

**2003 MARYLAND LEGISLATION OF INTEREST  
TO REAL PROPERTY ATTORNEYS**

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I thank all the members of the Code Revision Committee for their time and effort in reviewing and commenting on the bills and in attending our weekly meetings. A special thanks to Paul Rieger for his help in preparing this Report. Attached is a special summary of new Section 10-912 of the Tax-General Article prepared by Paul Rieger regarding the new requirements for Maryland withholding on real property transfers. This year's committee members were:

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The Maryland Legislature recently passed a number of bills dealing with real property and related issues.

**The most important part of this report is the part that is missing.** Many of the new laws will have an impact upon conveyancing and title practices. Additionally, the italicized portions of the text include tips and other information regarding the impact that the particular law may have on conveyancing or settlement practices. One might say that the Maryland Legislature was preoccupied this year.

The new laws are listed, for the most part, in numerical order within the various Article or Code sections of the Annotated Code of Maryland. **All of the laws listed have an effective date of October 1, 2003, unless otherwise specifically noted.** The full text of all bills passed in this year's session can be found on the Maryland General Assembly's website at <http://mlis.state.md.us>.

We hope that you will review the entire summary of new legislation. Please feel free to call Tom Barbuti (410-347-8719) or Paul Rieger (410) 752-7070 with any questions you may have regarding the new legislation.

## **I TAX-GENERAL ARTICLE**

### **A. Chapter 203 (HB 935) – Adds Section 10-912 to the Tax-General Article.**

#### **Budget Reconciliation and Financing Act of 2003 (Withholding Income Tax from Nonresidents at Closing)**

New Section 10-912 of the Tax-General Article provides an additional means for the State to collect income tax from sellers of real property who are not Maryland residents. Sales by nonresidents are targeted, because it is believed that a sale by a nonresident involves property other than the transferor's primary residence and that such a sale would likely trigger a capital gain, taxable in Maryland. Unfortunately, the new Section will have a significant impact on real estate settlements, deed preparation and recording.

The new Section requires that every deed or other instrument that effects a change of ownership on the Assessment records, contain a statement of the "total payment," in the recitals or the acknowledgement, or in an accompanying affidavit made by the transferor or the transferor's agent. The term "total payment" means the net proceeds of the sale (i.e., the total sales price paid, less payments made at closing to satisfy mortgages and other liens on the property, and less other expenses of the transferor, arising out of the sale and disclosed on a settlement sheet prepared in connection with the sale.) In order to record the deed, nonresident individuals must pay 4.75% and nonresident entities must pay 7% of the "total payment." The funds are collected by the Clerk, or State Department of Assessments and Taxation (SDAT) as

the case may be, and the Clerk or SDAT are required to pay the funds over to the Comptroller within 30 business days following collection.

There are several exemptions from the withholding and payment requirement. Withholding and payment is not required if the deed contains a certification in the recitals or the acknowledgement, or in an accompanying affidavit, made by the transferor or the transferor's agent, that the transferor is a Maryland resident or, alternatively, that the property being transferred is the transferor's principal residence. The requirement, also, does not apply to transfers pursuant to a mortgage foreclosure or deed in lieu, or to transfers by the United States or by the State and its political units or subdivisions. Additionally, the requirement is waived in whole or in part if the transferor presents a Comptroller's certification, indicating a predetermination that no tax, or a reduced amount of tax, is due or that the tax liability has been previously adequately secured or satisfied.

Neither the transferee nor the title agent will, ordinarily, be able to determine whether a transferor is, or is not, a Maryland resident. Although the applicable definitions for a resident and nonresident entity are straightforward (a resident entity is one formed under Maryland law, or otherwise qualified or registered to do business in Maryland), determining the status of an individual transferor is much more difficult. (See Section 10-101(h) for the definition of a Maryland resident for income tax purposes.) For that reason, the new Section provides that the transferee, title insurance producer, title insurer, settlement agent, closing attorney, lending institution, and real estate agent or broker are not liable for any amounts required to be collected and paid over to the Comptroller.

The Comptroller is required to adopt necessary regulations and establish procedures for issuing certificates and early refunds in appropriate cases.

## **II. REAL PROPERTY ARTICLE**

**A. Chapter 189 (HB 992)** – Repeals and reenacts, with amendments, Section 3-104(b) and (c)(3) of the Real Property Article.

### **Real Property – Prerequisites to Recording**

With respect to a deed transferring property to a county government, adds Baltimore City to the list of jurisdictions which do not require that all public taxes, assessments and charges currently due and owed, be paid prior to transferring the property on the Assessment records.

**B. Chapter 348 (HB 1054/SB 678)** – Repeals and reenacts with amendments, Section 3-105.1 of the Real Property Article; and Sections 11-501(a) and (g), Sections 11-502(b)(1) and (11), and Section 11-501(c) of the Financial Institutions Article.

### **Real Property – Mortgage or Deed of Trust - Enforcement of Release**

The existing release statute provides that, in a case where the holder of a debt secured by a mortgage or deed of trust on the borrower's principal dwelling does not record the release following payment in full within a reasonable time, the holder must forward the release to the "responsible person" (settlement agent) for recording. If the holder does not record the release or provide the release to the responsible person, the holder is required to furnish the release to the borrower, along with information on where to record the release and the estimated recording fee.

The statute, prior to HB 1054, did not provide any specific time period within which the holder was required to record the release or provide the release to the responsible person.

The statute, as amended by HB 1054, clarifies that the holder has a 45 day period in which to either record the release or provide the release to the responsible person, prior to furnishing the release and recording information to the borrower.

The amended statute also provides that, if a borrower files suit against the holder to require delivery of the release, the borrower may recover all costs and expenses in connection with bringing the action, including reasonable attorney's fees. However, the provisions regarding recovery of costs and expenses do not apply to licensees under the Maryland Mortgage Lender Law and to specified depository institutions and their affiliates.

**C. Chapter 80 (SB 321)** - Repeals and reenacts with amendments, Sections 8-111.1 and 8-402.2; Adds new Section 8-402.3; Renumbers former Section 8-402.3 to be 8-402.4 of the Real Property Article.

