# Part F
# Courts and Civil Proceedings

## Judges and Court Administration

This was a good year for the Maryland Judiciary. Not only did judges receive the full salary increases recommended by the Judicial Compensation Commission, but the General Assembly also added all of the 13 new judgeships requested by the Chief Judge of the Court of Appeals. In addition, the maximum salaries for circuit court clerks and registers of wills were increased, and the Office of the Public Defender received additional funding to continue its caseload initiative.

### Compensation of Judges

The Judicial Compensation Commission is charged under § 1-708 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland with studying and making recommendations regarding judicial compensation. The salary recommendations made by the commission are introduced as joint resolutions. The General Assembly may amend a joint resolution to decrease, but not to increase, any of the commission's salary recommendations. If the General Assembly does not adopt or amend the joint resolution within 50 days after its introduction (March 9, 2005), the salaries recommended by the commission apply.

In January 2005, the commission recommended that judges' salaries for fiscal 2006 through 2009 be increased by (1) $30,000 for judges on the Court of Appeals; (2) $25,000 for judges on the Court of Special Appeals and the Chief Judge of the District Court; (3) $20,000 for circuit court judges; and (4) $15,000 for District Court judges. The increases were proposed to be phased in as follows: 15 percent in fiscal 2006; 25 percent in fiscal 2007; 30 percent in fiscal 2008; and 30 percent in fiscal 2009.

Because the General Assembly did not pass an amended version of either of the judicial compensation joint resolutions (***Senate Joint Resolution 3***/***House Joint Resolution 1*** ***(both failed)***) by the March 9, 2005 deadline, the full salary increases as recommended by the commission will be implemented by operation of law.

The commission also recommended that judges not receive a cost-of-living adjustment in any year in which they receive salary increases recommended by the commission. Judges currently receive the same percentage increase in salary as the lowest step of the highest salary grade for employees in the Standard Pay Plan. ***Senate Joint Resolution 3***/***House Joint Resolution 1***, while they did not pass, by operation of law, will prohibit judges from receiving a cost-of-living adjustment for fiscal 2006.

A provision prohibiting judicial cost-of-living adjustments in any year in which judges' salaries are increased in accordance with a resolution from the commission was included in ***House Bill 147*** ***(passed)***, the Budget Reconciliation and Financing Act of 2005. The other provisions of this bill are discussed in further detail in other parts of this *90 Day Report.*

## New Judgeships

The Chief Judge of the Court of Appeals is responsible for the annual certification of judgeship needs and for making requests for additional judgeships. In November 2004, the Chief Judge requested 13 new judgeships for fiscal 2006.

***Senate Bill 204***/***House Bill 236*** ***(both passed)*** create seven new circuit court judgeships – two in Baltimore City, and one each in Anne Arundel, Baltimore, Montgomery, Washington, and Worcester counties. The bills also create six new District Court judgeships – two in District 5 (Prince George's County), and one each in District 1 (Baltimore City), District 2 (Dorchester, Wicomico, Somerset, and Worcester counties), District 4 (Charles, St. Mary's, and Calvert counties), and District 7 (Anne Arundel County). The new judges in District 2 and District 4 are to be appointed from Worcester County and Calvert County, respectively.

## Compensation of Court Personnel

Circuit court clerks and registers of wills are elected officials whose salaries are set by the Board of Public Works. The board determines the annual salary of each clerk based on the relative volume of business and receipts in that clerk's office. ***Senate Bill 598***/***House Bill 334*** ***(both passed)*** increase the maximum salary that the Board of Public Works may set for a circuit court clerk from $85,000 to $98,500. Similarly, the board determines the annual salary of each register of wills based on the population of the county and the dollar volume of total fees and taxes collected and excess fees turned over to the State by that register of wills. ***Senate Bill 284***/***House Bill 333*** ***(both passed)*** increase the maximum salary for a register of wills from $85,000 to $98,500. These increases will take effect at the beginning of the next term of office.

## Circuit Court Real Property Records Improvement Fund

The Circuit Court Real Property Records Improvement Fund is a nonlapsing revolving fund, managed and supervised by the State Court Administrator, with advice from a five-member oversight committee. The fund consists of surcharges assessed on instruments recorded in the land and financing statement records, and revenues from copies made on equipment bought through the fund. The fund is used to repair, replace, improve, modernize, and update office

equipment and equipment-related services in the land records office of the clerk of the circuit court for each county. ***House Bill 147***, the Budget Reconciliation and Financing Act of 2005, expands the required uses of the fund to include paying the operating expenses of the land records offices. The fund is to terminate on June 30, 2006.

***Senate Bill 348*/*House Bill 640*** ***(both passed)*** extend the termination date of the fund from June 30, 2006 to June 30, 2009.

### Public Defender Caseload Initiative

The fiscal 2006 budget includes enhanced funding for the Office of the Public Defender. There is $2.5 million for the third year of the caseload initiative, which includes 63 new positions comprised of both attorneys and support staff. Including the fiscal 2004 and 2005 budgets, the office has added a total 190 positions for this purpose. Additionally, $989,000 was appropriated in fiscal 2006 to increase the hourly rate for panel attorneys from the current $35 per hour in court and $30 per hour out of court to $50 per hour for both.

The caseload initiative of the Office of the Public Defender has three goals: (1) reduction of excessive public defender caseloads to comply with American Bar Association (ABA) standards; (2) establishment of a funding/staffing formula linked to Maryland specific caseload standards; and (3) installation of a case management system to improve case management and provide accurate caseload/workload data to increase accountability and streamline the budget process. In January 2005 the office received the first draft of a Maryland specific case-weighting study. Although the office is currently using ABA standards, the results of this study, when made final, will be the basis for future budgetary requests by the office. The study is to be completed and submitted to the budget committees of the General Assembly by August 1, 2005.

## Civil Actions and Procedures

### Medical Malpractice

Increases in medical professional liability insurance premiums and awards have drawn national attention and, according to the American Medical Association, have contributed to a "crisis" in several states. The current crisis is the third in the last 30 years. The first was spurred by massive losses in the medical professional liability insurance market in the 1970s that forced many insurers to leave the market. The second occurred in the 1980s and was driven by increases in the frequency and severity of paid claims. The current crisis appears to be the result of a combination of many factors, including the rise in claim severity nationwide, the exodus from the market of several insurers, declining investment yields, and prior premium rates set low to garner market share.

