Part F
Courts and Civil Proceedings

Judges and Court Administration

Circuit Court and District 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 2006, the Judiciary requested two new circuit court judgeships, but bills that would have authorized these judgeships failed.

For fiscal 2008, the Judiciary certified the need for 26 additional judgeships but only requested 4. ***Senate Bill 60*/*House Bill 58* *(both failed)*** would have added the requested judgeships – 2 in the circuit courts (1 in Baltimore City and 1 in Montgomery County), and 2 in the District Court (1 in Montgomery County and 1 in Charles County). There are currently 153 circuit court judges and 111 District Court judges. Baltimore City and Montgomery County have 32 and 21 circuit court judges, respectively. Montgomery County, which constitutes District 6 of the District Court, has 11 District Court judges, while Charles County has 2 of the 5 judges in District 4, which encompasses 3 counties in Southern Maryland.

Election of Circuit Court Judges

Several bills were again introduced this year addressing the election process for circuit court judges. Circuit court judges are nominated by the two principal political parties during the primary election. Although the two principal parties in Maryland each hold a closed primary in which only members of that party may vote, each of those parties allow candidates for circuit court judge to register their candidacies so as to appear on the primary ballots of both parties.

In 2004, a suit was filed in the circuit court for St. Mary's County alleging that unaffiliated voters are unconstitutionally disenfranchised from participating in the initial selection process for circuit court judges. On appeal from the trial court, the Court of Appeals recognized that there is a legitimate State interest in keeping partisanship out of judicial elections, without abandoning 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." *Suessman v. Lamone*, 383 Md. 697 (2004).

Senate Bill 46 ***(failed)*** would have provided for nonpartisan nomination and election of circuit court judges. Under the bill, any voter, regardless of party affiliation or lack thereof, would have been permitted 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.

Two proposed constitutional amendments, ***House Bill 290*** and ***House Bill 1363*** ***(both failed)*** would have provided for nonpartisan retention elections of circuit court judges without opposition. Under ***House Bill 1363***, the terms of circuit court judges would be reduced to 10 years vacancies in the circuit courts would have been filled in the same manner as vacancies on the Court of Appeals or Court of Special Appeals are filled, making them subject to confirmation by the Senate among other things.

District Court Jurisdiction

The District Court has exclusive jurisdiction over civil cases involving claims up to $5,000, and concurrent jurisdiction with the circuit courts over claims for amounts above $5,000 but not exceeding $25,000, exclusive of interest, costs, and attorney's fees. This monetary limit was last increased in 1998. ***House Bill 1109*** ***(Ch. 84)*** expands the concurrent civil jurisdiction of the District Court by raising the maximum amount in controversy from $25,000 to $30,000.

Sheriff's Fees

County sheriffs are entitled to collect fees for service of process and other papers. ***House Bill 740*** ***(passed)*** increases various sheriffs' fees by $10 and establishes a $60 fee for service of a paper originating from a foreign court. ***House Bill 740*** also reduces by 50 percent the amount of the fee refunded to a party if the sheriff is unable to serve a paper other than summary ejectment papers, and includes Cecil County, which currently has a different fee structure, under the statewide fee schedule. The bill prohibits a sheriff from collecting a fee to serve a paper from a housing authority or a summons for a law enforcement officer to appear as a witness in a criminal case.

Civil Actions and Procedures

Liability of Property and Casualty Insurers – "First Party" Claims

In response to some insurance companies' claims settlement practices following Hurricanes Isabel and Katrina, as well as reportedly pervasive unfair practices in the settlement of uninsured/underinsured motorist claims and personal injury protection claims under motor vehicle insurance policies, several bills were introduced expanding relief available to

policyholders alleging failure by their own insurance companies to act in good faith in resolving their "first party" property and casualty claims.

Generally, under current law, if an insured wishes to challenge a denial of coverage or the amount of coverage determined by its insurer under the policy, the insured may (1) file a civil action in court for breach of contract; or (2) file a complaint for a claim determination by the Maryland Insurance Administration (MIA) under the unfair claim settlement practices provisions in the Insurance Article. Under the Insurance Article, it is an unfair claim settlement practice to refuse to pay a claim for an arbitrary or capricious reason which is a very difficult standard to meet.

After a complaint is filed, MIA conducts an investigation, which includes a review of the insurance company's claim file, and issues a determination that becomes a final order, unless a party contests the determination at an administrative hearing. The Insurance Commissioner may issue an order following a contested hearing. A party may appeal the Commissioner's order to a circuit court for judicial review of the order on the record of the administrative hearing.

If the unfair claim settlement provisions have been violated, restitution may be ordered up to the amount of actual damages, subject to the policy's limits, with interest. Restitution that may be awarded does not include the policyholder's expenses, costs, and attorney's fees in pursuing recovery of damages. Therefore, even if an insured ultimately prevails against the insurer and is awarded the amount of damages originally claimed, the insured may not be made whole, because the policyholder's attorney's fees and costs must be paid out of the amount recovered.

MIA also may impose a penalty of up to $2,500 for each violation of the unfair claim settlement practices provisions. MIA may also issue a cease and desist order. In addition to any administrative penalty, a person who commits an unfair settlement practice with the frequency to indicate a general business practice may be guilty of a misdemeanor and on conviction is subject to a fine of up to $100,000, if a greater penalty is not applicable.

Senate Bill 389*/*House Bill 425* *(both passed) provide that, in a first-party claim under property and casualty insurance policies (including homeowner's, motor vehicle, and commercial policies), an insured who proves that an insurer did not act in good faith may recover expenses and litigation costs, including reasonable attorney's fees not exceeding one-third of the actual damages recovered, in addition to actual damages not exceeding the policy limits and interest.

"Good faith" is defined under the bills as an informed judgment based on honesty and diligence supported by evidence the insurer knew or should have known at the time the insurer made a decision on a claim. This is the same test for good faith established by the Court of Appeals for determining the duty owed, in another context, by insurance companies to their policyholders under *State Farm Mutual Automobile Insurance Company v. White*, 248 Md. 324 (1966). The bills specify that an insurer may not be found to have failed to act in good faith solely on the basis of delay, if the insurer acted within the time period specified by statute or regulation for investigation of a claim.

Under these bills, generally a party may not file such an action in a court until the date of a final decision by MIA on the party's claim if expenses and litigation costs are sought. However, a case may be filed initially in court if the case is within the small claims jurisdiction of the District Court, the parties agree, or the claim is under a commercial insurance policy with a limit of liability exceeding $1 million. If a complaint is filed with MIA, the bills (1) require prompt submission of specified claims documents by the parties, except for good cause shown (*e.g.*, refusal to submit a document that would not be subject to discovery under the Maryland Rules); (2) require MIA to promptly make its determinations and issue a decision within 90 days from the date of filing; and (3) allow any party within 30 days after an adverse decision from MIA to request a hearing by the Office of Administrative Hearings or to appeal to a circuit court. A party who receives an adverse decision at an administrative hearing may appeal to a circuit court.

