Real Property Annotated Code of Maryland

Real Estate Empower, Inc.
www.rempower.com

REAL PROPERTY

- TITLE 1. GENERAL PROVISIONS
  - s 1-101. Definitions
  - s 1-102. Rebuttable presumptions
  - s 1-103. Effect on successors in interest
  - s 1-104. Contractual alterations permitted
- TITLE 2. RULES OF CONSTRUCTION
  - s 2-101. Interpretation; "grant"; "bargain and sell"
  - s 2-102. Estate tail tenant; fee grant
  - s 2-103. Mortgage assignment; rights passed
  - s 2-104. "The said ... covenants" defined
  - s 2-105. Operation of general warranty
  - s 2-106. Operation of special warranty
  - s 2-107. Operation of covenant of seisin
  - s 2-108. Operation of right to grant
  - s 2-109. Operation of quiet enjoyment covenant
  - s 2-110. No act to encumber provision
  - s 2-111. Covenant against encumbrances; operation
  - s 2-112. Covenant for further assurances; operation
  - s 2-113. "Die without issue" defined
  - s 2-114. Title to street or highway
  - s 2-115. Implied covenant or warranty nonexistent
  - s 2-116. Creation of passive trust
  - s 2-117. Joint tenancy not presumed
  - s 2-118. Creation of conservation easements
  - s 2-119. Solar collection panels; restrictive covenants
  - s 2-120. Disclosure requirement; material fact; defect
  - s 2-121. Family day care homes
  - s 2-122. Definition of trust; grants of property by deed
  - s 2-123. Adoptees
- TITLE 3. RECORDATION
  - MD REAL PROP T. 3, References and Annotations
  - SUBTITLE 1--GENERAL RULES AND EXCEPTIONS
  - SUBTITLE 2--PRIORITIES BASED ON RECORDING
  - SUBTITLE 3--RECORD BOOKS AND INDEXES

- SUBTITLE 4--MARYLAND REVISED UNIFORM FEDERAL LIEN REGISTRATION ACT
- SUBTITLE 4A--WASHINGTON SUBURBAN SANITARY COMMISSION--LIEN DOCKETS
- SUBTITLE 5--MISCELLANEOUS RECORDATION AND INDEXING RULES
- SUBTITLE 6--RECORDING AND OTHER COSTS

TITLE 4. REQUISITES OF VALID INSTRUMENTS

- SUBTITLE 1--GENERAL RULES
- SUBTITLE 2--FORMS

TITLE 5. STATUTE OF FRAUDS

- MD REAL PROP T. 5, References and Annotations
- s 5-101. Parol estates; estates at will
- s 5-102. Exception to preceding rule
- s 5-103. Transfer of interest; writing required
- s 5-104. Actions on executory contracts
- s 5-105. Declarations of trust; writing required
- s 5-106. Assignment of beneficial interest; requirements
- s 5-107. Title inapplicable to trusts
- s 5-108. Additional requirements not repealed

TITLE 6. RIGHTS OF ENTRY AND POSSIBILITIES OF REVERTER

- s 6-101. Thirty-year limitation
- s 6-102. Other limitation
- s 6-103. Termination of estate; limitations
- s 6-104. Right to transfer
- s 6-105. Exception for governmental entities

TITLE 7. MORTGAGES, DEEDS OF TRUST, AND VENDOR'S LIENS

- SUBTITLE 1--MORTGAGES AND DEEDS OF TRUST
- SUBTITLE 2--VENDOR'S LIENS
- SUBTITLE 3--PROTECTION OF HOMEOWNERS IN FORECLOSURE

TITLE 8. LANDLORD AND TENANT

- MD REAL PROP T. 8, References and Annotations
- SUBTITLE 1--GENERAL RULES
- SUBTITLE 2--RESIDENTIAL LEASES
- SUBTITLE 3--DISTRESS FOR RENT
- SUBTITLE 4--LANDLORD'S REMEDIES OTHER THAN DISTRAINT
- SUBTITLE 5--TENANT REMEDIES
- SUBTITLE 6--JURY DEMANDS

- TITLE 8A. MOBILE HOME PARKS
  - MD REAL PROP T. 8A, References and Annotations
  - SUBTITLE 1--DEFINITIONS
  - SUBTITLE 2--RENTAL AGREEMENT, WRITTEN RENTAL AGREEMENT, DISCLOSURES TO CURRENT AND PROSPECTIVE RESIDENTS
  - SUBTITLE 3--RULES
  - SUBTITLE 4--PARK FEES
  - SUBTITLE 5--PROHIBITIONS AGAINST OWNER
  - SUBTITLE 6--SALES AND TRANSFER OF MOBILE HOMES
  - SUBTITLE 7--COVENANT OF QUIET ENJOYMENT; RIGHTS OF ENTRY
  - SUBTITLE 8--PARK OWNER--GENERAL OBLIGATIONS
  - SUBTITLE 9--RESIDENT--GENERAL OBLIGATIONS
  - SUBTITLE 10--SECURITY DEPOSITS
  - SUBTITLE 11--EVICTION OF RESIDENT--PARK OWNER'S REMEDIES
  - SUBTITLE 12--TERMINATION OF TENANCY--CHANGE IN LAND USE
  - SUBTITLE 13--RETALIATORY EVICTIONS
  - SUBTITLE 14--ABANDONMENT OF MOBILE HOME
  - SUBTITLE 15--GENERAL ENFORCEMENT AUTHORITY
  - SUBTITLE 16--NONPAYMENT OF RENT
  - SUBTITLE 17--PARK OWNER'S REPOSSESSION REMEDIES
  - SUBTITLE 18--APPLICABILITY, ENFORCEMENT AND SHORT TITLE
- TITLE 9. STATUTORY LIENS ON REAL PROPERTY
  - MD REAL PROP T. 9, References and Annotations
  - SUBTITLE 1--MECHANICS' LIENS
  - SUBTITLE 2--TRUST RELATIONSHIPS IN THE CONSTRUCTION INDUSTRY
  - SUBTITLE 3--CONSTRUCTION CONTRACTS
- TITLE 10. SALES OF PROPERTY
  - MD REAL PROP T. 10, References and Annotations
  - SUBTITLE 1--LAND INSTALLMENT CONTRACTS
  - SUBTITLE 2--EXPRESS AND IMPLIED WARRANTIES
  - SUBTITLE 3--DEPOSITS ON NEW HOMES
  - SUBTITLE 4--RECORDED LAND CONTRACTS
  - SUBTITLE 5--CUSTOM HOME PROTECTION ACT
  - SUBTITLE 6--NEW HOME WARRANTIES
  - SUBTITLE 7--CONTRACTS OF SALE--MISCELLANEOUS PROVISIONS
  - SUBTITLE 8--HOME INSPECTIONS

TITLE 11. MARYLAND CONDOMINIUM ACT
MD REAL PROP T. 11, References and Annotations
s 11-101. Definitions
s 11-102. Creation of condominium regime
s 11-102.1. Notice required before conversion
s 11-102.2. Procedures for termination of leases
s 11-103. Declaration of condominium
s 11-103.1. Amendment to declarations, bylaws or plats
s 11-104. Bylaws to govern administration
s 11-105. Filing of condominium plat
s 11-106. Condominium units; incidents and description
s 11-107. Percentage interests of unit owners
s 11-108. Rights in common elements
s 11-108.1. Duty to maintain and repair
s 11-109. Council of unit owners created
s 11-109.1. Board of directors; closed meetings
s 11-109.2. Preparation of annual budget
s 11-110. Distribution of common profits; expenses
s 11-111. Adoption of rules
s 11-111.1. Creation of day care homes
s 11-111.1. Creation of day care homes
s 11-111.2. Candidate signs
s 11-111.3. Distribution of information, application; door-to-door distribution
s 11-112. Eminent domain; allocation of award
s 11-113. Creation of dispute settlement mechanism
s 11-114. Mandatory insurance coverage
s 11-115. Unit owner's improvements
s 11-116. Maintenance of books and records
s 11-117. Repealed by Acts 1985, c. 480, s 2, eff. Feb. 1, 1986
s 11-118. Mechanics' liens on units
s 11-119. Service on council of unit owners
s 11-120. Right to expand condominiums
s 11-120. Right to expand condominiums
s 11-121. Deposits made on new condominiums
s 11-122. Applicability; building codes; zoning regulations

s 11-123. How condominium terminated
s 11-124. Method of construction
s 11-125. Rules regarding easements
s 11-126. Matters required to be disclosed
s 11-127. Registration requirement
s 11-128. Responsibilities of Secretary of State
s 11-129. Sale of condominiums located elsewhere
s 11-130. Consumer protection standard; enforcement
s 11-131. Warranties applicable to units
s 11-132. Documents required from developer
s 11-133. Cessation of leases and contracts
s 11-134. Employing developer to effect sale
s 11-135. Rules regarding resale
s 11-136. Tenant's right to buy property
s 11-137. Designated household; lease of unit
s 11-138. Rental facility; local government purchase
s 11-139. Units; local government purchase
s 11-139.1. Notice or delivery by electronic transmission
s 11-139.2. Voting by electronic transmission
s 11-140. Intent of General Assembly
s 11-141. Additional and supplemental provisions
s 11-142. Existing condominiums; applicability of title
s 11-143. Short title
TITLE 11A. MARYLAND REAL ESTATE TIME-SHARING ACT
MD REAL PROP T. 11A, References and Annotations
s 11A-101. Definitions
s 11A-102. Creation of time-share estate
s 11A-103. Recording of time-share instrument
s 11A-104. Restrictions on time-shares
s 11A-105. Management and maintenance arrangements
s 11A-106. Control by developer; title transferred
s 11A-107. License plan; management and maintenance
s 11A-108. Cessation of time-shares
s 11A-108.1. Termination of time-shares; amendment of termination date
s 11A-109. Provision of managing entity

s 11A-110. Assessment of costs
s 11A-111. Maintenance of insurance
s 11A-112. Delivery of public offering statement
s 11A-113. Rules regarding conversion buildings
s 11A-114. Purchaser's right to cancel contract
s 11A-115. Resale; furnishing of certificate
s 11A-116. Escrow account for purchase money
s 11A-117. Warranties on time-share units
s 11A-118. Contents of sales contract
s 11A-119. Restrictions on advertising time-shares
s 11A-120. Occupancy rights exchange; disclosure required
s 11A-121. Application for registration certificate
s 11A-122. Authority of Commission
s 11A-123. Persons who need not register
s 11A-124. Designation of project broker
s 11A-125. Remedies provided
s 11A-126. Resolution of statutory conflict
s 11A-127. Applicability of title
s 11A-128. Maintenance of records; closed meetings
s 11A-129. Short title
TITLE 11B. MARYLAND HOMEOWNERS ASSOCIATION ACT
MD REAL PROP T. 11B, References and Annotations
s 11B-101. Definitions
s 11B-102. Circumstances in which title applicable
s 11B-103. Variation by agreement prohibited
s 11B-104. Building code, zoning laws applicable
s 11B-105. Larger developments; initial sale
s 11B-106. Resale, smaller developments, initial sale
s 11B-107. Nonresidential lot; initial sale
s 11B-108. Rescission of contract
s 11B-109. Seller's false statements or omissions
s 11B-110. Notice of defect; applicable warranties
s 11B-111. Association meetings
s 11B-111.1. Using residence for day care
s 11B-111.1. Using residence for day care

- s 11B-111.2. Candidate signs
- s 11B-111.3. Distribution of materials to lot owners
- s 11B-111.4. Meetings of lot owners
- s 11B-112. Maintenance of records; depository
- s 11B-112.1. Late charges
- s 11B-113. Creation of homeowners association depository
- s 11B-113.1. Notice and delivery by electronic transmission
- s 11B-113.2. Voting by electronic transmission
- s 11B-113.3. Recorded covenants and restrictions; race, religious belief, national origin
- s 11B-113.4. Annual charges
- s 11B-113.5. Howard County; annexation of land in Columbia
- s 11B-114. Electronic payment fee
- s 11B-115. Short title

TITLE 12. EMINENT DOMAIN

- MD REAL PROP T. 12, References and Annotations
- SUBTITLE 1--GENERAL RULES
- SUBTITLE 2--RELOCATION AND ASSISTANCE

TITLE 13. LAND PATENTS

- MD REAL PROP T. 13, References and Annotations
- SUBTITLE 1--DEFINITIONS; GENERAL PROVISIONS
- SUBTITLE 2--ADMINISTRATION OF TITLE
- SUBTITLE 3--APPLICATION AND ISSUANCE OF WARRANT; VALUATION OF LAND
- SUBTITLE 4--OBJECTIONS, HEARINGS, AND DETERMINATION
- SUBTITLE 5--ISSUANCE OF PATENT

TITLE 14. MISCELLANEOUS RULES

- SUBTITLE 1--MISCELLANEOUS RULES
- SUBTITLE 2--MARYLAND CONTRACT LIEN ACT
- SUBTITLE 3--COMMERCIAL REAL ESTATE BROKER'S LIEN
- SUBTITLE 4--MARYLAND COORDINATE SYSTEM

TITLE 15. EFFECTIVE DATE AND APPLICABILITY

- s 15-101. Effective date of article
- s 15-102. Special dates
- s 15-103. Applicability of article

MD Code, Real Property, § 1-101

West's Annotated Code of Maryland Currentness
Real Property

Title 1. General Provisions

§ 1-101. Definitions

(a) In this article the following words have the meanings indicated unless otherwise apparent from context.

(b) "County" includes Baltimore City.

(c) "Deed" includes any deed, grant, mortgage, deed of trust, lease, assignment, and release, pertaining to land or property or any interest therein or appurtenant thereto, including an interest in rents and profits from rents.

(d) "Deed of trust" means only a deed of trust which secures a debt or the performance of an obligation, and does not include a voluntary grant unrelated to security purposes.

(e) "Grant" includes conveyance, assignment, and transfer.

(f) "Land" has the same meaning as "property".

(g) "Landlord" means any landlord, including a "lessor".

(h) "Lease" means any oral or written agreement, express or implied, creating a landlord and tenant relationship, including any "sublease" and any further sublease.

(i) "Mortgage" means any mortgage, including a deed in the nature of mortgage.

(j) "Person" includes an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, association, public or

private corporation, or any other entity.

(k) "Property" means real property or any interest therein or appurtenant thereto.

(l) "Purchaser" has the same meaning as buyer or vendee.

(m) "Tenant" means any tenant including a "lessee".

(n) "Vendor" has the same meaning as seller.

CREDIT(S)

Acts 1974, c. 12, § 2; Acts 1988, c. 6, § 1; Acts 1992, c. 596; Acts 1993, c. 274.

PRIOR COMPILATIONS

Title 1. General Provisions

§ 1-102. Rebuttable presumptions

Unless otherwise expressly provided, whenever this article states that a fact is presumed, the presumption is rebuttable.

CREDIT(S)

Acts 1974, c. 12, § 2.

PRIOR COMPILATIONS

Formerly Art. 21, § 1-103.

MD Code, Real Property, § 1-102, MD REAL PROP § 1-102
Current through end of 2006 Regular Session and 2006 First Special Session.

§ 1-103. Effect on successors in interest

Unless otherwise expressly provided, any obligation imposed on or right granted to any person automatically is binding on or inures to the benefit of his assigns, successors, heirs, legatees, and personal representatives. However, this section is not to be construed to create or confer any rights of assignment where none would exist otherwise.

CREDIT(S)

Acts 1974, c. 12, § 2.

PRIOR COMPILATIONS

Formerly Art. 21, § 1-104.

MD Code, Real Property, § 1-103, MD REAL PROP § 1-103
Current through end of 2006 Regular Session and 2006 First Special Session.

§ 1-104. Contractual alterations permitted

Any person may vary, by agreement, the effect of any provision in this article, except (1) as provided in this article, (2) the agreement may not affect the rights of persons not parties to or otherwise bound by the agreement, and (3) as provided by § 1-103 of this title.

CREDIT(S)

Acts 1974, c. 12, § 2.

PRIOR COMPILATIONS

Formerly Art. 21, § 1-105.
MD Code, Real Property, § 1-104, MD REAL PROP § 1-104
Current through end of 2006 Regular Session and 2006 First Special Session.

MD Code, Real Property, § 2-101
§ 2-101. Interpretation; "grant"; "bargain and sell"

MD Code, Real Property, § 2-101

West's Annotated Code of Maryland Currentness
Real Property

Title 2. Rules of Construction

§ 2-101. Interpretation; "grant"; "bargain and sell"

The word "grant", the phrase "bargain and sell", in a deed, or any other words purporting to transfer the whole estate of the grantor, passes to the grantee the whole interest and estate of the grantor in the land mentioned in the deed unless a limitation or reservation shows, by implication or otherwise, a different intent.

CREDIT(S)

Acts 1974, c. 12, § 2; Acts 1988, c. 6, § 1.

PRIOR COMPILATIONS

Formerly Art. 21, § 5-101.
MD Code, Real Property, § 2-101, MD REAL PROP § 2-101
Current through end of 2006 Regular Session and 2006 First Special Session.
MD Code, Real Property, § 2-102

West's Annotated Code of Maryland Currentness
Real Property

Title 2. Rules of Construction

§ 2-102. Estate tail tenant; fee grant

Any person seized of an estate tail, in possession, reversion, or remainder, in any land, tenement, or hereditament may grant and sell it in the form of a grant as if he were seized of an estate in fee simple and the grant is good and available, to all intents and purposes, against every person whom the grantor might debar by any mode of common recovery, or by any other means.

MD Code, Real Property, § 2-103

West's Annotated Code of Maryland Currentness
Real Property

Title 2. Rules of Construction

§ 2-103. Mortgage assignment; rights passed

Every valid assignment of a mortgage is sufficient to grant to the assignee every right which the assignor possessed under the mortgage at the time of the assignment.

MD Code, Real Property, § 2-104

West's Annotated Code of Maryland Currentness
Real Property

Title 2. Rules of Construction

§ 2-104. "The said ... covenants" defined

If the words "the said ... covenants" are used in a deed, the words are presumed to have the same effect as if the covenant were expressed to be by the covenantor for himself and as if made with the grantee in the deed.

MD Code, Real Property, § 2-105

West's Annotated Code of Maryland Currentness
Real Property

Title 2. Rules of Construction

§ 2-105. Operation of general warranty

A covenant by the grantor in a deed "that he will warrant generally the property hereby granted" has the same effect as if the grantor had covenanted that he will warrant forever the property to the grantee against every lawful claim and demand of any person.
MD Code, Real Property, § 2-106

West's Annotated Code of Maryland Currentness
Real Property

Title 2. Rules of Construction

§ 2-106. Operation of special warranty

A covenant by a grantor in a deed "that he will warrant specially the property hereby granted" has the same effect as if the grantor had covenanted that he will warrant forever and defend the property to the grantee against any lawful claim and demand of the grantor and every person claiming or to claim by, through, or under him.
MD Code, Real Property, § 2-107

West's Annotated Code of Maryland Currentness
Real Property

Title 2. Rules of Construction

§ 2-107. Operation of covenant of seisin

A covenant by the grantor in a deed "that he is seized of the land hereby granted" has the same effect as if the grantor had covenanted that the grantor, at the time of the execution and delivery of the deed, is and stands lawfully seized of the land.

MD Code, Real Property, § 2-108

West's Annotated Code of Maryland Currentness
Real Property

Title 2. Rules of Construction

§ 2-108. Operation of right to grant

A covenant by the grantor in a deed "that he has the right to grant the land" has the same effect as if the grantor had covenanted that he has good right, full power, and absolute authority to grant the land to the grantee in the deed, in the manner in which the land is granted, or intended to be, by the deed, according to its true intent.
MD Code, Real Property, § 2-109

West's Annotated Code of Maryland Currentness
Real Property

Title 2. Rules of Construction

§ 2-109. Operation of quiet enjoyment covenant

A covenant by the grantor in a deed that the grantee "shall quietly enjoy the land" has the

same effect as if he had covenanted that the grantee at any time thereafter might peaceably and quietly enter on, and have, hold, and enjoy the land granted by the deed, or intended to be granted, with all the rights, privileges, and appurtenances belonging to it, and to receive the rents and profits for his use and benefit, without any eviction, interruption, suit, claim, or demand by the grantor and free from any claim or demand by any other person.
MD Code, Real Property, § 2-110

West's Annotated Code of Maryland Currentness
Real Property

Title 2. Rules of Construction

§ 2-110. No act to encumber provision

A covenant by the grantor in a deed "that he has done no act to encumber the land" has the same effect as if he had covenanted that he had not done, executed, or knowingly suffered any act or deed whereby the land granted, or intended to be, or any part of it, is or will be charged, affected, or encumbered in title, estate, or otherwise.

MD Code, Real Property, § 2-111

West's Annotated Code of Maryland Currentness
Real Property

Title 2. Rules of Construction

§ 2-111. Covenant against encumbrances; operation

A covenant by the grantor in a deed, "that the land is free and clear of all encumbrances" has the same effect as if he had covenanted that neither he nor his predecessors in his chain of title had done, executed, or knowingly suffered any act or deed whereby the land granted, or intended to be granted, or any part of it, are or will be charged, affected, or encumbered in title, estate, or otherwise.
MD Code, Real Property, § 2-112

West's Annotated Code of Maryland Currentness
Real Property

Title 2. Rules of Construction

§ 2-112. Covenant for further assurances; operation

A covenant by a grantor in a deed "that he will execute further assurances of the land as may be requisite" has the same effect as if the grantor had covenanted that he at any time on any reasonable request, at the expense of the grantee, will do any further act and execute any further instrument to perfect the grant and assure to the grantee the lands granted, or intended to be granted, as shall be reasonably required by the grantee or his attorney.
MD Code, Real Property, § 2-113

West's Annotated Code of Maryland Currentness
Real Property

Title 2. Rules of Construction

§ 2-113. "Die without issue" defined

Unless a contrary intent is expressly indicated in the deed, the words "die without issue", or "die without leaving issue", or other words in a deed which may imply either a lack or a failure of issue of a person in his lifetime, or at the time of his death, or an indefinite failure of his issue, mean a lack or a failure of issue in the lifetime, or at the time of the death of the person, and not an indefinite failure of his issue.
MD Code, Real Property, § 2-114

West's Annotated Code of Maryland Currentness
Real Property

Title 2. Rules of Construction

§ 2-114. Title to street or highway

(a) Except as otherwise provided, any deed, will, or other instrument that grants land binding on any street or highway, or that includes any street or highway as 1 or more of the lines thereof, shall be construed to pass to the devisee, donee, or grantee all the right, title, and interest of the devisor, donor, or grantor (hereinafter referred to as the transferor) in the street or highway for that portion on which it binds.

(b) If the transferor owns other land on the opposite side of the street or highway, the deed, will, or other instrument shall be construed to pass the right, title, and interest of the transferor only to the center of that portion of the street or highway upon which the 2 or

more tracts coextensively bind.

(c) The provisions of subsections (a) and (b) of this section do not apply if the transferor in express terms in the writing by which the devise, gift, or grant is made, either reserves to the transferor or grants to the transferee all the right, title, and interest to the street or highway.
MD Code, Real Property, § 2-115

West's Annotated Code of Maryland Currentness
Real Property

Title 2. Rules of Construction

§ 2-115. Implied covenant or warranty nonexistent

There is no implied covenant or warranty by the grantor as to title or possession in any grant of land or of any interest or estate in land. However, in a lease, unless the lease provides otherwise, there is an implied covenant by the lessor that the lessee shall quietly enjoy the land.
MD Code, Real Property, § 2-116

West's Annotated Code of Maryland Currentness
Real Property

Title 2. Rules of Construction

§ 2-116. Creation of passive trust

(a) If a grant, deed, covenant, or bequest of any land or personal property is to a trustee whose title is nominal only and who has no express power of disposition or management of the property, and is to be held for a beneficiary expressly designated in it, the grant, deed, covenant, or bequest is void as to the trustee, and is a direct grant, deed, covenant, or bequest to the beneficiary.

(b) If a trust is created by grant, deed, covenant, or bequest of any land or personal property in which the trustee has duties other than nominal to perform at the inception of or during the term of the trust, but later because of the death of a life tenant or other occurrence the trust terminates or there remains only nominal duties to perform, the legal estate in the corpus of the trust then vests in the beneficiaries of the trust, even though the instrument creating the trust specifically requires a grant of the legal estate, unless the

trustee is required to make partition or division by the terms of the creating instrument.

(c) This section is not applicable to any deed of trust given as security for the payment of a debt or the performance of an obligation.

(d) Notwithstanding the repeal of the British Statute of Uses, executory interests and powers of appointment are valid in the State, subject to the rule against perpetuities.
MD Code, Real Property, § 2-117

West's Annotated Code of Maryland Currentness
Real Property

Title 2. Rules of Construction

§ 2-117. Joint tenancy not presumed

No deed, will, or other written instrument which affects land or personal property, creates an estate in joint tenancy, unless the deed, will, or other written instrument expressly provides that the property granted is to be held in joint tenancy.