## **Real Property – Ground Rents – Reimbursement for Costs and Expenses**

This statute applies only to a residential lease (or sublease) having an initial term of 99 years, renewable forever, which creates a leasehold (or subleasehold) estate subject to the payment of an annual ground rent. With respect to the collection of unpaid ground rent that is at least six months in arrears, the statute provides certain notice requirements benefiting a leasehold owner (“tenant”) and places certain limits on the holder of a ground rent (the “landlord”) in collecting related expenses and costs. Specifically, the landlord is not entitled to reimbursement for collection expenses, unless prior to taking action to collect the ground rent under section 8-402.2, (i.e., sending the ground rent bill to the tenant, followed by an action for possession, [also referred to as an “ejectment”] under 14-108.1), the landlord sends the tenant as identified in the records of the State Department of Assessments and Taxation (SDAT), 30 days advance written notice (the “30 day” notice). The 30 day notice must be in 14 point, bold font and state the amount of the past due ground rent claimed. The 30 day notice must also include a statement that, unless the past due ground rent is paid within 30 days, the landlord will take further actions in accordance with Sections 8-402.2(a) and 14-108.1 and the tenant will be liable for collection expenses and fees as provided in Section 8-402.3. The landlord is required to mail the 30 day notice by first class mail to the tenant's last known address as shown in the records of the SDAT and obtain a certificate of mailing from the United States Postal Service. By taking these steps, the landlord preserves the right to claim certain allowed expenses in connection with collection of the unpaid back rent, if the tenant does not pay the back rent within the 30 day period.

The landlord is entitled to file an ejectment action no less than 45 days after sending the bill for ground rent due, to the tenant, by certified mail, return receipt requested, at tenant’s last known address and by first class mail to the title agent or attorney listed on the tenant’s deed to the property or the intake sheet recorded with the deed (the “45 day” notice). Provided that the landlord has followed both the initial 30 day notice and the 45 day notice requirements, the landlord will be entitled to reimbursement for pre-ejectment expenses not exceeding \$500 incurred in the collection of the past due ground rent and in complying with the notice requirements, including title abstract and examination fees; judgment report fees; photocopying and postage fees; and attorney's fees. If the ground rent and allowed expenses are not paid during the 45 day period, upon filing an action for ejectment, the landlord will also be entitled to reimbursement for additional reasonable expenses incurred in the preparation and filing of the ejectment action, including: filing fees and court costs; expenses incurred in the service of process or in otherwise providing notice; any additional title abstract and examination fees, not exceeding \$300; reasonable attorney's fees not exceeding \$700; and taxes, including interest and penalties, that have been paid by the landlord.

Interestingly, the new statute does not require that the landlord give the initial 30 day notice to the tenant, unless the landlord wants to claim the related collection expenses. If the landlord was not interested in reimbursement for collection expenses,

the landlord could simply follow the 45 day notice provision, prior to filing the ejectment action.

*This statute will greatly assist in handling cases where proof of payment of the back ground rent is not available. In such a case, at closing, both 3 years' back ground rent and the \$500 "pre-ejectment" maximum may be collected in escrow. If, following closing, a ground rent owner (landlord) surfaced and wanted to collect the back rent as well as the allowed expenses, the landlord would have to first provide the 30 day notice by regular mail to the tenant at tenant's last known address as shown per the SDAT records (i.e., the address where the tax bill for the property is being sent). The tenant could then inform the escrow agent, who would then pay the claimed back rent to the landlord and return the \$500 to the party entitled to the funds under the escrow. If the tenant did not respond to the 30 day notice, the landlord would forward another notice (the ground rent bill) to the tenant by certified mail, at the tenant's last known address and by regular mail to the title agent or attorney listed on the tenant's title deed or intake sheet. The escrow agent would have the balance of the 45 day period in which to pay the back rent and maximum of \$500 from escrow to the landlord.*

**D. Chapter 464 (HB 1030/SB 655) –** Repeals and reenacts with amendments, Sections 3-102(a) and 8-110 of the Real Property Article and Sections 1-203(8) and 1-203.3 of the Corporations and Associations Article.

### **Real Property – Redemption of Ground Rents**

This statute applies to any residential lease (including a sublease) having a term of at least 15 years, created on or after April 9, 1884 and, therefore, redeemable as a matter of right under the current Section 8-110 (the typical 99 year lease). The statute provides an alternative method for redeeming a ground rent through a procedure of the State Department of Assessments and Taxation (SDAT), in lieu of the usual ground rent redemption deed from landlord to tenant.

Provided that the tenant has given the landlord 30 days' notice by both certified mail, return receipt requested and by first-class mail, to the last known address of the landlord (the "redemption notice") the tenant may apply to the SDAT to redeem the ground rent. The tenant is required to provide a \$20 fee (and any expediting fee if so chosen) along with documentation satisfactory to the SDAT as to the lease and the redemption notice given to the landlord. On receipt of those items, the SDAT is required to post a notice on its website that an application has been made to redeem the ground rent. The notice must remain posted for 90 days. No earlier than 90 days after the application has been posted, the tenant must provide to SDAT: (a) payment of the redemption amount and up to 3 years' back rent to the extent required under section 8-111.1 in a form satisfactory to the SDAT and (b) an affidavit made by the tenant, in the form adopted by the SDAT, certifying that: 1) the tenant has not received a bill for ground rent due or other communication from the landlord regarding the ground rent during the 3 years immediately before the filing of the application for a redemption certificate or 2) the last payment for ground rent was made to the landlord identified in the affidavit and sent to the same address where the redemption notice was sent. Upon

receipt of the payment and affidavit, the SDAT will issue a "Ground Rent Redemption Certificate," which can be recorded in the land records. Once recorded, the certificate is effective to conclusively vest a fee simple title in the tenant, free and clear of any interests of the landlord or those claiming through the landlord, as well as any creditors of the landlord. Those parties may file a claim with SDAT to collect any or all of the payment made by the tenant, by providing documentation satisfactory to the SDAT and a \$20 fee (plus any expediting fee, if chosen). In the event of a dispute over those funds, the SDAT may file an interpleader action in court or reimburse the landlord. However, liability of the SDAT under any given redemption is limited to the funds paid to the SDAT by the tenant. Any funds not collected by a claimant within 20 years escheat to the State. The SDAT is also required to maintain a list of properties redeemed in this manner and to adopt regulations to carry out the new process.