Senate Bill 389/***House Bill 425*** also establish that a single instance of a failure to act in good faith in settling a first party claim is also an unfair claim settlement practice for which MIA may institute an administrative enforcement action that may result in the Insurance Commissioner imposing a fine of up to $125,000. The Commissioner also may order an insurer to pay actual damages up to the policy limits, expenses, and litigation costs, including reasonable attorney's fees, and interest as part of the restitution ordered if MIA proceeds on a violation under its regulatory enforcement authority. In addition, MIA may proceed with more severe license sanctions against property and casualty insurers currently available under MIA's enforcement authority if an insurer's failure to act in good faith in settling first party property and casualty claims is committed with the frequency to indicate a general business practice. MIA is required to report annually to the General Assembly on the number and type of such claims and regulatory actions filed and their dispositions at the administrative and judicial levels.

The availability of the additional forms of remedial relief for a policyholder under ***Senate Bill 389***/***House Bill 425*** is not limited prospectively to claims filed on or after the effective date or causes of action arising on or after the effective date. The bills take effect October 1, 2007.

Senate Bill 721/***House Bill 904*** ***(both failed)*** would have allowed for the recovery of attorney's fees and consequential and punitive damages in an action under a homeowner's insurance policy if the insurer was found to have settled or failed to settle a claim in bad faith. The bills would have provided a specified procedure for notice of the claim to be sent and for the insurer to inspect the property and offer to settle the claim before such an action could be filed.

Comparative Negligence Act

For the first time since 2002, bills were introduced during the 2007 session attempting to change Maryland from a contributory negligence state to a comparative negligence state. Maryland remains one of five jurisdictions, along with Alabama, North Carolina, Virginia, and the District of Columbia, in which contributory negligence on the part of a plaintiff completely bars any recovery by the plaintiff for damages.

Senate Bill 267*/*House Bill 110 ***(both failed)*** would have established comparative negligence as the method for awarding damage in negligence actions. Specifically, the bills would have provided that, in an action to recover damages for negligence that resulted in property damage or the death of or injury to a person, the fact that the plaintiff may have been contributorily negligent would not bar recovery by the plaintiff if the negligence of the plaintiff was less than the negligence of the defendant or the combined negligence of all defendants. Instead, any damages awarded to the plaintiff would be diminished in proportion to the amount of negligence attributed to the plaintiff.

Limitations and Dismissal of Actions

Statute of Limitations – Child Sexual Abuse

Generally a civil action must be filed within three years from the date it accrues unless another statutory provision provides a different period of time within which an action may be commenced. Under the "discovery rule," which is applicable generally in all actions, a cause of action accrues when the claimant in fact knew or reasonably should have known of the wrong. If a cause of action involves a minor, the statute of limitations is tolled until the minor reaches the age of majority, which is age 18.

Pursuant to Chapter 360 of 2003, an action for damages arising out of an alleged incident of sexual abuse that occurred while the victim was a minor must be filed within seven years of the date that the victim attains the age of majority. ***Senate Bill 575*** ***(failed)*** would have allowed an action for damages arising out of alleged incident of sexual abuse that occurred while the victim was a minor to be filed by December 31, 2008, if the victim, regardless of age, obtained a "certificate of merit."

Dismissal of Medical Injury Claims

In a contested action or claim for medical injury, each party must file a certificate from a qualified expert attesting to the standards of care and the proximate cause of the alleged injury. A report of the attesting expert must be attached to each party's certificate. Discovery is available as to the basis of this certificate. In a 2006 case, *Walzer v. Osborne* (395 Md. 563), the Maryland Court of Appeals held that the attesting expert's report must be attached to the certificate in a medical injury action or claim and that the only sanction that a court may impose for failure to attach the report in a timely manner as required by law is dismissal of the action or claim without prejudice. However, if the statute of limitations has expired, a dismissed action or claim would be barred from being refiled. Several proposals were introduced in the 2007 session to address the impact of the *Walzer* decision.

Senate Bill 309 ***(passed)*** authorizes a party to commence a new health care malpractice action or claim for the same cause against the same party or parties as the original action or claim if the original action or claim was dismissed for failure to file an attesting expert's report and the new action or claim is filed within the later of (1) 60 days from the date of dismissal; (2) the expiration of the applicable statute of limitations; or (3) August 1, 2007, if the action or claim

was dismissed on or after November 17, 2006, (the date of the *Walzer* decision) but before June 1, 2007 (the effective date of the bill).

The bill does not have any effect on or application to an action or claim dismissed before the effective date of the bill for which a final judgment has been rendered and for which appeals, if any, have been exhausted before the effective date of the bill.

Senate Bill 642*/*House Bill 495* *(both failed) would have repealed the requirement that a party file a report of the party's attesting expert with the certificate in health care malpractice cases.

Indemnity Agreements – Motor Carriers

House Bill 898* *(Ch. 83) establishes that a provision or agreement contained in, collateral to, or affecting a motor carrier transportation contract that indemnifies, defends, or holds harmless the promisee against liability for loss or damage resulting from negligence or intentional acts or omissions of the promisee is against public policy and is void and unenforceable. The bill was introduced in response to complaints from motor carriers that they are increasingly being pressured by shippers to agree to contracts that contain provisions by which the motor carrier agrees to indemnify the shipper for the shipper's failure to meet its duties and responsibilities or lose the business opportunity by refusing to agree to the indemnity provision. The bill does not apply to the Uniform Intermodal Interchange and Facilities Access Agreement or other agreements for the interchange, use, or possession of intermodal equipment.

Releases – Tort Claims and Attorney Employment Contracts

Senate Bill 368*/*House Bill 387* *(both passed) increase from 5 to 30 days the time period during which the signing by an injured individual of a release of a claim for damages resulting from a tort or an employment contract with an attorney makes the release or contract voidable. As provided in these bills, such a release or contract is voidable at the option of the injured individual within 60 days after the document is signed if it was signed by that individual within 30 days of the infliction of the injuries, without the assistance of an attorney. Notice that a release is voided must be in writing and accompanied by the return of any money paid to the injured individual.

Local Government Tort Claims Act

The Local Government Tort Claims Act (LGTCA) limits the liability of a local government to $200,000 per individual claim and $500,000 per total claims that arise from the same occurrence for damages from tortious acts or omissions. The Act 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 government. Several bills were introduced during the 2007 session to add nonprofit organizations performing governmental functions to the definition of "local government."

Senate Bill 16*/*House Bill 165* *(both passed) expand the definition of "local government" for the purpose of the LGTCA to include the Baltimore Public Markets Corporation (BPMC), a nonprofit organization that operates five public markets in Baltimore City. The bills also provide that an existing 180-day notice requirement does not apply to actions against BPMC or Lexington Market, another Baltimore City public market already under the LGTCA.

