

# **Part I**

## **Financial Institutions, Commercial Law, and Corporations**

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### **Financial Institutions**

#### **Commissioner of Financial Regulation**

##### **Information Sharing**

The Commissioner of Financial Regulation is authorized to enter into cooperative and information-sharing agreements with (1) any federal or state regulatory agency with authority over financial institutions, provided the agreements prohibit the agency from disclosing shared information without the commissioner's prior written consent; (2) federal or state law enforcement agencies in specified situations; and (3) any other bank supervisory agency.

*House Bill 198 (Ch. 109)*, a departmental measure, increases the number of authorized agencies with which the commissioner may enter into cooperative and information-sharing agreements to include any federal or state law enforcement agency and the Office of Foreign Assets Control. In addition, if an agency providing information under such an agreement retains ownership of the record, the Act prohibits the commissioner from disclosing the record pursuant to a Maryland Public Information Act request and requires the commissioner to forward the request to the agency that owns the record for processing by that agency.

##### **Continuance of Office**

The Office of the Commissioner of Financial Regulation is responsible for regulating and supervising 48 Maryland State-chartered banks, 9 State-chartered credit unions, and 6 State-chartered trust companies. The office also is responsible for licensing, regulating, examining, and investigating mortgage lenders, consumer loan companies, sales finance companies, installment loan lenders, credit reporting agencies, and debt collection agencies. The office licenses and regulates over 9,300 nondepository licensees, including mortgage lenders, brokers, services, and originators.

***Senate Bill 103/House Bill 358 (both passed)*** extend the termination dates for the Office of the Commissioner of Financial Regulation and the State Collection Agency Licensing Board by 10 years to July 1, 2022, and requires evaluation of both the commissioner's office and the board by July 1, 2021. The bills also require the commissioner's office to implement, by January 1, 2012, a risk-based mortgage lender licensee examination schedule to supplement the existing calendar-based examination, and to report on the implementation by October 1, 2012.

Finally, the bills repeal the Banking Board which is charged with advising the commissioner on matters relating to Maryland's banking industry and the regulation of State-chartered banks. The board has not convened in nearly four years, and four of its nine seats currently are vacant.

### **Automated Teller Machines – Video Cameras**

An operator of an automated teller machine (ATM) is required to notify customers of safety precautions customers should employ when using an ATM and provide minimum outdoor lighting levels. Before installing an ATM, an operator also must consider a variety of factors, including lighting, potential obstructions such as vegetation, the access area, and the availability of parking.

***House Bill 1028 (passed)*** adds to the duties of an operator of an ATM by requiring the operator to (1) install and maintain in specified ATMs a video camera that views and records an image of a user as the user performs a transaction at the ATM; and (2) preserve the recordings for at least 45 calendar days. An operator of an ATM is not liable for a video camera malfunction that occurs due to a reason beyond the operator's control. The bill applies prospectively to an ATM first installed on or after October 1, 2011.

### **Credit Unions – Elections of Boards of Directors**

A federally chartered credit union may conduct electronic elections for its board of directors if appropriate notice is given to members. However, under State law, the board of directors of a credit union is elected exclusively by mail ballot. ***Senate Bill 980 (passed)*** authorizes a State-chartered credit union to conduct an election of its board of directors electronically. Under the bill, the Commissioner of Financial Regulation is required to establish electronic election procedures, including procedures for (1) providing notice of the election to each member in good standing; (2) providing a specified information and identification form; (3) providing instructions on how to access and use the electronic election system; and (4) allowing a member to opt out of using the electronic election system and vote by mail ballot.

### **Mortgage Loan Originators and Mortgage Lenders**

#### **Prohibited Actions**

In October 2010, the Federal Reserve Board announced an interim rule designed to protect the integrity of the appraisal process relating to secured mortgages. The final interim rule

(1) prohibits coercion intended to intimidate appraisers in order to alter the appraised value of a property; (2) prohibits appraisers hired by lenders from having an interest in the properties or the credit transactions; (3) requires creditors to determine the reasonableness of an appraised property value before the extension of credit if the creditors have knowledge of appraiser coercion or conflict of interest; (4) requires that creditors and settlement service providers with knowledge of appraiser misconduct file a report with the appropriate state licensing authorities; and (5) requires that creditors reasonably compensate appraisers who are not employees of the creditor or the appraisal management company hired by the creditor. Compliance with the rule is mandatory as of April 1, 2011.

