

Part I

Financial Institutions, Commercial Law, and Corporations

Financial Institutions

Mortgage Lenders and Mortgage Loan Originators

Since 2007, changes in the real estate market and the economy in general have had a number of negative effects on lenders and borrowers, both nationwide and in Maryland. One of the most significant of these effects has been a marked increase in the number of foreclosures affecting homeowners and their mortgage lenders. Many such foreclosures have involved residential properties that were financed through sub-prime loans and nonbank loan originators, leading to increased concerns regarding the lending practices that surround these nontraditional financing methods.

To address these and other issues relating to the mortgage foreclosure crisis, Chapters 7 and 8 of 2008 made a number of substantive changes to the laws relating to mortgage lending and the regulation of mortgage lenders. Chapters 7 and 8 authorized the Commissioner of Financial Regulation to participate in the establishment and implementation of a multistate automated licensing system for mortgage lenders and mortgage loan originators and to adopt regulations that waive or modify licensing requirements in order to facilitate the implementation of the multistate system.

Senate Bill 269 (Ch. 4) revises the State's mortgage lender and mortgage loan originator laws to conform to the requirements of the federal Secure and Fair Enforcement Mortgage Licensing Act of 2008 (SAFE Act). The Act (1) alters the licensing requirements, initial license terms, and renewal license terms for mortgage lenders and mortgage loan originators; (2) requires applicants and licensees to submit certain information and fees to the Nationwide Multistate Licensing System and Registry (NMLS); (3) increases civil penalties for violations of the mortgage lender and mortgage loan originator laws; and (4) authorizes the Commissioner of Financial Regulation to issue interim mortgage loan originator licenses and affiliated insurance producer-mortgage loan originator licenses.

Under the Act, an applicant for a mortgage lender or mortgage loan originator license must provide the NMLS with fingerprints for a criminal history background check, an

NMLSR-approved form containing the applicant's personal history and experience, and an authorization form that allows the NMLSR and the commissioner to obtain independent credit reports and other information about the applicant. In addition, the Act (1) prohibits an individual from engaging in the business of a mortgage loan originator unless the individual holds a valid license issued by the commissioner; (2) establishes exemptions from the licensing requirement; and (3) establishes conditions under which the commissioner may not issue a mortgage loan originator license. The Act also establishes prelicensing education, prelicensing testing, and surety bond requirements for mortgage loan originators, and requires each mortgage loan originator licensee to obtain a unique identifier number issued by the NMLSR upon obtaining an initial or renewal license on or after July 1, 2009.

To comply with the SAFE Act, the initial and renewal terms of a mortgage lender license and a mortgage loan originator license are changed from two years to one year. Regulations that went into effect on January 1, 2009, to begin the transitioning of mortgage lender and mortgage loan originator licensees to the NMLSR also establish a new fee schedule that sets an annual fee of \$1,000 for a mortgage lender license and a \$225 annual fee for a mortgage loan originator license.

Supervision of Bank Branches

Similar to legislation from the 2008 session that streamlined the procedures a bank must comply with to acquire or establish an affiliate, **House Bill 1555 (passed)** creates an expedited process for the establishment of a bank branch in the State. The bill also allows an out-of-state bank to open a *de novo* branch in Maryland if the bank's home state has reciprocal laws. The Commissioner of Financial Regulation is authorized to issue civil penalties against a bank or credit union that violates a cease and desist order or otherwise engages in an unsafe or unsound practice or a practice that is injurious to the public interest. The bill further allows the commissioner to close a public hearing regarding the assessment of civil penalties under extraordinary circumstances.

Financial Literacy

Senate Bill 140/House Bill 120 (both passed) increase the membership of the Task Force to Study How to Improve Financial Literacy in the State and provide additional staffing. The bills also extend the task force's reporting date to December 1, 2009, and its termination date to June 30, 2010. The task force was established by Chapters 186 and 187 of 2008.

