

**SUMMARY OF LEGISLATION OF INTEREST TO REAL PROPERTY  
LAWYERS PASSED BY THE 2007 MARYLAND GENERAL ASSEMBLY**

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Below are summaries of select legislation passed by the General Assembly in its 2007 legislative session. The legislation is organized by Code Article. Most of the affected sections listed below are in the Real Property Article, but this summary includes bills that affect a few other Articles as well. You may check a bill's status, or find its full text, at the General Assembly's website, <http://mlis.state.md.us>.

2480 bills were introduced this past session, and 800 were passed into law. Many thanks to each member of the Real Property Section's Legislative Liaison Committee for their dedication in reviewing and commenting upon these bills and numerous others. My special thanks as well to Stuart Kaplow and Paul Rieger for their assistance in compiling this summary, and to Ed Levin for guiding the Rule Against Perpetuities legislation from its initial discussion stages through the bill signing.

Unless otherwise noted, the effective date of each is October 1, 2007.<sup>1</sup>

Real Property Article

**SB 3 (Chapter 305)** amends Sections 12-105.1, 12-202, 12-204, 12-205 and 12-205.1 regarding condemnation. It increases compensation for displaced homeowners, tenants, businesses and farm uses, and requires the taking agency to negotiate a relocation plan in good faith with a displaced business or farm. It also requires that political entities

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<sup>1</sup> Note that a bill signing is scheduled for May 17, 2007, and bills that do not have chapter numbers may be signed then.

file a condemnation within four (4) years after its legislative authorization to acquire the property.

**HB 172/SB 106 (Chapter 1, Emergency; 1/22/07)** amends Section 8-111.2 to prohibit the creation of any new reversionary interests in real property used, or intended to be used, for four or fewer dwelling units under a ground lease or sublease that is renewable forever and subject to a payment of periodic ground rent.

**HB 452/SB 397 (Chapter 287)** amends Section 8-110.1 to convert irredeemable ground rents to redeemable ground rents, for residential property having four or fewer units, unless the owner files a notice to preserve irredeemability in the appropriate land records by 12/31/10.

**HB 458/SB 755 (Chapter 285)** applies in Baltimore City. It amends Sections 8-111.1, 8-402.3 and 14-115.1 to limit the amount of past due rent that may be collected from the City (as ground lessee) to three years, plus permits ground lessors of property leased by the City to request that the City redeem the ground lease for a specified market value. It also specifies a notice address for notices sent to the City regarding City owned ground leases. [July 1, 2007]

**HB 463/SB 396 (Chapter 286)** amends Sections 8-402.2, 8-402.3, 8-111.1 and 14-108.1 to repeal the ability of a ground lease holder to file an ejectment action as a remedy for a defaulted ground lease, and instead provides for the creation of a lien. Legal fees for the ground lease holder in the action to determine whether a lien may be established are capped at \$500. The lien created by this bill has priority as of the date of ground lease creation, and may be foreclosed through a judicial foreclosure. The ground lease holder's ability to file suit seeking a monetary judgment is unaffected. [July 1, 2007]

**HB 489/SB 623 (Chapter 291)** amends Sections 8-110, 14-116.1 and 14-129 to eliminate the statutory waiting period before a ground lessee may redeem the ground rent,

and requires that settlement agents provide purchasers of ground leased property with certain statutory redemption information. [July 1, 2007]

**HB 502 (Chapter 289)/ SB 398 (Chapter 288)** amends Sections 14-116, 14-116.1 and 14-117 (a) to require that the ground lessor provide the ground lessee with specific notices regarding the amount of ground rent due and consequences of non-payment, that the ground lessee notify the ground lessor of any change of address, and that any contract for residential property subject to a ground lease of four or fewer units contain the same notice to lessees. [July 1, 2007]

**HB 580/SB 622 (Chapter 290)** amends Sections 3-102 (a) and 8-701 *et seq.*, and creates a new subtitle 7, “Registry of Ground Leases.” Ground lessors must register their leasehold properties with SDAT by 9/30/10. All changes to the ground lessor’s status, and if a ground lease is redeemed, must be provided to SDAT. If a ground lessor does not register a property by 9/30/10, then the ground leasehold rights are extinguished and the SDAT shall issue a certificate of extinguishment to the ground lessee. Once the certificate is filed in the land records, the lessee has clear fee title to the property.

