Below are summaries of select legislation passed by the Maryland General Assembly in its 2012 legislative session. The legislation is organized by Code Article. Over 2,500 bills were introduced this past session. The full 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.

Portions of the bill summaries have been extracted from Fiscal and Policy Notes for individual bills and from the “90 Day Report,” provided courtesy of the Maryland Department of Legislative Services. The full text of the “90 Day Report” can be found on the Maryland General Assembly’s website at: http://mlis.state.md.us/2012rs/90-Day-report/The90DayReport.pdf

All of the laws listed have an effective date of October 1, 2012, unless otherwise specifically noted.

I would like to thank the members of the Real Property Section’s Legislative Liaison Committee for their dedication in reviewing and commenting upon these and numerous other bills. Special thanks to Paul Rieger and Carson Mills for their assistance in preparing this Summary.

I. REAL PROPERTY ARTICLE

A. Chapter 155 (HB 1373)

Real Property - Foreclosed Property Registry

Real Property 14-126, 14-126.1
State Finance and Procurement 6-226 (a)

This bill establishes the internet-based Foreclosed Property Registry and the accompanying Foreclosed Property Registry Fund in order to provide a data base of information relating to foreclosure sales. The bill applies to residential property, only, which is defined as property “improved by four or fewer dwelling units that are designed principally and are intended for human habitation.”

The bill places certain duties upon both the person responsible for conducting the foreclosure sale and the foreclosure purchaser, (the party identified as purchaser in the report of sale). At the time of the foreclosure sale, the person responsible for conducting the foreclosure must obtain a written acknowledgment of the requirements of this section from the foreclosure purchaser. Within 30 days after a foreclosure sale, the foreclosure purchaser must submit an initial registration containing: 1. the name, telephone number, and address of the foreclosure purchaser; 2. the street address of the property; 3. the date
of the foreclosure sale; 4. the sales price; 5. whether the property is a single–family or multifamily property; 6. the name and address of the person, including a substitute purchaser, who is authorized to accept legal service for the foreclosure purchaser; 7. to the best of the foreclosure purchaser’s knowledge at the time of registration: a. whether the residential property is vacant and b. the name, telephone number, and street address of the person who is responsible for the maintenance of the property; and 8. whether the foreclosure purchaser has possession of the property. Registration must be accompanied by a $50.00 filing fee if timely made; if not, the filing fee is $100.00.

Within 30 days after a deed transferring title to the residential property has been recorded, the foreclosure purchaser must submit a final registration to the Foreclosed Property Registry in the prescribed format containing, as of date of Final Registration: 1. the name, telephone number, and address of the owner on the deed; 2. the date of the ratification of the sale; and 3. the date the deed was recorded. There is no additional charge for final registration.

A local jurisdiction may enact a local law imposing a maximum $1,000 fine for failure to register. Additionally, a local government that abates a nuisance on, or expends funds to maintain, a registered property may collect any incurred costs as a charge included on the property’s tax bill, provided that a minimum of 30-days advanced written notice preceding the abatement or maintenance action is provided to 1. the person identified in the registry as authorized to accept legal service for the foreclosure purchaser; and 2. the person identified in the registry as being responsible for the maintenance of the property.

The bill also provides that the Registry is not a public record as defined by § 10–611 of the State Government Article and is not subject to public access requirements under State Government Article Title 10, Subtitle 6. The Registry is only available to local governmental jurisdictions and State agencies, with the exception that the Department of Labor, Licensing and Regulation (DLLR) or a local jurisdiction may provide limited contact information for a specific property in the Registry to: (i) a person who owns property on the same block or (ii) a homeowners association or condominium in which the property is located.

The bill provides that only the State may enact foreclosed property registration laws and the bill repeals Real Property § 14-126(c) which authorized a county or municipal corporation to enact local laws requiring notice of foreclosure actions. However, the bill expresses the intent that it not repeal any local law that was enacted under Chapter 149 of 2009 (which enabled local jurisdictions to enact local registration laws) in effect as of October 1, 2012 (such as Prince George’s County’s law requiring registration of both commercial and residential foreclosures within 5-days of foreclosure docketing).

DLLR is required to report to the General Assembly by January 1, 2013, on the status of the Foreclosed Property Registry and the Foreclosed Property Registry Fund.
This bill modifies existing foreclosure practice to allow for both “prefile” as well as the existing “post file” mediation. Under the bill, a secured party may now offer prefile mediation to a mortgagor or grantor to whom the secured party has delivered a notice of intent to foreclose. If the mortgagor or grantor elects prefile mediation, an order to docket or complaint to foreclose may not be filed until the completion of the mediation.

A secured party that offers prefile mediation must include a prescribed notice and prefile mediation application, with the notice of intent to foreclose. The notice will provide that:
1. the secured party offers prefile mediation;
2. the mortgagor or grantor may elect to participate in prefile mediation;
3. the mortgagor or grantor will not be entitled to postfile mediation if the mortgagor or grantor participates in prefile mediation, except as otherwise provided in a prefile mediation agreement;
4. the mortgagor or grantor is required to participate in housing counseling services as a precondition to prefile mediation; and
5. a fee will be charged for prefile mediation and the amount of the fee. If a mortgagor or grantor elects to participate in prefile mediation, the mortgagor or grantor must notify the secured party by submitting an application within 25 days after the date on which the secured party mails the notice of intent to foreclose. Once the secured party receives the application, the secured party must notify the Office of Administrative Hearings (OAH). OAH is required to (1) schedule a prefile mediation session within 60 days after it receives the notice from the secured party; (2) notify the parties and their attorneys, if any, of the date of the prefile mediation session; and (3) issue a report describing the result of the mediation upon its completion.

The bill requires the Commissioner of Financial Regulation, by regulation, to (1) establish a mediation checklist that describes the matters that must be reviewed and considered in prefile and post file mediation; (2) establish the fee for prefile mediation, which is paid to the Housing Counseling and Foreclosure Mediation Fund; and (3) prescribe the form and content of the notice about prefile mediation, the application to participate in prefile mediation, and instructions to complete the application.