In 2003, the federal Government Accountability Office (GAO) published a report that studied the extent of increases in medical malpractice insurance rates, analyzed the factors contributing to these increases, and identified market changes that might make this period of rising insurance premiums different from previous such periods. GAO found that the largest

contributor to increased premium rates was insurer losses on medical malpractice claims. This finding is tempered by a lack of comprehensive data available at either the federal or state level. Other factors contributing to the premium rate increases include decreased investment income, artificially low premium rates adopted while insurers competed for market share during boom years, and higher overall costs due largely to increased reinsurance rates for medical malpractice insurers.

The burden of the higher cost of medical professional liability insurance falls primarily on health care professionals and facilities. During the second medical malpractice crisis, in the 1980s, health care providers responded to sharply rising liability premiums by passing the cost on to public and private payers. Since then, the advent of managed care in commercial markets has limited a provider's ability to pass on increased rates as a cost of business. In response to lower reimbursement rates and higher medical professional liability insurance premiums, many health care providers have threatened to quit or limit their practices, reduce hours, move from the State, or retire.

Nationally, signs of a third crisis emerged in 2001 when the St. Paul Companies, the nation's largest medical professional liability carrier, ceased offering coverage to physicians both in Maryland and nationally. Maryland appeared unaffected until June 2003, when the State's largest medical professional liability insurer, the Medical Mutual Liability Insurance Society of Maryland (Medical Mutual), received approval from the Maryland Insurance Commissioner for a 28 percent rate increase in insurance premiums, effective January 1, 2004.

In June 2004, Medical Mutual requested a rate increase of 41 percent. Among other factors, Medical Mutual pointed to an increase in claim severity as prompting the need for increased rates. In calendar 2002, Medical Mutual paid claims, including defense costs, totaling $56.0 million as compared to $93.2 million in 2003. A 33 percent rate increase, effective January 1, 2005, was approved and will increase the cost of medical professional liability insurance to approximately $150,000 for obstetricians, the highest risk specialty.

Medical Mutual's 2004 rate increase prompted several unsuccessful proposals during the 2004 session, including a proposal drafted by a House workgroup comprised of members of the Economic Matters Committee, the Health and Government Matters Committee, and the Judiciary Committee. Following the failure of the 2004 legislation, a Senate Special Commission on Medical Malpractice Liability Insurance was formed in the 2005 interim to consider all aspects of the medical malpractice issue, including patient safety, comprehensive insurance reform, physicians' reimbursements, and the tort system for medical malpractice claims. The Governor also organized a task force during the interim that met to study the issue.

**Maryland Patients' Access to Quality Health Care Act of 2004**

The Governor issued an Executive Order calling the General Assembly into a special session on December 28, 2004, to take immediate action to address the costs of medical malpractice insurance. Bills crafted by the Administration, the Speaker, and the Senate Special Commission were introduced. Drawing from the three bills, the General Assembly amended ***House Bill 2*** ***(Ch. 5)*** of the 2004 Special Session to offer a comprehensive package to address

the malpractice crisis. Although ***House Bill 2*** was vetoed by the Governor, the veto was overridden by the General Assembly before the start of the 2005 session. ***House Bill 2*** became ***Chapter 5*** of the 2004 Special Session. Included in the reforms of ***Chapter 5*** are several changes affecting medical malpractice claims.

***Noneconomic Damages:*** For a cause of action for a medical injury arising on or after January 1, 2005, noneconomic damages are limited to $650,000. ***Chapter 5*** freezes that limit for four years, through calendar 2008, and then resumes the $15,000 annual increase. Generally, this aggregate amount applies to all claims for personal injury and wrongful death arising from the same medical injury, regardless of the number of claims, claimants, plaintiffs, beneficiaries, or defendants. However, in a wrongful death action in which there is more than one claimant or beneficiary, whether or not there is a personal injury action arising from the same injury, the total amount of noneconomic damages that may be awarded is 125 percent of the established limit, regardless of the number of claims, claimants, plaintiffs, beneficiaries, or defendants ($812,500 for four years under ***Chapter 5***.

***Economic Damages:*** ***Chapter 5*** also changes the manner in which economic damages are calculated. The Act limits past medical expenses to the total amount paid plus the total amount incurred but not paid, if the plaintiff or another person on the plaintiff's behalf is obligated to pay. A court may, on its own motion or the motion of a party, employ a neutral expert witness to testify on the issue of a plaintiff's future medical expenses and future loss of earnings. Unless otherwise agreed by the parties, the costs to employ a neutral expert are required to be divided by the parties.

***Mandatory Alternative Dispute Resolution:*** Within 30 days after the later of the filing of the defendant's answer to the complaint or the defendant's certificate of a qualified expert, ***Chapter 5*** requires a court to order the parties to engage in "alternative dispute resolution" (mediation, neutral case evaluation, neutral fact finding, or a settlement conference) at the earliest possible date. Alternative dispute resolution is not required if all parties file an agreement not to engage in it and the court finds that it would not be productive. The Act specifies mediation procedures and establishes requirements for individuals who serve as mediators.

***Apologies and Expressions of Sympathy:*** An apology or an expression of regret made by or on behalf of a health care provider is inadmissible as evidence of an admission of liability or as evidence of an admission against interest. Admissions of liability or fault that are part of or in addition to an apology or expression of regret are admissible.

***Qualifications of Experts:*** ***Chapter 5*** requires a health care provider who attests in a certificate of a qualified expert or testifies concerning a defendant's compliance with or departure from standards of care to (1) have clinical experience, provided consultation relating to clinical practice, or taught medicine in the defendant's specialty or a related field or in the field of health care in which the defendant provided care or treatment within five years of the incident and (2) be board certified in the same or a related specialty if the defendant is board certified in a specialty, unless the defendant was providing care or treatment to the plaintiff unrelated to the

area in which the defendant is board certified or the health care provider taught medicine in the same or a related field.

A health care provider who attests to or testifies as a qualified expert concerning compliance with or departure from standards of care may not devote more than 20 percent of the expert's professional activities to activities that directly involve testimony in personal injury claims.

***Supplemental Certificate of Qualified Expert:*** Within 15 days after the date that discovery is to be completed, ***Chapter 5*** requires a party to file a supplemental certificate of a qualified expert for each defendant that attests to (1) the basis for alleging the specific standard of care; (2) the expert's qualifications; and (3) the standard of care.

