Part F
Courts and Civil Proceedings

Judges and Court Administration

Special Admission of an Out-of-state Attorney – Fee

Although an attorney must generally be admitted to the Maryland Bar to practice law in the State, on a motion filed in accordance with the Maryland Rules, a court may grant special admission for an out-of-state attorney to practice law in a particular case. The individual must be admitted to the bar of another state and employed by a party in the case before a court or other unit of State government or a political subdivision of the State. The special admission may be granted only by the court hearing the case or, if the case is before a unit other than a court, by the circuit court in the county where the unit has its principal office or any circuit court to which the case may be appealed. The individual may practice law only in connection with the case for which the special admission is granted, and is subject to disciplinary proceedings as provided by the Maryland Rules. Currently, the circuit courts and appellate courts charge a $25 fee for appearances by out-of-state attorneys; the District Court does not charge a fee.

House Bill 523 ***(Ch. 129)*** requires the State Court Administrator to assess a $100 fee for the special admission of an out-of-state attorney and to pay $75 of the fee to the Janet L. Hoffman Loan Assistance Repayment Program (LARP). The Janet L. Hoffman Loan Assistance Repayment Program provides loan repayment assistance in exchange for service commitments to Maryland residents who provide public service in Maryland State or local government or nonprofit agencies in Maryland to low-income or underserved residents. Eligible employment fields include lawyers, nurses, nurse faculty members, physical and occupational therapists, social workers, speech pathologists, physician assistants, and certain teachers. Under the Act, the increased funds will be allocated to assist eligible law school graduates whose applications for tuition repayment assistance were not approved by the Maryland Higher Education Commission because of insufficient funds in the program.

For a more detailed discussion of the LARP component of this Act, see the subpart "Higher Education" within Part L – Education of this *90 Day Report*.

Orphans' Court Judges in Prince George's County

Senate Bill 281 ***(passed)*** proposes an amendment to the Maryland Constitution that prescribes additional qualifications for judges of the Orphans' Court for Prince George's County. If ratified by the voters at the November 2012 general election, an orphans' court judge in Prince George's County 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 requirement that an orphans' court judge in Prince George's County be a citizen of the State and a resident of Prince George's County for the 12 months preceding the election.

The bill is identical to a constitutional amendment for Baltimore City that was ratified by the voters at the November 2010 general election.

Grand Jury Investigations in Baltimore City

Grand juries consist of 23 members plus alternates. Unlike a petit jury, which listens to evidence in a courtroom and decides the facts in a particular case, a grand jury decides if there is probable cause to charge someone with a crime, not whether the defendant is guilty or innocent.

Each grand jury in Baltimore City must carry out an investigation as a judge of the circuit court directs. At the end of the period for which the grand jury sits, the grand jury must submit to the jury commissioner of the circuit court a report on each of its investigations and recommendations.

Senate Bill 374 ***(passed)*** alters the law relating to grand jury investigations in Baltimore City by requiring a grand jury to carry out an investigation only if directed to do so by a judge for the circuit court.

Talbot County Truancy Reduction Pilot Program

Senate Bill 278/***House Bill 49*** ***(Chs. 48 and 49)*** authorize the establishment of a Truancy Reduction Pilot Program in the juvenile court in Talbot County. For a discussion of the Act, see the subpart "Juvenile Law" within Part E – Crimes, Corrections, and Public Safety of this *90 Day Report*.

Civil Actions and Procedures

Exemptions

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 owner-occupied residential real property up to the amount allowed under federal bankruptcy law (currently $21,625). This homestead exemption (1) may be claimed if the individual debtor and specified

family members have not successfully claimed the exemption on the property within eight years prior to the filing of the bankruptcy proceeding in which the exemption is claimed; and (2) may not be claimed by both a husband and wife in the same bankruptcy proceeding.

While a condominium is considered real property, a cooperative (often referred to as a "co-op") is typically treated as personal property. An individual who purchases a condominium buys an individual apartment or townhouse. An individual who purchases a cooperative apartment buys shares in the cooperative housing corporation that owns the building, not the actual apartment. ***Senate Bill 169*** ***(Ch. 32)*** clarifies that under the homestead exemption (1) "owner-occupied residential real property" includes a condominium unit; and (2) a debtor may claim his/her aggregate interest in a cooperative housing corporation that owns property that the debtor occupies as a residence. The Act applies to cases filed on or after October 1, 2011.

Personal Injury Exemption – Exception for Child Support Arrearage

A "money judgment" is a judgment that a specified amount of money is immediately payable to the judgment creditor. Upon the issuance of a writ of execution, a sheriff or constable may seize and sell the debtor's legal or equitable interest in real or personal property to satisfy a judgment. The sheriff or constable must execute the writ, conduct the sale, and distribute the proceeds pursuant to the Maryland Rules. In general, several types of property are exempt from execution on a money judgment, including money payable in the event of the sickness, accident, injury, or death of any person, including compensation for loss of future earnings. The exemption includes money payable on account of judgments, arbitrations, compromises, insurance benefits, compensation, and relief; it does not include disability income benefits if the judgment is for necessities contracted for after the occurrence of the disability.

House Bill 837 ***(passed)*** establishes that 25% of the net recovery by a person on a claim for personal injury is subject to execution on a judgment for a child support arrearage. "Net recovery" is defined as the sum of money to be distributed to the debtor after deduction of attorney's fees, expenses, medical bills, and satisfaction of any liens or subrogation claims arising out of the claims for personal injury, including those arising under (1) the Medicare Secondary Payer Act, 42 U.S.C. § 1395y; (2) a program of the Department of Health and Mental Hygiene for which a right of subrogation exists under specified provisions of the Health-General Article; (3) an employee benefit plan subject to the Federal Employee Retirement Income Security Act of 1974; or (4) a health insurance contract. For a further discussion of this bill, see the subpart "Family Law" under this Part F of this *90 Day Report*.

Practice and Procedure

Prelitigation Disclosure of Insurance Coverage to Claimant

The Maryland Rules authorize a party in a circuit court case to obtain discovery of the existence and contents of any insurance agreement under which a person carrying on an insurance business might be liable to satisfy part or all of a judgment or to indemnify or reimburse for payments made to satisfy the judgment. The party may obtain discovery by several methods, including written interrogatories, requests for production of documents, and

depositions. The Maryland Rules authorize a party in a District Court case to obtain discovery of such information by written interrogatories. However, the Maryland Rules have no application to a claim before an action is filed in a circuit court or the District Court.

Senate Bill 599 and ***House Bill 921*** ***(Chs. 76 and 77)*** require an insurer to provide a claimant, who files a written tort claim concerning a vehicle accident and provides specified documentation of damages or a death in the accident to the insurer, with documentation of the applicable limits of coverage in any insurance agreement under which the insurer may be liable to (1) satisfy all or part of the claim; or (2) indemnify or reimburse for payments made to satisfy the claim. The insurer must provide the claimant with this documentation within 30 days after receipt of the claimant's written request, regardless of whether the insurer contests the applicability of coverage to a claim.

An insurer, and the employees and agents of an insurer, may not be civilly or criminally liable for the disclosure of this documentation, and disclosure in accordance with the Acts does not constitute (1) an admission that a claim is subject to the applicable agreement between the insurer and the alleged tortfeasor; or (2) a waiver of any term or condition of the applicable agreement between the insurer and the alleged tortfeasor or any right of the insurer, including any potential defense concerning coverage or liability. Documentation of the applicable limits of coverage provided by an insurer in accordance with the Acts is not admissible as evidence at trial by reason of its mandatory disclosure under the Acts.

The Acts apply to claims filed with an insurer on or after October 1, 2011.

Disclosure of Defendant's Addresses by Insurer

On written request of a party to a lawsuit, an insurer or a person that has a self-insurance plan must provide to the party the defendant's last known home and business address, if known. The information must be provided only if the plaintiff files a certification that (1) states that the defendant had applicable insurance coverage at the time the alleged liability was incurred; (2) sets forth the reasonable efforts made, in good faith, by the plaintiff to locate the defendant; and (3) states either that the defendant is evading service of process or the whereabouts of the defendant are unknown to the plaintiff. The plaintiff must file the certification with the court and serve it on the insurer or person that has a self-insurance plan.