At the conclusion of a prefile mediation session, each party is required to sign the mediation checklist. If the prefile mediation results in an agreement, the parties must execute a prefile mediation agreement which is drafted by the OAH. A mortgagor or grantor who elects prefile mediation will not be entitled to postfile mediation unless otherwise agreed by the parties. The parties to the prefile mediation agreement may
execute an amended prefile mediation agreement based on a material change of financial circumstances of the mortgagor or grantor.

To the extent that a notice of intent to foreclose complies with the new section and otherwise is valid under the law, a notice of intent to foreclose issued with respect to a property that has been the subject of prefile mediation continues to be valid for 1 year after the date on which the initial prefile mediation agreement is executed by the parties. The bill also provides that it does not prohibit a secured party and mortgagor or grantor from engaging in loss mitigation by other means.

An order to docket or complaint to foreclose must now include the report of the prefile mediation issued by the OAH where the parties elected prefile mediation or, if not, a statement that the parties have not elected to participate in prefile mediation. The order to docket or complaint to foreclose may exclude the request for a postfile mediation form if: 1. The mortgagor or grantor has participated in prefile mediation and the prefile mediation agreement does not give the mortgagor or grantor the right to participate in postfile mediation; or the property subject to the mortgage or deed of trust is not owner-occupied.

A mortgagor or grantor who has not participated in prefile mediation or has participated in prefile mediation that resulted in a prefile mediation agreement that gives the mortgagor or grantor the right to participate in postfile mediation is entitled to apply for postfile mediation.

The bill also authorizes local jurisdictions to issue certificates of vacancy and certificates of property unfit for human habitation if properties meet specified requirements. Accordingly, if a mortgage or deed of trust on residential property is in default, a mortgagee may request that a county or municipal corporation issue a certificate of vacancy or a certificate of property unfit for human habitation. If a local jurisdiction determines that the property meets the appropriate standards, it must issue the certificate. A county or municipal corporation may charge a fee not exceeding $100 to a secured party to issue a certificate of vacancy or a certificate of property unfit for human habitation. The record owner or occupant of the property may challenge the certificate by notifying the circuit court of the challenge. If a certificate is valid at the time of filing an order to docket or complaint to foreclose, a secured party may expedite the foreclosure process by eliminating the loss mitigation and mediation requirements of Section 7-105.1. However, if a challenge to the certificate is upheld, the process may not be expedited.

Finally, the bill exempts from the State income tax, any payment to an individual made as a result of the foreclosure settlement negotiated on February 9, 2012 between the U.S. Department of Justice, HUD, the Maryland Attorney General, 48 other state Attorneys
General, and five major banks.

Effective October 1, 2012, except for the income tax exemption provision which takes effect July 1, 2012 and is applicable to all taxable years beginning after December 31, 2011.

C. Chapter 461 (SB 123)

Real Property - Foreclosure Sale of Residential Property – Notice to Local Supervisor of Assessments

Real Property 7-105.11

This bill provides that, with certain exceptions, the purchaser of a residential property under a mortgage foreclosure shall provide a copy of the order ratifying the sale to the Supervisor of Assessments for the county in which the residential property is located by the later of: (1) 60 days after the entry of the order ratifying the foreclosure sale; or (2) if a motion is filed under Maryland Rule 2–535 before the expiration of the 60-day time period, 30 days after the entry of a court order that resolves the motion without nullifying the ratification order. Notification to the Supervisor of Assessments is not required if: (1) the deed has been recorded in the land records before the expiration of the relevant aforementioned time period or (2) the foreclosure sale is subject to: (i) a pending appeal of the ratification order; (ii) a bankruptcy stay; or (iii) an unexpired right of redemption in favor of the United States or any agency or department of the United States.

If a copy of the ratification order is not provided to the Supervisor of Assessments as required, any reduction in property tax received by the residential property because of its status as an owner–occupied principal residence from the date of the entry of the ratification order until the earlier of the receipt by the Supervisor of Assessments of a copy of the ratification order or the recordation in the land records of the deed shall remain due and collectable as a property tax.

Effective June 1, 2012 and applicable to all taxable years beginning after June 30, 2012.

D. Chapters 464 and 465 (SB 135/HB 177)

Ground Leases – Registration – Failure to Register

Real Property 3-102, 8-102.3, 8-704, 8-705, 8-70, 8-708, 8-709, 8-710, 8-711, 14-116.1
This bill addresses the Court of Appeals holding in Muskin v. State Department of Assessments and Taxation, 422 Md. 544 (2011), which invalidated the provisions of Maryland’s ground rent registration statute that voided ground leases for failure to register by a September 30, 2010 deadline. The bill requires registration as a prerequisite to a ground lease holder being able to: (1) collect any ground rent payments due under the ground lease; (2) bring a civil action against the leasehold tenant to enforce any rights the ground lease holder may have under the ground lease; or (3) obtain a ground rent lien on the property. The measures do not prohibit a ground lease holder who registers a ground lease from collecting up to three years of back ground rent payments that may have accrued during the period pre-registration or taking any other enforcement actions after the ground lease is registered.

The bill also provides that if a ground lease extinguishment certificate previously issued by State Department of Assessments and Taxation (SDAT) was filed in the land records, on request of the ground lease holder or the leasehold tenant, the SDAT shall cause a notice to be filed in the land records stating, “The Certificate of Ground Lease Extinguishment, recorded (insert the appropriate month, day, and year) has been invalidated by the Maryland Court of Appeals pursuant to its holding in Muskin v. State Department of Assessments and Taxation, 422 Md. 544 (2011) and the underlying leasehold interest remains in full force and effect unless otherwise redeemed under applicable Maryland law.”

Effective July 1, 2012.

E. Chapter 101 (HB 126)

Maryland Condominium Act – Right of Entry to Investigate Damage and Make Repairs

Real Property 11-125

This bill expands the right of a council of unit owners to enter units to make repairs to now authorize entry to investigate damage as well, provide the investigation reasonably appears necessary for public safety or to prevent damage to other portions of the condominium. Except in cases involving manifest danger to public safety or property, the council of unit owners shall make a reasonable effort to give notice to the owner of any unit to be entered for the purpose of investigation or repair.
F. Chapters 546 and 547 (SB 591/HB 678)

Real Property – Manufactured Homes – Affixation to and Severance from Real Property

Real Property 8B-101 through 8B-302
State Government 10-616, 10-616

In Droney v. Droney, 102 Md. App. 672, 651 A.2d 415 (1994), the Maryland Court of Special Appeals opined that a manufactured home became a fixture upon real property when significant changes and improvements were made to the home, such as removing the wheels, bolting it to the ground and attaching utility lines. This bill provides a method by which a person can memorialize the affixation of a manufactured home to real property through a filing in the land records. However, the procedure is optional and a manufactured home may continue to be conveyed and encumbered without making use of the statutory process.

