Part I
Financial Institutions, Commercial Law, and Corporations

Financial Institutions

Nondepository Trust Companies and Savings Banks – Suspension and Conversion

The Office of the Commissioner of Financial Regulation is responsible for regulating and supervising State-chartered banks, credit unions, and trust companies. Supervision includes periodic on-site evaluations as well as off-site monitoring programs. The office monitors and evaluates State-chartered banks, including examining and evaluating their capital, asset quality, management, earnings and liquidity position, sensitivity to market risk, as well as their internal controls and risk management systems.

House Bill 1136 ***(passed)*** grants the Office of the Commissioner of Financial Regulation the express authority to take immediate actions where emergency conditions threaten the continued safe and sound operations of a nondepository trust company. The bill requires a nondepository trust company to pledge securities or a surety bond of up to $3,000,000 to defray the costs of a potential receivership. In addition, the bill authorizes the Commissioner of Financial Regulation to appoint any agents, counsel, employees, and assistants and to retain any officers or employees needed to effectively undertake a receivership.

In response to a growing interest among federal savings banks to convert to a Maryland-chartered savings bank, ***House Bill 1136*** also establishes a streamlined process for converting from a federal savings bank to a Maryland-chartered savings bank and sets fees for the conversion.

Credit Unions and Depository Institutions – Savings Raffles

Senate Bill 886/***House Bill 990*** ***(both passed)*** authorize credit unions and depository institutions to conduct a savings promotion raffle that gives consumers a chance to win cash prizes for making deposits in a specified bank account, subject to the approval of the Commissioner of Financial Regulation and the prior authorization of specified federal regulators.

Mortgage Lender Licenses

Under Chapters 7 and 8 of 2008, an applicant for a new mortgage lender's license or for renewal of a current license must meet specified minimum net worth requirements completed in accordance with generally accepted accounting principles (GAAP). However, using GAAP to compute net worth can be costly, particularly for smaller firms that simply broker and do not make mortgage loans. ***Senate Bill 787*** ***(Ch. 106)*** allows a mortgage lender to comply with the minimum net worth requirements by using an alternative basis of accounting approved by the Commissioner of Financial Regulation.

Employees of the Office of the Commissioner of Financial Regulation – Background Checks

House Bill 1152 ***(Ch. 167)*** requires the Commissioner of Financial Regulation to conduct criminal history record checks on applicants for employment with the commissioner and authorizes the commissioner to conduct record checks of existing employees.

Redeposit of Local Government Funds into Insured Accounts

Senate Bill 777**/*****House Bill 844*** ***(Chs. 102 and 103)*** authorize local governments to deposit unexpended or surplus money in any federally insured bank or savings and loan association in excess of the Federal Deposit Insurance Corporation (FDIC) maximum insurance coverage limit without the State financial institution pledging collateral to secure the deposits under specified conditions. The unexpended or surplus money must be initially placed for deposit with a State financial institution that is selected by the local government to arrange for the redeposit of the money through a deposit placement program.

Commercial Law – Credit Regulation

Mortgage Lending

Reverse Mortgage Loans

Although Maryland passed comprehensive residential mortgage reform laws during the 2008 and 2009 sessions, the State does not have any consumer protections specifically governing reverse mortgage loans. ***Senate Bill 878*****/*****House Bill 799*** ***(both passed)*** prohibit a lender or an arranger of credit from requiring a borrower to purchase an annuity, a long-term care insurance policy, or other financial or insurance product as a condition of receiving a reverse mortgage loan. The bills also prohibit a lender or an arranger of credit from referring a borrower to a third-party to purchase an annuity or any other financial or insurance product before the later of the loan closing date or the expiration of the borrower's right to rescind the loan agreement. On receiving a prospective borrower's application for a reverse mortgage loan, a lender or an arranger of credit must provide the prospective borrower with a checklist advising the borrower to discuss certain issues with a housing counselor.

For a more detailed discussion of these bills, see the subpart "Consumer Protection" within this part.

Homebuyer Education or Counseling

House Bill 1399 ***(passed)*** requires a lender that makes a first mortgage loan secured by owner-occupied residential property in the State to provide a borrower with a written recommendation that the borrower complete homebuyer education or housing counseling. The bill prohibits a lender from closing on a mortgage loan unless the lender has provided the borrower with the notice required under the bill. The bill also repeals provisions of law that require a lender or credit grantor to provide a borrower with information on homebuyer education or counseling in connection with specified high-interest or high-fee mortgage loans.

