

**2004 MARYLAND LEGISLATION OF INTEREST**  
**TO REAL PROPERTY ATTORNEYS**

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The following is a list of bills affecting real property enacted or enrolled by the General Assembly of Maryland at this year's session and signed by the Governor. These bills are listed, for the most part, in numerical order within the various Articles of the Annotated Code of Maryland. This year's committee members were:

- Thomas C. Barbuti
- Timothy D.A. Chriss
- Lawrence S. Conn
- Mark D. Dopkin
- Lisa M. L. Eisemann
- Nancy Haas
- William M. Hoffman
- Edward J. Levin
- Michael H. Mannes
- James C. Oliver
- Russell R. Reno, Jr.
- J. Paul Rieger, Jr.
- Robert E. Scher
- Theresa B. Shea (Vice-Chair)
- Regan J. R. Smith
- Michael S. Swanenburg
- Raymond G. Truitt

Approximately 2,500 bills were filed in the General Assembly in 2004. The Real Property Code Revision Committee reviewed 154 bills and commented on 73 bills. I wish to express my appreciation to all the members of the Committee for their time and effort in reviewing and commenting on the bills and in attending our weekly meetings.

The complete text of all bills introduced in this year's session can be found on the Maryland General Assembly's website at <http://mlis.state.md.us>. All bills become effective October 1, 2004, unless otherwise specifically noted.

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Special thanks to Paul Rieger for his excellent assistance in the preparation of these materials.

## **I. REAL PROPERTY ARTICLE**

**A. Chapter 40 (HB 180)** – Repeals and reenacts, with amendments, Section 3-104(a) of the Real Property Article.

### **Real Property – Recordation of Deeds and Instruments of Writing**

This bill authorizes the streamlined recording process for all Maryland counties. The streamlined process allows for the recording of deeds and other instruments at the Clerk's office, without first processing the deed or instrument through the local Assessment Department. Instead, an intake sheet is required to be recorded with the deed. The intake sheet contains the information necessary to allow the Assessment Department to transfer the property on its Assessment records, irrespective of deed recording at the Clerk's Office. Prior to this bill, eleven Counties had adopted streamlined recording. (See also HB 569 whereby Prince George's County separately opted-in to streamlined recording as of October 1, 2004).

**Effective July 1, 2005.**

**B. Chapter 480 (SB 748)** – Repeals and reenacts with amendments, Sections 3-102(a) and 8-110 of the Real Property Article; repeals and reenacts with amendments, Sections 1-203(b)(8) and 1-1-203.3 of the Corporations and Associations Article.

### **Baltimore City – Extinguishment of Ground Rents**

This bill provides a method whereby the Mayor and City Council of Baltimore can extinguish an irredeemable ground rent on property that is abandoned and is being acquired by the City through condemnation. The City must apply to the State Department of Assessments and Taxation (SDAT) in a manner similar to the current law applicable to redeemable ground rent redemption by leasehold owners through SDAT. In addition to the information on the required application, the City must also provide an affidavit that the property is abandoned or distressed as defined under the local laws of Baltimore City; that the property is being acquired by the City through condemnation; that a thorough title search has been conducted; that the landlord of the property cannot be located or identified, and that the existence of the ground rent is an impediment to the redevelopment of the site. A landlord whose ground rent has been extinguished through this process may file a claim with the Director of Finance to collect an amount equal to the annual rent capitalized at 6 percent. In the event of a dispute regarding the extinguishment amount, the landlord may refuse payment from the Director of Finance and file an appeal regarding the valuation in the Circuit Court for Baltimore City. In the appeal, the landlord is entitled to receive the fair market value of the landlord's interest in the property at the time of the extinguishment.

**C. Chapter 369 (HB 723)** - Repeals and reenacts with amendments, Section 8-203(e) and (h) of the Real Property Article.

### **Real Property – Residential Leases – Security Deposits – Interest Rates**

This bill decreases from 4 percent to 3 percent per annum, the interest rate payable by a landlord to a tenant on the tenant's security deposit.

**D. Chapter 540 (HB 1245)** – Repeals and reenacts with amendments, Sections 8-401(b) and (c) of the Real Property Article; Adds Section 6-836.1 to the Environment Article; Adds Sections 18-101 through 18-104 to be under the new “Title 18, Regulation of Residential Property for Rent or Lease” to Article 24-Political Subdivisions-Miscellaneous Provisions.

**Real Property – Compliance with Lead Poisoning Prevention Requirements**

This bill addresses several issues arising out of the Reduction of Lead Risk in Housing law with respect to residential leases. The Reduction of Lead Risk in Housing law provides limited relief for landlords from liabilities arising from lead poisoning occurring at rental properties built before 1950 and properties built between 1950 and 1978 where the owner elects to participate in the program (“affected properties.”) The landlord must register the affected property with the Maryland Department of the Environment and, at each change in occupancy, satisfy the risk reduction standard by testing for lead contaminated dust or performing certain lead hazard reduction treatments such as removing peeling or chipped paint and repainting surfaces. The bill provides that a landlord seeking to repossess an “affected property” for nonpayment of rent must include in the complaint a statement that the landlord has registered the property with the Maryland Department of the Environment and the inspection certificate number. The landlord is not required to provide the inspection certificate number if the landlord states in the complaint that (1) the landlord has requested that the tenant allow landlord access to the property to perform lead removal work; (2) the landlord has offered to relocate the tenant if the work would disturb the paint on the interior surfaces and to pay the tenant’s reasonable expenses to relocate; and (3) the tenant has refused to allow access or refused to vacate the property in order for the landlord to perform the required work. The bill also provides that, in an action in which the landlord’s immunity from liability under the Reduction of Lead Risk in Housing law is challenged, upon motion by any party, the court shall (1) allow discovery limited solely to the issue of landlord’s immunity; (2) determine if there are any disputes of material fact as to whether the landlord is entitled to immunity; (3) hold an evidentiary hearing on any such issue which shall, upon request of any party, be before a jury; and (4) determine as a matter of law whether the landlord is entitled to immunity from liability. The bill also provides that a local government cannot authorize or certify a residential property to be rented or leased, unless the owner of the residential property makes certain written statements under penalty of perjury regarding the lead risk status of the property.