A manufactured home is deemed converted to (permanently affixed to and considered an integral part of) real property when (1) the manufactured home is attached to a permanent foundation (meaning anchored to the ground and connected to utilities); (2) the ownership interests in the manufactured home and the parcel of real property to which the manufactured home is affixed are identical; and (3) a prescribed affidavit of affixation has been recorded in the land records for the county in which the real property is located.

The affidavit of affixation must include or be accompanied by: (1) a description of the manufactured home, including: (i) the name of the manufacturer, make, model name, model year, dimensions, and manufacturer’s serial number; and (ii) a statement whether the manufactured home is new or used; (2) the street address and legal description of the real property and (3) a statement that the ownership interests in the manufactured home and the real property to which the manufactured home is or will be affixed are identical or will be identical after filing the affidavit of affixation in the land records; and (4) a statement that the manufactured home is or will be attached to the real property described at the time of the filing of the affidavit of affixation in the land records.

An affidavit of affixation must be accompanied by an original certificate of title issued by the Maryland Motor Vehicle Administration (MVA) with the word “surrendered” written on its face or a manufacturer’s certificate of origin with the word “surrendered” written on its face. If either document indicates a lien, encumbrance, or other security interest in the manufactured home, the certificate must be accompanied by a release from each party having a security interest in the manufactured home.
If the owner is unable to locate an original certificate of title or a manufacturer’s certificate of origin, the affidavit of affixation must be accompanied by a report prepared and acknowledged by an attorney licensed to practice in the State or a title insurance producer licensed to do business in the State that (1) identifies the party preparing the report; (2) states that a search has been conducted of the appropriate county’s land record and the records of the MVA; and (3) states that no lien, encumbrance, or other security interest has been found for the manufactured home. Additional accompaniments for the affidavit of affixation are required depending on whether the affidavit of affixation is accompanied by the original certificate of title, the manufacturer’s certificate of origin, or a statement from an attorney or title insurance producer.

The recordation of an affidavit of affixation does not represent a sale or transfer of real property for the purpose of the collection of any tax or fee charged by the State or any county or municipality. However, the clerk may charge a reasonable fee for recordation. Immediately after filing an affidavit of affixation with the clerk of the circuit court, the owner of the property must send a certified copy of the affidavit, and any attachments, to MVA. Once received, MVA must record the affidavit and attachments in its records. The bill requires that MVA make records for manufactured homes available to attorneys, title insurance producers and other individuals authorized to conduct a title search.

If an affidavit of affixation has been filed for a manufactured home and if the home is to be severed from the real property, the owner must file an affidavit of severance in the land records. An affidavit of severance must contain or be accompanied by specified information or documentation similar to that required in the affidavit of affixation. The MVA must accept a certified copy of a recorded affidavit of severance for filing and issue a certificate of title for the severed manufactured home. The MVA is required to develop a model affidavit of affixation that meets the requirements of the Section.

G. Chapter 181 (SB 130)

**Baltimore City – Nuisance Abatement and Local Code Enforcement – Community Associations**

**Real Property 14-123**

This bill alters several provisions in the nuisance abatement statute for nuisances located in Baltimore City. The bill amends the definitions of a “community association” and “nuisance.” The definition of a “community association” is changed to conform to the definition of “community association” in the State law for abating a nuisance when property is used for illegal drug activity. The definition of “nuisance” is also amended by repealing a requirement that a nuisance diminish the value of a neighboring property. The bill prohibits a community association from seeking injunctive and other equitable relief
for abatement of a nuisance if the Baltimore City Department of Housing and Community Development has provided the community association with specified notice that the property is part of an active code enforcement plan.

The bill repeals the requirement that a community association file a bond with the court before seeking relief in a legal action. The bill also grants standing to a community association to file a nuisance complaint when a vacant dwelling is boarded, if the property otherwise qualifies as a nuisance.

H. Chapter 179 (SB 128)

**Abandoned Land – Certificates of Reservation for Public Use**

**Real Property 13-101**

This bill repeals the September 30, 2012 termination date for Chapter 92 of 2007. Chapter 92 authorized the Department of Natural Resources (DNR) to apply for a certificate of reservation for public use of “abandoned land” included within or contiguous to land owned and managed by DNR for which no property tax payment has been made within 20 years and which has not been actually possessed by a person for a continuous period of 20 years. The bill gives DNR permanent statutory authority to obtain certificates of reservation for these abandoned properties.

I. Chapters 573 and 574 (SB 765/HB 1269)

**Public Service Commission – Study on Tenant Payment of Landlord Utility Bills**

This bill requires the Public Service Commission (PSC) to convene a workgroup to study and make recommendations on how to develop a mechanism to allow tenants in residential properties to pay for their utilities when the landlord responsible for utility payments defaults. By December 1, 2012, PSC must report its findings and recommendations to the Senate Finance Committee and the House Economic Matters Committee.

J. Chapter 364 (HB 281)

**St. Mary’s County – Real Property – Exception for Prerequisites to Recording**

**Real Property 3-104**
This bill adds St. Mary’s County to the list of counties where the requirement to pay all applicable taxes, assessments, and charges upon deed recording does not apply if the controller or treasurer of the county or the city has certified that the property transfer does not impair the ability of the jurisdiction to collect any public taxes, assessments, and charges due on the remaining property of the grantor.

II. ENVIRONMENT ARTICLE

A. Chapter 387 (HB 644)

**Environment – Reducing the Incidence of Lead Poisoning**

This bill expands the application of the Lead Poisoning Prevention law to residential rental property built between 1950 and 1978 (beginning January 1, 2015) but exempts properties constructed between January 1, 1950 and December 31, 1977 from a provision of law requiring 100% of an owner’s properties to meet the risk reduction standard by February 24, 2006.