Credit Regulation

Mortgage Fraud

Chapters 3 and 4 of 2008 created the Maryland Mortgage Fraud Protection Act, a comprehensive mortgage fraud statute that authorizes the Attorney General, a State's Attorney, and the Commissioner of Financial Regulation to take action to enforce the Act, including the

imposition of criminal penalties. **House Bill 79 (Ch. 126)** expands the definition of “mortgage fraud” under the Maryland Fraud Protection Act to include knowingly creating or producing a document for use during the lending process that contains a deliberate misstatement, misrepresentation, or omission with the intent that the document be relied on by a mortgage lender, borrower, or any other party to the lending process. This Act is intended to clarify that the Maryland Mortgage Fund Protection Act applies to the preparers of documents used in the lending process, such as appraisals.

Mortgage Lending – Exception to Proof of Ability to Repay Requirement

Under Chapters 7 and 8 of 2008, a lender may not make a mortgage loan without giving due regard to the borrower’s ability to repay the loan in accordance with its terms, including the fully indexed rate of the loan, if applicable, as well as property taxes and homeowner’s insurance. Due regard must include (1) consideration of the borrower’s debt-to-income ratio; and (2) verification of the borrower’s gross monthly income and assets by review of third-party documentation, including W-2 forms, income tax returns, payroll receipts, records of a financial institution, or other third-party documents that provide reasonably reliable evidence of the borrower’s income or assets. The income and asset verification requirements do not apply to mortgage loans approved for government guaranty by the Federal Housing Administration, the Veterans Administration, or the Community Development Administration.

Due to the downturn in the economy and the deteriorating residential real estate market that began in 2008, many homeowners are unable to refinance their mortgages at lower rates because of high loan-to-value ratios on their homes. In response to this situation, **Senate Bill 1036/House Bill 1535 (Chs. 114 and 115)** expand the exemptions from the income and asset verification requirements to include (1) refinancing mortgage loans offered under the federal Homeowner Affordability and Stability Plan and made available by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association; and (2) loans approved for government guaranty by the U.S. Department of Agriculture and the Maryland Department of Housing and Community Development.

The Home Affordability and Stability Plan is a \$75 billion federal initiative to provide loan modifications and refinancing opportunities to millions of American households. One of the goals of the plan is to allow distressed homeowners to refinance at lower rates and reduce their monthly mortgage payments. The Acts are intended to remove an obstacle that would prevent Maryland homeowners from fully participating in the federal program. The Acts are emergency measurers that took effect April 14, 2009, the date they were signed by the Governor.

Commercial Law

Maryland Antitrust Act

The United States Supreme Court recently overruled 97 years of jurisprudence when it held, in *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 551 U.S. ___, 127 S.Ct. 2705 (2007), that the federal Sherman Antitrust Act requires courts to apply a “rule of reason” standard rather than a “*per se* illegal” standard when considering the legality of minimum vertical price-fixing arrangements, also known as minimum resale price maintenance. Minimum vertical price-fixing involves an agreement between a manufacturer and retailers to establish a minimum price below which goods may not be sold.

Because the General Assembly has directed Maryland courts to look to federal court interpretations of federal antitrust laws when construing the Maryland Antitrust Act, the Supreme Court’s decision could influence how Maryland courts interpret and apply the State’s antitrust laws. **Senate Bill 239/House Bill 657 (Chs. 43 and 44)** ensure that Maryland courts will not follow the Supreme Court’s *Leegin* decision. The Acts codify existing Maryland case law by providing that the practice of minimum vertical price-fixing is a *per se* violation of the Maryland Antitrust Act.

Equipment Dealer Contract Act

The Equipment Dealer Contract Act provides statutory protections for dealers of construction, farm, utility, or industrial equipment. Among other things, it prohibits a wholesaler, supplier, or distributor of such equipment from cancelling, failing to renew, or substantially altering a dealer’s supply contract without good cause. The Equipment Dealer Contract Act also requires that a wholesaler, supplier, or distributor, at the option of the dealer, repurchase the dealer’s inventory upon the termination of a supply contract.

Senate Bill 896/House Bill 1068 (Chs. 109 and 110) expand the scope of the Equipment Dealer Contract Act to cover dealers of commercial heating, ventilation, and air conditioning equipment or repair parts. The Acts, therefore, provide dealers of commercial heating, ventilation, and air conditioning equipment with all the statutory protections available under the Equipment Dealer Contract Act.