**House Bill 102 (Ch. 97)** establishes State law protections for real estate appraisers and other individuals from undue influence or coercion in connection with a mortgage loan or loan application. The Act prohibits a mortgage loan originator from taking specified actions, including (1) withholding or threatening to withhold payment for a real estate appraisal with the intent to coerce the appraiser to agree to a value, range of values, or minimum value for the residential real estate; (2) conditioning the payment of an appraisal fee on the opinion, conclusion, or valuation to be reached by the appraiser; or (3) requesting the appraiser to report a predetermined opinion, conclusion, or valuation. Forty-four states and the District of Columbia have enacted similar real estate appraiser independence laws for the purpose of shielding appraisers and other persons from undue influence or coercion in connection with a real estate appraisal or residential mortgage loan.

### **Licensing Requirements**

Chapter 4 of 2009 overhauled the State’s mortgage lender and mortgage loan originator laws to conform to the requirements of the federal Secure and Fair Enforcement Mortgage Licensing Act of 2008. Chapter 4 altered the licensing requirements, initial license terms, and renewal terms for mortgage lenders and loan originators, and required applicants and licensees to submit certain information and fees to the Nationwide Mortgage Licensing System and Registry (NMLSR).

NMLSR is a web-based system that allows state-licensed mortgage lenders, mortgage brokers, and mortgage loan originators to apply for, amend, update, or renew a license online using a set of uniform applications. The online system was established in 2004 by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators in response to the increased volume and variety of residential mortgage originators.

**House Bill 944 (Ch. 148)**, a departmental measure, requires specified persons that are exempt from licensing as mortgage lenders and that employ a licensed mortgage loan originator to register with NMLSR. The Act also authorizes the commissioner to request from specified databases information relating to a licensee’s or applicant’s criminal records, and authorizes a mortgage loan originator licensee with nonactive status to renew a license while remaining in nonactive status if specified requirements are met.

Finally, the Act repeals provisions of law relating to (1) an alternative method of licensing for sole proprietor mortgage lenders who do not meet a specified experience

requirement; (2) the requirement that a mortgage lender with whom a mortgage loan originator is affiliated must maintain an office in the State under specified circumstances; (3) interim mortgage loan originator licenses; and (4) provisional licenses for mortgage loan originators.

## Commercial Law – Generally

### Debt Settlement Services

Effective July 2010, the Federal Trade Commission (FTC) amended its Telemarketing Sales Rule to cover companies that provide debt relief services. Among other things, the FTC's amended rule (1) prohibits debt relief service providers from collecting fees until after services have been provided; (2) requires debt relief service providers to make certain disclosures of material information about offered debt relief services; and (3) prohibits debt relief service providers from making specific misrepresentations about material aspects of debt relief services. Although the FTC's amended rule covers debt settlement service providers, there are limitations to the rule due to the FTC's limited authority over intra-state transactions.

*Senate Bill 741/House Bill 1022 (both passed)* address these limitations by establishing the Maryland Debt Settlement Services Act. The bills require debt settlement service providers to register with the Commissioner of Financial Regulation before providing debt settlement services in the State. The bills also incorporate into State law many of the provisions of the FTC rule and close some of the regulatory gaps in the federal rule. Finally, the bills require the commissioner to collect data on the debt settlement industry and report to the General Assembly on recommended changes to the Maryland Debt Settlement Services Act on or before December 1, 2014. Among other things, the report must include a recommendation on whether to impose a cap on fees charged by debt settlement service providers. Absent further action by the General Assembly, the Maryland Debt Settlement Services Act will expire on June 30, 2015.

### Registration and Reporting Requirements

*Senate Bill 741/House Bill 1022* require providers of debt settlement services in the State to register with the commissioner. Debt settlement services are defined as any service or program represented, directly or by implication, to renegotiate, settle, reduce, or in any way alter the terms of payment or other terms of a debt between a consumer and one or more unsecured creditors or debt collectors, including a reduction in the balance, interest rate, or fees. To register, a person must (1) submit an application form including specified information and (2) pay an initial \$1,000 registration fee and \$1,000 for each subsequent registration renewal. On or before March 15 of each year through March 15, 2014, a registrant must submit a report to the commissioner on the debt settlement services business of the registrant conducted during the preceding calendar year.

### Fees Charged to Customers

Under *Senate Bill 741/House Bill 1022*, a debt settlement service provider may not charge a consumer a fee for consultation or for obtaining a consumer's credit report or require a

voluntary contribution from a consumer for any of the provider's services. Additionally, a debt settlement service provider may not charge a debt settlement services fee until after (1) a debt settlement services agreement has been executed between the provider and the consumer; (2) the provider has renegotiated, settled, reduced, or otherwise altered the terms of at least one individual debt specified in the debt settlement services agreement; and (3) the consumer has made at least one payment in accordance with the debt settlement services agreement.

