Part F
Courts and Civil Proceedings

Judges and Court Administration

Circuit Court Funding

Real Property Records Improvement Fund

The Circuit Court Real Property Records Improvement Fund is a special fund used to repair, replace, and update office equipment and equipment-related services in the land records office of each circuit court clerk's office. The fund is funded by a surcharge on instruments recorded by the clerks of the courts.

Senate Bill 136*/*House Bill 92* (both failed)** would have increased the $5 recordation surcharge to a maximum of $15 (Senate Bill 136***) or a mandatory $20 (***House Bill 92***). However, ***House Bill 935* (passed)**, the Budget Reconciliation and Financing Act, increases this surcharge to $20. For a more detailed discussion of this bill, see Part A – Budget and State Aid of this *90 Day Report*.

Circuit Courts Action Plan

Two provisions of ***House Bill 935* (passed)** impact State funding of the circuit courts. One provision delays the State payment of rent to counties for office space occupied by circuit court clerks until fiscal 2007. The other requires the counties to partially share the cost of law clerks for circuit court judges. This latter provision partially reverses recent legislation that made law clerks State employees funded by the State rather than the counties.

Office of the Public Defender

The General Assembly approved an increase of $5,099,464 or 8.83 percent in the Office of the Public Defender (OPD) over the adjusted fiscal 2003 appropriation, after cost containment and with fiscal 2003 deficiencies. The OPD received a significant increase in fiscal 2004 appropriations at a time when other State agencies were reduced or had increases that collectively were 1 percent over the fiscal 2003 level. The additional funds address the OPD caseload crises; opening of the Baltimore City Juvenile Justice Center; representation for

noncustodial parents in Children in Need of Assistance (CINA) cases; the opening of the new Hargrove Southern District Court in Baltimore City; and the Montgomery County District Court criminal docket.

The fiscal 2004 appropriation also provides full funding of panel attorneys where the previous administration had reduced funds for cost containment. Panel attorneys are assigned cases where there are multiple defendants or to address the case overload when existing cases assigned to OPD staff exceeds acceptable levels for competent representation.

Military Discharge Papers

The circuit court clerk in each county is required to keep a book, and record and index in the book, the discharge papers of any person who has served in the armed forces and presents the papers for recording. Veterans need certified copies of their discharge papers to apply for low-cost mortgages, educational benefits, or treatment at military facilities.

Military discharge papers contain social security numbers and other identifying information. Concern had been expressed by veterans that providing unlimited access to these papers may lead to identity theft. ***Senate Bill 42***/***House Bill 733*** ***(both passed)*** allow access to these records only (1) to the person named in the discharge papers or the person's designee or representative; (2) in accordance with a subpoena or court order; (3) for use in a court or administrative proceeding; or (4) for good cause, to a relative of the person named in the discharge papers, if the request is made at least 70 years after the papers were presented for recording.

Election of Circuit Court Judges

Judges of the circuit courts are elected at the general election by the qualified voters of the respective county or Baltimore City in which the circuit court sits. A candidate for the office of circuit court judge may be challenged by one or more other candidates for the office. Each judge holds the office for 15 years from the time of election and until either a successor is elected and qualified or the judge turns 70 years old, whichever occurs first.

Senate Bill 6, ***Senate Bill 35***/***House Bill 120*** and ***Senate Bill 88*** ***(all failed)*** would have proposed amendments to the Maryland Constitution to be submitted to voters at the 2004 general election. Under these proposed amendments, circuit court judges would have been selected by gubernatorial appointment, subject to confirmation by the Senate, followed by approval or rejection via retention election by the voters without any other candidates on the ballot. The bills also decreased the term of office from 15 to 10 years following an election.

House Bill 466 ***(failed)*** would have established new procedures for the nonpartisan nomination and election of circuit court judges. Under these procedures, which are similar to those followed in school board elections, any voter, regardless of party affiliation, could vote for a number of candidates equal to the number of judges to be nominated or elected. The number of candidates who received the highest numbers of votes would be nominated or elected.

Public General Laws – Evidence of the Law

The Michie Annotated Code of Maryland, published by Lexis Law Publishers, has been considered evidence of the Public General Laws of the State by all State courts and all public offices and officers of the State and its political subdivisions for 51 years. Under ***Senate Bill 180*/*House Bill 287* (both passed)**, the Annotated Code of Maryland published by West of Eagan, Minnesota and the Code of Public General Laws compiled, updated, and maintained by the Department of Legislative Services in a database format are given the same status as the Michie Code and are to be considered evidence of the Public General Laws of the State.

Civil Actions and Procedures

Small Claim Actions

In a small claim action, the rules of procedure and evidence are relaxed to make it easier for parties to represent themselves without hiring an attorney. Even if not admitted to practice law, an officer or employee of a corporation or other business entity may appear on behalf of the entity in a small claim action.

***Senate Bill 4*/*House Bill 18* (both passed)** increase the maximum amount of a small claim, over which the District Court of Maryland has exclusive jurisdiction, from $2,500 to $5,000. The bill also increases, from $2,500 to $5,000, the amount in controversy (1) above which the District Court and circuit courts have concurrent jurisdiction in civil cases; and (2) for which a civil appeal from the District Court must be based on the record.

Statute of Limitations – Child Victims of Sexual Abuse

A civil action must generally be filed within three years from the date on which it accrues (that is, arises). Under the discovery rule, which is generally applicable in all actions, a cause of action accrues when the claimant knew, or reasonably should have known, of the wrong.

If the cause of action involves a minor, this general three-year statute of limitations is tolled until the child reaches the age of majority, which is 18 years of age. This means that a child victim of sexual abuse is required to file suit before reaching the age of 21. ***Senate Bill 68* (passed)** extends the statute of limitations from three to seven years in these cases. Thus, under this bill a child victim of sexual abuse must file suit before reaching the age of 25.