The bill repeals a rebuttable presumption that an owner of an affected property that is not in compliance with the lead law is presumed to have failed to exercise reasonable care with respect to lead hazards. Rather, the bill provides that evidence that an owner of an affected property was or was not in compliance with the lead law is admissible to prove that the owner exercised or failed to exercise reasonable care. The bill requires a court, in an action for damages arising from the ingestion of lead in an affected property, to require a party who alleges or denies time and place of residence of or visitation by a person at risk without a good faith basis, the party’s attorney, or both, to pay reasonable costs, including attorney’s fees, incurred by the adverse party in opposing the allegation or denial.

The bill also increases the annual registration fee for every rental dwelling in the State from $15 to $30; alters the definition of “abatement” to include renovation, repair, and painting of a lead-containing substance in residential, public, or commercial properties built before 1978 and authorizes the Maryland Department of the Environment to adopt regulations related to abatements involving renovation, repair, and painting of lead-containing substances in specified properties.

**Effective July 1, 2012.**
B. Chapter 373 (HB 472)

Workgroup on Lead Liability Protection for Rental Property

This bill requires the Maryland Insurance Commissioner to convene a workgroup to evaluate and make recommendations relating to lead liability insurance coverage for owners of rental property built before 1978. The Commissioner must report the findings and recommendations of the workgroup to the Governor and General Assembly by December 1, 2012.

Effective June 1, 2012.

C. Chapter 370 (HB 402)

Land Records – Dormant Mineral Interests and Natural Gas and Oil Leases – Court Order and Recordation Requirements

Environment 15-1201, 15-1203
Real Property 3-104

This bill requires that a court order that terminates a mineral interest under the Maryland Dormant Mineral Interests Act identify: 1. the mineral interest; 2. each surface estate into which the mineral interest is merged, including the tax map and parcel number; 3. the name of each surface owner; 4. if known, the name of each person that owned the mineral interest prior to the termination date; and 5. any information determined by the court as appropriate to describe the effect of the termination and merger of the mineral interest. The bill also requires the clerk of the court that issues the order to record the order in the land records. Additionally, the bill prohibits a clerk of a circuit court from recording an instrument that effects a real property lease dealing in natural gas and oil unless the instrument is accompanied by a complete intake sheet.

D. Chapter 703 (HB 1123)

Environment – Presumptive Impact Areas – Damage Contamination Caused by Gas Wells in Deep Shale Deposits

Environment 14-110.1
This bill establishes a presumptive impact area that applies to areas around a deep shale deposit gas well for which the Maryland Department of the Environment (MDE) has issued a gas exploration or production permit. In a presumptive impact area, it is presumed that contamination of a “water supply source” was caused by the activities of gas exploration or production. The presumptive impact area is in effect within a radius of 2,500 feet from the vertical wellbore and for 365 days after the last event of well drilling, completion, or hydraulic fracturing. However, the presumption of causation established by the bill does not apply to contamination of a water supply source if a landowner refuses to allow a permittee to test the owner’s water supply source before commencement of activities and to provide the landowner with a complete copy of the test results. The bill establishes the conditions under which a permittee must replace a water supply or compensate a property owner. However, MDE may not require a permittee to replace a water supply or compensate an owner if the permittee demonstrates to MDE by clear and convincing evidence that (1) the contamination is not the result of activities relating to the gas well; or (2) the contamination existed before the commencement of activities allowed by the permit and was not worsened by those activities. The bill also specifies when a permittee’s actions are deemed adequate to resolve contamination presumed to be caused by the permittee.

Effective July 1, 2012.

E. Chapter 97 (HB 61)

Dorchester County – Bay Restoration Fund – Collection of Restoration Fee

Environment 9-1605.2

This bill authorizes the Dorchester County Council to collect the bay restoration fee on behalf of the Dorchester County Sanitary District.

Effective July 1, 2012.

F. Chapters 191 and 192 (SB 208/HB 1)

Environment – Recycling – Apartment Buildings and Condominiums

Environment 9-1703, 9-1711

This bill requires the property owner or manager of an apartment building containing 10 or more units or the council of unit owners of a condominium containing 10 or more units to provide for the collection and removal of recyclable materials by October 1, 2014. A county may require such owners and managers to report to the county on recycling activities. The bill establishes a penalty of $50 for each day that recycling is not provided
for or carried out in accordance with the county recycling plan. Enforcement, including the authority to conduct inspections, is to be provided by a local government, and any penalties collected are paid to the jurisdiction that brought the enforcement action. The bill does not preempt any other law, rule, or ordinance that is more stringent and does not affect a local government’s authority to enact and enforce recycling requirements that are more stringent, including the establishment of any civil penalties.

Effective October 1, 2013, each county must address the bill’s requirements in its currently required recycling plan.

G. Chapter 684 (HB 884)

**Gas, Sewer, and Water Service – Default Notice to Condominium Unit Owners and Residents**

*Environment 9-662, 9-724, 9-726.1  
Public Utilities 7-307.2, 25-504*

This bill requires utilities and other suppliers of electric, gas, water, or sewer service to condominiums (including the Public Service Commission if it directly bills the condominium) to post a notice conspicuously at or near the entry to the common area of the condominium if a charge is in default for at least 60 days.

H. Chapter 675 (HB 723)

**Montgomery County – On–Site Sewage Disposal System and Well Easements - Rural Zones**  
MC 7–12

*Environment 9-1110*

This bill provides that, in Montgomery County, an on-site sewage disposal (septic) system or well located in a “rural zone” may serve contiguous subdivided property by an easement, under specified conditions and exceptions. The easement may only serve one additional lot or parcel that has been subdivided from the original property. The property on which the septic system or well is located cannot be burdened by an existing septic system or well easement. The subdivision of the property had to have been made in accordance with a State or county agricultural land conservation program if the property is subject to an agricultural land conservation easement. The septic system or well may not (1) serve land that is designated by the State or the governing body of Montgomery County as a special protection area; or (2) decrease the land available for agricultural production by more than 4,000 square feet.
Effective July 1, 2012.

