Part F
Courts and Civil Proceedings

Judges and Court Administration

Maryland Legal Services Corporation Fund

The Maryland Legal Services Corporation (MLSC) was established by legislation in 1982. It receives and distributes funds to nonprofit grantees that provide legal assistance to eligible clients in civil cases. MLSC's primary sources of revenue are from the Interest on Lawyer Trust Accounts (IOLTA) program and surcharges on filing fees in civil cases. As a result of historically low interest rates, IOLTA revenue has declined from $6.7 million in fiscal 2008 to a projected total of $2 million in fiscal 2010. While revenues have fallen, MLSC grantees report an increase in demand for legal services.

To help meet the shortfall, ***Senate Bill 248*** ***(passed)*** increases the maximum surcharge on civil cases filed in circuit court from $25 to $55. In the District Court, the maximum authorized surcharge increases from $5 to $8 for summary ejectment cases, and from $10 to $18 for all other civil cases.

The bill also requires the executive director of MLSC to prepare an informational budget for the corporation and to submit the budget to the General Assembly each year.

The bill contains a termination provision that would abrogate the measure at the end of June 30, 2013.

Election of Circuit Court Judges

Judges of the circuit courts are elected at the general election by the qualified voters of the respective county or Baltimore City in which the circuit court sits. This is a "contested" election, in which any challenger who meets the constitutional requirements may run. Each

judge holds the office for 15 years from the time of election, and until either a successor is elected and qualified, or the judge reaches the age of 70, whichever occurs first.

Senate Bill 833*/*House Bill 1385* *(both failed) would have proposed an amendment to the Maryland Constitution to alter the method of selection and tenure of circuit court judges. The bills would have proposed that circuit court judges be selected by gubernatorial appointment, subject to confirmation by the Senate, followed by approval or rejection by the voters in a retention election, rather than a contested election. The bills also would have decreased the term of office from 15 to 10 years following election.

District Court Mailings

The District Court currently mails a separate notice for each *nolle prosequi*, dismissal, or stet to the defendant, the defendant's attorney of record, and the charging officer. This is done even when the individuals were present in court at the time of the dismissal, *nolle prosequi*, or stet. Defendants who had more than one charge arising out of the same set of circumstances receive separate notifications for each *nolle prosequi*, dismissal, or stet.

House Bill 698* *(Ch. 160) requires a clerk of the District Court to mail notice of a dismissal, *nolle prosequi*, or stet to a defendant and the defendant's attorney of record if both the defendant and the defendant's attorney of record are not present in court when the dismissal or *nolle prosequi* is entered or the charge is stetted. The clerk is prohibited from mailing notice if the defendant's whereabouts are unknown or if either the defendant or the defendant's attorney of record is present in court when the dismissal or *nolle prosesqui* is entered or the charge is stetted.

Orphans' Court Judges in Baltimore City

House Bill 417* *(passed) proposes an amendment to the Maryland Constitution that prescribes additional qualifications for judges of the orphans' court in Baltimore City. If ratified by the voters at the November 2010 general election, an orphans' court judge in Baltimore City will be required to be a member in good standing of the Maryland Bar who is admitted to practice law in the State. The amendment continues the requirements that an orphans' court judge in Baltimore City be a citizen of the State and a resident of Baltimore City for the 12 months preceding the election.

Civil Actions and Procedures

False Claims

Under the English common law, a private individual could bring a *qui tam* action in court on behalf of the Crown. If the individual was successful, he or she would receive a part of the penalty imposed. In the United States, the practice exists as a component of some "whistleblower" statutes. ***Senate Bill 279* *(Ch. 4)*** modeled extensively on the federal False

Claims Act, implements *qui tam* provisions under State law in cases involving false or fraudulent claims against a State health plan or State health program. The Act (1) prohibits a person from making a false or fraudulent claim for payment or approval by the State or the Department of Health and Mental Hygiene (DHMH) under a State health plan or State health program; (2) authorizes the State to file a civil action against a person who makes a false health claim; (3) establishes liability for civil penalties and up to treble damages for making a false health claim; (4) permits a private citizen to file a civil action on behalf of the State against a person who has made a false health claim, but requires the action to be dismissed if the State declines to intervene; (5) requires the court to award a certain percentage of the proceeds of the action to the private citizen initiating the action; and (6) prohibits retaliatory actions by a person against an employee, contractor, or grantee for disclosing a false claim or engaging in other specified false claims-related activities.

Bankruptcy Homestead Exemption

In any federal bankruptcy proceeding under Title 11 of the U.S. Code (the federal Bankruptcy Code), an individual debtor domiciled in the State may exempt up to $5,000 worth of real property or personal property. The State has opted out of several federal bankruptcy exemptions, including exemptions for personal property and owner-occupied residential property. Thus, in a bankruptcy proceeding, an individual debtor domiciled in the State is not entitled to the federal exemptions provided by § 522(d) of the federal Bankruptcy Code. ***Senate Bill 782/House Bill 456*** ***(both passed)*** authorize an individual debtor domiciled in the State to exempt the following in a bankruptcy proceeding: (1) personal property up to $5,000; and (2) owner-occupied residential real property up to the amount permitted under the federal Bankruptcy Code. The exemption for owner-occupied residential real property ("homestead exemption") (1) may be claimed if the individual debtor and specified family members have not successfully claimed the exemption on the property in question within the eight years prior to the filing of the bankruptcy proceeding; and (2) may not be claimed by both a husband and a wife in the same bankruptcy proceeding. As of April 1, 2010, the federal homestead exemption is $21,625. The amount of the exemption is adjusted every three years.

Civil Jury Trials – Amount in Controversy

Under the English common law, parties to a civil case at law were entitled to a trial by jury regardless of the amount in controversy. Article 23 of the Declaration of Rights of Maryland preserves the right to a trial by jury in a civil case if the amount in controversy exceeds $10,000. ***Senate Bill 119*** ***(passed)*** proposes a constitutional amendment to increase, from over $10,000 to over $15,000, the amount in controversy in civil proceedings in which the right to a trial by jury may be limited by legislation. ***Senate Bill 118*** ***(passed)*** makes statutory changes to implement the proposed constitutional amendment by specifying that a party in a civil action may not request a jury trial if the amount in controversy does not exceed $15,000.

Defense of Dwelling or Place of Business – Civil Immunity, Attorney's Fees and Costs

A person who has reasonable grounds to believe that the person is being attacked may use force that is reasonably necessary for protection against the potential injury. A person may not use force that is likely to cause death or serious bodily injury unless the person reasonably believes that he or she is in danger of serious bodily injury. In evaluating claims of self-defense in the criminal context, some states, like Maryland, have adopted a standard known as the "castle doctrine." Under the castle doctrine, a person facing the danger of an attack upon his/her dwelling does not have a duty to retreat from the home to escape the danger, but instead is allowed to stand his/her ground and may kill the attacker if it is necessary to repel the attack.

***Senate Bill 411* (passed)** specifies that a person is not liable for damages for a personal injury or the death of an individual who enters the person's dwelling or place of business if (1) the person reasonably believes that force or deadly force is necessary to repel an attack by the individual; and (2) the amount and nature of the force used by the person is reasonable under the circumstances. Immunity does not attach, however, if the person is convicted of a crime of violence, second degree assault, or reckless endangerment as a result of the incident. "Person" does not include a government entity. A court may award costs and reasonable attorney's fees to a defendant who prevails in a claim of immunity established by this bill. The bill does not limit or abrogate any immunity from civil liability or defense under any other provision of the Maryland Code or at common law.

Design Professionals

Indemnity Agreements

At common law, a contract can be unenforceable if it has an illegal purpose, is contrary to public policy, or is unconscionable, among other reasons. Current statutory law establishes that construction or property maintenance contracts or agreements that purport to indemnify the promisee against property damage or bodily injury caused by or resulting from the sole negligence of the promisee or indemnitee (or the person's agents or employees) are against public policy and are void and unenforceable. The prohibition also applies to promises, agreements or understandings connected to these contracts or agreements but does not apply to insurance-related and workers' compensation contracts. ***House Bill 168* (passed)** adds architectural, engineering, inspecting, and surveying services to the list of services for which indemnity agreements are considered void and unenforceable as a matter of public policy under State law. The bill also clarifies that the prohibition on these types of indemnity agreements does not apply to a general indemnity agreement required for a surety bond.

Land Surveys

Current law provides a "statute of repose" for lawsuits related to errors in a land survey. Under the statute of repose, no cause of action accrues and a person may not seek contribution or indemnity for damages incurred for an error in a survey of land unless an action for damages is

brought within 15 years of the survey, or within 3 years after the discovery of the error, whichever occurs first. ***Senate Bill 531/House Bill 907 (both passed)*** reduce this statute of repose from 15 to 10 years after the survey, or within 3 years after the discovery of the error, whichever occurs first.

