

Part I

Financial Institutions, Commercial Law, and Corporations

Financial Institutions

Savings Banks

Under current law, a savings bank may be acquired through a consolidation, merger, or transfer of assets, by a banking institution in the State, any other bank in the State, or any State or federal savings and loan association in the State, if the Commissioner of Financial Regulation gives written consent to the transaction after receiving the advice of the State Banking Board. *Senate Bill 408/House Bill 423 (both passed)* authorize a savings bank to acquire another financial institution if the commissioner gives written consent to the transaction after receiving the advice of the State Banking Board. The bills also reduce the proportion of stock of a subsidiary savings bank that a parent mutual holding company must hold from 100 percent to a majority. Both changes seek to make it more attractive for federal savings banks to convert to state-chartered banks and to bring Maryland law into conformance with federal law.

Mortgage Lenders

Generally, a person may not act as a mortgage lender unless the person is licensed. To qualify for a mortgage lender license, an applicant must satisfy the Commissioner of Financial Regulation that the applicant is of good moral character and has sufficient financial responsibility, business experience, and general fitness to (1) engage in business as a mortgage lender; (2) warrant the belief that the business will be conducted lawfully, honestly, fairly, and efficiently; and (3) command the public's confidence. An applicant who is a sole proprietor must have three years of experience in the mortgage lending business.

Senate Bill 643/House Bill 1096 (both passed) authorize the commissioner to issue a mortgage lender license to a sole proprietor who does not meet the three-year experience requirement, if (1) the applicant is a licensed insurance producer in good standing and holds an appointment as an insurance producer for an insurer that controls, is controlled by, or is under common control with a specified financial institution; (2) the applicant agrees to broker loans only to that financial institution; (3) the financial institution and the affiliated insurer are identified in the license application; (4) the commissioner approves the selection of the financial

institution based on specified criteria; (5) the applicant meets all other requirements for a mortgage lender license; (6) the applicant has successfully completed at least 20 hours of classroom instruction in residential mortgage lending and passed an exam; (7) a representative of the financial institution signs the license application; and (8) the financial institution agrees to supervise the applicant and be held jointly and severably liable for the applicant's mortgage brokering activities.

A sole proprietor issued a license under Senate Bill 643/House Bill 1096 may not (1) help a borrower obtain a loan from another financial institution; (2) be compensated based on the loan amount, interest rate, fees, or other terms of the brokered loan or receive a finder's fee; (3) handle borrower or other third party funds; (4) refer a borrower to another licensed mortgage lender; or (5) make mortgage loans. A sole proprietor may forward a check to a financial institution under specified circumstances. It is anticipated that approximately 300 sole proprietors could become licensed under these bills.

Commercial Law

Consumer Protection

Privacy of Social Security Numbers

Senate Bill 117 (passed) prohibits specified disclosures of an individual's Social Security number (SSN). Violation of the bill is an unfair or deceptive trade practice under the Maryland Consumer Protection Act.

Senate Bill 117 prohibits a person, excluding a unit of State or local government, from (1) publicly posting or displaying an individual's SSN; (2) printing an individual's SSN on a card required to access products or services provided by the person providing the card; (3) requiring an individual to transmit the individual's SSN over the Internet without a secure connection or encryption protection; (4) requiring an individual to use the individual's SSN to access an Internet web site unless a password, unique personal identification, or other authentication device is also required; or (5) printing an individual's SSN on any material that is physically or electronically mailed or is transmitted by facsimile to the individual, unless required by State or federal law.

The bill does not apply to (1) the collection, release, or use of a SSN as required by State or federal law; (2) the inclusion of a SSN in an application form or document sent by mail under specified circumstances; or (3) the use of a SSN for internal verification or administrative purposes.

A person who uses an individual's SSN prior to January 1, 2005, in a prohibited manner may continue to do so until December 31, 1997, if (1) the use is continuous; and (2) the person provides an annual disclosure form stating an individual's right to stop the use of the individual's SSN. An individual's request to stop using the individual's SSN in a prohibited manner must be

honored within 30 days after receiving the request. A person may not deny products or services to an individual because of a request to stop using the individual's SSN.