For the plaintiff, the supplemental certificate must also attest to (1) the specific injury; (2) how the standard of care was breached; (3) what the defendant should have done to meet the standard of care; and (4) the inference that the breach proximately caused the plaintiff's injury.

For the defendant, the supplemental certificate must also attest to (1) how the defendant complied with the standard of care; (2) what the defendant did to meet that standard; and (3) if applicable, that the breach did not proximately cause the plaintiff's injury.

Failure to file by the plaintiff may result in dismissal without prejudice. Failure to file by the defendant may result in a ruling by the court for the plaintiff on the issue of liability.

***Offer of Judgment:*** Not less than 45 days before the trial begins, ***Chapter 5*** authorizes a party to an action for a medical injury to serve on the adverse party an offer of judgment for a specific amount, with costs then accrued. A party may also make an offer of judgment not less than 45 days before a hearing on the amount or extent of liability after liability has already been determined. The court must enter judgment after the filing of specified information on the offer and acceptance. If an offer is not accepted, evidence of the offer is not admissible except to determine costs. If the offer is not accepted and at trial the verdict is not more favorable to the adverse party than the offer, the party receiving the offer must pay the offeror's costs incurred after making the offer.

A discussion of insurance reforms related to medical malpractice can be found under Part H – Business and Economic Issues of this *90 Day Report*. A discussion of patient safety reforms related to medical malpractice can be found under Part J – Health of this *90 Day Report*.

**Tort Measures Introduced During the 2005 Session**

Some believed that further reforms were needed beyond those enacted by ***Chapter 5*** of the 2004 Special Session. ***House Bill 114 (failed)*** would have made several changes to the provisions governing medical malpractice claims, including:

- adding physician assistants to the definition of "health care provider" (for the purpose of various provisions concerning health care malpractice claims);

- limiting the "collateral source" rule by requiring that damages for past medical expenses be reduced to the extent that they have been or will be paid, reimbursed, or indemnified;

- requiring, on a motion by a party, a court to employ a neutral expert witness, at the expense of that party, on the issue of future medical expenses or future loss of earnings;

- limiting venue for an excess judgment action against a health care malpractice insurer to the county in which the health care provider was sued;

- prohibiting an admission of liability or fault that is part of an apology or expression of regret from being admitted as evidence; and

- limiting the "apology" rule to an expression of regret or apology made to the victim, any member of the victim's family, or an individual who claims damages by or through that victim, outside the presence of any other individual.

***House Bill 114*** also would have established a nine-member Joint Executive-Legislative Task Force on Health Care Malpractice to study any aspect of the health care, insurance, or civil justice systems related to health care malpractice liability. The task force would have been required to report its findings and recommendations to the Governor and the General Assembly by December 15, 2005.

***Senate Bill 221*/*House Bill 301* *(both failed)***, which were proposed by the Governor, would have reduced the limit on noneconomic damages to $500,000 for medical injuries, required expert testimony on damages, required damage awards to be itemized, altered the collateral source rule, altered standards for expert testimony, revised procedures for determining medical expenses and lost earnings, required periodic payments of awards and judgments, provided for an increased jury size, and altered the definition of the practice of medicine so that doctors who falsely testify or falsely attest to a certificate of a qualified expert in a medical professional liability case could be disciplined.

## Sales of Food, Drugs, Cosmetics, and Related Products – Antitrust Suits

A person whose business or property has been injured or threatened with injury by a violation of the State's antitrust law may bring an action for damages, an injunction, or both against any person who committed the violation. The United States, the State, or any of the State's political subdivisions may bring such an action, regardless of whether it dealt directly or indirectly with the person who violated law. However, other indirect purchasers do not have standing to sue.

***Senate Bill 413*/*House Bill 829* *(both passed)*** prohibit a person that sells, distributes, or otherwise disposes of any drug, medicine, cosmetic, food, food additive, commercial feed, or medical device from asserting as a defense, in an action brought by the Attorney General under the State's antitrust laws, that the person did not deal directly with the person on whose behalf the action is brought. To avoid duplicative damages, the bill allows a seller or distributor to

prove, as a complete or partial defense, that all or part of an alleged overcharge was passed on to another person who paid that overcharge. The bills also allow the Attorney General to bring any antitrust suit to recover damages on behalf of persons residing in the State. An action brought by the Attorney General is presumed superior to any class action brought on behalf of the same person.

## Maryland Tort Claims Act

Under the Maryland Tort Claims Act (MTCA), State personnel are immune from liability for acts or omissions performed in the course of their official duties, so long as the acts or omissions are made without malice or gross negligence. The MTCA limits the liability of the State to $200,000 to a single claimant for injuries arising from a single incident. Claims covered by MTCA are paid by the State Insurance Trust Fund (SITF), a nonbudgeted fund within the State Treasurer's Office. SITF receives its funding from annual insurance premiums paid by the individual State agencies and other entities. Currently, only judgments entered by a court against the State under MTCA may be paid to claimants via periodic installments ("structured settlements").

***Senate Bill 781***/***House Bill 836*** ***(both passed)*** allow the State to enter into agreements to pay damages in periodic payments when a case is settled before a judgment being entered.

## Civil Actions, Immunity, and Liability

### Civil Actions – Generally

***Senate Bill 14***/***House Bill 110*** ***(both passed)*** reduce the time in which a person may file suit against a land surveyor for an error in a survey from 20 to 15 years after the survey, or within 3 years after the discovery of the error, whichever occurs first.

***Senate Bill 86***/***House Bill 897*** ***(both passed)*** provide that an individual attains a specified age on the day of the anniversary of the individual's birth, changing the common law rule that an individual attains a given age on the day *before* the individual's birthday.

***Senate Bill 143***/***House Bill 404*** ***(both passed)*** apply the requirement of filing a certificate of a qualified expert ("certificate of merit") in claims against licensed professionals to claims against the employer, partnership, or other entity through which the licensed professional performed professional services.

***House Bill 1162*** ***(passed)*** establishes that, in an action against an insurer or the Maryland Automobile Insurance Fund under a policy providing uninsured motor vehicle liability coverage, the person asserting the uninsured status of a motor vehicle has the burden of proving the uninsured status. The bill sets forth the evidence necessary to satisfy that burden of proof.