Misrepresentations in Telephone Directory Advertisements and Listings

In response to concerns about businesses advertising in local telephone directories using local telephone numbers and false local addresses, the General Assembly passed **Senate Bill 10/House Bill 175 (Chs. 10 and 11)**. The Acts prohibit a person from causing to be published in a telephone directory any business telephone listing or advertisement that misrepresents the address of the business. The Acts specifically exempt banks, trust companies, savings banks, savings and loan associations, and credit unions, and the Acts do not apply to a publisher, printer, or distributor of a telephone directory.

A person who violates the provisions of the Acts is subject to a maximum civil fine of \$500 for each violation. A separate violation is committed for each edition of a local telephone directory or local telephone advertising directory in which a prohibited advertisement or telephone listing is published.

Automotive Warranty Enforcement Act

The Automotive Warranty Enforcement Act, or “lemon law,” provides legal remedies to purchasers of new cars, small trucks, and multipurpose vehicles (including motorcycles). Under the Automotive Warranty Enforcement Act, a manufacturer must replace a vehicle or provide a refund, minus an allowance for use, if the manufacturer or its agent, after a reasonable number of attempts, is unable to repair a defect or condition that arises during the Act’s warranty period and substantially impairs the vehicle’s use and market value.

Senate Bill 133 (passed) extends the Automotive Warranty Enforcement Act’s warranty period for a vehicle from the earlier of 15,000 miles or 15 months to the earlier of 18,000 miles or 24 months. The extension of the warranty period does not extend a manufacturer’s express warranty but merely extends the period during which the Act’s legal remedies are available to a consumer.

Parental Controls for Internet Access

Senate Bill 550 (passed) requires Internet access providers with subscribers in the State to create parental controls and to make the features available to each subscriber in the State at or near the time of subscription. An Internet access provider must allow a subscriber, in a commercially reasonable manner, to block all access to the Internet, as well as:

- block a child’s access to specified web sites or a category of web sites;
- restrict a child’s access to subscriber-approved web sites;
- restrict a child’s access to web sites approved by the parental control provider; or
- monitor a child’s Internet use by reporting to the subscriber each web site a child visits or web site the child was denied access to by the parental control.

The bill also allows an Internet access provider or a third party to charge a subscriber a fee to use the parental control features. The bill is limited to Internet access providers that offer direct Internet access to residential customers in exchange for consideration. It does not apply to libraries or educational institutions. A violation of the bill is an unfair or deceptive trade practice under the Maryland Consumer Protection Act and subject to its civil and criminal penalty provisions.

Corporations and Associations

Corporations

Corporate Records, Stock, Distributions, and Stockholder Inspection Rights

Senate Bill 626/House Bill 378 (both passed) alter various provisions of the Maryland General Corporation Law relating to recordkeeping requirements, elimination of fractional shares, redemption of stock, distributions of earnings, and stockholder inspection rights.

Location of Bylaws and Statement of Affairs: The bills eliminate the requirement that the original or a certified copy of a corporation's bylaws, including any amendments, be kept at the corporation's principal office. **Senate Bill 626/House Bill 378** also allow the annual statement of affairs of a corporation to be placed on file at any office or agency specified in the corporation's bylaws and specify the form in which the statement of affairs must be kept.

Elimination of Fractional Shares: The bills allow a corporation to eliminate a fractional interest in shares of stock by rounding up to a full share, rather than rounding off – whether up or down – to a full share.

Redemption of Shares by Open-end Investment Companies: **Senate Bill 626/House Bill 378** increase from \$500 to \$1,000 the net asset value of shares that may be redeemed by a corporation that is registered as an open-end investment company under the federal Investment Company Act of 1940. Correspondingly, if the aggregate net asset value of the shares to be redeemed should increase to an amount greater than \$1,000, rather than \$500, between the date of the notice of redemption and the actual date of redemption, the notice is of no further force and effect, and the redemption may not take place. The mandatory redemption of shares allows an open-end investment company to eliminate small investment accounts that are often beneath a minimum threshold investment and are not economical for the company to maintain.

