

Part F

Courts and Civil Proceedings

Judges and Court Administration

Circuit Courts

Circuit Court Judgeships

Each year, the Chief Judge of the Court of Appeals formally certifies to the General Assembly the need for additional judges in the State. This certification is prepared based upon a statistical analysis of the workload of the courts and the comments of the circuit administrative judges and the Chief Judge of the District Court. In 2005 the General Assembly authorized 13 new judgeships – 7 in the circuit courts (including 2 in Baltimore City and 1 in Montgomery County) and 6 in the District Court.

For fiscal 2007, the Judiciary certified the need for 23 additional judgeships but only requested 2. *Senate Bill 1058/House Bill 1557 (both failed)* would have added the 2 circuit court judgeships requested – 1 in Baltimore City and 1 in Montgomery County. There are currently 153 circuit court judges in the State. Baltimore City and Montgomery County currently have 32 and 21 circuit court judges, respectively.

Election of Circuit Court Judges

The election of circuit court judges remains a controversial issue. Circuit court judges are nominated by the two principal political parties during the primary election. Because Maryland holds closed primaries, in which only members of a particular political party may vote for that party's candidates for nomination, candidates for circuit court judge register their candidacies with both principal political parties so as to appear on the ballots of both parties during the primary. The practice of "cross-filing" candidacies dates back to 1941.

After the presidential primary in March 2004, a suit was filed in the Circuit Court for St. Mary's County requesting an injunction to prevent the State Board of Elections from certifying the primary results of circuit court judge candidates on the grounds that unaffiliated voters, who are generally not permitted to vote in party nominating elections (the primary), are

unconstitutionally disenfranchised from participating in the initial selection process for circuit court judges. Following a ruling by the trial court, the case, *Suessman v. Lamone*, 383 Md. 697 (2004), was appealed to the Court of Appeals. The court held that there is a legitimate State interest in keeping partisanship out of judicial elections, while holding on to the party primary system. The court held that the “State’s attempts to achieve this goal do not violate the equal protection provisions of either the Maryland or Federal Constitutions simply because some voters who decline to join a political party nevertheless wish to vote in that party’s primary.”

Senate Bill 324 (failed) would have provided for nonpartisan election of circuit court judges. The bill would have permitted any voter, regardless of party affiliation or lack thereof, to vote for the number of candidates for which there are offices to be filled. The bill would have eliminated the current partisan primaries and third party nominations as well as nominations by petition.

Funding for Judicial Law Clerks

State law requires that each circuit court judge have one law clerk employed by the State. The budget for the Administrative Office of the Courts must contain funds to employ these clerks. Each county and Baltimore City is required to reimburse the Administrative Office of the Courts for 25 percent of the salary and other expenses to employ circuit court law clerks. Reimbursements are credited to a special fund which must be used only to provide funds to employ law clerks.

Effective July 1, 2006, *House Bill 985 (passed)* repeals the reimbursement requirement for local jurisdictions. As a result general fund expenditures are expected to increase by \$1.9 million in fiscal 2007 and \$2.1 million by fiscal 2011.

Drug Courts – Funding

Maryland’s first two drug courts were established in Baltimore City in 1994. Since that time, drug courts have expanded to include 28 operational drug courts located at various District and circuit court locations throughout the State. A drug court is a specialized docket responsible for handling drug and dependency related cases through judicial intervention, intensive monitoring, and continuous substance abuse treatment. Drug courts have been established to serve both adults as well as juvenile offenders.

The fiscal 2007 budget includes a significant increase in State funding for drug courts. State funding totals approximately \$10.3 million, a \$5.7 million increase from the prior year. However, approximately \$3.3 million of this increase reflected the need to replace federal dollars that were no longer available, many local drug courts having been established using one-time federal grants made directly to local jurisdictions. The remaining \$2.4 million represents a 30 percent increase in the total funding available for drug courts. These new funds will be used for additional services and to expand the total number of drug courts.

Drug court funding is allocated among various agencies as follows:

- **Drug Court Operations:** The Judiciary’s budget includes \$4.9 million for drug court coordinators, drug testing and substance abuse treatment, aid to local State’s Attorneys’ offices, and drug court evaluations – an increase of \$700,000 over fiscal 2006.
- **Alcohol and Drug Abuse Administration:** The budget includes \$1 million in new funding for substance abuse treatment services to individuals under drug court supervision. The administration intends to work with local jurisdictions to determine how to allocate funding among existing drug courts as well as for new drug courts.
- **Public Safety and Correctional Services:** The budget includes \$531,345 to provide parole and probation services to adults under drug court supervision. This is in addition to the approximately \$1.4 million included in the base budget for drug court supervision.
- **Juvenile Services:** There is an additional \$195,172 to provide services for juveniles under the supervision of drug courts. This is on top of the almost \$2.2 million included in the base budget.

Although the fiscal 2007 budget represents a significant expansion of drug court funding, there is little data on the effectiveness of these programs. The budget committees have requested that the Judiciary undertake an evaluation of these programs.