### Immunity and Limitations on Liability

***Senate Bill 430*** ***(passed)*** alters the membership requirements for a nonprofit association, corporation, or other organization in order to qualify as a "community association" for purposes of the existing law limiting the liability of specified associations and organizations and their agents in civil actions. The bill will allow smaller associations to qualify as long as they meet specified criteria, including having been in existence since January 1, 2000.

***Senate Bill 683***/***House Bill 1081*** ***(both passed)*** expand the abrogation of the doctrine of parent-child immunity as it applies to actions for wrongful death, personal injury, or property damage arising from the operation of a motor vehicle, up to the limits of motor vehicle liability coverage or uninsured motor vehicle coverage. Legislation enacted in 2001 partially abrogated the doctrine of parent-child immunity in these actions up to the State's mandatory minimum coverage limits.

## Jurors and Witnesses

***House Bill 1185*** ***(passed)*** increases the State juror per diem from $15 per day to $50 per day for each day after the fifth day of jury service. The bill also prohibits an employer from requiring that an employee use annual, vacation, or sick leave to respond to a jury summons.

***House Bill 49*** ***(passed)*** repeals obsolete provisions providing for the payment of witness fees and mileage costs in State civil and criminal cases and for witnesses summoned before or being deposed by the Secretary of Agriculture, the Commission of Real Estate Appraisers and Home Inspectors, the Real Estate Commission, an arbitrator during an arbitration hearing, an orphans' court, the State Workers' Compensation Commission, or the Public Service Commission.

## Legislative Continuances

Several members of the General Assembly are also practicing attorneys who are officers of the courts and must take time away from their practices during the legislative session. Legislative continuances and time extensions for the filing of documents are statutorily allowed. ***House Bill 1476*** ***(passed)*** clarifies that legislative continuances and time extensions apply to appellate proceedings and all documents required in any case.

# Family Law

## Termination of Parental Rights and Adoption

### Permanency for Families and Children Act of 2005

Maryland's Foster Care Court Improvement Project (FCCIP) is a federal grant-based program that addresses improving the processing of Child in Need of Assistance (CINA), related termination of parental rights (TPR), and adoption cases. In 1997, an assessment of the juvenile courts' processing of CINA and related cases was the impetus for a report, *Improving Court*

*Performance for Abused and Neglected Children.* As a result of this report, FCCIP recommended a substantive revision of the CINA statutes, which was enacted as Chapter 415 of 2001.

During the revision of the CINA statute, FCCIP determined that the TPR and adoption statutes also warranted revision. ***Senate Bill 710 (passed)***, the Permanency for Families and Children Act of 2005, substantively revises and reorganizes the laws governing TPR and adoption. The legislation separates the statutes regarding TPR and adoption into three discrete areas:

- guardianship to and adoption through local departments of social services;
- private agency guardianship and adoption; and
- independent adoption.

The legislation is effective January 1, 2006, and the provisions do not apply to cases pending on or before December 31, 2005.

***General Provisions:*** ***Senate Bill 710*** expands the definition of paternity to include the results of genetic testing. New provisions are added to authorize and make enforceable post-adoption contact agreements between birth parents and adoptive parents.

***Guardianship and Adoption through a Local Department of Social Services:*** The legislation specifies the elements of a valid guardianship petition and clarifies that a petition must be filed before a child's eighteenth birthday. A 30-day time limit is established for a parent who has consented to guardianship to revoke his or her consent. The 30-day period is altered to run after the parent signs the consent, or after the consent is filed as required, whichever is later. Language to be included in a publication notice is specified. Publication of guardianship petitions must be included on the web site of the Department of Human Resources, in addition to the current requirement of publication in a general circulation newspaper. The legislation codifies the practice of some jurisdictions of granting consent to guardianship conditioned on adoption of a child into a specific family. However, the condition may be limited to family placement only. The legislation authorizes termination of a CINA case once guardianship has been granted and specifies the responsibilities of the court post-guardianship.

The circuit court is given specific authority to enter an adoption order for a CINA prior to TPR. If the parent of a CINA consents to guardianship, the need for a separate TPR proceeding is eliminated. Adequate notice and the elements of a valid order to show cause, as well as the factors the court must consider when ruling on an adoption petition and the time frames for guardianship cases are specified. Procedures in the event a proceeding becomes contested are also specified. The legislation also specifies the procedures for adoption of a CINA after TPR.

***Private Agency Guardianship and Adoption:*** ***Senate Bill 710*** retains the current law standard of a 30-day revocation period. However, a parent may not revoke consent if the child is at least 30 days old and the consent is given before a judge on the record, and the parent filed a

notice of objection or revoked consent to guardianship of the child in the preceding year. The legislation authorizes a court to enforce post-adoption contact agreements and also authorizes conditional consent by birth parents to adoption. The condition may only be limited to placement of a child with a certain adoptive parent. The definition of "father" is expanded to include the genetic father of a child.

***Independent Adoption:*** The legislation specifies requirements for notice to unknown or unlocated parents. The current law revocation period of 30 days is retained, but a parent is prohibited from revoking consent if the child is at least 30 days old and consent is given before a judge on the record and the parent revoked consent or filed a notice of objection to adoption of the child in the preceding year.

**Children in Out-of-home Placement**

The Adoption and Safe Families Act (ASFA) is the governing federal law for State foster care programs regarding permanency and service delivery. With the inception of ASFA, the federal government changed the acceptable plans to establish permanency for children in out-of-home placements. Independent living, permanent foster care, and long-term foster care were eliminated. In addition, the federal Chaffee Independent Living Act declared that independent living was not a permanency plan, but a group of services for the child in foster care.

In conformity with the new federal standards, ***House Bill 771 (passed)*** repeals provisions that authorize a court to consider, as a permanency plan for a child in out-of-home placement, continuation in a specified placement on a permanent basis due to the child's special needs or circumstances, continuation in a specified placement for a specified period due to the child's special needs or circumstances, or independent living. Instead, the legislation requires a local department of social services and a court to consider as a permanency plan, another planned permanent living arrangement that (1) addresses individualized needs of the child and (2) includes goals that promote continuity of relations with individuals who will fill a lasting and significant role in the child's life

***House Bill 1336 (passed)*** requires a local department of social services to place siblings together who are in an out-of-home placement, if it is in the sibling's best interests and placement together does not conflict with a specific health or safety regulation. If the placement of siblings does conflict with a specific health or safety regulation, the local department may place the siblings together if it makes a written finding describing how placing the siblings together serves their best interests.