Freedoms of Speech and Press

Foreign Defamation Lawsuits

In 2008, the United Nations' Committee on Human Rights criticized "libel tourism" for its stifling effects on public interest reporting and the press. "Libel tourism" is a term used for instances when plaintiffs use foreign courts with more lenient defamation laws to sue publishers and writers. Under the Maryland Uniform Foreign Money-Judgments Recognition Act, a foreign judgment that is final and conclusive may be recognized and, therefore, enforced under certain circumstances in this State. ***Senate Bill 13/House Bill 193 (both passed)*** authorize a State court to exercise personal jurisdiction, to the extent permitted by the U.S. Constitution, over any person who obtains a judgment in a defamation proceeding outside of the United States against any person who is a State resident or has assets in the State. This authority is solely for the purpose of providing declaratory relief with respect to determining the personal liability of the person for the judgment or determining whether the judgment may not be recognized under State law, if certain conditions apply. The bills also prohibit a court from recognizing a foreign defamation judgment unless the court first determines that the defamation laws as applied in the foreign jurisdiction provide at least as much protection for freedoms of speech and the press as the federal and State constitutions. A court is also prohibited from recognizing a foreign judgment if the cause of action resulted in a defamation judgment against the provider of an interactive computer service, as defined by federal law, unless the State court before which the matter is brought determines that the judgment is in compliance with the applicable federal statute.

Testimonial Privilege

With limited exceptions, a judicial, legislative, or administrative body, or anybody that has the power to issue subpoenas, may not compel any person who is, or has been, employed by the news media in any news gathering or news disseminating capacity to disclose (1) the source of any news or information procured by the person while employed by the news media, whether or not the source has been promised confidentiality; or (2) any news or information procured by the person while employed by the news media, in the course of pursuing professional activities, for communication to the public but which is not so communicated, in whole or in part. ***House Bill 257 (Ch. 140)*** extends this testimonial privilege to students engaged in any news gathering or news disseminating capacity recognized by their schools as a scholastic activity or in conjunction with an activity sponsored, funded, managed, or supervised by school staff or faculty ("school-related activity"). The privilege applies to any news or information procured by the student in the course of pursuing the scholastic or school-related activity. As is the case with the journalist privilege under current law, if a person eligible to claim the privilege disseminates a

source of news information while pursuing a professional, scholastic, or school-related activity, the protection from compelled disclosure is not waived by the person.

Strategic Lawsuits Against Public Participation

Strategic Lawsuits Against Public Participation (SLAPP) suit laws protect individuals and groups, many with few assets, from defending costly legal challenges to their lawful exercise of such constitutionally protected rights as free speech, assembly, and the right to petition the government. Covered activities may include writing letters to the editor, circulating petitions, organizing and conducting peaceful protests, reporting unlawful activities, speaking at public meetings, and similar actions. Plaintiffs in these lawsuits, who typically have far greater resources than defendants, may allege a number of legal wrongs. The goal of these lawsuits is often not to win the case, but rather to cause the defendants to devote such significant resources to defending it that they are unable to continue the challenged activities.

Senate Bill 990/House Bill 1250 ***(both passed)*** change the statute pertaining to SLAPP suits. The bills expand the definition of a SLAPP suit to include (1) a suit that inhibits the exercise of federal or State constitutional rights of free speech (rather than the current limited application of SLAPP status to suits in which there is an intent to inhibit those rights); and (2) a suit based on communications regarding any issue of public concern (rather than the current limited application to matters within the authority of a government body).

Nuisance – Prostitution

Under the State's drug-related nuisance abatement provisions, a "nuisance" is a property that is used for specified drug-related activity. ***Senate Bill 399*** ***(passed)*** classifies real property used for prostitution as a nuisance subject to a similar abatement action under the statute authorizing abatement of a nuisance when property is used for drug offenses. For a more detailed discussion of this issue, see the subpart "Real Property" within this Part F – Courts and Civil Proceedings of this *90 Day Report.*

Family Law

Same-sex Marriage

Background

In 2004, Massachusetts became the first state to issue marriage licenses to same-sex couples after the state's highest court ruled that authorizing civil unions for same-sex couples while prohibiting them from marrying was unconstitutional. Same-sex marriage is now legal in four other states: Connecticut (2008); Iowa (2009); Vermont (2009); and New Hampshire (2010). In addition, the District of Columbia passed legislation legalizing same-sex marriage in 2009.

Under the Full Faith and Credit Clause of the U.S. Constitution, states usually are required to give full faith and credit to the public acts, records, and judicial proceedings of every other state. Therefore, Maryland recognizes foreign marriages that are validly entered into in another state. For example, Maryland recognizes a common law marriage from a foreign jurisdiction, although common law marriages are not valid in Maryland. *Henderson v. Henderson*, 199 Md. 449 (1952). However, a state is not required to apply another state's law in violation of its own legitimate public policy. See *Nevada v. Hall*, 440 U.S. 410 (1979). Similarly, the *Henderson* court stated that Maryland is not bound to give effect to marriage laws that are "repugnant to its own laws and policy." 199 Md. at 459.

Since 1973, Maryland law has provided that only a marriage between a man and a woman is valid in this State. In 2004, the Office of Attorney General informally advised that the Maryland law prohibiting same-sex marriage could create a valid public policy exception to the general rule that marriages valid where performed are valid anywhere (Advice of Counsel Letter to the Honorable Joseph. F. Vallario, Jr., Chairman, House Judiciary Committee, February 24, 2004).

However, on February 23, 2010, the Attorney General issued a formal opinion on the question of whether Maryland may recognize same-sex marriages legally performed in other jurisdictions. The Attorney General concluded that although not free of all doubt, the Court of Appeals "… is likely to respect the law of other states and recognize a same-sex marriage contracted validly in another jurisdiction." (*See* 95 Op. Att'y Gen. 3 (2010) at 54.) The opinion advised that in light of evolving State public policies that favor, at least for some purposes, domestic partnerships and same-sex intimate relationships, the court would not readily invoke the public policy exception to the general rule of recognition of out-of-state marriages. The extent to which the Attorney General's opinion will alter State agency policies and actions toward same-sex spouses who enter, visit, or reside in Maryland remains to be seen.

Legislative Activity

In response to this opinion, emergency bills, ***Senate Bill 1120*/*House Bill 1532* *(both failed)***, were introduced to prohibit a unit of State or local government from altering any policy, procedure, rule, or regulation in effect on February 22, 2010 (the day before the opinion was issued), to the extent that the alteration requires or depends on a determination of whether a marriage must be recognized by the State. The prohibition would have been effective until the issue of recognition of same-sex marriage legally performed in other jurisdictions is decided by the Court of Appeals or addressed by the General Assembly through the enactment of a law.

In addition, ***House Simple Resolution 1*** ***(failed)*** *called* for the impeachment of Attorney General Douglas F. Gansler for alleged "incompetency and willful neglect of duty," based, in part, on his rendering of the opinion regarding same-sex marriages.

A number of other bills relating to same-sex marriage were also considered by the General Assembly. ***Senate Bill 852*/*House Bill 90*** ***(both failed)*** would have established that a marriage between two individuals of the same sex that is validly entered into in another state or in a foreign country is not valid in Maryland and that marriages between individuals of the same

sex are against the public policy of the State. ***Senate Bill 1097*/*House Bill 1079* (both failed)** would have proposed an amendment to the Maryland Constitution establishing that a marriage between a man and a woman is the only domestic legal union valid or recognized in the State.

Alternatively, ***Senate Bill 582*/*House Bill 808* (both failed)** would have altered the definition of a valid marriage by specifying that a marriage between two individuals who are not otherwise prohibited from marrying is valid in Maryland. ***House Bill 1279* (failed)** would have altered the definition of a valid marriage by repealing the reference to a man and a woman and specifying instead that only a marriage between consenting adults is valid in Maryland. This bill was contingent on the passage of ***House Bill 1176* (failed)** which would have proposed an amendment to the Maryland Constitution to establish that a marriage between two consenting adults is valid in Maryland.

Child Support

Child Support Guidelines

In any proceeding to establish or modify child support, a court is required to use the child support guidelines. The basic child support obligation is established in accordance with a schedule provided in statute. There is a rebuttable presumption that the amount of child support that would result from the application of the guidelines is the correct amount of support to be awarded. The presumption may be rebutted by evidence that the application of the guidelines would be unjust or inappropriate in a particular case. The current schedule uses the combined monthly adjusted actual income of both parents and the number of children for whom support is required to determine the basic child support obligation. The maximum combined monthly income subject to the schedule is $10,000.

Maryland's child support guidelines were originally enacted in 1989 in response to federal child support mandates. The current child support schedule is based on economic estimates of child-rearing expenditures as a proportion of household consumption developed in 1988 using national data on household expenditures from the 1972-1973 Consumer Expenditure Survey conducted by the U.S. Bureau of Labor Statistics.

At least every four years, the Child Support Enforcement Administration (CSEA) of the Department of Human Resources is required to review the guidelines to ensure that their application results in appropriate child support award amounts and to report its findings and recommendations to the General Assembly. During the 2008 interim, CSEA conducted its most recent review of the guidelines and, based on that review, proposed legislation this interim to update the current child support guidelines.

***Senate Bill 252*/*House Bill 500* (both passed)** revise the schedule of basic child support obligations used to calculate child support amounts under the child support guidelines to reflect changes in child-rearing costs and income levels. The revised schedule is based on the results of a federal study on child-rearing costs that was conducted in 1990 using data from 1980-1986, updated to 2008 price levels. The schedule is also adjusted to account for Maryland's above average housing costs.

Because it has become more common for combined monthly incomes to exceed $10,000 and therefore fall outside of the guidelines, the bills also expand the current guidelines to include combined monthly incomes of up to $15,000.