MD Code, Real Property, § 2-118

West's Annotated Code of Maryland Currentness
Real Property

Title 2. Rules of Construction

§ 2-118. Creation of conservation easements

(a) Any restriction prohibiting or limiting the use of water or land areas, or any improvement or appurtenance thereto, for any of the purposes listed in subsection (b) of this section whether drafted in the form of an easement, covenant, restriction, or condition, creates an incorporeal property interest in the water or land areas, or the improvement or appurtenance thereto, so restricted, which is enforceable in both law and equity in the same manner as an easement or servitude with respect to the water or land areas, or the improvement or appurtenance thereto, if the restriction is executed in compliance with the requirements of this article for the execution of deeds or the Estates and Trusts Article for the execution of wills.

(b) A restriction as provided in subsection (a) of this section may be for any of the following purposes:

(1) Construction, placement, preservation, maintenance in a particular condition, alteration, removal, or decoration of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;

(2) Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or other materials;

(3) Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in a manner as to affect the surface or otherwise alter the topography of the area;

(4) Removal or destruction of trees, shrubs, or other vegetation;

(5) Surface use except for purposes of preserving the water or land areas, or the improvement or appurtenance thereto;

(6) Activities affecting drainage, flood control, water conservation, erosion control, soil conservation, or fish or wildlife habitat preservation;

(7) Preservation of exposure of solar energy devices; or

(8) Other acts or uses having any relation to the preservation of water or land areas or the improvement or appurtenance thereto.

(c) If the restriction is not granted for the benefit of any dominant tract of land, it is enforceable with respect to the servient land, both at law and in equity, as an easement in gross, and as such it is inheritable and assignable.

(d) A restriction provided for by this section may be extinguished or released, in whole or in part, in the same manner as other easements.

(e) If any grant, reservation, dedication, devise, or gift of any nature which clearly indicates the maker's intention to subject any interest or estate in property to public use for the preservation of agricultural, historic, or environmental qualities fails to specify a grantee, donee, legatee, or beneficiary to receive the same or specifies a grantee, donee, legatee, or beneficiary who is not legally capable of taking the interest or estate, it passes to the Maryland Agricultural Land Preservation Foundation, the Maryland Historical Trust, or the Maryland Environmental Trust in any proceedings under §§ 14-301 and 14-302 of the Estates and Trusts Article.
MD Code, Real Property, § 2-119

West's Annotated Code of Maryland Currentness
Real Property

Title 2. Rules of Construction

§ 2-119. Solar collection panels; restrictive covenants

(a) A restrictive covenant regarding land use, which becomes effective after July 1, 1980, may not impose or act to impose unreasonable limitations on the installation of solar collection panels on the roof or exterior walls of improvements.

(b) This section does not apply to a restrictive covenant on historic property that is listed by:

(1) The Maryland Inventory of Historic Properties; or

(2) The Maryland Register of Historic Properties.

MD Code, Real Property, § 2-120

West's Annotated Code of Maryland Currentness
Real Property

Title 2. Rules of Construction

§ 2-120. Disclosure requirement; material fact; defect

(a) Under this title, it is not a material fact or a latent defect relating to property offered for sale or lease that:

(1) An owner or occupant of the property is, was, or is suspected to be:

(i) Infected with human immunodeficiency virus; or

(ii) Diagnosed with acquired immunodeficiency syndrome; or

(2) A homicide, suicide, accidental death, natural death, or felony occurred on the property.

(b) An owner or seller of real property or the owner's or seller's agent shall be immune

from civil liability or criminal penalty for failure to disclose a fact contained in subsection (a) of this section.

MD Code, Real Property, § 2-121

West's Annotated Code of Maryland Currentness
Real Property

Title 2. Rules of Construction

§ 2-121. Family day care homes

(a) In this section, "family day care home" means a unit:

(1) Registered under Title 5, Subtitle 5 of the Family Law Article; and

(2) In which the family day care provider or one or more of the children cared for resides.

(b) This section does not apply to a recorded covenant or restriction affecting property that is:

(1) Governed by the provisions of Title 11B of this article;

(2) Part of a condominium regime governed by Title 11 of this article; or

(3) Part of a cooperative housing corporation.

(c)(1) A recorded covenant or restriction in a deed that prohibits or restricts commercial or business activity in general, but does not expressly apply to family day care homes, may not be construed to prohibit or restrict the establishment or operation of family day care homes.

(2) The operation of a family day care home shall be considered a residential activity for purposes of construing a covenant or restriction described in paragraph (1) of this subsection.

(d) The provisions of this section do not apply to:

(1) A building containing more than four dwelling units located on one parcel of property or at one location;

(2) A covenant or restriction imposed in connection with a loan made or purchased by the Community Development Administration under Title 4, Subtitle 2 of the Housing and Community Development Article; or

(3) A lease.

MD Code, Real Property, § 2-122

West's Annotated Code of Maryland Currentness
Real Property

Title 2. Rules of Construction

§ 2-122. Definition of trust; grants of property by deed

(a)(1) In this section, "trust" means an express inter vivos or testamentary trust.

(2) "Trust" includes the following instruments or funding arrangements in the nature of a trust:

(i) A profit sharing plan;

(ii) A retirement plan;

(iii) A liquidating or liquidation plan; and

(iv) An unincorporated foundation.

(3) "Trust" does not include:

(i) A real estate investment trust as defined in § 8-101 of the Corporations and Associations Article;

(ii) A business trust as defined in § 12-101(c) of the Corporations and Associations Article; or

(iii) A trust, formed under the law of another state or a foreign country, that authorizes a trust to take, hold, and dispose of title to property in the name of the trust.

(b)(1) A grant of property by deed to a grantee designated in the deed as a trust has the same effect as if the grantor had granted the property to the trustee or trustees appointed and acting for the trust on the effective date of the deed.

(2) A grant of property by deed to a grantee designated in the deed as an estate of a decedent, including the estate of a nonresident decedent, has the same effect as if the grantor had granted the property to:

(i) The personal representative or personal representatives appointed by a register of wills or orphans' court in the State for the estate and acting as the personal representative on the effective date of the deed; or

(ii) A foreign personal representative exercising the powers of the office for the estate of a nonresident decedent on the effective date of the deed.

MD Code, Real Property, § 2-123

West's Annotated Code of Maryland Currentness
Real Property

Title 2. Rules of Construction

§ 2-123. Adoptees

"Instrument" defined

(a) In this section, "instrument" means a deed, grant, or other written instrument other than a will as defined in § 4-414 of the Estates and Trusts Article.

Construction of section

(b) This section does not limit the right of an individual to provide for distribution of property by will.

Construction of instrument

(c)(1) Unless an instrument executed on or after June 1, 1947, clearly indicates otherwise, "child", "descendant", "heir", "issue", or any equivalent term in the instrument includes an adoptee whether the instrument was executed before or after a court entered an order for adoption.

(2) Unless an instrument executed on or before May 31, 1947, clearly indicates otherwise, "child", "descendant", "heir", "issue", or any equivalent term in the instrument includes an adoptee if, on or after January 1, 1945, a court entered an

interlocutory order for adoption or, if none, a final order for adoption.

MD Code, Real Property, § 3-101

West's Annotated Code of Maryland Currentness
Real Property

Title 3. Recordation (Refs & Annos)

Subtitle 1. General Rules and Exceptions

§ 3-101. Execution and recordation of deeds

(a) Except as otherwise provided in this section, no estate of inheritance or freehold, declaration or limitation of use, estate above seven years, or deed may pass or take effect unless the deed granting it is executed and recorded.

(b) Subsection (a) of this section does not limit any other method of transferring or creating an estate, declaration, or limitation which is permitted by the law of the State except to the extent required by law.

(c) The recording requirement of subsection (a) of this section does not apply to any lease for an initial term not exceeding seven years if each renewal term under the lease (i) is for seven years or less, and (ii) by the provisions of the lease, may be effected or prevented by a party to the lease or his assigns.

(d) If a lease required to be executed and recorded under the provisions of subsection (a) of this section is executed but not recorded, the lease is valid and fully effective both at law and in equity (i) between the original parties to the lease and their personal representatives, (ii) against their creditors, and (iii) against and for the benefit of any other person who claims by, through, or under an original party and who acquires the interest claimed with actual notice of the lease or at a time when the tenant, or anyone claiming by, through, or under the tenant, is in such actual occupancy as to give reasonable notice to the person.

(e) In lieu of recording a lease as prescribed above, a memorandum of the lease, executed by every person who is a party to the lease, may be recorded with like effect. A memorandum of lease thus entitled to be recorded shall contain at least the following information with respect to the lease: (1) the name of the lessor and the name of the

lessee; (2) any addresses of the parties set forth in the lease; (3) a reference to the lease, with its date of execution; (4) a description of the leased premises in the form contained in the lease; (5) the term of the lease, with the date of commencement and the date of termination of the term; and (6) if there is a right of extension or renewal, the maximum period for which or date to which it may be renewed, and any date on which the right of extension or renewal is exercisable. If any date is unknown, then the memorandum of lease shall contain the formula from which the date is to be computed. When a memorandum of lease is presented for recording, the lease also shall be submitted to the recording office for the purpose of examination to determine whether or not the lease or the memorandum authorized by this section is subject to any transfer or other tax or requires any recording stamp. The clerk shall stamp the lease when submitted so that it may be identified as the instrument presented to the clerk at the time of recording the memorandum, and the clerk shall collect any required tax.

(f)(1) In this subsection, "option" includes any agreement or contract creating:

(i) An option with respect to the purchase, lease, or grant of property; or

(ii) A right of first refusal, a right of first offer, or similar right, with respect to the purchase, lease, or grant of property.

(2) In lieu of recording an option as prescribed above, a memorandum of the option, executed by each person who is a party to the option, may be recorded with like effect.

(3) A memorandum of option thus entitled to be recorded shall contain at least the following information with respect to the option:

(i) The name of the parties to the option;

(ii) Any addresses of the parties set forth in the option;

(iii) A reference to the option, with its date of execution;

(iv) A description of the property affected by the option in the form contained in the option;

(v) The nature of the right or interest created;

(vi) If stated, the term of the option, with the date of commencement and the date of termination of the term; and

(vii) If there is a right of extension or renewal, the maximum period for which or date to which it may be renewed, and any date on which the right of extension or renewal is exercisable.

(4) If any date is unknown, then the memorandum of option shall contain the formula, if

any, from which the date is to be computed.

MD Code, Real Property, § 3-102

West's Annotated Code of Maryland Currentness
Real Property

Title 3. Recordation (Refs & Annos)

Subtitle 1. General Rules and Exceptions

§ 3-102. Recording of other instruments

(a)(1) Any other instrument affecting property, including any contract for the grant of property, or any subordination agreement establishing priorities between interests in property may be recorded.

(2) The following instruments also may be recorded:

(i) Any notice of deferred property footage assessment for street construction;

(ii) Any boundary survey plat signed and sealed by a professional land surveyor or property line surveyor licensed in the State;

(iii) Any assumption agreement by which a person agrees to assume the liability of a debt or other obligation secured by a mortgage or deed of trust;

(iv) Any release of personal liability of a borrower or guarantor under a mortgage or under a note or other obligation secured by a deed of trust; or

(v) A ground rent redemption certificate or a ground rent extinguishment certificate issued under § 8-110 of this article.

(3) The recording of any instrument constitutes constructive notice from the date of recording.

(b) This section may not be construed to authorize the recording of a subdivision plat without any prior review and approval otherwise required by law.

MD Code, Real Property, § 3-103

West's Annotated Code of Maryland Currentness
Real Property

Title 3. Recordation (Refs & Annos)

Subtitle 1. General Rules and Exceptions

§ 3-103. Where instruments recorded

The proper jurisdiction for recording all deeds or other instruments referred to in §§ 3-101 and 3-102 is as follows:

(1) In the county where the land affected by the deed or instrument lies; or

(2) If the land lies in more than one county, in all of such counties.

MD Code, Real Property, § 3-104

West's Annotated Code of Maryland Currentness
Real Property

Title 3. Recordation (Refs & Annos)

Subtitle 1. General Rules and Exceptions

§ 3-104. Requirements before recording

(a)(1) The Clerk of the Circuit Court may record an instrument that effects a change of ownership if the instrument is:

(i) Endorsed with the certificate of the collector of taxes of the county in which the property is assessed, required under subsection (b) of this section;

(ii) 1. Accompanied by a complete intake sheet; or

2. Endorsed by the assessment office for the county as provided in paragraph (g)(8) of this section; and

(iii) Accompanied by a copy of the instrument, and any survey, for submission to the Department of Assessments and Taxation.

(2) The Supervisor of Assessments shall transfer ownership of property in the assessment records, effective as of the date of recordation, upon receipt from the Clerk of the Circuit Court of a copy of the instrument, the completed intake sheet, and any survey submitted under paragraph (1) of this subsection.

(b)(1) Except as provided in subsection (c) of this section, property may not be transferred on the assessment books or records until:

(i) All public taxes, assessments, and charges currently due and owed on the property have been paid to the treasurer, tax collector, or director of finance of the county in which the property is assessed; and

(ii) All taxes on personal property in the county due by the transferor have been paid when all land owned by him in the county is being transferred.

(2) The certificate of the collecting agent designated by law, showing that all taxes, assessments, and charges have been paid, shall be endorsed on the deed, and the endorsement shall be sufficient authority for transfer on the assessment books.

(3) Except as provided in subsection (c) of this section, in Cecil, Charles, Dorchester, Harford, Howard, Kent, Queen Anne's, Somerset, and St. Mary's counties no property may be transferred on the assessment books or records until (1) all public taxes, assessments, any charges due a municipal corporation, and charges due on the property have been paid as required by law, and (2) all taxes on personal property in the county due by the transferor have been paid when all land owned by him in the county and municipal corporation is being transferred. The certificate of the collecting agent and municipal corporation designated by law showing that all taxes, assessments, and charges have been paid, shall be endorsed on the deed and the endorsement shall be sufficient authority for transfer on the assessment books.

(c)(1)(i) The requirements for prepayment of personal property taxes in subsection (b) of this section do not apply to grants of land made:

1. By or on behalf of any mortgagee, lien creditor, trustee of a deed of trust, judgment creditor, trustee in bankruptcy or receiver, and any other court-appointed officer in an insolvency or liquidation proceeding; or

2. By a deed in lieu of foreclosure to any holder of a mortgage or deed of trust or to the holder's assignee or designee.

(ii) Notwithstanding any other provision of law, and except as provided in subparagraph (iii) of this paragraph, after the recordation of a deed or other instrument that effects a grant of land described in subparagraph (i) of this paragraph, the land shall be free and clear of, and unencumbered by, any lien or claim of lien for any unpaid taxes on personal property.

(iii) Subparagraph (ii) of this paragraph does not apply to:

1. Any lien for unpaid taxes on personal property that attached to the land by

recording and indexing a notice as provided in § 14-804(b) of the Tax-Property Article prior to the recording of the mortgage, lien, deed of trust, or other encumbrance giving rise to the grant of land described in subparagraph (i) of this paragraph; or

2. Unpaid taxes on personal property owed by the transferee or subsequent owner of the land after a grant of land described in subparagraph (i) of this paragraph.

(iv) This paragraph does not affect the rights of the personal property tax lienholder to make a claim to any surplus proceeds from a judicial sale of land resulting in a grant of land described in subparagraph (i) of this paragraph.

(2) Subsection (b) of this section does not apply in Charles, St. Mary's, Dorchester, Harford, Howard, Kent, Prince George's, Worcester, Carroll, Montgomery, Frederick and Washington counties to any deed executed as a mere conduit or for convenience in holding and passing title, known popularly as a straw deed or, as provided in § 4-108, a deed making a direct grant in lieu of a straw deed, or to a deed which is a supplementary instrument merely confirming, correcting, or modifying a previously recorded deed, if there is no actual consideration paid or to be paid for the execution of the supplementary instrument.

(3) Subsection (b) of this section does not apply in Baltimore City and Anne Arundel, Baltimore, Carroll, Frederick, or Washington counties to any deed transferring property to the county when the controller or treasurer of the county has certified that the conveyance does not impair the security for any public taxes, assessments, and charges due on the remaining property of the grantor.

(4)(i) Property may be transferred on the assessment books or records in July, August, or September if instead of paying the taxes required under subsection (b)(1) of this section on a property transfer by assumption, a lender or the attorney handling the transfer of title files with the county treasurer, tax collector, or director of finance of the county in which the property is assessed a statement that certifies that the lender maintains a real estate tax escrow account.

(ii) Upon receipt of the statement required in subparagraph (i) of this paragraph, the county treasurer, tax collector, or director of finance shall endorse on the deed an appropriate certification and the endorsement shall be sufficient authority for transfer on the assessment books.

(5) At the time of transfer of real property subject to a semiannual payment schedule for the payment of property taxes, only those semiannual payments that are due for the current taxable year under § 10-204.3 of the Tax-Property Article must be paid prior to the transfer of the property.

(d) Every deed or other instrument offered for recordation shall have the name of each

person typed or printed directly above or below the signature of the person. If a typed or printed name is not provided as required in this subsection, the clerk shall make reasonable efforts to determine the correct name under which the deed or other instrument shall be indexed.

(e)(1) Any printed deed or other instrument offered for recordation shall be printed in not less than eight-point type and in black letters and be on white paper of sufficient weight and thickness to be clearly readable. If the deed or other instrument is wholly typewritten or typewritten on a printed form, the typewriting shall be in black letters, in not less than elite type and upon white paper of sufficient weight or thickness as to be clearly readable. The foregoing provisions do not apply to manuscript covers or backs customarily used on documents offered for recordation. The recording charge for any instrument not conforming to these requirements shall be treble the normal charge. In any clerk's office where the deeds or other instruments are photostated or microfilmed, no instrument on which a rider has been placed or attached in a manner obscuring, hiding, or covering any other part of the instrument may be offered or received for record. No instrument not otherwise readily subject to photostating or microfilming may be offered or received for record until treble the normal recording charge is paid to the clerk and unless an affidavit, black type on white paper, is attached and made a part of the document stating the kind of instrument, the date, the parties to the transaction, description of the property, and all other pertinent data. After any document has been recorded in one county, a certified copy of the recorded document may be recorded in any other county.

(2) A certified copy of any document from a state, commonwealth, territory, or possession of the United States, or the District of Columbia that would otherwise be recordable under Maryland law may be recorded in this State, if the document contains:

(i) An original certification made by the clerk or other governmental official having responsibility for the certification or authentication of recorded documents in the jurisdiction where the document is recorded; and

(ii) An indication of the recording reference and court or other public registry where the original document is recorded.

(f)(1) No deed, mortgage, or deed of trust may be recorded unless it bears the certification of an attorney at law that the instrument has been prepared by an attorney or under an attorney's supervision, or a certification that the instrument was prepared by one of the parties named in the instrument.

(2) Every deed recorded in Prince George's County shall contain a reference to the election district in which the property described in the deed is located.

(3) Every deed or other instrument recorded in Talbot County shall have written, typed, or printed on its back, to be readily visible when folded for filing in the

appropriate drawer or file, the name of every party to the deed or other instrument and the nature or character of the instrument.

(4) No deed granting property lying within the boundaries of any sanitary district operated by the Worcester County Sanitary Commission may be accepted by the Clerk of the Circuit Court for recording unless the deed is marked by the Commission to indicate that every assessment or charge currently due and owed to the Commission with respect to the property described in the deed has been paid.

(5) In Frederick County, if the property to be transferred is a subdivision, which is being dissected from a larger tract of land, then every public tax, assessment, and charge due on the larger tract shall be paid before the property is transferred on the assessment books or land records. Notwithstanding any other provision of this section, in Frederick County the certificate of the Treasurer and the appropriate municipal tax collector, if the property is within an incorporated town or city, showing that every tax has been paid shall be endorsed on the deed. The endorsement is sufficient authority for transfer on the assessment books or land records.

(6) Every deed granting a right-of-way or other easement to a public utility, public agency, or a department or agency of the State shall contain an accurate and definite description as well as a reference to the liber and folio where the servient land was granted and a recitation of the grantors, grantees, and the date of the reference deed.

(g)(1) This subsection does not apply to:

(i) An assignment of a mortgage or if presented for recordation, an assignment of a deed of trust;

(ii) A release of a deed of trust or mortgage;

(iii) A substitution of trustees on a deed of trust;

(iv) A power of attorney; or

(v) A financing statement or an amendment, continuation, release, or termination of a financing statement recorded in land records.

(2) Except as provided in paragraph (1) of this subsection, each deed or other instrument affecting property and presented for recordation shall be:

(i) Accompanied by a complete intake sheet, on the form that the Administrative Office of the Courts provides; or

(ii) Endorsed as provided under paragraph (8) of this subsection.

(3) A complete intake sheet shall:

(i) Describe the property by at least one of the following property identifiers:

1. The property tax account identification number, if any, or in Montgomery County, any parcel identifier required under § 3-501 of this title, if different from the tax account number;

2. The street address, if any;

3. If the property is a lot within a subdivided tract, the lot and block designation, or in Baltimore City, the current land record block number;

4. If the property is part of a tract that has been subdivided informally and there is neither an assigned tax account identification number for the parcel nor a lot and block designation, then the street address, if any, or the amount of acreage; or

5. If the property consists of multiple parcels, the designation "various lots of ground" or the abbreviation "VAR. L.O.G.";

(ii) Name each grantor, donor, mortgagor, and assignor and each grantee, donee, mortgagee, and assignee;

(iii) State the type of instrument;

(iv) State the amount of consideration payable, including the amount of any mortgage or deed of trust indebtedness assumed, or the principal amount of debt secured;

(v) State the amount of recording charges due, including the land records surcharge and any transfer and recordation taxes;

(vi) Identify, by citation or explanation, each claimed exemption from recording taxes;

(vii) For an instrument effecting a change in ownership, state a tax bill mailing address; and

(viii) Indicate the person to whom the instrument is to be returned.

(4) An intake sheet may request any other information that the Administrative Office of the Courts considers necessary in expediting transfers of property or recording and indexing of instruments.

(5) A clerk may not charge any fee for recording an intake sheet.

(6) A clerk may not refuse to record an instrument that does not effect a change of

ownership on the assessment books solely because it is not accompanied by an intake sheet.

(7) A clerk may refuse to record a deed or instrument that effects a change of ownership on the assessment rolls if the instrument is not accompanied by a complete intake sheet or endorsed as transferred on the assessment books by the assessment office for the county where the property is located.

(8)(i) If a deed or other instrument that effects a change in ownership is submitted for transfer on the assessment books without an intake sheet, the person offering the deed or other instrument shall mail or deliver to the person having charge of the assessment books the information required on the intake sheet.

(ii) When property is transferred on the assessment books under this paragraph:

1. The transfer shall be to the grantee or assignee named in the deed or other instrument; and

2. The person recording the transfer shall evidence the fact of the transfer on the deed or other instrument.

(iii) An endorsement under this paragraph is sufficient to authorize the recording of the deed or other instrument by the clerk of the appropriate court.

(9)(i) An intake sheet shall be recorded immediately after the instrument it accompanies.

(ii) The intake sheet is not part of the instrument and does not constitute constructive notice as to the contents of the instrument.

(iii) The lack of an intake sheet does not affect the validity of any conveyance, lien, or lien priority based on recordation of an instrument.

MD Code, Real Property, § 3-105

West's Annotated Code of Maryland Currentness
Real Property

Title 3. Recordation (Refs & Annos)

Subtitle 1. General Rules and Exceptions

§ 3-105. Mortgage releases; deeds of trust

(a) A mortgage or deed of trust may be released validly by any procedure enumerated in this section.

(b) A release may be endorsed on the original mortgage or deed of trust by the mortgagee or his assignee, the trustee or his successor under a deed of trust, or by the holder of the debt or obligation secured by the deed of trust. The mortgage or the deed of trust, with the endorsed release, then shall be filed in the office in which the mortgage or deed of trust is recorded. The clerk shall record the release photographically, with an attachment or rider affixed to it containing the names of the parties as they appear on the original mortgage or deed of trust, together with a reference to the book and page number where the mortgage or deed of trust is recorded.

(c) At the option of the clerk of the court in whose office the book form of recording is used, the release may be written by the mortgagee, or his assignee, or the trustee, or his successor under a deed of trust, on the record in the office where the mortgage or deed of trust is recorded and attested by the clerk of the court. At the time of recording any mortgage or deed of trust, the clerk of the court in whose office the book form of recording is used shall leave a blank space at the foot of the mortgage or deed of trust for the purpose of entering such release.