Mortgage Broker Fees

Senate Bill 943**/*****House Bill 1254*** ***(Chs. 111 and 112)*** authorize a mortgage broker to charge a borrower for the actual cost of specified goods and services obtained by the mortgage broker at the written request of the borrower. Specifically, the Acts allow a mortgage broker to recover the costs of obtaining a condominium document or subordination agreement document at the written request of the borrower. A mortgage broker also may charge a borrower for third-party fees paid by the mortgage broker for goods or services that are approved by the Commissioner of Financial Regulation and required to complete the loan application process.

Consumer Credit Regulation

Credit Services Businesses – Fees

Under Maryland law, the maximum permissible interest rate a person may charge on a loan is 33%. However, the Office of the Commissioner of Financial Regulation received complaints that certain companies in the business of making short-term, high-interest loans employed a new business model to circumvent the State's interest rate limit. Under this model, a lender would transfer its loans through a licensed credit services business. Although the lender would charge a permissible interest rate, the credit services business also would charge the consumer a fee for arranging the extension of credit. When combined, the interest and fee greatly exceed State interest limits. ***House Bill 79*** ***(passed)*** addresses this practice by prohibiting a credit services business from charging or receiving a fee in connection with a loan that, when combined with an interest charge, exceeds the interest rate permitted by law.

Automobile Loan Financing

Senate Bill 898/***House Bill 1076*** ***(both passed)*** authorize a balloon payment on an installment automobile loan that exceeds $30,000. The bills give Maryland automobile dealers the ability to offer the same financing products to customers that are available in several surrounding jurisdictions, including Virginia, Delaware, and the District of Columbia. Specifically, car dealers in these jurisdictions may offer a hybrid form of automobile financing that combines a traditional automobile loan with elements of a lease agreement. At the end of the loan term, the consumer may return the car to the dealer or elect to purchase the automobile at the agreed on price – the "balloon" amount due on the loan.

Credit Card Blacklisting Act

Recent reports indicate that, in some cases, credit card companies are making credit determinations based on where a cardholder shops or which mortgage lender a cardholder uses. ***Senate Bill 523*** ***(passed)*** establishes the Credit Card Blacklisting Act, which prohibits a consumer credit provider from using such criteria to trigger a default under, or alter the terms of, a consumer credit contract without the consumer's prior written consent.

A more detailed discussion of this bill may be found under the subpart "Consumer Protection" within this part.

Commercial Law – Consumer Protection

Refund Anticipation Loans and Checks

Refund anticipation loans, also called tax refund loans, are short-term, high-cost loans secured by a taxpayer's anticipated income tax refund. The loans are marketed by, and facilitated through, income tax preparers. Some income tax preparers also offer refund anticipation checks, a nonloan alternative to a refund anticipation loan. A refund anticipation check is a payment device, such as a paper check or prepaid debit card, issued by a bank that is authorized to receive the taxpayer's income tax refund electronically from the Internal Revenue Service.

A 2010 report of the National Consumer Law Center found that refund anticipation loans cost taxpayers an estimated $738 million in loan fees nationwide in 2008. The report also found that refund anticipation checks cost taxpayers an estimated $360 million during that same period.

House Bill 1206 ***(passed)*** establishes certain consumer protections in connection with refund anticipation loans and refund anticipation checks. The bill requires that a person who facilitates a refund anticipation loan or refund anticipation check provide the consumer with certain written and oral disclosures. In the case of a refund anticipation loan, the required disclosures include the amount of any loan fee; a statement that the product is a one- to two-week loan; and a notice that the consumer is liable for the full amount of the loan, even if the consumer's tax refund is less than expected. The required disclosures in connection with a refund anticipation check include a statement that the consumer may receive a tax refund in the same amount of time without paying any fee if the consumer's tax return is filed electronically and the refund is deposited directly into the consumer's bank account.

Beyond the required disclosures, the bill establishes certain restrictions on refund anticipation loans and checks. Specifically, the bill prohibits a facilitator from requiring a consumer to take out a refund anticipation loan as a condition to obtaining tax preparation services, charging any fee other than the fee imposed by the lender, or arranging for any third party to charge a fee in connection with a refund anticipation loan or check.