The bills also repeal a provision of current law establishing that the adoption or revision of the child support guidelines may be grounds for requesting a modification of a child support award based on a material change in circumstances if the use of the guidelines would result in a change in the award of 25% or more. Instead, the bills specifically provide that the adoption or revision of the guidelines is not a material change of circumstances for the purpose of a modification of a child support award.

Child Support Enforcement

Interception of Abandoned Property: CSEA is authorized to certify to the Comptroller that a child support obligor is in arrears in paying child support if the amount of the arrearage exceeds $150 and CSEA is providing services as specified under the federal Social Security Act. This certification applies to persons receiving payments from the State, including vendors and State employees who are due travel payments and other employment-related reimbursements, and individuals who receive State tax income refunds. If CSEA makes a certification to the Comptroller, CSEA must notify the obligor that a certification has been made, and the obligor has the right to request an investigation.

When the Comptroller receives a certification regarding child support arrearages from CSEA, the Comptroller withholds the amount of the arrearage from any payment or tax refund due to the obligor and forwards the withheld amount to CSEA. The obligor must be notified of the amount paid to CSEA and that the obligor has a right to appeal the interception to the Office of Administrative Hearings. When CSEA receives an intercepted payment, it retains any portion of the payment that does not exceed the amount of the arrearage and pays to the obligor any part of the payment that exceeds the child support arrearage owed.

According to CSEA, the State Tax Refund Intercept Program has been successful since its inception in 1980 and has collected millions of dollars in child support payments. ***House Bill 963 (passed)*** expands the interception program by requiring the Comptroller to intercept abandoned property in which a child support obligor has an interest, in addition to any payments due the obligor, to defray a child support arrearage.

Maryland Uniform Interstate Family Support Act: Maryland's Uniform Interstate Family Support Act (UIFSA) governs the interstate issuance and enforcement of child support. ***House Bill 74 (Ch. 122)*** made several technical revisions to Maryland's UIFSA in order to ensure compliance with federal requirements. The most significant changes include (1) expanding the ability of the State to exercise personal jurisdiction over a nonresident individual if the individual resided with the child in the State; (2) specifying that if the Attorney General determines that a support agency is neglecting or refusing to provide services to an individual, the Attorney General is authorized to provide services directly to the individual; (3) clarifying that, in situations in which a request to determine which of multiple child support orders that have been issued for the same obligor and the same child controls, the requesting party is

responsible for providing notice to each party whose rights may be affected by this determination; (4) establishing that a party to a proceeding under UIFSA may not object to documentary evidence transmitted electronically from another state based on the means of transmission; and (5) clarifying that neither spousal immunity nor immunity based on the relationship of parent and child is available in a UIFSA proceeding.

Notification of Change of Address or Employment: Under current law, child support recipients and obligors must provide notice of a change in address or employment by sending the information to a support enforcement agency, return receipt requested. The information may also be entered online, if the agency's web site allows for such updates. Although not specified in statute, many local child support enforcement agency offices allow recipients or obligors to provide notice of a change in address or employment either in-person, by telephone, or through an electronic communication. ***House Bill 1454*** ***(passed)*** specifically authorizes child support recipients and obligors to send notice of a change in address or employment to a child support enforcement agency by filing in person at the agency and obtaining proof of filing or by calling or sending an electronic communication to the agency and obtaining proof of change.

Child Abuse and Neglect

Reporting of Risk of Sexual Abuse

Statutory requirements regarding the reporting of child abuse apply only if the reporter suspects that abuse has actually occurred. State law does not establish reporting requirements if a reporter believes that a child may be at substantial risk of abuse. ***Senate Bill 559***/***House Bill 811*** ***(both passed)*** authorize an individual to notify the local department of social services or the appropriate law enforcement agency if the individual has reason to believe that a parent, guardian, or caregiver of a child allows the child to reside with or be in the presence of an individual, other than the child's parent or guardian, who (1) is registered on the sexual offender registry based on the commission of an offense against a child; and (2) based on additional information, poses a substantial risk of sexual abuse to the child.

After confirming that the allegations in the report regarding the individual's history are true and that there is specific information that the child is at substantial risk of sexual abuse, the local department must make a thorough investigation to protect the health, safety, and welfare of any child or children who may be at substantial risk of sexual abuse.

The investigation must be conducted in conjunction with an appropriate law enforcement agency. As part of the investigation, the local department must (1) determine whether the child is safe; (2) determine whether sexual abuse of the child has occurred; (3) offer appropriate services to the family; and (4) immediately decide whether to file a Child in Need of Assistance (CINA) petition. To the extent possible, an investigation must be completed as soon as practicable, but not later than 30 days after receipt of a report.

Public Disclosure of Information

The federal Child Abuse Prevention and Treatment Act (CAPTA) requires states to adopt provisions allowing for the public disclosure of findings or information relating to a case of child abuse or neglect which resulted in a child fatality or near fatality. A 2008 report produced by the Children's Advocacy Institute and First Star compared and graded the child death and near death disclosure laws and policies of each state. The evaluation considered (1) whether a state had a public disclosure policy as mandated by CAPTA; (2) whether a state's policy was codified in statute; (3) the ease of access to the information; (4) the scope of information authorized for release; and (5) whether a state allowed public access to abuse or neglect proceedings. While the State is in compliance with CAPTA, this report gave Maryland, along with nine other states, a grade of "F." In evaluating the ease of access to information about child abuse or neglect which resulted in a child fatality or near fatality, the report criticized Maryland's policy as being "permissive with severely restrictive conditional language."

***Senate Bill 948*/*House Bill 1141* (both passed)** respond to the report's criticism of State laws by allowing greater public disclosure of information from child welfare records. Such disclosure is intended to increase public awareness and confidence that the Department of Human Resources is providing appropriate services to abused or neglected children and not using confidentially as a shield from disclosing appropriate public information regarding service delivery in child protective service cases where there is a fatality or near fatality.

The bills make it mandatory, rather than discretionary, for the director of a local department of social services or the Secretary of Human Resources to disclose, on request, specified information regarding child abuse or neglect if (1) the information is limited to actions or omissions of the local department, the Department of Human Resources, or an agent of the department; (2) the child named in a report has suffered a fatality or near fatality; and (3) the State's Attorney's Office has consulted with and advised the local director or Secretary that disclosure would not jeopardize or prejudice a related investigation or prosecution.

The bills repeal the requirement that the alleged abuser or neglector be charged criminally before the information may be disclosed, and also repeal a provision that permitted disclosure only if the local director or the Secretary determines that the disclosure is not contrary to the best interests of the child, the child's siblings, or other children in the household, family, or care of the alleged abuser or neglector.

Disclosure of Records and Reports to the Division of Parole and Probation

All records and reports concerning child abuse and neglect are confidential; however, records of child abuse or neglect must be disclosed pursuant to an order of the court or an administrative law judge and, under certain circumstances and on a written request, to the Baltimore City Health Department. Child abuse and neglect records may be disclosed on request to employees or persons of interest as specified in statute, including specified personnel of the Department of Human Resources and local departments of social services, law enforcement personnel, and individuals who are providing treatment or care to a child who is the subject of a report of child abuse or neglect. Unauthorized disclosure of child abuse or neglect records is a

misdemeanor and is subject to penalties of up to 90 days imprisonment and/or a fine of up to $500.

House Bill 1330 ***(passed)*** requires the disclosure of a report or record concerning child abuse or neglect to the Division of Parole and Probation if, as a result of a report or investigation of suspected child abuse or neglect, the local department of social services has reason to believe that an individual who lives in or has a regular presence in a child's home is registered on the sexual offender registry based on the commission of an offense against a child.

Guardianship Review Hearings

A juvenile court must hold an initial guardianship review hearing no later than 180 days after the date of an order granting guardianship to establish a permanency plan for a child. Additional review hearings must be held at least once each year after the initial review hearing until the juvenile court's jurisdiction terminates. ***House Bill 161*** ***(passed)*** is intended to bring Maryland into compliance with federal law enacted in 2008, by requiring the court to consult on the record with the child in an age-appropriate manner at least every 12 months in a guardianship review hearing.

Child Advocacy Centers

Child advocacy centers are child-focused entities that investigate, diagnose, and treat children who may have been abused or neglected. The centers include local law enforcement officers, prosecutors, and the local departments of social services, and may include child mental health service providers and other children and family service providers. The centers are intended to reduce trauma on abuse victims by eliminating the need to have the child repeat their story to multiple individuals and also reduce the amount of resources used in obtaining information.

Although not required by statute, the Department of Human Resources provides funding to 12 child advocacy centers, the majority of which are located within local departments of social services. However, the funding which is currently used to support the centers under the Victims of Crime Act is designated to be transferred to the Governor's Office of Crime Control and Prevention.

House Bill 1043 ***(passed)*** requires the Governor's Office of Crime Control and Prevention (GOCCP) to establish and sustain child advocacy centers in the State and requires that the State Victims of Crimes Fund, which provides services for victims and witnesses of crimes and delinquent acts and is administered by the State Board of Victim Services under the authority of GOCCP, be used to support the centers.

Domestic Violence

Shielding of Court Records

Court records, including those relating to a domestic violence or peace order proceeding, that are maintained by a court are presumed to be open to the public for inspection. Generally, a custodian of a court record must permit a person who appears in the custodian's office during normal business hours to inspect the record. Subject to certain exceptions, a court record that is kept in electronic form is open to inspection to the same extent that a record in paper form is open to inspection. The Maryland Judiciary's web site includes a link to "CaseSearch," which provides public Internet access to information from court records maintained by the Judiciary. Maryland District Court traffic, criminal, and civil case records and Maryland circuit court criminal and civil case records are available. Records can remain in CaseSearch indefinitely and are not removed except by a court-ordered expungement.