(d)(1) When the debt secured by a deed of trust is paid fully or satisfied, and any bond, note, or other evidence of the total indebtedness is marked "paid" or "canceled" by the holder or his agent, it may be received by the clerk and indexed and recorded as any other instrument in the nature of a release. The marked note has the same effect as a release of the property for which it is the security, as if a release were executed by the named trustees, if there is attached to or endorsed on the note an affidavit of the holder, the party making satisfaction, or an agent of either of them, that it has been paid or satisfied, and specifically setting forth the land record reference where the original deed of trust is recorded.

(2) When the debt secured by a mortgage is paid fully or satisfied, and the original mortgage is marked "paid" or "canceled" by the mortgagee or his agent, it may be received by the clerk and indexed and recorded as any other instrument in the nature of a release. The marked mortgage has the same effect as a release of the property for which it is the security, as if a release were executed by the mortgagee, if there is attached to or endorsed on the mortgage an affidavit of the mortgagee, the mortgagor, the party making satisfaction, or the agent of any of them, that it has been paid or satisfied, and specifically setting forth the land record reference where the mortgage is recorded.

(3) When the debt secured by a mortgage or deed of trust is paid fully or satisfied, and the canceled check evidencing final payment or, if the canceled check is unavailable, a copy of the canceled check accompanied by a certificate from the institution on which the check was drawn stating that the copy is a true and genuine image of the original

check is presented, it may be received by the clerk and indexed and recorded as any other instrument in the nature of a release. The canceled check or copy accompanied by the certificate has the same effect as a release of the property for which the mortgage or deed of trust is the security, as if a release were executed by the mortgagee or named trustees, if:

(i) The party making satisfaction of the mortgage or deed of trust has:

1. Allowed at least a 60-day waiting period, from the date the mortgage or deed of trust is paid fully or is satisfied, for the party satisfied to provide a release suitable for recording;

2. Sent the party satisfied a copy of this section and a notice that, unless a release is provided within 30 days, the party making satisfaction will obtain a release by utilizing the provisions of this paragraph; and

3. Following the mailing of the notice required under sub-subparagraph 2 of this subparagraph, allowed an additional waiting period of at least 30 days for the party satisfied to provide a release suitable for recording; and

(ii) The canceled check or copy accompanied by the certificate contains the name of the party whose debt is being satisfied, the debt account number, if any, and words indicating that the check is intended as payment in full of the debt being satisfied; and

(iii) There is attached to the canceled check or copy accompanied by the certificate an affidavit made by a member of the Maryland Bar that the mortgage or deed of trust has been satisfied, that the notice required under subparagraph (i) of this paragraph has been sent, and specifically setting forth the land record reference where the original mortgage or deed of trust is recorded.

(4) When the debt secured by a mortgage or deed of trust is fully paid or satisfied and the holder or the agent of the holder of the mortgage or deed of trust note or other obligation secured by the deed of trust, or the trustee or successor trustee under the deed of trust, executes and acknowledges a certificate of satisfaction substantially in the form specified under § 4- 203(d) of this article, containing the name of the debtor, holder, the authorized agent of the holder, or the trustee or successor trustee under the deed of trust, the date, and the land record recording reference of the instrument to be released, it may be received by the clerk and indexed and recorded as any other instrument in the nature of a release. The certificate of satisfaction shall have the same effect as a release executed by the holder of a mortgage or the named trustee under a deed of trust.

(5) When the holder of a mortgage or deed of trust note or other obligation secured by the deed of trust has agreed to release certain property from the lien of the mortgage or deed of trust and the holder or the agent of the holder of the mortgage or deed of trust

note or other obligation secured by the deed of trust, or the trustee or successor trustee under the deed of trust executes and acknowledges a certificate of partial satisfaction or partial release substantially in the form specified under § 4-203(e) of this article, containing the name of the debtor, holder, the authorized agent of the holder, or the trustee or successor trustee under the deed of trust, the date, the land record recording reference of the instrument to be partially released, and a description of the real property being released, it may be received by the clerk and indexed and recorded as any other instrument in the nature of a partial release. The certificate of partial satisfaction or partial release shall have the same effect as a partial release executed by the holder of a mortgage, the holder of the debt secured by a deed of trust, or the named trustee under a deed of trust.

(e) A release of a mortgage or deed of trust may be made on a separate instrument if it states that the mortgagee, holder of the debt or obligation secured by the deed of trust, trustee, or assignee releases the mortgage or deed of trust and states the names of the parties to the mortgage or deed of trust and the date and recording reference of the mortgage or deed of trust to be released. In addition, any form of release that satisfies the requirements of a deed and is recorded as required by this article is sufficient.

(f)(1) A holder of a debt secured by a mortgage or deed of trust, or a successor of a holder, may release part of the collateral securing the mortgage or deed of trust by executing and acknowledging a partial release on an instrument separate from the mortgage or deed of trust.

(2) A partial release shall:

(i) Be executed and acknowledged;

(ii) Contain the names of the parties to the mortgage or deed of trust, the date, and the land record recording reference of the instrument subject to the partial release; and

(iii) Otherwise satisfy the requirements of a valid deed.

(3) The clerk of the court shall accept, index, and record, as a partial release, an instrument that complies with and is filed under this section.

(4) Unless otherwise stated in an instrument recorded among the land records, a trustee under a deed of trust may execute, acknowledge, and deliver partial releases.

(g) If a full or partial release of a mortgage or deed of trust is recorded other than at the foot of the recorded mortgage or deed of trust, the clerk shall place a reference to the book and page number or other place where the release is recorded on the recorded mortgage or deed of trust.

(h) Unless otherwise expressly provided in the release, a full or partial release that is recorded for a mortgage or deed of trust that is re-recorded, amended, modified, or otherwise altered or affected by a supplemental instrument and which cites the released mortgage or deed of trust by reference to only the original recorded mortgage, deed of trust, or supplemental instrument to the original mortgage or deed of trust, shall be effective as a full or partial release of the original mortgage or deed of trust and all supplemental instruments to the original mortgage or deed of trust.

(i) Unless otherwise expressly provided in the release, a full or partial release that is recorded for a mortgage or deed of trust, or for any re-recording, amendment, modification, or supplemental instrument to the mortgage or deed of trust shall terminate or partially release any related financial statements, but only to the extent that the financing statements describe fixtures that are part of the collateral described in the full or partial release.

MD Code, Real Property, § 3-105.1

West's Annotated Code of Maryland Currentness
Real Property

Title 3. Recordation (Refs & Annos)

Subtitle 1. General Rules and Exceptions

§ 3-105.1. Release of mortgage or deed of trust

(a)(1) In this section the following words have the meanings indicated.

(2) "Borrower" means an individual who is mortgagor or grantor on a mortgage or deed of trust and whose loan was for personal, household, or family purposes or for a commercial purpose not in excess of $75,000.

(3)(i) "Holder" means the person to whom a loan secured by a mortgage or deed of trust is owed or that person's designee.

(ii) "Holder" does not include a responsible person.

(4) "Loan" means all indebtedness and other obligations of a borrower secured by a mortgage or deed of trust.

(5) "Mortgage or deed of trust" means a mortgage, deed of trust, security agreement, or other lien secured by a borrower's principal dwelling.

(6)(i) "Responsible person" means a person other than the holder or the holder's designee who has undertaken responsibility for filing a release of a mortgage or deed of trust with the governmental agency charged with recording the release.

(ii) "Responsible person" includes:

1. The person responsible for the disbursement of funds in connection with the grant of title to the property; and

2. An attorney or other person responsible for preparing the HUD-1 settlement statement required under the federal Real Estate Settlement Procedures Act. [FN1]

(b)(1) Except as provided in paragraph (2) of this subsection, this section does not apply to a mortgage or deed of trust given to secure or guaranty a commercial loan as defined in § 12-101 of the Commercial Law Article.

(2) This section applies to a mortgage or deed of trust given by an individual to secure a commercial loan to that individual if the commercial loan was not in excess of $75,000 and was secured by the borrower's principal dwelling.

(c) Within a reasonable time after a loan secured by an existing mortgage or deed of trust has been paid in full and there is no further commitment by the holder to make an advance or by the borrower to incur an obligation secured by that mortgage or deed of trust, the holder shall:

(1)(i) Indelibly mark with the word "paid" or "canceled" and return to the borrower each agreement, note, or other evidence of the loan secured by that mortgage or deed of trust; or

(ii) Furnish the borrower with a written statement that identifies the loan secured by that mortgage or deed of trust and states that the loan has been paid in full; and

(2) Release any recorded mortgage or deed of trust securing the loan.

(d) The release shall be:

(1) In writing; and

(2) Prepared at the expense of the holder.

(e)(1) If the holder does not record the release or provide the release to a responsible person for recording within 45 days after a loan secured by an existing mortgage or deed

of trust has been paid in full and there has been no further commitment by the holder to make an advance or by the borrower to incur an obligation secured by the mortgage or deed of trust, the holder shall furnish the borrower with:

(i) The release in a recordable form; and

(ii) A notice disclosing the location where the release should be recorded and the estimated amount of any fee required to be paid to a governmental entity in order to record the release.

(2) If the holder records the release, the holder shall furnish the borrower with a copy of the release.

(f)(1) A fee for the recording of a release may be collected by the holder from the borrower subject to this subsection.

(2) If a fee is collected for the recording of a release:

(i) The release shall be recorded by the holder; and

(ii) Any portion of the fee not paid to a governmental entity for recording the release that exceeds $15 shall be refunded to the borrower.

(3) A fee authorized under this subsection is not interest with respect to any loan.

(4) If a fee is not collected for the recording of a release, the holder is not obligated to record the release.

(g)(1) This subsection does not apply to:

(i) A licensee under Title 11, Subtitle 5 of the Financial Institutions Article; or

(ii) An entity described in § 11-502(b)(1) or (b)(11) of the Financial Institutions Article.

(2) Except as provided in paragraph (1) of this subsection, if the borrower is the prevailing party in an action to require the delivery of the release, the holder is liable for the delivery of a release and for all costs and expenses in connection with the bringing of the action, including reasonable attorney's fees.

MD Code, Real Property, § 3-106

West's Annotated Code of Maryland Currentness
Real Property

Title 3. Recordation (Refs & Annos)

Subtitle 1. General Rules and Exceptions

§ 3-106. Assignments of mortgages; recording

The clerk of the court shall record photographically any assignment of a mortgage with an attachment or rider affixed to it containing the names of the parties as they appear on the original mortgage and a reference to the book number and page number where the mortgage is recorded.

MD Code, Real Property, § 3-107

West's Annotated Code of Maryland Currentness
Real Property

Title 3. Recordation (Refs & Annos)

Subtitle 1. General Rules and Exceptions

§ 3-107. Vendor's liens; recording

When recording a deed or other instrument retaining a vendor's lien, the clerk shall leave a blank space at the foot of the document for the purpose of entering assignments and releases.

MD Code, Real Property, § 3-108

West's Annotated Code of Maryland Currentness
Real Property

Title 3. Recordation (Refs & Annos)

Subtitle 1. General Rules and Exceptions

§ 3-108. Method of recording plats generally

(a)(1) Except as provided in paragraph (2) of this subsection, the provisions of this section are in addition to any other provisions of the Code, pertaining to recordation of subdivision plats.

(2) The provisions of this section do not apply in Queen Anne's County.

(b) If the owner of land in the State subdivides his land for commercial, industrial, or residential use to be comprised of streets, avenues, lanes, or alleys and lots, and desires, for the purpose of description and identification, to record a plat of the subdivision among the land records of the county where the land lies, the clerk of the court shall accept and record the plat as prescribed in this section. The clerk may not accept the plat for record until the owner of land complies with the requirements prescribed in this section.

(c)(1) In this subsection, "coordinate" means a number which determines the position of any point in a north or south and an east or west direction in relation to any other point in the same coordinate system.

(2) The plat shall be legible, drawn accurately and to scale and shall be submitted for recordation using black ink on transparent mylar, or linen or black-line photo process comparable to original quality that will conform to archival standards. The State Highway Administration may substitute microfilm aperture cards showing property or rights-of-way to be acquired or granted. Microfilm aperture cards must meet archival standards for permanent records.

(3) The plat shall contain the courses and distances of all lines drawn on the plat.

(4) With respect to all curved lines, the plat shall show the length of all radii, arcs, and tangents and the courses and distances of all chords.

(5) The plat shall contain a north arrow which represents and designates either true or magnetic meridian as of a date specified on the plat or shall be referenced to a recognized coordinate system within the county.

(6) All courses shown on the plat shall be calculated from the plat meridian.

(7) No distance on the plat may be marked "more or less" except on lines which begin, terminate, or bind on a marsh, stream, or any body of water.

(8) The plat shall show the position by coordinates of not less than four markers set in convenient places within the subdivision in a manner so that the position of one marker is visible from the position of one other marker. From these markers, commonly called "traverse points", every corner and line can be readily calculated and marked on the ground. These markers shall comply with standards that the State Board for Professional Land Surveyors sets by regulation under § 15-208 of the Business Occupations and Professions Article.

(9) A certificate stating that the requirement of this subsection, as far as it concerns the making of the plat and setting of the markers, shall be put on the plat and signed by the

owner of the land shown on the plat to the best of his knowledge and by the professional land surveyor or property line surveyor preparing it.

(d) Three linen copies of the plat shall be mailed or delivered to the clerk. The fee is $5 for each set of plats, except that a fee is not required for plats or microfilm aperture cards showing property or rights-of-way to be acquired or granted by the State Highway Administration.

(e) Each plat shall be signed and sealed by a professional land surveyor or property line surveyor licensed in the State.

(f)(1) In Worcester County, if an unrecorded plat exists showing a subdivision, from which any lot has been granted, and the owner of the subdivision, or any part of it, proposes to resubdivide it in a manner different from the unrecorded plat, a copy of the unrecorded plat shall be recorded as required by this section and in addition to any other plat required by this section. If no unrecorded plat exists, the owner shall record an affidavit to this fact.

(2) In Worcester County, if a recorded plat exists showing a subdivision, and the owner of the subdivision, or any part of it, proposes to resubdivide it in a manner different from the recorded plat, another plat shall be recorded. This plat shall indicate clearly the lines, designation of blocks and block numbers, lots and lot numbers, streets, alleys, rights-of-way, and all other easements or pertinent data of the original recorded plat, with the proposed resubdivision plat superimposed on it. The proposed resubdivision plat shall indicate clearly the lines, designation of blocks and block numbers, lots and lot numbers, streets, alleys, rights-of-way, and all other easements and pertinent data. This plat shall be recorded in addition to any other plats required by this section.

(3) In Worcester County, if the owner of two or more contiguous tracts of land proposes to combine the tracts and subdivide them, the owner shall have recorded a plat to be known as a perimeter plat as provided in this section and in addition to any other plat required by this paragraph. The perimeter plat shall show clearly the lines of the original tracts, include a title reference to each tract, and have a plat showing the proposed subdivision of the entire tract superimposed on it. If less than the entire tract is subdivided, at any one time, each subsequent subdivision plat likewise shall be superimposed on a perimeter plat which also shall show clearly all prior subdivisions made pursuant to this subsection.

(4) Notwithstanding the provisions of subsections (b), (c), and (d) of this section and in addition to the requirements of paragraphs (1), (2), and (3) of this subsection, if the subdivided lands are, in whole or in part, within the corporate limits of an incorporated municipality, the plat may not be accepted for record by the Clerk of the Circuit Court of Worcester County until it first has been submitted to and approved by the governing

body of the municipality where the land is located, and the approval of the municipality has been indicated plainly on the plat.

(g) In Cecil County, if an unrecorded plat exists showing a subdivision created prior to June 1, 1945, from which any lot has been granted and to which reference has been made in a deed now of record, the owner of the subdivision or any lot, or any interested party may have recorded a copy of the unrecorded plat in a separate plat book to be maintained by the Clerk of the Circuit Court for Cecil County. Reference to the plat is not by itself a "description of the property sufficient to identify it with reasonable certainty" within the meaning of § 4-101. The person presenting the plat for recording shall pay to the Clerk a fee of $1 for each plat so offered. No other provision of this section applies to the recording of any plat in Cecil County.

(h)(1) In Garrett County the size of the sheet (plat) shall be 11 by 17 inches, 18 by 24 inches, or 24 by 36 inches, including a one and one-half inch margin for binding along the left edge. When more than one sheet is required, an index sheet of the same size shall be submitted showing the entire subdivision drawn to scale.

(2) This subsection does not apply to single lot plats suitable for recording in the same manner as other land record instruments.

(i)(1) A plat filed in the land records of Wicomico County shall measure 18 by 24 inches or 24 by 36 inches, including a 1 1/2 inch margin along the left edge. If more than one sheet is required, an index sheet of the same size shall be submitted showing the entire subdivision drawn to scale.

(2) This subsection does not apply to single lot plats suitable for recording in the same manner as other land record instruments, or to plats dated prior to July 1, 1977.

(j)(1) Notwithstanding any other provision of this section, in Caroline County, any interested person may record a copy of a plat if:

(i) It is signed and dated prior to January 1, 1970; and

(ii) The general location of the property can be determined by reference to the plat; and

(iii) The person offering the plat for recording appends a verified statement that it is the original plat, to the best of the offerer's knowledge, information and belief.

(2) The recording of plats under this subsection shall not be construed as the creation or establishment of a subdivision or compliance with any other rules or regulations applicable to subdivisions.

(k)(1) A plat filed in the land records of Dorchester County shall measure 18 by 24 inches or 24 by 36 inches, including a 1 1/2 inch margin along the left edge. If more than one sheet is required, an index sheet of the same size shall be submitted showing the entire subdivision drawn to scale.

(2) This subsection does not apply to single lot plats suitable for recording in the same manner as other land record instruments, or to plats dated prior to July 1, 1987.

(l) In Charles County, a deed conveying a parcel of land containing more than 20 acres of unimproved land is not required to be accompanied by a survey plat.

(m) In Calvert County, the Clerk of Court may not accept and record a plat that creates a new lot or that combines two or more subdivision lots to create one or more new lots unless the County Treasurer has certified on the plat that all taxes, assessments, and charges against the existing lots have been paid.

(n) This section does not apply in Allegany, Harford, Montgomery, Prince George's, and Talbot counties, except to the extent any of these counties is expressly mentioned in this section.
MD Code, Real Property, § 3-108.1

West's Annotated Code of Maryland Currentness
Real Property

Title 3. Recordation (Refs & Annos)

Subtitle 1. General Rules and Exceptions

§ 3-108.1. Queen Anne's County; recording plats

(a)(1) In this section the following words have the meanings indicated.

(2) "Appendix plat" means a plat of a single lot or parcel of land that:

(i) Is produced on a single page not larger than 8.5 inches by 14 inches;

(ii) Is presented for recordation as part of a deed or other instrument; and

(iii) Does not require subdivision approval.

(3)(i) "Plat" includes any diagram that purports to represent the boundaries of any land.

(ii) "Plat" does not include a plat or microfilm aperture card that:

1. Meets archival standards for permanent records; and

2. Depicts property or rights-of-way to be acquired or granted by the State Highway Administration.

(4) "Subdivision approval" means approval required under subdivision regulations adopted in Queen Anne's County in accordance with Article 66B of the Code.

(b) The provisions of this section apply only in Queen Anne's County.

(c) The Clerk of the Circuit Court for Queen Anne's County may not accept for record any plat that does not comply with the provisions of this section.

(d)(1) The provisions of this subsection do not apply to appendix plats.

(2) A person who is recording a plat shall deliver a set of 3 copies of each page of the plat at the time of recordation.

(3) Each copy of a page of a plat shall conform to all of the provisions of this section.

(4) The fee for recording each set of plats is $25.

(5) In accordance with the provisions of § 3-304 of this title, the Clerk of the Circuit Court of Queen Anne's County shall maintain and distribute any plat that the Clerk records.

(e)(1) Except for the provisions relating to legibility and scale, the provisions of this subsection do not apply to appendix plats.

(2) Each page of a plat shall:

(i) Be legible;

(ii) Be drawn to a stated scale;

(iii) Be 18 inches by 24 inches in size, including a one and one-half inch unused margin for binding along the left edge of the page; and

(iv) Be prepared in black ink on transparent mylar or by another process comparable to original quality that conforms to the archival standards established by the Maryland Hall of Records.

(3) A plat consisting of more than 1 page shall include an index page that includes and delineates each area shown on all other pages.

(f) A person who is recording a plat shall submit, along with the plat, a written certificate that is signed by:

(1) A person authorized to certify subdivision approval under regulations concerning subdivisions adopted by the county or a municipal corporation under Article 66B of the Code, and which states that:

(i) Subdivision approval has been given; or

(ii) Subdivision approval is not required; or

(2) Each owner of the property, and which states that the plat does not require subdivision approval.

(g) A certificate under subsection (f) of this section shall:

(1) Be in writing; and

(2) Contain the actual signature of the person who makes the certificate.

(h) A person who willfully executes or presents for recordation a plat that contains a certificate required by subsection (f) of this section and that is false is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $500 or imprisonment not exceeding 6 months or both.

MD Code, Real Property, § 3-109

West's Annotated Code of Maryland Currentness
Real Property

Title 3. Recordation (Refs & Annos)

Subtitle 1. General Rules and Exceptions

§ 3-109. Plats of State Highway Administration

MD Code, Real Property, § 3-110

West's Annotated Code of Maryland Currentness
Real Property

Title 3. Recordation (Refs & Annos)

Subtitle 1. General Rules and Exceptions

§ 3-110. Recordation by mail

(a) The clerk of the court of any county may not refuse to accept for recording any deed or other recordable instrument delivered by mail, or not in person, if the deed or other recordable instrument:

(1) Meets all the requisites for recording;

(2) Is accompanied by correct fees and taxes; and

(3) Is accompanied by a letter from an attorney or party to the instrument requesting or directing its recordation.

(b) This section does not require a clerk to perform any function which he normally would not have to perform if an instrument is delivered in person.

Plats showing property or rights-of-way acquired or conveyed by the State Roads Commission and the State Highway Administration shall be filed with the State Archives and electronically recorded, as provided in § 9-1011 of the State Government Article.

MD Code, Real Property, § 3-201

West's Annotated Code of Maryland Currentness
Real Property

Title 3. Recordation (Refs & Annos)

Subtitle 2. Priorities Based on Recording

§ 3-201. Deed's effective date

The effective date of a deed is the date of delivery, and the date of delivery is presumed to be the date of the last acknowledgment, if any, or the date stated on the deed,

whichever is later. Every deed, when recorded, takes effect from its effective date as against the grantor, his personal representatives, every purchaser with notice of the deed, and every creditor of the grantor with or without notice.
MD Code, Real Property, § 3-202

West's Annotated Code of Maryland Currentness
Real Property

Title 3. Recordation (Refs & Annos)

Subtitle 2. Priorities Based on Recording

§ 3-202. Unrecorded deed; who has possession

If a grantee under an unrecorded deed is in possession of the land and his possession is inconsistent with the record title, his possession constitutes constructive notice of what an inquiry of the possessor would disclose as to the existence of the unrecorded deed.
MD Code, Real Property, § 3-203

West's Annotated Code of Maryland Currentness
Real Property

Title 3. Recordation (Refs & Annos)

Subtitle 2. Priorities Based on Recording

§ 3-203. Effect of subsequent deed

Every recorded deed or other instrument takes effect from its effective date as against the grantee of any deed executed and delivered subsequent to the effective date, unless the grantee of the subsequent deed has:

(1) Accepted delivery of the deed or other instrument:

(i) In good faith;

(ii) Without constructive notice under § 3-202; and

(iii) For a good and valuable consideration; and

(2) Recorded the deed first.

MD Code, Real Property, § 3-204

West's Annotated Code of Maryland Currentness
Real Property

Title 3. Recordation (Refs & Annos)

Subtitle 2. Priorities Based on Recording

§ 3-204. Rents or profits; interest created

An interest created by a deed granting, assigning, or otherwise transferring an interest in rents or profits arising from property is perfected upon recordation as provided in this title:

(1) Regardless of whether, by its terms or otherwise, the grant, assignment, or transfer is operative immediately, or upon the occurrence of a specific event, or under any other circumstances; and

(2) Without the grantee, assignee, or transferee having to make any affirmative demand or take any further affirmative action.

MD Code, Real Property, § 3-301

West's Annotated Code of Maryland Currentness
Real Property

Title 3. Recordation (Refs & Annos)

Subtitle 3. Record Books and Indexes

§ 3-301. Maintenance of record books

(a) If the person offering a deed or other instrument affecting property for record first pays the recording fees, the clerk of the circuit court of each county shall record every deed and other instrument affecting property in well-bound books to be named "Land Records", if that is the practice in the county, or on microfilm, if that is the practice. The clerk shall endorse on the deed or other instrument the time he receives the document for recording and the endorsement shall show in the Land Records. Any deed or other instrument affecting property which also affects personal property shall be recorded in the same manner in the Land Records only, and not in the "Financing Records".