*This statute applies to redeemable ground rents, only, and is designed to provide relief to a tenant who wants to redeem the ground rent but who: (a) does not know the identity of the ground rent owner, because the tenant has not been billed for ground rent during the preceding 3 year period or (b) may have been billed during some portion of the preceding 3 year period, but has lost contact with the ground rent owner or (c) knows the identity of the ground rent owner and has tried to redeem the ground rent, but has met with a lack of cooperation from the ground rent owner.*

**Effective January 1, 2004.**

**E. Chapter 225 (HB 852/SB 258) – Repeals and reenacts with amendments, Section 11-109(c) of the Real Property Article.**

**Maryland Condominium Act – Meetings of Council of Unit Owners – Quorum**

Provides that, if the number of persons present in person or by proxy at a properly called meeting of the council of unit owners is insufficient to constitute a quorum, another meeting may be called for the same purpose if: (a) the original notice of the meeting stated that an additional meeting could be called in the event that a quorum is not present, in accordance with the procedures of this statute and (b) by majority vote, the unit owners present in person or by proxy at the meeting call for the additional meeting.

The statute requires that certain quorum and voting rules apply to the additional meeting, namely (a) at the additional meeting, the unit owners present in person or by proxy constitute a quorum and (b) unless the bylaws provide otherwise, a majority of the unit owners present at the meeting in person or by proxy may approve or authorize the proposed action and take any other action that could have been taken at the original meeting if a sufficient number of unit owners had been present. The statute also requires that 15 days' notice of the time, place, and purpose of the additional meeting be delivered or mailed to each unit owner at the address shown on the roster maintained by the condominium association and that the notice contain the statutorily required quorum and voting rules. The statute also provides that the "additional

meeting” procedure may not be construed to affect the percentage of votes required to amend the declaration or bylaws or to take any other action required to be taken by a specified percentage of votes.

**Effective July 1, 2003.**

**F. Chapter 44 (HB 616) – Repeals and reenacts with amendments, Section 11B-104 of the Real Property Article.**

**Charles County – Homeowners Association Commission – Resolution of Covenant Disputes**

Authorizes a Code Home Rule county located in the Southern Maryland class, to establish a homeowners association commission with the authority to hear and resolve disputes between a homeowners association and a homeowner regarding the enforcement of the recorded covenants or restrictions of the homeowners association by providing alternative dispute resolution services including binding arbitration. The Code Home Rule counties referred to are Calvert County, Charles County and St. Mary’s County.

**G. Chapter 334 (HB 887) – Repeals and reenacts with amendments, Sections 13-101, 13-106, and 13-306 of the Real Property Article. Adds Section 13-107 to the Real Property Article. Repeals and reenacts with amendments, Section 3-105 of the Estates and Trust Article. Repeals and reenacts with amendments Section 5-207 of the Natural Resources Article.**

**Real Property – Abandoned Land – Certificate of Reservation For Public Use**

Currently, the State can reserve for public use, “vacant” unpatented lands (or lands believed to be unpatented) by applying for, and obtaining from the Commissioner of Land Patents, a “Certificate of Reservation.” This statute expands the concept to allow a unit of State government to apply for a Certificate of Reservation for “abandoned” land. “Abandoned land” is defined as vacant land with boundaries that are located within or contiguous to Green Ridge State Forest and: (a) for which no property tax payment has been made within 20 years immediately preceding the State unit’s application and (b) which has not been actually possessed by a person, under claim of title or otherwise, for a continuous period of 20 years immediately preceding the State unit’s application. The Certificate of Reservation remains in effect until the unit of the State or a court of competent jurisdiction determines that legal title has been established in favor of a claimant. The statute allows a person who claims legal title to abandoned land that is the subject of a Certificate of Reservation, to file a written claim for legal title to the land with the unit of State government holding the Certificate of Reservation. If the State government unit determines that the claimant has legal title, the State unit must pay the claimant the fair market value of the land as determined by the lower of two independent appraisals of the land. If the State unit determines that the

claimant does not have legal title to the land, the claimant may file an action in the Circuit Court to quiet title to the land. A claim under this Section is barred, unless a claimant files a claim to the land within 20 years following the date of issuance of the Certificate of Reservation.

**H. Chapter 465 (HB 1049) – Repeals and reenacts with amendments, Section 14-103 of the Real Property Article.**

**Baltimore City – Foreclosure Sales of Interests in Land – Recordation of Ratification**

Provides that, in Baltimore City, if a foreclosure sale under a mortgage or a deed of trust of an interest in land is ratified and the vendor and the purchaser are the same and “a deed is not recorded,” the person making the sale shall record a copy of the final order of ratification in the land records within 90 days of the date of the final order of ratification.

### **III. TAX-PROPERTY ARTICLE**

**A. Chapter 411 (HB 163) – Repeals and reenacts, with amendments, Section 12-108(g) of the Tax-Property Article.**

#### **Recordation Tax – Refinancing Instrument – Exemption for Spouses**

Amends the current refinance exemption from recordation tax, to apply to a refinance by either the original mortgagor or by the original mortgagor and the spouse of the original mortgagor.

*This statute effectively reverses the Letter of Advice issued to the Clerks on October 2, 2002 by Assistant Attorney General Julia Andrew. The Assistant Attorney General had advised the Clerks that, “(w)hen a refinance deed of trust accompanies a deed whereby a new spouse is added to title, the deed of trust is subject to recordation tax on the amount of debt secured that exceeds one-half of the principal balance due on the prior mortgage or deed of trust that is being refinanced.”*

**This bill was passed as an emergency measure and takes effect from the date it is enacted.**

**B. Chapter 64 (SB 112) – Adds Sections 12-108(cc) and 13-410 and repeals and reenacts, with amendments, Section 13-207(a) of the Tax-Property Article.**

#### **Recordation and Transfer Tax – Land Trusts - Refinancing Instrument – Exemption**

Defines a "land trust" as a qualified organization under § 170(h)(3) of the Internal Revenue Code and related regulations, that has executed a cooperative agreement with the Maryland Environmental Trust. Defines a “conservation easement” as a restriction prohibiting or limiting the use of water or land areas, or any improvement or appurtenance thereto, as described in § 2-118 of the Real Property Article. This statute provides that an instrument of writing conveying or assigning a conservation easement to both a land trust and the United States, the State, an agency of the State, or a political subdivision of the State is not subject to recordation tax or State or County transfer taxes. The statute also provides that an instrument of writing conveying a conservation easement or fee simple title to a land trust is not subject to recordation tax or State or County transfer taxes if the land trust files a declaration of intent to convey its conservation easement or fee simple title to the United States, the State, an agency of the State, or a political subdivision of the State within 18 months of the date of the declaration.