Other measures expanded the definition of "local government" to include nonprofit organizations in Garrett County. ***Senate Bill 229*/*House Bill 222* *(both passed)*** include the Garrett County Community Action Committee, Inc., Garrett County's public transportation system and paratransit service, under the LGTCA, while ***Senate Bill 173* *(passed)*** includes Garrett County Municipalities, Inc., a private nonprofit corporation formed by the county's eight municipalities to improve their operational efficiency.

Family Law

Child Support

Child Support Obligations

Health Insurance Coverage: Under current law, a court must determine a child support obligation in accordance with the Maryland child support guidelines. Under the guidelines, a child support obligation is divided between the parents in proportion to their adjusted actual incomes. "Adjusted actual income" means, for each parent, actual income minus (1) preexisting reasonable child support obligations actually paid; (2) except as otherwise provided, alimony and maintenance obligations actually paid; and (3) the actual cost of providing health insurance coverage to a child for whom the parents are jointly and severally responsible. Thus, the parent who pays for the child's health insurance is authorized to deduct it from that parent's income.

The rising cost of health insurance has had a significant impact on the actual income of parents under child support guidelines. As a result, these costs have been borne disproportionately by the parent who pays for health insurance. Because the cost of health insurance is deducted from the paying parent's actual income in the child support obligation, the total income of the parties may be significantly reduced, thereby reducing the amount of the basic child support obligation.

In response to this concern, ***Senate Bill 503*/*House Bill 265* *(Chs. 35 and 36)*** alter the treatment of health insurance under the child support guidelines to provide that, instead of deducting the cost of a child's health insurance coverage from the income of the parent who provides the coverage, the cost is added to the basic child support obligation and divided by the parents in proportion to their incomes. As a result, the Acts give the parent paying for health insurance a greater deduction from that parent's share of child support and apportions the cost of health insurance more equitably between the parties. Additionally, the Acts potentially increase the amount of money upon which a child support obligation is based, which is beneficial to the child. Furthermore, sharing the cost of a child's health insurance coverage proportionately

between the parents is consistent with the cost sharing of other expenses under the guidelines such as child care, travel, and extraordinary medical expenses.

Establishment of Paternity: Under existing law, a proceeding to establish the paternity of a child must commence at any time before the child's eighteenth birthday and may be begun during the pregnancy. Also under existing law, parents are required to support their "destitute adult child," which is defined as an adult child who has no means of subsistence and cannot be self-supporting due to mental or physical infirmity.

In a recent case, *Trembow v. Schonfeld*, 393 Md. 327 (2006), the Court of Appeals ruled that the mother of a destitute adult child born out of wedlock was not entitled to try to establish paternity once the child reached 18. In that case, the mother filed suit seeking a determination of paternity and child support on behalf of her adult child who became permanently disabled before reaching the age of 18. The Court of Appeals held that under the statute, a paternity action must be brought prior to the child's eighteenth birthday. The court pointed out that had paternity been established before the disabled child reached 18, both the mother and the child, directly, or if incompetent, through a guardian, would have been entitled to seek support both during the child's minority and after the child became a destitute adult.

House Bill 536 ***(passed)*** extends the statute of limitations by providing that a paternity action for a child who is dependent on a parent due to a physical or mental disability may commence at any time before the child's twenty-first birthday.

Child Support Enforcement

Collection Fees: Under the Federal Deficit Reduction Act of 2005, states must assess an annual $25 fee for child support enforcement cases in which the family has never received benefits from the Temporary Cash Assistance program and at least $500 in child support is collected within a federal fiscal year (from October 1 to September 30). The federal government then deducts 66 percent of the estimated revenue from the state's Federal Financial Participation matching grant.

In conformity with the federal law, ***House Bill 1427*** ***(passed)*** authorizes the Child Support Enforcement Administration (CSEA) to deduct from child support payments a collection fee of $25 from cases in which the family has never received Temporary Cash Assistance and has received at least $500 in child support payments during the federal fiscal year. The bill terminates on September 30, 2008.

Child Support Payment Incentive Program: Low-income obligors often accumulate significant arrearages in child support obligations during periods of unemployment or incarceration, which may negatively impact the ability to collect current child support.

Senate Bill 154/House Bill 263 ***(Chs. 15 and 16)*** require CSEA to develop a statewide Child Support Payment Incentive Program to encourage payment of child support arrearages in cases in which the right to child support has been assigned to the State in exchange for

Temporary Cash Assistance. The program is intended to encourage obligors to enter into agreements with CSEA in exchange for reductions in the amount of arrearages.

To participate in the program, an obligor's gross income must be less than 225 percent of the federal poverty level. For purposes of determining the federal poverty level, the obligor's household includes children for whom the obligor must pay support under a child support order that is the subject of the application to the program.

In determining whether to authorize an obligor to participate in the program, CSEA must consider whether the obligor has a current ability to pay, the reduction of arrearages will enhance the obligor's economic stability, and the agreement serves the best interests of the children the obligor must support. If any of the aforementioned factors are met, then a presumption exists that it is in the best interest of the State to authorize an obligor to participate in the program.

Under the program, CSEA must agree to reduce the arrearages as follows:

- after 12 months of uninterrupted court-ordered payments, the arrearages must be reduced by 50 percent of the amount of the arrearages owed before the agreement; and

- after 24 months of uninterrupted court-ordered payments, the arrearages must be reduced to zero in full settlement of the arrearages owed.

Suspension of Attorneys' Licenses: In 1997, Maryland enacted a law to authorize the suspension of professional licenses for the failure to pay child support; however, the Court of Appeals, which is responsible for licensing attorneys, was not included in those provisions. ***House Bill 792*** ***(passed)*** establishes procedures for the suspension of attorneys' licenses for failure to pay child support. The bill alters the definition of "licensing authority" to specifically include the Court of Appeals.

Under the legislation, CSEA is authorized to refer an attorney who is 120 days in arrears in child support payments to the Attorney Grievance Commission for proceedings in accordance with the Maryland Rules governing attorney discipline. On recommendation of the commission, the Court of Appeals may suspend an attorney's license or take other action as authorized by the Maryland Rules. At least 30 days before making a referral, CSEA must give notice and an opportunity to contest the accuracy of the information. Upon receipt of a request for investigation from an attorney whose license is subject to suspension, CSEA must conduct an investigation. On completion of the investigation, CSEA must notify the attorney of the result of the investigation and the right to appeal to the Office of Administrative Hearings. Before suspension of a license, notice must be given as provided in the Maryland Rules governing attorney discipline. Appeal procedures are also governed by the Maryland Rules.

Task Force to Improve Child Support Compliance: Obligors with large arrears and no consistent payment history have posed a difficult and persistent problem to child support enforcement agencies. For example, in fiscal 2006, over 56,000 child support cases were open in Prince George's County. In over half of those cases arrears were owed. The number of cases

with arrears greater than $10,000 and where no payments were made within the last 12 months was 4,365.