(b) If an interested party so requests, the "Financing Records" provided for in § 9-402(9) of the Commercial Law Article shall include a notation that the instrument is recorded among the "Land Records". The instrument also shall be indexed in the general alphabetical index provided in § 3-302 of this subtitle. The notation and indexing have the same effect as if the instrument were recorded in full among the "Financing Records".

(c) The clerk may not refuse to accept any deed or other document entitled to be recorded, solely on the grounds that the deed or document contains a strike-through, interlineation, or other corrections. The clerk may refuse to accept for re-recording, a previously recorded deed or document that has been corrected or altered by a strike-through, interlineation, or similar corrective measures, and that has not been re-executed, initialled, or otherwise ratified in writing by the party or parties affected by the correction.

MD Code, Real Property, § 3-302

West's Annotated Code of Maryland Currentness
Real Property

Title 3. Recordation (Refs & Annos)

Subtitle 3. Record Books and Indexes

§ 3-302. Maintenance of indexes

(a) The clerk of the circuit court of each county shall make and maintain a full and complete general alphabetical index of every deed, and other instrument in a well-bound book in his office. The index shall be both in the name of each grantor, donor, mortgagor, and assignor, and each grantee, donee, mortgagee, or assignee. It shall include the book and page of the recordation of every instrument designating these names. The clerk shall index every deed or other instrument retaining a vendor's lien both as a deed and as a vendor's lien, in the same manner as mortgages are indexed.

(b) In every clerk's office where land records are not recorded in book form, the clerk shall index every assignment of a mortgage, deed of trust, and release or partial releases of a deed of trust, whether in long or short form, in the general alphabetical index, and shall place an entry in the general alphabetical index where the instrument is indexed, on the same horizontal line, indicating the place of record of the original instrument being assigned or released.

(c) The clerk of the circuit court of each county shall date each change or correction made

to information in the general alphabetical index on the horizontal line on which the change or correction was made.

(d) If a court of equity decrees a payment of cost or makes some other decree for payment of money by a plaintiff, the clerk immediately shall enter the plaintiff's name in a separate index, known as the index of plaintiffs. Until the plaintiff's name is indexed, no lien under the decree arises against the property of the plaintiff and no right of execution accrues on the decree.

(e)(1) The clerk shall include in the index each property identifier provided on an intake sheet under § 3-104(g) of this title or, if the space available in the index will not accommodate all of the identifiers, then as many as the space allows, giving priority to identifiers in the order in which they are listed in § 3-104(g)(3)(i) of this title.

(2) The clerk shall rely on the instrument that is accompanied by the intake sheet for indexing of grantor's and grantee's names.

MD Code, Real Property, § 3-303

West's Annotated Code of Maryland Currentness
Real Property

Title 3. Recordation (Refs & Annos)

Subtitle 3. Record Books and Indexes

§ 3-303. State Archivist; copies sent

The clerk shall make a microfilm picture or other copy of every document he records and transmit the microfilm pictures or copies to the State Archivist at the end of each year. When requested by the State Archivist, the clerk also shall make a microfilm picture or copy of the general index.

MD Code, Real Property, § 3-304

West's Annotated Code of Maryland Currentness
Real Property

Title 3. Recordation (Refs & Annos)

Subtitle 3. Record Books and Indexes

§ 3-304. Filing of plats

The clerk shall fasten securely one copy of each plat described under § 3- 108 in a book provided for that purpose or shall record the plat. He promptly shall send one copy of each plat to the supervisor of assessments of the county and one copy, with one half of the filing fee, to the State Archivist, who shall number and file the plat as part of the records of his office and shall notify the clerk of the number given. The Archivist shall mail or deliver, free of cost, to any supervisor of assessments of the State, a copy of the plat on request. Nothing in this section affects any recording fee of the clerk of the court under any local legislation prescribing recording fees for subdivision plats. The clerk and the Archivist shall keep accurate memoranda of the filing fees.

MD Code, Real Property, T. 3, Subt. 4, Refs & Annos

West's Annotated Code of Maryland Currentness
Real Property

Title 3. Recordation

Subtitle 4. Maryland Revised Uniform Federal Lien Registration Act

Alabama	1989, No. 89-948	1-1-1990	Code 1975, §§ 35-11-42 to 35-11-48.
Alaska	1988, c. 161	1-1-1989	AS 40.19.010 to 40.19.050.
Arizona	1990, c. 158	4-30-1990 [FN*]	A.R.S. §§ 33-1031 to 33-1035.
Arkansas	1989, No. 835	3-22-1989	A.C.A. §§ 18-47-201 to 18-47-207.
California	1979, c. 330	1-1-1980	West's Ann.Cal.C.C.P. §§ 2100 to 2107.
Colorado	1988, c. 264	7-1-1988	West's C.R.S.A. §§ 38-25-101 to 38-25-107.
Connecticut	1967, P.A. 456	7-1-1967	C.G.S.A. § 49-32a.
Delaware	70 Del. Laws, c. 504	7-12-1996	25 Del.C. §§ 3101 to 3105.
Florida	1992, c. 92-25	1-1-1993	West's F.S.A. § 713.901.
Idaho	1979, c. 226	3-29-1979	I.C. §§ 45-201 to 45-207.
Illinois	1989, P.A. 86-254	8-15-1989	S.H.A. 770 ILCS 110/1 to 110/7.
Iowa	1989, S.F. 276	4-20-1989 [FN*]	I.C.A. § 331.609.

Kansas	1988, c. 379	4-7-1988	K.S.A. 79-2613 to 79-2619.
Louisiana	1987, No. 348	7-6-1987	LSA-R.S. 52:51 to 52:56.
Maine	1989, c. 502	6-30-1989	33 M.R.S.A. §§ 1901 to 1907.
Maryland	1980, c. 581	7-1-1980 [FN*]	Code, Real Property, §§ 3-401 to 3-405.
Michigan	1983, No. 102	6-30-1983	M.C.L.A. §§ 211.661 to 211.668.
Minnesota	1979, c. 37	1-1-1980	M.S.A. §§ 272.479, 272.481 to 272.488.
Mississippi	1989, c. 515	1-1-1990	Code 1972, §§ 85-8-1 to 85-8-15.
Montana	1983, c. 396		MCA 71-3-201 to 71-3-207.
Nebraska	1988, LB 933	3-23-1988 [FN*]	R.R.S.1943, §§ 52-1001 to 52-1008.
Nevada	1979, c. 381	5-17-1979	N.R.S. 108.825 to 108.837.
New Hampshire ...	1988, c. 116:1	4-18-1988 [FN*]	RSA 454-B:1 to 454-B:10.
New Jersey	1997, c. 412	1-19-1998	N.J.S.A. 46:16-15 to 46:16-19.
New Mexico	1988, c. 44	3-4-1988	NMSA 1978, §§ 48-1-1 to 48-1-7.
New York	1987, c. 840	8-7-1987 [FN*]	McKinney's Lien Law, §§ 240 to 245.
North Carolina ..	1990, c. 1047	8-1-1990	G.S. §§ 44-68.10 to 44-68.17.
North Dakota	1979, c. 386	7-1-1979	NDCC 35-29-01 to 35-29-06.
Oklahoma	1988, c. 132	11-1-1988	68 Okl.St.Ann. §§ 3401 to 3407.
Oregon	1981, c. 852		ORS 87.806 to 87.831.
Pennsylvania	1989, P.L. 608, No. 69	12-7-1989*	74 P.S. §§ 157-1 to 157-8.
South Dakota	1988, c. 355		SDCL 44-7-1 to 44-7-12.
Texas	1989, c. 945	9-1-1989	V.T.C.A. Property Code, §§ 14.001 to 14.007.
Virginia	1988, cc. 113, 388		Code 1950, §§ 55-142.1 to 55-142.9.
Washington	1988, c. 73	7-1-1988	West's RCWA 60.68.005 to 60.68.902.
West Virginia ...	1989, c. 114		Code, 38-10A-1 to 38-10A-5.
Wisconsin	1979, c. 312	5-18-1980	W.S.A. 779.97.
Wyoming	1988, c. 41	7-1-1988	Wyo.Stat.Ann. §§ 29-6-201 to 29-6-208.

FN[FN*] Date of approval.

MD Code, Real Property, § 3-401

West's Annotated Code of Maryland Currentness

Real Property

Title 3. Recordation (Refs & Annos)

Subtitle 4. Maryland Revised Uniform Federal Lien Registration Act (Refs & Annos)

§ 3-401. Notice; place of filing

(a) Notices of liens on real property for obligations payable to the United States, and certificates and notices affecting the liens shall be filed in the office of the clerk of the circuit court of the county in which the real property subject to the liens is situated.

(b) Notices of liens on tangible or intangible personal property for obligations payable to the United States and certificates and notices affecting the liens shall be filed as follows:

(1) If the person against whose interest the lien applies is a corporation or a partnership whose principal executive office is in the State, as these entities are defined in the Internal Revenue Code, in the office of the clerk of the circuit court for the county where the principal executive office is located;

(2) In all other cases in the office of the clerk of the circuit court of the county where the person resides at the time of filing of the notice of lien.

MD Code, Real Property, § 3-402

West's Annotated Code of Maryland Currentness
Real Property

Title 3. Recordation (Refs & Annos)

Subtitle 4. Maryland Revised Uniform Federal Lien Registration Act (Refs & Annos)

§ 3-402. Recording federal liens; required certification

Certification of notice of liens, certificates, or other notices affecting federal liens by the Secretary of the Treasury of the United States, his delegate, or by any official or entity of the United States responsible for filing or certifying of notice of any other lien, entitles them to be filed and no other attestation, certification, or acknowledgement is necessary.

MD Code, Real Property, § 3-403

West's Annotated Code of Maryland Currentness
Real Property

Title 3. Recordation (Refs & Annos)

Subtitle 4. Maryland Revised Uniform Federal Lien Registration Act (Refs & Annos)

§ 3-403. Federal lien notice

(a) If a notice of federal lien, a refiling of a notice of federal lien, or a notice of revocation of any certificate described in subsection (b) of this section is presented to the filing officer, he shall cause the notice to be marked, indexed, and recorded in an alphabetical federal lien index, showing on one line the name and residence of the person named in the notice, the U.S. government serial number of the notice, the date and hour of filing, and the amount of the lien with the interest, penalties, and costs. He shall file and keep all original notices so filed in numerical order in a file, or files, and designated federal lien notices.

(b) If a certificate of release, nonattachment, discharge, or subordination of any lien is presented to the filing officer for filing he shall enter the same with date of filing in said federal lien index on the line where notice of the lien so affected is entered, and permanently attach the original certificate of release, nonattachment, discharge or subordination to the original notice of lien.

MD Code, Real Property, § 3-404

West's Annotated Code of Maryland Currentness
Real Property

Title 3. Recordation (Refs & Annos)

Subtitle 4. Maryland Revised Uniform Federal Lien Registration Act (Refs & Annos)

§ 3-404. Notice of lien; filing charges

The fee for filing and indexing each notice of lien or certificate or notice affecting the lien is $3. The office shall bill the district directors of internal revenue or other

appropriate federal officials on a monthly basis for fees for documents filed by them.

MD Code, Real Property, § 3-405

West's Annotated Code of Maryland Currentness
Real Property

Title 3. Recordation (Refs & Annos)

Subtitle 4. Maryland Revised Uniform Federal Lien Registration Act (Refs & Annos)

§ 3-405. Construction of preceding sections

Sections 3-401 through 3-405 of this subtitle shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states which enact them, and may be cited as the Maryland Revised Uniform Federal Lien Registration Act.

MD Code, Real Property, § 3-4A-01

West's Annotated Code of Maryland Currentness
Real Property

Title 3. Recordation (Refs & Annos)

Subtitle 4A. Washington Suburban Sanitary Commission--Lien Dockets

§ 3-4A-01. Repealed by Acts 1983, c. 243, eff. July 1, 1983

MD Code, Real Property, § 3-501

West's Annotated Code of Maryland Currentness
Real Property

Title 3. Recordation (Refs & Annos)

Subtitle 5. Miscellaneous Recordation and Indexing Rules

§ 3-501. Montgomery County; recordation system

(a)(1) The Clerk of the Circuit Court for Montgomery County shall:

(i) Assign to each parcel of real property in the county an individual parcel identifier,

numerical or otherwise; and

(ii) Record by parcel identifier in a parcel index any instrument or reference to an instrument presented for recording after June 30, 1981.

(2) Information recorded by parcel identifier in a parcel index shall be the legal record of interests affecting any parcel.

(b)(1)(i) Except as provided by subparagraph (ii) of this paragraph, all interests created after June 30, 1981 that are enforceable against real property, shall be recorded in the land records by serial number (liber or folio, or other number as the Clerk determines) and by parcel identifier.

(ii) The provisions of this subsection do not apply to:

1. Contracts for conveyance of real property;

2. Leases not required to be recorded under § 3-101(c) or (d) of this title;

3. Liens of judgment created by § 11-402 of the Courts and Judicial Proceedings Article, and other actions in law or equity which constitute a claim against or encumbrance upon the property;

4. Liens arising from nonpayment of real property taxes; and

5. Claims of the United States not subjected by federal law to the recording requirements of this State.

(2) An instrument may not be recorded after June 30, 1981 unless it is legible and contains:

(i) The parcel identifier;

(ii) The county tax account number for the parcel, if any, and if it is different from the parcel identifier;

(iii) The record legal description of the boundaries of the parcel;

(iv) The street address of the parcel, if any;

(v) The full name and address of each party to that instrument and the nature of the party's interest; and

(vi) The name of any title insurer insuring the instrument.

(3) An instrument is not rendered invalid by failure to comply with the requirements

of this section.

MD Code, Real Property, § 3-502

West's Annotated Code of Maryland Currentness
Real Property

Title 3. Recordation (Refs & Annos)

Subtitle 5. Miscellaneous Recordation and Indexing Rules

§ 3-502. Repealed by Acts 1994, c. 316, § 1, eff. Oct. 1, 1994

MD Code, Real Property, § 3-601

West's Annotated Code of Maryland Currentness
Real Property

Title 3. Recordation (Refs & Annos)

Subtitle 6. Recording and Other Costs

§ 3-601. Fees for recording

(a)(1) In this subsection, "page" means one side of a leaf not larger than 8 1/2 inches wide by 14 inches long, or any portion of it.

(2) Before recording an instrument among the land or financing records, a clerk shall collect:

(i) $10 for a release 9 pages or less in length;

(ii) $20 for any other instrument 9 pages or less in length;

(iii) Except as provided in item (i) of this paragraph, $20 for an instrument, regardless of length, involving solely a principal residence; and

(iv) $75 for any other instrument 10 pages or more in length.

(3) The recording costs under this subsection shall also apply to instruments required to be recorded in the financing statement records of the State Department of Assessments and Taxation.

(b)(1) A person who submits a written refund claim for recording fees, including any

recording surcharge, that have been overpaid to the clerk of a circuit court, is eligible for a refund of the amount overpaid from the clerk that collected the fees.

(2) A claim for a refund under paragraph (1) of this subsection shall be as required by regulations adopted by the State Court Administrator.

MD Code, Real Property, § 3-602

West's Annotated Code of Maryland Currentness
Real Property

Title 3. Recordation (Refs & Annos)

Subtitle 6. Recording and Other Costs

§ 3-602. Fees for copies

The fee for certification of a copy of any original paper recorded among the land records is $5. A reasonable fee may be charged by the clerk for reproducing a copy of the paper.

MD Code, Real Property, § 3-603

West's Annotated Code of Maryland Currentness
Real Property

Title 3. Recordation (Refs & Annos)

Subtitle 6. Recording and Other Costs

§ 3-603. Fee exemptions; commissions, counties, municipalities

The clerk may not charge any county, any municipality, the Maryland-National Capital Park and Planning Commission, or the Washington Suburban Sanitary Commission any fee provided by this subtitle unless the county, municipality, or respective commission first gives its consent. No charge may be made against the Comptroller for any service performed in connection with the recording and indexing of property liens arising under the Maryland income tax or the Maryland sales and use tax laws.

MD Code, Real Property, § 3-601

West's Annotated Code of Maryland Currentness
Real Property

Title 3. Recordation (Refs & Annos)

Subtitle 6. Recording and Other Costs

§ 3-601. Fees for recording

(a)(1) In this subsection, "page" means one side of a leaf not larger than 8 1/2 inches wide by 14 inches long, or any portion of it.

(2) Before recording an instrument among the land or financing records, a clerk shall collect:

(i) $10 for a release 9 pages or less in length;

(ii) $20 for any other instrument 9 pages or less in length;

(iii) Except as provided in item (i) of this paragraph, $20 for an instrument, regardless of length, involving solely a principal residence; and

(iv) $75 for any other instrument 10 pages or more in length.

(3) The recording costs under this subsection shall also apply to instruments required to be recorded in the financing statement records of the State Department of Assessments and Taxation.

(b)(1) A person who submits a written refund claim for recording fees, including any recording surcharge, that have been overpaid to the clerk of a circuit court, is eligible for a refund of the amount overpaid from the clerk that collected the fees.

(2) A claim for a refund under paragraph (1) of this subsection shall be as required by regulations adopted by the State Court Administrator.
MD Code, Real Property, § 3-602

West's Annotated Code of Maryland Currentness
Real Property

Title 3. Recordation (Refs & Annos)

Subtitle 6. Recording and Other Costs

§ 3-602. Fees for copies

The fee for certification of a copy of any original paper recorded among the land records is $5. A reasonable fee may be charged by the clerk for reproducing a copy of the paper.

MD Code, Real Property, § 3-603

West's Annotated Code of Maryland Currentness
Real Property

Title 3. Recordation (Refs & Annos)

Subtitle 6. Recording and Other Costs

§ 3-603. Fee exemptions; commissions, counties, municipalities

The clerk may not charge any county, any municipality, the Maryland-National Capital Park and Planning Commission, or the Washington Suburban Sanitary Commission any fee provided by this subtitle unless the county, municipality, or respective commission first gives its consent. No charge may be made against the Comptroller for any service performed in connection with the recording and indexing of property liens arising under the Maryland income tax or the Maryland sales and use tax laws.

MD Code, Real Property, § 4-101

West's Annotated Code of Maryland Currentness
Real Property

Title 4. Requisites of Valid Instruments

Subtitle 1. General Rules

§ 4-101. Sufficiency of deeds

(a)(1) Any deed containing the names of the grantor and grantee, a description of the property sufficient to identify it with reasonable certainty, and the interest or estate intended to be granted, is sufficient, if executed, acknowledged, and, where required, recorded.

(2) Any lease is sufficient even though it is not acknowledged if it otherwise complies with paragraph (1) of this subsection.

(b) If a deed is signed by the grantor in accordance with the requirements of Title 5 of this article, the absence of a seal or attestation does not affect the validity of the deed. A

corporate seal is not required for the execution of any deed or other instrument, notwithstanding any provision to the contrary in the corporation's charter, bylaws, or other documents.

MD Code, Real Property, § 4-102

West's Annotated Code of Maryland Currentness
Real Property

Title 4. Requisites of Valid Instruments

Subtitle 1. General Rules

§ 4-102. Effect of deed poll

If a deed contains a covenant by the grantee or a reservation of an incorporeal interest in the property granted by the deed and is signed only by the grantor (deed poll), the acceptance of delivery of the deed by the grantee binds the grantee to the provisions in the deed as effectively as if he had signed the deed as a grantee.
MD Code, Real Property, § 4-103

West's Annotated Code of Maryland Currentness
Real Property

Title 4. Requisites of Valid Instruments

Subtitle 1. General Rules

§ 4-103. Validity of deed presumed

(a) If a deed is executed, acknowledged, and, if required, recorded, the validity of the deed in respect to its execution and delivery by the grantor to the grantee is presumed.

(b) Subsection (a) of this section applies to a lease even though it is not acknowledged.
MD Code, Real Property, § 4-104

West's Annotated Code of Maryland Currentness
Real Property

Title 4. Requisites of Valid Instruments

Subtitle 1. General Rules

§ 4-104. Livery of seisin not required

Neither livery of seisin nor indenting is necessary to the validity of any deed.
MD Code, Real Property, § 4-105

West's Annotated Code of Maryland Currentness
Real Property

Title 4. Requisites of Valid Instruments

Subtitle 1. General Rules

§ 4-105. Words of inheritance not required

No words of inheritance are necessary to create an estate in fee simple or an easement by grant or by reservation. Unless a contrary intention appears by express terms or is necessarily implied, every grant of land passes a fee simple estate, and every grant or reservation of an easement passes or reserves an easement in perpetuity.
MD Code, Real Property, § 4-106

West's Annotated Code of Maryland Currentness
Real Property

Title 4. Requisites of Valid Instruments

Subtitle 1. General Rules

§ 4-106. Mandatory affidavits; consideration and disbursement

(a) No mortgage or deed of trust is valid except as between the parties to it, unless there is contained in, endorsed on, or attached to it an oath or affirmation of the mortgagee or the party secured by a deed of trust that the consideration recited in the mortgage or deed of trust is true and bona fide as set forth.

(b)(1) No purchase-money mortgage or deed of trust involving land, any part of which is located in the State, is valid either as between the parties or as to any third party unless the mortgage or deed of trust contains or has endorsed on, or attached to it at a time prior

to recordation, the oath or affirmation of the party secured by the mortgage or deed of trust stating that the actual sum of money advanced at the closing transaction by the secured party was paid over and disbursed by the party secured by the mortgage or deed of trust to either the borrower or the person responsible for disbursement of funds in the closing transaction or their respective agent at a time no later than the execution and delivery of the mortgage or deed of trust by the borrower. However, this subsection does not apply where a mortgage or deed of trust is given to a vendor in a transaction in order to secure payment to him of all or part of the purchase price of the property. The affidavit required by this subsection is required for only that part of the loan that is purchase money and, if the requirements of this subsection are not satisfied, the mortgage or deed of trust is invalid only to the extent of the part of the loan that is purchase money.

(2) The lender may deliver net proceeds, deducting charges, interests, expenses, or advance escrow and charges due from the borrower, if the following conditions are met:

(i) The charges, interests, expenses, and other deductions listed above have been agreed upon in advance, in writing; and

(ii) The lender provides a schedule of the deductions along with the net proceeds delivered.

(c) Any affidavit required by this section may be made by one of the several mortgagees or parties secured by the deed of trust and has the same effect as if made by all. The affidavit may be made by any trustee named in the deed of trust, by an agent of the trustee, or by an agent of a mortgagee or of a party secured by the deed of trust.

(d) If the affidavit is made by an agent, he shall make affidavit to be contained in, endorsed on, or attached to the mortgage or deed of trust, that he is the agent of the mortgagee or party secured by the deed of trust, or any one of them, or of the trustee. This affidavit is sufficient proof of agency. The president, other officer of a corporation, or the personal representative of the mortgagee or party secured by the deed of trust also may make the affidavits.

(e) This section does not apply to any mortgage or deed of trust where the loan secured is one in which it is lawful to charge any rate of interest under § 12-103(e) of the Commercial Law Article.
MD Code, Real Property, § 4-107

West's Annotated Code of Maryland Currentness
Real Property

Title 4. Requisites of Valid Instruments

Subtitle 1. General Rules

§ 4-107. Execution of power of attorney

(a) Every power of attorney executed by any person authorizing an agent or attorney to sell and grant any property shall be executed in the same manner as a deed and recorded:

(1) Before the day on which the deed executed pursuant to the power of attorney is recorded;

(2) On the same day as the deed executed pursuant to the power of attorney; or

(3) Subject to subsection (b) of this section, after the day on which the deed executed pursuant to the power of attorney is recorded.

(b) A power of attorney may be recorded after the day on which the deed executed pursuant to the power of attorney is recorded, if:

(1) The power of attorney is both dated and acknowledged on or before the effective date of the deed executed pursuant to the power of attorney;

(2) The power of attorney has not been revoked with respect to the period of time up to and including the date of recording of the deed in accordance with the provisions of subsection (c) of this section; and

(3) The deed, or a recorded instrument of writing supplementing the deed contains an affidavit or certification by the agent or attorney in fact named in the power of attorney, stating substantially, that the agent or attorney in fact did not have, at the time of the execution of the deed pursuant to the power of attorney, actual knowledge of the revocation of the power of attorney, by death of the principal or, if applicable, by the subsequent disability or incompetence of the principal.

(c) Any person executing a deed as agent or attorney for another shall describe himself in and sign the deed as agent or attorney. A power of attorney is deemed to be revoked when the instrument containing the revocation is recorded in the office where the deed should be recorded.
MD Code, Real Property, § 4-108

West's Annotated Code of Maryland Currentness
Real Property

Title 4. Requisites of Valid Instruments

Subtitle 1. General Rules

§ 4-108. Elimination of straw deeds

(a) Any interest in property may be granted by one or more persons, as grantors, to themselves alone, or to himself or themselves and any other person, as grantees, in life tenancy, with or without powers, joint tenancy, tenancy in common, or tenancy by the entirety without the use of a straw man as an intermediate grantee-grantor. These grants, regardless of when made, are ratified, confirmed, and declared valid as having created the type of concurrent ownership that the grant purports to grant.