Senate Bill 142 ***(passed)*** repeals the requirement that a plaintiff's certification must include detailed information on the plaintiff's efforts to locate the defendant before an insurer or self-insured person is required to disclose the information. The bill applies to cases filed on or after October 1, 2011.

Subpoenas

The Maryland Rules specify required content for subpoenas and certain procedural requirements for the issuance and service of subpoenas. On the request of an attorney or other officer of a court entitled to the issuance of a subpoena, the clerk must issue a subpoena signed and sealed but otherwise in blank, to be filled in by the attorney before service.

House Bill 22 ***(passed)*** authorizes an attorney or other officer of a court entitled to the issuance of a subpoena by a clerk of a court to obtain from the clerk of the court a subpoena that is signed and sealed by the clerk of the court. The attorney or other officer of the court may photocopy or otherwise copy the subpoena and use the subpoena for service.

Bar Admission – Exception for Rent Escrow Proceedings

Senate Bill 457/***House Bill 653*** ***(Chs. 66 and 67)*** authorize any individual to represent a landlord, or specified law students or employees of nonprofit organizations, to represent a tenant in a rent escrow proceeding in the District Court without having been admitted to the Maryland Bar as an attorney.

Contributory Negligence

Contributory negligence is conduct on the part of an injured party that falls below the standard to which the injured party should conform for self-protection and is a legally contributing cause (along with the defendant's negligence) in bringing about the plaintiff's harm. Under Maryland law, contributory negligence on the part of a plaintiff bars recovery by the plaintiff. Maryland is one of five jurisdictions, along with Alabama, North Carolina, Virginia, and the District of Columbia, that retain the doctrine of contributory negligence. Forty-six states follow the doctrine of comparative negligence, under which a plaintiff's recovery can be reduced if the plaintiff was partially at fault.

In a memorandum dated November 8, 2010, the Chief Judge of the Court of Appeals asked the court's Standing Committee on Rules of Practice and Procedure to determine whether the court could replace the doctrine of contributory negligence with a form of comparative fault through the issuance of new rules or if the change would have to be made through a judicial decision. The request also called on the committee to study the judicial and economic consequences of such a change, as well as the impact of a change to comparative fault on related legal principles, such as joint and several liability.

A draft report by the committee prepared before the conclusion of the 2011 session, indicates that the doctrine of contributory negligence, comparative fault, and associated doctrines and legal principles are matters of substantive laws that may not be changed by court rule.

House Bill 1129 ***(failed)*** would have required that contributory negligence remain an affirmative defense that may be raised by a party being sued for damages for wrongful death, personal injury, or property damage. The bill defined "contributory negligence" as the common law doctrine of contributory negligence according to its judicially determined meaning on January 1, 2011. The bill would not have expanded, limited, or otherwise modified the affirmative defense of contributory negligence as it existed and was applicable on January 1, 2011.

Class Action Waivers

A class action is a type of lawsuit in which a single person or a large group of people sue on behalf of the interests of a larger group of people or a group of defendants are sued on behalf of a larger group. Class action lawsuits typically occur when it is impractical or inconvenient for all of the members of a group of people with a common interest in the litigation to sue individually or appear personally. A representative is a person who sues on behalf of a group of plaintiffs in a class action.

Class action waivers are becoming a common feature in consumer contracts and are often accompanied by binding arbitration agreements. The U.S. Supreme Court is currently considering a case in which the issue is whether the reach of a federal law that favors arbitration is so extensive that it preempts a class action waiver contained in a binding arbitration agreement, regardless of how class action waivers outside of binding arbitration agreements have been treated under state contract law in the past.

House Bill 729 ***(failed)*** would have prohibited a written agreement made before a dispute arises from waiving or having the practical effect of waiving the rights of a party to the agreement to resolve the dispute by obtaining relief as a representative or member of a class in a class action lawsuit. The bill would have made any such class action waiver unenforceable and would have applied retroactively to any written agreement in existence on or after the bill's October 1, 2011 effective date.

Civil Litigation Funding

The Maryland Consumer Loan Law (MCLL) consists of Title 11, Subtitle 2 of the Financial Institutions Article and Title 12, Subtitle 3 of the Commercial Law Article. Under MCLL, a "loan" is defined as any loan or advance of money or credit made under the credit provisions of MCLL. Under MCLL, the Commissioner of Financial Regulation is responsible for the licensing and regulation of consumer loans and advances in the State. A person may not make a loan, receive an application for a loan, or allow any note or contract for a loan to be signed without being licensed by the State. Applicants must meet specified requirements, including having minimum liquid assets. A separate license is required for each place of business where a person makes a loan or transacts any business under MCLL. The commissioner has the authority to issue cease and desist orders to any licensee or other person engaging in a course of conduct that results in an evasion or violation of MCLL or any rule or regulation adopted under MCLL. Under Maryland law, the maximum permissible annual interest rate ("usury cap") for small loans (under $6,000) varies with the amount of the loan, up to 33%. In recent years, the Commissioner of Financial Regulation has issued cease and desist orders to civil litigation funding companies for engaging in the business of making loans or advances to Maryland consumers without the proper licenses under Maryland Law.

House Bill 873 ***(failed)*** would have established that the contingent right to receive a portion of the potential proceeds of a bona fide civil or statutory claim or cause of action ("legal claim") is assignable and an assignment of that right is valid for the purposes of obtaining

funding from a "civil litigation funding company." The bill would have also specified that nonrecourse civil litigation funding is not a loan and is not subject to the restrictions or provisions governing loans. Instead of being subject to regulation by the Commissioner of Financial Regulation (as commercial lenders are), a civil litigation funding company would have been required to register with the Secretary of State.

The bill would have also (1) established content requirements for nonrecourse civil litigation funding contracts; (2) specified a fee schedule for nonrecourse civil litigation funding; (3) established registration and reporting requirements for civil litigation funding companies; (4) clarified that specified rules of professional conduct apply to an attorney representing a consumer who has obtained funding and is in a dispute with the funding company; (5) specified that funding may not be used to pay for attorney's fees or costs; (6) specified that a funding company is only entitled to receive funds out of proceeds of a legal claim, may only be paid to the extent there are available proceeds from a legal claim, and may not be paid anything if there are no available proceeds from a legal claim; (7) required funding companies to adhere to specified standards of professional practice/behavior; and (8) required the Secretary of State to adopt certain regulations and submit an annual report.

Family Law

Same-sex Marriage

During the 2011 session, the issue that garnered the most attention in the area of family law was the issue of legalizing marriage for same-sex couples.

In 2004, Massachusetts became the first state to issue marriage licenses to same-sex couples. Same-sex marriage is legal in the District of Columbia (2010) and four other states: Connecticut (2008); Iowa (2009); Vermont (2009); and New Hampshire (2010). Thirty-nine states (including Maryland) have laws that either prohibit same-sex marriages or deny recognition of same-sex marriages solemnized in another jurisdiction. Thirty states have adopted constitutional amendments defining marriage as a union between a man and a woman.

Since 1973, Maryland law has provided that only a marriage between a man and a woman is valid in this State. In July 2004, nine same-sex couples filed suit, contending that the State law banning same-sex marriage is unconstitutional. The Court of Appeals upheld the State's marriage statute as constitutional, but cautioned that the opinion "… should by no means be read to imply that the General Assembly may not grant and recognize for homosexual persons civil unions or the right to marry a person of the same sex." *See Conaway, et. al v. Deane, et. al.* 401 Md. 219 (2007) at 325.

On February 23, 2010, the Attorney General issued a formal opinion on the question of State recognition of same-sex marriages legally entered into in other states. 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 formal opinion advised that in light of evolving State public policies that favor, at least for some purposes, same-sex intimate relationships, the court would probably be reluctant to prohibit recognition of same-sex marriages sanctioned in other states or jurisdictions. A major consideration would be the uncertainty that could be created by enforcing such a prohibition against those same-sex spouses and their families who visit or pass through Maryland if some event occurs which causes them to extend their connection with Maryland. As a result of the opinion, State agencies began to alter policies and actions to recognize same-sex spouses married in other jurisdictions who enter, visit, or reside in Maryland.