Jury Selection and Service

The last major review of the State’s jury laws occurred in 1968. For several years, the Judiciary’s Council on Jury Use and Management has recognized the need to update, clarify, and add to the laws governing jury selection and service. A subcommittee of the Council drafted *Senate Bill 796/House Bill 1024 (both passed)*, which update the jury laws to incorporate changes in procedure and technology since the 1968 revision and address concerns over jury service participation. Some of the bills’ key changes are described below.

- **Donation of Juror Pay:** Statutory authorization is provided for jurors to donate their per diem to programs included in the jurisdiction’s jury plan and approved by the Court of Appeals.
- **Access to Information about Prospective Jurors:** Access to juror information is prohibited unless authorized by rules promulgated by the Court of Appeals of Maryland.
- **Roles of Officials in the Jury Selection and Service Process:** The authority of jury commissioners and jury judges as to the jury selection and jury service process is clarified.
- **Disqualification from Jury Service Because of Criminal History:** An individual is disqualified from jury service if the individual (1) has been convicted of a crime punishable by imprisonment exceeding six months and received a sentence of more than six months or (2) has a criminal charge pending for a crime punishable by imprisonment

not exceeding six months. However, disqualification will no longer occur based on the amount of a fine.

- **Penalties:** The following maximum penalties are established: (1) \$1,000 fine and/or 30 days of incarceration for failure to return a jury qualification form; (2) \$1,000 fine and/or 60 days of incarceration for failure to appear for jury service; and (3) \$1,000 fine and/or 90 days of incarceration for beginning but failing to complete jury service. The current maximum penalties of a \$100 fine and/or 3 days imprisonment have been stated to be insufficient to ensure compliance with jury service.

Civil Actions and Procedures

Jury Trials

Under the English common law, parties to civil cases at law were entitled to a trial by jury regardless of the amount in controversy. Article 23 of the Declaration of Rights of Maryland entitles parties to a civil case at law to a trial by jury if the amount in controversy exceeds \$10,000.

In *Davis v. Slater*, 383 Md. 599 (2004), the Court of Appeals found that while Article 23 of the Declaration of Rights preserves the right to a jury trial in civil cases at law where the amount in controversy exceeds \$10,000, it does not abrogate the common law right to a trial by jury in cases where the amount in controversy is \$10,000 or less. The court concluded that under the common law, all parties to all civil cases at law are entitled to a trial by jury notwithstanding the provision in Article 23 of the Declaration of Rights concerning the amount in controversy. The *Davis* decision essentially rendered meaningless the limitation in Article 23 and a corresponding statute on the right to a jury trial based on the amount in controversy.

In response to concerns about the effect of the *Davis* decision on the number of civil jury trials, [House Bill 413](#) (*passed*) and [House Bill 427](#) (*passed*) reinstate the limitation on civil cases in which a party may request a jury trial to cases in which the amount in controversy exceeds \$10,000.

[House Bill 413](#) proposes a constitutional amendment that authorizes the General Assembly to adopt legislation that limits the right to trial by jury in a civil proceeding to civil proceedings in which the amount in controversy exceeds \$10,000.

[House Bill 427](#) makes statutory changes to clarify that a party in a civil action may not request a jury trial if the amount in controversy does not exceed \$10,000, exclusive of attorney's fees if attorney's fees are recoverable by law or contract. The bill's enactment is contingent on the passage and ratification of the constitutional amendment in [House Bill 413](#) and takes effect on the date of the certification of the election results on the ratification of the constitutional amendment. The bill applies prospectively to civil actions filed on or after the bill's effective date.

Appeal from In Banc Review

In general, Article IV, § 22, of the Maryland Constitution allows a party in a circuit court trial to have a judgment or determination of any point or question reviewed by a circuit court in banc, sometimes referred to as a “poor person’s appeal.” A circuit court in banc typically consists of a panel of three judges. The decision of the court in banc is considered final and conclusive against the party who requested the in banc review. However, the party who did not request the in banc review can appeal the in banc court’s decision to the Court of Appeals. Because the Court of Appeals hears cases via certiorari, this appeal is discretionary, not direct.

However, Maryland Rule 2-551, adopted after the creation of the Court of Special Appeals 40 years ago, specifically states that appeals of decisions by circuit courts in banc go to the Court of Special Appeals.

In *Bienkowski v. Brooks*, 386 Md. 516 (2005), the Court of Appeals held that only the Court of Appeals, and not the Court of Special Appeals, has jurisdiction over appeals from decisions by circuit courts in banc. Therefore, if the party who did not request the review by the circuit court in banc wishes to appeal the in banc court’s decision, that party must do so by petitioning the Court of Appeals for a writ of certiorari.

In response to the court’s decision in *Bienkowski*, [*House Bill 84 \(passed\)*](#) proposes a constitutional amendment to provide to the party who did not request the in banc review, a direct appeal to the Court of Special Appeals from a decision by a circuit court in banc.