(b) Any interest in property held by a husband and wife in tenancy by the entirety may be granted, (1) by both acting jointly, to themselves, to either of them, individually, or to themselves and any other person, in joint tenancy or tenancy in common; (2) by both acting jointly, to either husband or wife and any other person in joint tenancy or tenancy in common; and (3) by either acting individually to the other in tenancy in severalty, without the use of a straw man as an intermediate grantee-grantor. These grants, regardless of when made, are ratified, confirmed, and declared valid as having created the type of ownership that the grant purports to grant.

MD Code, Real Property, § 4-109

West's Annotated Code of Maryland Currentness
Real Property

Title 4. Requisites of Valid Instruments

Subtitle 1. General Rules

§ 4-109. Grants which are defective

(a) If an instrument was recorded before January 1, 1973, any failure of the instrument to comply with the formal requisites listed in this section has no effect, unless the defect was challenged in a judicial proceeding commenced by July 1, 1973.

(b) If an instrument is recorded on or after January 1, 1973, whether or not the instrument is executed on or after that date, any failure to comply with the formal requisites listed in this section has no effect unless it is challenged in a judicial proceeding commenced within six months after it is recorded.

(c) For the purposes of this section, the failures in the formal requisites of an instrument are:

(1) A defective acknowledgment;

(2) A failure to attach any clerk's certificate;

(3) An omission of a notary seal or other seal;

(4) A lack of or improper acknowledgment or affidavit of consideration, agency, or disbursement; or

(5) An omission of an attestation.

MD Code, Real Property, § 4-110

West's Annotated Code of Maryland Currentness
Real Property

Title 4. Requisites of Valid Instruments

Subtitle 1. General Rules

§ 4-110. Unapproved subdivision; validating deeds

Notwithstanding the provisions of § 5.06 of Article 66B, Annotated Code of Maryland, or of any similar public local law or ordinance, every deed executed or recorded before June 1, 1974, conveying land in a subdivision a plat of which had not been approved by a planning commission is fully valid and effective according to its terms if the deed would have been valid and effective but for the provisions of § 5.06, as enacted by § 1 of Chapter 672, Acts of 1970, or a similar public local law or ordinance.

MD Code, Real Property, § 4-111

West's Annotated Code of Maryland Currentness
Real Property

Title 4. Requisites of Valid Instruments

Subtitle 1. General Rules

§ 4-111. Subordination of interests

(a)(1) In this section the following words have the meanings indicated.

(2) "Lender" means a person holding an interest in or lien on property pursuant to a mortgage or deed of trust.

(3) "Subordination agreement" means an agreement establishing priorities:

(i) Between or among lenders; or

(ii) Between or among a lender and any other person or persons holding an interest in property.

(b) A lender may subordinate its interest under a mortgage or deed of trust to the interest of another lender or to the property interest of a person, through execution of a subordination agreement on behalf of the subordinating lender by:

(1) As to a lender secured by a mortgage, the mortgagee or assignee; or

(2) As to a lender secured by a deed of trust, the trustee or successor trustee or the holder of the note or other obligation secured by the deed of trust.

(c) This section applies to all subordination agreements existing on or after October 1, 1997.

MD Code, Real Property, § 4-201

West's Annotated Code of Maryland Currentness
Real Property

Title 4. Requisites of Valid Instruments

Subtitle 2. Forms

§ 4-201. Sufficiency of forms

Every form contained in this subtitle, or a form to like effect, is sufficient for the purpose intended. Any covenant, limitation, restriction, or provision may be added, annexed to, or introduced with any form.
MD Code, Real Property, § 4-202

West's Annotated Code of Maryland Currentness
Real Property

Title 4. Requisites of Valid Instruments

Subtitle 2. Forms

§ 4-202. Form used for grants

(a) This deed, made this ..... day of ....., in the year ....., by me, (here insert the name of the grantor) witnesseth, that in consideration of, (here insert consideration) I, the said ....., do grant unto (here insert the name of the grantee), all that (here describe the property).

Witness my hand.

(b) This deed, made this ..... day of ....., in the year ....., by me, ..., witnesseth, that in consideration of ..... I, the said ....., do grant unto ....., to hold during his life and no longer.

Witness my hand.

(c) This deed, made this ..... day of ....., in the year ....., by me, ..., witnesseth, that whereas (here insert the consideration for making the deed), I, said ....., do grant unto ....., as trustee, the following property, (here describe the property), in trust for the following purposes (here insert the purposes of the trust, and any covenant that may be agreed upon).

Witness my hand.

(d) This deed, made this ..... day of ....., in the year ....., by me, ..., Sheriff of ..... County, Maryland, witnesseth, that by virtue of an execution issued out of (here insert the style of court), and dated ..... day of ....., in the year ....., in the case of ..... v. ....., I, the said ....., as Sheriff of said county, have sold to ....., the following property, (here describe property). Now, therefore, I, the said ....., do grant unto the said ....., all the right and title of ....., in and to said hereinbefore described property.

Witness my hand.

(e) This deed, made this ..... day of ....., in the year ....., by me, ..., trustee, witnesseth, whereas, by a decree of (here insert style of court), passed on ..... (here insert day of decree), in the case ..... v. ....., I, the said ....., was appointed trustee to sell the land decreed to be sold, and have sold the same to ....., who has fully paid the purchase money therefor. Now, therefore, in consideration of the premises, I, the said ....., do grant unto ..... all the right and title of all the parties to the aforesaid cause, in and to ..... (describe property).

Witness my hand.

(f) This deed, made this ..... day of ....., in the year ....., witnesseth, that we ....., (here insert names of commissioners), commissioners appointed by the Circuit Court for ..... County, to divide the lands of A B, late of ..... County, deceased, in consideration of the sum of ....., have sold, and do hereby grant to C D, all that parcel of land, (here describe the land as described in return of the commissioners).

Witness my hand.

(g) This deed, made this ..... day of ....., in the year ....., witnesseth, that I, ... personal representative of the Last Will of ....., late of ..... County, deceased, in consideration of the sum of ....., have bargained and sold to ....., all that parcel of land (here describe the land).

Witness my hand.

(h) This mortgage, made this ..... day of ..... by me, ..., witnesseth, that in consideration of the sum of ..... dollars, now due from me, the said ....., to ....., I, the said ....., do grant unto the said ....., (here describe the property); provided, that if I, the said ....., shall pay, on or before the ..... day of ....., to the said ....., the sum of ..... dollars, with the interest thereon from ....., then this mortgage shall be void.

Witness my hand.

(i) This lease, made this ..... day of ....., in the year ....., between ..... and ....., witnesseth, that the said ..... do lease unto the said ....., his personal representatives

or assigns (here describe property), for the term of ..... years, beginning on the ..... day of ....., in the year ....., and ending on the ..... day of ....., in the year ....., the said ....., paying therefor the sum of ..... dollars, on the ..... day of ....., in each and every year.

Witness my hand.

MD Code, Real Property, § 4-203

West's Annotated Code of Maryland Currentness
Real Property

Title 4. Requisites of Valid Instruments

Subtitle 2. Forms

§ 4-203. Assignments and releases; form used

(a) "I hereby assign the within mortgage to the assignee, ...

Witness my hand this ..... day of ....."

(b) "I hereby release the above (or within) mortgage (or deed of trust).

Witness my hand this ..... day of ....."

(c) "I hereby certify, under penalties of perjury, that the within (or attached) note(s) are the only original note(s) secured by a deed of trust recorded among the Land Records of ..... in Liber ..... Folio ....., and that I received the said note(s) from (here enter name of holder) after satisfaction of the debt secured thereby.

.....(Affiant)"

(d) "Certificate of Satisfaction

Know All Men By These Presents:

That ..... does hereby acknowledge that the indebtedness secured by a certain deed of trust/mortgage made by ..... and ..... dated ..... and recorded

among the Land Records of ..... County/City, Maryland in Liber ..... No. ....., Folio ..... has been fully paid and discharged, that ..... was, at the time of satisfaction, the holder of the deed of trust note/mortgage, and that the lien of the deed of trust/mortgage is hereby released.

Witness the hands and seals of the holders of the said deed of trust note/mortgage this ..... day of ....., 20.....

In witness whereof, the holder of said deed of trust note/mortgage has caused this instrument to be executed on its behalf by its agent this ..... day of ....., 20....

Attest:

....(Seal)

....(Seal)

State of ....., County of ....., To Wit:

I hereby certify, that on this ..... day of ....., 20....., before me, the subscriber, personally appeared ..... (who acknowledged ....self to be the agent of .....) the holder of the deed of trust note/mortgage referred to above and that ..... executed the aforegoing certificate of satisfaction for the purposes therein contained (by signing the name of ..... as its agent) and that the facts set forth therein are true.

Witness my hand and notarial seal.

.....
Notary Public

My Commission expires: ....."

(e) "Certificate of Partial Satisfaction or Partial Release

Know All Men By These Presents:

That ..... does hereby acknowledge that a certain deed of trust/mortgage made by ..... and ..... dated ..... and recorded among the Land Records of ..... County/City, Maryland in Liber No. ..... Folio ..... has been partially satisfied or partially released by ..... the holder of the deed of trust/mortgage, and that the lien of the deed of trust/mortgage is hereby released as to the following described property.

Description of property released: .....
.....
.....
.....

Reserving, however, the lien of the deed of trust/mortgage on all property described in the deed of trust/mortgage which has not been herein nor heretofore released.

Witness the hands and seals of the holders of the said deed of trust/mortgage or agent or trustee of the holder this ..... day of ..... 20.....

Attest:

....(Seal)
....(Seal)

State of ..... County of ....., to wit:

I hereby certify, that on this ..... day of ....., 20...., before me, the subscriber personally appeared ..... (who acknowledged ..... self to be the agent of .....) the holder of the deed of trust/mortgage referred to above and that ..... executed the aforegoing certificate of partial satisfaction or partial release for the purposes therein contained (by signing the name of ..... as its agent) and that the facts set forth therein are true.

Witness my hand and notarial seal

.....
Notary Public

My Commission expires: ....."

MD Code, Real Property, § 4-204

West's Annotated Code of Maryland Currentness
Real Property

Title 4. Requisites of Valid Instruments

Subtitle 2. Forms

§ 4-204. Form used for acknowledgments

(a) State of Maryland, ... County, to wit: I hereby certify, that on this ....., in the year ...., before the subscriber, (here insert style of the officer taking the acknowledgment), personally appeared (here insert the name of the person making the acknowledgment), and acknowledged the foregoing deed to be his act.

(b) State of ..... County, to wit: I hereby certify, that on this ..... day of ....., in the year ...., before the subscriber, (here insert the official style of the person taking the acknowledgment), personally appeared (here insert the name of the husband), and (here insert name of the married woman making the acknowledgment), his wife, and did each acknowledge the foregoing deed to be their respective act.

(c) State of ..... County, to wit: I hereby certify, that on this ..... day of ....., in the year ...., before the subscriber, (here insert the official style of the officer taking the acknowledgment), personally appeared (here insert the name of the person making the acknowledgment), and acknowledged the foregoing deed to be his act.

Seal of the court

In testimony whereof I have caused the seal of the court to be affixed, (or have affixed my official seal), this ..... day of ....., A.D. .....

MD Code, Real Property, T. 5, Refs & Annos

West's Annotated Code of Maryland Currentness
Real Property

Title 5. Statute of Frauds

MD Code, Real Property, T. 5, Refs & Annos, MD REAL PROP T. 5, Refs & Annos
Current through end of 2006 Regular Session and 2006 First Special Session.
MD Code, Real Property, § 5-101

West's Annotated Code of Maryland Currentness
Real Property

Title 5. Statute of Frauds (Refs & Annos)

§ 5-101. Parol estates; estates at will

Every corporeal estate, leasehold or freehold, or incorporeal interest in land created by parol and not in writing and signed by the party creating it, or his agent lawfully authorized by writing, has the force and effect of an estate or interest at will only, and has no other or greater force or effect, either in law or equity.

MD Code, Real Property, § 5-102

West's Annotated Code of Maryland Currentness
Real Property

Title 5. Statute of Frauds (Refs & Annos)

§ 5-102. Exception to preceding rule

Section 5-101 of this title is not applicable to a leasehold estate not exceeding a term of one year.
MD Code, Real Property, § 5-103

West's Annotated Code of Maryland Currentness
Real Property

Title 5. Statute of Frauds (Refs & Annos)

§ 5-103. Transfer of interest; writing required

No corporeal estate, leasehold or freehold, or incorporeal interest in land may be assigned, granted, or surrendered, unless it is in writing signed by the party assigning, granting, or surrendering it, or his agent lawfully authorized by writing, or by act and operation of law.
MD Code, Real Property, § 5-104

West's Annotated Code of Maryland Currentness
Real Property

Title 5. Statute of Frauds (Refs & Annos)

§ 5-104. Actions on executory contracts

No action may be brought on any contract for the sale or disposition of land or of any interest in or concerning land unless the contract on which the action is brought, or some memorandum or note of it, is in writing and signed by the party to be charged or some other person lawfully authorized by him.
MD Code, Real Property, § 5-105

West's Annotated Code of Maryland Currentness
Real Property

Title 5. Statute of Frauds (Refs & Annos)

§ 5-105. Declarations of trust; writing required

Except as provided in § 5-107 of this title, every declaration of trust, or amendment to it, respecting land shall be manifested and proved by a writing signed by the party who by law is enabled to declare the trust, or by his last will in writing, or else it is void.
MD Code, Real Property, § 5-106

West's Annotated Code of Maryland Currentness
Real Property

Title 5. Statute of Frauds (Refs & Annos)

§ 5-106. Assignment of beneficial interest; requirements

Every assignment of any beneficial interest in a trust, the assets of which wholly or partially consist of land, is void unless the assignment is:

(1) In writing signed by the assignor or his agent lawfully authorized by writing; or

(2) By his last will in writing.

MD Code, Real Property, § 5-107

West's Annotated Code of Maryland Currentness
Real Property

Title 5. Statute of Frauds (Refs & Annos)

§ 5-107. Title inapplicable to trusts

This title is not applicable where any grant is made of any interest in land by which a trust arises or results by implication or construction of law, or where a trust is transferred or extinguished by operation of law.
MD Code, Real Property, § 5-108

West's Annotated Code of Maryland Currentness
Real Property

Title 5. Statute of Frauds (Refs & Annos)

§ 5-108. Additional requirements not repealed

Nothing in this title may be construed as negating any additional requirement of this article for the effective granting of estates or interests in land.
MD Code, Real Property, § 6-101

West's Annotated Code of Maryland Currentness
Real Property

Title 6. Rights of Entry and Possibilities of Reverter

§ 6-101. Thirty-year limitation

(a) This section is effective on July 1, 1969, with respect to (1) inter vivos instruments taking effect on or after that date, (2) wills of persons who die on or after that date, and (3) appointments by inter vivos instruments or wills made on or after that date under powers created before that date.

(b) If the specified contingency of a special limitation creating a possibility of reverter or of a condition subsequent creating a right of entry for condition broken does not occur within 30 years of the effective date of the instrument creating the possibility or condition, the possibility or condition no longer is valid thereafter.
MD Code, Real Property, § 6-102

West's Annotated Code of Maryland Currentness
Real Property

Title 6. Rights of Entry and Possibilities of Reverter

§ 6-102. Other limitation

(a) The provisions of this section apply to all possibilities of reverter and rights of entry on estates of fee simple, existing before July 1, 1969.

(b) A special limitation or a condition subsequent, which restricts a fee-simple estate, and the possibility of reverter or right of entry for condition broken thereby created is not valid, unless within the time specified in subsection (e) of this section, a notice of intention to preserve the possibility of reverter or right of entry is recorded. The extinguishment occurs at the end of the period in which the notice or renewal notice may be recorded and an estate in fee simple determinable or fee simple subject to a condition subsequent then becomes a fee simple absolute. No disability or lack of knowledge of any kind prevents the extinguishment of the interest if no notice of intention to preserve is filed within the time specified in subsection (e).

(c) Any person having a possibility of reverter or right of entry may record among the land records of the county where the land is located a notice of intention to preserve the entire possibility of reverter or right of entry, if duly acknowledged by the person. The notice may be recorded by the person claiming to be the owner of the interest, or by any other person acting on his behalf if the claimant is under a disability, or otherwise unable to assert a claim on his own behalf.

(d)(1) To be effective and to be entitled to be recorded, the notice shall contain an accurate and full description of all land affected by the notice. The description shall be set forth in particular terms and not by general inclusions. However, if the claim is founded on a recorded instrument, then the description in the notice may be the same as that contained in the recorded instrument. The notice also shall contain the name of any record owner of the land at the time the notice is filed and the terms of the special limitation or condition subsequent from which the possibility of reverter or right of entry arises.

(2) Every notice which is duly acknowledged shall be accepted for recording among the land records on payment of the same fees as are charged for the recording of deeds.

(3) The notice shall be indexed as "Notice of Reverter or Right of Entry":

(i) In the grantee indices of deeds under the name of every person on whose behalf the notice is executed and recorded;

(ii) In the grantor indices of deeds under the name of every record owner of the possessory estates in the land to be affected against whom the claim is to be preserved at the time of the filing; and

(iii) In any block or property location index in any county which maintains such an index.

(e)(1) If a possibility of reverter or right of entry was created before July 1, 1899 and initial notice was not recorded before July 1, 1972, the possibility of reverter or right of entry created no longer is valid. If initial notice was recorded before July 1, 1972, then a renewal notice and further renewal notices may be recorded.

(2) If the date when the possibility of reverter or right of entry was created was between July 1, 1899 and June 30, 1969, inclusive, the initial notice shall be recorded not less than 70 years nor more than 73 years after the date of its creation. If it is not so recorded it is no longer valid.

(3) A renewal notice shall be recorded after the expiration of 27 years and before the expiration of 30 years from the date of recording of the initial notice, and shall be effective for a period of 30 years from the recording of the renewal notice. In like manner, further renewal notices shall be recorded after the expiration of 27 years and before the expiration of 30 years from the date of recording of the last preceding renewal notice. If it is not so recorded it is no longer valid.

MD Code, Real Property, § 6-103

West's Annotated Code of Maryland Currentness
Real Property

Title 6. Rights of Entry and Possibilities of Reverter

§ 6-103. Termination of estate; limitations

No person may commence an action for the recovery of land, nor make an entry on it, by reason of a breach of a condition subsequent, or by reason of the termination of an estate of fee-simple determinable, unless the action is commenced or entry is made within seven years after breach of the condition or from the time when the fee-simple determinable estate terminates. If a breach of a condition subsequent or termination of a fee-simple determinable estate occurred prior to July 1, 1969, an action may be commenced for the recovery of the land, or an entry may be made on it, by the owner of a right of entry or possibility of reverter by July 1, 1976. Possession of land after breach of a condition subsequent or after termination of an estate of fee-simple determinable is adverse and hostile from the first breach of a condition subsequent or from the occurrence of the event terminating the fee-simple determinable estate.

MD Code, Real Property, § 6-104

West's Annotated Code of Maryland Currentness

Real Property

Title 6. Rights of Entry and Possibilities of Reverter

§ 6-104. Right to transfer

A possibility of reverter or right of entry for condition broken may be transferred in the same manner as any other interest in property.

MD Code, Real Property, § 6-105

West's Annotated Code of Maryland Currentness
Real Property

Title 6. Rights of Entry and Possibilities of Reverter

§ 6-105. Exception for governmental entities

The provisions of this title do not apply to grants made at any time by the State or its political subdivisions as long as the possibility of reverter or right of entry owned by the State or its political subdivisions is not transferred.

MD Code, Real Property, § 7-101

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 1. Mortgages and Deeds of Trust

§ 7-101. Deed absolute regarded as mortgage

(a) Every deed which by any other writing appears to have been intended only as security for payment of an indebtedness or performance of an obligation, though expressed as an absolute grant is considered a mortgage. The person for whose benefit the deed is made may not have any benefit or advantage from the recording of the deed, unless every other writing operating as a defeasance of it, or explanatory of its being intended to have the effect only of a mortgage, also is recorded in the same records at the same time.

(b) Subsection (a) of this section is not applicable to the grant of a security interest in a mortgage by a mortgagee, or one of several mortgagees, or any assignee of his interest in a mortgage as security for payment of an indebtedness or performance of an obligation. Such a transaction is governed by Title 9 of the Maryland Uniform Commercial Code. [FN1]

(c) Notwithstanding any provision of Title 9 of the Maryland Uniform Commercial Code to the contrary, if a security interest in a mortgage was attached and perfected before July 1, 2001, in accordance with subsection (b) of this section as in effect before July 1, 2001, then the security interest shall continue to be perfected after July 1, 2001, without the need for any additional filing in the land records in the county where the mortgage is recorded, and without the need for any additional filing otherwise required under Title 9 of the Maryland Uniform Commercial Code.

MD Code, Real Property, § 7-102

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 1. Mortgages and Deeds of Trust

§ 7-102. Statement of secured amount required

(a)(1) No mortgage or deed of trust may be a lien or charge on any property for any principal sum of money in excess of the aggregate principal sum appearing on the face of the mortgage or deed of trust and expressed to be secured by it, without regard to whether or when advanced or readvanced.

(2) Paragraph (1) of this subsection does not apply to a mortgage or deed of trust to:

(i) Guarantee the party secured against loss from being an obligee of a third party;

(ii) Indemnify the party secured against loss from being an endorser, guarantor, or surety; or

(iii) Secure a guarantee or indemnity agreement.

(b) If after the date of the mortgage or deed of trust, any sum of money is advanced or readvanced, any endorsement or guaranty is made, or the liability under an indemnity

agreement arises, priority for such sum of money or for any indemnity arising under the endorsement, or guaranty, or indemnity agreement dates from the date of the mortgage or deed of trust as against the rights of intervening purchasers, mortgagees, trustees under deeds of trust, or lien creditors, regardless of whether the advance, readvance, endorsement, or guaranty was obligatory or voluntary under the terms of the mortgage or deed of trust.

MD Code, Real Property, § 7-103

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 1. Mortgages and Deeds of Trust

§ 7-103. Notes; presumption of title

(a) The title to any promissory note, other instrument, or debt secured by a mortgage, both before and after the maturity of the note, other instrument, or debt, conclusively is presumed to be vested in the person holding the record title to the mortgage. If the mortgage is duly released of record, the promissory note, other instrument, or debt secured by the mortgage, both before and after the maturity of the promissory note, other instrument, or debt, conclusively is presumed to be paid as far as any lien on the property granted by the mortgage is concerned.

(b) After an assignment of a mortgage is recorded, any payment made by the original mortgagor to the assignor is effective to reduce or discharge the note or debt, unless the mortgagor has received actual notice of the assignment prior to the payment. This provision also applies to a payment by a transferee of the mortgagor's interest in the mortgaged property except where the assignment of the mortgage is of record at the effective date of the transfer of the mortgagor's interest in the mortgaged property.

MD Code, Real Property, § 7-104

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 1. Mortgages and Deeds of Trust

§ 7-104. Deed of trust; priority

If property is sold and granted, and as part of the same transaction the purchaser gives a mortgage or deed of trust to secure total or partial payment of the purchase money, the mortgage or deed of trust shall be preferred to any previous judgment or decree for the payment of money which is obtained against the purchaser if it recites that the sum received is all or part of the purchase money of the property or otherwise recites that it is a purchase money mortgage or deed of trust. This section is applicable regardless of whether the mortgage or deed of trust is given to the vendor of the property or to a third party who advances all or part of the purchase money.

MD Code, Real Property, § 7-105

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 1. Mortgages and Deeds of Trust

§ 7-105. Sale upon default

(a) A provision may be inserted in a mortgage or deed of trust authorizing any natural person named in the instrument, including the secured party, to sell the property or declaring the borrower's assent to the passing of a decree for the sale of the property, on default in a condition on which the mortgage or deed of trust provides that a sale may be made. A sale made pursuant to this section or to the Maryland Rules, after final ratification by the court and grant of the property to the purchaser on payment of the purchase money, has the same effect as if the sale and grant were made under decree between the proper parties in relation to the mortgage or deed of trust and in the usual course of the court, and operates to pass all the title which the borrower had in the property at the time of the recording of the mortgage or deed of trust.

(a-1)(1) In this subsection, "record owner" means the person holding record title to residential real property as of the date on which an action to foreclose the mortgage or deed of trust is filed.

(2) In addition to any notice required to be given by provisions of the Annotated Code of Maryland or the Maryland Rules, the person authorized to make a sale in an action to foreclose a mortgage or deed of trust shall give written notice of the action to the record owner of the property to be sold.

(3)(i) The written notice shall be sent no later than 2 days after the action to foreclose

is docketed:

1. By certified mail, postage prepaid, return receipt requested, bearing a postmark from the United States Postal Service, to the record owner; and

2. By first-class mail.

(ii) The notice shall state that an action to foreclose the mortgage or deed of trust may be or has been docketed and that a foreclosure sale of the property will be held.