***Senate Bill 935*/*House Bill 1149* (both passed)** authorize a respondent to file a written request to shield all records relating to a domestic violence or peace order proceeding if the domestic violence or peace order petition was denied or dismissed at any stage of the proceeding. "Shield" is defined as removing information from public inspection. "Shielding" means (1) with respect to a record kept in a court house, removing to a separate secure area to which persons who do not have a legitimate reason for access are denied access; and (2) with respect to electronic information about a proceeding on the web site maintained by the Maryland Judiciary, removing the information from the public web site. A court record includes (1) an index, docket entry, petition, memorandum, transcription of proceedings, electronic recording, order, and judgment; and (2) any electronic information about a proceeding on the web site maintained by the Maryland Judiciary (*i.e.*, "CaseSearch").

A request for shielding may not be filed within three years after the denial or dismissal of the petition, unless the respondent files a general waiver and release of all the respondent's tort claims related to the proceedings. The court must schedule a hearing on the shielding request and provide notice of the hearing to the petitioner or the petitioner's attorney of record. After the hearing, the court must order the shielding of court records relating to domestic violence protective order or peace order proceedings if the court finds (1) that the petition was denied or dismissed at the interim, temporary, or final order stage of a protective order or peace order proceeding; (2) that a final protective order or peace order has not been previously issued in a proceeding between the petitioner and the respondent; and (3) that none of the following are pending at the time of the hearing: (i) an interim or temporary protective order or peace order issued in a proceeding between the petitioner and the respondent; or (ii) criminal charge against the respondent arising from alleged abuse against the petitioner.

The court may, for good cause, deny the shielding if the petitioner appears at the hearing and objects. In determining whether there is good cause to grant the request to shield court records, the court must balance the privacy of the respondent and potential danger of adverse consequences to the respondent against the potential risk of future harm and danger to the petitioner and the community.

The following persons are not prohibited from accessing a shielded record for a legitimate reason: (1) a law enforcement officer; (2) an attorney who represents or has represented the petitioner or the respondent in a proceeding; (3) a State's Attorney; (4) an employee of a local department of social services; or (5) a "victim services provider." A "victim services provider" means a nonprofit organization that has been authorized by the Governor's Office of Crime Control and Prevention or the Department of Human Services to have access to records of shielded peace orders or protective orders to assist victims of abuse. Other individuals may subpoena or file a motion for access to a shielded record. If the court finds that the individual has a legitimate reason for access, the court may grant access to the shielded record under the terms and conditions that the court determines. The court must balance the person's need for access with the respondent's right to privacy and the potential harm of unwarranted adverse consequences to the respondent that disclosure may create.

Within 60 days after entry of a shielding order, each custodian of court records subject to the order of shielding must advise in writing the court and the respondent of compliance with the order.

The bills also require the court, before granting, denying, or modifying a final protective order, to review all open and shielded court records involving the person eligible for relief and the respondent, including records involving criminal matters and domestic violence and peace order proceedings. However, the court's failure to review records does not affect the validity of a protective order that is issued.

Extension of Final Protective Order

In a domestic violence proceeding, if a judge finds by clear and convincing evidence that abuse has occurred, or if the respondent consents to the entry of a protective order, the judge may grant a final protective order to protect any person eligible for relief from abuse. All relief granted in a final protective order is effective for the period stated in the order, generally up to a maximum of 12 months. A final protective order may be issued for up to two years if it is issued against a respondent for an act of abuse committed within one year after the date that a prior final protective order issued against the same respondent on behalf of the same person eligible for relief expired, if the prior final protective order was issued for a period of at least six months.

Senate Bill 867/***House Bill 534*** ***(both passed)*** authorize a judge to extend the term of a final protective order for up to two years if, during the term of the protective order, the judge finds by clear and convincing evidence that the respondent named in the protective order has committed a subsequent act of abuse against a person eligible for relief named in the protective order. Prior to extending a final protective order, the judge must give notice to the respondent and all affected persons eligible for relief and hold a hearing. In determining the period of extension, the judge must consider the following factors: (1) the nature and severity of the subsequent act of abuse; (2) the history and severity of abuse in the relationship between the respondent and any person eligible for relief named in the protective order; (3) any pending criminal charges against the respondent and the type of charges; and (4) the nature and extent of the injury or risk of injury caused by the respondent.

Domestic Violence Central Repository

On July 1, 2008, the Maryland Judiciary launched a statewide database (central repository) that includes all protective orders and peace orders issued by District Court and circuit court judges and District Court commissioners. The repository was designed to provide Maryland's law enforcement agencies with real time, secure access to imaged copies of protective orders and peace orders. This enables law enforcement officers to verify the existence and content of an order at any time, particularly when responding to domestic violence calls, and to facilitate immediate arrests for violations. The central repository is also intended to enable court personnel to eliminate conflicting or simultaneous orders between District and circuit courts that share concurrent jurisdiction over domestic violence cases.

House Bill 625* *(passed) codifies the central repository by requiring the Administrative Office of the Courts to maintain a Domestic Violence Central Repository to store the following domestic violence orders issued in the State: (1) interim protective orders; (2) temporary protective orders; (3) final protective orders; (4) peace orders; and (5) peace orders issued pursuant to a juvenile cause. Peace orders issued pursuant to a juvenile cause must only be stored during the term of the peace order.

GPS Monitoring of Abusers

A judge may allow the pretrial release of a defendant charged with violating specified provisions of a temporary or final protective order on suitable bail or any other conditions that will reasonably ensure that the defendant will not flee or pose a danger to another person or the community. On entering a judgment of conviction, the court may suspend the imposition or execution of the sentence and place the defendant on probation on conditions that the court considers proper.

"Active electronic monitoring" is electronic monitoring that takes place on a 24-hour basis. The monitoring law enforcement agency receives reports in real time, that is, at the time an infraction occurs. A monitoring system that is connected to a global positioning satellite (GPS) tracking system enables the law enforcement agency to know not only when the defendant went out of range, but precisely to what location the defendant went.

House Bill 665* *(passed) and ***House Bill 1336* *(passed)*** establish GPS tracking system pilot programs in Prince George's and Washington counties, respectively. The bills require those counties to implement GPS tracking system pilot programs that authorize the court, as a condition of a defendant's pretrial release on a charge of violating a protective order, to order that the defendant be supervised by means of active electronic monitoring. The bills also establish that on entering a judgment of conviction for failing to comply with the relief granted in a protective order, if a court suspends the imposition or execution of sentence and places the defendant on probation, the court may order that the defendant be supervised by means of active electronic monitoring for the duration of the protective order.

The bills require the sheriff and the Administrative Judge for the District Court in each county to submit a report evaluating the pilot programs by September 1, 2012. The bills take effect October 1, 2010, and terminate September 30, 2012.

Child Care

Background Checks

State law requires criminal background investigations of certain individuals who work or volunteer with children. ***Senate Bill 61*** ***(Ch. 18)*** adds the following two facilities serving minors to the list of facilities whose employees are required to obtain a criminal history check: (1) a licensed home health or residential service agency authorized to provide home or community-based health services for minors; and (2) privately operated recreation centers and programs.

Additionally, the bill requires the Department of Public Safety and Correctional Services to provide a full Report of Arrests and Prosecutions (RAP) sheet, which includes arrest information, rather than the "filtered" RAP sheet provided under current law, which reports only the existence of a conviction, a probation before judgment disposition, a not criminally responsible disposition, or a pending change.

Inspections of Family Day Care Homes and Child Care Centers

Currently, Maryland State Department of Education (MSDE) regulations must, at a minimum, provide for announced inspection by the MSDE of each registered family day care home prior to the issuance of an initial registration and at least once every two years thereafter to determine whether applicable requirements, including those relating to recordkeeping are being met. MSDE must also inspect each child care center operating under a license or a letter of compliance (1) on an announced basis before issuing the license or letter of compliance and at least every two years thereafter; and (2) on an unannounced basis at least once during each 12-month period that the license or letter of compliance is in effect to determine whether safe and appropriate child care is being provided.

Senate Bill 176 ***(passed)*** alters these requirements by requiring announced inspections prior to the issuance of an initial or continuing registration, license, or letter of compliance for these entities and repealing the requirement for a subsequent inspection every two years thereafter. Eliminating the requirement for announced inspections every two years is intended to allow for more unannounced inspections, which provide a more accurate assessment of the facility on a daily basis.

Window Coverings

According to the U.S. Consumer Product Safety Commission (CPSC), almost once a month a child between the ages of 7 months and 10 years dies from window cord strangulation. In December 2009, CPSC recalled millions of window coverings, including Roman shades and roll up blinds, due to the serious risk of strangulation to young children. CPSC has indentified

window coverings with cords as one of the top five hidden hazards in the home, and recommends the use of cordless window coverings in all homes where children live or visit.

***Senate Bill 605*/*House Bill 646* (both passed)** require that all new and replacement window coverings installed in a foster home, family day care home, or child care center in the State on or after October 1, 2010, be cordless. Window coverings in place before the bill's effective date must meet minimum safety standards to be established in regulations jointly adopted by the Department of Human Resources and the Maryland State Department of Education. A person who fails to comply with the established minimum standards may be required to replace existing window coverings with cordless ones.