III. INSURANCE ARTICLE

A. Chapter 683 (HB 866)

Title Insurance – Closing or Settlement Protection Practices – Study

This bill requires the Maryland Insurance Commissioner to study closing or settlement protection practices of the title insurance industry and make recommendations for changes to these practices. In conducting the study, the Commissioner must consider: (1) title insurance producer defalcations reported to the Maryland Insurance Administration by title insurers; (2) title insurance producer defalcations discovered by the Administration as a result of a complaint received by the Administration; (3) the extent to which any regulations relating to the on–site review by title insurers of their appointed title insurance producers have addressed the problem of title insurance producer defalcations; (4) the availability and affordability of fidelity bonds, escrow bonds, reinsurance, or other coverage to protect title insurers against the theft, misappropriation, or misuse of closing or settlement funds by its appointed title insurance producers, other agents, or employees; (5) the manner in which closing or settlement protection is being addressed by other states, the National Association of Insurance Commissioners, and the National Coalition of Insurance Legislators; and (6) any other relevant matter, as determined by the Commissioner. In conducting the study, the Commissioner may consult with any person or entity that the Commissioner determines appropriate, including representatives of: (1) the title insurance industry; (2) title insurance producers; (3) mortgage lenders; (4) the Division of Consumer Protection of the Office of the Attorney General; (5) the real estate industry; and (6) the Maryland Real Estate Commission.

On or before December 1, 2012, the Commissioner shall report to the Senate Finance Committee and the House Economic Matters Committee, on the findings and recommendations of the study conducted by the Commissioner.

IV. TAX-PROPERTY ARTICLE
A. Chapter 701 (HB 1081)

**Homestead Property Tax Credit Reform Act of 2012**

**Tax - Property 9-105**

This bill provides that a person who has been granted a homestead property tax credit and is subsequently found to not qualify for the credit, will be assessed for the amount of State, county, and municipal property taxes otherwise due. If the person is found by the Department to have willfully misrepresented facts regarding qualification for the property tax credit, the person will be assessed a penalty equal to 25% of the amount of the property tax credit received during each taxable year. The penalty must be included on the person’s property tax bill and constitutes a lien on the property until paid in full or if the property is sold in an action to foreclose on a mortgage or deed of trust: 1. a copy of the court order ratifying the foreclosure sale is provided to the Supervisor of Assessments for the county in which the residential property is located; or 2. an instrument of writing transferring the property is recorded in the land records. If a lien is released under the preceding paragraph, any unpaid penalty amount shall remain the personal liability of the person against whom the penalty was assessed.

**Effect June 1, 2012, and applies to taxable years beginning after June 30, 2012.**

B. Chapter 2 (2012 Special Session 1) (SB 1302)

**State and Local Revenue and Financing Act of 2012**

**Tax - Property 12-105**

This Special Session bill includes revenue provisions relating to indemnity mortgages and deeds of trust. The bill defines an indemnity mortgage as a mortgage, deed of trust or other security interest “that secures a guarantee of repayment of a loan for which the guarantor is not primarily liable.” The bill provides that, with two exceptions, “secured debt with respect to an indemnity mortgage is deemed to be incurred … when and to the same extent as debt is incurred on the guaranteed loan” and that “the recordation tax applies under this subsection in the same manner as if the guarantor were primarily liable for the guaranteed loan.” The exceptions are: 1. when the recordation tax is paid on another instrument of writing that secures payment of the guaranteed loan and 2. when the indemnity mortgage secures a guarantee of repayment of a loan for less than $1,000,000.

**Effective July 1, 2012, and applicable to all instruments of writing recorded on or after July 1, 2012.**
C. Chapter 188 (SB 182)

Tax Sales – Complaint to Foreclose Right of Redemption – Notice

Tax - Property 14-833, 14-843

This bill prohibits a holder of a certificate of tax sale from filing a complaint to foreclose the right of redemption until at least 30 days after sending the second of two required notices; (existing law continues to preclude filing for two months following the sending of the first notice). The bill also changes the means of delivery of the first notice from simple first class mail, to first–class certified mail, postage prepaid, return receipt requested, bearing a postmark from the United States Postal Service. The bill also provides that if an action to foreclose the right of redemption has not been filed, and the property is redeemed more than 4 months after the date of the tax sale, the holder of a certificate of sale may be reimbursed for postage and certified mailing costs incurred for the notices (along with other prescribed expenses presently allowed under existing law.)

D. Chapter 380 (SB 265/HB 518)

Frederick County – Tax Sales – Auctioneer’s Fees

Tax - Property 14-813

This bill alters the per-property auctioneer’s fee from $3.00 per property sold (when 4 or more properties are sold at the tax sale) to a fee equal to the lowest responsive auctioneer’s bid per property sold (thus preventing Frederick County from going out of pocket when an auctioneer bids the work at over $3.00 per property).

Effective July 1, 2012.

E. Chapter 232 (SB 425)

Harford County – Tax Sales – Auctioneer Fees

Tax - Property 14-813

This bill alters the per-property auctioneer’s fee from $3.00 per property sold (when 4 or more properties are sold at the tax sale) to $10.00.

Effective July 1, 2012.
F. Chapter 356 (HB 158)

Tax – High Performance Building Tax Credit – National Green Building Standards

Tax - Property 9-242

This bill expands the definition of “high-performance building” for purposes of the property tax credit for high-performance buildings to include a residential building that achieves at least a silver rating according to the International Code Council’s 700 National Green Building Standards.

Effective June 1, 2012 and applicable to all taxable years beginning after June 30, 2012.

G. Chapters 162 and 163 (SB 32/HB 59)

Anne Arundel County – Property Tax Payment Deferral – Eligibility

Tax - Property 10-204.6

This bill authorizes Anne Arundel County to enact a property tax payment deferral program for residential real property occupied as the principal residence of the owner. To be eligible, the property owner must have lived in the dwelling for the previous five years; be at least 62 years of age, or be permanently and totally disabled; and meet specified income requirements. The deferral program must specify: (1) the amount of tax that may be deferred not exceeding the increase in the county property tax from the date the taxpayer elects to defer the payment of the tax and the duration of the deferral; (2) restrictions on the amount of real property eligible for a payment deferral; (3) the interest rate; (4) a requirement that any mortgagee or beneficiary under a deed of trust receive specified notification; and (5) income eligibility.