To explore new methods for improving the regularity and consistency of child support payments, ***House Bill 636*** ***(passed)*** establishes a Task Force to Improve Child Support Compliance in Prince George's County. The task force must develop a plan and draft legislation to improve child support compliance in Prince George's County among obligors who are more than $10,000 in arrears and have failed to make a payment for 12 or more consecutive or nonconsecutive months. Findings and recommendations are due by July 1, 2008.

Children in Out-of-home Placements

Children with Disabilities – Voluntary Placement Agreements

Under current law, a "child in need of assistance" (CINA) is a child who requires court intervention because (1) the child was abused or neglected or has a developmental disability or a mental disorder; and (2) the child's parents, guardian, or custodian are unable or unwilling to give the proper care and attention to the child's needs. If the court finds that a child is a CINA, the court may commit the child to the custody of a local department of social services, the Department and Health and Mental Hygiene, or both.

Legislation enacted in 2003 established a Voluntary Placement Agreement Program for children with disabilities. Under this law, the Social Services Administration is required to establish an out-of-home placement program for minor children (1) who are placed in local departments of social services' custody for not more than 180 days by parents or legal guardians under voluntary placement agreements; or (2) who, with the approval of the Social Services Administration, are placed in out-of-home placements by local departments of social services under voluntary placement agreements. A voluntary placement agreement is a binding, written agreement between a local department of social services and the parent or legal guardian that specifies, at a minimum, the legal status of the child and the rights and obligations of the parent or legal guardian.

Before determining whether a child with a developmental disability or mental illness is a CINA, ***Senate Bill 579***/***House Bill 1226*** ***(both passed)*** require the juvenile court to make a finding as to whether the local department of social services made reasonable efforts to place the child in accordance with a voluntary placement agreement. The bills also authorize the court, in making a disposition on a CINA petition, to hold in abeyance its determination and order the local department of social services to (1) assess or reassess the family and child's eligibility for a voluntary placement agreement; and (2) report to the court in writing within 30 days unless the court extends the time period for good cause shown.

If the local department does not find the child eligible for a voluntary placement agreement, the court must hold a hearing to determine the issue of eligibility. After the hearing, the court must (1) find that the child is a CINA and order the local department of social services to offer to place the child in accordance with a voluntary placement agreement; (2) find that the child is not a CINA; or (3) dismiss the case.

Eastern Shore Task Force on Foster Care

The Department of Human Resources advises that 296 children are in family foster care homes and 85 children are in group homes on the Eastern Shore. ***House Bill 397*** ***(passed)*** establishes an Eastern Shore Task Force on Foster Care to (1) consider incentives that will enhance foster care parent recruitment and retention on the Eastern Shore; (2) consider hiring a permanent staff person in each local department of social services to recruit, retain, and support foster care parents and consider potential funding sources for those positions; and (3) make recommendations on improving foster care parent recruitment and retention on the Eastern Shore. The task force must submit an interim report by December 31, 2007, and a final report by December 31, 2008.

Review Boards

Senate Bill 431 ***(passed)*** conforms State law to changes in the federal Child Abuse Prevention and Treatment Act and enhances implementation of Chapters 31 and 475 of 2006, the Child Welfare Accountability Act of 2006. The bill alters the powers, duties, and reporting requirements for the State Citizens Review Board for Children and local review boards.

The most significant changes made by the legislation include (1) expanding the duties of the State Citizens Review Board for Children to include examining the practices of State and local agencies and reviewing specific cases; (2) expanding the duties of each local board of review for minor children in out-of-home placement to include the review of the services provided to children in aftercare following a child's out-of-home placement; (3) changing case review requirements by local boards from a requirement of once every six months to a requirement of at least once within the first 12 months after a child enters an out-of-home placement and subsequent reviews when the court, the local department, an interested person, or the local board raises a specific concern; and (4) expanding the duties of local citizens review panels to include performing case reviews.

Child Abuse

Drug-exposed Infants

Within one year after a child's birth, there is a presumption that a child is not receiving proper care and attention from the mother for the purposes of determining whether a child is a CINA if (1)(i) the child was born exposed to cocaine, heroin, or a derivative of cocaine or heroin as shown by any appropriate test of the mother or child; or (ii) on hospital admission for delivery of the child, the mother tested positive for one of these drugs as shown by any appropriate toxicology tests; and (2) drug treatment was made available, and the mother refused the recommended level of drug treatment or did not successfully complete the drug treatment.

Additionally, for purposes of a court's consideration of a petition to terminate parental rights, a court must consider any exposure of the child to any of these drugs and amenability to treatment of the parent as described above.

The negative impact on health and well-being of a child exposed to methamphetamine is as significant as exposure to cocaine and heroin. ***Senate Bill 686/House Bill 340*** ***(Chs. 47 and 48)*** expand the definition of a drug-exposed infant to include exposure to methamphetamine or a derivative of methamphetamine for the purposes of determining whether a child is a CINA or whether terminating a parent's rights is in the child's best interests.

Reporting

Except as otherwise provided by law, all records and reports concerning child abuse or neglect are confidential and their unauthorized disclosure is a criminal offense. A violator is subject to maximum penalties of 90 days imprisonment and/or a $500 fine. ***Senate Bill 876/House Bill 1332*** ***(both passed)*** extend to nonpublic school officials the same rights to receive child abuse and neglect records concerning a school employee who has allegedly abused or neglected a student as are afforded to public school officials when determining appropriate personnel or administrative actions following a report of suspected abuse or neglect of a student committed by the employee.

The bills provide that reports or records concerning child abuse or neglect may be disclosed on request to the principal or equivalent employee of a nonpublic school that holds a certificate of approval from the State or is registered with the State Department of Education The reports or records may be disclosed to carry out appropriate administrative or personnel actions following a report of suspected child abuse committed against a student by an employee of the nonpublic school or an independent contractor or employee of an independent contractor who works with or supervises students at that nonpublic school. The reports or records may also be disclosed to the appropriate superintendent of schools if the report concerns suspected child abuse involving a student and committed by an employee, independent contractor, or employee of an independent contractor employed by a nonpublic school under the jurisdiction of the Archdiocese of Baltimore, the Archdiocese of Washington, or the Catholic Diocese of Wilmington.

Adoption

Post Adoption Support Services Pilot Program

House Bill 968 ***(passed)*** establishes a pilot program within the Department of Human Resources to provide post adoption support services to adopted children and their families and to provide additional State funds for adopted children. "Post adoption support services" means medical treatment, mental health services, parenting classes, or any other direct services provided by the department after a child is adopted that aid the adopted child or adoptive family and assist in preventing the child from being returned to the department's care and supervision. An adopted child or adoptive family is eligible for post adoption support services if the adoption is through a local department of social services and there had not been a prior termination of parental rights.