Human Relations

Discrimination in Places of Public Accommodation

Under State law, an owner or operator of a place of public accommodation may not refuse, withhold from, or deny to any person any of the accommodations, advantages, facilities, or privileges of the place of public accommodation because of the person's race, sex, age, color, creed, national origin, marital status, sexual orientation, or disability. A "place of public accommodation" includes (1) a hotel, motel, or other lodging establishment; (2) a facility serving food or alcoholic beverages, including facilities on the premises of a retail establishment or gasoline station; (3) entertainment, sports, or exhibition venues; and (4) a public or privately operated retail establishment offering goods, services, entertainment, recreation, or transportation.

***Senate Bill 68*/*House Bill 1501* (both passed)** require a place of public accommodation, on request, to keep closed captioning activated on any closed-captioning television receiver that is in use during regular hours in any public area. Places of public accommodation are excluded from this requirement if (1) no television receiver of any kind is available in the public area or (2) the only public television receiver available in the public area is not a closed-captioning receiver. A "closed-captioning television receiver" means a receiver of television programming that has the ability to display closed captioning.

As a result of Federal Communications Commission requirements, most televisions in use today have the ability to display closed captioning, and a high percentage of television programs have closed captions. The bills are intended to improve access for the deaf and hard of hearing to television broadcasts in public places.

Gender Identity

Thirteen states and the District of Columbia have passed laws prohibiting discrimination based upon gender identity. Since 2002, Baltimore City has had laws prohibiting discrimination based upon gender identity and expression in employment, public accommodations, education, and housing. In 2007, Montgomery County added gender identity as a covered basis under

county law prohibiting discrimination in employment, housing, cable television services, and taxicab services. Governor Martin O'Malley issued an executive order in August 2007 that included gender identity and expression as a proscribed basis for discrimination in State personnel actions.

Senate Bill 583*/*House Bill 1022 ***(both failed)*** would have prohibited discrimination based on "gender identity" in public accommodations, labor and employment, and housing throughout the State. The bills would have defined gender identity as a gender-related identity, appearance, expression, or behavior of an individual, regardless of the individual's sex at birth. The bills also would have prohibited discrimination based on gender identity and sexual orientation in State personnel actions and in the leasing of property for commercial usage.

Housing Discrimination

State law prohibits housing discrimination because of race, sex, color, religion, national origin, marital status, familial status, sexual orientation, or disability. ***Senate Bill 243*** ***(failed)*** would have added discrimination based on a person's lawful source of income to this list.

Real Property

Residential Foreclosures

Background

The State's multi-faceted approach to the foreclosure crisis has involved legislative reforms of mortgage lending laws, extensive consumer outreach efforts, and enhanced mortgage industry regulation and enforcement. Legislation passed during the 2008 and 2009 sessions (1) created the Mortgage Fraud Protection Act, Maryland's first comprehensive mortgage fraud statute; (2) tightened mortgage lending standards and required a lender to give due regard to a borrower's ability to repay a loan; (3) reformed the foreclosure process to provide homeowners with more time and additional notices before their properties are sold; and (4) required additional notices to be given to residential tenants renting properties in foreclosure. Consumer outreach efforts have included statewide public workshops to assist distressed homeowners in coordination with the Maryland Foreclosure Prevention Pro Bono Project.

Despite the impact of extensive State legislative and consumer outreach efforts, foreclosure activity in Maryland continues to rise as State residents feel the effects of rising unemployment and declining home values. According to Mortgage Bankers Association data for the fourth quarter of 2009, 10% of residential mortgage loans in Maryland were delinquent – the highest delinquency rate in 36 years. Among the states, Maryland is ranked fifteenth in mortgage delinquencies and fourteenth in foreclosure starts. The Department of Housing and Community Development (DHCD) estimates that 311,000 of the 1.3 million active residential mortgages in the State have outstanding loan balances that exceed the values of their respective homes.

Over the course of six to eight weeks in fall 2009, the Governor convened a workgroup of various stakeholders to explore options for instituting a foreclosure mediation program in Maryland. The workgroup examined the existing foreclosure process in the State and analyzed the advantages and disadvantages of other states' mediation programs.

Foreclosure Mediation

***House Bill 472* (passed)**, an Administration measure that grew out of the workgroup's efforts, seeks to prevent a homeowner from losing his or her home through foreclosure when loan modification may be available and requires the consideration of other loss mitigation options where appropriate. The bill strengthens the disclosures contained in a notice of intent to foreclose and requires the notice to be accompanied by a loss mitigation application along with instructions and other useful information. An order to docket or complaint to foreclose must be accompanied by either a final loss mitigation affidavit or a preliminary loss mitigation affidavit. If the filing concerns owner-occupied residential property and is accompanied by a final loss mitigation affidavit, the filing must also be accompanied by a request for foreclosure mediation form. If the filing is accompanied by a preliminary loss mitigation affidavit, the secured party must file a final loss mitigation affidavit at least 30 days before the date of a foreclosure sale and no earlier than 28 days after the filing of the order to docket or complaint to foreclose.

If the residential property subject to the foreclosure action is owner-occupied, the mortgagor or grantor may file with the court a request for foreclosure mediation, to be conducted by the Office of Administrative Hearings (OAH) before the foreclosure sale is scheduled. The request must be made within 15 days after service or mailing of the final loss mitigation affidavit. OAH must schedule a foreclosure mediation within 60 days after transmittal of the request from the court. For good cause, OAH may extend the time for completing a foreclosure mediation for a period not exceeding 30 days. At the foreclosure mediation, the mortgagor or grantor must be present and may be accompanied by a housing counselor and legal representation; the secured party, or a representative of the secured party who must have authority to settle the matter or be able to readily contact a person with authority to settle the matter, must also be present. OAH must file a report on the outcome of the request for a foreclosure mediation within the earlier of 5 days after the foreclosure mediation is held or the end of the 60-day period plus any extension granted. If the parties do not reach an agreement, or the 60-day period expires without an extension, the foreclosure attorney may schedule the foreclosure sale. If the residential property is owner-occupied and foreclosure mediation is requested, the foreclosure sale may be held at least 15 days after the date the foreclosure mediation is held or, if a foreclosure mediation is not held, at least 15 days after the date OAH files its report.

The bill imposes a $300 filing fee on every order to docket or complaint to foreclose a mortgage or deed of trust on residential property, and requires a borrower to pay a $50 filing fee with a request for foreclosure mediation. All filing fee revenue must be distributed to the newly created Housing Counseling and Foreclosure Mediation Fund administered by DHCD. The purposes of the fund are to (1) support nonprofit and government housing counselors and other nonprofit entities with providing legal assistance to homeowners or occupants who are trying to

avoid foreclosure or manage foreclosure proceedings, and homebuyer education, housing advice, or financial counseling for homeowners and prospective homeowners; (2) support the establishment and operation of nonprofit housing counseling entities; (3) support efforts by the Department of Labor, Licensing, and Regulation to contact and provide advice and assistance to homeowners and occupants facing financial difficulty or foreclosure, and provide advice and assistance to prospective homeowners; and (4) assist in funding the costs of foreclosure mediations provided by OAH. The bill applies prospectively and does not apply to any order to docket or complaint to foreclose on residential property filed before the effective date. The bill takes effect July 1, 2010.

Fund revenues are expected to increase by $11.1 million in fiscal 2011, $7.8 million in fiscal 2012, $5.5 million in fiscal 2013, $3.9 million in fiscal 2014, and $2.8 million in fiscal 2015. Fund expenditures in the fiscal 2011 budget include $3,980,785 to DHCD to support nonprofit and government housing counseling services; $784,387 to OAH to implement the foreclosure mediation program; $228,865 to the Judiciary to process foreclosure actions in high-impact jurisdictions; and $225,000 to the Office of the Commissioner of Financial Regulation to implement an electronic notice of intent to foreclose tracking system.

Authority to Exercise a Power of Sale

Some circuit courts have interpreted deeds of trust that omit the name of the trustee or contain the name of an entity, rather than a natural person, to be void. These courts have, at times, required foreclosing attorneys to file a petition to foreclose rather than allowing a foreclosure to proceed under a power of sale provision. ***Senate Bill 562*/*House Bill 633* *(both passed)*** clarify that the person exercising a power of sale must be an individual and that the failure of the lien instrument to properly designate an individual does not invalidate the ability to foreclose under a power of sale clause.

Tenants in Foreclosure

Chapters 614 and 615 of 2009 required notices of foreclosure to be sent to all occupants of a residential property (1) when a foreclosure action is filed; (2) no earlier than 30 days and no later than 10 days prior to the foreclosure sale; and (3) after the entry of a judgment awarding possession of the property and before any attempt to execute the writ of possession. ***Senate Bill 654*/*House Bill 711* *(both passed)*** alter the State-approved notices to occupants of residential property subject to a foreclosure proceeding to conform to the federal Protecting Tenants at Foreclosure Act of 2009. Specifically, the bills incorporate the federal definition of a "bona fide" tenant in State law; require that a 90-day notice to vacate be sent to a bona fide tenant stating the landlord's basis for terminating the tenancy; and alter the contents of notices required to be sent to occupants of residential property subject to foreclosure. The bills take effect June 1, 2010.