**The provisions of this bill regarding an action in which a landlord’s immunity from liability is challenged, become effective on June 1, 2004 and apply to all cases pending before a court of competent jurisdiction in which trial has not commenced on or before June 1, 2004. All other provisions become effective on October 1, 2004.**

**E. Chapter 286 (SB 568)** – Repeals and reenacts with amendments, Sections 11-101, 11-109(c) and 11B-101 and adds Sections 11-139.1, 11-139.2, 11B-113.1 and 11B-113.2 of the Real Property Article. Repeals and reenacts with amendments, Section 5-6B-01 and adds Sections 5-6B-18.3 and 18.4 of the Corporations and Associations Article.

**Cooperative Housing Corporations, Condominiums, and Homeowners Associations – Electronic Transmission of Notices and Votes**

This bill authorize a cooperative housing corporation, a council of unit owners of a condominium, or a homeowners association in a development to provide notice of a meeting or deliver information to a member, unit owner or lot owner by electronic transmission, under certain circumstances. “Electronic transmission” is defined in the bill as “any form of communication not directly involving the physical transmission of paper, that creates a record that (1) may be retained, retrieved and reviewed by a recipient of the communication; and (2) may be reproduced directly in paper form by a recipient through an automated process. Electronic transmissions are authorized, irrespective of the terms of the declaration or relevant

governing document, provided (1) the board of directors of the housing cooperative, the governing body of council of unit owners or the board of directors or governing body of a homeowners association, authorizes electronic transmissions; (2) the member, unit owner or owner in development authorizes in writing, the use of electronic transmissions; and (3) an officer or agent of the cooperative housing corporation, council of unit owners, or homeowners association certifies in writing that it has provided notice or delivered material or information as authorized by the member, unit owner or owner in development. The bill also allows for the submission of votes or proxies by electronic transmission, provided that the electronic transmission contains information that verifies that the vote or proxy is authorized by the member, unit owner or owner in the development. If the governing documents require voting by secret ballot and the anonymity of voting by electronic transmission cannot be guaranteed, voting by electronic transmission is permitted if the member, unit owner or owner in the development has the option of casting anonymous printed ballots.

**F. Chapter 382 (HB 879)** – Repeals and reenacts with amendments, Sections 11-116 and 11B-112 of the Real Property Article and Section 5-6B-18.3 of the Corporations and Associations Article.

### **Cooperative Housing Corporations, Condominiums, and Homeowners Associations – Books and Records**

This bill makes the inspection of document rules affecting homeowners associations, applicable to cooperative housing corporations and condominiums. The bill provides that all books and records kept by or on behalf of a cooperative housing corporation shall be made available for examination and copying by a member, a member's mortgagee and their respective duly authorized agents or attorneys, during normal business hours, after reasonable notice. The bill provides that, for cooperative housing corporations and condominiums, books and records may be withheld from public inspection to the extent that they concern (1) personnel records; (2) an individual's medical records (3) an individual's financial records; (4) records relating to business transactions that are currently in negotiation; and (5) written advice of legal counsel. The bill also authorizes imposition of a reasonable charge on a person desiring to review or copy the books and records. With respect to cooperative housing corporations, condominiums and homeowners associations, the bill also authorizes the withholding of the minutes of a closed meeting of the board of directors or other governing body.

**G. Chapter 507 (HB 566)** – Adds to Section 11B-113.1 of the Real Property Article.

### **Homeowners Associations – Annual Charges**

The bill expresses the intent of the General Assembly to “prevent unfair treatment of property owners by a homeowners association when annual charges based on the assessed value of property imposed by the homeowners association increase at such a rate that it creates an unexpected windfall for the homeowners association.” Although Columbia, Maryland is not expressly referenced, the bill requires a homeowners association on a development that contains at least 13,000 acres and has a population of at least 80,000 to base its annual charge on the phased-in assessment value of the property. Any increase in the assessment of more than 10 percent over the previous year's assessed value must be considered an unexpected windfall and must be rebated or credited back to the property owner beginning the following year, unless the governing body certifies that the revenues from the annual charges are insufficient to pay outstanding bond obligations. The bill also provides that when calculating an annual charge, a homeowners association may not consider the rate of assessed value of property to have increased by more than 10 percent in a taxable year. The bill also provides that private assessments for public facilities or services entered into or imposed prior to July 1, 1978, based on valuations made by the State for real property purposes, shall be based upon 50 percent of the phased-in value of property. This bill applies retroactively

and shall be applied to, and interpreted to affect, all annual charges imposed by a homeowners association made on or after January 1, 2003.

**Effective June 1, 2004.**

**H. Chapter 478 (SB 692)** – Adds Section 11B-113.1 to the Real Property Article.

**Homeowners Associations – Recorded Covenants or Restrictions Based On Race, Religious Belief or National Origin**

This bill, which by its terms, applies only to homeowners association developments, provides that a homeowners association may delete a recorded covenant or restriction that restricts ownership based on race, religious belief or national origin from the deeds or other declarations of property in the development if at least 85 percent of the lot owners in the development agree to the deletion. If the deed or declaration expressly provides for a method of amendment or deletion of a recorded covenant or restriction, a covenant or restriction based on race, religious belief or national origin may be deleted in such fashion, or by the agreement of 85 percent of the lot owners in the development. The bill also provides that after the lot owners agree to the deletion, the homeowners association is required to record the amendment to the deed or other declaration with the Clerk of the Court in the jurisdiction where the development is located.