**Adoption – Written Instrument – Meaning of "Child"**

Under current law, in any deed, grant, will, or other written instrument, executed after June 1, 1947, unless the instrument clearly indicates otherwise, the term "child," "descendent," "heir," "issue," or any equivalent term includes an adopted individual regardless of the date of the adoption. If the instrument was executed before June 1, 1947, unless the instrument clearly indicates otherwise, the term "child," "descendent," "heir," "issue," or any equivalent term

includes an adopted individual only if the decree of adoption was entered on or after June 1, 1947. ***Senate Bill 176***/***House Bill 146*** ***(both passed)*** provide that, in any instrument executed before June 1, 1947, unless the instrument clearly indicates otherwise, the term "child," "descendant," "heir," "issue," or any equivalent term includes an adopted individual if the individual's adoption was finalized on or after January 1, 1945. The legislation applies only prospectively and may not be applied to affect vested property rights.

## Children in Need of Assistance

### Court Hearings and Findings

By federal law local departments of social services are required to make reasonable efforts to establish permanency for a CINA (1) to prevent a CINA from entering an out-of-home placement and (2) to finalize a permanency plan for a CINA who has been committed to an out-of-home placement. ***Senate Bill 696***/***House Bill 1225*** ***(both passed)*** expand the proceedings concerning a CINA at which a court must make reasonable efforts findings to include a CINA disposition hearing, a permanency plan hearing, and specified review hearings involving a child in out-of-home placement.

### Custody and Guardianship

Ciara Jobes was a 15-year-old who suffered starvation, sexual and physical abuse, and death at the hands of her court-appointed guardian, Satrina Roberts, who was convicted of her murder and sentenced to 40 years imprisonment. Roberts, who was mentally ill, abandoned an application to become Ciara's foster parent to avoid investigation and instead sought to become her guardian. To help prevent future cases like that of Ciara Jobes, ***Senate Bill 746***/***House Bill 976*** ***(both passed)*** provide that a court may not grant custody and guardianship to a relative or nonrelative of a CINA until it considers a report by a local department or child placement agency on the suitability of the prospective guardian The suitability report must include a home study, child protective services history, criminal history records checks, and review of the proposed guardian's physical and mental history.

### Priority of Relatives as Caregivers

***House Bill 935*** ***(passed)*** requires the court to give priority to a child's relatives over nonrelatives when ordering shelter care for a child alleged to be in need of assistance and when committing a child to the custody of an individual other than a parent.

## Child Abuse

Under current law, except under limited circumstances, child abuse and neglect records are confidential. An unauthorized disclosure of these records is a misdemeanor and offenders are subject to a minimum $500 fine or 90 days imprisonment, or both.

In 2004, newborn twins were discharged from a hospital in Baltimore City to a mother about whom the hospital had concerns. However, the hospital was not aware of the mother's

history with the local department of social services, which might have affected the hospital's discharge plan for the newborns. The twins were murdered by the mother shortly after leaving the hospital.

As of July 1, 2005, ***House Bill 254*** ***(passed)*** authorizes the Department of Human Resources to disclose certain child abuse and neglect information to a licensed practitioner of a hospital or birthing center for the purpose of making discharge decisions concerning a child when the practitioner suspects that the child may be in danger based on the practitioner's observation of the behavior of the child's parents or immediate family members. Only the following information may be disclosed: (1) whether there is a prior finding of indicated child abuse or neglect by either parent and (2) whether there is an open investigation of child abuse or neglect pending against either parent. This legislation also requires the Department of Human Resources to report to the General Assembly (1) by October 1, 2005 on the feasibility of offering family counseling services to individuals who have had a finding of indicated child abuse or neglect and (2) by December 31, 2007, on the use and effectiveness of the disclosure of child abuse and neglect information.

## Domestic Violence

### Definition of "Abuse"

According to the Maryland *Uniform Crime Report*, there were 17,860 domestic violence crimes committed during calendar 2003. This excludes incidents in Baltimore City, which did not report crimes to the State Police for that period. Of the reported crimes, there were seven reported cases of domestic violence involving stalking. ***Senate Bill 263*** ***(passed)*** expands the definition of "abuse" as it applies to domestic violence proceedings to include stalking. Stalking is a malicious course of conduct including approaching of or pursuing another person, intending to place or knowing that the conduct would place the person in reasonable fear of serious bodily injury, assault, rape, or sexual offense, false imprisonment, death, or that a third person will suffer any of these acts. A person convicted of stalking is guilty of a misdemeanor and is subject to up to five years imprisonment or a $5,000 fine.

### Local Domestic Violence Fatality Review Teams

***House Bill 741*** ***(passed)*** authorizes a county government to establish a "local domestic violence fatality review team" to investigate the causes of serious physical injury or death that result from domestic violence and to make recommendations for the comprehensive improvement in agency and organizational responses to victims of domestic violence. The legislation establishes immunity for team participants, specifies confidentiality and disclosure provisions, and establishes penalties for violation of disclosure and confidentiality provisions.

## Child Support

### Settlement of Arrearages

***House Bill 1181* (passed)** establishes a presumption that it is in the best interest of the State to accept as full settlement of an arrearage in child support payments from an obligor (that is, an individual who is required to pay child support under a court order) an amount that is less than the total arrearage in a case in which a child support recipient assigns his or her right to child support to the State in exchange for Temporary Cash Assistance. The presumption applies if:

- the obligor, the Temporary Cash Assistance recipient, and the child who is the subject of the support order have resided together for at least 12 months immediately preceding a request for settlement;
- the obligor has been supporting the child for at least 12 months immediately preceding a request for settlement; and
- the gross income of the obligor is less than 225 percent of the federal poverty level.

This legislation also requires the Child Support Enforcement Administration to conduct or commission a study of Child Support Trust Accounts that would allow Temporary Cash Assistance recipients to accumulate child support payments in trust during the time the recipients are on welfare. The Administration must report to the Governor and the General Assembly on the findings and recommendations of the study by November 1, 2005.

### Interception for Child Support

The Child Support Enforcement Administration reports that the State Tax Refund Intercept Program has been successful since its initiation in 1980. Millions of dollars in child support payments have been collected through this program. ***Senate Bill 172* (passed)** extends the interception program to include vendor payments that are issued by the Comptroller's Office. This includes payments to individuals under contract with the State, as well as payments to State employees for travel and other employment-related reimbursements.