**Effective July 1, 2003.**

**C. Chapter 238 (HB 556/SB 346)** – Repeals and reenacts, with amendments, Sections 14-817(c), 14-835(a), 14-844(e) and 14-845 of the Tax-Property Article.

**Baltimore City - Tax Sales – Abandoned Property**

With respect to a tax sale of abandoned property in Baltimore City, this statute provides that the City may seek a monetary judgment against a person whose property was sold at a tax sale for less than the full amount of the City's tax lien, at its discretion. (Prior law required the City to seek a monetary judgment in all such cases.) The statute also clarifies that, with respect to an abandoned property in Baltimore City: (a) an action to reopen a judgment foreclosing rights of redemption on the ground of constructive fraud is subject to the same one-year limitation applicable to all properties and (b) a defendant or any person for whom notice of the tax sale foreclosure case is required, has the right to file an action to recover damages on the ground of inadequate notice within 3 years after the date of judgment foreclosing rights of redemption. In such case, relief is limited to damages, alone, which may not exceed the fair market value of that person's interest in the property at the time of the sale. A person may not seek relief to reopen a judgment foreclosing rights of redemption based on inadequate notice, whether styled as constructive fraud, or otherwise.

**Effective July 1, 2003.**

**D. Chapter 109 (SB 726)** – Repeals Section 14-841 and Repeals and reenacts, with amendments, Section 14-843(a) of the Tax-Property Article.

**Property Tax – Procedures – Holders of Certificates of Sale**

Eliminates the ability of the holder of several tax sale certificates, to include more than one tax sale certificate in a single foreclosure proceeding. This statute also revises the cap on attorneys' fees that the plaintiff is allowed to collect if the property is redeemed. If the property is redeemed before the foreclosure action is filed, the current \$400 cap on attorneys' fees continues to apply. However, once the foreclosure suit is filed, the plaintiff is entitled to "reasonable" attorneys' fees upon redemption.

#### **IV. PUBLIC LOCAL LAWS**

**A. Chapter 429 HB 424) –** Repeals and reenacts, with amendments, Section 21-7 of the Public Local Laws of Baltimore City, Article 4 – Public Local Laws of Maryland and Section 4-401(15) of the Courts and Judicial Proceedings Article.

##### **Baltimore City - Condemnation – Immediate Possession and Title – Distressed Property**

Adds distressed property to the types of properties for which the Mayor and City Council of Baltimore City may file for condemnation and immediate taking, and grants exclusive original civil jurisdiction to the District Court for those proceedings where the estimated value of the property does not exceed \$25,000. “Distressed property” is defined as property that is subject to a tax lien with a lien to value ratio equal to, or greater than, 15 percent and that: (a) contains a dwelling unit or other structure that has deteriorated to the extent that the dwelling unit or other structure constitutes a serious and growing menace to the public health, safety, and welfare and is subject, under the building code of Baltimore City or the Housing Code of Baltimore City, to an expired violation notice and order to correct the deteriorated conditions; or (b) is subject to a lien or liens in an amount greater than \$1,000 for work done by the Baltimore City Department of Housing and Community Development. The statute also provides that if an owner of distressed property satisfies the tax liens before a court vests title to the distressed property in the City, the court shall dismiss the City’s petition.

**B. Chapter 468 (HB 1059) –** Adds Section 2-701 and 2-702 to be under the new subtitle "Subtitle 7. Taxes" to The Public Local Laws of Washington County, Article 22 - Public Local Laws of Maryland. Adds Section 2-213(i) to the Courts and Judicial Proceedings Article and adds Section 9-323(e) to the Tax – Property Article.

##### **Washington County Growth Management Act of 2003**

Authorizes the County Commissioners of Washington County to impose by ordinance, a building excise tax on specified construction and a transfer tax on an instrument of writing. The transfer tax may not exceed 0.5% for a fiscal year beginning after June 30, 2003, but before July 1, 2008; and 1% for any fiscal year beginning after June 30, 2008. The County Commissioners may authorize exemptions for: first-time home buyers; seniors who are moving into less expensive housing; promoting affordable housing; and redevelopment of properties inside the urban growth areas of the County. The County Commissioners may also provide a property tax credit on renovated or rehabilitated business real property located in a priority funding area.

**The building excise and transfer tax provisions are effective July 1, 2003. The provisions regarding the tax credit on renovated or rehabilitated business real property are effective June 1, 2003.**

**V. COURTS AND JUDICIAL PROCEEDINGS ARTICLE**

**A. Chapter 160 (HB 467)** – Repeals and reenacts, with amendments, Section 5-406 of the Courts and Judicial Proceedings Article and adds Section 7-108 to the State Government Article.

**Community Associations – Civil Liability**

Adds community associations to the list of parties that receive immunity from personal liability for damages arising from certain civil suits. Under the statute, a “community association” is defined as a nonprofit association, corporation or other organization that registers with the Secretary of State and that is composed of at least 25 percent of the adult residents of a local community that: consists of at least 40 households; is defined by specific geographic boundaries in its bylaws or charter; requires the payment of dues at least annually; promotes social welfare and general civic improvement; and, in the case of a corporation, is in good standing. A nonprofit association, corporation or other organization that has been in existence for at least five years and promotes social welfare and general civic improvement may register with the Secretary of State as a community association by filing an affidavit that the organization meets the above definition.

**B. Chapter 241 (SB 368)** – Repeals and reenacts, with amendments, Section 12-701(a) of the Courts and Judicial Proceedings Article.