**HB 95 (Chapter 170)/SB 635 (Chapter 171)** amends Sections 11-102.1 and 11-136 (a) to clarify notice provisions in rental to condominium conversions. If the purchaser offer is not made concurrently with the conversion notice, then the tenant’s six months residency protection does not begin until the purchaser offer is made.

**HB 183** amends Section 11B-115 (11B-116) to cause the HOA to have similar consumer protections as condominiums and cooperatives. Violations of the Maryland HOA act are now within the enforcement protection of the Consumer Protection Division of the Attorney General’s Office, to the extent that a violation affects a “consumer.”

**SB 287 (Chapter 321)** amends Sections 11-109.3 and 11B-111.5 to permit condominium unit owners and HOA members to petition for a receiver if there are not enough board (or council) members remaining in office to constitute a quorum. The

receiver may not reside in the community that is the subject of the action, and serves until the vacancies are filled by the council or HOA.

**HB 377 (Chapter 236)** amends Section 8-401 to permit a court in a non-residential landlord-tenant action for unpaid rent to award the landlord reasonable attorney's fees, if the lease permits that award.

**HB 922 (Chapter 440)** amends Section 8-401 to count a stricken judgment towards the number of judgments necessary to foreclose a right of redemption.

**HB 331/SB 143 (Chapter 234)** amends Section 3-502 to establish a pilot program for electronically filing documents in the land records. This bill authorizes the Administrative Office of the Court to institute an e-recording pilot program, but does not mandate that and county actually implement it. The pilot program may modify technical/procedural recording rules to enable the electronic filing. Each document that is electronically filed shall have the same validity and same filing date as it would have, had the "substantively identical" document been manually filed on that date. [June 1, 2007]

**HB 1027 (Chapter 21)/SB 220 (Chapter 20)** amends Sections 3-105 and 3-105.2 to authorize a settlement agent, title insurer or Maryland lawyer to record a "statutory release affidavit" in the land records if the secured debt is paid but the debt holder failed to provide a release within sixty days after pay off. The releasor must provide the debt holder with a copy of the release affidavit and a thirty day response time before recording the affidavit. [July 1, 2007]

**HB 677/SB 577** amends Section 14-125.2 and C&JP Section 4-401.7 to permit the Harford County State's Attorney to bring District Court actions for relief of certain property nuisances. This legislation is more interesting for what was not enacted. It was originally introduced to provide HOA's in Harford County that same enforcement remedy, but the HOA powers were amended out of the bill.

**HB 188 (Chapter 381)** is the “*Rule Against Perpetuities*” bill. It amends RP Section 2-116 (d), and E&T Sections 11-102 and 11-102.1 to add statutory exceptions to the RAP. HB 188 provides that the common law Rule Against Perpetuities does not apply to contracts, leases, options, rights of first offer, rights of first refusal, rights of first negotiation or similar preemptive rights relating to the use, possession, transfer, or ownership of real or personal property and that are made for actual consideration. Instead, HB 188 establishes a new rule that sets forth applicable time periods within which “property interests,” as defined in the bill, must be exercised or vested. Most importantly, the bill provides that if the parties do not set forth any time period within which a property interest must be exercised or vested, the property interest is void if it is not exercised or vested within seven years. If a contract sets forth a period within which a property interest must be exercised or vested that does not exceed 60 years or the time that would be permissible under the common law Rule Against Perpetuities, the period of time selected by the parties will be respected.

As a matter of convenience to practitioners, the HB 188 adds to the Estates and Trusts Article a list of the currently existing exceptions to the common law Rule Against Perpetuities that were not previously enumerated in a statute. These include a tenant’s options to renew or purchase leased premises, a usufructuary’s option to extend the scope of an easement or profit, and the right of a county, municipality or person from whom land was acquired to acquire (or re-acquire) that land from the State under Section 8-309 of the Transportation Article. Finally HB 188 exempts from the reach of RAP buy-sell agreements relating to equity interests in business enterprises.

**HB 465/SB 511** amends Section 10-705 to add conservation easements to the list of disclaimers in real estate sales contracts. The parties may rely on the recorded easement to stand as the disclosure, or in lieu of providing a copy of the easement.