Medical Malpractice – Statute of Repose – Minors

A person suing for damages for an injury allegedly caused by a health care provider must, by law, file suit within the earlier of five years of the time the injury occurred or three years of the date the injury was discovered. A recent Court of Appeals decision, *Piselli v. 75th Street Medical*, 371 Md. 188 (2002), invalidated shorter time limits for filing a claim for an injury committed while the claimant was a minor and held that the statutory three- and five-year time

periods as applied to a claimant injured as a minor do not begin to run until the claimant reaches the age of 18.

House Bill 676 ***(failed)*** would have required a claimant who sues a health care provider for damages for injuries committed while the claimant was under the age of 11 to file suit before the claimant reaches the age of 19 or, for an injury to the claimant's reproductive system or one caused by a foreign object negligently left in the claimant's body, before the claimant reaches the age of 21.

Compensation by Board of Public Works

Individuals Erroneously Convicted and Imprisoned

An individual is eligible for a grant from the Board of Public Works (BPW) for actual damages for erroneous conviction and imprisonment under State law for a crime the individual did not commit only if the individual has received a full pardon from the Governor stating that the conviction has been shown conclusively to be in error. The determination of whether the eligibility standard has been met by the person requesting the pardon is wholly within the discretion of the Governor.

Senate Bill 569 ***(passed)*** authorizes BPW to also grant a reasonable amount to an individual erroneously convicted and imprisoned to assist with the cost of financial and other appropriate counseling for the individual.

Law Enforcement Officers

House Bill 879 ***(passed)*** authorizes BPW to approve payment of reasonable attorney's fees and lost wages resulting from a suspension without pay to an applicant from a State law enforcement agency if (1) the suspension occurred as a result of one or more criminal charges filed against the applicant; and (2) the final disposition of each charge resulted in a dismissal, *nolle prosequi*, or an acquittal. BPW may not approve such a payment if the applicant is terminated from employment as a result of an administrative proceeding resulting from the same criminal charges or if the applicant resigns before resuming duties for pay.

Subsequent Injury Fund/Workers' Compensation Appeals

The Subsequent Injury Fund (SIF) was established to encourage the hiring of workers with preexisting disabilities by assuming financial responsibility for the combined effects of a preexisting disability and an accidental workplace injury. SIF reviews and investigates workers' compensation claims that involve preexisting health conditions that substantially increase the disability of injured workers. The liability of an employer's insurer is limited to compensation for the damages caused by the current injury, and SIF incurs all additional liability from the combined effects of all injuries or conditions.

Senate Bill 140/***House Bill 122*** ***(both passed)*** require that if SIF is impleaded (that is, sued) in a Workers' Compensation Commission (WCC) claim on appeal before a circuit court or

the Court of Special Appeals, as to an impleader filed at least 60 days before the scheduled trial in the circuit court or hearing in the Court of Special Appeals, the court must suspend further proceedings and remand the case to WCC for further proceedings to give SIF an opportunity to defend against the claim. As to an impleader filed less than 60 days before the scheduled trial in the circuit court or hearing in the Court of Special Appeals, the court may for good cause shown suspend further proceedings and remand the case to WCC for further proceedings.

The bills were introduced in response to a Court of Appeals holding that circuit court judges must, without any delay or further hearings on the matter, return WCC appeals to WCC as soon as SIF is impleaded. As a result of their passage, the bills provide the circuit courts and the Court of Special Appeals with the ability to determine whether a bona fide reason exists for returning an appeal to WCC or whether the impleading is being used for a delay of the case without merit, if the impleading occurred within 60 days of the scheduled trial or hearing.

Immunity – Community Associations

The Maryland Associations, Organizations, and Agents Act generally provides that an agent of an association or organization is not personally liable for damages in any suit, and the liability of the association or organization itself is limited if the organization or association maintains specified levels of liability insurance.

Currently, the Act applies to athletic clubs, charitable organizations, civic leagues or organizations, cooperative housing corporations, condominium unit owners councils, and homeowner associations. However, most of these entities must have tax-exempt status from the Internal Revenue Service.

House Bill 467 ***(passed)*** adds community associations, regardless of whether they have a tax-exempt status from the Internal Revenue Service, to those entities covered by the Maryland Associations, Organizations, and Agents Act.

Under the bill, a "community association" is defined as a nonprofit organization registered with the Secretary of State that is composed of at least 25 percent of the adult residents of a local community that consists of at least 40 households and is defined by specific geographic boundaries; requires the payment of dues at least annually; promotes social welfare and general civic improvement; and, in the case of a corporation, is in good standing. A nonprofit organization that has been in existence for at least five years and promotes social welfare and general civic improvement may register with the Secretary of State as a community association by filing an affidavit that the organization meets the above definition.

Family Law

Child Support

Federally Mandated Enforcement Provisions

Background: The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 not only changed the administration of welfare (by creating the Temporary Assistance to Needy Families (TANF) program), but also significantly changed the administration of child support. In the partnership between the federal and state governments for enforcement of child support, the federal government reimburses states for about two-thirds of the cost of state child support enforcement programs in exchange for which the federal government requires state compliance with all federal child support enforcement provisions. States are required to submit a plan for enforcement of child support provisions (known as a state IV-D plan). The federal sanction for noncompliance is loss of up to all of the State block grant for TANF and the grant and incentive payments provided for the State child support enforcement program (a total of about $295 million in Maryland).

In October 2002, the Department of Human Resources (DHR) received an official notice of intent to disapprove Maryland's IV-D plan from the U.S. Department of Health and Human Services. The notice of intent to disapprove was due to the following provisions of Maryland law that are not in compliance with federal requirements:

- State processing of earnings withholding orders authorizes direct payments to parents rather than requiring all payments to be made through the State Disbursement Unit;

- the State definition of "financial institution" does not include institution-affiliated parties, as required by the federal government; and

- the State does not require inclusion of Social Security numbers on driver's, recreational, and marriage licenses.