**I. Chapter 220 (HB 1228)** – Repeals and reenacts with amendments, Section 11-120(b) of the Real Property Article.

**Condominiums – Conditions on the Right to Expand – Calvert County**

This bill increases from 15 years to 18 years, the time period following the recording of the Declaration during which a condominium may be expanded in Calvert County.

**J. Chapter 396 (HB 1030)** – Repeals and reenacts with amendments, Sections 14-117(d) and (e); Adds Section 14-117(e) to the Real Property Article

**Real Property – Disclosure Requirements – Chesapeake and Atlantic Coastal Bays Critical Area**

This bill provides that a contract or an addendum to the contract for the sale of real property shall contain in conspicuous type, a statement advising the buyer that the property may be located in the “critical area” of the Chesapeake and Atlantic coastal bays:

*“Notice to buyer concerning the Chesapeake and Atlantic coastal bays critical area. Buyer is advised that all or a portion of the property may be located in the “critical area” of the Chesapeake and Atlantic coastal bays, and that additional zoning, land use and resource protection regulations apply in this area. The “critical area” generally consists of all land and water areas within 1,000 feet beyond the landward boundaries of state or private wetlands, the Chesapeake Bay, the Atlantic coastal bays, and all of their tidal tributaries. The “critical area” also includes the waters and lands under the Chesapeake Bay, the Atlantic coastal bays, and all of their tidal tributaries to the head of tide. For information as to whether the property is located within the critical area, buyer may contact the local department of planning and zoning, which maintains maps showing the extent of the critical*

*area in the jurisdiction. Allegany, Carroll, Frederick, Garrett, Howard, Montgomery, and Washington Counties do not include land located in the critical area.”*

**K. Chapter 529 (HB 1017)** – Adds Section 14-128 to the Real Property Article.

**Real Property – Display of United States Flag by Homeowners and Tenants**

This bill provides that, regardless of the terms of any contract, deed, covenant, restriction, instrument, declaration, rule, by-law, lease agreement, rental agreement, or any other document concerning the display of flags or decorations by a homeowner or tenant on residential property, the homeowner or tenant may not be prohibited from displaying on the premises, one portable, removable flag of United States in a respectful manner, consistent with applicable federal law. The bill also provides that the terms of any such document concerning the display of flags or decorations may not prohibit or unduly restrict the right of a homeowner or tenant to display such a flag on the premises. However, the bill provides that the Board of Directors of the condominium, homeowners association, or housing cooperative, or landlord may adopt reasonable rules and regulations regarding placement and manner of display of the flag of United States and the flagpole used to display the flag of United States. The bill also provides that prior to adopting rules or regulations, the Board of Directors or landlord shall (1) hold an open meeting on the proposed rules and regulations for the purpose of providing affected homeowners and tenants and opportunity to be heard; and (2) provide advance notice of the time and place of the open meeting by publishing the notice in a community newsletter, on a community bulletin board, by means provided in the documents governing the condominium, homeowners association or housing cooperative, or in the lease, or by other means reasonably calculated to inform the affected homeowners and tenants.

**II. TAX-GENERAL ARTICLE**

**A. Chapter 410 (HB 1277)** – Repeals and reenacts with amendments, Section 10-912 of the Tax-General Article.

**Income Tax – Payments – Sale of Property by Nonresidents**

This bill amends the Maryland Withholding law by eliminating the requirement that the “total payment” statement or recital be contained in the deed or affidavit recorded with the deed. Instead, in those cases where withholding actually occurs, the total payment must be described on the withholding return form specified by the Comptroller, which form must be signed under oath by the transferor, or an agent of the transferor, or the real property reporting person as defined under Section 6045 of the Internal Revenue Code (usually, the settlement agent). The bill also clarifies that, for the purpose of determining the “total payment,” adjustments in favor of, or against, the transferor are not taken into account. The bill also clarifies that, with respect to the existing exemption from withholding for foreclosure and deed in lieu transfers, the exemption applies where the lender or secured party buys or takes back the property in the name of a designee or nominee (such as an REO subsidiary or loan servicer) as well as where that designee or nominee transfers to a purchaser for value. The bill also adds an exemption from withholding for deeds where the affidavit or recital of consideration states that the consideration payable is “zero.”

**B. Chapter 145 (SB 860)** – Repeals and reenacts with amendments, Section 7-203(b) of the Tax-General Article.

## **Inheritance Tax – Stepchildren and Stepparents of a Decedent**

This bill clarifies that the existing exemption from state inheritance tax for lineal descendants applies to a stepchild or former stepchild of a decedent (now included in the definition of “child”) and a stepparent or former stepparent of a decedent (now included in the definition of “parent.”). The bill also clarifies that the exemption applies to both a child of the decedent as well as a lineal descendent of a child of the decedent. The bill also provides that it is intended to be corrective and clarifying in nature and applicable retroactively.

**Effective July 1, 2004.**

C. **Chapter 430 (SB 508)** – Repeals and reenacts with amendments, Section 7-309 of the Tax-General Article.

## **Budget Reconciliation and Financing Act of 2004 (Maryland Estate Tax)**

Following partial decoupling of the Maryland estate tax from the federal estate tax in 2002 due to the planned phase-out of the federal estate tax, the Maryland estate tax became calculated as if the federal law changes had not phased out the federal credit. However, the Maryland changes did not decouple the Maryland estate tax from the effects of the gradual increases to the unified credit allowed against the federal estate tax. Thus, as the unified credit under federal law increases, the amount of the Maryland estate tax will decline. This portion of the Budget bill has the effect of freezing the amount of the unified credit so as to exclude \$1 million from the federal estate tax for purposes of the Maryland estate tax calculation. The bill also resolves a potential “circular calculation” problem caused by a provision of federal law, effective 2005, that will allow a deduction for State death taxes paid, in lieu of the previously allowed credit for State death taxes paid. The bill provides that the Maryland estate tax shall be determined without regard to the deduction for State death taxes allowed under federal law. The bill also provides that if a federal estate tax return is not required to be filed, the person responsible for paying the inheritance tax on property that passes from the decedent is responsible for filing a Maryland estate tax return and paying the Maryland estate tax.