A debt settlement service provider may, however, request or require a consumer to deposit funds in an account to be used for debt settlement services fees and for payments to creditors or debt collectors in connection with a debt settlement services agreement if specified conditions are met. If a provider establishes such an account, the provider must file a \$50,000 surety bond.

For each individual debt, a debt settlement services fee must (1) bear the same proportional relationship to the debt settlement services fee for settling the total debt as the individual debt amount bears to the total debt; or (2) be calculated as a percentage of the amount by which the principal amount of the debt exceeds the amount paid to the creditor or debt collector to settle the debt.

### **Debt Settlement Services Agreements and Consumer Rights**

The bills establish requirements for an agreement between a debt settlement service provider and a consumer for the performance of debt settlement services. Among other information, a debt settlement services agreement must include a description of services to be provided to the consumer, any debt settlement services fees to be charged, information about each individual creditor or debt collector owed and the principal amount of the total debt, and a good faith estimate as to when specified actions may occur.

A debt settlement service provider must allow a consumer to withdraw from a debt settlement services agreement at any time. If the consumer withdraws, a provider may not charge the consumer a penalty but may collect any fees earned. The agreement must include a statement notifying the consumer of his or her right to withdraw at any time and the possible consequences of withdrawal.

In addition, if the debt settlement service provider requests or requires the consumer to deposit funds in a dedicated account, the agreement must include a statement indicating the consumer's ownership of the funds and any accrued interest in the account and the right to payment of funds and accrued interest in the account to the consumer, less any fees owed by the consumer, if the consumer withdraws from the agreement.

### **Misrepresentation and Advertisements**

*Senate Bill 741/House Bill 1022 (passed)* prohibit debt settlement service providers from misrepresenting any material aspect of any debt settlement service. The bills also require debt settlement service providers to disclose in an advertisement for debt settlement services specified

information relating to the potential financial consequences of a consumer's use of the debt settlement services.

### **Residential Mortgages – Escrow Accounts**

In connection with a mortgage loan, a lending institution may require a borrower to place funds into an escrow account to pay taxes, insurance, or other expenses on the mortgaged property. If a lender determines that there is or will be a deficiency in an escrow account, the federal Real Estate Settlement Procedures Act allows the lender to require additional monthly deposits to avoid or eliminate the deficiency.

*House Bill 1038 (passed)* addresses the circumstance in which a lender or servicer of a loan determines that a borrower must pay an increased amount in escrow under a first mortgage or first deed of trust on residential property. The bill prohibits a lender or servicer of a loan from charging interest or fees on the amount of the increase in borrower escrow payments for a one-year period after the determination is made.

Under the bill, however, a lender or servicer of a loan may charge a borrower interest if the lender or servicer is required to advance its own funds to pay taxes, insurance premiums, or other expenses owed by the borrower. Before charging interest, the lender or servicer must provide the borrower with notice that the advance was made and that interest will be charged on the advance.

### **Tobacco Products – Sales of Unpackaged Cigarettes**

*Senate Bill 82 (Ch. 22)* specifies that a retailer, wholesaler, or vending machine operator may not sell or distribute unpackaged cigarettes. Any cigarette not contained in a sealed package of 20 or more cigarettes is considered an unpackaged cigarette. Violators are guilty of a misdemeanor and are subject to a maximum \$500 fine or imprisonment for up to three months or both. The Act does not apply to an individual who produces unpackaged cigarettes for the individual's own consumption by using a mechanical rolling machine or a hand rolling device or procedure.

### **Sales of Engine Coolant and Antifreeze**

Ethylene glycol is an odorless, sweet-tasting, and highly toxic liquid commonly used in engine coolant or antifreeze. *House Bill 897 (passed)* prohibits a person from selling or offering to sell any engine coolant or antifreeze that contains more than 10% ethylene glycol unless the coolant or antifreeze contains a specified concentration of denatonium benzoate. Denatonium benzoate is a chemical compound that is known for its bitter taste and used as an aversive agent in toxic products to prevent children and animals from consuming the products. For further discussion of this issue, see subpart "Public Health – Generally" under Part J – Health and Human Services of this *90 Day Report*.

## **Information Printed on Receipts**

*House Bill 482 (passed)* decreases from eight to five the number of digits of a payment device number that a merchant may print on an electronically printed receipt provided to the purchaser in connection with a purchase of consumer goods or services. The bill also prohibits a merchant from printing the expiration date of the payment device on the electronically printed receipt. By restricting the information that may be printed on an electronically printed receipt, the bill conforms Maryland law to the federal Fair and Accurate Credit Transaction Act.

