

## 2002 Maryland Legislation of Special Interest to Real Property Attorneys/Clients

### **Title Insurers**

A title insurer must conduct an on-site review of the underwriting, claims, and escrow practices of each producer appointed as a principal agent. [House Bill 441](#) (*passed*) repeals the requirement that a title insurance producer or agency that is appointed with a title insurer have on file with the insurer an annual statement of financial condition. Chapter 209 of 2001 exempted law firms and attorneys practicing in law firms from the filing requirement.

### **Recordable Instruments**

[Senate Bill 199/House Bill 114](#) (*both passed*) repeal the requirement that each circuit court clerk record, index, and maintain: (1) an auditor's report of distribution of proceeds of a sale of real or personal property if ratified by the court; and (2) all bonds of every nature and kind given in any proceeding in the court. [Senate Bill 108](#) (*passed*) repeals the requirement that the clerks of the circuit courts receive, index, and file plats showing property or rights-of-way acquired or conveyed by the State Highway Administration or the State Roads Commission. The bill directs the plats to be filed with and electronically recorded by the Maryland State Archives and authorizes that agency to charge a reasonable fee to recover costs.

### **Real Estate Sales**

#### **Continuing Education**

[Senate Bill 560/House Bill 52](#) (*both passed*) require an applicant for a real estate salesperson, associate broker, or broker license to successfully complete a three-hour course in real estate ethics approved by the Maryland Real Estate Commission. These bills also modify continuing education requirements. Generally, a licensee must complete 15 hours of continuing education to qualify for renewal. However, if a licensee possesses a graduate degree in law, business, or real estate, or if the licensee has been licensed for ten consecutive years and holds a real estate designation from a nationally recognized trade association, the continuing education requirement may be satisfied with 7.5 hours. Every two years, a licensee must complete a three-hour course that includes the Maryland Code of Ethics and discussion of the practices of flipping and predatory lending. Further, these bills provide for reciprocity in the continuing education requirements.

#### **Nonresident Brokers - Reciprocity**

[Senate Bill 523/House Bill 596](#) (*both passed*) authorize the Maryland Real Estate Commission to approve a nonresident commercial real estate broker to engage in a transaction in the State if the nonresident broker enters into a written agreement with a State-licensed broker and is licensed in a jurisdiction that allows a Maryland broker to obtain a license under similar circumstances. A nonresident broker who is approved by the commission is issued a temporary license to provide real estate broker services in the State. A nonresident real estate salesperson may only engage in a transaction in the State if the salesperson provides services under the direct supervision of a nonresident real estate broker.

## **Advertising and Use of Trade Name**

[House Bill 704](#) (*passed*) authorizes a licensed associate real estate broker or salesperson to provide brokerage services under a trade name that has been approved by the Maryland Real Estate Commission. A trade name is a name other than a licensee's full legal name and includes a first name, nickname, or last name. [House Bill 704](#) also prohibits a licensed associate broker or salesperson from advertising unless the advertisement includes, in a meaningful and conspicuous manner, either the licensee's name or trade name, as well as the name of the business with which the licensee is affiliated. The commission may deny a license, reprimand a licensee, or suspend or revoke a license if an individual violates provisions relating to the advertising or use of a trade name.

## **Home Builders**

### **Regulation/Consumer Protection**

Under [House Bill 79](#) (*passed*), the responsibility for holding surety bonds and letters of credit - and for the approval and monitoring of third-party warranty plans relating to home builders - is transferred from the Department of Labor, Licensing, and Regulation to the Consumer Protection Division (CPD) of the Office of the Attorney General. The bill centralizes within CPD all regulatory functions involving home builders. [House Bill 79](#) also requires a homebuilder to disclose to a buyer that the home builder must be registered with the CPD.

### **Registration Fees**

[House Bill 592](#) (*passed*) establishes an initial registration fee of \$600 for all home builders; a two-tier, biennial renewal fee of \$300 for home builders who have built 10 or fewer homes in the preceding calendar year; and \$600 for those who have built 11 or more. The bill repeals the requirement that fees must approximate the direct and indirect costs of administering the Maryland Home Builders Registration Act by the CPD. The provisions in [House Bill 592](#) terminate on December 31, 2005.