Civil Actions, Immunity, and Liability

Burden of Proof – Uninsured Motorist Coverage

As a result of the General Assembly’s override of the gubernatorial veto of House Bill 1162 of 2005 ([*Ch. 17 of 2006*](#)), the legislation 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 that status. The Act sets forth the evidence necessary to satisfy that burden of proof. If the person satisfies the burden of proof, the finder of fact must find the motor vehicle to be uninsured, unless an adverse party proves by a preponderance of the evidence that the vehicle or its driver was covered by a valid, enforceable, liability insurance policy, bond, or security that provides coverage for the occurrence out of which the cause of action arose.

Sexual Abuse – Statute of Limitations

An action for damages arising out of an alleged incident of sexual abuse that occurred while the victim was a minor must be filed within seven years of the date that the victim attains the age of majority. [*House Bill 1148 \(failed\)*](#) would have extended this statute of limitations to 24 years from the date that the victim attains the age of majority. The bill would not have revived actions barred by the previous statute of limitations.

Local Government Tort Claims Act

The Local Government Tort Claims Act limits the liability of a local government to \$200,000 per individual claim and \$500,000 per total claims that arise from the same occurrence for damages from tortious acts or omissions (including intentional and constitutional torts). It further provides that the local government is liable for tortious acts or omissions of its employees acting within the scope of employment, and it defines local government to include counties, municipal corporations, Baltimore City, and various agencies and authorities of local governments.

House Bill 668 (passed) expands the Local Government Tort Claims Act to include the Carroll County Senior Overland Service, Inc. (t/a Carroll Area Transit System) and the Humane Society of Carroll County, Inc., which are private nonprofit corporations providing governmental services under a contract or memorandum of understanding with the Carroll County government.

Agricultural Nuisances

In response to development in areas once considered rural, many counties have adopted ordinances, often referred to as “Right to Farm” regulations, to address potential conflicts that may arise between agricultural operations and their nonagricultural neighbors. Several counties have enacted right to farm ordinances, and many have created Agricultural Reconciliation Committees. These committees mediate and arbitrate disputes regarding agricultural operations, specifically interference with the use or enjoyment of property from agricultural operations. Fourteen counties have an Agricultural Reconciliation Committee. While findings of these committees are binding on the parties as a matter of law, their enforcement will be suspended if a party appeals the order to a circuit court within 30 days of the date of the committee’s judgment.

However, in many of these jurisdictions, citizens and members of the legal community are unaware of the existence of agricultural reconciliation committees. Thus, a number of cases that should be referred to such a committee are being filed in circuit court.

In an attempt to promote non-litigious resolution of these types of conflicts and notify the legal community of the existence of ARCs, *House Bill 396 (passed)* requires an individual who wishes to bring a nuisance action against an agricultural operation in any court to first (1) file a complaint with a local agency authorized to hear such complaints, if one exists; and (2) obtain a decision or recommendation on the complaint from the local agency. If there is no local agency authorized to hear a nuisance complaint against an agricultural operation, the individual may not bring the nuisance action in court until (1) the individual refers the complaint to the State Agricultural Mediation Program in the Maryland Department of Agriculture; and (2) the department certifies that mediation has been concluded.

Family Law

Same Sex Marriage and Civil Unions

Definition of Valid Marriage in Maryland

The Maryland law defining marriage as only between a man and a woman was enacted in 1973. In July 2004, nine same-sex couples sued Maryland in the Baltimore City Circuit Court claiming that the State law prohibiting marriage between individuals of the same sex is unconstitutional. The plaintiffs asked the court for a ruling (1) declaring that the failure of the Maryland statutory code to permit same-sex couples to marry constitutes unjustified discrimination based on sexual orientation and an unjustified deprivation of fundamental rights, including the fundamental right to marry, and therefore violates Article 24 of the Maryland Declaration of Rights; and (2) enjoining the clerks of the courts from refusing to issue marriage licenses to plaintiff couples or other same-sex couples because they are same-sex couples.

A hearing was held in August 2005, and in January 2006 the circuit court in *Deane v. Conaway* (case # 24-C-04-005390) granted the plaintiffs' motion for summary judgment and held that the Maryland statute defining marriage is unconstitutional and violates Article 46 of the Maryland Declaration of Rights because it discriminates based on gender against a suspect class and is not narrowly tailored to serve any compelling governmental interests. Article 46 of Maryland's Declaration of Rights is commonly referred to as "Maryland's Equal Rights Amendment" and prohibits abridgment of equal rights under State law because of sex. The ruling was stayed pending an appeal. The Office of Attorney General immediately filed an appeal of the ruling.

Senate Bill 262/House Bill 48 (both failed) would have proposed an amendment to the Maryland Constitution to provide that only a marriage between a man and woman is valid in Maryland and, further, that a civil union or relationship between parties of the same sex that confers the benefit of marriage is not valid and is against the public policy of Maryland. A similar bill, *House Bill 1716 (failed)*, would have amended the Maryland Constitution to establish that marriage is only between a man and a woman and would have reserved the right to the General Assembly and the people of Maryland to establish any other civil union between two people.