**Appeals - Removal of Personal Representative - Successor Personal Representative or Special Administrator**

Provides that an appeal from a final order of an orphans’ court or circuit court removing a personal representative of an estate does not stay an order appointing a successor personal representative or special administrator. Also grants the successor personal representative the powers of a special administrator during an appeal from a final order removing a personal representative.

**C. Chapter 203 (HB 935)** – Repeals and reenacts, with amendments, Section 13-604(a) of the Courts and Judicial Proceedings Article.

**Budget Reconciliation and Financing Act of 2003 (Land Record Improvement Fund)**

Increases the Land Record Improvement Fund Surcharge on recorded instruments from \$5.00 to \$20.00.

**Effective June 1, 2003.**

## **VI. ENVIRONMENT ARTICLE**

**A. Chapter 466 (HB 1051)** – Repeals and reenacts, with amendments, Sections 7-201(a), (k) and (x)(1)13-604(a) and 7-506(a)(2), (b), and (d) and adds Sections 7-201(x)(7) and 7-506(f) and (g) of the Environment Article.

### **Environment - Brownfields - Environmental Restoration and Development**

Provides that a person who owns real property is not considered a liable under the Controlled Hazardous Substances law, solely by reason of contamination of the person's property from a contiguous or otherwise similarly situated real property provided: the person does not own the contiguous or otherwise similarly situated real property; the person's real property is or may be contaminated by a release or threatened release of a hazardous substance from the contiguous to or otherwise similarly situated real property; and the person meets the requirements of section 107(q) of CERCLA and related regulations, dealing with contiguous property owners.

The statute also provides that a determination by the Department of the Environment that it has no further requirements of a participant in a voluntary cleanup program, may be transferred to a subsequent purchaser of the property provided that the subsequent purchaser did not cause or contribute to the contamination. If a determination by the Department that it has no further requirements is conditioned on certain uses of the property or on the maintenance of certain conditions, the participant shall record the determination in the land records of the local jurisdiction within 30 days after receiving the determination. Failure to do so causes the determination to be void.

The statute also permits the Department to reduce the \$6,000 program fee, if the Department determines that a lesser fee would be sufficient to cover the program costs. The statute also provides for the formation of an Environmental Restoration and Development Task Force to review various aspects of the Brownfields initiative.

**Effective June 1, 2003.**

## **VII. AGRICULTURAL ARTICLE**

**A. Chapter 255 (SB 564/HB 804) –** Repeals and reenacts, with amendments, Section 2-510(e) of the Agriculture Article.

### **Maryland Agricultural Land Preservation Foundation – Easement Rankings**

Requires the Maryland Agricultural Land Preservation Foundation, in consultation with the counties, to adopt such guidelines to identify easements for purchase that further the goals of the Maryland Agricultural Land Preservation Program, which shall include consideration of: (1) location in a priority funding area of the county; (2) soil and other land characteristics associated with agricultural activity; (3) agricultural production and contribution to the agricultural economy; and (4) any other unique county considerations that support the program's goals.

**B. Chapter 258 (SB 626/HB 805) –** Repeals and reenacts, with amendments, Section 2-513 of the Agriculture Article.

### **Maryland Agricultural Land Preservation Foundation – Easements – Lot Exclusions and Allowable Economic Activity**

Provides that the Maryland Agricultural Land Preservation Foundation may permit land subject to an agricultural easement, to be used for farm and forest related uses and home occupations. The statute allows a landowner selling an easement to choose between excluding up to three lots to be used for dwelling houses for the landowner and/or child of the landowner, or one unrestricted lot.

With respect to the landowner's family use lots, the landowner may receive: one lot if the size of the easement property is 20 acres or more but fewer than 70 acres; two lots if the easement is 70 acres or more but fewer than 120 acres; and three lots if the easement is 120 acres or more.

Alternatively, the landowner may exclude one, unrestricted, one-acre or less lot which may be subdivided at any time and sold to anyone to construct one residential dwelling, provided the resulting density on the balance of the property is less than the density allowed under the zoning of the property in effect before the Foundation purchased the easement. The landowner must agree to not further subdivide any acreage allowed to be released, and the agreement must run with the land and be recorded among the land records where the land is located. The location of the lot to be subdivided is subject to the approval of the local agricultural advisory board and the Foundation. The right to exclude the lot is taken into consideration in the appraisal of fair market value and determination of easement value. If the property is transferred by the landowner before the right to exclude the lot has been exercised, the right may be transferred with the property to the transferee.

## **VIII. BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE**

**A. Chapter 435 (SB 583/HB 521) – Adds Section 16-212.1 to the Business Occupations and Professions Article.**

### **Department of Labor, Licensing, and Regulation - Real Estate Appraisers – Baltimore City - Reports**

Provides that a licensed or certified real estate appraiser shall file a quarterly report listing the address and appraised value of residential real estate in Baltimore City appraised by the appraiser. The report is open for inspection only to representatives of government agencies for investigation of fraudulent practices. The Baltimore City Department of Housing and Community Development shall serve initially to receive and maintain the reports.

**B. Chapter 368 (SB 221/HB 801) – repeals and reenacts with amendments, Section 17-527.2(b) and adds Sections 16-212.1. Also adds Sections 17-536 through 17-540, inclusive, to be under the new part "Part IV. Nonresident Commercial Real Estate Brokers"**

### **Real Estate Brokers - Advertisements and Reciprocity**

Authorizes nonresident commercial real estate brokers and nonresident salespersons working for nonresident brokers to engage in commercial real estate transactions in Maryland, under certain conditions. The nonresident broker and nonresident salesperson must currently hold licenses in another state. In the case of the nonresident broker; the broker must provide real estate brokerage services through a real estate broker licensed in Maryland and must enter into a written agreement with the Maryland broker which: (a) specifies the terms of cooperation and compensation; (b) includes a statement by the nonresident real estate broker that the nonresident real estate broker and the nonresident real estate salesperson licensed and affiliated with the nonresident real estate broker, will both adhere to Maryland law; and (c) allocates the responsibility for the actions of the nonresident real estate broker in the transaction. The nonresident broker must apply for and receive, a temporary license from the Maryland Real Estate Commission. The Commission will issue a temporary license to a nonresident real estate broker who complies with the requirements, if the jurisdiction in which the real estate broker holds a current license: (a) allows a Maryland broker to obtain a temporary license under similar circumstances; or (b) waives the examination and qualification requirements for licensure for individuals licensed in Maryland.