Consumer Disclosures

Real Estate Settlement Disclosures

Chapters 356 and 357 of 2008 created the Commission to Study the Title Insurance Industry in Maryland. The commission, among other things, was required to study affiliated business arrangements among title insurance producers, builders, title insurance companies, realtors, lenders, and other businesses involved with the settlement of real estate transactions to determine the impact of those arrangements on title insurance rates.

Senate Bill 1019*/*House Bill 1471* *(both passed) codify one of the commission's recommendations. Specifically, the bills establish that a person who participates in an "affiliated business arrangement" as defined under the federal Real Estate Settlement Procedures Act (RESPA) is not in violation of State law that otherwise prohibits affiliates from participating in a real estate settlement solely because that person participates in an affiliated business arrangement and receives consideration as a result of that participation as long as that person complies with existing RESPA disclosure requirements.

Disclosure of Right to Appeal Tax Valuation or Classification

Under existing law, a taxpayer may appeal the valuation or classification of his or her home to the State Department of Assessments and Taxation (SDAT) by submitting a written appeal within 45 days of receiving an SDAT assessment notice or by requesting a petition for review before a certain date for the next taxable year. In addition, an appeal may be filed within 60 days of purchasing a property that was transferred after January 1 but before July 1.

House Bill 6* *(passed) requires a sales contract for single-family residential real property to contain a specified notice of the purchaser's right to appeal the classification or valuation of the property by SDAT within 60 days of the sale if the property is transferred after January 1 but before July 1.

Common Ownership Communities

Condominiums, homeowners associations, and cooperative housing corporations, collectively referred to as common ownership communities (COC), were the focus of a large number of bills introduced this session.

Notice of Proposed Budget of a Homeowners Association

Under current law, a condominium's council of unit owners is required annually to prepare and submit a proposed budget to unit owners at least 30 days before its adoption at an open meeting. The proposed budget must include certain details on expenditures for reserves and capital items. ***Senate Bill 416*/*House Bill 695* *(both passed)*** place similar notice, publication, content, and adoption requirements on the board of directors of a homeowners association (HOA). The proposed budget and notice of the meeting may be provided to lot owners electronically, by posting on the HOA web page, or inclusion in an HOA newsletter.

Except for an expenditure made by an HOA to repair conditions that might constitute a danger to the health or safety of lot owners or cause significant damage to the development, any expenditure of more than 15% of the previously adopted budgeted amount must be approved by a budget amendment at a special meeting of the lot owners.

Implied Warranties on Common Areas and Common Elements

Under current law, in addition to the implied warranties on any parcel of improved real property, there is an implied warranty on the common elements of a condominium from the developer to the council of unit owners. The warranty applies to the roof, foundation, external and supporting walls, and other structural elements. The warranty provides that the developer is responsible for correcting any defect in materials or workmanship and that the common elements are within acceptable industry standards in effect when the building was constructed. Current law provides for a similar implied warranty on the common areas in a homeowners association.

For a condominium, ***Senate Bill 597*** ***(passed)*** extends the length of time of the implied warranty to the later of three years from the first transfer of title to a unit owner or two years from the date the unit owners, other than the developer and its affiliates, first elect a controlling majority of the board of directors for the council of unit owners. For an HOA, the bill extends a declarant's implied warranty on improvements to common areas to the later of two years from the first transfer of title to a lot to a member of the public or two years from the date on which the lot owners, other than the declarant and its affiliates, first elect a controlling majority of the governing body of the HOA.

Senate Bill 597 also requires certain common elements in a residential condominium, such as roofs, exterior walls, and foundations, to be designated in the declaration as "common elements" rather than as parts of the "units" to ensure that the implied warranties apply to those common elements. The bill prohibits any amendment to the declaration's description and designation of the common elements until after the date the unit owners, other than the developer and its affiliates, first elect a controlling majority of the board of directors for the council of unit owners. This bill applies to a condominium or homeowners association for which a declaration, bylaws, and plat are recorded in the local land records on or after October 1, 2010.

Fidelity Insurance

Chapters 77 and 78 of 2009 require the governing body of any COC to purchase fidelity insurance to provide indemnification against losses resulting from criminal misconduct or fraudulent acts or omissions of the COC's officers, directors, management companies, or associated agents or employees. ***Senate Bill 800*** ***(passed)*** exempts very small COCs from the requirement of purchasing fidelity insurance. If a COC has four or fewer members, units, or lot owners and less than $2,500 of gross common charges, gross annual assessment, or gross annual fees for a three-month period, ***Senate Bill 800*** provides that the COC is not required to purchase or maintain fidelity insurance coverage.

House Bill 702 ***(passed)*** authorizes the governing body of a COC to satisfy the fidelity insurance requirement by purchasing a fidelity bond. Both fidelity insurance and fidelity bonds

protect a COC from the misconduct and fraudulent activities of an officer, director, or employee. In general, as compared to an insurance policy, a fidelity bond may provide advantages such as broader coverage, no required deductible, lower cost, and simpler administration.

Cancellation of Condominium Property Insurance

A condominium must maintain property and casualty insurance on its common elements and areas. The insurer may not cancel that insurance until 30 days after notice has been mailed to the council of unit owners and any unit owner or mortgagee issued a certificate of insurance. ***House Bill 1514*** ***(passed)*** updates this cancellation requirement to conform to the statutory cancellation requirement for all other forms of commercial insurance. Generally, for reasons other than nonpayment of the premium, the bill requires the insurer to provide written notice 45 days before cancelling the policy. For nonpayment of a premium, written notice must be provided 10 days before the date of cancellation.

Condominiums and Homeowners Associations and Priority of Liens

A significant concern for condominiums and HOAs in these times of financial difficulty is the payment of the required monthly assessment by a unit owner or lot owner. ***House Bill 842*** ***(failed)*** would have provided that in the event of foreclosure of an encumbrance recorded before a lien for unpaid assessments, the condominium or HOA lien would have priority in an amount of up to four months of unpaid assessments and up to $500 of related interest and fees. In addition, ***House Bill 842*** would have required a governing body of a condominium to impose a security deposit on each unit owner in the amount of two months of common assessments and related charges.

Landlord-Tenant Law

Victims of Domestic Violence or Sexual Assault

Senate Bill 554/House Bill 1382 ***(both passed)*** provide certain protections for a residential tenant or a legal occupant who is a victim of domestic violence or sexual assault, including the ability to terminate a lease or change the locks of the residence. A legal occupant is defined as an individual who resides on the premises with the actual knowledge and permission of the landlord.

In order to terminate the lease, the tenant or legal occupant must provide the landlord with written notice of (1) an intent to vacate the premises; and (2) the individual's status as a victim of domestic violence or sexual assault. A copy of an enforceable final protective order or peace order issued for the benefit of the tenant or legal occupant is considered notice of victim status. Once the tenant or legal occupant provides written notice to terminate the lease, the tenant has 30 days to vacate. The tenant is responsible for the rent for the 30-day period.

If the protective order or peace order requires the offender to either refrain from entering or vacate the residence of the tenant or legal occupant, the tenant or legal occupant may request, in writing, that the landlord change the locks of the premises. The landlord has until the close of

the next business day after receiving the request to change the locks. If the landlord does not change the locks within that time period, the tenant may have a locksmith change the locks and shall give the landlord a duplicate key. The landlord who changes the locks may charge the tenant a reasonable fee and withhold the fee from the security deposit or charge the fee as additional rent if the tenant fails to pay.

Abatement of Nuisance on Property

Background

Under the State's drug-related nuisance abatement statute, a "nuisance" is a property that is used for certain illegal drug activities. A community association, State's Attorney, or city or county attorney or solicitor is authorized to bring an action to abate the nuisance when residential or commercial property is being used for such activities.

Generally, in a drug-related nuisance abatement case, the court may order a tenant with knowledge of the nuisance to vacate the property within 72 hours or an owner or operator with knowledge to submit a plan of correction for court approval to ensure that the property will not again be used for a nuisance. If an owner fails to comply with a drug-related nuisance abatement order, the court may issue a contempt order or order any other relief. In addition, the court may order the property to be sold, at the owner's expense, or demolished under certain circumstances.

Prostitution-related Nuisance

Because prostitution can have similar harmful effects on neighborhoods, ***Senate Bill 399 (passed)*** expands the scope of a nuisance abatement action to cover the use of real property for prostitution. If an owner, including an owner-occupant, fails to comply with an order to vacate or submit a plan of correction relating to the use of a property for prostitution, the court, after a hearing, may issue a contempt order. The court may not, in a prostitution-related abatement action, order the property sold or demolished, or award court costs and attorneys fees to a community association that is a prevailing party.

Real Property – Wrongful Detainer

In response to recent court cases, ***Senate Bill 443*/*House Bill 605* (both passed)** clarify that a wrongful detainer action is for use by persons other than landlords claiming possession of real property and that certain provisions of law governing an action for wrongful detainer do not apply if (1) the person in actual possession has been granted possession under a court order; (2) a remedy is available under existing landlord-tenant laws; or (3) any other exclusive means to recover possession is provided by statute or rule. To further clarify its application, the bills transfer the wrongful detainer statute from Title 8 (Landlord-Tenant) of the Real Property Article to Title 14 (Miscellaneous Rules).