## Same-sex Marriage

### Definition of Valid Marriage

In 1993, the Hawaii Supreme Court ruled that denial of marriage to same-sex couples violated the state's constitution. In 1998, Hawaii became one of the first states to adopt a constitutional amendment that authorizes its legislature to reserve marriage to couples of the opposite sex. In April 2000, Vermont became the first state to recognize civil unions that provide to same-sex couples virtually all the rights and privileges provided to married couples. In November 2003, the Massachusetts Supreme Judicial Court, that state's highest court, ruled

that under the state constitution, same-sex couples have the right to marry. In February 2004, the court ruled that authorizing civil unions for same-sex couples while prohibiting them from marrying was also unconstitutional. As a result, Massachusetts began issuing marriage licenses to same-sex couples in May 2004 and remains the only state that permits marriage between individuals of the same sex. Same-sex marriage is legal in the Canadian provinces of Ontario and British Columbia and in the countries of Belgium and the Netherlands. The countries of Denmark, France, and Germany permit civil unions between same-sex couples.

The Maryland law defining marriage as only between a man and a woman was enacted in 1973. In July 2004, nine homosexual couples sued Maryland claiming that its law prohibiting marriage between individuals of the opposite sex violates State constitutional rights. ***House Bill 1220 (failed)*** would have proposed an amendment to the Maryland Constitution that provides that only a marriage between a man and a woman is valid in Maryland.

### Validity of Same-sex Marriages from Foreign Jurisdictions

Under the Full Faith and Credit Clause of the U.S. Constitution, states are required to give full faith and credit to the public acts, records, and judicial proceedings of every other state. Therefore, Maryland will recognize foreign marriages that are validly entered into in another state. For example, Maryland will recognize a common law marriage from a foreign jurisdiction, although common law marriages are not valid in Maryland. *Henderson v. Henderson,* 199 Md. 449 (1952).

However, the Full Faith and Credit Clause does not require a state to apply another state's law in violation of its own legitimate public policy. See *Nevada v. Hall*, 440 U.S. 410 (1979). The Office of Attorney General has advised that the Maryland law prohibiting same-sex marriage would create a valid public policy exception to the general rule that marriages valid where performed are valid anywhere. ***House Bill 693 (failed)*** would have provided that a marriage between two individuals of the same sex that is validly entered into in another state or in a foreign country is not valid in Maryland and is against the public policy of the State.

## Child Care Centers

***House Bill 163 (passed)*** requires the Department of Public Safety and Correctional Services to submit a printed statement of a licensed child care center or registered family day care home employee's criminal history records check results to the Child Care Administration. The administration is authorized to disclose the results to a licensed child care center or a registered family day care provider to determine an individual's employment suitability. Each child care center employee hired by a licensed facility on or after October 1, 2005, must apply to the administration on or before the first day of employment for a child abuse and neglect clearance. The administration may prohibit a licensed child care center operator from employing an individual who does not meet established qualifications in accordance with to a background check and clearance.

# Human Relations

## Same-sex Unions

Nationally, six states and the District of Columbia confer benefits to same-sex or unmarried couples. In contrast, a substantial majority of states (36), including Maryland, have laws either prohibiting same-sex marriages or denying recognition of those marriages performed in other jurisdictions. During the 2005 legislative session, the General Assembly visited both issues.

### Medical Decisions

***Senate Bill 796* (passed)**, the Medical Decision Making Act of 2005, requires the Department of Mental Health and Hygiene to issue a "certificate of life partnership" to qualifying couples for the purpose of conferring rights to make medical determinations for a life partner. For a more detailed discussion of this issue, see the subpart "Public Health-Generally" within Part J – Health of this *90 Day Report*.

### Marriage

***House Bill 693* (failed)** would have specifically established that same-sex marriages performed in other jurisdictions are not valid in this State. Similarly, ***House Bill 1220* (failed)** would have proposed a constitutional amendment to establish that only a marriage between a man and woman is valid in this State. A more detailed discussion of these bills can be found in the subpart "Family Law" under Part F – Courts and Civil Proceedings of this *90 Day Report.*

## Hate Crimes

***House Bill 692* (passed)** expands the scope of the existing hate crimes statute to include crimes based on the sexual orientation of another person. For a further discussion of this bill, see the subpart "Criminal Law" within Part E – Crimes, Corrections, and Public Safety of this *90 Day Report*.

## Human Relations Commission

***Senate Bill 518* (passed)** allows the State Human Relations Commission to apply for and accept grants from State, federal, and private nonprofit organizations to further its mission of reducing discrimination and improving human relations within the State.

# Real Property

## Sales of Residential Property

### Foreclosure Sales

The number of home foreclosures across the nation was 50 percent higher in March 2005 than a year ago. With housing prices in metropolitan areas of the State dramatically increasing, unscrupulous individuals are taking advantage of homeowners who face foreclosure. "Foreclosure consultants" search court records for foreclosure actions and then contact homeowners offering to help them avoid foreclosure. Using misrepresentations, they often dupe the homeowner into transferring the deed to the home to the consultant or a "foreclosure purchaser."

***Senate Bill 761* *(passed)***, an emergency bill, seeks to address the growing problem of foreclosure "rescue" scams. It provides for disclosures and rights of rescission for the homeowners in these transactions and prohibits practices that make it easier to deceive the homeowners.

***Senate Bill 761*** requires a notice to be sent by a person who is authorized to make a foreclosure sale to the homeowner when a foreclosure action is filed that contains the telephone number of the Attorney General's Consumer Protection Division which will provide information about government agencies and nonprofit organizations that can provide information about the foreclosure process.

The bill also grants a homeowner the right to (1) rescind a foreclosure consulting contract at any time and (2) rescind a foreclosure reconveyance at any time before midnight on the third business day after any conveyance or transfer of legal or equitable title to a residence in foreclosure.

***Senate Bill 761*** specifies the required contents of a foreclosure consulting contract. When a contract is executed a foreclosure consultant must provide to the homeowner a signed and dated copy of the contract. A foreclosure consultant is limited to charging 8 percent annual interest on any loan made to the homeowner and may not demand any payment until after performing all the services under the contract. Finally, a consultant may not take a power of attorney from the homeowner for any purpose except to inspect documents.