By December 1, 2009, the Secretary of Human Resources must report to the General Assembly on the number of adopted children and adoptive families served by the program, the

number of adopted children and adoptive families who applied for services, the types of services provided, and the effectiveness of those services. The bill terminates December 31, 2009.

Denial of Paternity, Custody, and Visitation

Senate Bill 679*/*House Bill 648* *(both failed) would have provided that for purposes of guardianship or adoption, a man may be excluded from the legal status as a child's father and be denied custody and visitation, if he committed rape in the first or second degrees, incest, or sexual abuse of a minor against the child's mother and the child was conceived as a result of that act.

Child Care

In Maryland, a volunteer who works with children in certain child care settings and is required to have a criminal history records check must pay the mandatory processing fee for the national records check assessed by the Federal Bureau of Investigation (FBI), reasonable administrative costs to the Department of Public Safety and Correctional Services, and the fee for access to Maryland criminal history records. The total cost of each criminal history records check for volunteers who work with children is $56, which includes State and national background checks plus fingerprinting and a discount for the national background check.

Senate Bill 152* *(passed) provides that a volunteer who works with children through programs registered with the Maryland Mentoring Partnership and who is required to obtain a national and State criminal history records check is not required to pay the $38 fee for access to Maryland criminal history records but would be required to pay the $18 mandatory processing fee assessed by the FBI for the national criminal history records check.

Divorce

While federal law specifies that child support is exempt from attachment for a parent's debts, alimony is not protected from collection. This subjects the entire amount of an alimony recipient's support, often the majority of his or her income, to collection. Because alimony is so substantial a part of its recipient's income, alimony recipients typically report it when applying for a home, auto, or other loans, and Maryland law requires lenders to consider alimony when determining loan eligibility of an applicant. However, currently alimony is subject to garnishment.

In response to this concern, ***House Bill 422* *(passed)*** exempts from execution on a judgment money payable or paid for child support or, to the extent that wages are exempt from attachment (*i.e.*, 75 percent of the disposable wages due), alimony.

Human Relations

Expression of Regret for Slavery in Maryland

Slavery existed in Maryland since its inception as an English colony in 1634 and was officially sanctioned by State law in 1664. Two hundred years later, slavery was abolished with the ratification of the Maryland Constitution of 1864. ***Senate Joint Resolution 6***/***House Joint Resolution 4*** ***(both passed)*** express profound regret for the role Maryland played in instituting and maintaining slavery and for slavery's legacy of discrimination. The resolutions also commit the State to the formation of a more perfect union among its citizens regardless of color, creed, or race and recommit the State to the principle that all people "are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness."

Human Relations Commission

Maryland is 1 of 11 states that do not allow a private cause of action for employment discrimination in state courts. Under the Fair Employment Practices Act, employees who work for an employer with 15 or more employees must have their complaints heard by the Maryland Human Relations Commission (MHRC). Remedies at administrative hearings are limited to reinstatement or hiring, with or without back pay not exceeding 36 months, or other appropriate equitable relief; compensatory damages are not authorized.

Senate Bill 678/***House Bill 314*** ***(both passed)*** create a civil cause of action in State circuit courts for workplace discrimination without regard to employer size. A civil action may be filed (1) by a claimant after filing an administrative charge or complaint; or (2) by MHRC on behalf of a claimant. Remedies available in a civil action under the bills include (1) compensatory damages based on the size of the employer; (2) punitive damages if the respondent is not a government entity and engaged in an unlawful practice with actual malice; and (3) reasonable attorney's fees, expert witness fees, and costs. If compensatory or punitive damages are sought, any party may demand a jury trial. The bills also expand the remedies available through MHRC proceedings by authorizing compensatory damages based on the size of the employer.

Senate Bill 678/***House Bill 314*** are consistent with protections available in the majority of states and bring Maryland law into alignment with the comparable federal statutes, the Civil Rights Acts of 1964 and 1991 (commonly referred to as "Title VII").

Senate Bill 192/***House Bill 878*** ***(both passed)*** clarify and modify MHRC's investigatory and hearing procedures relating to complaints filed under the State's commercial nondiscrimination policy. A more detailed discussion of these bills may be found within the subpart "Procurement" under Part C – State Government of this *90 Day Report*.

Race-based Traffic Stops

Chapter 343 of 2001, as amended by Chapter 25 of 2006, 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 vehicle laws are being enforced. ***Senate Bill 1027*** ***(passed)*** extends the termination date for the collection of traffic stop data from December 31, 2007, to December 31, 2009. For further discussion, see the subpart "Public Safety" within Part E – Crimes, Corrections, and Public Safety of this *90 Day Report*.

Minority Business Enterprises

House Bill 691 ***(passed)*** reauthorizes the Washington Suburban Sanitary Commission's (WSSC) minority business utilization programs for design/build contracts and construction contracts until 2012 and establishes the Office of Small, Local, and Minority Business Enterprise to administer programs that foster minority business enterprise participation in WSSC procurements. For a further discussion, see the subpart "Bi-county Agencies" under Part D – Local Government of this *90 Day Report*.

Discrimination Against Transgender Individuals

Current Maryland law prohibits discrimination in labor and employment, housing, and public accommodations on the basis of race, sex, creed, color, religion, national origin, marital status, disability, and sexual orientation. ***Senate Bill 516***/***House Bill 945*** ***(both failed)*** would have added gender identity and expression as a legally protected class. "Gender identity and expression" was defined in the bills as a gender-related identity, appearance, expression, or behavior of an individual regardless of the individual's sex at birth. The bills would have also prohibited discrimination based on gender identity and expression and sexual orientation in State personnel actions.

Real Property

Ground Rents

Background

Ground rents have been a form of property holding in Maryland since colonial times, with some of the earliest known leases dating to 1750. The use of ground rents in the State saw increased use following the Second World War, as returning members of the military sought affordable housing. Historically, ground rents could reduce the purchase price for a home buyer, thus enabling the buyer to afford a mortgage. However, in today's economic climate, ground rents have little or no effect on the sale price of a home and provide questionable financial benefit for the homeowner.

While ground rents are recognized in other states, Maryland's system is unique. In Maryland, a ground rent creates a leasehold estate in a grantee. The leasehold estate is personal – not real – property. The grantor retains a reversion in the ground rent property and the fee simple title to the land. Ground rents generally have a 99-year term and are renewable perpetually. Ground rent is paid to the grantor (the ground rent holder) for the use of the property for the term of the lease in annual or semiannual installments. Under a typical ground lease, the tenant agrees to pay all fees, taxes, and other costs associated with ownership of the property.

When a tenant fails to pay rent, the ground rent holder may bring an action for the past-due rent or for possession of the premises. In either case, the amount of monetary compensation the ground rent holder may seek is limited by statute to three years' past-due rent plus fees and expenses incurred in collecting the past due rent and complying with notice requirements. Because the tenant has a leasehold estate, a tenant whose property is seized in an ejectment action (an action to retake the premises) receives no other compensation. The ground rent holder is then free to release the property under the ground rent or sell the property in fee simple.

