusing to make a reasonable accommodation for the known disability of an otherwise qualified employee unless the accommodation would cause undue hardship on the conduct of the employer's business. The bills also prohibit an employer or labor organization from retaliating against any employee, applicant, or member who has opposed any prohibited employment

practice or participated in an investigation, proceeding, or hearing relating to a discrimination charge.

### Gender Identity

Thirteen states and the District of Columbia have passed laws prohibiting discrimination based upon gender identity. Since 2002, Baltimore City has had laws prohibiting discrimination based upon gender identity and expression in employment, public accommodations, education, and housing. In 2007, Montgomery County added gender identity as a covered basis under county law prohibiting discrimination in employment, housing, cable television services, and taxicab services. Governor Martin O'Malley issued an executive order in August 2007 that included gender identity and expression as a proscribed basis for discrimination in State personnel actions.

***Senate Bill 566*/*House Bill 474* *(both failed)*** would have prohibited discrimination based on "gender identity" in public accommodations, labor and employment, and housing throughout the State. The bills would have defined gender identity as a gender-related identity, appearance, expression, or behavior of an individual, regardless of the individual's sex at birth. The bills also would have prohibited discrimination based on gender identity and sexual orientation in State personnel actions and in the leasing of property for commercial usage.

## Real Property

### Residential Foreclosures

#### Background

In 2008, property foreclosure activity in the State increased to 10,030 events during the fourth quarter, an increase of 25.8% from the third quarter. The Commissioner of Financial Regulation received more than 64,000 notices of intent to foreclose during calendar 2008. In January 2009, the Department of Housing and Community Development estimated that foreclosure events in the State would increase in the near future, as the State's 5.8% unemployment rate in December 2008 was at a 15-year high.

Foreclosures of residential property affect tenants, as well as the property owners, because a tenant currently does not have a right to remain in a home sold at foreclosure. Accordingly, an increasing number of residential tenants face eviction due to the increase in residential foreclosures. Baltimore City responded to this issue in 2008 by enacting a local law requiring a purchaser of residential property at a foreclosure sale, tax sale, or judicial sale to provide the occupant with two weeks notice of the execution of a writ of possession. Recent changes to the Maryland Rules, effective May 1, 2009, also require notices to be sent to the occupant of residential property when a foreclosure action is filed and before the date of the foreclosure sale.

**Notice of Foreclosure to Residential Tenants**

Two emergency measures, ***Senate Bill 842***/***House Bill 776*** ***(both passed)*** require notices of foreclosure to be sent to all occupants of a residential property at three separate times during the foreclosure process: (1) when a foreclosure action is filed; (2) no earlier than 30 days and no later than 10 days before the foreclosure sale; and (3) after the entry of a judgment awarding possession of the property and before any attempt to execute the writ of possession. ***Senate Bill 842***/***House Bill 776*** also specify the contents of each notice and require that each notice be sent by first-class mail in a specially marked envelope.

**Notice of Foreclosure to Local Governments**

In an action to foreclose a lien on real property, current law requires the person authorized to make the sale of the property to notify the county or municipal corporation where the property is located at least 15 days before the sale. Within 10 days of receiving this notification, the local government must notify that person of any outstanding liens, charges, taxes, or assessments on the property.

***House Bill 640*** ***(Ch. 149)*** affords local governments the opportunity to receive an earlier notice of foreclosure on residential property. The Act authorizes a county or municipal corporation to enact a local law that requires notice to be given to the local government when a foreclosure action is filed on residential property located in the jurisdiction. The local law must require the person authorized to make the sale to notify the local government within five days after filing an order to docket or a complaint to foreclose the mortgage or deed of trust. The notice must provide the name and contact information of the person authorized to make the sale, the street address of the subject residential property, and the names and addresses, if known, of all owners of the residential property.

**Mortgage Fraud – Clarification of Scope**

The Federal Bureau of Investigation reports that mortgage fraud is one of the fastest growing financial crimes in the United States. Chapters 3 and 4 of 2008 enacted the Maryland Mortgage Fraud Protection Act, a comprehensive statute that establishes criminal penalties; authorizes the Attorney General, a State's Attorney, and the Commissioner of Financial Regulation to take enforcement action; and allows victims of mortgage fraud to bring private actions seeking damages and attorney's fees from alleged violators.