The U.S. Department of Health and Human Services has stated that disapproval of Maryland's IV-D plan could result in the withholding by the federal government of the State's entire block grant for TANF and all cooperative reimbursement payments for child support services. Conforming State law to federal requirements could help prevent loss of all or part of the $295 million the State receives annually for the TANF block grant and child support enforcement reimbursement.

Earnings Withholding Orders: Under Maryland law, when the payment of child support is enforced through earnings withholding, a court is authorized to order that payments be made directly to the child support obligee's bank account or directly to the obligee under certain circumstances. ***Senate Bill 408/House Bill 107 (both passed)*** are emergency bills that require a court to order child support payments through the State Disbursement Unit in all cases in which the court orders immediate service of an earnings withholding order, as required by federal law.

Definition of Financial Institution: ***House Bill 313*** ***(passed)*** is an emergency bill that expands the definition of "financial institution," which may be asked by the Child Support Enforcement Administration (CSEA) to provide information or assistance to enforce parental liability for child support, to include State credit unions and specified institution-affiliated parties. An "institution-affiliated party" includes any director, officer, employee, or controlling stockholder (excluding a bank holding company) of, or agent for, an insured depository institution. The bill also expands the definition of "financial institution" to include State credit unions for the purpose of a provision of the law that authorizes CSEA to seize and attach account assets from a child support obligor whose account is $500 or more in arrears and who has not paid child support for more than 60 days.

Social Security Numbers: Under federal law, for purposes of child support enforcement, disclosure of an individual's Social Security number is mandatory under specified circumstances. Revisions to the federal-state child support enforcement program enacted in 1975 established a Federal Parent Locator Service (FPLS) for collecting and making available information on "absent" parents to authorized persons. The Social Security number is one of the key pieces of information concerning these individuals and is collected from various sources, including State and federal agencies. The disclosure and use of the Social Security number for the FPLS is restricted to child support enforcement purposes, including establishing paternity, and establishing, modifying, and enforcing child support and medical support obligations. To broaden the state and federal databases for child support enforcement and to ensure accuracy, Congress required in 1996 that states have "statutorily prescribed procedures" for recording Social Security numbers. States are specifically required to record the Social Security numbers on applications for marriage licenses, recreational licenses, and driver's licenses. In 1999, the federal government issued a policy interpretation of the law informing states that a person does not have to have a Social Security number as a condition of having a license. Individuals without Social Security numbers, however, must submit a sworn affidavit, under penalty of perjury, that states that he or she does not have a Social Security number.

House Bill 115 ***(passed)*** requires each party to provide his or her Social Security number when applying for a marriage license or a recreational fishing license issued by the Department of Natural Resources. The Social Security numbers may not be disclosed except to a person in interest, or on request, to CSEA. The Motor Vehicle Administration proposed regulations relating to the disclosure of Social Security numbers on driver's licenses. However, the Office of the Attorney General advises that enactment of a statute, rather than adoption of a regulation, is required to comply with the requirements of the federal child support enforcement law.

House Bill 838 ***(passed)*** requires an application for a driver's license to include a Social Security number unless the applicant does not have one. If the applicant does not have a Social Security number, the applicant must certify that fact in the driver's license application. For a more detailed discussion of other provisions of this bill, see Part G – Transportation and Motor Vehicles of this *90 Day Report*.

Privatization and Competition in Child Support Enforcement

Since 1995, Maryland has reformed child support enforcement by experimenting with different approaches to increasing child support collections. Employing private vendors and comparing their results to traditional State-run and innovative State-run approaches has been part of the framework for deciding on the best approach to maximize child support collections. Chapter 491 and Chapter 486 of 1999 authorized DHR to hire a private contractor to improve child support collections in Baltimore City and Queen Anne's County. DHR was also authorized to establish State-run "demonstration sites" that would employ innovative practices such as streamlined hiring procedures and the payment of incentives to employees to increase collections. Demonstration sites were established in Calvert, Howard, Montgomery, and Washington counties to compete with the two privatized sites. The authority for these practices continued until October 31, 2002.

During the 2002 session, the General Assembly passed House Bill 495. The bill would have extended privatization and provided authority for the Secretary of Human Resources to continue demonstration sites and create additional sites on a phased-in basis. The Governor vetoed House Bill 495. In his veto message, the Governor stated that extending privatization and the demonstration sites for another three years was unnecessary based on a study commissioned by DHR that indicated that demonstration sites had improved at an overall faster rate, compared to privatized sites. However, the General Assembly adopted budget bill language to extend privatization in Baltimore City and Queen Anne's County through June 30, 2003. The authority for demonstration sites expired, however, on October 31, 2002.

Senate Bill 524/House Bill 564 ***(both passed)*** establish the Child Support Enforcement Privatization Pilot Program. The Secretary of Human Resources is authorized to enter into contracts with companies to privatize all aspects of child support enforcement, including absent parent location, paternity establishment, support order establishment, collection and disbursement of payments review, modification of child support orders, and child support order enforcement. The authority for privatization continues until September 30, 2009. The first privatization contract to be negotiated must be for a period of four years and three months, with an option for two one-year extensions.

The bills also require the Secretary of Human Resources to establish child support demonstration sites in the other 22 jurisdictions that are not privatized. A demonstration site is any jurisdiction that competes against a privatized jurisdiction in providing child support enforcement services. The Secretary is required to establish four sites by July 1, 2003, in Calvert, Howard, Montgomery, and Washington counties. Three new sites must be established by July 1, 2005. Four additional sites must be established by July 1, 2006, five additional sites must be established by July 1, 2007, and the remaining six sites must be established by July 1, 2008. When establishing demonstration sites, the Secretary must choose sites that are geographically diverse. Sites may be established at a rate faster than that set forth in these bills if sufficient budgetary resources are available. The Secretary has sole authority over child support enforcement functions at a demonstration site, and must establish pay incentives for

demonstration site employees. Powers of the Secretary to carry out demonstration site provisions are to be construed liberally.