Ground rents in Maryland became an issue after a December 2006 series of articles in the *Baltimore Sun* described an apparently dysfunctional ground rent system in which residential property was being seized over missed ground rent payments and homeowners were being charged exorbitant fees. Often, because of the age of the ground rent, it was reported that the current occupant of the property did not know of the existence of the ground rent until facing legal action. Newspaper accounts noted a sharp increase in the number of ejectment actions filed in the Circuit Court for Baltimore City during the last five years.

Legislative Responses

Several measures were introduced in the 2007 session to address the ground rents system. The first bill introduced and passed on this subject, ***Senate Bill 106*** ***(Ch. 1)***, is an emergency measure that prohibits the creation of new residential ground rents on or after January 22, 2007. The other bills deal with existing ground leases on residential real property.

To modernize the residential ground rent system and facilitate the timely payment of ground rents, ***Senate Bill 622/House Bill 580*** ***(both passed)*** require the State Department of Assessments and Taxation (SDAT) to establish an online registry of properties that are subject to a ground lease. Ground lease holders are required to register their properties by September 30, 2010, for a fee and promptly update the department about changes in the registration information. If a ground lease holder fails to register within the required time, the ground lease holder's reversionary interest is extinguished and the ground rent is no longer payable. SDAT is required to work with the State Archives to coordinate the recordation, indexing, and linking of electronic ground rent information and to publish at least annually in newspapers around the State notice of the registration requirements. The department and the State Comptroller are required to report to the General Assembly by December 31, 2007, on recommendations regarding additional notification about the registration requirements.

To enhance communication between ground lease holders and leasehold tenants, ***Senate Bill 398/House Bill 502*** ***(both passed)*** require a ground lease holder to mail a bill for the payment due to the leasehold tenant's last known address no later than 60 days before an installment payment is due. The bill must include a notice containing specified information about the property, contact information for the ground lease holder, consequences for failing to pay the ground rent, and the right to redeem the ground lease. The bills also require a contract for the sale of real property subject to a ground lease to include a similar notice. Lastly, the bills require a leasehold tenant to notify a ground lease holder of a change of address, including specified information, within 30 days after the change.

Several bills were passed to encourage leasehold tenants to redeem, or purchase, ground leases and gain absolute fee simple title to the land underneath their homes. ***Senate Bill 397/House Bill 452*** ***(both passed)*** provide for the conversion of irredeemable ground rents to redeemable ground rents. Irredeemable ground rents are those ground rents executed before April 9, 1884, and established as "irredeemable" by the terms of the ground lease. While the exact number of these ground rents is unknown, they do present a unique impediment to the leasehold tenant who would like to obtain absolute fee simple title. The bills provide that an irredeemable ground rent becomes converted to a redeemable ground rent unless a notice of intention to preserve irredeemability is recorded in the land records by December 31, 2010. If notice is filed, then the irredeemability continues through 2020 unless another 10-year notice is filed. Once a notice lapses, the ground rent becomes redeemable. ***Senate Bill 623/House Bill 489*** ***(both passed)*** eliminate the statutory waiting period before a leasehold tenant may redeem a ground rent and establish notice requirements about the right to redeem when a ground lease is transferred to a third party and at settlement on a loan secured by property subject to a ground rent. Lastly, ***Senate Bill 883/House Bill 1284*** ***(both passed)*** alter the purpose of the Maryland Home Financing Program in the Department of Housing and Community Development to include making preferred interest rate loans for the redemption of ground leases; the amount of the loan may also include transactional costs associated with the redemption.

To eliminate the possibility that a leasehold tenant could lose the tenant's home and all of the equity in it for failure to pay a ground rent, ***Senate Bill 396/House Bill 463*** ***(both passed)*** repeal the ability of a ground lease holder to bring an action of ejectment for failure to pay ground rent on residential property and instead provide for the creation of a lien. The bills do not affect a ground lease holder's right to bring a civil action against a leasehold tenant seeking a money judgment for the amount of the past due ground rent. Under the bills, if ground rent is unpaid at least six months after its due date, the ground lease holder must give notice in a specified manner to the leasehold tenant and each mortgagee or trustee of the property. A party receiving notice may file a complaint in circuit court to determine whether the lien should be established. If a complaint is filed, the court determines whether the lien should be established and in what amount, including court costs and reasonable expenses and attorney's fees up to $500 in the discretion of the court. The ground lease holder may file a lien statement in the land records within a specified time period if the court orders a lien or if no complaint is filed and the ground rent continues to be unpaid. A lien filed under the bills has priority from the date the ground lease was created. A filed lien may be enforced and foreclosed in the same manner and subject to the same requirements as the foreclosure of a mortgage or deed of trust containing

neither a power of sale nor an assent to decree. If the property is sold at a foreclosure sale, the ground lease holder must be paid out of the proceeds the amount of the lien and the statutory redemption amount if the ground rent is redeemable. The buyer takes the property free and clear of the ground lease. If the ground rent is irredeemable, the ground lease holder must be paid the amount of the lien, and the buyer takes title subject to the ground lease.

One measure applies only in Baltimore City. ***Senate Bill 755/House Bill 458*** ***(both passed)*** place a lower absolute limit of no more than three years' past due ground rent on the amount that a ground lease holder may recover in a suit, action, or proceeding to recover back rent for abandoned or distressed property owned or acquired by Baltimore City. The bills prohibit the ground lease holder from getting reimbursed for expenses associated with filing the action for past due ground rent and specify a single place to send documents regarding ground rents owned or acquired by the city.

Eminent Domain

Background

The power to take, or condemn, private property for public use is an inherent power of state government and the state's 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, 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.

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.

According to the National Conference of State Legislatures, eminent domain legislation in response to the *Kelo* decision was considered in each of the 44 states that went into session in

2006. To date, legislatures have passed eminent domain bills in 28 of those states: in 24 states, the legislation was enacted; in 2 states, the measures passed were constitutional amendments that went on the November ballot for voter approval; and in 2 states, the legislation was vetoed by the Governor.

Historically, Maryland has used its condemnation authority primarily for the construction of roads and highways. However, recent uses of condemnation authority include the construction by the Maryland Stadium Authority of Orioles 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 and did not move forward.

Forty-three bills related to eminent domain were introduced in the 2006 session. Approximately two-thirds were statewide bills. The remaining bills banned or limited the use of eminent domain for particular purposes in individual counties. Two statewide bills were reported out of committee in 2006; both failed.