Senate Bill 116/***House Bill 55***/***House Bill 175*** ***(all failed)*** would have legalized same-sex marriage by repealing the reference to a man and a woman in the current statute and specifying instead that a marriage between two individuals who are not otherwise prohibited from marrying is valid in Maryland. ***House Bill 963*** ***(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.

Child Abuse and Neglect

Child Neglect

According to the National Center for Prosecution of Child Abuse of the National District Attorneys Association, the District of Columbia and at least 20 states have enacted statutes that criminalize child neglect. Those states are Arizona, Delaware, Florida, Illinois, Indiana, Michigan, Minnesota, Mississippi, Nevada, North Carolina, Oklahoma, Oregon, Rhode Island, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin.

Maryland law does not criminalize the act of child neglect. However, State law prohibits an adult from willfully contributing to, encouraging, causing, or tending to cause any act, omission, or condition that renders a child in need of assistance (CINA). A "child in need of assistance" is a child who requires court intervention because (1) the child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) the child's parent, guardian, or custodian is unable or unwilling to give proper care and attention to the child and the child's needs. Violators are guilty of a misdemeanor and subject to maximum penalties of three years imprisonment and/or a $2,500 fine.

Additionally, under current law, a person may not recklessly engage in conduct that creates a substantial risk of death or serious physical injury to another. "Serious physical injury" means injury that (1) creates a substantial risk of death; or (2) causes permanent or protracted serious disfigurement, loss of the function of any bodily member or organ, or impairment of the function of any bodily member or organ. In *State v. Kanavy*, 416 Md. 1 (2010), the Court of Appeals held that the term "conduct" in this statute includes the willful failure to perform a legal duty. A violator is guilty of the misdemeanor of reckless endangerment and on conviction is subject to imprisonment not exceeding five years or a fine not exceeding $5,000 or both.

Also, under current law, it is a crime for a person who is charged with the care of a child under the age of eight to allow the child to be locked or confined in a building or motor vehicle while the person charged is absent unless a reliable person at least 13 years old is with the child. A violator is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $500 or imprisonment not exceeding 30 days or both.

Although child neglect is not a crime in Maryland, a person is required to report suspected child neglect and the State is required to intervene to protect the child. Specified professionals must adhere to specific oral and written reporting requirements. "Neglect" is defined as any parent or other person who has permanent or temporary care or custody or responsibility for supervising a child leaving a child unattended or otherwise failing to give proper care and attention to a child under circumstances that indicate (1) that the child's health or welfare is harmed or placed at substantial risk of harm or (2) mental injury to the child or a substantial risk of mental injury.

Local departments of social services are required to investigate reports of child neglect according to statutory guidelines. If a local department finds that neglect has occurred, the State is required to provide services to the family to prevent continued neglect. If child neglect continues, the State may petition to have the child declared a child in need of assistance and to commit the child to the custody of the local department until the child can be safely reunited with the child's family or placed in foster care. Continued instances of neglect by a parent could subject a parent to termination of parental rights.

Senate Bill 178*/*House Bill 162* *(both passed) establish the crime of child neglect. A parent, family member, household member, or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor may not neglect a minor.

"Neglect" means the intentional failure to provide necessary assistance and resources for the physical needs or for the mental health of a minor that creates a substantial risk of harm to the minor's physical health or a substantial risk of mental injury to the minor. "Mental injury" means the substantial impairment of a minor's mental or psychological ability to function. "Neglect" does not include the failure to provide necessary assistance and resources for the physical needs or mental health of a minor when the failure is due solely to a lack of financial resources or homelessness. "Family member" is defined as a relative of a minor by blood, adoption, or marriage. "Household member" means a person who lives with or is a regular presence in a home of a minor at the time of the alleged neglect.

A violator is guilty of the misdemeanor of child neglect and on conviction is subject to maximum penalties of five years imprisonment and/or a $5,000 fine. A sentence imposed for the crime of child neglect is in addition to any other sentence imposed for a conviction arising from the same facts and circumstances unless the evidence required to prove each crime is substantially identical. The bills conform the reporting and investigation requirements for child neglect to the reporting and investigation requirements for child abuse, with the exception of the requirement to notify the State's Attorney.

Out of Court Statements of Child Victims

A court is authorized to admit into evidence in a juvenile court proceeding or in a criminal proceeding an out of court statement to prove the truth of the matter asserted in the statement made by a child victim who (1) is younger the age of 12 years; and (2) is the alleged victim or the child alleged to need assistance in the case before the court concerning:

- child abuse or sexual abuse of a minor;
- first or second degree rape or a first, second, or third degree sexual offense;
- attempted rape or attempted sexual offense in the first degree or in the second degree; and
- abuse or neglect in a juvenile court proceeding.

An out of court statement made by a child victim may be admissible only if the statement was made to and is offered by one of the following individuals while the individual was acting lawfully in the course of the his/her profession: (1) a physician; (2) a psychologist; (3) a nurse; (4) a social worker; or (5) a principal, vice principal, teacher, or counselor at a school. An out of court statement by a child victim may come into evidence to prove the truth of the matter asserted in the statement regardless of whether the child victim testifies if the statement is not admissible under any other hearsay exception. If the child victim does not testify, the child victim's out of court statement will be admissible only if there is corroborative evidence that (1) the defendant had the opportunity to commit the alleged crime; or (2) the child respondent or the alleged offender had the opportunity to commit the alleged abuse or neglect.

The prosecuting attorney is required to serve the defendant, child respondent, or alleged offender and the attorney for the defendant, child respondent, or alleged offender with notice of the State's intention to introduce the statement and the content of the statement. The notice must be served within statutory time limits.

The out of court statement of a child victim is only admissible if it has particularized guarantees of trustworthiness. To determine the trustworthiness of the statement, the court must consider multiple factors specified in statute, including the child victim's personal knowledge of the event, the timing of the statement, the age appropriateness of the terminology used in the statement, and the nature and duration of the abuse or neglect.

This provision for out of court statements of child victims, sometimes referred to as the "tender years statute," is a statutory exception to the hearsay rule, which generally prohibits the admission into evidence of an out of court statement offered to prove the truth of the matter asserted in the statement. In *State v. Snowden*, 385 Md. 64 (2005), the Court of Appeals held that when a child abuse victim's out of court statement made to a health or social worker is testimonial, the statement may only be admitted through the health or social worker without violating the Confrontation Clause of the U.S. Constitution if the declarant is unavailable and

defendant had a prior opportunity to cross examine the declarant. The Confrontation Clause does not apply in CINA proceedings.

Senate Bill 768/House Bill 859 ***(Chs. 87 and 88)*** make several changes to the statute governing the admission of out of court statements made by a child victim in a juvenile court or criminal proceeding. The Acts authorize a court to admit an out of court statement made by a victim who is younger than the age of 13 years, rather than the current age limit of 12 years. The Acts also add counselors and therapists who are licensed or certified under Title 17 of the Health Occupations Article to the list of professionals, to whom a child victim's out of court statement was made, who may testify concerning the statement.

A child victim must testify as a prerequisite to the admissibility of the child victim's out of court statement in a criminal proceeding or in a juvenile court proceeding other than a CINA proceeding. The prosecuting attorney must serve notice of any audio or visual recording of the statement on the defendant, child respondent, or alleged offender and his/her attorney within statutory time limits. If an audio or visual recording of the statement is not available, the prosecuting attorney is required to serve notice of the statement's content. The Acts also eliminate the requirement that the court, when determining the admissibility of an out of court statement by a child victim, examine the child victim, if the court determines that an audio or visual recording of the child victim's statement makes an examination of the child unnecessary.