Two other bills, *Senate Bill 690 (failed)* and *House Bill 1393 (failed)*, would have amended the Maryland Constitution to provide that only a marriage between a man and a woman is valid in Maryland, while *Senate Bill 900 (failed)* would have amended the Maryland Constitution by providing that nothing in the Maryland Equal Rights Amendment may be construed to authorize a court to invalidate a Maryland law that defines marriage. Similarly, *House Bill 1637 (failed)* would have amended the Maryland Constitution by specifying that the Equal Rights Amendment may not be construed to affect a law that defines a valid marriage as one that takes place only between a man and a woman.

Child Support

Child Support Obligations

Affidavit of Support: Under existing law, a court may order a child support award retroactive to the time of the filing for child support. Because of the lag in time between the filing in court and the issuance of the court's order, there is often unnecessary delay in providing support and the obligor is often already in arrears in making payments, which contributes to an adversarial relationship between the parents.

In response to this concern, **House Bill 272 (passed)** provides for the execution of an "affidavit of support" by the Child Support Enforcement Administration and the child support obligor and obligee. An affidavit of support is immediately enforceable in the same manner as a court order. An affidavit of support may be executed by the administration if a party is receiving child support enforcement services under federal law, the paternity of the child has been established, and a support conference has been conducted that resulted in an agreement by the parties. An affidavit of support must set the obligation amount in accordance with the statutory child support guidelines. If the administration determines that application of the guidelines would be inappropriate or unjust, the administration must make a written finding on the record stating the reason for departure from the guidelines. A party has the right to rescind it, in writing, within 60 days of its execution. An affidavit may also be challenged in court on the basis of fraud, duress, or material mistake of fact or that the affidavit is not in accordance with child support guidelines.

Notice of Change of Address: **Senate Bill 43 (passed)** sets forth notification of change of address and employment procedures that apply to earnings withholding orders. **Senate Bill 43** expands the manner in which support obligors and recipients may give the legally required notice of a change of address or employment to include notice in person at the court and on-line notice at the Child Support Enforcement Administration web site.

Settlement of Arrearages

Under current law, if the administration considers it to be in the best interest of the State, in a case where a child support recipient assigns his or her right to the child support in exchange for Temporary Cash Assistance (TCA) the Child Support Enforcement Administration may accept an amount that is less than the total arrearage as full settlement of a child support obligation. In a case in which an assignment is made, there is a presumption that it is in the best interest of the State to accept as full settlement an amount this is less than the total arrearage if the obligor, the TCA recipient, and the child who is the subject of the support order have resided together for at least the 12 months immediately preceding a request for settlement.

In a recent child support case, *Harvey v. Marshall* 389 Md. 243 (2004), the father, who was required to pay child support under a court order, was living with the children because one of the mothers was incapacitated and the other mother had died. The Court of Appeals indicated that the presumption in favor of settlement described above did not apply because, under existing law, the obligor must be living with both the child support recipient and the child. **House Bill**

654 (passed) expands the presumption to apply when the obligor and the subject child have resided together for at least the 12 months immediately preceding the settlement request and the recipient who made the assignment is deceased, incapacitated, or otherwise unavailable to reside with the obligor and the child. A recipient who assigns his or her right to child support may not be considered incapacitated or otherwise unavailable due solely to a change in legal or physical custody of the child.

Additionally, in the *Harvey* case, the father petitioned the court to direct the Child Support Enforcement Administration to forgive the child support arrearages that he accumulated before he obtained custody of his children. The father argued that he needed this debt to the State forgiven in order to adequately meet the current financial needs of the children. The Court of Appeals held that the “best interests of the child” standard did not apply to the authority of the Child Support Enforcement Administration to settle child support arrearages for less than the full amount. **House Bill 453 (passed)** further modifies the ruling of *Harvey v. Marshall* by specifying that the authority of the Child Support Enforcement Administration to settle child support arrearages is, in fact, subject to the best interests of the child.

Adoption

Adoption Search, Contact, and Reunion Services

Current law provides that the Social Services Administration in the Department of Human Resources (DHR) must provide adoption search, contact, and reunion services through the use of a confidential intermediary to locate and assess the mutual desire for communication or disclosure of information between adopted individuals, biological parents of adopted individuals, and siblings of adopted individuals.

If an individual who is sought is deceased, the confidential intermediary may not disclose the identity of the deceased, but must report the fact that the individual sought is deceased to the individual who applied for services.

House Bill 334 (passed) expands the adoption search, contact, and reunion services program within DHR to include services to locate relatives of the biological parent and members of the adoptive family if the parent or adopted child, respectively, is dead.

Permanency for Families and Children Act of 2005 – Revisions

In 2005, the General Assembly passed the Permanency for Families and Children Act of 2005. This Act substantively revised and reorganized the laws governing termination of parental rights, guardianship, and adoption. **Senate Bill 795/House Bill 978 (passed)** make clarifying, technical, and conforming changes to the Permanency for Families and Children Act of 2005. One of the substantive provisions added to the law requires Child In Need of Assistance case orders to be separate from guardianship orders, to avoid the disclosure of confidential information if the guardianship order is appealed. Another addition provides for the adoption of a child without the consent of the parents, if both the child’s parents are dead.