The 2008 Act defines "mortgage fraud" as any action by a person made with the intent to defraud that involves knowingly making, using, or facilitating the use of a deliberate misstatement, misrepresentation, or omission during the mortgage lending process with the intent that it will be relied on by a mortgage lender, borrower, or any other party in the lending process.

***House Bill 79*** ***(Ch. 126)*** clarifies that the 2008 Act applies to the preparers of documents such as appraisals by expanding the definition of "mortgage fraud" to include the intentional

creation or production of a document containing a misstatement, misrepresentation, or omission that is created before and used during the lending process.

**Foreclosure Procedures – Clarification of Scope**

Chapters 1 and 2 of 2008 changed the foreclosure process for residential property, including allowing a mortgagor or grantor to cure the default by paying all past due payments, penalties, and fees up to one business day before the foreclosure sale. Although current law generally addresses foreclosure procedures for residential property, the right of a mortgagor or grantor to cure a default is not explicitly limited to residential property. Thus, a foreclosing lender of commercial property may be forced to accept the amount necessary to cure the default and reinstate the loan.

***Senate Bill 807*/*House Bill 798* *(both passed)*** clarify that the definition of "residential property" applicable to the law governing residential foreclosure procedures means property improved by four or fewer single-family dwelling units that are designed principally for, and are intended for, human habitation. The bills also clarify that the mortgagor or grantor "of residential property" may cure a default up to one business day before the foreclosure sale of the property. With these changes, commercial lenders retain the ability to accelerate a loan in default and demand early repayment of an outstanding debt.

## Common Ownership Communities

Condominiums, homeowners associations, and cooperative housing corporations, collectively referred to as common ownership communities (COC), continue to be the focus of a large number of bills introduced each session. Several 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.

**Transition of Control**

One of the findings of the task force was that a developer should be required to supply the COC resident governing body with a list of the common elements and all contracts entered into by the developer or the developer-controlled governing body that affect the COC. ***Senate Bill 742*/*House Bill 667* *(Chs. 95 and 96)*** establish the procedures for the transition of control of a condominium or homeowners association from a developer to the governing body of each community that is elected by its owners. The Acts require a meeting to elect the governing body of the community to be held within 60 days from the date a certain percentage of the units or lots have been sold to the public. The developer must also deliver to each unit owner or lot owner a notice that the minimum number of units or lots have been sold and when the meeting will be held. Within 30 days of that meeting, the developer must deliver copies of specified records, contracts, and financial statements of the community to the newly elected governing body.

**Fidelity Insurance**

***Senate Bill 541*/*House Bill 687* (Chs. 77 and 78)** require the governing body of a COC to purchase fidelity insurance no later than the time of the first conveyance of a unit or lot to a person other than the developer. The fidelity insurance provides for the indemnification of the COC against losses resulting from acts or omissions arising from fraud, dishonesty, or criminal acts by the COC's officers, directors, managing agents, management companies, or associated agents or employees. The amount of the fidelity insurance must equal the lesser of either three months' worth of gross common charges or annual charges and the total amount held in all investment accounts at the time the fidelity insurance is issued or $3,000,000.

**Repair or Replacement of Damage or Destruction by Council of Unit Owners**

Property insurance and the repair of damaged property is another significant concern for COCs. ***Senate Bill 201*/*House Bill 287* (both passed)** clarify that the responsibility of a condominium's council of unit owners to repair or replace the common elements extends to the condominium units, exclusive of improvements installed in the units by unit owners other than the developer, in the event of damage or destruction to the condominium – notwithstanding inconsistent provisions in the council of unit owners' bylaws.

The bills are designed to overturn the Court of Appeals ruling in *Anderson v. Council of Unit Owners of The Gables on Tuckerman Condominium, et al.,* 404 Md. 560 (2008) by placing an affirmative duty on the council of unit owners of a condominium to repair damage or destruction to the condominium that originated in a unit, and to purchase property insurance that reflects this duty.

The condominium's council of unit owners must maintain property insurance on the common elements and units, exclusive of improvements installed in the units by unit owners other than the developer. The bills further require a unit owner to pay the deductible of the condominium's master insurance policy, up to the statutory limit of $5,000, if the cause of the damage originated from the owner's unit. Notice of a unit owner's responsibility for the insurance deductible must be included in a condominium sales contract and given annually in writing by the council of unit owners to each unit owner.