Adoption Search, Contact, and Reunion Services – Siblings of Minors in Out-of-home Placement

The Department of Human Resources (DHR) is required to provide adoption "search, contact, and reunion services." These are services to (1) locate adopted individuals, siblings, and biological parents of adopted individuals, and other relatives and members of the adoptive family as specified in statute; (2) assess the mutual desire for communication or disclosure of information between adopted individuals and siblings and/or adoptive parents and, as specified in statute, between adopted individuals and relatives and biological parents and members of the family; and (3) provide counseling for adopted individuals, siblings, and biological parents of adopted individuals and members of the adoptive family or to provide referral to counseling.

Biological parents of adopted individuals age 21 or older and the adopted individuals themselves who are age 21 or older can apply for these services through an approved confidential intermediary. An individual who applies for search, contact, and reunion services must execute a written agreement with a confidential intermediary concerning the services.

House Bill 255 ***(passed)*** expands the adoption "search, contact, and reunion services" program to include contacting the siblings of a minor in out-of-home placement, if the siblings were adopted through a local department of social services, to develop a placement resource or facilitate a family connection with the siblings of the minor. A director of a local department of social services who is acting on behalf of a minor in out-of-home placement is authorized to apply to the Director of the Social Services Administration within DHR to receive search, contact, and reunion services if an adopted individual is age 21 or older. The bill also exempts

the director from a provision that authorizes a confidential intermediary to charge an applicant a fee.

Written Findings in CINA Hearings

House Bill 1118 ***(Ch. 117)*** makes technical corrections to current law by clarifying the circumstances under which the juvenile court must send its findings in specified CINA hearings to (1) the director of the local department of social services; (2) the Social Services Administration; (3) the State Citizens Review Board for Children; (4) the local citizens review panel, if applicable; and (5) any individual or agency identified by a local department or court as responsible for monitoring the care and services provided to children who are in the legal custody or guardianship of the local department on a systemic basis. The Act requires the court to promptly send its written findings in specified CINA hearings to the individuals and entities listed above if the court finds that reasonable efforts were made to prevent placement of the child into the custody of the local department of social services or finalize a permanency plan for the child and meet the child's needs, but that at least one of an enumerated list of other conditions exists which necessitates the written findings and their prompt transmission.

Domestic Violence

Protection for Pets

According to the Animal Legal and Historical Center, 17 states (Arizona, California, Colorado, Connecticut, Hawaii, Illinois, Louisiana, Maine, Minnesota, Nevada, New York, North Carolina, Oklahoma, Tennessee, Vermont, Washington, and West Virginia) and the District of Columbia have enacted legislation that provides protection to pets that may be possessed by a victim of domestic violence or a child of the victim. According to the American Humane Association, up to 71% of battered women report that their pet was threatened, harmed, or killed by their partners and 25 to 40% of women delay leaving a dangerous domestic situation due to fear that their partners will harm or kill the family pet. Many domestic violence shelters, including some in Maryland, now offer "safe havens" for pets of domestic violence victims.

Senate Bill 747/***House Bill 407*** ***(both passed)*** authorize a District Court Commissioner, when issuing an interim protective order, or a court, when issuing a temporary or final protective order, to award temporary possession of any pet of a person eligible for relief or a respondent.

Notification of Service of Protective Order

Chapter 711 of 2009 provided for the notification by the Department of Public Safety and Correctional Services (DPSCS) to a petitioner in a domestic violence proceeding of the service of an interim or temporary protective order on the respondent. Specifically, a law enforcement officer is required to electronically notify DPSCS of the service of the order, and DPSCS is required to notify the petitioner within specified time limits. Chapter 711 of 2009 took effect January 1, 2010, and was contingent on the receipt, by January 1, 2010, of federal funds under the American Recovery and Reinvestment Act of 2009 by the Governor's Office of Crime Control and Prevention. The law further specified that if the funding contingency was met, the

law would remain in effect for two years and terminate on December 31, 2011. ***House Bill 136 (Ch. 130)*** extends the termination date for an additional two years (until December 31, 2013). The Act also requires that the system used for the electronic notification of the service of a temporary protective order be approved and provided by DPSCS.

Peace Orders

An individual who does not meet specified relationship requirements under protective order statutes in the Family Law Article may file a petition for a peace order with the District Court or, if the clerk's office is closed, a District Court commissioner, that alleges the commission of specified acts against the petitioner by the respondent, if the act occurred within 30 days before the filing of the petition.

After a final peace order hearing, if a judge finds by clear and convincing evidence that the respondent has committed, and is likely to commit in the future, one of the specified acts against the petitioner, or if the respondent consents to the entry of a peace order, the court may issue a final peace order to protect the petitioner. A final peace order may order the respondent to refrain from committing specified acts, refrain from contacting the petitioner, or stay away from specific locations. The order must contain only the relief that is minimally necessary to protect the petitioner. Relief granted in a final peace order is effective for the period stated in the order, but may not exceed six months. An individual who fails to comply with specified provisions of an interim, temporary, or final peace order is guilty of a misdemeanor and subject to maximum penalties of a $1,000 fine and/or 90 days imprisonment.

***Senate Bill 342*/*House Bill 667* (Chs. 57 and 58)** authorize a judge, for good cause shown, to extend the term of a final peace order for an additional six months after (1) giving notice to the petitioner and the respondent; and (2) a hearing.

***Senate Bill 480*/*House Bill 666* (Chs. 68 and 69)** increase the penalties for a second or subsequent offense for violating an interim, temporary, or final peace order. Under the Acts, a second or subsequent violation of a peace order is subject to maximum penalties of imprisonment for one year and/or a $2,500 fine. The current statutory penalties for violation of a peace order apply to a first violation. These Acts make the expanded penalties for violations of peace orders consistent with the penalties for violations of protective orders.

Shielding of Records

Although court records, including those relating to a domestic violence proceeding that are maintained by a court, are presumed to be open to the public for inspection, a respondent in a peace order or protective order proceeding is authorized to file a written request to "shield" all court-related records if a petition for a peace order or protective order was denied or dismissed at any stage of the proceedings. "Shield" is defined as removing information from public inspection. "Shielding" means:

- 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

- with respect to electronic information about a proceeding on the website maintained by the Maryland Judiciary, removing the information from the public website.

A request for shielding must be filed in accordance with statutory timeframes. 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 peace order or domestic violence protective 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; (3) that there is not a pending interim or temporary protective order or peace order for a proceeding between the petitioner and the respondent; or (4) there is not a pending criminal charge against the respondent arising from alleged abuse against the petitioner.

However, the court may, for good cause, deny the shielding if the petitioner appears at the hearing and objects to the shielding. 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. Provisions regarding the access of shielded records by specified individuals or individuals who file a motion or subpoena the records are also set forth in statute. Information about the proceeding may not be removed from the domestic violence central repository (a secure database maintained by the Maryland Judiciary and available for use by courts and law enforcement that includes all protective and peace orders issued by District Court judges, circuit court judges and District Court commissioners).

***House Bill 349* (Ch. 119)** limits the circumstances under which a court is required to order shielding of records related to a peace order or domestic violence protective order proceeding by specifying that the requirement applies if (1) a final peace order or protective order has not been previously issued against the respondent in a proceeding between the petitioner and the respondent; and (2) an interim or temporary peace order or protective order against the respondent is not pending at the time of the hearing on the shielding request. The Act addresses a situation in which a respondent would be precluded from having records in the domestic violence central registry shielded, even if a prior protective order or peace order was issued on his or her behalf in an earlier proceeding between the parties.

Divorce

A court may grant an absolute divorce on the following grounds (1) adultery; (2) desertion, if the desertion is deliberate and final, has continued for 12 months without interruption, and there is no reasonable expectation of reconciliation; (3) voluntary separation, if the parties have voluntarily lived separate and apart without cohabitation for 12 months without interruption and there is no reasonable expectation of reconciliation; (4) conviction of a felony or misdemeanor in any state or federal court, if the defendant has been sentenced to serve at least three years, or an indeterminate sentence, and has served 12 months of the sentence;

(5) two-year separation, when the parties have lived separate and apart without cohabitation for two years without interruption before the filing of the divorce application; (6) insanity, as specified; or (7) cruelty of treatment or excessively vicious conduct toward the complaining party or a minor child of the complaining party, if there is no reasonable expectation of reconciliation.