Legislative Approaches

Thirteen bills related to eminent domain were introduced in the 2007 session; three were local bills and the remainder were statewide. Only one measure was successful, ***Senate Bill 3 (passed)***. The primary purpose of this bill is to increase compensation for homeowners, tenants, and business or farm owners who are displaced as a result of a condemnation action. Specifically, the bill doubles the cap on the amount that may be paid to a displaced homeowner or tenant ($45,000 and $10,500, respectively) for a comparable replacement dwelling; increases from $10,000 to $60,000 the cap on the amount that may be paid to reestablish a displaced farm, nonprofit organization, or small business at its new site; and increases from $20,000 to $60,000 the alternative fixed payment that may be elected by a displaced business or farm operation in lieu of being relocated. The bill also requires a representative of the displacing agency to contact the owner of any business or farm operation on the private property to be acquired in a condemnation action no less than 30 days before the filing of a condemnation action to negotiate in good faith a relocation plan for the business or farm. Lastly, the bill requires the State, its instrumentalities, or its political subdivisions to file a condemnation action within four years after the date of the specific administrative or legislative authorization to acquire the property. With regard to a condemnation authorization granted before the effective date of the bill, the bill requires the State, its instrumentalities, or its political subdivisions to file an action for condemnation within four years from the effective date of the bill.

Condominiums, Cooperative Housing Corporations, and Homeowners Associations

Background

Chapter 469 of 2005 established the Task Force on Common Ownership Communities. The task force met 10 times during 2006 and conducted five public hearings, at which public comments were solicited. While the task force did not propose any legislation in the 2007 session, several of its findings and recommendations were the basis of bills introduced this year. Among the topics discussed by the task force were the enforcement of State laws affecting common ownership communities and the ability of owners in a common ownership community to petition a court for the appointment of a receiver.

Enforcement of State Laws

House Bill 183 ***(passed)*** provides that a violation of the Maryland Homeowners Association Act, to the extent that it affects a "consumer," is within the enforcement authority of the Consumer Protection Division within the Office of the Attorney General. The bill also authorizes a county or municipal corporation to adopt a law, ordinance, or regulation not inconsistent with the Maryland Consumer Protection Act. This measure adds provisions that are nearly identical to those already in law for condominiums and cooperative housing corporations.

Appointment of a Receiver

To the extent that they are not inconsistent with the Maryland Cooperative Housing Corporation Act, cooperative housing corporations are subject to general corporate provisions governing nonstock and stock corporations, which include, among other topics, the appointment of a receiver. However, neither the Maryland Condominium Act nor the Maryland Homeowners Association Act provides for the appointment of a receiver. To address this gap, ***Senate Bill 287*** ***(passed)*** authorizes three or more unit owners in a condominium or lot owners in a homeowners association to petition a circuit court to appoint a receiver if there are not enough members of the board of directors or governing body sufficient to constitute a quorum. At least 30 days before filing, the petitioners must mail a notice describing the petition and the proposed action to a condominium's council of unit owners or the governing body of a homeowners association. A receiver appointed by the court may not reside in or own a unit in the condominium or a lot in the development for which the receiver is appointed. A receiver has all powers and duties of a duly constituted board of directors or governing body and serves until sufficient vacancies on the board or governing body are filled to constitute a quorum.

Notice of Conversion to a Condominium

Senate Bill 635/House Bill 95 ***(both passed)*** clarify the notice provisions that are required to be given by the owner or landlord of a rental facility to the tenants of property that is being converted to a condominium by providing that if an offer to purchase the rental property is not given to the tenant concurrently with the notice of the conversion, the 180-day period during which the tenant is entitled to remain in the tenant's residence that is triggered by receiving the

notice of the conversion does not begin until the tenant also receives the purchase offer. The purchase offer is considered to have been given to a tenant if delivered by hand or mailed by certified mail, in the same manner as is required for the conversion notice.

Disclosures in Real Property Sales Contracts

Conservation Easements

Conservation easements allow landowners to protect natural resources and preserve open space by limiting future development and restricting the use of the land. ***Senate Bill 511/House Bill 465*** ***(both passed)*** require a seller of property encumbered by a conservation easement to provide the purchaser a copy of all conservation easements encumbering the property, as well as include in the sales contract a statement with specified information about the conservation easement and the purchaser's rights and responsibilities regarding the conservation easement. If a seller fails to meet these requirements, the purchaser has the right to rescind the contract.

Carbon Monoxide Alarms

As to the sale of single-family residential real property that relies on the combustion of a fossil fuel for heat, ventilation, hot water, or clothes dryer operation, ***House Bill 401*** ***(passed)*** requires the seller to include in the written residential property condition disclosure form information on whether a carbon monoxide alarm is installed on the property. This measure also requires a carbon monoxide alarm to be installed in newly constructed dwellings for which a building permit is issued on or after January 1, 2008. A more detailed discussion of this bill may be found under Part E – Public Safety of this *90 Day Report.*

Landlord – Tenant

Summary Ejectment Proceedings for Nonresidential Tenants

In a recent decision, the Court of Special Appeals held that attorney's fees authorized as damages under a rental contract were not "rent" and not recoverable in a summary ejectment proceeding. *Agbaje, P.C. v. JLH Properties, II, LLC*, 169 Md. App. 355 (2006). In response to the *Agbaje* decision, ***House Bill 377*** ***(passed)*** authorizes a court, in a summary ejectment proceeding regarding a nonresidential tenancy in which process is properly served, to award reasonable attorney's fees, in addition to costs of the suit, the amount of rent, and late fees, when the judgment is in favor of the landlord. However, reasonable attorney's fees may be awarded only if the lease agreement authorizes the landlord to recover attorney's fees.

Statutory Right of Redemption – Judgment for Possession

House Bill 922 ***(passed)*** provides that a judgment for a landlord's possession of leased premises is stricken but applies toward the number of judgments that disqualify a tenant from the statutory right to redeem the leased premises whether the landlord does not order a warrant of restitution or the landlord orders a warrant of restitution but does not take action on it within 60

days from the date of the order, unless the court in its discretion determines that the judgment may not apply toward the right to redeem.

Task Force to Study Rent Stabilization for the Elderly in Prince George's County

***House Bill 627* (passed)** creates a task force to study rent stabilization for elderly citizens in Prince George's County. The task force must review current rent stabilization laws of the District of Columbia and other local governments, review the impact of current rent levels on senior citizens in Prince George's County, and make recommendations for any statutory or regulatory changes. The task force must report its findings to the Prince George's County Council by November 1, 2007.

Recordation Matters

Release of a Mortgage, Deed of Trust, or Lien Instrument

When the debt secured by a mortgage, deed of trust, or lien instrument is paid fully or satisfied, there are several options for recording the release of the obligation in the land records. However, it is often difficult to get the release itself from the bank or mortgage lender. To help address this problem, ***Senate Bill 220*/*House Bill 1027* (Chs. 20 and 21)** authorize a settlement agent, title insurer, or Maryland lawyer to prepare and record a "statutory release affidavit" in the land records when the debt secured by a mortgage, deed of trust, or lien instrument has been paid off and the recipient of the payment fails to provide a release. Before the settlement agent, title insurer, or lawyer may record the statutory release affidavit, the person must allow at least a 60-day waiting period from the date the debt is paid or satisfied to allow the party satisfied to provide a release suitable for recording, send to the party satisfied a copy of the proposed statutory release affidavit and notice of intent to record it, and allow an additional 30-day waiting period after sending the notice for the satisfied party to provide a release suitable for recording.