The statute also extends to October 1, 2004, current law requiring a licensed real estate salesperson or licensed associate real estate broker to have the full name of the business (and not a logo used by the business) with which they are affiliated in the same size as their name or trade name in advertisements.

## **IX. COMMERCIAL LAW ARTICLE**

**A. Chapter 36 (HB 201)** - Repeals and reenacts with amendments, Section 17-301(a) and adds Section 17-308.2.

### **Commercial Law - Disposition of Abandoned Property - Notice Requirement of Holder**

With respect to abandoned property, provides that not more than 120 days or less than 30 days before the filing of the abandoned property report required under § 17-310 of the Commercial Law Article, the holder in possession of presumed abandoned property shall send a written notice by first-class mail to the apparent owner of the presumed abandoned property to the owner's last known address informing the owner that the holder is in possession of the property and that the property will be considered abandoned unless the owner responds within 30 days of the notification to the holder.

*This statute affects the procedures to be followed in disposing of abandoned property, such as funds represented by checks not cashed or negotiated by recipients. Please note that, due to legislation passed last year, the period of time for the presumption that property is "abandoned" is currently 3 years as to the reporting period ending June 30, 2003.*

**Effective July 1, 2003.**

**X. ESTATES AND TRUSTS ARTICLE**

**A. Chapter 232 (SB 307/HB 284) –** Repeals and reenacts, with amendments, Section 5-702 of the Estates and Trusts Article.

**Estates - Personal Representatives - Election for Modified Administration**

This statute expand the kinds of estates that may elect modified administration, to include estates where all residuary legatees or all heirs at law are the decedent's personal representative(s) and those individuals or entities exempt from inheritance tax under section 7-203(b), (e), and (f) of the Tax - General Article. If the decedent's will establishes a trust, the trustees must be limited to the personal representative(s), surviving spouse, and children of the decedent.

**B. Chapter 233 (SB 310/HB 99) –** Repeals and reenacts, with amendments, Sections 5-703 and 5-708(a) of the Estates and Trusts Article.

**Estates - Modified Administration - Final Report and Distribution - Extension**

Provides that the initial time periods for filing a final report and for making distribution of an estate in a modified administration of the estate may be extended for 90 days on obtaining consent for the extension of the time periods signed by the personal representative and each interested person and filed within 10 months from the date of appointment.

## **XI. INSURANCE ARTICLE**

**A. Chapter 35 (HB 200)** – Repeals and reenacts, with amendments, Sections 2-112, 10-110(a), (b), and (c), 10-116(d), and 10-1185-702, and adds new Section 10-116(f) to the Insurance Article.

### **Insurance - Regulation of Insurance Producers**

This statute modifies certain of the procedures for filing and reporting appointments and terminations of insurance agents (now known as “producers”). Insurers are required to maintain a “producer register” listing certain information regarding those producers currently appointed to the insurer. An insurance producer may not act on behalf of an insurer unless the insurance producer is listed on the insurer’s producer register. Producers are also required to maintain a record documenting the producer’s appointments with insurers. Both the insurer’s producer register and the record maintained by the producer, are open to inspection and examination by the Commissioner and may be maintained electronically.

The statute also provides that if the appointment of an insurance producer is terminated because the insurance producer failed to renew the insurance producer’s license and the license is reinstated, an insurer may reappoint the insurance producer retroactively, with the appointment effective on the date that the license expired.

The statute also repeals the \$50 fee for approval of a continuing education course by the Commissioner and makes review of continuing education courses by the Commissioner optional.

**The filing requirement portion of the statute is effective January 1, 2004. The portion eliminating the fee for course approval and allowing optional course approval by the Commissioner is effective July 1, 2003.**

**B. Chapter 173 (SB 632/HB 711)** – Repeals and reenacts, with amendments, Sections 27-209 and 27-212 of the Insurance Article.

### **Insurance - Offers of Educational or Promotional Materials or Articles of Merchandise**

Provides that, except as otherwise provided by law, a person may not knowingly offer, promise, or give any valuable consideration not specified in the policy, except for educational materials, promotional materials or articles of merchandise that cost less than \$10, regardless of whether a policy is purchased.

**Summary of new Section 10-912 of the Tax-General Article and the Draft, Proposed  
Regulations (COMAR 03.04.12) Re:  
Withholding Income Tax from Sales of Maryland Real Estate by Nonresidents**

J. Paul Rieger, Jr.  
Maryland State Counsel  
Commonwealth Land Title Insurance Company  
September 9, 2003

- **The new law will take effect on October 1, 2003.** Emergency Regulations will likely become effective by mid to late October.
- The purpose of law is to improve compliance in collection of income tax on capital gains generated by the sale of Maryland real property by nonresidents. According to the Comptroller's Office, in most cases, the sale of real estate sale by a nonresident involves property that is not the individual's primary residence. As a result the sale would likely trigger a capital gain that is taxable under Maryland law. The State found it difficult to collect Maryland taxes generated by those transactions because the nonresident would not necessarily file a Maryland return. The nonresident's federal return, likewise, would not necessarily indicate that the sale resulted in Maryland taxable income. Examples would be vacation/second homes sold by nonresidents.
- The new law affects *all real estate closings* where title is transferred by deed or other instrument of writing that effects a change of ownership on the assessment records, such as a typical deed, or an assignment of a 99-year or perpetually renewable leasehold. Included are articles of sale and transfer, mergers and consolidations filed at SDAT. *Translation: virtually every instance where record title changes hands is subject to the new law.*
- *Each deed or instrument must contain a statement of the "total payment" paid to the transferor from the sale.* "Total payment" means the net proceeds of the sale actually paid to the transferor, including the fair market value of any property received by the transferor as part of an exchange. Under the draft, proposed regulations, net proceeds would equal the gross sales price (actual consideration stated in the deed) less: (1) "expenses of the transferor arising out of the sale or exchange of the property and disclosed on a settlement statement prepared in connection with the sale or exchange of the property" (according to Comptroller's Office, this would only include bona fide expenses related to the sale or exchange of the property - the seller could not 'throw-in' unrelated expenses such as credit card bills, etc., as deductions from gross proceeds on the settlement statement) and (2) "debts of the transferor secured by a mortgage or other lien on the property being transferred" that are being paid-off as part of the closing, *except for "debts incurred in contemplation of sale."* A "debt incurred in contemplation of sale" means a debt secured by the property and "incurred by the transferor within 120 days of the sale of the property." According to Comptroller's Office, *this means that the transferor cannot deduct for calculation purposes, any secured debt incurred within the 120 days prior to the effective date of the deed or instrument transferring title.* Thus, for