***Senate Bill 139*/*House Bill 402* (both passed)** reduce, from two years to 12 months, the required period of time the parties must have lived separate and apart without cohabitation and without interruption before filing the application for absolute divorce on the ground of involuntary separation. The bills also repeal the ground of voluntary separation. The reduced period of separation that qualifies for an absolute divorce in the bills is more consistent with the period of separation required in the District of Columbia (6 months for voluntary separation, otherwise one year) and Virginia (6 months if parties have a separation agreement, otherwise one year).

Child Support

A "money judgment" is a judgment that a specified amount of money is immediately payable to the judgment creditor. A money judgment constitutes a lien on the debtor's interest in real or personal property located where the judgment was rendered and may be executed by a writ. Upon the issuance of a writ of execution, a sheriff or constable may seize and sell the debtor's legal or equitable interest in the real or personal property. The sheriff or constable must execute the writ, conduct the sale, and distribute the proceeds pursuant to court-approved rules.

A writ of execution on a money judgment does not become a lien on the personal property of the debtor until an actual levy is made. The lien then extends only to the property included in the levy. Statutory provisions specify numerous items that are exempt from execution on a money judgment, including money payable in the event of the sickness, accident, injury, or death of any person, including compensation for loss of future earnings.

***House Bill 837* (passed)** establishes that 25% of the net recovery by a person on a claim for personal injury is subject to execution on a judgment for a child support arrearage. "Net recovery" is defined as the sum of money to be distributed to the debtor after deduction of attorney's fees, expenses, medical bills, and satisfaction of any liens or subrogation claims arising out of the claims for personal injury, including those arising under:

- the Medicare Secondary Payer Act;
- a program of the Department of Health and Mental Hygiene for which a right of subrogation exists under statutory provisions;
- an employee benefit plan subject to the Federal Employee Retirement Income Security Act of 1974; or
- a health insurance contract.

The bill authorizes the withholding of a portion of a personal injury award or settlement to pay a child support arrearage. It is in response to a Court of Appeals decision, *Curtis O. Rosemann v. Salsbury, Clements, Bekman, Marder & Atkins, LLC*, 412 Md. 308 (2010).

Child Care Homes

Under current law, a child care provider is an adult who has primary responsibility for the operation of a family day care home. A child care provider may not care for more than 8 children at any given time, and no more than 4 of the children may be younger than the age of two. An adult-to-child ratio of at least one adult to every 2 children younger than the age of two is required at all times. Regulations define a "small center" as a child care center which is located in a private residence and is licensed for 12 or fewer children. (*See* COMAR 13A.16.01.02.) A "family day care home" is defined as a residence in which family day care is provided. Regulations also specify that "family child care" has the same meaning as "family day care" as defined in the Family Law Article. (*See* COMAR 13A.15.01.02.)

The Maryland State Department of Education (MSDE) advises that due to the label "center," child care providers who care for between 9 and 12 children in their residence cannot receive national accreditation. Without accreditation, a child care program is not eligible for tiered reimbursement in the Child Care Subsidy Program, will not be eligible for the higher rating levels in the new Quality Rating and Improvement System, and loses automatic eligibility to participate in the Child and Adult Care Food Program.

***Senate Bill 925* (passed)** amends current definitions to define a "large family child care home" as a residence in which family child care is provided for at least 9 but not more than 12 children and a "family child care home" as a residence in which child care is provided for up to 8 children. The bill also expands the definition of "child care provider" to include an adult who has primary responsibility for the operation of a large family child care home. A reference to "centers" serving between 7 and 12 children within residences is also repealed. The bill also changes multiple references from "family day care" to "family child care." MSDE advises that changing references from "day care" to "child care" align statutory language with the terminology that is used.

The bill further specifies that in a "family child care home," there may not be more than 8 children in care at any given time, and no more than 4 of the children may be younger than the age of two. An adult-to-child ratio of at least one adult to every 2 children younger than the age of two is required. In a large family child care home, there may not be more than 12 children in care at any given time and there must be an adult-to-child ratio that complies with regulations adopted by MSDE. The bill also applies, to large family child care homes, registration and regulatory requirements that apply to family child care homes. MSDE is also required to adopt regulations relating to the registration of large family child care homes on or before January 1, 2012. The bill also expands eligibility for Child Care Quality Incentive Grants (grants to help qualified child care providers purchase supplies, materials, and equipment) to include large family child care homes. Eligibility for Direct Grant Funds (grants awarded as

reimbursement for expenses incurred by child care providers to comply with State and local regulations) is also expanded to include large family child care homes. The provision requiring MSDE to adopt regulations takes effect July 1, 2011; the remaining provisions take effect January 1, 2012.

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. A person alleging discrimination by a place of public accommodation may file a complaint with the Maryland Commission on Human Relations (MCHR). Remedies are limited to granting nonmonetary relief to the complainant and assessing civil penalties against the respondent.

***Senate Bill 642/House Bill 285* (both failed)** would have expanded the remedies available for discrimination by a place of public accommodation to include (1) enjoining the respondent from engaging in the discriminatory act; (2) ordering appropriate affirmative relief, including the provision of a reasonable accommodation; (3) awarding compensatory damages for pecuniary and nonpecuniary losses; and (4) ordering any other appropriate equitable relief. A court also would have been authorized to award punitive damages if the respondent is not a governmental unit or political subdivision and the court finds that the respondent acted with actual malice. The bills would have repealed a provision prohibiting the issuance of an order – with regard to a respondent found to have engaged in a discriminatory act other than an unlawful employment practice – that substantially affects the cost, level, or type of transportation services. The bills also would have repealed the authority of MCHR to seek an order assessing a civil penalty for discrimination by a place of public accommodation.

In addition, the bills would have authorized a complainant, a respondent, or MCHR to elect to have the claims asserted in a complaint alleging discrimination by a place of public accommodation determined in a civil action brought by MCHR if (1) MCHR has found probable cause to believe the respondent has engaged or is engaging in discrimination by a place of accommodation; and (2) there is a failure to reach an agreement to remedy and eliminate the discrimination. The measures would have allowed a complainant to bring a civil action alleging discrimination by a place of public accommodation if (1) the complainant initially filed a timely administrative charge or complaint; (2) at least 180 days have elapsed since the filing of the

charge or complaint; and (3) the action is filed within two years after the alleged discrimination occurred.

Gender Identity

Thirteen states and the District of Columbia have passed laws prohibiting discrimination based on gender identity. Since 2002, Baltimore City has had laws prohibiting discrimination based on 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.

House Bill 235 (failed) would have prohibited discrimination based on gender identity in employment and housing and by persons licensed or regulated by the Commissioner of Financial Regulation. The measure would also have prohibited discrimination based on gender identity and sexual orientation in State personnel actions. As amended in the Senate, "gender" identity would have been defined as a persistent, bona fide gender-related identity and the consistent, public manifestation of that identity in the gender-related appearance of an individual regardless of the individual's assigned sex at birth.

Same-sex Marriage

A number of bills relating to same-sex marriage were considered by the General Assembly during the legislative session. ***Senate Bill 116 (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. The measure would have further provided that it did not require an official of a religious institution or body authorized to solemnize marriages to solemnize any marriage in violation of the right to the free exercise of religion as guaranteed by the United States and Maryland Constitutions. For a more detailed discussion of this issue and of other bills offered on same-sex marriage, see the subpart "Family Law" within this Part F – Courts and Civil Proceedings of this *90 Day Report*.

Commission Name Change

The Maryland Commission on Human Relations (MCHR) originated in 1927 as the Interracial Commission. In 1943, it became the Commission to Study Problems Affecting the Colored Population. It was renamed the Commission on Interracial Problems and Relations in 1951, and then reorganized as the Commission on Human Relations in 1969. ***House Bill 211 (passed)*** changes the name of the commission to the Maryland Commission on Civil Rights. The measure requires MCHR to use all the existing letterhead, business cards, and other documents already in print before the bill's effective date prior to using letterhead, business cards, and other documents reflecting the new name so the change will not result in any additional printing costs. The most recent name change was proposed to better reflect the work being done by MCHR.