### **Home Improvement Contractors**

[Senate Bill 595](#) (*passed*) requires a licensed home improvement contractor to maintain at least \$50,000 of general liability insurance. Current law requires an applicant for a contractor license to maintain this level of insurance. If a contractor intends to cancel the required general liability insurance, the contractor must notify the Maryland Home Improvement Commission at least ten days prior to the effective date of the cancellation.

### **Rights and Responsibilities of Innkeepers**

[Senate Bill 251](#) (*passed*) authorizes an innkeeper to refuse to provide lodging or services to, or to remove from a lodging establishment, an individual for a number of reasons, including nonpayment for services, intoxication, creating a public nuisance, possession of controlled substances or firearms, or refusal to abide by posted rules or policies.

For individuals who are under age 18, [Senate Bill 251](#) authorizes an innkeeper to require a parent or guardian to: (1) accept liability for lodging and any damages; and (2) provide a valid

credit card or make an advance cash deposit of up to \$500 to cover any charges incurred or damages caused by the individual. The innkeeper must refund any portion of the advance deposit not needed to cover reasonable charges for damages.

[Senate Bill 251](#) also requires innkeepers to post a copy of the bill's provisions, together with all rules of the establishment, in a place at or near the guest registration desk and in each guest room. The bill may not be construed to alter the prohibition against discrimination applicable to innkeepers and lodging establishments.

## **Mortgage Loans/Extension of Credit**

[House Bill 649](#) (*passed*) imposes consumer protection provisions on high interest or high fee mortgage loans that are one percentage point less than the comparison percentages for loans issued under the federal Home Ownership Equity Protection Act. Specifically, [House Bill 649](#) prohibits a mortgage lender from financing single premium credit health, credit life, or credit involuntary unemployment benefit insurance as part of a loan, and from making loans without giving due regard to the borrower's ability to repay the loan in accordance with its terms. The bill also requires mortgage lenders to provide potential borrowers with a written recommendation that the borrowers seek homebuyer education or housing counseling and information on where to obtain the counseling. Additionally, the bill provides that only the State may enact a law that purports to regulate extensions of credit made by a financial institution. The State preemption provision does not restrict or otherwise affect: (1) local laws that establish property ownership or the rights and obligations of property owners; (2) a local government's ability to regulate its fiscal, economic, or community development policy; (3) federal preemption of State law; (4) a local government's laws or regulations relating to fair housing or other civil rights; or (5) a local government's loan programs to assist residents with financial needs. The preemption provisions take effect June 1, 2002, while all other provisions take effect October 1, 2002.

## **Property Taxes**

### **Property Tax Administration**

#### **Petition for Review**

Under current law, a property tax assessment can be appealed in several ways. Taxpayers, counties, municipalities, and the Attorney General can appeal an assessment within 45 days of receipt of an assessment notice, by a petition for review, and, in the case of the taxpayer, within 60 days of purchase of property between January 1 and June 30. A petition for review, which triggers an out-of-cycle assessment appeal, must be filed with the Department of Assessments and Taxation by January 1 of any year.

Since 1976, when the authority to appeal assessments by filing a petition for review was granted to local governments, Montgomery County has been the only county to use the authority. No municipality had ever filed a petition until recently when the City of Rockville filed ten and Gaithersburg filed one. The Attorney General's Office has never filed a petition.

In recent years, Montgomery County has routinely filed a petition for appeal of a property tax assessment when property sells for significantly more than the current assessment. Property owners and the Department of Assessments and Taxation have

objected that these petitions for review, by resulting in assessment increases outside of the three-year cycle for assessments under the State's triennial assessment process, effectively violate assessment uniformity and can result in large variances in property assessments within the same neighborhood.

[Senate Bill 208/House Bill 892](#) (*both passed*) are emergency bills that repeal the authority for municipalities, counties, and the Attorney General to appeal a real property tax assessment outside of an assessment cycle. The right to appeal within 45 days after an assessment is issued remains unchanged. The bills also provide that the Department of Assessments and Taxation may not certify an assessment after the effective date of the bill that reflects an increase related to a petition for review after January 1, 2000 by a local government, and the local government may not issue a tax bill after the effective date of the bill that reflects an increase related to a petition for review after January 1, 2000, by a local government.