Telephone Bills – Third-party Billing Charges

Senate Bill 643/House Bill 880 (Chs. 89 and 90) address the practice of "cramming," in which a third party adds a charge to a telephone customer's bill for a service the customer did not order, agree to, or use. Although third-party billing is used for legitimate charges, it has been widely used for fraudulent charges as well. In many cases, these fraudulent charges are small, $2 to $3, and the description that appears on a customer's bill makes it difficult for the customer to recognize the charges as fraudulent.

To combat the practice of cramming, ***Senate Bill 643***/***House Bill 880*** prohibit a third-party vendor from submitting charges to a telephone company unless the third-party vendor first obtains authorization from the customer. The authorization must include, among other things, the customer's name and telephone number, an explanation of the product or service being purchased and all applicable charges, and an affirmation from the customer that the charges may be billed to the customer's telephone bill.

The Acts further provide that a customer is not liable for third-party vendor charges unless the customer (1) receives notice that the telephone company allows third-party billing; (2) receives an itemization of third-party charges, identifying them separately from other charges; and (3) is provided with the name and telephone number of the third-party vendor. Finally, the Acts provide that a customer is not liable for any third-party charges that the customer disputes within a reasonable time, unless the third-party vendor has provided a copy of the customer's authorization to the telephone company and the customer.

For a discussion of these Acts in the context of public service companies, see the subpart "Public Service Companies" within Part H – Business and Economic Issues of this *90 Day Report*.

Reverse Mortgages

Approximately 90% of reverse mortgages are insured under the federal Home Equity Conversion Mortgage (HECM) program, which is administered by the U.S. Department of Housing and Urban Development. The remainder of the reverse mortgage market is comprised of proprietary reverse mortgages, which are underwritten by private lenders. Federally insured HECM loans are subject to federal regulation. Proprietary reverse mortgages, however, are largely unregulated.

To address the lack of regulation in the proprietary loan market, ***Senate Bill 878***/***House Bill 799 (both passed)*** require that lenders making proprietary reverse mortgages comply with federal regulations governing HECM loans. For example, federal regulations require housing counseling in connection with a HECM loan. By incorporating federal regulations regarding HECM loans, the bills require housing counseling for proprietary reverse mortgages as well. The bills also require that a lender, upon receiving an application for a reverse mortgage loan, provide a prospective borrower with a checklist advising the borrower to discuss with the housing counselor specific issues that may affect the borrower's ability to manage a reverse mortgage loan. The checklist requirement applies to both HECM and proprietary reverse mortgage loans.

Beyond the loan itself, there are consumer risks associated with the cross-selling of financial products to a reverse mortgage borrower, a practice that many consumer advocates consider predatory. Federal law prohibits a lender from conditioning the extension of a HECM loan on a requirement that the borrower purchase insurance, an annuity, or similar financial product, except for those products that are customary in mortgage lending. ***Senate Bill 878***/***House Bill 799*** prohibit any lender from requiring a borrower to purchase an annuity, long-term care policy, or other financial or insurance product as a condition to obtaining a reverse mortgage loan. The bills also prohibit a lender from referring a borrower to any person for the purchase of an annuity or other insurance product before the closing date of the loan or the expiration of the borrower's right to rescind the loan, whichever is later.

Consumer Credit

Recent reports indicate that, in some cases, credit card companies have made credit determinations based on where a cardholder shops or which mortgage lender a cardholder uses. ***Senate Bill 523*** **(*passed)*** prohibits a consumer credit provider, including a credit card company, from using such criteria to trigger a default under a consumer credit contract or alter the terms of the contract without the consumer's prior written consent. The bill provides that a provision in a consumer credit contract that triggers a default or authorizes the credit provider to alter the terms of the contract based on such criteria is unenforceable.

Commercial Law – Generally

Uniform Commercial Code – Fraudulent Financing Statements

When a borrower uses personal property as collateral for a loan, the lender may protect its interest in the property by filing a Uniform Commercial Code (UCC) financing statement with the State Department of Assessments and Taxation (SDAT). Financing statements filed with SDAT provide public notice of the lender's interest in the property and establish priority among the borrower's creditors.

However, in rare instances, individuals have misused the UCC filing system by filing fraudulent financing statements to harass another person. Although a fraudulent financing statement does not create any legal liability for the named debtor, it can cause the named debtor economic harm. When a fraudulent financing statement purports to relate to a large outstanding debt, a prospective lender that discovers the financing statement may be unwilling to extend credit to the person named in the financing statement. A fraudulent financing statement, therefore, can impair an individual's capacity to obtain credit. Also, it can be costly and time-consuming for a person named in a fraudulent financing statement to remove the financing statement from the public records.