Discrimination Based on Source of Income

State law prohibits housing discrimination because of race, sex, color, religion, national origin, marital status, familial status, sexual orientation, or disability. ***Senate Bill 643*/*House Bill 902* *(both failed)*** would have added discrimination based on a person's lawful source of income to this list. Under the bills, "source of income" was defined as any lawful source of money paid directly or indirectly to or on behalf of a renter or buyer of housing, including income from (1) any lawful profession, occupation, or job; (2) any government or private assistance, grant, loan, or rental assistance program, including low-income housing assistance certificates and vouchers; (3) any gift, inheritance, pension, annuity, alimony, child support, or other consideration or benefit; and (4) any sale or pledge of property or interest in property. A similar bill, ***House Bill 928* *(failed)***, also would have prohibited discriminatory practices in the sale or rental of a dwelling because of a person's source of income but did not include government or private assistance in the definition of "source of income." Making a written or oral inquiry to verify a person's level or source of income would not have been a discriminatory housing practice under the bill.

Real Property

Residential Foreclosures

Background

The State's multipronged approach to the foreclosure crisis over the last several years has involved legislative reforms of mortgage lending and foreclosure laws, extensive consumer outreach efforts, and enhanced mortgage industry regulation and enforcement. Legislation passed during the 2008, 2009, and 2010 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) prohibited foreclosure rescue transactions and granted the Commissioner of Financial Regulation additional enforcement powers; (4) reformed the foreclosure process to provide homeowners with greater time and additional notices before their properties are sold; (5) required additional notices to be given to residential tenants renting properties in foreclosure; (6) required a lender, under specified circumstances, to provide to a borrower a written notice regarding homebuyer education or housing counseling in connection with a mortgage loan; and (7) required the secured party to file a final loss mitigation affidavit and allowed the mortgagor or grantor to request foreclosure mediation. Consumer outreach efforts have included statewide public workshops to assist distressed homeowners, in coordination with the Maryland Foreclosure Prevention Pro Bono Project.

Due to a multitude of factors, including the State's new foreclosure mediation process, consumer outreach efforts, and legal issues surrounding many banks and mortgage companies' foreclosure practices, the number of foreclosure events decreased significantly in the fourth quarter of 2010 to approximately 6,000 from over 14,000 in the third quarter. In

December 2010, Maryland's foreclosure rate was 1,427 households per foreclosure, ranking the State thirty-eighth highest in the nation. The Department of Housing and Community Development (DHCD) estimates that 326,600 of the 1.3 million active residential mortgages in the State have outstanding loan balances that exceed the values of their respective homes. Maryland's housing market is expected to continue to exhibit instability due to foreclosures through at least 2012.

Accordingly, legislative efforts to address the foreclosure situation in the State continued during the 2011 session.

Foreclosure Procedures

Notice of Intent to Foreclose: In October 2010, the Maryland Court of Appeals approved an emergency rule allowing circuit courts to appoint independent attorneys to assess foreclosure documents for problems, including the authenticity of a signature or the veracity of an attestation. The rule was adopted following published revelations that two Maryland attorneys had not personally signed foreclosure affidavits that bore their names. To further ensure the accuracy of foreclosure documents, ***Senate Bill 205/House Bill 366 (Chs. 36 and 37)*** require that an affidavit accompanying an order to docket or a complaint to foreclose a mortgage or deed of trust on residential property state, if applicable, that the contents of the notice of intent (NOI) to foreclose were accurate at the time the NOI was sent.

Required Documents and Timing of Mediation: Chapter 485 of 2010 significantly expanded the protections for owners of residential property in foreclosure, including requiring certain documents to be filed with the court and served on the mortgagor or grantor. ***House Bill 728 (passed)*** clarifies that law by reducing the number of documents that must accompany an order to docket or complaint to foreclose on residential property that is filed with a court and requiring that certain documents must accompany the copy of the order to docket or complaint to foreclose that is served on a mortgagor or grantor, including notice about the foreclosure action and, if appropriate, a loss mitigation application with supporting documents and a request for foreclosure mediation form with supporting documents. The Commissioner of Financial Regulation is required to prescribe by regulation the notice, forms, and supporting documents that must be served on the mortgagor or grantor. If the residential property is not owner-occupied, the measure also requires a notice of intent to foreclose to be accompanied by a written notice of the determination that the property is not owner-occupied and a telephone number to call to contest that determination. The bill also extends the amount of time (1) from 15 to 25 days, in which a mortgagor or grantor may file with the court a completed request for foreclosure mediation in a foreclosure action on owner-occupied residential property; and (2) from five to seven days, in which the Office of Administrative Hearings (OAH) must file a report on the outcome of a request for mediation. Additionally, the bill authorizes OAH to extend the time for completing foreclosure mediation for more than 30 days if all parties agree.

Lost Note Affidavit: Often when an original debt instrument is lost, destroyed, or stolen and cannot be found, the attorney for the party filing a foreclosure action makes a motion for acceptance of a lost note affidavit. ***Senate Bill 450/House Bill 412 (both passed)*** require

specific information to be included in a lost note affidavit. The bills prohibit a court from accepting a lost note affidavit unless the affidavit (1) identifies the owner of the debt instrument and states from whom and the date on which the owner acquired ownership; (2) states why a copy of the debt instrument cannot be produced; and (3) describes the good faith efforts made to produce a copy of the debt instrument.

Definition of "Secured Party": A significant concern frequently cited in the media regarding foreclosures is the role of electronic databases in the foreclosure process, such as MERS (Mortgage Electronic Registration Systems, Inc). ***Senate Bill 206/House Bill 691 (both failed)*** would have defined "secured party" for purposes of residential property foreclosure procedures as the person that (1) owns a debt instrument secured by a mortgage or deed of trust on residential property; and (2) is entitled to the net proceeds of a foreclosure sale of the residential property or of the payoff of the debt instrument.

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 write of possession. Chapters 587 and 588 of 2010 altered these notice requirements by conforming to the federal Protecting Tenants at Foreclosure Act of 2009 and incorporating the federal definition of a "bona fide" tenant.

Senate Bill 516/House Bill 842 (both passed) add further protections for tenants in foreclosed property with regard to the collection of rent. Specifically, the bills prohibit a foreclosure sale purchaser from asserting a claim to rent payments from a bona fide tenant in possession of residential property, unless the purchaser has (1) conducted a reasonable inquiry into the property's occupancy status and whether any individual in possession is a bona fide tenant; and (2) served on each bona fide tenant, by first-class mail with a certificate of mailing, a notice containing the contact information of the purchaser or the purchaser's agent responsible for managing and maintaining the property and stating that the tenant must direct rent payments to this person. Until a foreclosure sale purchaser fulfills these requirements, the purchaser waives any claim to rent payments from a bona fide tenant, except for a claim for rent for the use of the property for the 15 days immediately prior to satisfying the notice requirements.

Enforcement Authority of Commissioner of Financial Regulation

Chapters 5 and 6 of 2008 created the Protection of Homeowners in Foreclosure Act (PHIFA). PHIFA was enacted to address the growing problem of foreclosure "rescue" scams. It requires "foreclosure consultants" to enter into consulting contracts with homeowners that lay out the terms of their agreements, give disclosures, and afford basic consumer protections such as a three-day rescission period. Chapters 3 and 4 of 2008 created the Maryland Mortgage Fraud Protection Act (MMFPA). MMFPA prohibits specified actions made with the intent to defraud, including knowingly making, using, or facilitating the use of any deliberate misstatement,

misrepresentation, or omission during the mortgage lending process with the intent that it be relied upon by a mortgage lender, borrower, or any other party to the lending process.