(iii) The notice shall contain the following statement printed in at least 14 point boldface type:

"NOTICE REQUIRED BY MARYLAND LAW

Mortgage foreclosure is a complex process. Some people may approach you about "saving" your home. You should be careful about any such promises.

The State encourages you to become informed about your options in foreclosure before entering into any agreements with anyone in connection with the foreclosure of your home. There are government agencies and nonprofit organizations that you may contact for helpful information about the foreclosure process. For the name and telephone number of an organization near you, please call the Consumer Protection Division of the Office of the Attorney General of Maryland at 1-888-743-0023. The State does not guarantee the advice of these organizations.

Do not delay dealing with the foreclosure because your options may become more limited as time passes.".

(b)(1)(i) In this subsection, "record owner" means the person holding record title to property as of the later of:

1. 30 days before the day on which a foreclosure sale of the property is actually held; and

2. The date on which an action to foreclose the mortgage or deed of trust is filed.

(ii) In addition to any notice required to be given by provisions of the Annotated Code of Maryland or the Maryland Rules, the person authorized to make a sale in an action to foreclose a mortgage or deed of trust shall give written notice of the proposed sale to the record owner of the property to be sold.

(2)(i) The written notice shall be sent:

1. By certified mail, postage prepaid, return receipt requested, bearing a postmark from the United States Postal Service, to the record owner; and

2. By first-class mail.

(ii) The notice shall state the time, place, and terms of the sale and shall be sent not earlier than 30 days and not later than 10 days before the date of sale.

(iii) The person giving the notice shall file in the proceedings:

1. A return receipt; or

2. An affidavit that:

A. The provisions of this paragraph have been complied with; or

B. The address of the record owner is not reasonably ascertainable.

(iv) The person authorized to make a sale in an action to foreclose a mortgage or deed of trust is not required to give notice to a record owner whose address is not reasonably ascertainable.

(3) In the event of postponement of sale, which may be done in the discretion of the trustee, no new or additional notice need be given pursuant to this section.

(4) The right of a record owner to file an action for the failure of the person authorized to make a sale in an action to foreclose a mortgage or deed of trust to comply with the provisions of this subsection shall expire 3 years after the date of the order ratifying the foreclosure sale.

(c)(1) In this subsection, "holder of a subordinate interest" includes any condominium council of unit owners or homeowners association that has filed a request for notice of sale under paragraph (3) of this subsection.

(2) The person authorized to make a sale in an action to foreclose a mortgage or deed of trust shall give written notice of any proposed foreclosure sale to the holder of any subordinate mortgage, deed of trust, or other subordinate interest, including a judgment, in accordance with subsection (b) of this section and the requirements of Maryland Rule 14-206.

(3)(i) The land records office of each county shall maintain a current listing of recorded requests for notice of sale by holders of subordinate mortgages, deeds of trust, or other subordinate interests. The holder of a subordinate mortgage, deed of trust, or other subordinate interest may file a request for notice under this paragraph.

(ii) Each request for notice of sale shall:

1. Be recorded in a separate docket or book which shall be indexed under the name of the holder of the superior mortgage or deed of trust and under the book and page numbers where the superior mortgage or deed of trust is recorded;

2. Identify the property in which the subordinate interest is held;

3. State the name and address of the holder of the subordinate interest; and

4. Identify the superior mortgage or deed of trust by stating:

A. The names of the original parties to the superior mortgage or deed of trust;

B. The date the superior mortgage or deed of trust was recorded; and

C. The office, docket or book, and page where the superior mortgage or deed of trust is recorded.

(iii) 1. Except as provided in sub-subparagraph 2 of this subparagraph, failure of a holder of a subordinate mortgage, deed of trust, or other subordinate interest to record a request for notice under this paragraph does not affect the duty of a holder of a superior interest to provide notice as required under this subsection.

2. A holder of a superior interest does not have a duty to provide notice to a condominium council of unit owners or homeowners association that has not filed a request for notice under this paragraph.

(4) The person giving notice under this subsection shall file in the action:

(i) The return receipt from the notice; or

(ii) An affidavit that:

1. The notice provisions of this subsection have been complied with; or

2. The address of the holder of the subordinate interest is not reasonably ascertainable.

(5) The person authorized to make a sale in an action to foreclose a mortgage or deed of trust is not required to give notice to the holder of a subordinate mortgage, deed of trust, or other subordinate interest if:

(i) The existence of the mortgage, deed of trust, or other subordinate interest is not reasonably ascertainable;

(ii) The identity or address of the holder of the mortgage, deed of trust, or other subordinate interest is not reasonably ascertainable;

(iii) With respect to a recorded or filed subordinate mortgage, deed of trust, or other recorded or filed subordinate interest, the recordation or filing occurred after the later of:

1. 30 days before the day on which the foreclosure sale was actually held; and

2. The date the action to foreclose the mortgage or deed of trust was filed;

(iv) With respect to an unrecorded or unfiled subordinate mortgage, deed of trust, or other unrecorded or unfiled subordinate interest, the subordinate interest was created after the later of:

1. 30 days before the day on which the foreclosure sale was actually held; and

2. The date the action to foreclose the mortgage or deed of trust was filed; or

(v) With respect to a condominium council of unit owners or homeowners association, the condominium council of unit owners or homeowners association has not filed a request for notice under paragraph (3) of this subsection.

(6) The right of a holder of a subordinate mortgage, deed of trust, or other subordinate interest to file an action for the failure of the person authorized to make a sale in an action to foreclose a mortgage or deed of trust to comply with the provisions of this subsection shall expire 3 years after the date of the order ratifying the foreclosure sale.

(d)(1) Absent a provision to the contrary in a mortgage or note secured by a deed of trust, in the enumerated counties, the interest provided in a mortgage or note secured by a deed of trust is payable for the time period provided in paragraph (2) of this subsection or until the audit of the sale is ratified, whichever occurs first.

(2) Under paragraph (1) of this subsection, the time period following sale is:

(i) 60 days in Calvert, Cecil, Frederick, Kent, Queen Anne's, Talbot, Caroline, Charles, and St. Mary's counties; and

(ii) 180 days in Worcester County.

(e) No title to property acquired at sale of property subject to a mortgage or deed of trust is invalid by reason of the fact that the property was purchased by the secured party, his assignee, or representative, or for his account.

(f)(1) Any purchaser at a foreclosure sale of a mortgage or deed of trust has the same rights and remedies against the tenants of the mortgagor or grantor as the mortgagor or grantor had, and the tenants have the same rights and remedies against the purchaser as they would have had against the mortgagor or grantor on the date the mortgage or deed of trust was recorded.

(2) If the required advertisement of sale so discloses, a foreclosure sale shall be made subject to one or more of the tenancies entered into subsequent to the recording of the mortgage or deed of trust or otherwise subordinated thereto. Any lease so continuing is unaffected by the sale, except the purchaser shall become the landlord, as of the date of the sale, on ratification of the sale.

(g)(1) Except as provided in this subsection, unless the mortgage or deed of trust provides otherwise, if any property is encumbered by a mortgage or deed of trust, annual crops planted or cultivated by any debtor or those claiming under him do not pass with the property at any sale under or by virtue of the mortgage or deed of trust, but the crops remain the property of the debtor or those claiming under him.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, after the sale, the debtor or those claiming under him and the purchaser or those claiming under him may agree on a reasonable rental of the part of the property occupied by the crops. This rental is a lien on the crops and continues until paid in favor of the purchaser or those claiming under him, and neither the crops nor any part of them may be removed until after payment. If the parties are unable to agree on the rental, any party in interest may apply to the court having jurisdiction over the sale or the confirmation of it for the appointment of disinterested appraisers to determine the rental, whose award shall be final.

(3) In addition to any other remedy, the purchaser or those claiming under him, on ascertainment of the rent, may distrain for the rent or any part of it remaining due, as in the case of landlord and tenant. No provision of this section is intended to interfere with the right of the purchaser or those claiming under him to have possession of the property, except as to the part occupied by the crop, with necessary ingress or egress.

(h) The entry of an order for resale on default by a purchaser at a sale under this section and Title 14 of the Maryland Rules:

(1) Does not affect the prior ratification of the sale and does not restore to the mortgagor or former record owner any right or remedy that was extinguished by the prior sale and its ratification; and

(2) Extinguishes all interest of the defaulting purchaser in the real property being foreclosed and in the proceeds of the resale.

CREDIT(S)

Acts 1974, c. 12, § 2; Acts 1976, c. 272; Acts 1980, c. 436; Acts 1980, c. 538; Acts 1980, c. 565; Acts 1981, c. 290; Acts 1983, c. 563; Acts 1983, c. 602; Acts 1985, c. 361; Acts 1985, c. 656; Acts 1992, c. 625; Acts 1993, c. 113; Acts 1995, c. 580, § 1, eff. Oct. 1, 1995; Acts 1996, c. 364, § 1, eff. Oct. 1, 1996; Acts 1998, c. 21, § 1, eff. April 14, 1998; Acts 2005, c. 509, § 1, May 26, 2005.

PRIOR COMPILATIONS

Formerly Art. 21, § 7-105.

HISTORICAL AND STATUTORY NOTES

1996 Legislation

Acts 1996, c. 364, § 2, provides:

"That this Act may not be construed to affect the rights of a condominium council of unit owners or a homeowners association that has obtained a recorded lien or is otherwise entitled to notice under any other provision of law."

MD Code, Real Property, § 7-105, MD REAL PROP § 7-105
Current through end of 2006 Regular Session and 2006 First Special Session.

MD Code, Real Property, § 7-106

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 1. Mortgages and Deeds of Trust

§ 7-106. Presumption of release; continuation statements

(a) No trustee of a deed of trust may charge, demand, or receive any money or any other item of value exceeding $15 for the partial or complete release of the deed of trust unless the fee is specified in the instrument. Any person who violates this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $100.

(b)(1) Subject to the provisions of paragraph (5) of this subsection a person who has undertaken responsibility for the disbursement of funds in connection with the grant of title to property, shall mail or deliver to the vendor and purchaser in the transaction, the original or a photographic, photostatic, or similarly reproduced copy of the recorded release of any mortgage or deed of trust which the person was obliged to obtain and record with all or part of the funds to be disbursed. If the original or copy of a recorded release is not readily obtainable at the time of recording, the person may mail or deliver to the purchaser or vendor the original or a copy of the court's recordation receipt for the release, or any other certified court document clearly evidencing the recordation of the release.

(2) The required evidence of a recorded release shall be mailed or delivered to the vendor and purchaser within 30 days from the delivery of the deed granting title to the property. However, if the recording of the release is delayed beyond the 30-day period for causes not attributable to the neglect, omission, or malfeasance of the person responsible for the disbursement of funds, a letter explaining the delay shall be mailed or delivered to the vendor and purchaser within the 30-day period, and the person shall mail or deliver to the vendor and purchaser the required evidence of the recorded release at the earliest opportunity. The person shall follow the procedure of mailing or delivering a letter of explanation every 30 days until the required evidence of a recorded release is mailed or delivered to the purchaser and vendor.

(3) If the person responsible for the disbursement of funds does not comply with the provisions of paragraphs (1) and (2), the vendor, purchaser, or a duly organized bar association of the State may petition a court of equity to order an audit of the accounts maintained by the person for funds received in connection with closing transactions in the State. The petition shall state concisely the facts showing noncompliance and shall be verified. On receipt of the petition, the court shall issue an order to the person to show cause within ten days why the audit should not be conducted. If cause is not shown, the court may order the audit to be conducted. The court may order other relief as it deems appropriate under the circumstances of the case.

(4) Prior to delivery of the deed granting title to the property, the person responsible for the disbursement of funds shall inform the vendor and purchaser in writing of the provisions of this section.

(5) Unless specifically requested to do so by either the purchaser or the vendor, a person responsible for the disbursement of funds in a closing transaction is not required to provide the purchaser or vendor with the required evidence of a recorded release if the person properly disburses all funds entrusted to him in the course of the closing transaction within five days from the date of the delivery of any deed granting title to the property.

(6) The vendor shall bear the cost of reproducing and mailing a recorded release under this section unless the parties otherwise agree.

(c)(1) If a mortgage or deed of trust remains unreleased of record, the mortgagor or grantor or any interested party is entitled to a presumption that it has been paid if:

(i) 12 years have elapsed since the last payment date called for in the instrument or the maturity date as set forth in the instrument or any amendment or modification to the instrument and no continuation statement has been filed;

(ii) The last payment date or maturity date cannot be ascertained from the record, 40 years have elapsed since the date of record of the instrument, and no continuation statement has been filed; or

(iii) One or more continuation statements relating to the instrument have been recorded and 12 years have elapsed since the recordation of the last continuation statement.

(2) Except as otherwise provided by law, if an action has not been brought to enforce the lien of a mortgage or deed of trust within the time provided in paragraph (1) of this subsection and, notwithstanding any other right or remedy available either at law or equity, the lien created by the mortgage or deed of trust shall terminate, no longer be enforceable against the property, and shall be extinguished as a lien against the property.

(3)(i) A continuation statement may be filed within 1 year before the expiration of the applicable time period under paragraph (1) of this subsection.

(ii) A continuation statement shall:

1. Be signed by:

A. The current mortgagee, if the instrument is a mortgage; or

B. The current beneficiary or any one or more of the current trustees if the instrument is a deed of trust;

2. Identify the original instrument by:

A. The office, docket or book, and first page where the instrument is recorded; and

B. The name of the parties to the instrument; and

3. State that the purpose of the continuation statement is to continue the effectiveness of the original instrument.

(iii) Upon timely recordation in the land records where the original instrument was recorded of a continuation statement under this subparagraph, the effectiveness of the original instrument shall be continued for 12 years after the day on which the continuation statement is recorded.

(iv) A continuation statement is effective if it substantially complies with the requirements of subparagraph (ii) of this paragraph.

(d) Any person who has a lien on real property in this State, or the agent of the lienholder, on payment in satisfaction of the lien, on written request, shall furnish to the person responsible for the disbursement of funds in connection with the grant of title to that property the original copy of the executed release of that lien. If the lien instrument is a deed of trust the original promissory note marked "paid" or "cancelled" in accordance with § 3-105(d)(1) of this article constitutes an executed release. If the lien instrument is a mortgage, the original mortgage marked "paid" or "cancelled" in accordance with § 3-105(d)(2) of this article constitutes an executed release. This release shall be mailed or otherwise delivered to the person responsible for the disbursement of funds:

(1) Within seven days of the receipt, by the holder of the lien, of currency, a certified or cashier's check, or money order in satisfaction of the debt, including all amounts due under the lien instruments and under instruments secured by the lien; or

(2) Within seven days after the clearance of normal commercial channels of any type of commercial paper, other than those specified in paragraph (1), received by the holder of the lien in satisfaction of the outstanding debt, including all amounts due under the lien instruments and under the instruments secured by the lien.

(e) If the holder of a lien on real property or his agent fails to provide the release within 30 days, the person responsible for the disbursement of funds in connection with the grant of title to the property, after having made demand therefor, may bring an action to enforce the provisions of this section in the circuit court for the county in which the property is located. In the action the lienholder, or his agent, or both, shall be liable for the delivery of the release and for all costs and expenses in connection with the bringing of the action, including reasonable attorney fees.

CREDIT(S)

Acts 1974, c. 12, § 2; Acts 1975, c. 698; Acts 1976, c. 272; Acts 1979, c. 450; Acts 1984, c. 407; Acts 1984, c. 408; Acts 1984, c. 497; Acts 1987, c. 374; Acts 1988, c. 335; Acts 1989, c. 5, § 1; Acts 1990, c. 6, § 2.

PRIOR COMPILATIONS

Formerly Art. 21, § 7-106.
MD Code, Real Property, § 7-106, MD REAL PROP § 7-106
Current through end of 2006 Regular Session and 2006 First Special Session.

MD Code, Real Property, § 7-107

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 1. Mortgages and Deeds of Trust

§ 7-107. Lender's payment of taxes

(a) In the case of a mortgage or a deed of trust in which the lender assumes responsibility to the borrower to pay the property taxes on the mortgaged property by the collection of taxes through an expense account arrangement, the lender shall pay the taxes within 45 days after (1) the first due date, (2) receipt of the tax bill by the lender, or (3) the funds collected by the lender are sufficient to pay the amount of taxes and interest due, whichever occurs last.

(b) If a lender has sufficient funds available to pay the taxes, has received a copy of the tax bill, and fails to pay at the time as provided in this section, the lender shall pay the difference between the amount of taxes, interest, and penalty due if paid at the time as provided and the amount of taxes, interest, and penalty due at the time that the taxes, interest, and penalty are actually paid by the lender.

MD Code, Real Property, § 7-108

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 1. Mortgages and Deeds of Trust

§ 7-108. Incorporation of declaration by reference

Any person may record among the land records of any county an unexecuted declaration of provisions, covenants, and conditions, and any mortgage or deed of trust thereafter recorded among the land records of the county where the declaration is recorded may incorporate any provision, covenant, or condition of the declaration into the mortgage or deed of trust by specific reference to it and to the liber and folio of the declaration, if the intention to incorporate by reference is shown clearly, and the mortgagor or grantor is

furnished a copy of the declaration when the mortgage or deed of trust is executed.

MD Code, Real Property, § 7-109

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 1. Mortgages and Deeds of Trust

§ 7-109. Disbursement requirement at closing

(a)(1) In this section the following words have the meanings indicated.

(2) "Affiliate" means any association, corporation, business trust, or other similar organization that controls, is controlled by, or is under common control with, a financial institution, as defined in § 1-101 of the Financial Institutions Article.

(3) "Settlement" means the process of executing and delivering to the lender or the agent responsible for settlement, legally binding documents evidencing or securing a loan secured by a deed of trust or mortgage encumbering real property in this State.

(b)(1) In any consumer loan transaction in which the loan is secured by a purchase money mortgage or deed of trust on real property located in this State, on or before the day of settlement, the lender shall disburse the loan proceeds in accordance with the loan documents to the agent responsible for settlement as provided in subsections (c) and (d) of this section.

(2) In any consumer loan transaction in which the loan is secured by a secondary deed of trust or mortgage on real property located in this State, on or before the day of funding the agent responsible for settlement may require the lender to disburse the loan proceeds as provided in paragraph (1) of this subsection.

(c) Except as provided in subsection (d) of this section, the lender shall disburse the loan proceeds in the form of:

(1) Cash;

(2) Wired funds;

(3) A certified check;

(4) A check issued by a political subdivision or on behalf of a governmental entity;

(5) A teller's check issued by a depository institution and drawn on another depository institution; or

(6) A cashier's check.

(d) In addition to the methods of loan disbursement provided in subsection (c) of this section, the loan proceeds may be disbursed in the form of a check drawn on a financial institution insured by the Federal Deposit Insurance Corporation and located in the 5th Federal Reserve District if the lender is:

(1) An affiliate or subsidiary of a financial institution insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration Share Insurance Program; or

(2) A mortgage company approved by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(e) If a loan subject to this section is not disbursed as provided in subsection (c) of this section, the lender may not charge interest on the loan for the first 30 days following the date of closing.

MD Code, Real Property, § 7-110

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 1. Mortgages and Deeds of Trust

§ 7-110. Priority of transferred interests

(a) Notwithstanding any other provision of law, including Title 7 of this article, any grant of a security interest in or assignment of a mortgage to any State or federal government agency or instrumentality, including the Maryland Deposit Insurance Fund Corporation, a federal reserve bank, or a federal home loan bank, by any savings and loan association is fully perfected and takes priority to the extent of the association's interest in the mortgage over all other claims and creditors with respect to any such mortgage in the possession or control of that State or federal government agency or instrumentality.

(b) The State or federal government agency or instrumentality receiving a grant of a security interest in or assignment of a mortgage by a savings and loan association pursuant to subsection (a) of this section shall give prompt notification thereof to the State or federal agency that issued the charter to the association.

MD Code, Real Property, § 7-111

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 1. Mortgages and Deeds of Trust

§ 7-111. Mortgage alterations; effect on priority

(a) Subject to subsection (b) of this section, any change or modification to a mortgage or deed of trust or to an obligation secured by a mortgage or deed of trust does not extinguish the existing lien of the mortgage or deed of trust or otherwise adversely affect the existing lien priority of the mortgage or deed of trust.

(b) If the change or modification to a mortgage or deed of trust or to an obligation secured by a mortgage or deed of trust increases the principal sum secured by the mortgage or deed of trust above the amount appearing on the face of the mortgage or deed of trust and expressed to be secured by it:

(1) The existing lien priority of the original mortgage or deed of trust shall continue as to the principal sum secured by the mortgage or deed of trust immediately preceding the change or modification; and

(2) The lien priority for the increase in the principal sum shall date from the date of the changed or modified mortgage or deed of trust.

CREDIT(S)

Acts 1992, c. 644.
MD Code, Real Property, § 7-111, MD REAL PROP § 7-111
Current through end of 2006 Regular Session and 2006 First Special Session.

MD Code, Real Property, § 7-201

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 2. Vendor's Liens

§ 7-201. Amount due on face

If any property is granted, and the purchase money, or any part of it, remains unpaid at the time of the grant, the vendor may not have a lien or charge on the property for any other sum of money than the sum that appears to be due on the face of the deed. The time set for payment shall be specified and recited in the deed. No provision in this section may be construed to affect any mortgage or deed of trust given by a purchaser to secure the payment of all or any part of the purchase money, or in any way affect or postpone the lien of any landlord on goods or chattels for the satisfaction or security of rent due or accruing.

MD Code, Real Property, § 7-202

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 2. Vendor's Liens

§ 7-202. Power of sale; sale decree

The provisions of § 7-105(a) also are applicable to instruments reserving a valid vendor's lien, to sales pursuant to a reserved vendor's lien, and to sales pursuant to the vendor's authority to sell. A court of equity may decree a sale to enforce a vendor's lien or any other equitable lien although the lienor may have an adequate remedy at law.
MD Code, Real Property, § 7-203

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 2. Vendor's Liens

§ 7-203. Satisfaction of notes

Any deed retaining a valid vendor's lien may provide that in the event of a sale, any note or other instrument of indebtedness mentioned in the deed shall be paid and satisfied in full in the order of maturity. However, if any note or instrument of indebtedness is paid or satisfied, no further proceedings may be had in reference to or satisfaction of it, but the funds arising from the sale shall be distributed as if the note already paid or satisfied had never been given. If the lien is duly released of record after the date of the maturity of the note or other instrument of indebtedness mentioned in the deed, the note or other instrument of indebtedness conclusively is presumed to have been paid as far as any lien on the property granted by the deed is concerned.
MD Code, Real Property, § 7-204

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 2. Vendor's Liens

§ 7-204. Lien assigned or released

An assignment or release of a vendor's lien may be made by the holder of the lien in the same manner prescribed for the short assignment or release of a mortgage. The holder of the lien also may write a release on the record in the office where the deed is recorded or the release may be endorsed on the original deed.

MD Code, Real Property, § 7-205

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 2. Vendor's Liens

§ 7-205. Lien not waived; guarantee accepted

The acceptance by the vendor of any guarantee, endorsement, collateral, or other security to insure the full payment of any vendor's lien, may not be construed as a waiver of the lien. However, the purchaser shall be credited with the proceeds from the sale of any

collateral or other securities.

MD Code, Real Property, T. 7, Subt. 3, Refs & Annos

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 3. Protection of Homeowners in Foreclosure

MD Code, Real Property, § 7-301

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 3. Protection of Homeowners in Foreclosure (Refs & Annos)

Part I. Definitions; General Provisions (Refs & Annos)

§ 7-301. Definitions

(a) In this subtitle the following words have the meanings indicated.

(b) "Foreclosure consultant" means a person who:

(1) Solicits or contacts a homeowner in writing, in person, or through any electronic or telecommunications medium and directly or indirectly makes a representation or offer to perform any service that the person represents will:

(i) Stop, enjoin, delay, void, set aside, annul, stay, or postpone a foreclosure sale;

(ii) Obtain forbearance from any servicer, beneficiary or mortgagee;

(iii) Assist the homeowner to exercise a right of reinstatement provided in the loan documents or to refinance a loan that is in foreclosure and for which notice of foreclosure proceedings has been published;

(iv) Obtain an extension of the period within which the homeowner may reinstate the homeowner's obligation or extend the deadline to object to a ratification;

(v) Obtain a waiver of an acceleration clause contained in any promissory note or

contract secured by a mortgage on a residence in foreclosure or contained in the mortgage;

(vi) Assist the homeowner to obtain a loan or advance of funds;

(vii) Avoid or ameliorate the impairment of the homeowner's credit resulting from the filing of an order to docket or a petition to foreclose or the conduct of a foreclosure sale;

(viii) Save the homeowner's residence from foreclosure;

(ix) Purchase or obtain an option to purchase the homeowner's residence within 20 days of an advertised or docketed foreclosure sale;

(x) Arrange for the homeowner to become a lessee or renter entitled to continue to reside in the homeowner's residence;

(xi) Arrange for the homeowner to have an option to repurchase the homeowner's residence; or

(xii) Engage in any documentation, grant, conveyance, sale, lease, trust, or gift by which the homeowner clogs the homeowner's equity of redemption in the homeowner's residence; or

(2) Systematically contacts owners of property that court records or newspaper advertisements show are in foreclosure or in danger of foreclosure.