Senate Bill 117 applies to all health insurance policies and contracts issued, delivered, or renewed on or after January 1, 2005. Issuers of health insurance policies or contracts in effect before January 1, 2005, must comply by January 1, 2006.

Telemarketing Enforcement – National Do Not Call Registry

Senate Bill 88 (passed) prohibits violations of the National Do Not Call Registry and related telemarketing laws and rules under the jurisdiction of the Federal Communications Commission and the Federal Trade Commission. Violation of the bill is an unfair or deceptive trade practice under the Maryland Consumer Protection Act. For a more detailed discussion of Senate Bill 88, see the subpart "Business Regulation" within this Part H.

Late Fees in Consumer Contracts

The parties to a consumer contract may agree to the payment of a late fee when a party fails to make a payment by the due date. A late fee is any charge or fee imposed because a payment is not made when due under the terms of the contract. The permissible amount for a late fee is determined by one of two alternative methods. Under the first method, the late fee may be the greater of up to either \$5 per month or 10 percent per month of the past due amount; however, no more than three monthly late fees may be imposed for any single payment amount that is past due. Under the second method, the amount of the late fee may be up to 1.5 percent per month of the past due payment amount. *Senate Bill 172/House Bill 455 (both passed)* repeal the October 1, 2005, termination provision for the authorization of a late fee in a consumer contract.

Household Goods Movers

House Bill 810 (passed) requires a household goods mover, under the Maryland Household Goods Movers Act, to provide a consumer with a written receipt that states (1) the household goods mover's legal name and (2) the address and telephone number of either the household goods mover's resident agent in the State or, if there is no resident agent, the principal place of business. Under the Maryland Household Goods Movers Act, a household goods mover may not enforce or threaten to enforce a carrier's lien against, or refuse to deliver, a consumer's household goods when providing household goods moving services for a move within the State. Violation of the Act is an unfair or deceptive trade practice subject to enforcement under the Maryland Consumer Protection Act and other applicable civil or criminal actions.

Credit Regulation

Mortgage or Deed of Trust – Required Insurance

Typically, a mortgage lender requires homeowner's insurance on secured property and if the property is in a flood plain separate flood insurance under the National Flood Insurance

Program. Under current law, a mortgage lender may not require a borrower, as a condition of receiving or maintaining a loan secured by a first mortgage or first deed of trust, to provide or purchase standard property insurance coverage against risks to any improvements on real property exceeding the replacement value of the improvements. *House Bill 1447 (passed)* prohibits a lender from requiring a borrower, as a condition to receiving or maintaining a loan secured by a first mortgage or first deed of trust, to provide or purchase flood insurance coverage under the National Flood Insurance Program exceeding the replacement value of the improvements on the real property.

Commercial Law – Generally

Revision of Title 7 of the Uniform Commercial Code

Generally, Title 7 of Maryland’s Uniform Commercial Code (UCC) governs obligations and rules of construction governing negotiation and transfer of warehouse receipts, bills of lading, and other documents of title for transactions in which personal property is transferred.

The National Conference of Commissioners of Uniform State Laws (NCCUSL), along with the American Law Institute, completed work on a revised Article 7 to the UCC during 2003. The 2003 revision updates the original to provide a framework for the further development of electronic documents of title. This modernization of Article 7 addresses state, federal, and international developments, including the Uniform Electronic Transactions Act and the federal Electronic Signatures in Global and National Commerce Act (E-SIGN).

Senate Bill 136/House Bill 140 (both passed) repeal the current Title 7 to the Maryland UCC and adopt the revised Article 7 to the UCC, as recommended by NCCUSL. The bills also make various conforming changes in other titles of the UCC. Revised UCC Article 7 provides for control of electronic documents of title and the transfer of interests when electronic documents of title are used. The bills also provide for the application of Title 7 to E-SIGN. The bills make various changes to the rules of construction governing negotiation and transfer of warehouse receipts, bills of lading, and other documents of title for transactions in which personal property is transferred. The bills distinguish between electronic and tangible documents of title and provide for conversion between the two types of title documents.