If a foreclosure reconveyance is included in a foreclosure consulting contract or arranged after the execution of the contract, the foreclosure purchaser must provide the homeowner with a document entitled *"Notice of Transfer of Deed or Title."* The document must contain the entire agreement between the parties, describe the terms of any foreclosure reconveyance, and include other specified information required under the bill.

The foreclosure purchaser must also provide the homeowner with a document entitled *Notice of Right to Cancel Transfer of Deed or Title*. The document must include specified information, including the right to rescind within three days after transfer. It must be provided to

the homeowner immediately on execution of any document that includes a foreclosure reconveyance. If the homeowner rescinds the agreement, the homeowner must repay any money spent on the homeowner's behalf by the purchaser within 60 days, along with 8 percent annual interest.

A foreclosure purchaser may not enter into, or attempt to enter into, a foreclosure reconveyance with a homeowner unless the purchaser verifies and can demonstrate that the homeowner has or will have a reasonable ability to pay for the subsequent reconveyance of the property back to the homeowner on completion of the terms of the conveyance. Until the homeowner's right to rescind or cancel the transaction has expired, the purchaser may not (1) record any document signed by the homeowner; or (2) transfer or encumber or purport to transfer or encumber any interest in the residence in foreclosure to a third party.

The Attorney General may seek an injunction to prohibit violations and a homeowner may sue for damages and attorney's fees. If the court finds a violation of the bill was willful or knowing, it may award the homeowner three times the amount of actual damages.

In addition to these civil remedies, a violation of ***Senate Bill 761*** is a misdemeanor that carries maximum penalties of three years' imprisonment and a $10,000 fine.

The provisions of ***Senate Bill 761*** that deal with foreclosure consultants and foreclosure consulting services does not apply to (1) a Maryland attorney; (2) a person who holds or is owed an obligation secured by a lien on a residence in foreclosure while providing services in connection with the obligation or lien; (3) a bank, trust company, savings and loan association, credit union, or insurance company; (4) a judgment creditor of a homeowner; (5) a title insurer; (6) a title insurance producer; (7) a mortgage broker or mortgage lender; (8) a real estate broker, associate real estate broker, or real estate salesperson; or (9) a nonprofit organization that solely offers counseling advice to homeowners in foreclosure or loan default. The bill does not apply to an individual who is functioning in an exempt position and is providing services designed to transfer title to the residence in foreclosure directly or indirectly to the individual or an agent or affiliate of the individual.

**Disclosure of Latent Defects**

***Senate Bill 192***/***House Bill 412*** ***(both passed)*** require a seller of single-family residential property to give specified information about latent defects in the property to a purchaser before entering into a sales contract. The bills define "latent defects" as material defects in the real property or an improvement to the real property that the purchaser would not reasonably be expected to observe and would pose a direct threat to the health or safety of the purchaser or an occupant. Under ***Senate Bill 192***/***House Bill 412***, the seller must disclose latent defects of which the seller has actual knowledge in the required disclaimer or disclosure statement. The bills also require the State Real Estate Commission to include a definition of the term "latent defects" in the next revision of the standardized residential real property condition disclosure and disclaimer statement form to reflect this new law.

## Land Records

### Intake Sheets

Chapter 40 of 2004, which takes effect July 1, 2005, streamlines the recordation process by repealing the requirement that deeds be presented at the local assessment office before recordation. Under this law, recordation will be simply a two-step process under which an instrument presented for recording must be endorsed with the certificate of the county tax collector and accompanied by a complete intake sheet.

***House Bill 204* (Ch. 35)** provides an alternative to the requirement that an instrument be accompanied by a complete intake sheet. The bill allows the clerk of the court to record an instrument that effects a change of ownership in real property if the instrument is endorsed by the local assessment office. The bill prohibits a clerk from refusing to record an instrument that does not effect a change of ownership on the assessment books solely because it is not accompanied by a complete intake sheet as long as the person offering the deed or other instrument mails in or delivers the information required on the intake sheet. When property is transferred on the assessment books in this fashion, the transfer must be made to the grantee or assignee, and the person recording the transfer must evidence the transfer on the deed or other instrument.

### Release of Mortgage or Deed of Trust

***House Bill 1421* (passed)** repeals an outdated requirement that the clerk of a circuit court retain a mortgage or deed of trust for 25 years after a release endorsed on the instrument is filed for the purpose of recording the release. The current practice of clerks is to record releases by making a photocopy, photograph, or digital copy, all of which are then converted to microfilm for storage at the State Archives. The original release is promptly returned to the person submitting the release for filing and is no longer stored by the clerk.

## Condominiums, Cooperative Housing Corporations, and Homeowners Associations

### Annual Charges – Assessed Value Reduction

Chapter 507 of 2004, the provisions of which are limited to a homeowners' association in a development that has a population of at least 80,000 and contains at least 13,000 acres, requires the homeowners' association to base its annual charge on the phased-in assessment value of the property. Columbia is the only development that currently meets these criteria. ***House Bill 522* (Ch. 55)** modifies this law and requires the homeowners association to take into account, for purposes of the annual charge on improved property, any reduction in assessed value that has been made by a State or county assessment office after a protest, appeal, credit, or other adjustment.

### Credit Card as Debt Fee

***House Bill 282*** ***(passed)*** authorizes a homeowners association to charge a reasonable electronic payment fee if a member of the association elects to pay a fee by credit card or debit card. The homeowners association must include a notice, with each bill or invoice for which electronic payment is authorized, that a fee will be charged. The fee may not exceed the amount of a fee changed to the homeowners association in connection with the use of the credit card or debit card.

### Task Forces

***Senate Bill 229*** ***(passed)*** establishes a 23-member Task Force on Common Ownership Communities. Common ownership communities are defined as condominiums, cooperative housing corporations, and homeowners associations. This task force will study and report to the Governor and the General Assembly by December 31, 2006, on the following issues affecting these communities: (1) education and training needs of board members and education for new and prospective owners; (2) alternative dispute resolution services; (3) the desirability of adopting provisions of the Uniform Common Interest Ownership Act of 1994; (4) aging common ownership communities; (5) collection of assessments; and (6) resale of homes by owners.

***Senate Bill 735*** ***(passed)*** establishes a 19-member task force to study and make recommendations regarding specially designed alarm systems for people who are hearing impaired and live in apartments or condominiums. A more detailed discussion of this bill can be found under the subpart "Public Safety" within Part E – Crimes, Corrections, and Public Safety of this *90 Day Report*.