example, the transferor cannot deduct the payoff of a mortgage/deed of trust used to refinance the property within 120 days of the transfer. (According to Comptroller's Office, the 120 day period would begin upon the date of receipt of the loan proceeds by transferor). *Likewise, the transferor cannot deduct loan funds "taken-down" under a new or a pre-existing line of credit mortgage/deed of trust, if those loan funds had been received within 120 days of the transfer.* Unfortunately, the attorney or title agent preparing the deed or instrument cannot simply use the "bottom line" net proceeds figure from a settlement statement as the "total payment" figure in any case where a deed of trust or mortgage being paid-off was taken out during the previous 120 days, or where a line of credit mortgage or deed of trust is being paid-off. *In those cases, the attorney or title agent will need to inquire whether the transferor received loan funds under those mortgages or deeds of trust within the 120 day period.* The "total payment" figure would have to be recalculated, accordingly. Obviously, the attorney or title agent will be relying upon the honesty and good faith of the transferor to supply that information; standard payoff statements do not ordinarily state when disbursements were made and the Comptroller's Office appears to recognize this fact. *The statement of "total payment" can be made as a deed recital, in the acknowledgment in the deed, or via an affidavit signed by the transferor or agent of the transferor (which affidavit must "accompany" and be recorded "with" the deed or instrument). Unfortunately, the calculation and recital of the "total payment" is required for every transfer, even in cases where the transferor is a Maryland resident and exempt from withholding (which will, likely, be in 90 percent of the cases).*

- **If the transferor certifies under penalties of perjury in the transfer document, or in an attached affidavit, that the transferor is a Maryland resident or the property being transferred is the transferor's principal residence, then no withholding is required.** As to Maryland residency, the transferor will need to determine whether or not the transferor is a Maryland resident. The determination of residency for entities is simple: if the entity is either formed in Maryland, or if not, is qualified or registered to do business in Maryland, it is considered a resident of Maryland for the purposes of the law. The determination can be more complicated for individual transferors. The determination of whether an individual is a Maryland resident depends upon whether the individual meets the definition of "resident" found in section 10-101(h) of the Tax-General Article. The text of section 10-101(h) follows at the end of this summary. *This is not a determination that a title attorney or settlement agent could or should be making for the seller. According to the Comptroller's Office, the instructions that will accompany the withholding return will provide information to assist the consumer in determining whether an exemption applies.*
- If the transferor claims the exemption from withholding based upon the property being the transferor's principal residence, under the draft, proposed regulations, "principal residence" means a residence that "has the same meaning as when used in Section 121 of the Internal Revenue Code" **and** a residence that "is listed as an owner-occupied residence with the Department." Thus, the tax account for the

property would have to be checked (which can be accomplished online, via the SDAT's webpage <http://www.dat.state.md.us/> to make certain that the account indicates principal residence status. The transferor would also have to consider IRC Section 121 (26 U.S.C. Section 121). Both the "ownership and use" tests (person must own and live in the residence for at least 2 years during the preceding 5-year period) as well as the residency factors, would apply. (IRS Publication 523 "Selling Your Home" provides guidance on these points. See <http://www.irs.gov/pub/irs-pdf/p523.pdf> or 26 C.F.R. Section 1.121). Again, the instructions that will accompany the withholding return should provide information to assist the consumer in determining whether an exemption applies.

- Additionally, certain transfers are exempt, including a transfer "by foreclosure," meaning both the transfer from foreclosure trustees to the lender or third party and the transfer of REO property from a lender to a third party would be exempt. Other exempted transfers are those from the United States and its instrumentalities and from the State and its units and political subdivisions.
- The new law and draft, proposed regulations also provide for exemptions from withholding (or partial exemptions) in cases where the transferor has filed for, and received, a certificate of full or partial exemption from the Comptroller. Under the draft, proposed regulations, there are presently 13 specific grounds (and one "catch-all") for obtaining a certificate for full or partial exemption from withholding. The 14 grounds are listed on the attachment to this summary. The transferor is required to file the application with the Comptroller at least 21 days prior to the settlement date. According to Comptroller's Office, this simply means that the Comptroller's Office is required to process the application within a 21 day time frame. With respect to 1031 exchanges, the draft, proposed regulation states that, "if at the time of settlement, it is known that the property will not qualify as a like-kind exchange under the provisions of Section 1031 of the Internal Revenue Code or the transferor will receive taxable boot, then notwithstanding the issuance of the certificate of full or partial exemption," withholding would be required based upon the "total payment" or the taxable boot. The Comptroller's decision to issue or deny a certificate of full or partial exemption and the determination of the amount of tax to be withheld if a partial exemption is granted "are final and not subject to appeal."
- *If the transferor is unable or unwilling to make the certification as to residency/principal residence or does not obtain the Comptroller's certification of full exemption, (and the transfer is not otherwise exempt) the transferor is required to pay over a percentage of the "total payment" to the Clerk of the Court as income tax withholding. The amount withheld is 4.75 percent of the "total payment" for nonresident individuals and 7 percent of the "total payment" for nonresident entities.*
- The draft, proposed regulations require the transferee or "settlement officer" to "withhold, at settlement, the tax required" and remit the tax to the Clerk or SDAT. The "person presenting the deed or other instrument of transfer" to the Clerk or SDAT is also required to present "copies A and B" of the withholding return (Form MW 506 NRS, soon to be available) and a separate check in the amount of tax

required to be withheld, made payable to the Clerk or Department. If a certificate of full or partial exemption is utilized, the certificate must also be presented with the deed or instrument. The Clerk or Department "shall review the documents presented for recordation or filing for compliance with the requirements" of the law. The Clerk or Department is required to forward the tax collected along with other documentation to the Comptroller on or before the 21st day of the month following the month in which the Clerk or Department receives the payment of tax. The draft, proposed regulations also provide that "an individual or a corporation" that has paid withholding tax in excess of the amount owed, may file "an application for tentative refund of withholding on sales of real property by nonresidents" with the Comptroller after sixty days have elapsed from the date the tax was paid to the Clerk or the Department. Pass-through entities and their partners, members or shareholders cannot file such an application.