Children in Need of Assistance

Voluntary Placement Agreements

A child in need of assistance (CINA) is a child who requires court intervention because the child was abused or neglected, has a developmental disability, or has a mental disorder, and the child's parents, guardian, or custodian are unable or unwilling to give the child proper care and attention.

A developmental disability is a severe, chronic disability of an individual that: (1) is attributable to a physical or mental impairment, other than the sole diagnosis of mental illness, or a combination of mental and physical impairments; (2) is likely to continue indefinitely; (3) results in an inability to live independently without outside support or continuing and regular assistance; and (4) reflects the need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services individually planned and coordinated for the individual.

A mental disorder is a behavioral or emotional illness resulting from a psychiatric or neurological disorder. It includes a mental illness that substantially impairs an individual's mental or emotional functioning as to make care or treatment necessary or advisable for the individual's welfare or for the safety of the person or property of another. Mental disorder does not include mental retardation.

The Social Services Administration of DHR must establish an out-of-home placement program for minor children: who are placed in the custody of a local department of social services by a parent or legal guardian for not more than six months under a voluntary written agreement; or who are abused, abandoned, neglected, or dependent if a juvenile court has determined that continued residence in the child's home is contrary to the child's welfare, and has committed the child to the custody or guardianship of a local department.

A child may be placed in the custody of a local department of social services, under a voluntary, written agreement, for a period of not more than six months. DHR regulations mandate that, except for children for whom a parent has signed a voluntary consent to adoption, a child may only remain in an out-of-home placement for more than six months if a juvenile court has committed the child to the local department's custody.

An adjudicatory hearing is held to determine whether a child is CINA, then a court must hold a separate CINA disposition hearing. At the disposition hearing, the court must either dismiss the case due to a finding that the child is not CINA, or the court must find that the child is CINA and commit the child to the custody of a parent, relative, or other individual or an individual who can give proper care, or to a local department of social services, the Department of Health and Mental Hygiene, or both departments.

Senate Bill 458 ***(passed)*** prohibits a local department of social services from seeking legal custody of a child with a developmental disability or mental illness who is under a voluntary placement agreement if the purpose of the placement is to obtain treatment or care related to the disability that the parent cannot provide. A voluntary placement agreement is defined as a binding, written agreement voluntarily entered into between a local department of social services and the parent or legal guardian of a minor child that specifies, at a minimum, the legal status of the child and the rights and obligations of the parent or guardian, the child, and the local department while the child is in placement. Such a child may remain in an out-of-home placement for more than 180 days if necessary, and if the juvenile court determines that continuation of the placement is in the child's best interests. The local department may not seek, and a court may not order, a child with a developmental disability or mental illness to be committed to the local department's custody solely because the child's parents are financially unable to provide treatment or care for the child.

Central Registry

DHR maintains a central registry, which is a computerized database that contains information regarding child abuse and neglect investigations. ***House Bill 532*** ***(passed)*** prohibits the central registry of child abuse and neglect investigations maintained by the Social Services Administration in DHR from including the identity of an individual related to an investigation of neglect or found responsible for neglect when: (1) a child is released from a hospital or other facility; (2) the child has been diagnosed with a mental disorder or developmental disability; and (3) the individual has failed to take the child home due to a reasonable fear for the safety of the child or the child's family.

In addition to the legislation passed by the General Assembly, Governor Ehrlich issued an executive order on January 17, 2003, that established a 17-member Council on Parental Relinquishment of Custody to Obtain Health Care Services. Among its duties, the council must analyze alternatives to forced child custody relinquishment. Findings and recommendations must be reported to the Governor on September 1, 2003.

Permanency Plan Review Hearings

Federal regulations issued under the federal Adoption and Safe Families Act (ASFA) require states to impose stricter requirements regarding judicial findings and documentation in court orders of reasonable efforts to finalize permanency plans in child in need of assistance cases. For a state to claim foster care matching funds for a child in an out-of-home placement, there must be a finding that there have been reasonable efforts to finalize the permanency plan. All findings must be explicit, specific and made on a case-by-case basis. The Administration of Children and Families (ACF) of the U.S. Department of Health and Human Services recently conducted an eligibility review for federal foster care funding. ACF found that, in Maryland, while reasonable efforts to finalize the permanency plan were made and presented in court, the court orders of the hearings did not stipulate the effort, as required by federal regulations. ***House Bill 799*** ***(Ch. 49)*** provides that at a hearing to review a child's permanency plan, the court must

determine and document in its order whether reasonable efforts have been made to finalize the permanency plan that is in effect.

Grounds for Divorce

A court may decree an absolute divorce on the grounds of cruelty of treatment toward the complaining party, if there is no reasonable expectation of reconciliation, and excessively vicious conduct toward the complaining party, if there is no reasonable expectation of reconciliation. A court may decree a limited divorce on the basis of cruelty of treatment of the complaining party or of a minor child of the complaining party, and excessively vicious conduct to the complaining party or to a minor child of the complaining party.

"Cruelty of treatment," within the meaning of the divorce statute, means any misconduct of a spouse that endangers, or creates a reasonable apprehension that it will endanger, the other spouse's safety or health to a degree rendering it physically or mentally impracticable to properly discharge the marital duties. *Das v. Das*, 133 Md. App. 1 (2000). Ordinarily, a single act of violence does not constitute cruelty of treatment. However, if the single act of violence indicates an intention to do serious bodily harm or is of such a character as to threaten serious danger in the future, it may be a sufficient basis for a divorce on the ground of cruelty. *Scheinin v. Scheinin,* 200 Md. 282, 89 A.2d 609 (1952). Psychological pain or injury may also constitute cruelty. Cruelty generally includes any conduct on the part of a spouse that is calculated to seriously impair the health or permanently destroy the happiness of the other spouse. *Id*., at 289.