The bill specifies that deferred county property taxes are due when the deferral ends, the eligible owner dies, or immediately on transfer of ownership of the property. The bill also provides that: (1) the cumulative amount of the tax deferral and interest be included in the taxpayer’s annual property tax bill; (2) the amount of all deferred taxes and interest constitute a lien on the property until all deferred taxes and interest are paid; (3) the deferral be authorized by a written agreement reflecting the terms and conditions of the deferral, which agreement is recorded among the land records and (4) penalties may not be charged during the deferral period on deferred taxes.

Effective June 1, 2012 and applicable to all taxable years beginning after June 30, 2012.
H. Chapter 401 (HB 897)

Prince George’s County – Property Tax – Installment Payment Schedule PG 416–12

Tax - Property 10-204.3

This bill authorizes Prince George’s County to provide, by law, for an installment payment schedule of no more than six payments each year for county, municipal, and special taxing district property taxes due on owner-occupied residential property if the homeowner is at least 62 years old and the property is not subject to a deed of trust, mortgage, or other encumbrance. The county must provide for: (1) any additional eligibility criteria for the installment payment schedule; (2) the process for electing a installment payment schedule; (3) the due date of each payment installment; (4) and any other provision necessary to carry out the installment payment schedule.

Effective October 1, 2012 and applicable to all taxable years beginning after June 30, 2013.

I. Chapter 141 (HB 923)

Property Tax Credit – Neighborhood Conservation Act of 2012

Tax - Property 9-255

This bill authorizes local governments to grant a property tax credit for owner-occupied residential real property that is purchased from July 1, 2012, through June 30, 2018, and is located in a neighborhood conservation area established or renewed by application to the Department of Housing and Community Development (DHCD) based on the specified criteria adopted by DHCD. DHCD must adopt regulations that establish application procedures for the designation of a neighborhood conservation area based on: (1) the concentration of foreclosure activity; (2) the concentration of blighted or vacant properties; and (3) the location within a priority funding area, with preference given to specified sustainable communities.

Effective June 1, 2012 and applicable to all taxable years beginning after June 30, 2012.

V. TAX-GENERAL ARTICLE
A. Chapters 448 and 449 (SB 294/HB 444)

Family Farm Preservation Act of 2012

Tax - General 7-309

This bill exempts from the State estate tax, up to $5.0 million in qualified agricultural property. In order to qualify for the exemption, the property must pass from a decedent to an individual who enters into an agreement to use the property for farming purposes after the decedent’s death. Qualified agricultural property includes real and personal property that is used primarily for farming purposes, as defined in Section 2032A(E)(5) of the Internal Revenue Code (IRC), meaning cultivating the soil or raising or harvesting any agricultural or horticultural commodity (including the raising, shearing, feeding, caring for, training, and management of animals) on a farm.

In addition, the bill specifies that the estate tax imposed on an estate with qualified agricultural property valued in excess of $5.0 million cannot exceed the sum of: (1) 16% of the amount by which the taxable estate excluding the value of qualifying agricultural property exceeds $1.0 million; and (2) 5% of the value of the qualified agricultural property in excess of $5.0 million. The Maryland estate tax will be recaptured if, within 10 years after the decedent’s death, the qualified agricultural property ceases to be used for farming purposes. The amount of the estate tax recaptured will be the additional Maryland estate tax that would have otherwise been payable at the time of the decedent’s death. The Comptroller is required to adopt regulations to implement the bill.

Effective July 1, 2012 and applicable to decedents dying after December 31, 2011.

VI. ESTATES AND TRUSTS ARTICLE

A. Chapters 84 and 85 (SB 711/HB 774)

Maryland General and Limited Power of Attorney Act


This bill makes additional changes to the Maryland General and Limited Power of Attorney Act (“Loretta’s Law”) enacted in 2010. The statutory form personal financial power of attorney and statutory form limited power of attorney (“POA’s”) are amended to allow a principal to designate two or more coagents. The coagents must act together
unanimously unless the power of attorney provides otherwise. The POA’s are also amended to alert the principal that granting the agent the authority to make gifts to or designate the agent, the agent’s spouse, or a dependent of the agent as a beneficiary of a retirement plan may constitute a taxable gift by the principal and may make the property subject to that authority, taxable as a part of the agent’s estate. An authorization of an agent to create or change a beneficiary designation for any retirement plan, and in particular an authorization of the agent to designate as the principal’s beneficiary the agent, the agent’s spouse, or a dependent of the agent, must be explicitly stated in the special instructions section of the statutory form or in a separate power of attorney. The bill also clarifies that a power of attorney substantially in one of the statutory forms in effect when the document is executed continues to be effective, notwithstanding the enactment of subsequent legislation altering the statutory form.

B. Chapters 62 and 63 (SB 353/HB 318)

Estates – Small Estate Administration – Eligibility Thresholds

Estates and Trusts 5-601, 5-605, 5-606

This bill changes the eligibility thresholds for small estate administration from $30,000 to $50,000, for estates in general, and from $50,000 to $100,000 for an estate in which the surviving spouse is the sole legatee or heir of the decedent. The bill also eliminates duplication in the probate fee schedules for small estates and regular estates under different sections of the Estates and Trusts Article.

C. Chapters 301 and 302 (SB 787/HB 772)

Estates and Trusts – Maryland Uniform Principal and Income Act – Certain Payments to and from Trusts

Estates and Trusts 15-516, 15-527

This bill modifies specified provisions of the Maryland Uniform Principal and Income Act (MUPIA) by: (1) establishing certain requirements regarding payments from a “separate fund” (e.g., an individual retirement account) and their allocation between principal and income of a trust which qualifies, or for which an election has been made to qualify, for a marital deduction from the federal estate tax; and (2) amending provisions specifying how a tax on the trust’s share of an entity’s taxable income must be paid by the trustee. The bill clarifies when the provisions relating to payments from a “separate fund” first apply, based generally on when a trust is initially funded. The bill provides
that it applies to relevant trusts as follows: (1) if the trust is not funded on or before October 1, 2012, the date of the decedent’s death; (2) if the trust is initially funded in calendar year 2012, the date of the decedent’s death; or (3) if the trust is not described in item (1) or (2) of this section, 11 January 1, 2012.