**Closed Meetings of Board of Directors or Other Governing Body**

In response to complaints concerning closed meetings from homeowners and condominium owners who have expressed concern about their inability to be present at meetings that may affect their interests, ***Senate Bill 171* (Ch. 38)**/***House Bill 553* (passed)** and ***Senate Bill 172* (passed)**/***House Bill 552* (Ch. 144)** limit the authority of a board of directors or other governing body of a condominium or a homeowners association, respectively, to close a meeting. Among other things, the bills repeal a provision that authorizes a closed meeting by an individually recorded affirmative vote of two-thirds of the board or committee members present, for an exceptional reason so compelling as to override the general public policy in favor of open meetings.

### Public Inspection of Books and Records

***House Bill 137*** ***(passed)*** alters provisions dealing with the public inspection and copying of the books and records of a COC. The bill applies to members of cooperative housing corporations, condominium unit owners, and lot owners in homeowners associations, as well as a member's or owner's mortgagee, authorized agent, or attorney. Among other things, the bill requires that all books or records of a COC be made available for both inspection and copying by an authorized party, and prohibits a COC from withholding from public inspection information on individual salaries, wages, bonuses, and other compensation paid to employees. A written request for a copy of financial statements or minutes must be complied with within 21 days of the request if the document was prepared within three years of the request; if the document was prepared more than three years before the date of the request, the COC has 45 days to send the requested document. Any charge for copying may not exceed the limits authorized for copying under Title 7, Subtitle 2 of the Courts Article (*i.e.*, $.50 per page for copies made by a court clerk and $.25 per page for copies made by a customer).

## Drug Nuisances on Commercial Property

Under the State's drug-related nuisance abatement statute, a "nuisance" is a property that is used (1) by persons who assemble for the specific purpose of illegally administering a controlled dangerous substance; (2) for the illegal manufacture or distribution of a controlled dangerous substance or controlled paraphernalia; or (3) for the storage or concealment of a controlled dangerous substance in sufficient quantity to indicate an intent to manufacture, distribute, or dispense a controlled dangerous substance or controlled paraphernalia.

A community association, State's Attorney, or city or county attorney or solicitor is authorized to bring an action to abate a nuisance when residential property is being used for certain illegal drug activities. A plaintiff must give the tenant and owner of record of commercial property 45 days' notice before bringing an abatement action.

According to testimony concerning efforts to abate drug-related nuisances on commercial property in Baltimore City, the majority of targeted properties are not legitimate businesses, but rather fronts for operations selling and storing illegal drugs. Testimony further indicated that the six-week advance notice requirement has hampered efforts to abate drug activity in local communities in a timely fashion.

***Senate Bill 159***/***House Bill 99*** ***(both passed)*** reduce the number of days of notice that must be given to the tenant and owner of commercial property before an action to abate a drug nuisance may be filed. In Baltimore City, the prior notice period is shortened from 45 days to 15 days; in all other jurisdictions, 30 days' notice must be given.

## Mechanics' Liens

***Senate Bill 364***/***House Bill 544*** ***(Chs. 54 and 55)*** authorize the establishment of a mechanic's lien for interior design services that pertain to interior construction and are provided

by a certified interior designer. "Interior design services" are defined as rendering or offering to render services for a fee or other valuable consideration, in the preparation and administration of interior design documents (including drawings, schedules, and specifications) pertaining to the planning and design of interior spaces including furnishings, layouts, fixtures, cabinetry, lighting fixtures, finishes, materials, and interior construction not materially related to or materially affecting the building systems, all of which must comply with applicable laws, codes, regulations, and standards.

## Real Property Sales Contracts

### New Home Sales Contracts

Realtors often include a standard clause in a contract for the sale of an existing home making the sale contingent on the purchaser obtaining financing. Many new home builders use their own form contracts, however, which may not contain a financing contingency clause. In that case, consumers may find themselves bound by a contract to purchase a new home, even if they cannot secure financing. ***Senate Bill 657*** ***(Ch. 92)*** requires a contract for the initial sale of a new home to be contingent on the purchaser obtaining a written commitment for a loan secured by the property, unless the contract expressly states otherwise. If the contract is contingent on the purchaser obtaining financing, the contract must state the maximum interest rate the purchaser is obligated to accept.