**Applicable as to all decedents dying after December 31, 2003.**

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

A. **Chapter 248 (SB 76)** – Repeals and reenacts, with amendments, Section 12-108(g) of the Tax-Property Article.

### **Recordation Tax – Refinancing Instrument – Trusts**

This bill expands the residential refinance exemption by defining as an “original mortgagor,” the trustee of an inter vivos trust if: the mortgaged property is used as a principal residence of the settlor of the trust and the trustee or the settlor of the trust originally assumed or incurred the debt secured by the mortgage or deed of trust being refinanced. The bill also amends the form of the statement or affidavit under oath that must be included in, or submitted with, the refinance mortgage or deed of trust in order to qualify for the exemption.

**Effective July 1, 2004.**

**B. Chapter 379 (HB 820)** – Repeals and reenacts with amendments, Sections 9-107, 9-220 and 12-108(cc) of the Tax-Property Article.

**Property Tax and Transfer and Recordation Taxes – Land Trusts – Credits and Exemptions**

This bill expands the property tax credit applicable to conservation property by including perpetual conservation easements donated to the Department of Natural Resources in addition to those donated to the Maryland Environmental Trust. This bill also expands the authority of local governments to grant property tax credits for conservation or land trust property, to include property used to conserve agricultural land and to promote continued agricultural use of the land. The bill also expands the existing exemption from State recordation and transfer tax by exempting all instruments conveying or assigning a conservation easement to a land trust and by exempting fee simple conveyances to a land trust if the land trust files a declaration of intent that the land will be used for certain enumerated preservation and conservation uses.

**Effective July 1, 2004.**

**C. Chapter 497 (HB 159)** - Repeals and reenacts, with amendments, Sections 7-104 and 11-103 of the Tax-Property Article.

**Property Tax – Exemptions**

This bill provides that if exempt real property is transferred to a transferee whose use of the property also qualifies for an exemption, the property tax shall be abated from the date of transfer if the transferee files an application for an exemption on or before September 1 of the following taxable year. The bill also provides that if exempt personal property used in manufacturing is transferred to a transferee whose use of the property also qualifies for an exemption, the property tax shall be abated from that date if the transferee files an application for an exemption within six months after receipt of the first assessment notice issued after date of transfer which includes the personal property used in manufacturing.

**Effective October 1, 2004 and applicable to all taxable years beginning after December 31, 2004.**

**D. Chapter 346 (HB 435)** – Repeals and reenacts with amendments, Section 8-231 of the Tax-Property Article.

**Property Tax – Special Assessments – Damaged or Destroyed Real Property**

This bill expands existing provisions currently applicable only to residential properties which are damaged or destroyed due to flood, fire, storm or any natural occurrence. Presently, if the assessment of such property is not reduced or abated, the replacement or restoration of comparably valued property may not be assessed at an amount greater than the assessment in effect before the damage or destruction. This bill expands the type of affected property from “residential” to property used for “other than commercial purposes.” The bill also provides that such replaced or restored property cannot be reassessed outside of the regular three-year assessment cycle. The bill also changes the term “comparably valued” to “real property of comparable size, construction, and utility.”

**Effective July 1, 2004.**

**E. Chapter 43 (HB 216)** – Repeals and reenacts with amendments, Section 9-105 of the Tax-Property Article.

**Homestead Tax Credit – Damaged Property**

This bill provides for the continuation of the Homestead Property Tax Credit for the current taxable year and two succeeding taxable years for a homeowner whose property is damaged due to an accident or natural disaster, provided the homeowner is otherwise eligible for the credit, even if the homeowner does not actually reside in the dwelling for the required time period due to such damage and even if the property has been removed from the assessment roll because of such damage. The bill also provides that, if the homestead tax credit includes improvements that are removed from the assessment rolls, the full benefit of the credit may not be diminished by any tax abatement under Section 10-304 (reduction in real property taxes for damaged property that should be removed from the assessment records) nor shall such abatement be diminished by the amount of the credit.

**Emergency Bill – Became effective upon enactment on April 13, 2004.**

**F. Chapter 519 (HB 804)** – Adds Section 9-242 to the Tax-Property Article.

**Property Tax Credit – High Performance Buildings**

This bill provides that Baltimore City or the governing body of a county or municipal corporation may grant, by law, a property tax credit against the property tax imposed on a “high performance building.” A “high performance building” is defined as a building that (1) achieves at least a silver rating according to the U.S. Green Building Council’s LEED (Leadership in Energy and Environmental Design) Green Building Rating System as adopted by the Maryland Green Building Council; (2) achieves at least a comparable rating according to any other appropriate rating system or (3) meets comparable green building guidelines or standards approved by the State.

**G. Chapter 354 (HB 543)** – Repeals and reenacts with amendments, Section 14-813(e)(2) of the Tax-Property Article.

**Baltimore City - Tax Sales – Auctioneer’s Fee**

This bill provides that in Baltimore City, in an electronic sale, the auctioneer’s fee shall be an amount not to exceed \$10.00 for each property sold.