Mobile Home Parks

Plans for Dislocated Residents

Under Chapters 621 and 622 of 2008, a mobile home park owner in St. Mary's County who applies for a change in land use of the park is required to submit a relocation plan for the residents who will be dislocated as a result of the change. An owner who fails to submit a relocation plan or does not comply with its terms is in default of the plan and the application for change of land will not be approved until the owner submits and complies with the plan. The plan must include a list of all residents and their contact information, a relocation timeline, a list of mobile home parks with vacancies, and a budget reflecting an amount of money for each dislocated resident to cover costs of moving the mobile home.

***Senate Bill 235*/*House Bill 103* (both passed)** expand statewide the requirement for a resident relocation plan. If the park operator elects to close a park with more than 38 sites, the park owner must pay relocation assistance in an amount equal to 10 months' rent, excluding taxes and utilities, to each displaced household. The bills provide that a mobile home park owner who undertakes a reasonable good faith inquiry to obtain the information for inclusion in the relocation plan does not incur liability and may not be stopped from obtaining possession of the premises if the information in the plan is not accurate. Further, the bills provide a timetable for paying the relocation assistance and authorize local jurisdictions to provide additional relocation assistance.

Annual Payment of Rent

Under current law, the term of payment stipulated in a mobile home park rental agreement may be monthly, quarterly, semiannually, or annually. ***House Bill 242* (passed)** prohibits a mobile home park rental agreement from requiring an annual payment of rent. However, a prospective mobile home park resident may request, and a park owner may agree to, an annual payment of rent for a site.

Affordable Housing Land Trusts

***Senate Bill 780*/*House Bill 869* (both passed)** establish the Affordable Housing Land Trust Act as a new means to create and maintain permanently affordable housing in the State. An affordable housing land trust is a nonprofit or governmental entity that provides affordable housing to low- and moderate-income families through an affordable housing land trust agreement. The bills (1) establish the powers and duties of an affordable housing land trust; (2) specify the contents of an affordable housing land trust agreement; (3) require an affordable housing land trust to register with the State Department of Assessments and Taxation; (4) exempt an affordable housing land trust from certain time limits relating to the possibility of reverter and right of entry, and from provisions governing the creation and redemption of reversionary interests; and (5) specify that an affordable housing land trust agreement is not a ground lease and is not subject to existing provisions of law applicable to ground leases.

Private Transfer Fees

Private transfer fees are similar to ground rents and are typically created as 99-year deed restrictions. The covenant is typically recorded against the title to the property and requires the buyer, and all future buyers, to pay the original seller a fee of up to 1% of the purchase price upon each transfer of the property. ***Senate Bill 666*/*House Bill 1298*** ***(both passed)*** prohibit a person who conveys a fee simple interest in real property from recording a covenant against the title to the real property for the payment of a transfer fee. The emergency bills establish that a covenant that requires the payment of a transfer fee on the conveyance of a fee simple interest in real property is void.

Installation and Use of Clotheslines on Residential Property

Senate Bill 224 ***(passed)*** prohibits any contract, deed, covenant, lease, or other similar residential governing document from banning the installation or use of clotheslines on the property of a homeowner or tenant. The bill applies to any single-family residential dwelling or townhome, including condominiums, homeowners associations, and housing cooperatives. The bill's provisions do not apply, however, to a property with more than four dwelling units or to a restriction concerning the installation or use of clotheslines on specified historic properties. The bill, however, permits reasonable restrictions relating to aesthetic considerations and the placement of clotheslines for safety purposes in the event of emergencies.

Local Laws – Prince George's County

Home Builders – Community Amenities

House Bill 642 ***(passed)*** requires, in Prince George's County, that a contract of sale for residential property that includes an agreement by the home builder to build a community amenity must include a disclosure statement identifying the amenity and specifying when the amenity will be completed. Any advertisement for the development must also include the same information. A "community amenity" includes a country club, golf course, health club, park, swimming pool, tennis court, and walking trail. The required disclosure statement must be dated and signed by the purchaser and home builder and included with the sales contract.

If a purchaser does not receive the disclosure statement on or before executing the sales contract, the purchaser has an unconditional right, after providing written notice to the home builder, to rescind the sales contract at any time before or within five days of receipt of the disclosure statement. Additionally, a home builder who fails to make a community amenity available as specified in the sales contract may be liable for breach of contract.

Community Association Property Management Services

House Bill 566 ***(passed)*** requires the Prince George's County Office of Community Relations to establish a community association managers registry. Any entity that provides community association management services for a condominium homeowners association, or

cooperative housing corporation in the county must register and renew annually by January 31 of each year and pay a fee of $100. Community association management services include (1) managing and maintaining community-owned properties such as pools, golf courses, or community centers; (2) collecting monthly assessments; (3) preparing budgets and financial statements; (4) negotiating contracts; and (5) executing the decisions of the governing body.

Estates and Trusts

Maryland General and Limited Power of Attorney Act

A power of attorney is an authorization for one person (the agent) to act on behalf of another (the principal). In 2006, the National Conference of Commissioners on Uniform State Laws promulgated a Uniform Power of Attorney Act. ***Senate Bill 309*/*House Bill 659* *(both passed)*** incorporate existing provisions governing powers of attorney, with minor alterations, and provisions derived from the uniform act into a new Maryland General and Limited Power of Attorney Act.

The bills provide two statutory form powers of attorney and an optional form for use by an agent to certify facts concerning a power of attorney. One of the statutory forms (the "Maryland Statutory Form Personal Financial Power of Attorney") provides an agent with broad authority as specified on the form, while the other statutory form (the "Maryland Statutory Form Limited Power of Attorney") allows a principal to specifically indicate which of the various powers are given to an agent.

The bills specify that a principal may delegate to one or more agents the authority to do any act specified in the statutory forms, though the acts specified in the statutory forms may not be deemed to invalidate or limit the validity of other authorized acts that a principal may delegate to an agent.

Other provisions of the bills address:

- requirements for proper execution of a power of attorney, including acknowledgement before a notary public and attestation by two or more adult witnesses;
- when a power of attorney becomes effective, and, if effective on the occurrence of a future event or contingency or the principal's incapacity, the determination of the occurrence of the event or contingency or the principal's incapacity;
- validity and enforceability of a power of attorney;
- required acceptance of a statutory form power of attorney, and sanctions applicable to a refusal of an acknowledged statutory form power of attorney;
- when a power of attorney terminates and when an agent's authority terminates;

- standards applicable to an agent's actions and other requirements of an agent; liability of an agent; and disclosure by an agent of receipts, disbursements, or transactions conducted on behalf of the principal on request by specified persons or entities, including the principal, or by order of a court;

- persons that may petition a court to construe a power of attorney or review an agent's conduct, and grant appropriate relief; and the principal's ability to have the petition dismissed, unless the court finds the principal lacks capacity to revoke the agent's authority or the power of attorney;

- entitlement of an agent to reimbursement of expenses reasonably incurred on behalf of the principal and, if the principal indicates in the power of attorney that the agent is entitled to compensation, authorization of the agent to receive compensation based on what is reasonable under the circumstances or on another basis as set forth in the power of attorney;

The bills do not supersede other laws applicable to financial institutions or other entities. To the extent those other laws are inconsistent with the bills, the other laws prevail.

Wills and Trusts

Maryland International Wills Act

The Uniform International Wills Act (UIWA) was drafted, and approved and recommended for enactment in all states by the National Conference of Commissioners on Uniform State Laws in 1977. ***Senate Bill 340*/*House Bill 448* *(Chs. 63 and 64)*** establish the Maryland International Wills Act, a slightly modified version of the UIWA, and are intended to eliminate the need to execute multiple wills for different countries and reduce the costs and problems associated with having a Maryland will accepted by foreign courts.

Chapters 63 and 64 establish requirements and procedures for a will to be made in the form of an international will, including:

- a requirement that the will be made in writing and by hand or any other means, although it may be in any language;

- requirements for the execution of an international will, including that at least two witnesses and a person authorized to act in connection with international wills attest the will by signing their names in the presence of the person making the will;

- requirements for the placement of signatures on a will and numbering of multiple sheets in a will, although failure to comply with these provisions does not affect the validity of a will that complies with the requirements for execution;

- a requirement that a certificate be attached to the will (for which a statutory form is provided), signed by an authorized person, which, in the absence of evidence to the

contrary, is conclusive of the formal validity of the will as an international will, although the absence or irregularity of a certificate does not affect the formal validity of a will.

An "authorized person" or "person authorized to act in connection with international wills" is a person, including a member of the diplomatic and consular service of the United States designated by Foreign Service Regulations, who is admitted, and currently licensed, to practice law before the courts in this State, or by the laws of the United States is empowered to supervise the execution of international wills.

Construction of References in Will or Trust to Federal Estate Tax or Generation-skipping Transfer Tax

Under the Economic Growth and Tax Relief Reconciliation Act of 2001, the federal estate tax does not apply to the estates of deceased persons dying after December 31, 2009, and the generation-skipping transfer tax does not apply to generation-skipping transfers after December 31, 2009. The Act itself will terminate December 31, 2010, at which point the federal estate and generation-skipping transfer tax laws as they existed prior to the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001 will apply. Because of the one-year suspension of the federal estate tax and generation-skipping transfer tax, references to those taxes in wills and trust documents of persons dying in 2010 could result in unintended distributions from an estate or trust.