There are few reported decisions discussing the ground of excessively vicious conduct. The courts seem to hold that there is little distinction between cruelty and excessively vicious conduct. Excessively vicious conduct usually involves a "vice" which is "indulged in to an excessive degree." *Shutt v. Shutt*, 71 Md. 193, 17A. 1024 (1889). Generally, "excessively vicious conduct" has been defined in terms of what it is not. For example, drunkenness is not *per se* a basis for a limited divorce on this ground. *Id.* Additionally, cursing and the use of vile epithets does not constitute excessively vicious conduct. *McKane v. McKane*, 152 Md. 515, 137A. 288 (1927).

Generally, behavior that would give rise to an action for cruelty will also constitute constructive desertion. However, the reverse is not necessarily true. Any conduct of a spouse that renders the marital relation intolerable and compels one party to leave may be justification for a divorce based on constructive desertion, even though the conduct may not justify a divorce on the ground of cruelty. *Scheinin v. Scheinin*, 200 Md. 282 (1952). "Constructive desertion" is defined as a conduct by one spouse that renders impossible a continuation of marital cohabitation with safety, health, and self-respect. See *Neff v. Neff*, 13 Md. App. 128, 281 A.2d 556 (1971).

Recrimination is not currently a bar to either party obtaining an absolute divorce on the grounds of: adultery, desertion, voluntary separation, conviction of a felony or misdemeanor, or two-year separation. However, recrimination is a factor to be considered in a case based on the ground of adultery. Recrimination is generally defined as a rule or doctrine that precludes one

spouse from obtaining a divorce from the other, where the spouse seeking a divorce has himself or herself been guilty of conduct which would entitle the other spouse to a divorce.

While a spouse may file for a limited divorce on the basis of cruelty of treatment or excessively vicious conduct toward a minor child of the parties, the effect of a limited divorce is only to give the injured spouse the right to live separate and apart from the spouse at fault. Additionally, only in cases of absolute divorce do the divorcing spouses have the benefit of property division under the Marital Property Act. Although a spouse may currently file for an absolute divorce on the basis of constructive desertion, the spouse must wait 12 months after the separation before filing the complaint.

***Senate Bill 249*/*House Bill 346* (both passed)** add to the grounds for absolute divorce cruelty of treatment toward a minor child of the complaining party, and excessively vicious conduct toward a minor child of the complaining party, if there is no reasonable expectation of reconciliation. The bills also provide that recrimination is not a bar to either party obtaining an absolute divorce on the grounds of: (1) insanity; (2) cruelty of treatment toward the complaining party or a minor child of the complaining party; or (3) excessively vicious conduct toward the complaining party or a minor child of the complaining party.

Child Abuse Reporting Requirements

According to the State Council on Child Abuse and Neglect, failure to report child abuse is a problem nationwide. The Congressionally mandated *Third National Incidence Study* found that only 28 percent of the children recognized by community professionals as having been harmed were reported to and investigated by child protective services agencies. The Maryland Office of the Maryland Attorney General has advised that Maryland law does not require the reporting of child abuse to authorities if the abuse occurred outside of Maryland, unless the child victim lives in Maryland.

Reporting of Out-of-state Abuse and Neglect

St. Luke Institute is a Silver Spring psychiatric hospital that treats Catholic priests who have sexually abused children. The institute has a policy of not reporting suspected child abuse to authorities if the abuse occurred outside of Maryland and there is no child victim in the State. ***House Bill 550* (passed)** addresses concerns with the reporting policies at institutions such as the St. Luke Institute. The bill requires reporting of child abuse or neglect that is alleged to have occurred outside of Maryland to a victim currently under age 18, who lives outside of Maryland. The bill establishes procedures for reporting of suspected abuse or neglect under these circumstances and extends provisions for immunity from criminal penalty or civil liability to persons who make or participate in these reports. The bill establishes procedures for local departments of social services that receive a report of suspected abuse or neglect alleged to have occurred outside of Maryland. The bill also clarifies that existing procedures for the reporting and formal investigation of allegations of child abuse and neglect apply only to suspected abuse or neglect that is alleged to have occurred in Maryland, and suspected abuse or neglect of a child living in Maryland, regardless where the suspected abuse or neglect is alleged to have occurred.

Reporting By Clergy

Senate Bill 412 ***(failed)*** would have limited a provision of law that exempts members of the clergy from the child abuse and neglect reporting requirements by specifying that a minister, clergyman, or priest is not required to report child abuse or neglect if such a report would disclose matter communicated by the perpetrator only in the course of a confession and the minister, priest, or clergyman is specifically bound to maintain the confidentiality of that communication by canon law or church doctrine.

Failure to Report

Senate Bill 195 ***(failed)*** would have criminalized the knowing and willful failure to report suspected child abuse or neglect. The misdemeanor, with a maximum fine of $1,000, would have applied to health care practitioners, police officers, educators, and human service workers who are acting in a professional capacity and who have reason to believe that a child has been subjected to abuse or neglect.

Other Child Abuse-related Legislation

Senate Bill 133/***House Bill 588*** ***(both passed)*** increase criminal penalties for child abuse and child sexual abuse. The bills establish the crimes of child abuse in the first and second degrees, establish terms of imprisonment for those crimes, and increase the maximum term of imprisonment for a person who causes sexual abuse to a minor. The bills also add a definition of severe physical injury for the purpose of the crime of child abuse in the first degree. For a more detailed discussion of these bills, see Part E – Crimes, Corrections and Public Safety of this *90 Day Report.*

Generally, a civil action must be filed within three years from the date the cause of action accrues. If a cause of action, such as child sexual abuse, accrues to a minor, this general three-year statute of limitations is tolled until the child reaches the age of majority. As a result, a victim of child sexual abuse would be required to file the suit before the victim reaches the age of 21 years. ***Senate Bill 68*** ***(passed)*** extends the statute of limitations for civil actions for child sexual abuse to within seven years of the date that the victim attains the age of majority. The bill does not apply retroactively to any action that was barred by the period of limitations applicable before the bill's October 1, 2003, effective date.