**Emergency Bill – Effective May 11, 2004.**

**H. Chapter 512 (HB 683)** – Repeals and reenacts with amendments, Section 14-817 of the Tax-Property Article.

**Prince George’s County - Tax Sales – High Bid Premium PG 404-04**

This bill changes the high bid premium for Prince George’s County tax sales to 20% of the amount by which the highest bid exceeds: (1) the lien amount, or (2) 40% of the property’s full cash value, whichever is greater.

**Emergency Bill – Effective May 26, 2004.**

#### **IV. CORPORATIONS AND ASSOCIATIONS ARTICLE**

**A. Chapter 516 (HB 737)** – Repeals and reenacts with Amendments, Sections 2-212, 2-309, 2-505, 2-604, 3-410, 3-411, and 3-412 of the Corporations and Associations Article.

##### **Corporations – Miscellaneous Provisions**

This bill alters the effect that a voluntary dissolution has upon the powers of a board of directors of a corporation. Presently, when a Maryland corporation is voluntarily dissolved, and until a court appoints a receiver, the directors of the corporation become trustees of its assets for purposes of liquidation. This bill provides that the directors do not become trustees of the corporate assets upon a voluntary dissolution, but that the board of directors continues to manage the business and affairs of the corporation solely for purposes of winding-up. This bill also expands upon existing provisions which authorize holders of non-common stock to take actions or consent to actions in writing or by electronic transmissions, where authorized by the charter of the corporation, and provided the action or consent is authorized by not less than the minimum number of votes necessary to authorize or take the action at a stockholders meeting. The bill authorizes the same procedures for holders of common stock. The bill further clarifies the means of delivering such consent to the corporation and the effective date of such action or consent, following delivery. The bill also provides that, unless the charter provides otherwise, a board of directors may amend the charter with the approval of a majority of the board of directors and without stockholder action, to effect a reverse stock split that results in a combination of shares of stock at a ratio of not more than 10 shares of stock to 1 share of stock in any twelve-month period.

**Effective July 1, 2004.**

#### **V. COMMERCIAL LAW ARTICLE**

**A. Chapter 95 (SB 136)** - Repeals existing Title 7 of the Maryland UCC; repeals and reenacts with amendments, various sections of the Maryland UCC; Reenacts Revised Article 7 of the Maryland UCC, Sections 7-101 through 7-603, inclusive, under the amended title “Title 7. Documents of Title.”

##### **Commercial Law – Uniform Commercial Code – Title 7 Revisions**

This bill repeals the current Title 7 to the Maryland UCC and adopts the revised Article 7 to the UCC, as recommended by the National Conference of Commissioners of Uniform State Laws (NCCUSL). Title 7 of Maryland’s UCC governs obligations and rules of construction as to negotiation and transfer of warehouse receipts, bills of lading and other documents of title relating to personal property. Article 7 was revised to take into account modernizations such as electronic documents of title, the Maryland Uniform Electronic Transactions Act and the federal Electronic Signatures in Global and National Commerce Act (E-SIGN).

**B. Chapter 421 (HB 1447)** Repeals and reenacts with amendments, Section 12-124 of the Commercial Law Article.

## **Mortgages and Deeds of Trust – Flood Insurance**

This bill provides that a lender may not require a borrower, as a condition to receiving or maintaining a loan secured by first mortgage or first deed of trust, to provide or purchase federal flood insurance coverage in an amount exceeding the replacement value of the improvements on the real property. The bill also provides that a violation entitles the borrower to injunctive relief, reasonable attorney's fees, and damages directly resulting from the violation. However, a violation does not affect the validity of the first mortgage or first deed of trust securing the loan.

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

**A. Chapter 541 (HB 1249)** – repeals and reenacts with amendments, Sections 17-303(d), 17-305(d) and 17-315(a)(b) and (c).

### **Business Occupation and Professions – Real Estate Licenses – Requirements for Licensure and Renewal**

This bill provides that an individual applying for a license as a real estate broker, associate real estate broker, or real estate salesperson must complete a 3 clock hour course in real estate ethics approved by the Real Estate Commission. The bill also provides that, to qualify for license renewal, a licensee must complete at least 15 clock hours of continuing education during the preceding 2-year term, subject to certain reduced “phase-in” provisions for licensees who have been licensed for 10 years or more on the date of renewal, and subject to reduced requirements for licensees holding graduate degrees in law or real estate. The bill also provides for reciprocity rules for out of state licensees. The bill expands the subject matter of the biennial continuing education requirement to include at least one 3 clock hour ethics course that includes the Maryland Code of Ethics and a discussion of the practices of flipping and predatory lending. The bill requires the Commission to create and provide a list of continuing education learning opportunities which must be posted on the Commission's website, along with other relevant information.

**B. Chapter 267 (SB 366)** Repeals and reenacts with amendments, Sections 17-505 of the Business Occupations and Professions Article.

### **Real Estate Brokers – Trust Money – Distribution and Liability**

This bill expands the existing immunity from liability provisions for real estate brokers distributing deposits or other trust monies to a party following a failed transaction. Presently, a real estate broker who follows the required notification rules and exercises good faith in distributing trust money following an incomplete transaction, is not liable to the owner of the trust money for having taken that action. This bill expands the immunity to protect the real estate broker for both the broker's good faith decision to distribute as well as the broker's good faith decision to not distribute the trust money.

**C. Chapter 514 (HB 701)** Repeals and reenacts with amendments, Sections 17-527.2 and 17-527.3 of the Business Occupations and Professions Article.

### **Business Occupations and Professions – Real Estate Brokers – Use of Designated Name**

Presently, licensed associate real estate brokers and real estate salespersons may use “trade names” when providing brokerage services and when advertising under certain conditions. Approval of Real Estate Commission is required prior to adding the designated name to the license certificate and/or to the pocket card issued by the Commission. This bill changes the term “trade name” to “designated name” and provides that a licensed real estate broker may also use a designated name. The bill also repeals a requirement applicable to advertisements and pocket cards relating to the text size of the names.