Otherwise, effective October 1, 2012.

VII. CORPORATIONS AND ASSOCIATIONS ARTICLE

A. Chapters 599 and 600 (SB 855/HB 777)

Corporations and Associations – Limited Liability Act – Revisions

Corporations and Associations 1-101, and various Sections of Title 4A

This bill alters various provisions of the Maryland Limited Liability Company Act, including provisions relating to LLC articles of organization, conversion of a partnership, operating agreements, member consent for various actions, proxy voting, assignments of interest, withdrawal of a member, rights of a creditor, abandonment of a merger, and information regarding an LLC’s affairs.

With respect to creditors’ rights, the bill provides a mechanism for a charging order to be placed against the economic interest of the debtor in the LLC for the unsatisfied amount of the debt and that a charging order placed against an economic interest of a debtor in the LLC requires the LLC to pay the creditor only any distributions that would otherwise be paid to the debtor. Any such charging order does not affect the noneconomic interest of a debtor. The bill specifies that, before a foreclosure on an economic interest under a charging order takes place, the economic interest may be redeemed with property of the LLC with the consent of the members as provided in the operating agreement. If the operating agreement does not address the issue, all members whose economic interests are not so charged must consent.

VIII. FINANCIAL INSTITUTIONS ARTICLE

A. Chapter 254 (SB 546)

Financial Institutions - Mortgage Lenders and Mortgage Loan Originators

This bill alters the circumstances under which an individual may act as a mortgage loan originator under a name, or for an employer, that is different than the one that appears on the individual’s license. The bill applies to an affiliated insurance producer-mortgage loan originator, the same requirements a mortgage loan originator licensee must meet to: (1) act under a name or for an employer that is different from the name or employer on the licensee’s license; or (2) enter into and remain in nonactive status. The bill also authorizes the Commissioner of Financial Regulation to issue an affiliated insurance producer-mortgage loan originator license to an individual who is not employed by a Commissioner-approved financial institution, provided that the license is placed into and remains in nonactive status until the licensee complies with specified requirements.

Effective July 1, 2012.

B. Chapter 55 (SB 302)

Financial Institutions – Commissioner of Financial Regulation –Investigative and Enforcement Powers and Regulation of Mortgage Lenders

Financial Institutions 2-113, 11-502

This bill removes the mortgage lender licensing exemption for: (1) a person who makes three or fewer mortgage loans per calendar year; (2) a person who brokers at most one mortgage loan per calendar year; and (3) a subsidiary or affiliate of certain financial institutions, subject to audit or examination of the federal government; and (4) a subsidiary or affiliate of certain financial institutions incorporated under federal law. The bill also provides the Commissioner of Financial Regulation with investigative and enforcement powers over a subsidiary under the Commissioner’s jurisdiction.

Effective January 1, 2013.

IX. BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE

A. Chapter 184 (SB 134)

State Real Estate Commission – Sunset Extension and Program Evaluation

State Government 8-403, 8-403

This bill retains the State Real Estate Commission by extending its termination date 10 years to July 1, 2022. The bill also requires evaluation of the commission by July 1, 2021,
includes reporting requirements, and changes various statutory provisions related to the regulation of real estate professionals. The bill increases the amount a consumer may recover due to licensee misconduct by raising the statutory cap on the amount of a claim to the Guaranty Fund from $25,000 to $50,000. The bill also increases, from $3,000 to $5,000, the amount a consumer may recover from the Guaranty Fund without a hearing before the commission. The bill requires the commission to submit additional information in its annual report to the Secretary of Labor, Licensing, and Regulation regarding various issues related to the payment of Guaranty Fund claims. In particular, the commission must report the number of awards that reach the new statutory cap, the total amount included in the claim by the consumer, and the amount of potential damages owed to the consumer if the cap did not exist. The bill also requires licensees to pay a fee for, and submit notice to the commission of, an address change and raises the fee for a dishonored check.

Effective July 1, 2012.

B. Chapter 34 (SB 145)

State Real Estate Commission – Continuing Education – Documentation

This bill allows the State Real Estate Commission to accept certificates of completion for continuing education course work by electronic submission directly from the business or instructor that conducted the course and authorizes electronic copies of completion certificates to be provided to licensees. The bill also requires continuing education course work to include discussion of recent changes in federal, State, or local laws and regulations and information on recent court cases and industry trends affecting those laws and regulations. By December 1, 2012, the commission must submit recommendations to specified committees of the General Assembly regarding the collection and use of electronically available information on licensees and whether and to what extent the information should be made publicly available.

X. AGRICULTURE

A. Chapter 35 (SB 148)

Maryland Agricultural Land Preservation Foundation – Lot Release

Agriculture 2-513

This bill alters the provisions governing the release of family lots from Maryland
Agricultural Land Preservation Foundation (“MALPF”) easement restrictions. The bill provides that if the release is to be issued for a child of the landowner, the child must be at least 18 years of age at the date that the preliminary release is issued and that, unless extended by a majority vote of the foundation board of trustees, the release becomes void if a nontransferable building permit in the name of the landowner or child of the landowner is not received by the foundation within 3 years of the date of recordation of the preliminary release. The bill clarifies that the landowner’s or child’s lot may not be transferred for 5 years from the date of the final release, except on approval by the foundation or by a transfer pursuant to a bona fide foreclosure of a mortgage or deed of trust or to a deed in lieu of foreclosure by a lender that provides notice to the foundation. If the lot is not used for the person or purpose for which it was released for the 5–year period, the foundation may require the lot owner to reconvey the lot to the owner of the land encumbered by the easement from which it was released and subject the lot to the restrictions of the easement. The Foundation may require evidence it deems sufficient to ensure that the persons for whom the lots are released occupy the dwellings located on the lots for the 5–year period.

The bill applies to a person who is subject to MALPF easement requirements and who either is granted a preliminary or final lot release before the bill takes effect, or has requested a release after the bill takes effect.

Effective July 1, 2012.