House Bill 876 ***(passed)*** alters from five years to two years, the period of time that an identification card, issued by the Motor Vehicle Administration remains effective for a child under age 16. Identification cards for children are particularly useful in locating missing children. For a more detailed discussion of this bill, see Part G – Transportation and Motor Vehicles of this *90 Day Report.*

Human Relations

Hate Crimes Based on Sexual Orientation

House Bill 322 ***(failed)*** would have expanded the scope of the prohibition against committing a hate crime to include hate crimes based on the sexual orientation of a person or group. ***House Bill 322*** would have prohibited a person from defacing, damaging, destroying, burning an object on, or attempting to commit such an act on real or personal property connected to a building that is publicly or privately owned, leased, or used (1) because a person or group of a particular sexual orientation has contacts or is associated with the building; or (2) if there is evidence that exhibits animosity against a person or group because of the sexual orientation of that person or group. The bill also would have prohibited a person from harassing or committing a crime against another person, defacing, damaging, or destroying, or attempting to deface, damage, or destroy the real or personal property of another person, or burning or attempting to burn an object on the real or personal property of another person, because of that person's sexual orientation. A person who violated the provisions of ***House Bill 322*** would have been guilty of a felony if the violation involved a separate crime that is a felony and would have been subject to maximum penalties of ten years' imprisonment and/or a $10,000 fine. In all other cases, the offense would have been a misdemeanor punishable by imprisonment not exceeding three years and/or a fine not exceeding $5,000.

Employment Discrimination

House Bill 470 ***(failed)*** would have added discrimination in employment against an individual with an arrest or conviction record that is not directly related to employment to the unlawful bases of employment discrimination under State law. ***House Bill 470*** would have amended the policy of the State to assure all persons equal opportunity in receiving employment and in all labor management-union relations regardless of an arrest record or conviction record that is not directly related to employment.

Housing Discrimination

Senate Bill 683/***House Bill 853*** ***(both failed)*** would have prohibited discrimination in the sale or rental of a dwelling because of a person's source of income.

Real Property

Ground Rents

Redemption of Ground Rents

Generally, "ground rent" is paid to the owner of land for the use of the property under a long-term lease (for example, 99 years) with the lessor retaining title to the land. The lease creates a leasehold estate in the lessee and is commonly renewable. Redemption is a statutorily

created right by which a tenant may obtain fee simple title to the property by paying a specified amount to the landowner.

A growing problem in Maryland is that homeowners are not able to find the current ground rent owner and therefore cannot redeem their ground rents. Many of these missing ground rent owners have died and the heirs either do not understand ground rents or do not want to be bothered with collecting a $90 per year ground rent.

***Senate Bill 655*/*House Bill 1030* (both passed)** authorize a tenant who has given notice by certified mail, return receipt requested, and by first-class mail to the last known address of the landlord to apply to the State Department of Assessments and Taxation (SDAT) to redeem a ground rent in cases where the ground rent owner cannot be found. The tenant must provide (1) satisfactory documentation of the lease and the notice given to the landlord; and (2) payment of a $20 fee, along with any fee for expedited processing. SDAT must post notice of the application on its web site for at least 90 days. No earlier than 90 days after notice of the application has been posted, the tenant must provide to SDAT (1) payment of the redemption amount and up to three years' back rent; and (2) an affidavit that the tenant has not received a bill for ground rent due or other communication from the landlord in the past three years or that the last payment was sent to the same address where the notice was sent. Upon receipt of the required documentation, fees, redemption amount, and up to three years' back rent, SDAT must issue a ground rent redemption certificate to the tenant. The redemption is effective to vest fee simple title in the tenant when the tenant records the certificate in the county land records.

The landlord, any creditor of the landlord, or any other person claiming through the landlord may collect the redemption amount, without interest, by providing SDAT with satisfactory documentation of the claimant's interest and payment of a $20 fee, along with any fee for expedited processing. Any funds not collected by a landlord within 20 years will escheat to the State.

Reimbursement for Costs and Expenses

Currently, for property subject to a ground rent, a landlord may bring an action for possession of the property 30 days after sending a bill for the ground rent to the tenant's last known address when (1) at least six months' ground rent is in arrears; and (2) the landlord has the right to reenter for nonpayment of the rent. In a suit for back rent, a landlord may demand or recover up to three years' back rent.

No provision (1) specifically authorizes a landlord to claim costs in addition to the past due ground rent; or (2) limits the amount a landlord may claim as costs, including attorney's fees, in addition to the past due rent.

***Senate Bill 321* (passed)** provides that a holder of a ground rent that is at least six months in arrears is entitled to reimbursement for actual expenses, up to $500, incurred in collecting the past due ground rent and in complying with the statutory notice requirements for ejectment actions, including: (1) title abstract and examination fees; (2) judgment report fees; (3) photocopying and postage fees; and (4) attorney's fees.

Upon filing an action for ejectment, the holder is entitled to reasonable expenses incurred in the preparation and filing of the action, including: (1) filing fees and court costs; (2) expenses incurred for service of process or otherwise providing notice; (3) additional fees for a title abstract and examination not exceeding $300; (4) reasonable attorney's fees not exceeding $700; and (5) taxes, including interest and penalties, paid by the plaintiff or holder.

The holder of a ground rent may not be reimbursed for expenses unless the holder gives notice to the tenant of the amount of the past due ground rent. The notice must be sent by first-class mail to the tenant's last known address as shown in the records of SDAT and must state that unless the past due ground rent is paid within 30 days, the holder will take action to repossess the property. The bill also increases, from 30 to 45 days, the period for giving notice to a tenant by certified mail before bringing an ejectment action and requires that notice also be given by first-class mail to the title agent or attorney listed on the deed to the property or the intake sheet recorded with the deed.