## **VII. NATURAL RESOURCES ARTICLE**

**A. Chapter 526 (HB 1009)** – Repeals and reenacts, with amendments, Sections 8-1801, 8-1802(a), 8-1808, 8-1808.5(a), 8-1815, and 8-1815.1 of the Natural Resource Article.

### **Chesapeake and Atlantic Coastal Bays Critical Area Program – Miscellaneous Enforcement Provisions**

The preamble to this bill specifically references the July, 2003 Court of Appeals decision in *Lewis v. Department of Natural Resources* which resulted in a hunting camp being permitted in a buffer area and which decision is said to have “rejected the finding of the General Assembly that the cumulative impact of development is harmful to the critical area; shifted the burdens of proof and persuasion to local jurisdictions with respect to the denial of a critical area variance application, thus adding burdensome requirements and unnecessary expenses to their consideration of variance applications; and opened the door for citizens to view unpermitted development activity in the critical area as viable due to the lack of detrimental consequence.” This bill, in specifically overruling the *Lewis* case, defines “unwarranted hardship” to mean that “without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.” The bill also requires that, in considering an application for a variance, a local jurisdiction shall presume that the specific development activity in the critical area does not conform with the general purpose and intent of the critical areas law and regulations. The bill then shifts the burden of proof and the burden of persuasion to the applicant to overcome the established presumption. The bill also establishes a fine not exceeding \$10,000 for a violation.

**Effective June 1, 2004.**

**B. Chapter 546 (HB 1345)** – Repeals and reenacts, with amendments, Sections 8-1802(a) and 8-1808.1(e), of the Natural Resource Article.

### **Chesapeake and Atlantic Coastal Bays Critical Area Program – Dwelling Units**

This bill provides that, in calculating the 1 - in - 20 acres density of development in a resource conservation area, the local jurisdiction is required count each dwelling unit, now defined as “a single unit providing complete, independent living facilities for least one person, including permanent provisions for sanitation, cooking, eating, sleeping, and other activities routinely associated with daily life.” The bill further defines a dwelling unit to include living quarters for a domestic or other employee or tenant, an in-law or accessory apartment, a guest house, or a caretaker residence. The bill also grants a local jurisdiction the flexibility to consider one additional dwelling unit per lot or parcel as part of a primary dwelling unit for the purpose of the density calculation under certain circumstances. The bill requires that the local jurisdiction maintain records of building permits issued for additional dwelling units considered part of a primary dwelling unit and to provide this information on a quarterly basis to the Critical Areas Commission, which is required to report the information to certain legislative committees on an annual basis. The bill is

construed to apply prospectively, only, and not to apply to any dwelling unit in existence or for which all necessary permits for construction had been issued before the effective date of the statute.

**Effective June 1, 2004.**

## **VIII. ENVIRONMENT ARTICLE**

**A. Chapters 72 and 73 (HB 294 / SB 186)** – Repeals and reenacts, with amendments, Sections 7-501(e), (g) and (j) and 7-505, 7-506, 7-509, 7-511(a), 7-514, and 7-515 of the Environment Article. Adds Sections 7-266.1 and 7-506.1 of the Environment Article. Repeals and reenacts with amendments, Section 12-111(f) of the Real Property Article, Section 9-229(g) of the Tax-Property Article and Article 83A Business and Economic Development –Sections 5-1401(j) and 5-1408(a).

### **Brownfields Redevelopment Reform Act**

This bill seeks to encourage Brownfields redevelopment by altering certain procedures and requirements for applicants to the Voluntary Cleanup Program. The bill provides that a site currently under active enforcement can be an “eligible property” provided that all applications filed with respect to the property are by inculpable persons, and provided any approved response action plan and cleanup criteria is at least as protective of public health and the environment as the requirements of any outstanding active enforcement action. The bill also relaxes the requirements for an environmental site assessment to provide that a Phase II site assessment is required unless the Department of the Environment concludes, after review of the Phase I site assessment, that there is sufficient information to determine that there are no recognized environmental conditions as defined by the American Society for Testing and Materials. Additionally, the applicant may delay submitting the Phase II site assessment until after the application and applicable fees are submitted. The bill also provides that the participant in the Program and any successors in interest in a property subject to either a “no further requirements” notice or a “certificate of completion,” shall continue to be protected from liability in the event of any violation of the conditions placed on the use of the property, provided that the participant and any successors in interest did not cause or contribute to the violation. The bill also provides that, subject to a hearing, in addition to penalties and costs of recovery under current law, a responsible person who fails without sufficient cause to comply with a final order is subject to punitive damages not exceeding three times the amount of any costs that are incurred by the State.

## **IX. AGRICULTURE ARTICLE**

**A. Chapter 189 (HB 606)** – Repeals and reenacts with amendments, Sections 2-505, 2-509(a), 2-510(k), and 2-514 of the Agriculture Article.

### **Maryland Agricultural Land Preservation Program - Installment Purchase Agreements, Schedule of Installments, and Termination of Easements**

This bill authorizes the Maryland Agricultural Land Preservation Foundation to purchase an agricultural easement through an installment purchase agreement, having a maximum term of 15 years. The bill also provides a land owner may not terminate an easement purchased using an installment purchase agreement.

**B. Chapter 190 (HB 625) – Adds Section 2-510.1 to the Agriculture Article.**

**Maryland Agricultural Land Preservation Program – Grants - Installment Purchase Programs**

This bill authorizes the Maryland Agricultural Land Preservation Foundation to make grants to Counties having approved installment purchase programs. Easements purchased using such a grant are required to be held jointly by the County and the Foundation. The bill also provides that an easement purchased using a grant may not terminate.