## **Real Property**

### **Time Shares**

Many Maryland time-share instruments provide that the time-shares automatically terminate on a specified date, after which all owners of a unit become tenants in common.

[House Bill 385](#) (*Ch. 62*) authorizes a time-share owners association, by a two-thirds majority vote of the members present at a meeting, to amend its time-share instrument to provide that the time shares in the time-share project will not terminate at the end of the time-share plan. The notice of a meeting at which such an action is to be considered must expressly state that the action may be considered at the meeting.

### **Sales of Real Property - Anne Arundel County**

[House Bill 352](#) (*Ch. 60*) requires a contract for the sale of single-family residential real property in Anne Arundel County to contain a notice stating that the buyer should consult the appropriate county agency or county Internet web site for information concerning the current and future land use plans, facility plans, public works plans, school plans, or other plans affecting the property or area.

### **Ground Rents and Mortgage Releases**

Several bills that would have addressed the recovery of the costs of court actions and expenses necessary to collect past due ground rent and the duty of a holder of a loan secured by a mortgage or deed of trust that has been paid in full to release the mortgage or deed of trust failed.

### **Ground Rents**

[Senate Bill 225/House Bill 176](#) (*both failed*) and [House Bill 975](#) (*failed*) would have affected the entitlement of a landlord or holder of ground rent to collect costs and expenses relating to the recovery of past due ground rent. [Senate Bill 225](#) and [House Bill 176](#) would have limited the recovery of costs to the lesser of the amount of actual expenses relating to the demand for back rent or \$400. [House Bill 975](#) would have

categorized the allowable expenses available to the holder of a ground rent and included the expenses of: (1) complying with notice requirements, including reasonable attorney's fees not to exceed \$200; and (2) filing an ejectment action, including reasonable attorney's fees not to exceed \$400, and fees for a title search and examination not to exceed \$200.

### **Releases**

[House Bill 1404](#) (*failed*) would have required that within 45 days after a loan secured by a mortgage or deed of trust on the borrower's principal dwelling has been paid in full: (1) a release of the mortgage or deed of trust must be executed and recorded by the holder; or (2) the release must be sent in a recordable form to the borrower with a notice disclosing where to record it and the estimated cost of recordation. If the holder of the mortgage or deed of trust failed to release the mortgage or deed of trust or send the release in a recordable form, the borrower, after making a demand for the release, would have been authorized to bring an action to require delivery of the release. Finally, if the borrower prevailed in the action, the bills would have entitled the borrower to recover costs and expenses in connection with bringing the action, including reasonable attorney's fees. Current law requires the holder to release a mortgage or deed of trust or send the release to the borrower within a reasonable time after the loan has been paid in full but provides no enforcement mechanism if the holder fails to do so.

### **Other Legislation of Interest:**

#### **[SB 807](#) Homeowner's Insurance -- Cancellation**

Authorizing an insurer to cancel a specified policy of homeowner's insurance under which a one-time guaranteed fully refundable deposit is required for a stated amount of coverage, if the cancellation takes effect on the anniversary date of the inception of the policy, is not based on a claim that occurred more than 3 years before the anniversary date of the policy, and is in accordance with specified provisions of law.

#### **[HB 446](#) Rental Housing Production Program -- Office or Other Commercial Space**

Altering the definition of "office and other commercial space" as it is used in the Rental Housing Production Program to include a building last used as office or other commercial space, regardless of the primary purpose for which the building was originally built; and making stylistic changes.

#### **[SB 199](#) Clerks of Circuit Courts -- Auditor's Reports and Bonds -- Recording and Indexing**

Repealing requirements for clerks of the circuit courts to record and index an auditor's report as to the disposition of proceeds of a sale of property, after ratification by a circuit court, and a bond given in any court proceeding; and stating the intent of the General Assembly regarding specified fees of the clerks of the circuit courts.

**EFFECTIVE JUNE 1, 2002**