House Bill 202 ***(passed)*** prohibits a person from filing a financing statement that the person knows to contain false information. A person who violates the bill's provisions is guilty of a misdemeanor and is subject to a maximum fine of $500 for each fraudulent financing statement or amendment to a financing statement filed with SDAT.

Equipment Dealer Contract Act

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

Senate Bill 302 ***(Ch. 55)*** expands the scope of the Equipment Dealer Contract Act to cover dealers of outdoor power sports equipment. Outdoor power sports equipment includes all-terrain vehicles, dirt bikes, and snowmobiles, as well as attachments and repair parts for such equipment. The Act applies all the statutory protections of the Equipment Dealer Contract Act to outdoor power sports equipment dealers.

Debt Settlement Services

The debt relief industry comprises various sub-industries, including the debt management services industry and the expanding debt settlement services industry. In Maryland, companies that provide debt management services are subject to the licensing and regulatory provisions of the Maryland Debt Management Services Act. Although more than 30 states regulate providers of debt settlement services, Maryland does not. ***Senate Bill 701***/***House Bill 392*** ***(both passed)*** direct the Commissioner of Financial Regulation, in consultation with the Consumer Protection Division of the Office of the Attorney General, to study the debt settlement services industry and report its findings to the Senate Finance Committee and House Economic Matters Committee on or before December 1, 2010. The study must determine how the debt settlement services industry would be best regulated in the State, including the option of establishing a licensure requirement and the fiscal impact of regulating the industry if licensure were required. In conducting the study, the Commissioner of Financial Regulation must establish a workgroup comprised of relevant stakeholders.

Corporations and Associations

Benefit Corporations

Maryland law recognizes both a C corporation that elects to be taxed under Subchapter C of the Internal Revenue Code and an S corporation that elects to be taxed as a small business corporation under Subchapter S of the Internal Revenue Code. ***Senate Bill 690*/*House Bill 1009* (Chs. 97 and 98)** authorize a Maryland corporation to elect to be a benefit corporation which, unlike a traditional C or S corporation, must have as its purpose the creation of one or more public benefits.

Under the Acts, a corporation may elect to be a benefit corporation by amending or including in its charter a statement that the corporation is a benefit corporation. A benefit corporation must have the purpose of creating a general public benefit, defined in the Acts as a "material, positive impact on society and the environment … through activities that promote a combination of specific public benefits." Specific public benefits are defined to include preserving the environment, improving human health, and promoting the arts, sciences, or advancement of knowledge. The Acts require the election of benefit corporation status and the termination of that status to be approved by the corporation's stockholders. Clear reference to the fact that a corporation is a benefit corporation must appear prominently at the head of each charter document and on each certificate representing outstanding stock of the benefit corporation.

Senate Bill 690*/*House Bill 1009 also (1) establish specific duties of the directors of a benefit corporation; (2) provide for immunity from liability for directors who perform their duties in accordance with required standards of care; (3) require annual benefit reports to be delivered to each stockholder; and (4) provide for the termination of benefit corporation status.

General Corporation Law

***Senate Bill 688*/*House Bill 972* (Chs. 95 and 96)** alter various provisions of the Maryland General Corporation Law relating to charter documents, delegation of powers of the board of directors, stockholder meetings, notices, and proposals, and involuntary dissolutions of corporations.

Execution of Charter Documents

The Acts expand the individuals who may sign and acknowledge and witness or attest specified charter documents for a corporation, business trust, or real estate investment trust. Under ***Senate Bill 688*/*House Bill 972***, the charter documents may be signed and acknowledged by the chief financial officer or any other authorized officer or agent of the corporation, business trust, or real estate investment trust, and witnessed or attested by a treasurer, chief financial officer, or assistant treasurer. In addition, the chief financial officer and any other authorized officer or agent of a corporation, business trust, or real estate investment trust may verify under oath the contents of the charter documents.

Charter Provisions Relating to Classes and Series of Stock

Senate Bill 688*/*House Bill 972 extend to a series of stock a corporation's authority to provide by its charter for various rights of classes of stock and authorize a charter to give the holders of one or more classes or series of stock exclusive voting rights on a charter amendment that would alter only the contract rights of the specified class or series.

Delegation of Powers of Board of Directors

Senate Bill 688*/*House Bill 972 authorize a board to delegate to an executive or other committee of the board the power to authorize dividends on stock but repeal the authority of the board of directors of a corporation to delegate to a committee of the board the power to fix the amount and other terms of a distribution.