- *Although the new law applies to all deeds or other instruments of transfer recorded with the Clerk or SDAT, on or after October 1, 2003, a transition period is provided in the draft, proposed, regulations, for deeds currently 'in the pipeline.' As long as the effective date of the deed or instrument is prior to October 1, 2003, the deed or instrument may be recorded or filed before December 1, 2003 without having to comply with the new law.*
- The statute provides that neither the transferee, nor those involved in the closing, such as the title insurer, settlement agent, closing attorney, lending institution or real estate agent/broker are liable for the amounts required to be collected and paid. *However, the failure to comply with the law means that the recording package will likely be rejected.*
- If approved, the regulations will take effect on an emergency basis by mid to late October, 2003. Thereafter, final regulations will be published and adopted. *Significant variations from the regulations as described in this summary could occur in both the emergency and final regulations. Please note, that this summary of the statute and new regulations is preliminary and is based upon the draft proposal of the Comptroller's Office. The Comptroller's Office, of course, cannot guarantee that the proposed regulations will not change between now and October, 2003. And of course, the final regulations are subject to public comment.*
- *The Comptroller's Office will likely provide, for informational purposes, only and not as part of the regulations, both an example of an acceptable residency/principal residence certification and other public information to help explain the law and assist a seller in determining whether or not a seller is a Maryland resident.* These items may or may not be available prior to October 1, 2003. An example of a transferor's certification form (not a State product) follows at the end of the summary. (Thanks to Jeff Markowitz, Esquire, of Miles and Stockbridge for providing the form.)

**Tax-General 10-101(h) Resident.** — (1) "Resident" means: (i) an individual, other than a fiduciary, who: 1. is domiciled in this State on the last day of the taxable year; or 2. for more than 6 months of the taxable year, maintained a place of abode in this State, whether domiciled in this State or not; (ii) a personal representative of an estate if the decedent was domiciled in this State on the date of the decedent's death; or (iii) a fiduciary, other than a personal representative, of a trust if: 1. the trust was created, or consists of property transferred, by the will of a decedent who was domiciled in the State on the date of the decedent's death; 2. the creator or grantor of the trust is a current resident of the State; or 3. the trust is principally administered in the State. (2) "Resident" includes, for the part of the taxable year that an individual resides in this State, an individual who: (i) moves to this State with the intent to be domiciled in this State; or (ii) is domiciled in this State and moves outside this State before the last day of the taxable year with the bona fide intention to remain permanently outside of this State. (3) If an individual under paragraph (2) (ii) of this subsection again resides in this State within 6 months after having moved outside this State, there is a rebuttable presumption that the individual did not have a bona fide intention to remain permanently outside this State.

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## Grounds for Issuing a Certificate of Full or Partial Exemption

"C. The Comptroller may issue a Certificate of Full or Partial Exemption (MW 506 E) for any of the following reasons:

- (1) The tax due has been paid in full to the Comptroller;
- (2) The transfer is to a corporation controlled by the transferor under §351 of the Internal Revenue Code;
- (3) The transfer is pursuant to a tax-free reorganization as described in §361 of the Internal Revenue Code;
- (4) The transfer is being made on an installment sale basis under §453 of the Internal Revenue Code;
- (5) The transfer is by a tax-exempt entity in accordance with §501(a) of the Internal Revenue Code involving little or no unrelated business taxable income under IRC §512;
- (6) The transfer is to a partnership in exchange for an interest in the partnership such that no gain or loss is recognized under §721 of the Internal Revenue Code;
- (7) The transfer is by a partnership to a partner of the partnership in accordance with §731 of the Internal Revenue Code;
- (8) The transfer is by a real estate investment trust under §857 of the Internal Revenue Code;
- (9) The transfer is a like-kind exchange under §1031 of the Internal Revenue Code;
- (10) The transfer is occurring because of a condemnation and conversion into a similar property under §1033 of the Internal Revenue Code;
- (11) The transfer is between spouses, or incident to a divorce in accordance with §1041 of the Internal Revenue Code;
- (12) The transfer is by an S-corporation in accordance with §1368 of the Internal Revenue Code;

(13) The transfer is to a disregarded entity, classified as such under 26CFR §301.7701-3, that is solely owned by the transferor; or

(14) The transfer is otherwise exempt as documented by the transferor."

**Certification of Exemption from Withholding Upon Disposition of Maryland Real Estate Affidavit of Residence or Principal Residence**

Based on the certification below, Transferor claims exemption from the tax withholding requirements of § 10-912 of Maryland's Tax General Article. Section 10-912 states that certain tax payments must be withheld when a deed or other instrument that affects a change in ownership of real property is recorded. The requirements of § 10-912 do not apply when a transferor provides a certification of Maryland residence or certification that the transferred property is the transferor's principal residence.

<b>1. Transferor Information</b>	
Name of Transferor	

<b>2. Reason for Exemption</b>	
<b>Resident Status</b>	<input type="checkbox"/> I, Transferor, am a resident of the State of Maryland. <input type="checkbox"/> Transferor is a resident entity under § 10-912(A)(4) of Maryland's Tax General Article, I am an agent of Transferor, and I have authority to sign this document on Transferor's behalf.
<b>Principal Residence</b>	<input type="checkbox"/> Although I am no longer a resident of the State of Maryland, the Property is my principal residence as defined in IRC § 121.

**Under penalty of perjury, I certify that I have examined this declaration and that, to the best of my knowledge, it is true, correct, and complete.**

<b>3a. Individual Transferors</b>	
Witness	Name
	Signature

<b>3b. Entity Transferors</b>	
Witness/ Attest	Name of Entity
	By:
	Name
	Title