**HB 401 (Chapter 401)** amends Sections 10-702, and Public Safety Article, Section 12-1101 *et seq.*, to require the installation of carbon monoxide alarms within proscribed areas of newly constructed dwellings (including hotels and dormitories) that

use fossil fuels, and requires that the presence or absence of a carbon monoxide detection be disclosed in residential sales contracts covering homes using fossil fuels.

#### Agriculture Article

**HB 1354 (Chapter 476)** amends AG Section 2-518 and State Finance Section 5-408 to prohibit the state from certifying an area as a priority preservation area unless the county agrees that the area supports the ability of working farms in that area to engage in normal agricultural and forestry activities.

**HB 1331** amends Sections 2-509 and 2-510 to extend many of the determinations involved in classifying an area as an agricultural priority district to apply as well to whether an agricultural easement may be purchased or imposed. [July 1, 2007]

#### Tax – Property Article

**HB 813/SB 827** amends Section 7-504 to provide a property tax exemption for affordable and inclusionary housing, both new and redevelopment. The project must be 30 or more units and set aside a minimum of 10% of the units at 60% or less of area median income, and have certain private capital invested. [June 1, 2007, effective through July 1, 2010]

**HB 1386/SB 962 (Chapter 209)** amends Section 9-105 (a) to add some partners in general partnerships and shareholders of family corporations to qualify for homestead tax credits. [June 1, 2007]

**HB 755/SB 486** amends Section 9-246 to permit jurisdictions to provide tax credits for persons who purchase a dwelling after their immediately prior dwelling was acquired for public use. [June 1, 2007]

**HB 231** amends Section 12-116 to exempt transfers from governments or public agencies from the payment of recordation taxes.

**HB 1348 (Chapter 99)** amends Section 14-201 to restrict assessor notes and medical-related adjustments on residential worksheets in the property valuation records from public view.

#### Business Occupations and Professions Article

**HB 1326** amends Section 16-101 to require supervising appraisers who are licensed by the Real Estate Appraisers and Home Inspectors Commission to be certified, and to be listed as either a residential or general real estate appraiser. [January 1, 2008]

**HB 1288 (Chapter 274)** amends Sections 17-101, 17-207, 17-301, and 17-322 to expand the definition of “real estate brokerage services” to include sales of real estate as a sales agent for a home builder. Although the bill as introduced attempted to remove this exception, a home builder that initially sells a home that it constructs continues to be exempt under 17-301(b)(3). That being said, there is an ongoing discussion with the Attorney General’s office and many home builders as to whether the exception was or was not removed by the language of the bill.

#### General

**SB 883 (Chapter 292)/HB 1284 (Chapter 293)** amends HCD Sections 4-804, 4-806, 4-807 and 4-810 – 815 to permit preferred interest rate loans for ground rent redemption. [July 1, 2007]

**HB 1107** amends CL Section 12-804 to clarify that the limitation on mortgage brokers collecting a finder’s fee more than once in a 24 month period on the same property only applies if it is the same borrower, and the second loan is obtained to cure a default under the first loan.

**HB 657/SB 682** permits Cecil County to acquire development rights in agricultural land.

**HB 588/SB 573** amends Natural Resources Title 5, Subtitle 16, to include in “net tract area” for forest conservation purposes land that is partially within 100 year flood plains or is wetlands, if the conservation easement is placed when the plat of the land is recorded. [July 1, 2007 – February 29, 2008]

**HB 1175 (Chapter 267)** amends various provisions of Article 24 under a new Title 20 –“Purchase of Development Rights” to permit Anne Arundel, Baltimore, Howard and Prince George’s County to purchase development rights if their local government body has authorized the spending. [June 1, 2007]

**HB 784 (Chapter 300)** amends various provisions of Article 24 under a new Title 20 – “Affordable Housing Programs,” to enable the jurisdictions to support affordable housing through trust funds, restriction of sales prices, provision of county land or PILOT programs.

**HB 772** amends Article 66B, Section 1.02, to permit Howard County to enforce its zoning regulations through civil fines, liens, and costs assessments.

**HB 762/SB 278** amends Baltimore City Code Section 9-8 to permit immediate family member of a deceased HABC tenant to remain in occupancy, if that family member also meets the residency criteria.

**HB 136/SB 110 (Chapter 6)** creates a Base Realignment and Closure Subcabinet under State Government Section 9-802 to coordinate BRAC-related initiatives such as education, health care, infrastructure, housing and transportation. [June 1, 2007 – December 31, 2011]