Electronic Recording Pilot Program

***Senate Bill 143*/*House Bill 331* (both passed)** authorize the Administrative Office of the Courts to establish a pilot program for electronic recording of instruments in the land records, to be governed by Maryland Rule 16-307. The program may waive or modify any method, procedure, or clerical or technical requirement for recording or indexing. The program will be paid for out of the Circuit Court Real Property Records Improvement Fund. An instrument filed in accordance with the pilot program shall be valid and effective, and remain validly and effectively recorded and indexed, to the same extent as a substantively identical paper instrument filed at the same time. The bill takes effect June 1, 2007, and remains effective for the period that the plan for the pilot program is authorized by the Court of Appeals.

Estates and Trusts

Donation of Conservation Easements

Conservation easements allow landowners to protect natural resources and preserve open space by limiting future development. Chapter 603 of 2000 authorized a personal representative, trustee, or fiduciary to donate, or in the case of a trustee or fiduciary consent to the donation of, a conservation easement on any real property in order to obtain the benefit of the estate tax exclusion allowed under § 2031(c) of the Internal Revenue Code if (1) the will or governing instrument directs the donation of a conservation easement on the real property; or (2) each interested person or beneficiary who has an interest in the real property that would be affected by the conservation easement consents in writing to the donation. ***Senate Bill 219*/*House Bill 187* (*Chs. 18 and 19*)** provide that a personal representative, trustee, or fiduciary may donate, or in the case of a trustee or fiduciary consent to the donation of, a conservation easement on any real property to obtain the benefit of the federal estate tax exclusion if the will or governing instrument *authorizes* the donation of a conservation easement. The Act applies retroactively to the donation of a conservation easement from an estate of a decedent who died on or after January 1, 1998.

Disclaimers

A person may disclaim (*i.e.*, refuse to accept) in whole or in part any interest in or power over property, including a power of appointment, regardless of whether the creator of the interest or power imposed a restriction upon the transfer of, or a restriction or limitation on the right to disclaim, the interest or power. A disclaimed interest passes according to the terms of the instrument creating the interest if it provides for the disposition of the interest if it is disclaimed, or for disclaimed interests in general. If the instrument does not provide for the disposition of a disclaimed interest, the interest passes, if the disclaimant is an individual, as if the individual had died immediately before the time of distribution of the interest, or if the disclaimant is not an individual, as if the disclaimant did not exist. A disclaimer of an interest in or power over property is not a transfer, assignment, or release. A disclaimer may be filed, recorded, or registered if the instrument transferring an interest in or power over property subject to the disclaimer is required or permitted by law to be filed, recorded, or registered. Failure to file, record, or register the disclaimer does not affect its validity as between the disclaimant and the persons to whom the interest or power passes to because of the disclaimer. ***Senate Bill 434* *(passed)*** establishes that creditors of a disclaimant of an interest in or a power over property have no interest in the property disclaimed. The bill also broadens the application of existing law establishing that a failure to file, record, or register a disclaimer has no effect on its validity.

Guardianship of Disabled Person – Certification by Health Care Professionals

On receiving a petition and after notice and a hearing, a court may appoint a guardian for a disabled person, if it determines that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person (including providing for health care, food, clothing, or shelter), due to a mental disability, disease, habitual drunkenness, or drug addiction, and no less restrictive intervention is available. Currently, the petition must include signed and verified certificates from either two licensed physicians who have examined the disabled person or a licensed physician and a licensed psychologist who have evaluated the disabled person. At least one of the examinations or evaluations must have been conducted within 21 days before the petition is filed. ***House Bill 672*** ***(passed)*** adds a licensed certified social worker-clinical (LCSW-C) as a health care professional who may sign a certificate. Under the bill, a certificate from a LCSW-C, along with a certificate from a licensed physician, may be included with a petition for guardianship.

Rule against Perpetuities

With limited exceptions, the common law "rule against perpetuities" applies in Maryland. Under the common law rule, a future property interest, either real or personal, must vest within a life or lives in being (the lifetime of a living person) at the time of the interest's creation, plus 21 years. The term of gestation is added in the case of a posthumous birth. An interest that will not or may not vest within the vesting period violates the rule and is void. Maryland courts have placed limitations on nonvested future interests, chiefly through the rule against perpetuities, because the law does not favor nonvested future interests that cannot vest, or will not vest, within a recognizable period of time. The common law rule depends on possible, not actual, events, and any hypothetical violation of the rule extinguishes a future interest.

House Bill 188 ***(passed)*** adds statutory exceptions to the common law rule against perpetuities. The bill makes the rule against perpetuities inapplicable to:

- a tenant's option to renew a lease;
- a tenant's option to purchase all or part of leased premises;
- a usufructuary's option to extend the scope of an easement or profit;
- the right of a county, a municipality, a person from whom land is acquired, or the successor-in-interest of a person from whom land is acquired, to acquire land from the State under provisions governing the disposal of unneeded land by the State Highway Administration;
- a right or privilege, including an option, warrant, pre-emptive right, right of first refusal, right of first option, right of first negotiation, call right, exchange right, or conversion

right, to acquire an interest in a domestic or foreign joint venture, partnership, limited liability partnership, limited partnership, limited liability limited partnership, corporation, cooperative, limited liability company, business trust, or similar enterprise, whether the interest is characterized as a joint venture interest, partnership interest, limited partnership interest, membership interest, security, stock, or otherwise; or

- a nondonative (given for consideration other than nominal consideration) property interest, as defined under the bill, that becomes effective on or after October 1, 2007.

The bill provides that a nondonative property interest becomes effective as of its delivery date. One that becomes effective on or after October 1, 2007 is void unless it is not subject to the rule against perpetuities or it is exercised or vested within the applicable time period set forth in the bill. A document creating a nondonative property interest that does not state a date or make reference to lives in being by which the property interest must be exercised or vested is void unless exercised or vested within seven years after the property interest's effective date. One that either expressly states a date or makes reference to lives in being by which the property interest must exercised or one from which the date may be determined is void on the earlier of the expressed or determined date or 60 years after the effective date. If the document creating the nondonative property interest refers to one or more lives in being for determining the date by which the property interest must be exercised or vested, it is void (1) at the end of the period of time referenced, if the reference is to the duration of not more than 10 identified lives in being and not more than 21 years; or (2) at the end of 60 years, if the reference is to the duration of more than 10 identified lives in being or to identified lives in being and more than 21 years.