(c) "Foreclosure consulting contract" means a written, oral, or equitable agreement between a foreclosure consultant and a homeowner for the provision of any foreclosure consulting service or foreclosure reconveyance.

(d) "Foreclosure consulting service" includes:

(1) Receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a lien on a residence in foreclosure;

(2) Contacting creditors on behalf of a homeowner;

(3) Arranging or attempting to arrange for an extension of the period within which a homeowner may cure the homeowner's default and reinstate the homeowner's obligation;

(4) Arranging or attempting to arrange for any delay or postponement of the sale of a residence in foreclosure;

(5) Arranging or facilitating the purchase of a homeowner's equity of redemption or legal or equitable title within 20 days of an advertised or docketed foreclosure sale;

(6) Arranging or facilitating any transaction through which a homeowner will become a lessee, optionee, life tenant, partial homeowner, or vested or contingent remainderman of the homeowner's residence;

(7) Arranging or facilitating the sale of a homeowner's residence or the transfer of legal title, in any form, to another party as an alternative to foreclosure;

(8) Arranging for a homeowner to have an option to repurchase the homeowner's residence after a sale or transfer;

(9) Arranging for or facilitating a homeowner remaining in the homeowner's residence as a tenant, renter, or lessee; or

(10) Arranging or facilitating any other grant, conveyance, sale, lease, trust, or gift by which a homeowner clogs the homeowner's equity of redemption in the homeowner's residence.

(e) "Foreclosure purchaser" means a person who acquires title or possession of a deed or other document to a residence in foreclosure as a result of a foreclosure reconveyance.

(f) "Foreclosure reconveyance" means a transaction involving:

(1) The transfer of title to real property by a homeowner during or incident to a proposed foreclosure proceeding, either by transfer of interest from the homeowner to another party or by creation of a mortgage, trust, or other lien or encumbrance during the foreclosure process that allows the acquirer to obtain legal or equitable title to all or part of the property; and

(2) The subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the homeowner by the acquirer or a person acting in participation with the acquirer that allows the homeowner to possess the real property following the completion of the foreclosure proceeding, including an interest in a contract for deed, purchase agreement, land installment sale, contract for sale, option to purchase, lease, trust, or other contractual arrangement.

(g) "Foreclosure surplus acquisition" means a transaction involving the transfer, sale, or assignment of the surplus remaining and due the homeowner based on the audit account during a foreclosure proceeding.

(h)(1) "Foreclosure surplus purchaser" means a person who acts as the acquirer by

assignment, purchase, grant, or conveyance of the surplus resulting from a foreclosure sale.

(2) "Foreclosure surplus purchaser" includes a person who acts in joint venture or joint enterprise with one or more acquirers.

(i) "Homeowner" means the record owner of a residence in foreclosure, or an individual occupying the residence under a use and possession order issued under Title 8, Subtitle 2 of the Family Law Article, at the time an order to docket or a petition to foreclose is filed.

(j) "Residence in foreclosure" means residential real property consisting of not more than four single family dwelling units, one of which is occupied by the owner, or the owner's spouse or former spouse under a use and possession order issued under Title 8, Subtitle 2 of the Family Law Article, as the individual's principal place of residence, and against which an order to docket or a petition to foreclose has been filed.

MD Code, Real Property, § 7-302

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 3. Protection of Homeowners in Foreclosure (Refs & Annos)

Part I. Definitions; General Provisions (Refs & Annos)

§ 7-302. Scope of subtitle

(a) Except as provided in subsection (b) of this section, this subtitle does not apply to:

(1) An individual admitted to practice law in the State, while performing any activity related to the individual's regular practice of law in the State;

(2) A person who holds or is owed an obligation secured by a lien on any residence in foreclosure while the person performs services in connection with the obligation or lien, if the obligation or lien did not arise as a result of a foreclosure reconveyance;

(3)(i) A person doing business under any law of this State or the United States regulating banks, trust companies, savings and loan associations, credit unions, or insurance companies, while the person performs services as a part of the person's normal business activities; and

(ii) Any subsidiary, affiliate, or agent of a person described in item (i) of this item, while the subsidiary, affiliate, or agent performs services as a part of the subsidiary's, affiliate's, or agent's normal business activities;

(4) A judgment creditor of the homeowner, if the judgment creditor's claim accrued before the written notice of foreclosure sale required under § 7- 105(b) of this title is sent;

(5) A title insurer authorized to conduct business in the State, while performing title insurance and settlement services;

(6) A title insurance producer licensed in the State, while performing services in accordance with the person's license;

(7) A person licensed as a mortgage broker or mortgage lender under Title 11, Subtitle 5 of the Financial Institutions Article while acting under the authority of that license;

(8) A person licensed as a real estate broker, associate real estate broker, or real estate salesperson under Title 17 of the Business Occupations and Professions Article, while the person engages in any activity for which the person is licensed under those provisions so long as any conveyance or transfer of deed, title, or establishment of equitable interest is done through a settlement as defined in § 7-311(a)(5) of this subtitle; or

(9) A nonprofit organization that solely offers counseling or advice to homeowners in foreclosure or loan default, if the organization is not directly or indirectly related to and does not contract for services with for- profit lenders or foreclosure purchasers.

(b) This subtitle does apply to an individual who:

(1) Is functioning in a position listed under subsection (a) of this section; and

(2) Is engaging in activities or providing services designed or intended to transfer title to a residence in foreclosure directly or indirectly to that individual, or an agent or affiliate of that individual.

MD Code, Real Property, § 7-303

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 3. Protection of Homeowners in Foreclosure (Refs & Annos)

Part I. Definitions; General Provisions (Refs & Annos)

§ 7-303. Reserved

MD Code, Real Property, § 7-304

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 3. Protection of Homeowners in Foreclosure (Refs & Annos)

Part I. Definitions; General Provisions (Refs & Annos)

§ 7-304. Reserved

MD Code, Real Property, § 7-304, MD REAL PROP § 7-304
Current through end of 2006 Regular Session and 2006 First Special Session.

MD Code, Real Property, T. 7, Subt. 3, Pt. II, Refs & Annos

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 3. Protection of Homeowners in Foreclosure

Part II. Foreclosure Consultants

HISTORICAL AND STATUTORY NOTES

2005 Legislation

Acts 2005, c. 509, § 1, added Part II, Foreclosure Consultants.

MD Code, Real Property, T. 7, Subt. 3, Pt. II, Refs & Annos, MD REAL PROP T. 7, Subt. 3, Pt. II, Refs & Annos
Current through end of 2006 Regular Session and 2006 First Special Session.

MD Code, Real Property, T. 7, Subt. 3, Pt. II, Refs & Annos

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 3. Protection of Homeowners in Foreclosure

Part II. Foreclosure Consultants

HISTORICAL AND STATUTORY NOTES

2005 Legislation

Acts 2005, c. 509, § 1, added Part II, Foreclosure Consultants.

MD Code, Real Property, T. 7, Subt. 3, Pt. II, Refs & Annos, MD REAL PROP T. 7, Subt. 3, Pt. II, Refs & Annos
Current through end of 2006 Regular Session and 2006 First Special Session.

MD Code, Real Property, § 7-305

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 3. Protection of Homeowners in Foreclosure (Refs & Annos)

Part II. Foreclosure Consultants (Refs & Annos)

➡§ 7-305. Right of rescission

(a) In addition to any other right under law to cancel or rescind a contract, a homeowner has the right to:

(1) Rescind a foreclosure consulting contract at any time; and

(2) Rescind a foreclosure reconveyance at any time before midnight of the 3rd business day after any conveyance or transfer in any manner of legal or equitable title to a residence in foreclosure.

(b) Rescission occurs when the homeowner gives written notice of rescission to the foreclosure consultant at the address specified in the contract or through any facsimile or electronic mail address identified in the contract or other materials provided to the homeowner by the foreclosure consultant.

(c) Notice of rescission, if given by mail, is effective when deposited in the United States mail, properly addressed, with postage prepaid.

(d) Notice of rescission need not be in the form provided with the contract and is effective, however expressed, if it indicates the intention of the homeowner to rescind the foreclosure consulting contract or foreclosure reconveyance.

(e) As part of the rescission of a foreclosure consulting contract or foreclosure reconveyance, the homeowner shall repay, within 60 days from the date of rescission, any funds paid or advanced by the foreclosure consultant or anyone working with the foreclosure consultant under the terms of the foreclosure consulting contract or foreclosure reconveyance, together with interest calculated at the rate of 8% a year.

(f) The right to rescind may not be conditioned on the repayment of any funds.

MD Code, Real Property, § 7-306

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 3. Protection of Homeowners in Foreclosure (Refs & Annos)

Part II. Foreclosure Consultants (Refs & Annos)

§ 7-306. Disclosures

(a) A foreclosure consulting contract shall:

(1) Be provided to the homeowner for review before signing;

(2) Be printed in at least 12 point type and written in the same language that is used by the homeowner and was used in discussions with the foreclosure consultant to

describe the consultant's services or to negotiate the contract;

(3) Fully disclose the exact nature of the foreclosure consulting services to be provided, including any foreclosure reconveyance that may be involved, and the total amount and terms of any compensation to be received by the foreclosure consultant or anyone working in association with the consultant;

(4) Be dated and personally signed by the homeowner and the foreclosure consultant and be witnessed and acknowledged by a notary public appointed and commissioned by the State; and

(5) Contain the following notice, which shall be printed in at least 14 point boldface type, completed with the name of the foreclosure consultant, and located in immediate proximity to the space reserved for the homeowner's signature:

"NOTICE REQUIRED BY MARYLAND LAW

..... (Name) or anyone working for him or her CANNOT ask you to sign or have you sign any lien, mortgage, or deed as part of signing this agreement unless the terms of the transfer are specified in this document and you are given a separate explanation of the precise nature of the transaction.

..... (Name) or anyone working for him or her CANNOT guarantee you that they will be able to refinance your home or arrange for you to keep your home. Continue making mortgage payments until a refinancing, if applicable, is approved.

If a transfer of the deed or title to your property is involved in any way, you may rescind the transfer any time within 3 days after the date you sign the deed or other document of sale or transfer. See the attached Notice of Rescission form for an explanation of this right. As part of any rescission, you must repay, within 60 days, any money spent on your behalf as a result of this agreement, along with interest calculated at the rate of 8% a year.

THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF YOUR HOME. CONTACT AN ATTORNEY BEFORE SIGNING.".

(b) The contract shall contain on the first page, in at least 12 point type size:

(1) The name and address of the foreclosure consultant to which the notice of cancellation is to be mailed; and

(2) The date the homeowner signed the contract.

(c)(1) The contract shall be accompanied by a completed form in duplicate, captioned "NOTICE OF RESCISSION".

(2) The Notice of Rescission shall:

(i) Be on a separate sheet of paper attached to the contract;

(ii) Be easily detachable; and

(iii) Contain the following statement printed in at least 15 point type:

"NOTICE OF RESCISSION

(Date of Contract)

You may cancel or rescind this contract, without any penalty, at any time.

If you want to end this contract, mail or deliver a signed and dated copy of this Notice of Rescission, or any other written notice indicating your intent to rescind to (name of foreclosure consultant) at (address of foreclosure consultant, including facsimile and electronic mail).

As part of any rescission, you (the homeowner) must repay any money spent on your behalf as a result of this agreement, within 60 days, along with interest calculated at the rate of 8% a year.

THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF YOUR HOME. CONTACT AN ATTORNEY BEFORE SIGNING.

NOTICE OF RESCISSION

TO: (name of foreclosure consultant)

(address of foreclosure consultant, including facsimile and electronic mail)

I hereby rescind this contract.

..... (Date)

..... (Homeowner's signature)".

(d) The foreclosure consultant shall provide the homeowner with a signed and dated copy of the contract and the attached Notice of Rescission immediately upon execution of the contract.

(e) The time during which the homeowner may rescind the contract does not begin to run until the foreclosure consultant has complied with this section.

(f) Any provision in a foreclosure consulting contract that attempts or purports to waive any of the rights specified in this title, consent to jurisdiction for litigation or choice of law in a state other than Maryland, consent to venue in a county other than the county in which the property is located, or impose any costs or filing fees greater than the fees required to file an action in a circuit court, is void.

MD Code, Real Property, § 7-306

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 3. Protection of Homeowners in Foreclosure (Refs & Annos)

Part II. Foreclosure Consultants (Refs & Annos)

§ 7-306. Disclosures

(a) A foreclosure consulting contract shall:

(1) Be provided to the homeowner for review before signing;

(2) Be printed in at least 12 point type and written in the same language that is used by the homeowner and was used in discussions with the foreclosure consultant to describe the consultant's services or to negotiate the contract;

(3) Fully disclose the exact nature of the foreclosure consulting services to be provided, including any foreclosure reconveyance that may be involved, and the total amount and terms of any compensation to be received by the foreclosure consultant or anyone working in association with the consultant;

(4) Be dated and personally signed by the homeowner and the foreclosure consultant and be witnessed and acknowledged by a notary public appointed and commissioned by the State; and

(5) Contain the following notice, which shall be printed in at least 14 point boldface type, completed with the name of the foreclosure consultant, and located in immediate proximity to the space reserved for the homeowner's signature:

"NOTICE REQUIRED BY MARYLAND LAW

..... (Name) or anyone working for him or her CANNOT ask you to sign or have you sign any lien, mortgage, or deed as part of signing this agreement unless the terms of the transfer are specified in this document and you are given a separate explanation of the precise nature of the transaction.

..... (Name) or anyone working for him or her CANNOT guarantee you that they will be able to refinance your home or arrange for you to keep your home. Continue making mortgage payments until a refinancing, if applicable, is approved.

If a transfer of the deed or title to your property is involved in any way, you may rescind the transfer any time within 3 days after the date you sign the deed or other document of sale or transfer. See the attached Notice of Rescission form for an explanation of this right. As part of any rescission, you must repay, within 60 days, any money spent on your behalf as a result of this agreement, along with interest calculated at the rate of 8% a year.

THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF YOUR HOME. CONTACT AN ATTORNEY BEFORE SIGNING.".

(b) The contract shall contain on the first page, in at least 12 point type size:

(1) The name and address of the foreclosure consultant to which the notice of cancellation is to be mailed; and

(2) The date the homeowner signed the contract.

(c)(1) The contract shall be accompanied by a completed form in duplicate, captioned "NOTICE OF RESCISSION".

(2) The Notice of Rescission shall:

(i) Be on a separate sheet of paper attached to the contract;

(ii) Be easily detachable; and

(iii) Contain the following statement printed in at least 15 point type:

"NOTICE OF RESCISSION

(Date of Contract)

You may cancel or rescind this contract, without any penalty, at any time.

If you want to end this contract, mail or deliver a signed and dated copy of this Notice of Rescission, or any other written notice indicating your intent to rescind to (name of foreclosure consultant) at (address of foreclosure consultant, including facsimile and electronic mail).

As part of any rescission, you (the homeowner) must repay any money spent on your behalf as a result of this agreement, within 60 days, along with interest calculated at the rate of 8% a year.

THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF YOUR HOME. CONTACT AN ATTORNEY BEFORE SIGNING.

NOTICE OF RESCISSION

TO: (name of foreclosure consultant)

(address of foreclosure consultant, including facsimile and electronic mail)

I hereby rescind this contract.

..... (Date)

..... (Homeowner's signature)".

(d) The foreclosure consultant shall provide the homeowner with a signed and dated copy of the contract and the attached Notice of Rescission immediately upon execution of the contract.

(e) The time during which the homeowner may rescind the contract does not begin to run until the foreclosure consultant has complied with this section.

(f) Any provision in a foreclosure consulting contract that attempts or purports to waive any of the rights specified in this title, consent to jurisdiction for litigation or choice of law in a state other than Maryland, consent to venue in a county other than the county in which the property is located, or impose any costs or filing fees greater than the fees required to file an action in a circuit court, is void.

CREDIT(S)

Added by Acts 2005, c. 509, § 1, eff. May 26, 2005.
MD Code, Real Property, § 7-306, MD REAL PROP § 7-306
Current through end of 2006 Regular Session and 2006 First Special Session.
MD Code, Real Property, § 7-307

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 3. Protection of Homeowners in Foreclosure (Refs & Annos)

Part II. Foreclosure Consultants (Refs & Annos)

§ 7-307. Prohibited actions

A foreclosure consultant may not:

(1) Claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure

consultant contracted to perform or represented that the foreclosure consultant would perform;

(2) Claim, demand, charge, collect, or receive any interest or any other compensation for any loan that the foreclosure consultant makes to the homeowner that exceeds 8% a year;

(3) Take any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation;

(4) Receive any consideration from any third party in connection with foreclosure consulting services provided to a homeowner unless the consideration is first fully disclosed in writing to the homeowner;

(5) Acquire any interest, directly or indirectly, or by means of a subsidiary, affiliate, or corporation in which the foreclosure consultant or a member of the foreclosure consultant's immediate family is a primary stockholder, in a residence in foreclosure from a homeowner with whom the foreclosure consultant has contracted;

(6) Take any power of attorney from a homeowner for any purpose, except to inspect documents as provided by law; or

(7) Induce or attempt to induce any homeowner to enter into a foreclosure consulting contract that does not comply in all respects with this subtitle.

CREDIT(S)

Added by Acts 2005, c. 509, § 1, eff. May 26, 2005.

MD Code, Real Property, § 7-307, MD REAL PROP § 7-307
Current through end of 2006 Regular Session and 2006 First Special Session.

MD Code, Real Property, § 7-308

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 3. Protection of Homeowners in Foreclosure (Refs & Annos)

Part II. Foreclosure Consultants (Refs & Annos)

➡§ 7-308. Reserved

MD Code, Real Property, § 7-308, MD REAL PROP § 7-308
Current through end of 2006 Regular Session and 2006 First Special Session.

MD Code, Real Property, § 7-309

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 3. Protection of Homeowners in Foreclosure (Refs & Annos)

Part II. Foreclosure Consultants (Refs & Annos)

§ 7-309. Reserved

MD Code, Real Property, § 7-309, MD REAL PROP § 7-309
Current through end of 2006 Regular Session and 2006 First Special Session.

MD Code, Real Property, T. 7, Subt. 3, Pt. III, Refs & Annos

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 3. Protection of Homeowners in Foreclosure

Part III. Foreclosure Purchasers

HISTORICAL AND STATUTORY NOTES

2005 Legislation

Acts 2005, c. 509, § 1, added Part III, Foreclosure Purchasers.

MD Code, Real Property, T. 7, Subt. 3, Pt. III, Refs & Annos, MD REAL PROP T. 7, Subt. 3, Pt. III, Refs & Annos
Current through end of 2006 Regular Session and 2006 First Special Session.

MD Code, Real Property, T. 7, Subt. 3, Pt. III, Refs & Annos

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 3. Protection of Homeowners in Foreclosure

Part III. Foreclosure Purchasers

HISTORICAL AND STATUTORY NOTES

2005 Legislation

Acts 2005, c. 509, § 1, added Part III, Foreclosure Purchasers.

MD Code, Real Property, T. 7, Subt. 3, Pt. III, Refs & Annos, MD REAL PROP T. 7, Subt. 3, Pt. III, Refs & Annos
Current through end of 2006 Regular Session and 2006 First Special Session.

MD Code, Real Property, § 7-310

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 3. Protection of Homeowners in Foreclosure (Refs & Annos)

Part III. Foreclosure Purchasers (Refs & Annos)

➡§ 7-310. Foreclosure reconveyances; notices; right of rescission; prohibited actions

(a) If a foreclosure reconveyance is included in a foreclosure consulting contract or arranged after the execution of a foreclosure consulting contract, the foreclosure purchaser shall provide the homeowner with a document entitled "Notice of Transfer of Deed or Title".

(b) The document entitled "Notice of Transfer of Deed or Title" shall:

(1) Contain the entire agreement of the parties;

(2) Be printed in 12 point type and written in the same language that is used by the homeowner and was used in discussions to describe the foreclosure consultant's or foreclosure purchaser's services or to negotiate the transfer or sale of the property;

(3) Be dated and personally signed by the homeowner and the foreclosure purchaser and witnessed and acknowledged by a notary public appointed and commissioned by the State;

(4) Describe in detail the terms of any foreclosure conveyance including:

(i) The name, business address, telephone number, and facsimile number of the person to whom the deed or title will be transferred;

(ii) The address of the residence in foreclosure;

(iii) The total consideration to be given by the foreclosure purchaser, the foreclosure consultant, and any other party as a result of the transfer;

(iv) The time at which title is to be transferred to the foreclosure purchaser and the terms of any conveyance;

(v) Any financial or legal obligations that the homeowner may remain subject to, including a description of any mortgages, liens, or other obligations that will remain in place;

(vi) A description of any services of any nature that the foreclosure purchaser will perform for the homeowner before or after the sale or transfer;

(vii) A complete description of the terms of any related agreement designed to allow the homeowner to remain in the home, including the terms of any rental agreement, repurchase agreement, contract for deed, land installment contract, or option to buy, and any provisions for eviction or removal of the homeowner in the case of late payment; and

(viii) How any repurchase price or fee associated with any transfer of title or deed back to the homeowner will be calculated.

(5) Contain the following statement printed in at least 14 point boldface type and located in immediate proximity to the space reserved for the homeowner's signature:

"If you change your mind about transferring ownership of your property, you, the

homeowner, may rescind the transfer of the deed or title to your property any time within the next 3 days. As part of any rescission, you must repay, within 60 days, any money spent on your behalf as a result of this agreement, along with interest calculated at the rate of 8% a year.

THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF YOUR HOME. CONTACT AN ATTORNEY BEFORE SIGNING.".

(c)(1) If a foreclosure reconveyance is included in a foreclosure consulting contract or arranged after the execution of a foreclosure consulting contract, the foreclosure purchaser shall provide the homeowner with a document entitled "NOTICE OF RIGHT TO CANCEL TRANSFER OF DEED OR TITLE".

(2) The NOTICE OF RIGHT TO CANCEL TRANSFER OF DEED OR TITLE shall:

(i) Be a separate document and not printed on the back of any other document; and

(ii) Contain the following statement printed in at least 14 point type:

"NOTICE OF RIGHT TO CANCEL TRANSFER OF DEED OR TITLE

(Date)

You may cancel or rescind the transfer of ownership of your property through the transfer of a deed or title within 3 business days after the date you sign this document.

To rescind this transaction, mail or deliver a signed and dated copy of this Notice, or any other written notice expressing a similar intent to (name of foreclosure consultant) at (address of foreclosure consultant, including facsimile and electronic mail).

As part of any rescission, you (the homeowner) must repay any money spent on your behalf as a result of this agreement, within 60 days, along with interest calculated at the rate of 8% a year.

THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF YOUR HOME. CONTACT AN ATTORNEY BEFORE SIGNING.

NOTICE OF RESCISSION

TO: (name of foreclosure consultant)

(address of foreclosure consultant, including facsimile and electronic mail)

I hereby rescind the transfer of deed or title to my property. Please return all executed documents to me.

..... (Date)

..... (Homeowner's signature)".

(d) The foreclosure purchaser shall provide the homeowner with a copy of the Notice of Right to Cancel Transfer of Deed or Title immediately on execution of any document that includes a foreclosure reconveyance.

(e) The time during which the homeowner may rescind the contract or transfer does not begin to run until the foreclosure purchaser has complied with this section.

(f) Any provision in a foreclosure consulting contract or other agreement concerning a foreclosure reconveyance that attempts or purports to waive the homeowner's rights under this section, consent to jurisdiction for litigation or choice of law in a state other than Maryland, consent to venue in a county other than the county in which the property is located, or impose any costs or filing fees greater than the fees required to file an action in a circuit court, is void.

(g) A foreclosure reconveyance may not be carried out using a power of attorney from the homeowner.

(h) A notice of rescission need not take the particular form specified in this subtitle or any form contained in any agreement with the foreclosure consultant or foreclosure purchaser and is effective, however expressed, if it indicates the intention of the homeowner to rescind the reconveyance agreement.

(i) The right to rescind may not be conditioned on the repayment of any funds.

(j) Within 10 days after receipt of a notice of rescission given in accordance with this subtitle, the foreclosure purchaser shall return, without condition, any original deed, title, contract, and any other document signed by the homeowner.