Abandoned Land – Certificate of Reservation for Public Use

Under current law, a governmental body may reserve vacant land by obtaining from the Commissioner of Land Patents a certificate of reservation for public use. "Vacant land" is defined as land for which a patent has never been issued or for which the applicant for a certificate of reservation believes that a patent has never been issued. In order to reserve vacant land for public use, a unit of State government must notify and obtain approval from the Board of Public Works. If the board approves the request, the unit must immediately apply for a certificate of reservation.

House Bill 887 ***(passed)*** authorizes a unit of State government to apply for a certificate of reservation for public use of abandoned land. "Abandoned land" is defined as vacant land that has boundaries that are located within or contiguous to Green Ridge State Forest (1) for which no property tax payment has been made within 20 years; and (2) which has not been actually possessed by a person for a continuous period of 20 years. The bill allows a person who claims legal title to abandoned land that was patented prior to the issue of a certificate of reservation for public use by a unit of State government to file a written claim for legal title to the land with the unit.

Because the definition of abandoned land is limited to land within or contiguous to Green Ridge State Forest, it is assumed that the only unit of State government that would apply for a certificate of reservation for public use of such land would be the Department of Natural Resources (DNR). Small, isolated tracts of land that are not owned by the State are located entirely within and adjacent to Green Ridge State Forest. The owners of the tracts are unknown. The presence of these tracts within the forest makes it difficult for DNR to manage the forest as a whole.

Mortgage or Deed of Trust – Enforcement of Release

The holder of a mortgage or deed of trust, within a reasonable time after the loan secured by the mortgage or deed of trust has been paid in full and there is no further obligation by the borrower or holder, must release any recorded mortgage or deed of trust and either (1) furnish the borrower with a written statement identifying the loan as having been paid in full; or (2) indelibly marking the word "paid" or "cancelled" on any evidence of the loan and return it to the borrower. The release must be in writing and prepared at the holder's expense. If the holder records the release, the holder may keep up to $15 of any fee collected from the borrower in excess of any recordation fee paid by the holder. If the holder does not record the release or provide it to a "responsible person" for recording, the holder must furnish the borrower with a notice disclosing the location where the release should be recorded and the estimated amount of any required fee. This provision applies only to a mortgage or deed of trust that secures (1) a loan for personal, family, or household purposes; or (2) a commercial loan to an individual if the loan (a) does not exceed $75,000; and (b) was secured by the borrower's principal dwelling.

Generally, a person who is responsible for disbursing funds in a real estate transaction in which title to the property passes must mail or deliver to the seller and the purchaser in the transaction a recorded release of any mortgage or deed of trust within 30 days of the delivery of the deed granting title to the property. If the person responsible for distributing funds does not comply, the seller, purchaser, or a bar association of the State may petition a court of equity to order an audit of the accounts maintained by the person for funds received in connection with closing real estate transactions. The court may order the audit and other relief it deems necessary.

After a lien is satisfied, the lienholder, upon written request, must furnish the person responsible for disbursement of funds in connection with the grant of title to the property the original copy of the release of the lien. If the holder fails to provide the release within 30 days, the person responsible for the disbursement of funds, after having demanded the release, may bring an action to force the granting of the release. The action must be brought in the circuit court for the county in which the property is located. In the action, the lienholder, the lienholder's agent, or both are liable for delivery of the release and for all costs and expenses in connection with bringing the action, including reasonable attorney's fees. In *Green v. Taylor*, 142 Md. App. 44 (2001), the Court of Special Appeals held that the provision authorizing this statutory cause of action and damages, including attorney's fees, is not available to a person who is merely the borrower in the transaction. The *Green* court stated that these provisions do not apply to a borrower who is not responsible for the disbursement of funds in connection with the grant of title to the property.

***Senate Bill 678*/*House Bill 1054* (both passed)** provide that within 45 days after a loan has been paid in full with no further commitment required by the borrower or holder of the mortgage or deed of trust (1) the required release of a mortgage or deed of trust on a borrower's principal residence must be executed and the required notices about the release must be sent; or (2) the release must be sent in a recordable form with a notice of where to record it and the recordation price.

A borrower who is the prevailing party in an action for the delivery of a release is entitled to costs and expenses in connection with bringing the action, including reasonable attorney's fees. The provisions relating to a borrower's costs and expenses do not apply to a licensee under the Maryland Mortgage Lender Law or to specified depository institutions and their affiliates.

Condominiums

Under current law, unless the bylaws provide otherwise, a quorum of a condominium's council of unit owners is deemed to be present throughout any meeting of the council if persons entitled to cast 25 percent of the total number of votes are present in person or by proxy.

***Senate Bill 258*/*House Bill 852* (both passed)** provide that if the number of persons present in person or by proxy at a properly called meeting of the council of unit owners is insufficient to constitute a quorum, another meeting may be called for the same purpose if (1) the original meeting's notice stated that an additional meeting might be called if no quorum is present; and (2) the unit owners present in person or by proxy call for an additional meeting by majority vote.

The bills require that 15 days' notice of the time, place, and purpose of the additional meeting be delivered or mailed to each unit owner at the address shown on the roster maintained by the condominium association. The notice must state the quorum and voting rules for the additional meeting. At the additional meeting, the unit owners present in person or by proxy constitute a quorum. Unless the bylaws provide otherwise, a majority of the owners present at the meeting in person or by proxy may approve or authorize the proposed action and take any other action that could have been taken at the original meeting if a sufficient number of unit owners had been present.

Baltimore City – Foreclosure Sales of Interests in Land – Recordation of Ratification

***House Bill 1049* (passed)** provides that, in Baltimore City, if a foreclosure sale of an interest in land under a mortgage or a deed of trust is ratified, the person making the sale must cause to be recorded in the land records a copy of the final order of ratification, within 90 days after the date of the final order, if the vendor and purchaser are the same and a deed is not recorded. The bill does not apply to a foreclosure that is subject to a court-issued stay in a bankruptcy proceeding.