Distributions from Net Assets: Generally, a corporation may not make a distribution or pay a dividend to stockholders if, after the distribution or payment, the corporation (1) would not be able to pay its debts as they become due in the usual course of business; or (2) the corporation's total assets would be less than the sum of its total liabilities plus the amount needed to satisfy the preferential rights of stockholders if the corporation were dissolved. **Senate Bill 626/House Bill 378** alter this prohibition by authorizing a corporation to make distributions from the corporation's net earnings for (1) the fiscal year in which the distribution is made; (2) the preceding fiscal year; or (3) the immediately preceding eight fiscal quarters, provided the corporation can pay its debts in the usual course of business. This change is intended to give Maryland corporations that have negative stockholder equity but are able to pay their debts when due more flexibility to make distributions from net earnings.

Stockholder's Right of Inspection: Under the Maryland General Corporation Law, a stockholder, holder of a voting trust certificate, or an agent of the stockholder or certificate holder has a right to inspect specified corporate documents including a corporation's bylaws,

minutes of stockholder meetings, and a corporation's annual statement of affairs. **Senate Bill 626/House Bill 378** require that a request to inspect the records be made in writing and that, within seven days after a request is presented to an officer or the resident agent of the corporation, the corporation have the requested documents available for inspection at its principal office.

Fees for Dishonored Checks

Senate Bill 68 (Ch. 16) authorizes the State Department of Assessments and Taxation to collect a fee of \$30 if a check or other negotiable instrument that is presented to the department for personal property or corporate document filings is returned for nonpayment. The fees collected are to be paid into the general fund and used to offset bank charges incurred by the State in connection with the dishonored checks.

Professional Corporations

The Maryland Professional Service Corporation Act authorizes members of specified professions to organize their practice as a professional corporation. This business form allows licensed individuals to obtain the benefits of limited liability and other advantages that only are available to corporations under federal tax law. Ownership of stock in a professional corporation is limited to individuals who hold licenses in the profession. In general, services rendered through a professional corporation must be within a single profession.

The General Assembly considered two changes to the Maryland Professional Service Corporation Act during the 2009 session. **Senate Bill 634 (Ch. 88)** alters the conditions under which a professional service corporation may render services within two or more professions. This Act authorizes a corporation to be a professional corporation for the purpose of rendering the same, similar, or related professional services within two or more professions, instead of requiring that the combination of professional purposes be authorized by the State licensing law applicable to each profession in the combination.

Maryland corporation law requires the corporate name of a professional corporation to contain the surname of one or more stockholders of the corporation unless (1) the corporation's name is approved by the appropriate licensing unit; (2) a certificate of authorization to use the name is issued by the licensing unit; and (3) the certificate is attached to the corporation's articles of incorporation. **House Bill 498 (passed)** exempts a professional corporation in which a majority of the stockholders are physicians licensed by the State Board of Physicians from this requirement.

Foreign Business Entities – Proof of Good Standing

Foreign limited liability companies, foreign limited liability partnerships, foreign limited partnerships, and foreign corporations are required to register with the State Department of Assessments and Taxation before doing any interstate, intrastate, or foreign business within Maryland. **Senate Bill 67 (passed)** requires these business entities to provide proof of good standing from the entity's home jurisdiction when registering with the department. This

requirement is intended to prevent a foreign business entity that is out of compliance with the laws of its home jurisdiction to use its registration in Maryland as an indication that it is a legitimate business, and to allow the department to verify that the business entity was lawfully formed in another jurisdiction.

Securities – Senior Investment Protection Act

Under the Maryland Securities Act, it is unlawful for a person, in connection with the offer, sale, or purchase of a security, to engage in a fraudulent or deceptive act or practice. A person who violates the Act is subject to administrative, civil, and criminal penalties, including the denial, suspension, or revocation of the person's registration to do business in the State.

Senate Bill 684/House Bill 571 (both passed) are intended to address the growing use of senior-specific certifications or professional designations that misleadingly imply expertise in advising or servicing senior investors. The bills make it unlawful for any person to use a senior or retiree credential or designation in a way that is or would be misleading in connection with (1) the offer, sale, or purchase of securities; (2) receiving any consideration from another person for advice about the value of securities or their purchase or sale; or (3) acting as a broker-dealer, agent, investment adviser, or investment adviser representative. *Senate Bill 684/House Bill 571* require the Maryland Securities Commissioner to define what constitutes a misleading use of a senior or retiree credential or designation and establish enhanced criminal penalties for a willful violation of the law. *Senate Bill 684/House Bill 571* are emergency measures that will take effect when signed by the Governor.