Stockholder Proposals, Meetings, and Notices

A corporation's charter or bylaws may require a stockholder proposing a nominee for election to the board of directors or any other matter to be considered at a stockholders meeting to provide advance notice to the corporation before a date or within a period of time specified in statute, or another time specified in the charter or bylaws. ***Senate Bill 688*/*House Bill 972*** repeal the specific time periods established by statute. The Acts also authorize a meeting of stockholders, before it is convened, to be postponed from time to time to a date not more than 120 days after the original record date set for the meeting.

In addition, the Acts alter the requirements for providing notice to stockholders by (1) allowing a corporation, for any notice it is required to give to stockholders, to provide a single notice to all stockholders who share the same address unless otherwise requested by a stockholder; and (2) providing that a notice of a charter amendment, instead of including a copy of the amendment or a summary of the changes it will effect, may identify a web site at which the amendment or summary may be accessed.

Dissolution of Corporations

In general, stockholders entitled to vote in the election of a corporation's directors may petition a court to dissolve the corporation on the grounds that the stockholders are so divided that directors cannot be elected. ***Senate Bill 688*/*House Bill 972*** exclude stockholders of a corporation that has a class of equity securities registered under the federal Securities and Exchange Act of 1934 from provisions of law establishing this right.

Real Estate Investment Trusts

A real estate investment trust (REIT) is an unincorporated business trust or association in which property is acquired, held, managed, administered, controlled, invested, or disposed of for the benefit and profit of any person who may be a shareholder. A REIT is formed by filing a declaration of trust with the Maryland State Department of Assessments and Taxation (SDAT). ***Senate Bill 501*/*House Bill 412*** ***(Chs. 79 and 80)*** make changes to the law governing a REIT's declaration of trust and specify the circumstances under which a REIT may file a certificate of notice with SDAT.

The Acts add a definition of "declaration of trust" to the provisions of law governing REITs to clarify that the term refers to the document as originally accepted for record by SDAT and that document as subsequently amended, corrected, or supplemented by specified articles or a certificate of correction. The Acts also clarify that a REIT may provide in its declaration of trust that the holders of one or more classes or series of shares have exclusive voting rights on an amendment to the declaration of trust that would alter only the contract rights of the specified class or series.

Senate Bill 501*/*House Bill 412 further authorize the board of trustees of a REIT with equity securities registered under the federal Securities and Exchange Act of 1934 to amend the REIT's declaration of trust to authorize a reverse stock split that does not exceed a specified ratio by a majority vote of the trustees and without shareholder action. Finally, the Acts specify the circumstances under which REIT may file a certificate of notice for record with SDAT.

Maryland Business Trust Act

Chapter 452 of 1999 enacted the Maryland Business Trust Act (MBTA) which authorized the establishment of business trusts in Maryland. Under MBTA, a business trust is defined as an unincorporated business, trust, or association created by a governing instrument under which property is held, managed, administered, controlled, invested, reinvested, or operated by a trustee, or business or professional activities for profit are carried on by a trustee, for the benefit of persons who have a beneficial interest in the trust property.

***Senate Bill 784*/*House Bill 971* (both passed)** extensively revise MBTA and rename it as the Maryland Statutory Trust Act. For consistency with corresponding statutes in other states, the bills repeal the definition of "business trust," define a "statutory trust," and make conforming terminology changes where appropriate throughout the Annotated Code. Under the bills, a "statutory trust" means an unincorporated business, trust, or association that is (1) formed by filing an initial certificate of trust with SDAT; and (2) governed by a governing instrument. The term includes a business trust formed under MBTA.

While many of the changes made are technical or stylistic, ***Senate Bill 784*/*House Bill 971*** also (1) clarify the requirements for formation and governance of a statutory trust; (2) clarify the general powers of a statutory trust; (3) authorize the governing instrument of a statutory trust to contain provisions relating to the nature and division of beneficial interests in the statutory trust; (4) clarify the types of consideration that may be contributed for a beneficial interest in a statutory trust; (5) clarify the powers, duties, and liabilities of trustees of a statutory trust and the procedures by which trustees and beneficial owners may take specified actions; and (6) alter the procedures for the merger or consolidation of a statutory trust. In addition, the bills establish registration and other requirements for foreign business trusts that do business in the State as well as penalties for failing to register.