Court-appointed Attorneys for Children

In the case of *Fox v. Wills* (No. 43, September Term 2003, filed January 18, 2006), the Court of Appeals stated that Maryland law, unlike the law in other states, does not recognize a *guardian ad litem*, also known as a “best interest” attorney, who is appointed to provide independent legal services for the purpose of protecting a child’s best interests, without being bound by the child’s directives or objectives. However, Maryland courts have been construing the law to authorize the appointment of a *guardian ad litem* for a number of years. ***Senate Bill 664/House Bill 700 (both passed)*** restore the authority of the courts to appoint a best interest attorney who would provide an independent assessment of what is in the child’s best interest, even if that assessment differs from the opinions of the child and the parties. Under the legislation, in a contested custody, visitation, or support action, the court is authorized to (1) appoint a lawyer who shall serve as a child advocate attorney to represent the minor child by advocating for the position of the child; or (2) appoint a lawyer who shall serve as a best interest attorney to represent the minor child. A lawyer appointed under the provisions of the bills must exercise ordinary care and diligence in the representation of a minor child.

Dissolution of the Family

Custody and Visitation

Senate Bill 76/House Bill 435 (both passed) provides that, unless good cause is shown by clear and convincing evidence, a court may not grant custody or visitation to a parent found guilty of first or second degree murder of the other parent of the child, another child of the parent, or any other family member residing in the household of either parent of the child. However, if it is in the best interest of the child, the court may approve a supervised visitation arrangement that assures the safety and psychological, physiological, and emotional well-being of the subject child.

Property Distribution in Divorce

In an action for annulment or divorce, after the court determines which property is marital property and the value of that property, the court may transfer an ownership interest in specified types of material property and/or grant a monetary award. The transfer or grant is an adjustment of the equity of the parties regarding the marital property, regardless of an alimony award.

A court may not transfer the ownership of personal or real property from one party to the other, except an interest in a pension, retirement, profit sharing, or deferred compensation plan or family use personal property.

Senate Bill 353/House Bill 452 (both passed) provide that in a divorce or annulment proceeding, a court may transfer, subject to the terms of any lien, ownership of an interest in real property jointly owned by the parties, and used as the principal residence of the parties when they lived together, by (1) ordering the transfer of ownership if the party to whom the interest in real property is transferred obtains the release of the other party from any lien against the real

property; (2) authorizing one party to purchase the interest of the other party, in accordance with the terms and conditions ordered by the court; or (3) both. The legislation applies prospectively to cases filed on or after October 1, 2006.

Domestic Violence

Address Confidentiality

Senate Bill 25/House Bill 1056 (both passed) require the Secretary of State to establish an Address Confidentiality Program for domestic violence victims. A program participant may be an individual, a parent or a guardian acting on behalf of a minor who resides with the parent or guardian, or a guardian acting on behalf of a disabled person. The Secretary of State will accept service of process and receipt of first-class, certified, and registered mail for the participant and create a substitute address for the participant to use. On request, a State or local agency must use a participant's substitute address instead of the person's actual address.

Human Relations

Race-based Traffic Stops

Chapter 343 of 2001 required the State's law enforcement agencies to adopt a policy against race-based traffic stops and to record specified information in connection with each traffic stop, including the driver's race and ethnicity, to evaluate the manner in which the vehicle laws are being enforced. *Senate Bill 288 (Ch. 25)* extends the termination date for the collection of traffic stop data from December 31, 2006, to December 31, 2007. For further discussion of *Senate Bill 288*, see the subpart "Public Safety" within Part E – Crimes, Corrections, and Public Safety of this *90 Day Report*.

State Procurement/Minority Business Enterprises

Senate Bill 897 (passed) generally prohibits the State from contracting with any business entity that has discriminated against subcontractors, suppliers, vendors, or commercial customers on the basis of race, age, sex, color, creed, disability, or national origin. For further discussion of *Senate Bill 897*, see the subpart "Procurement" within Part C – State Government of this *90 Day Report*.

Senate Bill 884/House Bill 869 (both passed) extend for an additional five years the State Minority Business Enterprise (MBE) program, which has a goal of at least 25 percent of the total dollar value of each agency's procurement contracts being awarded to MBEs. For a more detailed discussion of these bills, see the subpart "Procurement" within Part C – State Government of this *90 Day Report*. *House Bill 1431 (passed)* establishes a linked deposit program in the Department of Housing and Community Development to provide low-interest loans to State-certified MBEs. For further discussion, see the subpart "Financial Institutions" within Part I – Financial Institutions, Commercial Law, and Corporations of this *90 Day Report*.

Health Care Disparities

House Bill 58 (passed) requires the Office of Minority Health and Health Disparities, in collaboration with the Maryland Health Care Commission to publish an annual “Health Care Disparities Policy Report Card” including analysis of racial and ethnic variations in insurance coverage for low-income, nonelderly individuals; racial and ethnic composition of the physician population compared to the composition of the State’s population; and the racial and ethnic disparities in morbidity and mortality rates based on ethnicity and race for certain diseases and conditions.