B. Chapter 21 (SB 112)

Maryland Agricultural Land Preservation Foundation – Appraisal Requirement

Agriculture 2-514

This bill requires the Department of General Services (DGS), at the direction of MALPF, to order two, instead of one, fair market value appraisals after approval of a request for termination of a MALPF easement. The land must be appraised as of the date of the approval of the request for termination. DGS must review the two appraisals, determine the land’s value, and issue a written statement on the approved fair market value to MALPF. MALPF must use the DGS statement to notify the landowner of the land’s approved fair market value.

Effective July 1, 2012.

C. Chapter 180 (SB 129)
Maryland Agricultural Land Preservation Foundation – Easements

Agriculture 2-509, 2-510, 2-513, 2-513.1

This bill modifies the easement application and approval process for the MALPF program to clarify responsibilities and repeal obsolete provisions concerning agricultural districts. MALPF is authorized to assign agricultural district agreements that have not been purchased by MALPF or have not otherwise terminated as of June 30, 2012, to willing county governing bodies. County governing bodies that accept agreements are authorized to enforce their terms and are required to determine whether to terminate or modify them.

Effective June 30, 2012.

XI. PUBLIC UTILITIES

A. Chapter 685 (HB 896)

The Washington Suburban Sanitary District Transparency and Rate Relief Act of 2012 - PG/MC 107–12

This bill establishes a Task Force to Study Rates and Charges in the Washington Suburban Sanitary District. The Washington Suburban Sanitary Commission (WSSC) must provide staff support for the task force. The task force must report its findings and recommendations to the Governor and the Montgomery County and Prince George’s County legislative delegations by December 31, 2012. The bill also requires Prince George’s County, beginning June 1, 2013, to add a notice on the property tax bill indicating the number of annual payments remaining for the WSSC front foot benefit charge.

Effective June 1, 2012.

XII. COMMERCIAL LAW

A. Chapter 673 (HB 700)

Commercial Law – Uniform Commercial Code – Revisions to Title 1

Commercial Law 1-101 through 1-108, 1-201 through 1-206, 1-301 through 1-310 (and various other sections)
This bill revises, updates, reorganizes, and clarifies Title I of the Maryland Uniform Commercial Code (MUCC) relating to general provisions applicable to MUCC. The bill authorizes the subordination of an obligation or a right to performance and specifies that subordination does not create a security interest against either the common debtor or a subordinated creditor. The bill alters the definition of “good faith” to mean honesty in fact in the conduct or transaction concerned. The bill authorizes evidence of “course of performance” to be used to interpret a contract. Under the bill, course of performance is defined as a sequence of conduct between the parties to a particular transaction that exists if: (1) the agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and (2) the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection. If the express terms of an agreement contradict course of dealing, usage of trade, and course of performance, the express terms control course of performance, course of dealing, and usage of trade. However, if course of performance contradicts course of dealing and usage of trade, course of performance prevails.

In addition, the bill specifies that – with two exceptions – Title I of MUCC modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act.

**Effective June 1, 2012.**

**B. Chapter 674 (HB 713)**

**Commercial Law – Uniform Commercial Code – Secured Transactions – Revision**

**Commercial Law (various sections in Title 9)**

This bill alters various provisions of Title 9 of the Maryland Uniform Commercial Code (MUCC) relating to secured transactions. The bill also establishes various transition provisions for the 2012 amendments contained within the bill.

The bill clarifies that, in order for a secured party to have control of electronic chattel paper, a system employed for evidencing the transfer of interests in the chattel paper must reliably establish that the secured party is the person to which the chattel paper was assigned. The bill establishes specified rules applicable to collateral to which a security interest attaches within four months after the debtor changes its location to another jurisdiction. Additionally, the bill establishes specified rules regarding when a financing statement naming an original debtor is filed pursuant to State law regarding the perfection of a security interest and the new debtor is located in another jurisdiction. The bill alters
the circumstances in which a security interest created by a new debtor is perfected.

The bill alters the circumstances in which a record of a mortgage is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut. In addition to other requirements, a record of a mortgage must satisfy the requirements for a financing statement but (1) the record is not required to indicate that it is to be recorded in the land records; and (2) the record sufficiently provides the name of a debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is a specified individual. The bill alters the circumstances in which a financing statement sufficiently provides the name of a debtor. The requirements vary depending on whether the debtor is a registered organization (or collateral is held in a trust that is a registered organization), collateral is administered by the personal representative of a decedent, collateral is held in a trust that is not a registered organization, or the debtor is an individual.

The bill authorizes a secured party of record to file an information statement with respect to a record if the secured party believes that the person that filed the record was not entitled to do so. The secured party must identify the record by specified means, indicate that the filing is an information statement, and provide the basis for the person’s belief that the person that filed the record was not entitled to do so. The bill alters any reference to a “correction statement” to be an “information statement.”

The bill also prohibits a filing office from refusing to accept specified documents in the form and format set forth in the official text of the 2010 amendments to Article 9 of the Uniform Commercial Code promulgated by the American Law Institute and the Uniform Law Commission.

Effective July 1, 2013.

XIII. LAND USE

A. Chapter 426 (HB 1290)

Land Use

This code revision bill revises, restates, and recodifies the laws of the State that relate to land use. The new Land Use Article as a whole governs the establishment and implementation of land use mechanisms by local governments in their jurisdictions. Division I is derived from Article 66B – Land Use and contains statewide enabling authority and planning requirements and other provisions concerning land use in
commission counties, municipal corporations, and Baltimore City.

Division II is derived from Article 28 – Maryland-National Capital Park and Planning Commission (M-NCPPC) and contains provisions on M-NCPPC and on land use in Montgomery and Prince George’s counties.

B. Chapter 419 (HB 1161)

Charles County – Assessment for Abatement of Zoning Violation

Land Use 9-807

This bill authorizes the Charles County Commissioners to assess against the property subject to a zoning violation, the reasonable cost of a zoning violation abatement. The assessment must be added to the annual property tax bill to be collected in the same manner as other taxes and subject to the same interest and penalty for the nonpayment of county taxes. The bill specifies that an assessment is a lien against the property from the date of assessment until paid.