However, the bill goes beyond federal law, in that it extends the restriction on the printing of payment device numbers and expiration dates to cover electronically printed receipts retained by a merchant. A person that violates the bill's provisions is subject to a civil penalty of up to \$25 for each violation. The bill's provisions take effect January 1, 2013.

## **Commercial Law – Consumer Protection**

### **Arbitration of Consumer Claims**

*Senate Bill 309/House Bill 442 (both passed)* create the Transparency in Consumer Arbitrations Act. Under the bills, an arbitration organization that performs 50 or more binding consumer arbitrations during a five-year period must collect, publish, and make publicly available specified information about the parties involved, types of claims handled, and arbitration outcomes. The information must be updated by the arbitration organization at least every quarter and may be considered in determining whether a consumer arbitration agreement is unconscionable or unenforceable under law. The bill also grants a consumer the power to seek injunctive relief against an arbitration organization.

Under the bills, consumer arbitration is defined as a binding arbitration conducted in accordance with a consumer arbitration agreement. A consumer arbitration agreement is defined as a standardized contract between a consumer and nonconsumer that (1) provides for the sale or lease of goods, services, real property, or credit primarily for personal, family, or household purposes; and (2) requires that disputes arising under the contract be submitted to binding arbitration. The bill excludes from its scope (1) an arbitration conducted in accordance with provisions of specified insurance policies; (2) an arbitration governed by rules adopted by a securities self-regulatory organization and approved by the federal Securities and Exchange Commission; (3) an arbitration between a consumer and certain nursing homes or long-term care facilities; and (4) a public or private sector collective bargaining agreement.

### **Maryland Consumer Protection Act – Scope**

The Maryland Consumer Protection Act (MCPA) prohibits a person from engaging in unfair or deceptive trade practices in connection with the sale, lease, or rental of consumer goods, consumer services, or consumer realty. An unfair or deceptive trade practice includes any false, falsely disparaging, or misleading oral or written statement, visual description, or other

representation of any kind that has the capacity, tendency, or effect of deceiving or misleading consumers. The Consumer Protection Division of the Office of the Attorney General is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. A person who violates MCPA is subject to a civil penalty of up to \$1,000 for an initial violation and up to \$5,000 for each subsequent violation. In addition to civil penalties, a person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 or imprisonment for up to one year or both.

***Senate Bill 75/House Bill 128 (both passed)*** expand the scope of MCPA to encompass certain transactions in which a consumer sells goods to a merchant. Specifically, the bills prohibit a merchant from engaging in unfair or deceptive trade practices in connection with the purchase or offer for purchase of consumer goods or consumer realty from a consumer if the merchant's business includes paying off consumer debt in connection with the purchase.

### **Household Goods Movers**

***House Bill 1134 (passed)*** requires a household goods mover to provide a written estimate containing specified information to a consumer before providing household goods moving services for an intrastate move. Under the bill, however, a consumer may waive the right to receive a written estimate.

If the written estimate is a binding estimate, the mover may not require the consumer to pay more than the estimated total price for the services described in the estimate. If the written estimate provided to the consumer is a nonbinding estimate, the mover may not require the consumer to pay more than 125% of the estimated total price for the services described in the estimate plus any excess charges. The bill defines excess charges to mean any charges for additional services that are necessary because of circumstances that (1) are beyond the control of the mover and (2) could not have been reasonably anticipated. Violation of the bill's provisions is an unfair or deceptive trade practice under MCPA.

### **Leased Motor Vehicles**

***House Bill 908 (passed)*** prohibits a person who leases vehicles from failing to include a dealer processing or freight charge when determining the adjusted capitalized cost used to calculate the base lease payment shown in an advertisement for a leased vehicle. Under Maryland law, the "adjusted capitalized cost" serves as the basis for determining the base lease payment of a vehicle. The adjusted capitalized cost is computed by subtracting from the capitalized cost any "capitalized cost reduction" which is generally the down payment plus any trade-in value. The adjusted capitalized cost is then paid throughout the lease term to the estimated residual value of the vehicle.

The bill also prohibits a person who leases vehicles from advertising to the general public a capitalized cost reduction in connection with a vehicle lease unless the capitalized cost reduction is offered to all potential lessees. Violation of the bill is an unfair and deceptive trade practice under MCPA. An individual aggrieved by a violation of the bill's provisions, however,

is limited to the damage remedies available under the provisions governing consumer vehicle leasing contracts.