Minority Participation in the Environmental Community

Senate Bill 350/House Bill 412 (both passed) establish a Task Force on Minority Participation in the Environmental Community to evaluate and make recommendations regarding methods of improving minority participation in the environmental community.

Expression of Regret for Slavery in Maryland

Slavery existed in Maryland since its inception as an English colony in 1634. Slavery was officially sanctioned by law in Maryland in 1664 and was abolished in 1864 with the ratification of a new State constitution. *Senate Joint Resolution 4 (failed)* would have expressed regret on behalf of the State for the role Maryland played in instituting and maintaining slavery and for the legacy of discrimination that resulted. Similarly, *House Bill 1049 (failed)* would have required the Governor to apologize on behalf of the citizens of Maryland for the State’s history of slavery.

Discrimination in Employment and Public Accommodations

State and federal laws generally exempt nonprofit private membership clubs from prohibitions against employment discrimination. *House Bill 262 (failed)* would have made country clubs subject to State employment discrimination laws, allowing an employee of a country club to file and pursue an employment discrimination complaint before the Human Relations Commission.

House Bill 1034 (failed) would have allowed a person aggrieved by a discriminatory employment or public accommodation practice to file a civil action in a court.

Real Property

Eminent Domain

Background

The power to take, or condemn, private property for public use is an inherent power of state government and, through the state, its political subdivisions. Courts have long held that this power, known as “eminent domain,” is derived from the sovereignty of the state.

Both the federal and state constitutions expressly limit condemnation authority by establishing two requirements for taking property through the power of eminent domain. First, the property taken must be for a “public use.” Maryland courts have broadly interpreted the term “public use.” The Court of Appeals has recognized takings that encompass a “public benefit” or a “public purpose.” Maryland courts have given great deference to a legislative determination that property should be taken for a particular public purpose.

Second, the party whose property is taken must receive “just compensation.” The damages to be awarded for the taking of land are determined by the land’s “fair market value,” a term defined by statute. In some cases, a business can have market value that exceeds the real property and tangible personal property utilized in the business; however, this concept that is referred to as “goodwill” is not generally compensable. In addition, when land is acquired by condemnation, the condemning agency must pay a displaced person for specified moving expenses and other expenses associated with moving or discontinuing a business.

Historically, the State has used its condemnation authority primarily for the construction of roads and highways. However, recent examples include the construction by the Maryland Stadium Authority of Oriole Park at Camden Yards, M&T Bank Stadium, and the Hippodrome Theater in Baltimore City. Montgomery County used its condemnation authority as part of the downtown Silver Spring redevelopment. Baltimore City has exercised its condemnation powers for the redevelopment of the Inner Harbor and the Charles Center.

In 2000, Baltimore County attempted to exercise eminent domain powers for revitalization in three aging residential areas. However, despite enactment of Senate Bill 509 in the 2000 session to help accomplish this plan, the project was petitioned to a local referendum and rejected by the county voters at the general election that year by a margin of more than two to one. Since that vote, Baltimore County has not exercised its condemnation authority.

The Kelo Decision: In June 2005, the U.S. Supreme Court ruled in *Kelo v. City of New London*, 125 S. Ct. 2655 (2005) that New London, Connecticut’s use of its condemnation authority under a state law to require several homeowners in an economically depressed area to vacate their properties to make way for mixed use development did not violate the U.S. Constitution. In essence, the *Kelo* decision left the determination to state law as to whether eminent domain may be used for economic development purposes.

Task Force on Business Owner Compensation in Condemnation Proceedings: This task force was established by Chapter 446 of 2004. It released a final report in December 2005, in which the group made several recommendations regarding business owner compensation. Their recommendations were reflected in bills introduced in the 2006 session.

Legislative Approaches

Forty-three bills related to eminent domain were introduced in the 2006 session. Approximately two-thirds were statewide bills. The remainder were bills that banned or limited the use of eminent domain for particular purposes in individual counties. One local bill, **House Bill 335 (failed)**, would have repealed the authority to use eminent domain for urban renewal in the Town of Sudlersville in Queen Anne's County.

Some of the statewide bills were constitutional amendments that would have limited the use of eminent domain to certain purposes by defining "public use" in a narrow way, such as "public ownership or control" or "physical use or access by the general public." Other bills excluded purposes such as urban renewal, community revitalization or redevelopment, job creation, or generating tax revenue from the definition of "public use."

Other statewide bills changed statutory provisions governing procedure and compensation in condemnation cases. These bills included ones that compensated the loss of "goodwill" in a business condemnation, established time frames for filing condemnation actions, or repealed monetary limits on relocation expenses. Many of these bills included recommendations made by the task force.

Two statewide bills were reported out of committee. **Senate Bill 3 (failed)** would have established procedural requirements to be met before a government unit could condemn private property for economic development purposes, increased compensation for business and property owners affected by condemnation, and established the right of a former owner of condemned property to reacquire the property if the property was not needed for a public purpose.