**Effective July 1, 2004.**

**C. Chapter 498 (HB 164) – Repeals and reenacts with amendments, Section 2-513 of the Agriculture Article.**

**Maryland Agricultural Land Preservation Foundation**

This bill adds additional requirements with respect to the release of the Foundation's easement restrictions on a one-acre site or less, allowed for the purpose of constructing a dwelling house for the use of the landowner or the child of the landowner, only. The release document must include a statement that the owner's or child's lot may not be transferred for five years from the date of the final release, except on approval by the Foundation, or on a lender providing notice to the Foundation of a transfer pursuant to a bona fide foreclosure of a mortgage or deed of trust, or deed in lieu of foreclosure.

**D. Chapter 374 (HB 770) – Repeals and reenacts with amendments, Section 2-513(b) of the Agriculture Article.**

**Maryland Agricultural Land Preservation Foundation – Tenant Houses - Construction**

This bill provides that, subject to the approval of the Maryland Agricultural Land Preservation Foundation, a landowner may construct housing for tenants fully engaged in the operation of the farm and that construction may not exceed one tenant house per 100 acres, unless the Foundation grants an exception based upon a showing of compelling need. The bill also requires that the Foundation adopt regulations as to the size and location of the tenant house.

**E. Chapter 375 (HB 777) – Repeals and reenacts with amendments, Section 2-514 of the Agriculture Article. Adds Section 2-514.1 to the Agriculture Article.**

**Maryland Agricultural Land Preservation Foundation – Easement Termination**

This bill provides that, with respect to easements acquired by the Foundation on or before September 30, 2004, before deciding on a landowner's request for termination of an easement, the Foundation must provide the landowner with an opportunity for a hearing. The landowner may appeal any Foundation denial directly to the Circuit Court of the County where the land is located. This bill also provides that an easement whose purchase is approved by the Board of Public Works on or after October 1, 2004, shall be held by the Foundation in perpetuity.

## **X. ESTATES AND TRUSTS ARTICLE**

**A. Chapter 477 (SB 686)** – Repeals and reenacts, with amendments, Section 5-702 of the Estates and Trusts Article.

### **Estates – Election for Modified Administration**

This bill alters the requirements for trustees electing modified administration. To qualify, the trust must be a residuary legatee under the decedent's will. The trustee or trustees must be limited to the decedent's personal representative, surviving spouse, or children. The bill provides for prospective application, only, and may not be applied to an estate of a decedent dying before October 1, 2004.

**B. Chapter 465 (SB 541)** – Repeals Sections 9-201 through 9-209, inclusive and adds revised Sections 9-201 through 9-216, inclusive to the Estates and Trusts Article. Repeals and reenacts with amendments, Section 13-204(a)(4)(ii) of the Estates and Trusts Article.

### **Maryland Uniform Disclaimer of Property Interests Act**

This bill repeals Maryland's 1978 version of the Uniform Disclaimer of Property Interests Act (UDPIA) and adopts the 1999 version as promulgated by the National Conference of Commissioners on Uniform State Laws. UDPIA governs the rules for disclaimers of interests in, or powers over, property by one who would have otherwise succeeded to the right or power as a distributee of property through an estate, a legatee under a will, or successor by right of survivorship pursuant to a deed. Unlike the prior version of UDPIA, which required that a disclaimer of an interest in real property be filed in the land records, the revised UDPIA provides that the disclaimer may be recorded, but that the failure to record does not affect the validity of the disclaimer as between the disclaimant and the persons to whom the property interest or power passes by reason of the disclaimer.

## **XI. INSURANCE ARTICLE**

**A. Chapter 253 (SB 147)** – Repeals and reenacts, with amendments, Section 10-118(d) of the Insurance Article.

### **Insurance – Regulation of Insurance Producers- Written Documentation of Appointment**

This bill provides that an insurance producer may not act on behalf of an insurer unless the insurance producer has received written documentation of the producer's appointment from the insurer.

## **XII. ARTICLE 83B – DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**

**A. Chapter 88 (SB 66)** – Repeals and reenacts with amendments, Section 2-201(b) of Article 83B – Department of Housing and Community Development.

**Department of Housing and Community Development – Community Development Administration – Grants to Home Buyers**

This bill provides that the Community Development Administration may award grants to home buyers for settlement expenses, as provided by the Department of Housing and Community Development.

**B. Chapter 209 (HB 905)** – Repeals and reenacts with amendments, Sections 4-201, 4-202, 4-203, 4-204, 4-205 and 4-208 to Article 83B. Adds Section 2-204(18) to Article 83B.

**Department of Housing and Community Development (Microenterprises)**

This bill provides that the Neighborhood Business Development Program may provide funding for “microenterprises.” A microenterprise is defined as a business with not more than five employees that requires not more than \$35,000 in total start-up capital and does not have access to the traditional commercial banking sector. The bill also provides that the Department of Housing and Community Development may sell any business development program loan, including selling at a discount, and apply the proceeds received to the Neighborhood Business Development Fund. The bill also provides that the Department “may make a reasonable good-faith effort to make 25 percent of the business development program loans and grants to microenterprises.”

**C. Chapter 499 (HB 165)** – Repeals and reenacts with amendments, Sections 4-801 and 4-812 of Article 83B – Department of Housing and Community Development.

**Department of Housing and Community Development – Community Legacy Program – Neighborhood Intervention Projects**

This bill provides that a Community Legacy Project may include the financing of a Neighborhood Intervention Project for the demolition of improvements on property to prepare the property for revitalization, redevelopment, or re-use as part of a redevelopment plan. To receive financial assistance for a Neighborhood Intervention Project, the sponsor must provide evidence of the sponsor’s legal interest in the property and intention to revitalize, redevelop or re-use the property as part of a redevelopment plan. The sponsor is also required to contribute an amount at least equal to the financial assistance received from the Program towards the demolition of the improvements. The sponsor must repay the financial assistance to the Community Legacy Financial Assistance Fund under certain terms.