Residential Leases – Interest on Security Deposits

Several bills would have altered the amount of interest that a landlord must pay a tenant upon return of the tenant's security deposit. Currently a landlord must pay a tenant 4 percent per annum.

***Senate Bill 57* (failed)** would have altered the amount of interest to the rate paid on the account by the financial institution where the deposit is being held, less 0.25 percent for administrative expenses.

***Senate Bill 74*/*House Bill 590* (both failed)** would have altered the amount of interest to the lesser of the current 4 percent per annum or the per annum rate paid on the account by the financial institution where the deposit is being held.

***Senate Bill 436*/*House Bill 217* (both failed)** would have altered the amount of interest to the prevailing passbook rate at the financial institution where the deposit is being held.

***House Bill 95* (failed)** would have altered the amount of interest to the lesser of (1) the current 4 percent per annum rate; or (2) the rate paid on the account by the financial institution where the deposit is being held. The bill would have authorized the landlord to retain 0.25 percent of the accrued interest for administrative expenses.

Estates and Trusts

Modified Administration of an Estate

In 1997 the General Assembly enacted legislation providing for the "modified administration" of certain estates. Modified administration is a simplified form of probate that allows estates to be closed more quickly and with less paperwork. Formal inventory and account provisions required under a normal administration are replaced by a less rigorous final report.

The personal representative of the estate must file an election for modified administration within three months of the date of appointment. The filing must indicate the approval of all takers of the estate. The personal representative must file a final report within ten months after appointment and make a distribution within 12 months.

In the 2003 session, changes were made in qualifying for modified administration of an estate and in certain procedural deadlines.

***Senate Bill 307*/*House Bill 284* (both passed)** expand the classes (types) of estates that qualify to elect a modified administration. Under current law, an estate may qualify for modified administration if the takers of the estate are limited to the decedent's personal representative, surviving spouse, and children. The bills expand the class to include the decedent's grandparents, parents, children's spouses, stepparents, stepchildren, and siblings, a corporation if all of its stockholders consist of family members, a charitable organization, and individuals receiving personal property from certain nonresident decedents. If all takers of the estate are in this expanded class, the estate qualifies for modified administration. The bills also provide that in order to elect modified administration, if a decedent's will establishes a trust, the trustees must be limited to the personal representative, surviving spouse, and children of the decedent.

***Senate Bill 310*/*House Bill 99* (both passed)** provide for a 90-day extension of the ten-month time period for filing a final report under modified administration of an estate with the consent of the personal representative and all interested persons.

An extension avoids a revocation of a modified administration for failure to file a final report with ten months after appointment and allows the final report by the personal representative to cover the cycle of an entire year, which would include the period for filing an income tax return and an estate tax return.

Elective Share

Current law allows a surviving spouse to elect to take a one-third share of a net estate, instead of property left to the spouse by a will, if there is also surviving issue (i.e., lineal descendants). If no issue survives the decedent, a surviving spouse is allowed to take a one-half share of a net estate. A "net estate" is the property remaining after the payment of family allowances, expenses, and enforceable claims.

***Senate Bill 312*/*House Bill 240* (both passed)** make several changes concerning a spouse's elective share. The bills: (1) modify the definition of "net estate" for the purpose of determining a spouse's elective share; (2) require that the net estate and the property allocable to a share of a surviving spouse be valued as of the date of distribution; (3) clarify that a surviving spouse's elective share includes any income earned on a net estate during a period of administration; (4) provide for an adjustment of an elective share based on any prior distribution to the surviving spouse; (5) alter the time period during which a surviving spouse may make an election to receive an elective share; and (6) specify who may make payment to a surviving spouse and the method of property valuation if an interest in a specific property is not contributed to the surviving spouse's elective share. The bills apply prospectively to an estate of a decedent who dies on or after October 1, 2003.

Successor Personal Representatives

Under current law an appeal from an orphans' court or circuit court stays any proceeding concerning the issue being appealed. This rule covers appeals from final orders by a court removing a personal representative. The grant of powers to a successor personal representative or special administrator is also stayed. Under ***Senate Bill 368*/*House Bill 239* (both passed)**, an appeal from a final order of an orphans' court or circuit court removing a personal representative of an estate does not stay an order appointing a successor personal representative or special administrator. The bills also grant the successor personal representative the powers of a special administrator during an appeal from a final order removing a personal representative.

Corporate Fiduciaries – Investments in Closed-end Funds

***Senate Bill 262*/*House Bill 207* (both passed)** expressly authorize a corporate fiduciary to invest in a no-load closed-end management type investment company or investment trust, commonly called closed-end funds.

Under current Maryland law, corporate fiduciaries are authorized to invest in no-load open-end investment companies. An open-end investment company, commonly called a mutual fund, owns the securities of several corporations and receives dividends on the shares that it holds. Investors may purchase mutual fund shares from the fund itself (or through a broker for the fund), but may not purchase the shares from other investors on a secondary market, such as the New York Stock Exchange or the NASDAQ Stock Market.

Like mutual funds, the investment portfolios of closed-end investment companies generally are managed by separate entities known as "investment advisers" that are registered with the federal Securities and Exchange Commission. However, by contrast, closed-end investment companies generally do not continuously offer their shares for sale. Rather, they sell a fixed number of shares at one time (in the initial public offering), after which the shares typically trade on a secondary market.

Recovery By Minor in Tort

It is the State's public policy that a substantial sum of money paid to a minor from a tort claim or judgment must be preserved for the benefit of the minor. To this end, current law requires that a net recovery of money of at least $2,000 be paid to a trustee or guardian on behalf of the minor.

***House Bill 1008* (Ch. 52)** increases the amount of a net tort recovery, to at least $5,000, for which the person responsible for the payment must issue a check made payable to the order of a trustee or guardian for the minor.