## **Corporations and Associations**

### **Limited Liability Company Act**

*House Bill 637 (passed)* alters various provisions of the Maryland Limited Liability Company Act (LLC Act), including provisions relating to LLC operating agreements, rights of assignees, and rights of an LLC member’s creditors.

#### **Operating Agreements – Generally**

Members of an LLC generally may enter into an operating agreement to regulate any aspect of the LLC’s affairs. *House Bill 637* clarifies that the policy of the LLC Act is to give the maximum effect to the principles of freedom of contract and to the enforceability of operating agreements. The bill also makes certain clarifying changes regarding the provisions that may be included in an operating agreement. For example, the bill provides that members of an LLC may include in the operating agreement a provision that establishes the rights of any person with respect to the LLC, including a person who is not an LLC member and is not a party to the operating agreement.

#### **Amendment of an Operating Agreement**

*House Bill 637* also clarifies that when an operating agreement provides for the manner in which the operating agreement may be amended, the operating agreement may be amended only in that manner. However, if the operating agreement requires that a specified person approve an amendment, that person may waive the required approval. Likewise, if an operating agreement requires that specified conditions be met to amend the operating agreement, the conditions may be waived by a person for whose benefit the conditions were intended.

#### **Enforceability of an Operating Agreement**

*House Bill 637* further clarifies that an LLC is bound by its operating agreement regardless of whether the LLC has executed the operating agreement. Moreover, an operating agreement that is duly adopted or amended is binding on each person who is or becomes a member of the LLC and each person who is or becomes an assignee of a member of the LLC, regardless of whether the person has executed the operating agreement or amendment.

#### **Rights of Assignees**

*House Bill 637* also makes certain clarifying changes regarding the rights of an assignee of an interest in an LLC. The bill specifies that, unless otherwise provided in the operating agreement, an assignment of a member’s interest entitles the assignee to receive only the assignor’s share of profits, losses, and distributions.

The bill also clarifies how an assignee may be admitted as a member of an LLC. Generally, an assignee of an interest in an LLC may be admitted as a member of the LLC (1) in accordance with the terms of the operating agreement providing for the admission of a member; or (2) by unanimous consent of the members. *House Bill 637* addresses the terms of admission of an assignee as a member of an LLC if, at the time the assignee obtains the interest, there are no remaining LLC members. The bill provides that, if the operating agreement is silent, an assignee may be admitted as a member of the LLC on terms determined by the assignee. The bill also provides that an operating agreement may require that the last remaining member's assignee agree in writing to continue the LLC and to be admitted as a member or to appoint a designee as a member, effective as of the time the last remaining member ceased to be a member.

### **Rights of an LLC Member's Creditors**

Finally, *House Bill 637* also clarifies a creditor's rights with respect to a member's interest in an LLC. The bill provides that the exclusive remedy available to a creditor of an LLC member is to obtain a charging order against the member's interest. A court may appoint a receiver for any distributions due to the member and may make all other orders, directions, accounts, and inquiries that the member would have been entitled to make or that the circumstances of the case may require. A charging order constitutes a lien on the member's interest, and a court may, at any time, order foreclosure of the interest. Any purchaser of the interest at the foreclosure sale has the rights of an assignee with respect to the foreclosed interest.

### **Benefit Limited Liability Companies**

*Senate Bill 595/House Bill 1151 (both passed)* authorize a Maryland limited liability company (LLC) to elect to be a "benefit LLC." The bills are similar to Chapters 97 and 98 of 2010, which established "benefit corporations" as a new form of business entity in Maryland. Like a benefit corporation, a benefit LLC must deliver to each member an annual benefit report, which must include an assessment of the societal and environmental performance of the benefit LLC prepared in accordance with a third party standard.

Under the bills, an LLC may elect to be a benefit LLC by including in its articles of organization a statement that the LLC is a benefit LLC. A benefit LLC must have the purpose of creating a "general public benefit." The bills define a general public benefit to mean a "material, positive impact on society and the environment ... through activities that promote a combination of specific public benefits." A benefit LLC's operating agreement may also identify a "specific public benefit" as one of the purposes of the LLC. A "specific public benefit" includes (1) providing individuals or communities with beneficial products or services; (2) promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business; (3) preserving the environment; (4) improving human health; (5) promoting the arts, sciences, or advancement of knowledge; (6) increasing the flow of capital to entities with a public benefit purpose; or (7) the accomplishment of any other particular benefit for society or the environment. Clear reference to the fact that an LLC is a benefit LLC must appear

prominently at the head of the benefit LLC’s articles of incorporation and on each certificate representing outstanding interests in the benefit LLC.