**Effective July 1, 2004.**

**D. Chapter 76 (HB 679)** – Repeals and reenacts with amendments, and transfers to Session Laws, Section 5-801 of Article 83B – Department of Housing and Community Development.

**Department of Housing and Community Development (Maryland Heritage Structure Rehabilitation Tax Credit Program)**

This bill reestablishes the Maryland Heritage Structure Rehabilitation Tax Credit Program, which would have otherwise terminated on June 1, 2004. The Program provides funding for rehabilitation of historic properties and other properties contributing to an historic district or certified heritage area. The bill increases the available total commercial credit cap for the existing tax credit for calendar year 2004 to \$25 million, of which \$10 million must be awarded on a competitive basis. The bill places the Program under

budgetary control by creating a reserve fund to which funds are to be appropriated by the Governor for future fiscal years.

**Effective June 1, 2004.**

### **XIII. ARTICLE 66B – LAND USE**

**A. Chapter 385 (HB 912)** – Repeals and reenacts with amendments, Section 4.01(c) and 4.02 of Article 66B Land Use.

#### **Municipal Corporations – Annexations - Limitations on Uses of Land and Densities of Development**

This bill provides that a municipal corporation may include in an annexation agreement, limitations on uses of land and densities of development otherwise allowed in the zoning district where the land is located.

**B. Chapter 548 (HB 1387)** – Repeals and reenacts with amendments, Section 14.03 of Article 66B Land Use. Repeals and amends with amendments, The Public Local Laws of Carroll County, Section 3-108, Article 7, Public Local Laws of Maryland.

#### **Carroll County – Abatement of Zoning Violation and Codes Related to Construction**

This bill authorizes the County Commissioners of Carroll County to assess the reasonable costs of the abatement of a violation of a zoning, building, plumbing, electrical, or other construction code. The assessment is added to the annual tax bill and collected in the same manner as ordinary taxes. The assessment constitutes a lien against the property from the date of assessment until paid. The bill provides that a property owner aggrieved by the assessment may petition the County Commissioners for relief. At the hearing, the petitioner has the burden to show good cause as to why the assessment should not be made.

### **XIV. PUBLIC LOCAL LAWS**

**A. Chapter 420 (HB 1445)** – Adds Section 20.142 “Part VI. Public School Facility Surcharge” to the Public Local Laws of Howard County.

#### **Howard County – Public School Facilities Surcharge Ho. Co. 7-04**

This bill requires the County Council of Howard County to impose, by ordinance, a school facilities surcharge on residential new construction for which a building permit is issued on or after July 1, 2004. For fiscal year 2005, the surcharge is established at \$1.00 per square foot of occupiable area in the residential new construction. For fiscal year 2006 and each succeeding year, the surcharge shall be adjusted for inflation in accordance with the Consumer Price Index for all Urban Consumers established for the preceding year. The surcharge is required to be paid by the applicant at the time the building permit is issued. The surcharge may not be construed to be a settlement cost. The bill also provides for certain rebates, if on the initial sale of property, the property is sold for a fair market value that is less than

\$200,000. The bill provides that the revenue collected under the surcharge is intended to supplement funding for public school facilities and may not supplant other County or State funding for school construction.

**Effective July 1, 2004.**

**B. Chapter 405 (HB 1203)** – Repeals and reenacts, with amendments, The Charter of Baltimore City, Article II – General Powers, Section (62)(b) and (c).

**Baltimore City – General Powers- Tax Increment Financing**

This bill authorizes the Mayor and City Council of Baltimore to use bond proceeds from tax increment financing for the construction or rehabilitation of buildings that are abandoned property, distressed property, or will provide units of affordable housing.

**C. Chapter 411 (HB 1286)** – Repeals and reenacts with amendments, The Public Local Laws of St. Mary’s County, Section 138.1, and Article 19, Public Local Laws of Maryland.

**St. Mary’s County – Transfer Tax – Termination Provision**

This bill extends St. Mary’s County’s authority to collect local transfer taxes through July 1, 2010.

**Effective July 1, 2004.**

**XV. ARTICLE 24 – POLITICAL SUBDIVISIONS**

**A. Chapter 389 (HB 965)** – Adds Section 9-10A-01 “Subtitle 10A. Harford County School Construction Financing”

**Harford County School Construction Financing Act of 2004**

This bill authorizes the County Council of Harford County to fix, impose and collect, by ordinance, a development impact fee not to exceed \$10,000 for new construction or development. The revenues are placed in a special fund for school construction and related uses.

**Effective June 1, 2004.**

**B. Chapter 401 (HB 1161)** – Adds Section 9-1002

**Dorchester County – County Council – Building Excise Tax**

This bill authorizes the County Council of Dorchester County to fix and impose, by ordinance, a building excise tax on any building construction within Dorchester County. The County Council may impose different rates of the building excise tax on different types of building construction. The tax rates shall relate to the development or growth-related infrastructure needs in the County and may not exceed

\$5,000 per unit for residential development or \$1.00 per square foot for any category of nonresidential development, not to exceed \$5,000 per lot or parcel.

**Effective July 1, 2004.**

## **XVI. MISCELLANEOUS**

### **A. Chapter 446 (SB 275)**

#### **REAL PROPERTY - TASK FORCE ON BUSINESS OWNER COMPENSATION IN CONDEMNATION PROCEEDINGS**

This bill establishes a Task Force on Business Owner Compensation in Condemnation Proceedings. The bill provides that the Task Force shall study the concept of business goodwill, with a particular focus on small business goodwill.

**Effective July 1, 2004 and abrogated at the end of December 31, 2005.**