## Abatement of Nuisances on Property Used for Drug Offenses

During the 2004 interim, a workgroup of legislators, law enforcement officials, community groups, and property owners met to discuss solutions to abate drug-related nuisances which resulted in ***Senate Bill 674***/***House Bill 921*** ***(both passed).*** These bills expand the relief that a District Court may order in an action to abate a drug-related nuisance. The bills provide that such an action may be brought against a tenant, an owner, or an operator including a property manager or other person authorized to evict a tenant. The court may order an owner or operator of the property to submit for court approval a plan of correction to ensure, to the extent reasonably possible, that the property will not again be used for a drug-related nuisance if (1) the owner or operator is a party to the action and (2) the owner or operator knew or reasonably should have known of the nuisance.

If a tenant fails to comply with an order and the owner or operator, in addition to the tenant, are parties to the action, the court, after a hearing, may order restitution of the possession of the property to the owner or operator.

If an owner, including an owner-occupant, fails to comply with an order, after a hearing the court may, in addition to issuing a contempt order or an order for any other relief, order that (1) the property be sold, at the owner's expense, in accordance with the Maryland Rules

governing judicial sales or (2) the property be demolished if it is unfit for habitation and its estimated cost of rehabilitation significantly exceeds its estimated market value after rehabilitation.

If an owner-occupant fails to comply with an order regarding a nuisance in the owner-occupied unit of the property, the court may, in addition to issuing a contempt order or an order for any other relief, order that the unit be vacated within 72 hours and remain unoccupied for up to one year or until the property is sold in an arm's length transaction.

With the exception of a sealed affidavit, ***Senate Bill 674***/***House Bill 921*** also provide that a law enforcement officer, an attorney in a municipal or county attorney's office, or an assistant State's Attorney may disclose the contents of an executed search warrant issued under the drug-related nuisance abatement provisions and papers filed with the warrant to (1) an officer or director of the community association in which the nuisance is located, or their attorney; (2) an owner, tenant, or operator of the searched property, or their agents; or (3) an attorney in a municipal or county attorney's office.

## Landlord – Tenant – Medical Disability

### Early Lease Termination by Medically Disabled Tenant

***Senate Bill 339*** ***(passed)*** limits the liability of a tenant who terminates a residential lease before the end of the term because of a medical disability to two months' rent. The tenant must provide the landlord with a physician's written certification regarding the medical condition of an individual who is a named party in a lease or an authorized occupant under the lease's terms and a written notice of termination of the lease stating when the tenant will vacate the premises.

***Senate Bill 339*** does not apply if the lease contains a liquidated damages clause that requires written notice to vacate of one month or less and imposes liability for rent less than or equal to two months' rent after the tenant vacates.

## Ground Rents

Chapter 464 of 2003 established an alternative method for redemption of a ground rent (technically a lease) by any tenant through submission of documentation to the State Department of Assessments and Taxation (SDAT) if specified criteria are met. The tenant must pay the statutory redemption amount plus three years' back rent to SDAT. Chapter 480 of 2004 provided that when Baltimore City condemns property subject to an irredeemable ground rent, the city becomes the tenant and, after giving the landlord notice as required for the alternative method of redeeming the ground rent, may apply to SDAT to extinguish the ground rent. SDAT issues a ground rent extinguishment certificate to the city after receiving rent and an affidavit, and the city acquires fee simple title in the land.

***Senate Bill 322*** ***(Ch. 18)***/***House Bill 1374*** ***(passed)*** provide that when Baltimore City condemns abandoned or distressed property that is subject to a redeemable ground rent, the city becomes the tenant of the ground rent. The bill authorizes Baltimore City to redeem a ground

rent on the condemned abandoned or distressed property by following the same process provided for extinguishing an irredeemable ground rent. The city may keep the redemption amount instead of paying it to SDAT but must pay it to the landlord of the redeemed ground rent if the landlord files a claim with the city.

### Lead Poisoning Prevention

***House Bill 251*** ***(passed)*** makes several changes to the Reduction of Lead Risk in Housing Program administered by the State Department of the Environment. The bill reduces, by February 24, 2006, the elevated blood lead level that triggers notification by local health departments and compensation to children for medical care and relocation. It also makes playground equipment and benches on certain property subject to the lead hazard reduction law. A more detailed discussion of this bill can be found under the subpart "Environment" within Part K – Natural Resources, Environment, and Agriculture of this *90 Day Report*.

### Environmental Covenants

Environmental covenants are increasingly being used as part of the remediation process for contaminated real property. ***House Bill 679*** ***(passed)*** establishes requirements for the creation, applicability, maintenance, and enforcement of "environmental covenants." A more detailed discussion of ***House Bill 679*** can be found under the subpart "Environment" within Part K – Natural Resources, Environment, and Agriculture of this *90 Day Report*.

## Estates and Trusts

### Maryland Uniform Transfers to Minors Act – Qualified Minor's Trust

The custodian of a minor's property under the Maryland Uniform Transfers to Minors Act generally must transfer the property to the minor when the minor reaches the age of 21. ***Senate Bill 3*** ***(passed)*** authorizes a custodian of a minor's property to transfer all or part of the custodial property to a qualified minor's trust without a court order, if (1) the custodial property was created under a testamentary instrument that expressly authorizes the transfer or (2) the instrument that created the custodial property contains a statement that the transferor grants the authority to transfer the property to a minor's trust as provided under the bill. The bill establishes an alternative to immediate distribution of a custodial account to a beneficiary at the age of 21.

### Allowance for Funeral Expenses

***Senate Bill 51*** ***(passed)*** increases from $5,000 to $10,000 the maximum allowance for funeral expenses that a personal representative of an estate may expend without obtaining a special order from an orphans' court if the will does not expressly authorize payment of the expenses without a court order. The increase does not apply to a small estate (value of $30,000 or less or in the case an estate where a surviving spouse is the sole heir, $50,000 or less). The maximum allowance remains $5,000 for a small estate.

## Personal Representatives – Nomination by Power Conferred in Will

Current law sets forth a priority order of classes of individuals who may be eligible for appointment as a personal representative of an estate in administrative or judicial probate, or appointed as a successor personal representative or special administrator. ***Senate Bill 45 (passed)*** includes individuals who have been nominated in accordance with a power conferred in a will on the priority list for appointment as personal representative, second only in the order of priority to personal representatives named in a will admitted to probate.