Abandoned Property

Within one year after taking custody of unclaimed abandoned personal property, the Comptroller must sell the property at auction, acting as the administrator of abandoned property. A person who claims a legal interest in such property must file a claim to the property or to the proceeds from its sale. Under current law, for a claim to property sold at auction, the Comptroller must pay the claimant an amount equal to the sales price plus interest at the rate earned on invested State funds. For interest-bearing property, the Comptroller must pay interest at the lesser of 5 percent or the interest rate earned on the property while in the former holder’s possession. If the Comptroller allows a claim, the Comptroller must pay the claimant interest for the period that the Comptroller held the property, up to five years. *Senate Bill 276/House Bill 687 (both passed)* repeal the requirement for the Comptroller to pay interest to claimants of

(1) interest-bearing abandoned property and (2) the proceeds from the sale of other abandoned property.

Hotel and Retirement Community Operating Agreements

Senate Bill 603/House Bill 703 (both passed) provide rules of interpretation for operating agreements relating to the management, operation, or franchise of a hotel or a retirement community. If a conflict exists between the express terms and conditions of an operating agreement relating to the management, operation, or franchise of a hotel or retirement community and the terms and conditions implied by law governing the relationship between a principal and agent, the bills provide that the express terms and conditions govern. A court may order specific performance for anticipatory or actual breach, or attempted or actual termination of the operating agreement, notwithstanding an agency relationship between the parties to the agreement. The covenant of good faith and fair dealing is implied in an operating agreement unless the agreement states that a party may perform a duty or obligation at its sole discretion. Unless an operating agreement contains a covenant or other provision that specifically incorporates a duty into the agreement, no duties are implied under the agreement.

Corporations and Associations

Corporations – Miscellaneous Changes

House Bill 737 (passed) makes various changes to the laws governing corporate actions, including provisions governing a reverse stock split under a corporate charter, signatures on corporate securities, stockholder consent, and corporate dissolution.

The bill authorizes, unless a corporation's charter provides otherwise, the board of directors of a corporation to amend its corporate charter to effect a reverse stock split resulting in a ratio of no more than 10 to 1 in any 12-month period (1) upon approval of a majority of the entire board; and (2) without stockholder approval. Within 20 days after the effective time of the reverse stock split, the corporation must give written notice of the reverse split to each holder of record of the combined shares of stock as of the effective date. This only applies to a corporation with a class of equity securities registered under the Securities and Exchange Act of 1934 or registered as an open-ended investment company under the Investment Company Act of 1940.

The bill includes the chief executive officer, chief operating officer, chief financial officer, and vice chairman of the board of directors on the list of persons authorized to sign a stock certificate.

The bill also authorizes the holders of corporate common stock entitled to vote generally in the election of directors, if authorized by the corporate charter, to take, or consent to, any action (by delivering consent in writing or by electronic transmission) of the stockholders entitled to cast at least the minimum number of votes that would be necessary to authorize or

take the action at a stockholders meeting, if the corporation gives notice of the action to each holder of the class of common stock no later than 10 days after the action's effective date.

Finally, the bill allows a corporation's board of directors, as the board of directors rather than as director-trustees, to continue to handle corporate affairs when a corporation is voluntarily dissolved. Specifically, until a court appoints a receiver, the board of directors must manage the corporation solely for the purpose of winding up the corporation. Dissolution does not subject the corporation's directors to a different standard of conduct.

Budget Reconciliation and Financing Act

Senate Bill 508 (passed), the Budget Reconciliation and Financing Act, repeals the exemption for foreign insurance companies from the requirement of foreign corporations to pay a \$300 filing fee with an annual report submitted to the State Department of Assessments and Taxation. The bill also requires business trusts to pay a \$300 filing fee with an annual report submitted to the department. Lastly, Senate Bill 508 raises the filing fee for certain exempt securities from \$100 to \$400. For a more detailed discussion of Senate Bill 508, see the subpart "Operating Budget" under Part A – Budget and State Aid of this *90 Day Report*.