House Bill 1203 (failed) would have made different changes to the procedures governing condemnation cases. For example, the bill would have specified that farmland, land zoned for agricultural use, and land under an agricultural preservation easement could not be condemned for economic development and would have defined "economic development." It also would have expressed the intent of the General Assembly regarding the relocation of businesses that are condemned for economic development; outlined required elements of a comprehensive planning process to be followed when private property is condemned for economic development; established speedy trial requirements for condemnation actions; and required an action to be filed within five years of the determination to acquire the property.

Disclosure of Information in Residential Property Sales

Military Operations

Senate Bill 253/House Bill 298 (both passed) require a contract for the sale of residential real property to contain a statement advising the buyer that the property may be located near a military installation that conducts military operations or testing and that the flight operations, munitions testing, or military operations may result in high noise levels. *Senate Bill 253/House Bill 298* do not apply in Allegany, Carroll, Frederick, Garrett, Howard, Montgomery, and Washington counties. Also, any local law requiring a substantially similar statement or notice will prevail over the requirements of the bills.

Special Taxing District in Frederick County

Under *House Bill 559 (Ch. 93)* a seller of real property in Frederick County that is subject to a tax or fee of a special taxing district or community development authority is required to provide the buyer within 20 days after entering into the sales contract with (1) a written statement containing specified information about the fee or tax and the provisions required by the Act; (2) the amount of the current annual tax or fee; (3) the number of years remaining for the tax or fee; and (4) whether any tax or fee is delinquent. Providing this information is necessary in order to enforce the sales contract.

Condominiums, Cooperative Housing Corporations, and Homeowners Associations

Condominium Conversions

When a developer decides to convert a rental facility with 10 or more units to a condominium, the developer must give notice to the tenants and meet other requirements, including honoring existing leases. The developer must offer a lease extension of three years to a household that (1) meets the income eligibility standard prepared by the Secretary of State (approximately 80 percent of the median income for each county and standard metropolitan statistical area); and (2) includes an individual who is either a “senior citizen” (an individual at least age 62) or a “handicapped citizen” (a person with a measurable limitation of mobility due to congenital defect, disease, or trauma). The developer is not required to grant extended leases to more than 20 percent of the units in a condominium.

If a county or incorporated municipality finds and declares that a rental housing emergency exists, the county or municipality may (1) grant the right to an extended lease beyond the three-year period; and (2) expand the eligibility for extended leases to additional categories of persons. If a county or municipality does expand eligibility, a lease to a person in an additional category may not exceed three years.

Definition of Disability: *Senate Bill 10/House Bill 123 (both passed)*, emergency bills, were prompted by a condominium conversion in Montgomery County that affected between 40

and 50 developmentally disabled adults who rent apartments in the project being converted. Many of the adults are part of programs that provide residential counselors or support services. Individuals with developmental disabilities often live on limited fixed incomes and have special needs, such as the need to be close to public transportation and shopping. These bills are intended to give these individuals additional time to find suitable housing when their apartments are converted to condominiums.

Senate Bill 10/House Bill 123 repeal the existing defined term “handicapped citizen,” replacing it with the definition for “disability” used in the federal Americans with Disabilities Act and in federal and State fair housing laws. This change will allow individuals with developmental disabilities as well as individuals with physical disabilities to be included in the category of individuals who must be offered extended leases when a rental facility is converted to a condominium. Under the bills, “disability” means either a physical or mental impairment that substantially limits one or more of an individual’s major life activities or a record of having a physical or mental impairment that substantially limits one or more of an individual’s major life activities. “Disability” does not include the current illegal use of or addiction to a controlled dangerous substance, as defined in State law, or a controlled substance, as defined in federal law.

Income Eligibility for Extended Leases: Senate Bill 815/House Bill 1006 (both passed), emergency bills, change the income eligibility for extended leases in rental facilities being converted to condominiums. The bills also give a local government that exercises its right to purchase a rental housing facility before conversion to a condominium the option to retain at least 20 percent of the units in the facility as rental units for 15 years for income-eligible households, as an alternative to retaining the entire property as a rental facility for at least three years.

Senate Bill 815/House Bill 1006 authorize a county or incorporated municipality, except for Baltimore City, to select which income eligibility figure prepared by the Secretary of State to use for purposes of determining eligibility for an extended lease when rental housing is being converted to a condominium. Alternatively, the bills allow a county or municipality to select the uncapped low-income limits as adjusted for family size calculated by the U.S. Department of Housing and Urban Development for assisted housing programs. Except for Baltimore City, if a county or municipality does not select a figure, the income eligibility figure is 80 percent of the median household income for the county. In Baltimore City, the income eligibility figure is 100 percent of the median household income for the Baltimore metropolitan statistical area.

Authority to Establish Condominium Regime in Municipality

Generally, the fee simple owner or lessee under a lease that exceeds 60 years of any property in the State may subject the property to a condominium regime by recording a declaration, bylaws, and condominium plat that complies with the requirements specified in the Maryland Condominium Act. *Senate Bill 544/House Bill 638 (both passed)* authorize a municipality holding a reversionary interest in a leasehold estate to lease property for the creation of condominiums. The bills give municipalities the same power that the State, a charter

county and, under specified conditions, the Washington Metropolitan Transit Authority have to lease property for this purpose.