***Senate Bill 337* (Ch. 62)/*House Bill 449* (passed)**, both emergency bills, require that specified words, phrases, and provisions (generally relating to or based upon the federal estate tax or generation-skipping transfer tax laws) that are included in specified wills or trusts (those of deceased persons who die after December 31, 2009, and before January 1, 2011) be deemed to refer to the federal estate tax or generation-skipping transfer tax laws as applied to estates of persons dying or generation-skipping transfers made on December 31, 2009. The Act establishes exceptions and a provision limiting its applicability if a federal estate tax or generation-skipping transfer tax becomes applicable before January 1, 2011. The Act also allows the personal representative or any interested person under a will or other instrument to bring a proceeding to determine whether references to the federal estate tax and generation-skipping transfer tax laws should be construed with respect to the law as it existed after December 31, 2009.

Property Held as Tenants by the Entireties – Transfer to Trust

Property jointly held by a husband and wife as tenants by the entirety is protected from the claims of their separate creditors. However, the legal protection of owning property as tenants by the entirety is lost when they transfer the property to a trustee of a trust.

***Senate Bill 25* (passed)** establishes that property held by a husband and wife as tenants by the entirety that is conveyed to a trustee has the same immunity from the claims of their separate creditors as it would if they had continued to hold the property or its proceeds as tenants by the entirety as long as the husband and wife remain married, the property or its proceeds continues to be held in trust, and both the husband and wife are beneficiaries of the trust. After a conveyance to a trustee, the property transferred shall no longer be held by the husband and wife as tenants

by the entirety. After the death of the first of the husband and wife to die, all property held in trust that was immune from the claims of their separate creditors immediately prior to the individual's death continues to have the same immunity from the claims of the decedent's separate creditors as would have existed if the husband and wife had continued to hold the property conveyed in trust, or its proceeds, as tenants by the entirety. To the extent that the surviving spouse remains a beneficiary of the trust, the property shall be subject to the claims of the separate creditors of the surviving spouse.

The immunity from the claims of separate creditors may be waived as to any specific creditor or any specifically described trust property by (1) the express provisions of a trust instrument; or (2) the written consent of both the husband and the wife.

With specified exceptions, immunity from the claims of separate creditors is waived if a trustee executes and delivers a financial statement for the trust that fails to disclose the requested identity of property held in trust that is immune from the claims of separate creditors. This waiver is effective only as to the person to whom the financial statement is delivered by the trustee, as to the particular trust property held in trust for which the immunity from the claims of separate creditors is insufficiently disclosed on the financial statement, and as to the transaction for which the disclosure was sought.

In any dispute relating to the immunity of trust property from the claims of a separate creditor of a husband or wife, the trustee has the burden of proving the immunity of the trust property from the creditor's claims.

The bill also exempts the following items from execution on a judgment and from the claims of creditors in bankruptcy: (1) the debtor's beneficial interest in any trust property that is immune from the claims of the debtor's creditors under the bill; and (2) with respect to claims by a separate creditor of a husband or wife, trust property that is immune from the claims of the separate creditors of the husband or wife under the bill.

Effect of Deed Granting Property from Trust or Estate

In Maryland, because a trust or probate estate is a fiduciary relationship between one or more fiduciaries and the person to whom a fiduciary duty is owed, it cannot be the transferor or transferee of property. Instead, the trustee(s) or personal representative(s) for the trust or estate, respectively, are the owners of the property subject to a trust or in an estate. Problems, then, may be created when a trust or estate is inadvertently designated in a deed as the grantor of property. ***Senate Bill 341*/*House Bill 337* *(both passed)*** establish that a grant of property by deed from an estate of a deceased person or from a trust has the same effect as if the person granted the property had received the property from the personal representative(s) for the estate or trustee(s) acting for the trust, respectively, on the effective date of the deed. The bills apply to any grant of property by a trust or estate contained in a deed existing on or after October 1, 2010.

Estates

Extension of Time for Taking Elective Share

Instead of property left to a surviving spouse by will, the surviving spouse may elect to take a specified share (one-third if there is a surviving lineal descendant of the deceased spouse or one-half if there is no surviving lineal descendant) of the net estate of the deceased spouse. Under current law, the surviving spouse must make the election within the later of nine months after the date of the decedent's death or six months after the first appointment of a personal representative under a will. The orphans' court may extend the time for election, *before its expiration*, for a period not to exceed three months at a time, upon notice given to the personal representative and for good cause shown. The Maryland Rules similarly indicate that, within the period for making an election, the surviving spouse may file with the court a petition for an extension of time and the court may grant extensions not to exceed three months at a time, provided each extension is granted before the expiration of the period originally prescribed or extended by a previous order. ***Senate Bill 338* (passed)**/***House Bill 329* (Ch. 146)** repeal statutory language specifying that an extension of the time for a surviving spouse to elect to take an elective share of the deceased spouse's estate must be authorized by the court prior to the expiration of the time period for making the election. The Act instead specifies only that the surviving spouse must file a petition (with a copy given to the personal representative) with the orphans' court for an extension of time within the period for making an election.

Unlawfully Obtaining Property of Vulnerable Adult or Elderly Individual

***House Bill 327* (passed)** establishes that a person who is convicted of unlawfully obtaining property from a vulnerable adult or individual who is at least age 68 is disqualified, to the extent of the person's failure to restore the property or its value, from inheriting, taking, enjoying, receiving, or otherwise benefiting from the estate, insurance proceeds, or property of the victim of the offense, whether by operation of law or pursuant to a legal document executed or entered into by the victim before the person was convicted. The bill also (1) establishes that if a person is disqualified from benefiting from the estate or other property, the person is treated as if the person predeceased the victim; and (2) requires that if the person receives a distribution in violation of law, the person must make restitution to the person who should have received the distribution. A fiduciary or other person who distributes property in good faith and without actual knowledge of a conviction is not personally liable for the distribution. The bill applies only prospectively.

Guardianships

Maryland Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

The circuit courts in Maryland have exclusive jurisdiction over guardianship and protective proceedings for disabled persons. A guardian is appointed for a disabled person if the court determines (1) the person is unable to manage the person's property and affairs effectively,

for any number of specified reasons, and has or may be entitled to property or benefits that require proper management; or (2) based on clear and convincing evidence, the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person because of any mental disability, disease, habitual drunkenness, or drug addiction, and no less restrictive form of intervention is available that is consistent with the person's welfare or safety.

Senate Bill 231/House Bill 1275 ***(both passed)*** establish the Maryland Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. The bills are a modified version of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act drafted, approved, and recommended in 2007 for enactment in all states by the National Conference of Commissioners on Uniform State Laws.

The bills address jurisdiction of Maryland courts over adult guardianship and protective proceedings, in relation to courts in other states, and related issues. The bills contain various provisions concerning:

- circumstances under which a Maryland court has jurisdiction to appoint a guardian or issue a protective order appointing a conservator or guardian of property to administer/manage the property of an adult, in relation to courts in other states; the duration of jurisdiction once the court has appointed a guardian or issued a protective order; the ability of a Maryland court to decline jurisdiction if it determines a court of another state is a more appropriate forum; and factors to be considered in determining whether the court is an appropriate forum;

- options available to a court if it determines it acquired jurisdiction because of unjustifiable conduct, including the assessment of specified fees, costs, and expenses against the party that engaged in unjustifiable conduct;

- rules applicable when a petition for the appointment of a guardian or issuance of a protective order is filed both in Maryland and in another state;

- communication and cooperation between a Maryland court and a court in another state regarding a guardianship or protective proceeding;

- testimony of witnesses in another state;

- notice requirements applicable to the filing of petitions for appointment of a guardian or issuance of a protective order;

- transfer of a guardianship or conservatorship to another state; and

- registration of a guardianship or protective order issued in another state, in a court in Maryland.

The bills apply to guardianship and protective proceedings beginning on or after October 1, 2010.

Payment of Expenses After Death of Ward

Guardians of minors or disabled persons who die are treated differently than guardians of minors or disabled persons who reach majority or cease to be disabled, respectively, with regard to unpaid claims and expenses at the end of the guardianship. Because of the statutory order of payment of claims against an estate with insufficient assets to pay all claims in full, commissions or other expenses of a guardian of a minor or disabled person who dies may go unpaid if there are limited assets in the estate. ***Senate Bill 339*/*House Bill 328* *(both passed)*** require the guardian of the property of a minor or disabled person, on the death of the minor or disabled person, to pay from the estate all commissions, fees, and expenses shown on the court-approved final guardianship account before delivering the balance of the estate to an appointed personal representative or other person entitled to it.

Qualifications of Baltimore City Orphans' Court Judges

Under the Maryland Constitution, each county and Baltimore City elects three judges to the orphans' court of their respective jurisdictions (with the exception of Montgomery and Harford counties where a circuit court judge sits as the orphans' court). The orphans' court judges must be citizens of the State and residents, for the preceding 12 months, in the city or county in which they are elected. Orphans' court judges are not required to be attorneys or members of the State bar.

House Bill 417* *(passed) proposes a constitutional amendment, prescribing additional qualifications for judges of the orphans' court in Baltimore City. If ratified by the voters of the State at the November 2010 general election, an orphans' court judge in Baltimore City will be required to be a member in good standing of the Maryland Bar who is admitted to practice law in the State. The amendment continues the requirements that an orphans' court judge in Baltimore City be a citizen of the State and a resident of Baltimore City for the 12 months preceding the election.