***House Bill 509* (Ch. 127)**, an emergency bill, clarifies the authority of the Commissioner of Financial Regulation to enforce and investigate PHIFA and MMFPA. The bill authorizes the commissioner to enforce these Acts by exercising any of the commissioner's general enforcement powers, seeking an injunction, or requiring a violator to take affirmative action to correct a violation, including the restitution of money or property to any person aggrieved by the violation. Additionally, the commissioner is authorized to cooperate with any unit of law enforcement in the investigation and prosecution of a violation of the Acts, investigate violations, and aid any unit of the State government with regulatory jurisdiction over the business activities of the violator. The bill also clarifies that a homeowner may bring an action for damages as a result of a violation of PHIFA or MMFPA, without having to exhaust administrative remedies and regardless of the status of an administrative action or criminal prosecution, if any, under the applicable Act.

Residential Property Sales

New Home Sales – Minimum Visitability Features

"Visitability" according to the United Spinal Association, a group advocating for people with mobility impairment, is a public movement with the purpose of making homes more accessible to people with mobility impairments by changing some of the home's fundamental construction features. The Department of Disabilities cites a national study that estimates up to 60% of new homes will, at some point, have a resident with severe, long-term mobility impairment.

***House Bill 437* (passed)** requires a home builder that constructs 11 or more new homes in a subdivision that contains 11 or more new homes that receives preliminary plan approval on or after October 1, 2012, to offer minimum visitability features as an option for purchase. "Minimum visitability features" are defined as (1) a ground level entrance meeting specified height, width, and accessibility characteristics; and (2) a circulation route from the ground level entrance to an unattached garage, parking space, or public right-of-way that is free of specified impediments or vertical changes in levels greater than 1.5 inches. The builder must provide (1) a point of sale document describing the minimum visitability features; and (2) a drawing or photograph showing these features as well as the lots and new home types that are conducive to the construction of these features.

Deposits on New Homes – Escrow Accounts

Senate Bill 334*/*House Bill 379* (both passed)** respond to issues raised in *Coleman v. State* – 196 Md. App. 634, (2010), in which the Court of Special Appeals ruled that the current law is ambiguous as to when a builder or vendor of a new single-family home is required to maintain an escrow account. ***Senate Bill 334*/*House Bill 379 provide that a builder or vendor must maintain money received from a purchaser at any time before completion of the home, including prior to the start of construction, in an escrow account, surety bond, or irrevocable

letter of credit. The money received by the builder or vendor must be held in trust for the benefit of the purchaser of the new home, and any payments for labor or materials in connection with the construction of the new home must be consistent with that trust obligation. In addition, the bills clarify that the escrow account must be maintained until the granting of a deed for a completed home. Further, the bills allow the builder or vendor to make withdrawals from the escrow account to finance construction in accordance with a draw schedule agreed to by the purchaser in writing.

Rescission of Sales Contracts – Return of Deposits

House Bill 1109 ***(Ch. 156)*** clarifies that the procedures and standards for the maintenance and disposition of a trust account held by a licensed real estate broker for a purpose relating to a real estate transaction, as established in the Business Occupations and Professions Article, apply to deposits held by a licensed real estate broker under the Real Property Article on behalf of a purchaser of a residential dwelling, a cooperative interest in a cooperative housing corporation, a condominium unit, or a lot in a homeowners association.

Common Ownership Communities

Common ownership communities (COCs) is the term used to describe collectively condominiums, homeowners associations (HOAs), and cooperative housing corporations. COCs were the focus of a number of bills introduced this session.

Condominiums and Homeowners Associations – Priority of Liens

Similar to the persistence of mortgage foreclosures on residential property, condominiums and HOAs also continue to experience problems in collecting payments of required assessments from unit owners or lot owners. ***House Bill 1246*** ***(passed)*** seeks to address these problems by establishing the priority of a condominium or HOA lien for a specified amount of unpaid assessments in the event of foreclosure on a condominium unit or lot in an HOA.

House Bill 1246 provides that in a foreclosure of a mortgage or deed of trust on a condominium unit or a lot in an HOA that is recorded before a lien for unpaid assessments, the condominium or HOA lien will have priority in an amount of not more than four months, or the equivalent of four months, of unpaid regular assessments, up to a maximum of $1,200. The priority lien may not include interest, attorney's fees, or other costs or sums due. Additionally, at the request of a holder of the first mortgage or deed of trust who provides the governing body of the condominium or HOA with written contact information, ***House Bill 1246*** requires the governing body to provide the holder with written notice of the portion of the lien that has priority. If a governing body fails to provide the written information within 30 days of filing the lien in the county land records where the condominium or HOA is located, that portion of the lien does not have priority as provided under the bill.

House Bill 1246 also requires specific information about the amount of regular monthly assessments to be included in a statement of lien filed under the Maryland Contract Lien Act.

The bill does not limit or affect the priority of any lien, secured interest, or other encumbrance with priority that is held by the State or any county or municipal corporation in the State; or, with respect to HOAs, a lien for the annual charge provided first priority over a deed of trust or mortgage by a deed, agreement, and declaration of covenants, easements, charges, and liens dated December 13, 1966, and recorded in Howard County (the Columbia Association Declaration).

Homeowners Association Elections – Resolution of Procedural Issues

While the Maryland Condominium Act provides direction for the enforcement of certain elements of condominium elections by the Division of Consumer Protection (division) in the Office of the Attorney General, the Maryland Homeowners Association Act does not contain similar guidance. ***Senate Bill 532 (passed)*** addresses that inconsistency. Specifically, if a lot owner believes the HOA's board of directors has failed to comply with election procedures specified in the HOA's governing documents, ***Senate Bill 532*** authorizes the lot owner to submit the dispute to the division if the provisions concern (1) notice about the date, time, and place for the election of the board of directors or other governing body; (2) the manner in which a call is made for nominations for the board of directors or other governing body; (3) the format of the election ballot; (4) the format, provision, and use of proxies during the election process; or (5) the manner in which a quorum is determined for election purposes.

Condominium Units – Insurance Coverage

House Bill 679 (Ch. 138) authorizes a condominium's bylaws to require that all unit owners maintain condominium insurance on their units. A condominium's council of unit owners may amend its bylaws to require the insurance if at least 51%, rather than the current required threshold of 66 2/3%, of unit owners having votes in the council of unit owners agree. If the bylaws require all unit owners to maintain condominium insurance on their units, the bylaws must also require each unit owner to provide the council of unit owners with evidence of insurance coverage.

Regulation of Management Services Companies

Many COCs hire professional management companies to provide administrative services such as payment collection, financial management, groundskeeping, and other maintenance. These companies are responsible for managing large sums of money due to and owned by the COCs but lack comprehensive regulation by the State. Several bills would have imposed differing forms of regulation on these companies. ***House Bill 722 (failed)*** would have required a management services provider to enter into a written contract with a COC before providing the services. ***House Bill 537 (failed)*** would have established a statewide registry of companies providing community association management services. A State board of common interest community managers would have been established by ***House Bill 942 (failed)*** and ***House Bill 592 (failed)***. Finally, ***Senate Bill 264 (failed)*** would have repealed the requirement that a COC purchase fidelity insurance covering a management company and instead would have required that the management company contracting to provide services to the COC purchase fidelity insurance.

Landlord/Tenant and Mobile Home Parks

Victims of Domestic Violence or Sexual Assault

Chapters 318 and 319 of 2010 provided 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 the lease or change the locks of the residence. ***House Bill 1047*** ***(Ch. 152)*** clarifies that a victim tenant may terminate the tenant's future liability under a residential lease, and that the authority to terminate future liability under a residential lease does not extend to, or in any other way impact, the future liability of a tenant who is the respondent in an action that results in the issuance of a final protective order or final peace order for the benefit of the victim tenant or victim legal occupant.

Retaliatory Actions

Under current law, a landlord generally may not evict a tenant or arbitrarily increase the rent or decrease services to which the tenant is entitled solely because (1) the tenant or the tenant's agent has filed a good faith written complaint with the landlord or with a public agency against the landlord; (2) the tenant or agent has filed a lawsuit or lawsuits against the landlord; or (3) the tenant is a member or organizer of any tenants' organization. There are similar protections against "retaliatory evictions" for residents of mobile home parks.