### Disclosure of Conservation Easements

Conservation easements allow landowners to protect natural resources and preserve open space by limiting future development and restricting the use of the land. Since 2007, the seller of property encumbered by a conservation easement must provide the purchaser a copy of all conservation easements encumbering the property as well as including in the sales contract a statement with specified information about the conservation easement and the purchaser's rights and responsibilities regarding the conservation easement. The purchaser has the right to rescind the contract if a seller fails to meet these requirements within 20 calendar days after entering into the contract.

***Senate Bill 1027/House Bill 754*** ***(both passed)*** alters provisions concerning notice requirements and rescission rights when real property encumbered by a conservation easement is sold. Under the bills, the vendor must deliver the notice about the purchaser's rights and responsibilities regarding a conservation easement and a copy of all conservation easements to the purchaser before entering into a contract for the sale of the property. The purchaser who receives the notice and copies of the easement on or before entering into a contract of sale may not rescind the contract based on the information received from the vendor. If the notice and easement copies are given after the sales contract is signed, the purchaser is allowed to rescind the sales contract any time before, or within five days after, receipt of the notice and easement copies.

# Estates and Trusts

## Estates

### Admission of Copy of Executed Will

In many cases, the decedent's original will cannot be found, but copies are available. There is uncertainty regarding whether a copy of an original executed will may be admitted to probate in the absence of the original will, and the issue is addressed differently among the counties. In some counties, the register of wills admits a copy of an executed will in place of an original as a matter of course, while in other counties, admission of a copy of an executed will requires judicial probate. ***Senate Bill 154*** ***(Ch. 37)*** allows an interested person to file a petition for the admission of a copy of an executed will at any time before administrative or judicial probate if the original is alleged to be lost or destroyed, a copy evidencing the signatures of the decedent and witnesses is offered, and all heirs and persons that receive property under the will execute a specified consent to probate of the copy. An orphans' court may authorize the petitioner to proceed with administrative probate and authorize the register of wills to accept the copy or require the filing of judicial probate.

### Determination by Orphans' Court of Title to Personal Property

***Senate Bill 153***/***House Bill 399*** ***(both passed)*** increase the limit on the value of personal property (from $20,000 to $50,000) for which an orphans' court may determine questions of title for the purpose of determining what personal property is properly includable in an estate. The current limit was first enacted in 1994 and has not been updated since then. Disputes over vehicles, bank accounts, and household personal property now often involve amounts that exceed $20,000, requiring these disputes to be heard in circuit court.

### Valuation of Real and Leasehold Property

Within three months of appointment, a personal representative for an estate must prepare and file an inventory of property owned by the decedent at the time of the decedent's death, indicating the fair market value of each item listed as of the date of death. Generally, the personal representative must secure an independent appraisal of each item of property in the inventory. However, real and leasehold property may be valued at the full cash value for property tax assessment purposes, unless the property is assessed on the basis of its use value.

***House Bill 582*** ***(passed)*** adds an additional exception to the appraisal requirement. The bill allows real and leasehold property in an estate to be valued at the contract sales price for the property, instead of an appraisal at fair market value, if (1) the price is set forth on a settlement statement for an arm's length contract of sale of the property; and (2) the settlement on the contract occurs within one year after the decedent's death. This provision does not apply to property assessed for property tax purposes on the basis of its use value.

## Trust for Care of Animal

The validity and enforceability of a trust created for the care of an animal is currently not addressed by Maryland statutory law, and there does not appear to be any Maryland case law on the subject, which has raised concern that such a trust may be unenforceable in this State. ***House Bill 149*** ***(Ch. 132)*** allows for the creation and enforcement of a trust to provide for the care of an animal alive during the lifetime of the person creating the trust and provides that the common law rule against perpetuities does not apply to the trust. A trust created under the Act would last for the lifetime of the animal or animals and may be enforced by a person appointed under the terms of the trust, or if no person is appointed, a person appointed by the court. A person with an interest in the welfare of the animal may ask the court to appoint a person to enforce the trust or remove a person appointed. The property of the trust could only be used for the intended purpose of the trust, unless the court determines that the value of the trust exceeds the amount required for the intended use. Unless otherwise provided by the terms of the trust, property not required for the intended use must be distributed to the person who created the trust, or if that person is deceased, the person's successors in interest. The Act applies only to trusts created on or after October 1, 2009.