Representation of a Common Ownership Community in a Dispute with a Homeowner

Charles County and Montgomery County have established commissions to hear and resolve disputes between a homeowners' association and a homeowner regarding the enforcement of the recorded covenants or other restrictions of the association. In general, disputes arising between these parties are governed by procedures written in the bylaws of the association or by the courts. Current law generally prohibits a person from representing clients in court in the State without being admitted to the Bar of Maryland; however, there are exceptions to the representation rule. For example, a person representing a landlord in a summary ejectment proceeding or an employee in a grievance procedure need not be a member of the Bar of Maryland. *House Bill 1166 (passed)* provides another exception. A director or officer of a common ownership community while representing the common ownership community in a dispute or hearing before a board or commission established to oversee a homeowners association, residential condominium, or cooperative housing is exempt from the requirement of being admitted to the Bar of Maryland.

Annexation of Land in Columbia – Howard County

Under current law the annexation of land into one of the villages or town center of Columbia may be accomplished in one of two ways: approval of the annexation by the Federal Housing Administration (FHA) or approval of two-thirds of the members of the association entitled to vote. However, FHA no longer participates in the annexation process and a super majority vote for approval by members of the association is difficult to obtain. Consequently, the residents of two residential properties near the Columbia Mall that are not part of a village or town center must pay a charge imposed on real property by the Columbia Association, but are unable to either elect representatives or be elected to village boards, the Columbia Council, or the Columbia Board of Directors.

Senate Bill 1089 (Ch. 32)/House Bill 1725 (passed), emergency bills, establish an alternate process for the annexation of land subject to the deed, agreement, and declaration establishing any of the villages or town center in Columbia. A parcel of land may be annexed into the village or town center in which it is located, if (1) the owner or developer of the land applies to the village or town center community association for annexation; and (2) the Columbia Association or its successor, and the village or town center community association approve the annexation. The annexed land is subject to the recorded covenants and restrictions of the village or town center in which it is located and the owners of the land become members of the common ownership associations.

Landlord – Tenant

Residential Leases – Surety Bonds Instead of Security Deposits

House Bill 1620 (passed) authorizes a tenant to purchase a surety bond to protect the landlord against nonpayment of rent, damage due to breach of lease, or damage that exceeds ordinary wear and tear to the leased premises, common areas, major appliances, and furnishings instead of paying all or part of a security deposit to a landlord.

The bill establishes rights and responsibilities for the landlord, tenant, and surety. A landlord may not require a tenant to purchase a surety bond, nor is the landlord required to consent to a tenant's purchase of a surety bond. Accepting a surety bond relieves a landlord of paying interest on a tenant's security deposit. If a prospective tenant does not enter into a lease with the landlord or if a landlord refuses to accept the bond, the surety must refund the amount paid for the surety bond. The cost of a surety bond may not exceed two times the monthly rent and the bond must be issued by State licensed carrier. Before a tenant purchases a surety bond, the surety must disclose specified information about the bond in writing to the tenant.

Interim Studies on Landlord – Tenant Relations

Senate Bill 597/House Bill 1481 (both failed) would have established procedures for a tenant who is evicted to reclaim personal property. Under current law, when an eviction warrant is executed, a tenant's personal possessions may be left unprotected outside the premises. The bills would have established a three-day period for the tenant to reclaim personal property left in the premises after the warrant is executed. The Senate Judicial Proceedings Committee and the House Environmental Matters Committee have referred this issue to interim study.

Senate Bill 599/House Bill 1483 (both failed) would have repealed current law governing retaliatory evictions of residential tenants and mobile home residents and established new rules governing retaliatory actions by landlords and mobile home park owners. The same standing committees will study this issue in the interim.

Mechanics Liens – Professional Services

Current law provides for the establishment of a mechanic's lien for the payment of debt contracted for work done and materials furnished in the construction or repair of buildings. *Senate Bill 423/House Bill 1060 (both passed)* add the provision of building or landscape architectural services, engineering services, or land surveying services to the types of work for which a lien on a building may be established.

Estates and Trusts

Transfers to Minors – Joint Custodians

The Maryland Uniform Transfers to Minors Act allows property to be irrevocably transferred to a custodian for the benefit of a minor until the minor reaches the age of 18 or 21, depending on from whom the property was transferred but, only one person may serve as the custodian of a minor's property. *Senate Bill 550/House Bill 546 (both passed)*, authorize two persons to be designated as custodians. When two persons are designated to act as joint custodians, unless otherwise specified, each custodian has the full power and authority to act alone. If either custodian resigns, dies, becomes incapacitated, or is removed, the remaining custodian may serve as the sole custodian without appointing a successor joint custodian.

Limited Liability Companies – Inspection Authority of Fiduciaries

Senate Bill 678 (passed) adds limited liability companies (LLCs) to the list of entities that hold property that a personal representative, trustee, or fiduciary may inspect to determine compliance with environmental law and to respond to an actual or potential liability relating to the property. The bill clarifies that LLCs are to be treated in the same manner as a sole proprietorship, partnership, or corporation in which a fiduciary holds an interest.