Senate Bill 620*/*House Bill 670 ***(both passed)*** expand these protections for tenants and mobile home park residents while also providing that certain actions by a landlord or park owner may not be deemed to be "retaliatory actions" if they occur more than six months after the protected action of a tenant or park resident.

In addition to the prohibitions in current law, the bills prohibit a landlord or park owner from threatening to bring an action for possession, or terminating a periodic tenancy or rental agreement, because of specified actions by the tenant or resident. The bills also delete the requirement that a tenant or park resident must prove that a retaliatory action was taken "solely" because of a protected action of the tenant or park resident. Further, the bills expand the protected actions of a tenant or park resident to include (1) the written or actual notice of a good faith complaint about an alleged violation of the lease, violation of law, or condition on the leased premises that is a substantial threat to the health or safety of occupants; (2) the filing of a lawsuit against the landlord or park owner, or the testifying or participation in a lawsuit involving the landlord or the park owner; or (3) participation in a tenant's organization. Lastly, a tenant or resident may raise the landlord's retaliatory action as a defense in an action for possession or as an affirmative claim for damages resulting from a retaliatory action of a landlord or park owner during a tenancy.

Estates and Trusts

Trusts

Special Needs Trusts and Pooled Asset Special Needs Trusts

Special (or supplemental) needs trusts are intended to hold funds for the benefit of a disabled individual for purposes other than those provided for by Medicaid or other public benefits, without affecting the individual's eligibility for the public benefits. A pooled asset special needs trust is a trust that collectively invests and manages funds of multiple individuals who are disabled, reducing the costs of trust administration. The assets of a disabled individual used to fund a special needs trust may come from a source such as a personal injury settlement or an inheritance of the individual.

***Senate Bill 888*/*House Bill 1277* (both passed)** establish that it is the policy of the State to encourage the use of a special needs trust or supplemental needs trust by an individual of any age with disabilities to preserve funds to provide for the needs of the individual not met by public benefits and to enhance quality of life. The bills require each State agency that provides public benefits through means-tested programs, including Medicaid, to individuals with disabilities of all ages to adopt regulations that are not more restrictive than existing federal law, regulations, or policies with regard to the treatment of a special needs trust or supplemental needs trust, including specified trusts defined under federal law governing State Medicaid programs.

The regulations must allow:

- an individual account in a pooled asset special needs trust to be funded without financial limit;
- a fund in a special needs trust, supplemental needs trust, or pooled asset special needs trust to be used for the sole benefit of the beneficiary including, at the discretion of the trustee, distributions for food, shelter, utilities, and transportation;
- an individual to establish or fund an individual account in a pooled asset special needs trust without an age limit or a transfer penalty;
- an individual to fund a special needs trust or supplemental needs trust for the individual's child with disabilities without a transfer penalty and regardless of the child's age; and
- all legally assignable income or resources to be assigned to a special needs trust, supplemental needs trust, or pooled asset special needs trust without limit.

A State agency may not impose additional requirements on a nonprofit organization for the purpose of qualification or disqualification of the organization from offering a pooled asset special needs trust.

Transfer of Tenancy by the Entirety Property to Trustees

Chapter 202 of 2010 established that the property of a husband and wife that is held by them as tenants by the entirety and subsequently conveyed to a trustee, and the proceeds of that property, have the same immunity from the claims of the separate creditors of the husband and wife as would exist if the husband and wife had continued to hold the property or its proceeds as tenants by the entirety, subject to certain conditions. Chapter 202 also specified that after the death of the first spouse, the property continues to be immune from the claims of the decedent's separate creditors, but to the extent the surviving spouse remains a beneficiary of the trust, the property is subject to the claims of the surviving spouse's separate creditors.

According to the Estate and Trust Law Section of the Maryland State Bar Association, questions have arisen as to whether Chapter 202 of 2010 applies to transfers of tenancy by the entirety property to trusts with more than one trustee or trustees of multiple trusts. Concerns have also been raised that Chapter 202 may have unintended estate tax consequences in relation to certain trusts used for estate planning purposes to obtain the benefit of both spouses' estate tax exemptions. ***Senate Bill 696/House Bill 799 (both passed)*** make corrective and clarifying changes to the provisions enacted under Chapter 202 of 2010.

The bills specify that the immunity of property held in trust applies to property conveyed to *the trustee or trustees of one or more trusts* and also adds a condition to the immunity that the trust instrument, deed, or other instrument of conveyance provides that the provisions enacted under Chapter 202 apply to the property or its proceeds. The bills also specify that the provisions enacted under Chapter 202, and the alterations made by the bill, only apply to tenancy by the entirety property conveyed to a trustee or trustees on or after October 1, 2010.

The bills lastly expand the authority to waive the immunity established under Chapter 202. Chapter 202 allowed for the immunity to be waived as to any specific creditor or any specifically described trust property. The bills specify that this authority includes the authority to waive the immunity as to all separate creditors of a husband and wife or all former tenancy by the entirety property conveyed to the trustee or trustees.

Probate

A 2005 Attorney General Opinion (90 Op. Att'y Gen. 145) indicated that orphans' court review is required whenever estate funds are used for payment of attorney's fees (aside from a limited statutory exception, where consent is obtained from creditors and interested persons and the payment does not exceed a specified amount), including where a decedent had entered into a contingent fee agreement with an attorney prior to death. The opinion was in response to a request that indicated orphans' courts around the State had adopted differing practices concerning whether and when to require fee petitions in such cases. ***Senate Bill 673 (Ch. 80)*** allows payment of attorney's fees to be made without court approval if (1) the fee is paid to an attorney representing the estate in litigation under a contingency fee agreement signed by the decedent or the current personal representative of the decedent's estate; (2) the fee does not exceed the terms of the agreement; (3) a copy of the agreement is on file with the register of

wills; and (4) the attorney files a statement with each account stating that the scope of the representation by the attorney does not extend to the administration of the estate.

Qualifications of Prince George's County Orphans Court Judges

Senate Bill 281 ***(passed)*** proposes an amendment to the Constitution of Maryland that prescribes additional qualifications for judges of the Orphans' Court in Prince George's County. If the amendment is approved by the voters at the 2010 general election, an orphans' court judge in Prince George's County 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 Prince George's County be a citizen of the State and a resident of Prince George's County for the 12 months preceding the election.

Powers of Attorney

The Maryland General and Limited Power of Attorney Act was enacted by Chapters 689 and 690 of 2010. Applicable to all powers of attorney, with certain listed exceptions, Chapters 689 and 690 included various new provisions derived in part from the Uniform Power of Attorney Act and also incorporated existing provisions governing powers of attorney, with minor alterations. The legislation established requirements for proper execution of a power of attorney, specified when a power of attorney becomes effective, and provided for the validity and enforceability of a power of attorney. Fiduciary duties for an agent appointed under a power of attorney were established. Finally, the 2010 legislation included two statutory form powers of attorney.

Senate Bill 529/***House Bill 247*** ***(Chs. 74 and 75)*** make corrective and clarifying changes to the Maryland General and Limited Power of Attorney Act. The Acts define the term "property," to include both real and personal property and any right or title in real or personal property, whether held individually or jointly and whether indivisible, beneficial, contingent, or of any other nature. The Acts also define "stocks and bonds" to mean evidence of ownership in or debt issued by a corporation, partnership, limited liability company, firm, association, or similar entity and specify various types of instruments that are included within the definition. The definition of "statutory form power of attorney" is amended to exclude a form power of attorney that incorporates by reference provisions of another writing.

Chapters 74 and 75 also specify that a provision of the Maryland General and Limited Power of Attorney Act that establishes the presumption that powers of attorney are durable, and related provisions, are applicable to all powers of attorney without exception (a durable power of attorney is a power of attorney by which a principal designates another as an attorney in fact or agent and the authority is exercisable notwithstanding the principal's subsequent disability or incapacity). ***Chapters 74 and 75*** also modify the statutory form powers of attorney to specify certain authority of an agent with respect to banks and other financial institutions, including the authority of an agent to transact all business in connection with an account or other banking arrangement made by or on behalf of the principal or established by the agent and the authority

to deposit with or leave in the custody of a financial institution money or property of the principal.