## Guardianship of Minors

***Senate Bill 905***/***House Bill 634*** ***(both passed)*** specify that an orphans' court may exercise jurisdiction over the guardianship of the person of a minor if the presiding judge of the orphans' court is a member of the bar, regardless of whether the minor has property, may inherit property, or is destitute. An orphans' court that exercises, or is requested to exercise, this jurisdiction may transfer the matter to a circuit court, on a finding that the best interests of the child require use of the equitable powers of the circuit court, and may waive the costs, if any, of the transfer.

## Fiduciaries

### Powers of Personal Representatives and Fiduciaries

***Senate Bill 152*** ***(passed)*** allows a personal representative to become a limited partner in a partnership or a member in a limited liability company, including a single member limited liability company. In addition, the bill allows a fiduciary to continue as or become a member in a limited liability company, including a single member limited liability company. The bill would allow a personal representative to keep a small business running for the estate of a decedent, thereby helping to preserve its value, especially if the decedent was an owner or a major partner in the business. The personal representative would also be protected from personal liability in the business.

### Maryland Uniform Prudent Management of Institutional Funds Act

***House Bill 200*** ***(Ch. 134)*** enacts the Maryland Uniform Prudent Management of Institutional Funds Act (UPMIFA). The Act is a modified version of the 2006 UPMIFA drafted,

approved, and recommended for enactment in all states by the National Conference of Commissioners on Uniform State Laws (NCCUSL). According to NCCUSL, the 2006 UPMIFA has so far been adopted in 28 states and the District of Columbia. NCCUSL also drafted and approved in 1972 the Uniform Management of Institutional Funds Act (UMIFA), which was enacted by 47 states, including Maryland and the District of Columbia. The Maryland UMIFA was enacted by Chapter 838 of 1973 and has not been substantively amended since. UPMIFA updates standards for the management and investment of charitable funds and endowment spending and includes provisions concerning:

- management and investment conduct, including exercising ordinary business care and prudence under the existing prevailing facts and circumstances, an express obligation regarding cost management, a standard of whole portfolio management, a diversification requirement, and provision for a special skills standard of performance;

- expenditure or accumulation of endowment funds, including elimination of the concept of historic dollar value;

- a rebuttable presumption of imprudence for the appropriation for expenditure in any year of an amount greater than 7% of the fair market value of an endowment fund and a requirement that the Attorney General be notified of such an appropriation (not applicable to appropriations permitted under other law or by the gift instrument);

- delegation of management and investment functions, including (1) requiring that ordinary business care and prudence under the existing prevailing facts and circumstances be exercised in selecting an external agent, establishing the scope and terms of the delegation, and periodically reviewing the actions of the agent; (2) establishing a duty of reasonable care for the agent; and (3) subjecting the agent to court jurisdiction;

- release or modification of a restriction on the management, investment, or purpose of an institutional fund with the consent of the donor;

- standards for the release or modification of a restriction on the management, investment, or purpose of an institutional fund (1) by a court of competent jurisdiction (modification only), on application of an institution; or (2) in the case of a fund with a total value of less than $50,000 that has been in existence for more than 20 years, by the institution 60 days after notification of the Attorney General; and

- standards for the modification of a charitable purpose or restriction on the use of an institutional fund by a court of competent jurisdiction on application of an institution.

The Act applies to institutional funds existing on or established after the date the bill takes effect (April 14, 2009). With respect to funds existing on the date the Act takes effect, it only governs decisions made or actions taken on or after that date.

**Powers of Attorney**

***Senate Bill 150*/*House Bill 852* (both failed)** would have established the Maryland Uniform Power of Attorney Act and repealed existing statutory provisions relating to powers of attorney. The failed legislation was a modified version of the 2006 Uniform Power of Attorney Act drafted, approved, and recommended for enactment in all states, by the National Conference of Commissioners on Uniform State Laws, which was 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.