(k) During the 3-day rescission period, a deed or other document affecting title to the homeowner's residence may not be recorded.

MD Code, Real Property, § 7-311

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 3. Protection of Homeowners in Foreclosure (Refs & Annos)

Part III. Foreclosure Purchasers (Refs & Annos)

➡§ 7-311. Foreclosure reconveyances; prohibited actions; presumptions; accounting; bona fide purchasers

(a)(1) In this section the following words have the meanings indicated.

(2) "Primary housing expenses" means the total amount required to pay regular principal, interest, rent, utilities, hazard insurance, real estate taxes, and association dues on a property.

(3) "Resale" means a bona fide market sale of property subject to a foreclosure reconveyance by the foreclosure purchaser to an unaffiliated third party.

(4) "Resale price" means the gross sale price of a property on resale.

(5) "Settlement" means an in-person, face-to-face meeting with the homeowner to complete final documents incident to the sale or transfer of real property, or the creation of a mortgage or equitable interest in real property, conducted by a settlement agent who is not employed by or an affiliate of the foreclosure purchaser, during which the homeowner must be presented with a completed copy of the HUD-1 Settlement Form.

(b) A foreclosure purchaser may not:

(1) Enter into, or attempt to enter into, a foreclosure reconveyance with a homeowner unless:

(i) The foreclosure purchaser verifies and can demonstrate that the homeowner has or will have a reasonable ability to pay for the subsequent reconveyance of the property back to the homeowner on completion of the terms of a foreclosure conveyance, or, if the foreclosure conveyance provides for a lease with an option to repurchase the property, the homeowner has or will have a reasonable ability to make the lease payments and repurchase the property within the term of the option to repurchase;

(ii) The foreclosure purchaser and the homeowner complete a formal settlement before any transfer of an interest in the property is effected; and

(iii) The foreclosure purchaser complies with the requirements of the federal Home Ownership Equity Protection Act, 15 U.S.C. 1639, and its implementing regulations for any foreclosure reconveyance in which the homeowner obtains a vendee interest in a contract for deed;

(2) Fail to:

(i) Ensure that title to the property has been reconveyed to the homeowner in a timely manner if this subtitle or the terms of a foreclosure reconveyance agreement require a reconveyance; or

(ii) Make payment to the homeowner within 90 days of any resale of the property so that the homeowner receives cash payments or consideration in an amount equal to at least 82% of the net proceeds from any resale of the property should a property subject to a foreclosure reconveyance be sold within 18 months after entering into a foreclosure reconveyance agreement;

(3) Enter into repurchase or lease terms as part of the foreclosure conveyance that are unfair or commercially unreasonable, or engage in any other unfair conduct;

(4) Represent, directly or indirectly, that:

(i) The foreclosure purchaser is acting as an advisor or a consultant, or in any other manner represent that the foreclosure purchaser is acting on behalf of the homeowner;

(ii) The foreclosure purchaser has certification or licensure that the foreclosure purchaser does not have;

(iii) The foreclosure purchaser is assisting the homeowner to "save the house" or use a substantially similar phrase; or

(iv) The foreclosure purchaser is assisting the homeowner in preventing a foreclosure

if the result of the transaction is that the homeowner will not complete a redemption of the property;

(5) Make any other statements, directly or by implication, or engage in any other conduct that is false, deceptive, or misleading, or that has the likelihood to cause confusion or misunderstanding, including statements regarding the value of the residence in foreclosure, the amount of proceeds the homeowner will receive after a foreclosure sale, any contract term, or the homeowner's rights or obligations incident to or arising out of the foreclosure reconveyance; or

(6) Until the homeowner's right to rescind or cancel the transaction has expired:

(i) Record any document, including an instrument of conveyance, signed by the homeowner; or

(ii) Transfer or encumber or purport to transfer or encumber any interest in the residence in foreclosure to any third party.

(c) For purposes of subsection (b)(1) of this section, there is a rebuttable presumption that:

(1) A homeowner has a reasonable ability to pay for a subsequent reconveyance of the property if the homeowner's payments for primary housing expenses and regular principal and interest payments on other personal debt, on a monthly basis, do not exceed 60% of the homeowner's monthly gross income; and

(2) The foreclosure purchaser has not verified reasonable payment ability if the foreclosure purchaser has not obtained documents other than a statement by the homeowner of assets, liabilities, and income.

(d)(1) The foreclosure purchaser shall make a detailed accounting of the basis for the amount of a payment made to the homeowner of a property resold within 18 months after entering into a foreclosure reconveyance agreement, in accordance with (b)(2)(ii) of this section.

(2) The accounting shall be on a form prescribed by the Attorney General in consultation with the Commissioner of Financial Regulation and shall include detailed documentation of expenses and other consideration paid by the foreclosure purchaser and deducted from the resale price.

(e) A bona fide purchaser for value or bona fide lender for value who enters into a transaction with a homeowner or a foreclosure purchaser when a foreclosure consulting contract is in effect or during the period when a foreclosure reconveyance may be rescinded, without notice of those facts, receives good title to the property, free and clear

of the right of the parties to the foreclosure consulting contract or the right of the homeowner to rescind the foreclosure reconveyance.

(f) This subtitle may not be construed to impose any duty on a purchaser, title insurer, or title insurance producer with respect to the application of the proceeds of a sale of property by a foreclosure purchaser.

CREDIT(S)

Added by Acts 2005, c. 509, § 1, eff. May 26, 2005.
MD Code, Real Property, § 7-311, MD REAL PROP § 7-311
Current through end of 2006 Regular Session and 2006 First Special Session.

MD Code, Real Property, § 7-312

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 3. Protection of Homeowners in Foreclosure (Refs & Annos)

Part III. Foreclosure Purchasers (Refs & Annos)

§ 7-312. Reserved

MD Code, Real Property, § 7-312, MD REAL PROP § 7-312
Current through end of 2006 Regular Session and 2006 First Special Session.

MD Code, Real Property, § 7-313

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 3. Protection of Homeowners in Foreclosure (Refs & Annos)

Part III. Foreclosure Purchasers (Refs & Annos)

§ 7-313. Reserved

MD Code, Real Property, § 7-313, MD REAL PROP § 7-313
Current through end of 2006 Regular Session and 2006 First Special Session.

MD Code, Real Property, T. 7, Subt. 3, Pt. IV, Refs & Annos

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 3. Protection of Homeowners in Foreclosure

Part IV. Foreclosure Surplus Purchasers

HISTORICAL AND STATUTORY NOTES

2005 Legislation

Acts 2005, c. 509, § 1, added Part IV, Foreclosure Surplus Purchasers.

MD Code, Real Property, T. 7, Subt. 3, Pt. IV, Refs & Annos, MD REAL PROP T. 7, Subt. 3, Pt. IV, Refs & Annos
Current through end of 2006 Regular Session and 2006 First Special Session.

MD Code, Real Property, § 7-314

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 3. Protection of Homeowners in Foreclosure (Refs & Annos)

Part IV. Foreclosure Surplus Purchasers (Refs & Annos)

§ 7-314. Foreclosure surplus acquisition contracts

(a) Each foreclosure surplus acquisition shall be in the form of a written contract.

(b) Each foreclosure surplus acquisition contract shall:

(1) Contain the entire agreement of the parties;

(2) Be printed in at least 12 point type, in the same language that is used by the homeowner and was used by the foreclosure surplus purchaser and the homeowner to negotiate the sale of the residence in foreclosure;

(3) Be fully completed, dated, and personally signed by the homeowner and the foreclosure surplus purchaser before the statement of account has been referred to the auditor; and

(4) Include:

(i) The name, business address, and telephone number of the foreclosure surplus purchaser;

(ii) The address of the residence in foreclosure;

(iii) The total consideration to be given by the foreclosure surplus purchaser in connection with or incident to the transaction;

(iv) A complete description of the terms of payment or other consideration, including any services of any nature that the foreclosure surplus purchaser represents the foreclosure surplus purchaser will perform for the homeowner before or after the sale; and

(v) The following notice, which shall be printed in at least 14 point boldface type, completed with the name of the foreclosure surplus purchaser, and located in immediate proximity to the space reserved for the homeowner's signature:

"NOTICE REQUIRED BY MARYLAND LAW

If you have any questions about this document, seek legal counsel before signing. This is an important legal contract. Failure to read and understand these documents may cause you to lose valuable rights.

The effect of these documents is that you may lose the equity in your home. This agreement will not stop the foreclosure or get your house back. If you believe the foreclosure sale was improper, you should immediately seek legal advice to determine what objections to ratification or to rescind the order of ratification may be filed.

You may rescind this contract for the sale of your house without any penalty or obligation at any time within 10 days after the auditor states the account of the foreclosure sale. See the attached Notice of Rescission form for an explanation of this right. As part of the rescission, you must repay from the surplus proceeds any consideration received, directly or indirectly, together with an amount for interest calculated at the rate of 8% a year.

(c)(1) The contract shall be accompanied by a completed form in duplicate, captioned "Notice of Rescission".

(2) The Notice of Rescission shall:

(i) Be on a separate sheet of paper attached to the contract;

(ii) Be easily detachable; and

(iii) Contain the following statement printed in at least 15 point type:

"NOTICE OF RESCISSION

..... (Date of contract)

You may rescind this contract for the sale of your house at any time within 10 days after the auditor states the account of the foreclosure sale.

To cancel this transaction, mail or deliver a signed and dated copy of this Notice of Rescission to ..... (Name of purchaser) at ..... (Address of purchaser, including facsimile and electronic mail) with a copy to the court appointed auditor.

I hereby rescind this transaction.

..... (Date)

..... (Homeowner's signature)".

(d) The foreclosure surplus purchaser shall provide the homeowner with a copy of the contract and the attached Notice of Rescission at the time the contract is executed by all parties.

(e) The contract required by this section survives delivery of any instrument of conveyance of the residence in foreclosure, is binding in the audit, and has no effect on persons other than the parties to the contract.

(f) Any provision in a contract that attempts or purports to waive any of the rights specified in this title, consent to jurisdiction or choice of law in a state other than Maryland, consent to venue in a county other than the county in which the property is located, or impose any costs or filing fees greater than the fees required to file an action in a circuit court, is void.

CREDIT(S)

Added by Acts 2005, c. 509, § 1, eff. May 26, 2005.
MD Code, Real Property, § 7-314, MD REAL PROP § 7-314
Current through end of 2006 Regular Session and 2006 First Special Session.

MD Code, Real Property, § 7-315

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 3. Protection of Homeowners in Foreclosure (Refs & Annos)

Part IV. Foreclosure Surplus Purchasers (Refs & Annos)

§ 7-315. Right of rescission

(a) In addition to any other right of rescission, a homeowner has the right to rescind any contract with a foreclosure surplus purchaser at any time within 10 days after the statement of audit account of the foreclosure sale.

(b)(1) Rescission occurs when the homeowner delivers, by any means, written Notice of Rescission to the address specified in the contract, with a copy to the auditor. As part of the rescission, the homeowner shall repay any consideration received directly or indirectly, together with interest calculated at the rate of 8% a year.

(2) On receipt of the Notice of Rescission, the auditor shall restate the account. The repayment of consideration and interest by the homeowner shall be incorporated by

the auditor into the revised statement of account filed with the court.

(3) Upon ratification of the amended audit, the attorney named in the mortgage, mortgage assignee for purposes of foreclosure, trustee, or substitute trustee in making distribution of the surplus funds shall comply with the revised court-approved audit.

(c) A Notice of Rescission given by a homeowner need not be in the form provided with the contract and is effective, however expressed, if it indicates the intention of the homeowner to rescind the contract.

(d) The right to rescind may not be conditioned on the repayment of any funds.

(e) Within 10 days after receipt of a Notice of Rescission given in accordance with this section, the foreclosure surplus purchaser shall return, without condition, the original contract and all other documents signed by the homeowner.

CREDIT(S)

Added by Acts 2005, c. 509, § 1, eff. May 26, 2005.

MD Code, Real Property, § 7-315, MD REAL PROP § 7-315
Current through end of 2006 Regular Session and 2006 First Special Session.

MD Code, Real Property, § 7-316

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 3. Protection of Homeowners in Foreclosure (Refs & Annos)

Part IV. Foreclosure Surplus Purchasers (Refs & Annos)

§ 7-316. Reserved

MD Code, Real Property, § 7-316, MD REAL PROP § 7-316
Current through end of 2006 Regular Session and 2006 First Special Session.

MD Code, Real Property, § 7-317

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 3. Protection of Homeowners in Foreclosure (Refs & Annos)

Part IV. Foreclosure Surplus Purchasers (Refs & Annos)

§ 7-317. Reserved

MD Code, Real Property, § 7-317, MD REAL PROP § 7-317
Current through end of 2006 Regular Session and 2006 First Special Session.

MD Code, Real Property, T. 7, Subt. 3, Pt. V, Refs & Annos

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 3. Protection of Homeowners in Foreclosure

Part V. Prohibited Acts; Enforcement and Penalties

HISTORICAL AND STATUTORY NOTES

2005 Legislation

Acts 2005, c. 509, § 1, added Part V, Prohibited Acts; Enforcement and Penalties.

MD Code, Real Property, T. 7, Subt. 3, Pt. V, Refs & Annos, MD REAL PROP T. 7, Subt. 3, Pt. V, Refs & Annos
Current through end of 2006 Regular Session and 2006 First Special Session.

MD Code, Real Property, § 7-318

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 3. Protection of Homeowners in Foreclosure (Refs & Annos)

Part V. Prohibited Acts; Enforcement and Penalties (Refs & Annos)

➡§ 7-318. Waiver of rights prohibited

(a) A person may not induce or attempt to induce a homeowner to waive the homeowner's rights under this subtitle.

(b) Any waiver by a homeowner of the provisions of this subtitle is void and unenforceable as contrary to public policy.

CREDIT(S)

Added by Acts 2005, c. 509, § 1, eff. May 26, 2005.
MD Code, Real Property, § 7-318, MD REAL PROP § 7-318
Current through end of 2006 Regular Session and 2006 First Special Session.

MD Code, Real Property, § 7-319

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 3. Protection of Homeowners in Foreclosure (Refs & Annos)

Part V. Prohibited Acts; Enforcement and Penalties (Refs & Annos)

➡§ 7-319. Actions by Attorney General

(a) The Attorney General may seek an injunction to prohibit a person who has engaged or is engaging in a violation of this subtitle from engaging or continuing to engage in the violation.

(b) The court may enter any order or judgment necessary to:

(1) Prevent the use by a person of any prohibited practice;

(2) Restore to a person any money or real or personal property acquired from the person by means of any prohibited practice; or

(3) Appoint a receiver in case of willful violation of this title.

(c) In any action brought by the Attorney General under this section, the Attorney General is entitled to recover the costs of the action for the use of the State.

CREDIT(S)

Added by Acts 2005, c. 509, § 1, eff. May 26, 2005.
MD Code, Real Property, § 7-319, MD REAL PROP § 7-319
Current through end of 2006 Regular Session and 2006 First Special Session.

MD Code, Real Property, § 7-320

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 3. Protection of Homeowners in Foreclosure (Refs & Annos)

Part V. Prohibited Acts; Enforcement and Penalties (Refs & Annos)

➡§ 7-320. Private actions

(a) In addition to any action by the Attorney General authorized under this subtitle and any other action otherwise authorized by law, a homeowner may bring an action for damages incurred as the result of a practice prohibited by this subtitle.

(b) A homeowner who brings an action under this section and who is awarded damages may also seek, and the court may award, reasonable attorney's fees.

(c) If the court finds that the defendant willfully or knowingly violated this subtitle, the court may award damages equal to three times the amount of actual damages.

CREDIT(S)

Added by Acts 2005, c. 509, § 1, eff. May 26, 2005.
MD Code, Real Property, § 7-320, MD REAL PROP § 7-320
Current through end of 2006 Regular Session and 2006 First Special Session.

MD Code, Real Property, § 7-321

West's Annotated Code of Maryland Currentness
Real Property

Title 7. Mortgages, Deeds of Trust, and Vendor's Liens

Subtitle 3. Protection of Homeowners in Foreclosure (Refs & Annos)

Part V. Prohibited Acts; Enforcement and Penalties (Refs & Annos)

§ 7-321. Criminal penalties

(a) A person who violates any provision of this subtitle is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding $10,000 or both.

(b) A person who violates this subtitle is subject to § 5-106(b) of the Courts Article.

CREDIT(S)

Added by Acts 2005, c. 509, § 1, eff. May 26, 2005.
MD Code, Real Property, § 7-321, MD REAL PROP § 7-321
Current through end of 2006 Regular Session and 2006 First Special Session.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 1. GENERAL RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-101 (2006)

§ 8-101. Remedies of and against transferee of reversion in leased property

A transferee of the reversion in leased property or of the rent has the same remedies by entry, action, or otherwise for nonperformance of any condition or agreement contained in the lease, as the original landlord would have had if the reversion or rent had remained in the original landlord. A transferee of the reversion in leased property is subject to the same remedies, by action or otherwise, for nonperformance of any agreement contained in the lease, as the original landlord. This section applies to any transferee of a reversion in leased property, by voluntary grant or operation of law.

HISTORY: An. Code 1957, art. 21, § 8-201; 1974, ch. 12, § 2; 1999, ch. 219.

MARYLAND LAW REVIEW. --For article, "Survey of Developments in Maryland Law, 1985-86," see 46 Md. L. Rev. 533 (1987).

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "The Uniform Residential Landlord and Tenant Act and Its Potential Effects upon Maryland Landlord-Tenant Law," see 5 U. Balt. L. Rev. 247 (1976).
For article, "An Analysis of the Maryland Mobile Home Park Act: A Need for Amendment," see 8 U. Balt. L. Rev. 271 (1979).

RIGHT OF ENTRY UPON DEFAULT. --The assignor of a leasehold estate did not have a right to reentry upon default in the terms of the lease by the assignee. Italian Fisherman, Inc. v. Middlemas, 313 Md. 156, 545 A.2d 1 (1988).

MUNICIPAL ORDINANCE ESTABLISHING LANDLORD SECURITY DEPOSIT SYSTEM, under which the landlord of multiple dwelling units would be required to post security funds with the city to be used for emergency repairs to the units, is not clearly foreclosed by the Landlord-Tenant Title. 62 Op. Att'y Gen. 523 (1977).

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 1. GENERAL RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-102 (2006)

§ 8-102. Remedy on covenants in case of merger

If the reversion of any leased premises merges in any other estate, the person entitled to the estate into which the reversion merges has the same remedy against the tenant for nonpayment of rent or other forfeiture, or for not performing conditions, covenants, or agreements, as the person entitled to the reversion would have had if the reversion had not merged.

HISTORY: An. Code 1957, art. 21, § 8-202; 1974, ch. 12, § 2.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 1. GENERAL RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-103 (2006)

§ 8-103. No merger by mortgage to landlord

There is no merger by reason of any grant by way of mortgage or assignment of mortgage from the tenant of any property leased for a term of years, to the landlord of the property, whether by original or sublease, and the same rights and remedies exist as if the grantee in the grant had no other interest or estate in the property than the one granted.

HISTORY: An. Code 1957, art. 21, § 8-204; 1974, ch. 12, § 2.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 1. GENERAL RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-104 (2006)

§ 8-104. In grant of nonpossessory corporeal interest, attornment by tenant unnecessary; payment of rent before notice

Any grant of a nonpossessory corporeal estate is valid and effective without the attornment of the tenant in possession. However, any payment of rent by the tenant to the grantor of the grant prior to actual notice of the grant is an effective discharge of liability for the rent.

HISTORY: An. Code 1957, art. 21, § 8-203; 1974, ch. 12, § 2.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 1. GENERAL RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-105 (2006)

§ 8-105. Exculpatory and indemnification clauses

If the effect of any provision of a lease is to indemnify the landlord, hold the landlord harmless, or preclude or exonerate the landlord from any liability to the tenant, or to any other person, for any injury, loss, damage, or liability arising from any omission, fault, negligence, or other misconduct of the landlord on or about the leased premises or any elevators, stairways, hallways, or other appurtenances used in connection with them, and not within the exclusive control of the tenant, the provision is considered to be against public policy and void. An insurer may not claim a right of subrogation by reason of the invalidity of the provision.

HISTORY: An. Code 1957, art. 21, § 8-211; 1974, ch. 12, § 2; 1981, ch. 598.

MARYLAND LAW REVIEW. --For survey of Maryland Court of Appeals decisions, 1975-1976, regarding torts, see 37 Md. L. Rev. 158 (1977).

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "An Analysis of the Maryland Mobile Home Park Act: A Need for Amendment," see 8 U. Balt. L. Rev. 271 (1979).

APPLICABILITY. --For this section to apply it is clear from its text that the negligence of the landlord must be "on or about the leased premises or any ... appurtenances used in

connection with them" and that the area involved must not be "within the exclusive control of the tenant"; conversely, where the area "on or about" which the landlord was negligent is "within the exclusive control of the tenant," an indemnification provision is not rendered void by operation of this section. Prince Philip Partnership v. Cutlip, 321 Md. 296, 582 A.2d 992 (1990).

SECTION INAPPLICABLE. --This section, by its language, does not apply to any lease wherein the lessee or tenant has "exclusive control" of the premises. Shell Oil Co. v. Ryckman, 43 Md. App. 1, 403 A.2d 379 (1979).

Although this section generally invalidates exculpatory clauses designed to exonerate a landlord for injuries which arise as a result of his or her own negligence, the section does not apply where a tenant is in exclusive possession of the premises. White v. Walker-Turner Div., 841 F. Supp. 704 (D. Md. 1993).

WHETHER LANDLORD HAS RETAINED EXCLUSIVE CONTROL OVER PREMISES IS ESSENTIALLY A MATTER OF INTENTION to be determined in the light of all the significant circumstances, particularly the leases and practices of the parties. Shell Oil Co. v. Ryckman, 43 Md. App. 1, 403 A.2d 379 (1979).

EXCULPATORY CLAUSES GENERALLY. --Maryland law (this section aside) operates to void exculpatory clauses where (1) the relationship between the parties was not full and open, (2) there is a specific public interest which requires avoidance of the provision or (3) any extreme form of negligence is involved. White v. Walker-Turner Div., 841 F. Supp. 704 (D. Md. 1993).

Although Maryland law prohibits clauses in a lease that purport to exonerate a landlord from liability for injury or loss caused by the landlord's negligence, there is no flat prohibition against a clause exonerating a tenant from liability for loss caused by the tenant's negligence or a provision waiving a landlord's right to sue a tenant for damage negligently caused by the tenant. Rausch v. Allstate Ins. Co., 388 Md. 690, 882 A.2d 801 (2005).

EXCULPATORY CLAUSE HELD VALID UNDER FORMER LAW. --See Eastern Ave. Corp. v. Hughes, 228 Md. 477, 180 A.2d 486 (1962).

EXCULPATORY CLAUSE HELD INVALID. --Exculpatory clause was invalid where handicapped plaintiff was injured in restroom in tenant-doctor's office not equipped with handicapped facilities and where such restroom was "on or about ... appurtenances used in connection with" the premises leased by doctor and such appurtenances were "not within the exclusive control of" the tenant-doctor. Prince Philip Partnership v. Cutlip, 321 Md. 296, 582 A.2d 992 (1990).

RULE THAT LEASE MUST BE CONSTRUED MOST STRONGLY AGAINST LESSOR and in favor of a lessee is only to be resorted to when the words of the lease are doubtful in their meaning or susceptible of more than one construction. Home Indem. Co. v. Basiliko, 245 Md. 412, 226 A.2d 258 (1967).

QUOTED IN Liberty Mut. Ins. Co. v. Storch, 23 Md. App. 43, 325 A.2d 760 (1974).

CITED IN Schrier v. Beltway Alarm Co., 73 Md. App. 281, 533 A.2d 1316 (1987); Cornell v. Council of Unit Owners Hawaiian Village Condominiums, Inc., 983 F. Supp. 640 (D. Md. 1997).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***

*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 1. GENERAL RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-106 (2006)

§ 8-106. Payment of rent on death of landlord who is life tenant

If a landlord, having only an estate for life, dies on or before the day on which the rent that has been earned is payable and the landlord's death terminates the leasehold estate, the landlord's personal representative may recover from the tenant the full amount of the rent if death occurs on the day the rent is payable or a proportionate share of the rent if death occurs before this day.

HISTORY: An. Code 1957, art. 21, § 8-205; 1974, ch. 12, § 2; 1999, ch. 219.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 1. GENERAL RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-107 (2006)

§ 8-107. Limitation of actions

If there is no demand or payment for more than 20 consecutive years of any specific rent reserved out of a particular property or any part of a particular property under any form of lease, the rent conclusively is presumed to be extinguished and the landlord may not set up any claim for the rent or to the reversion in the property out of which it issued. The landlord also may not institute any suit, action, or proceeding to recover the rent or the property. However, if the landlord is under any legal disability when the period of 20 years of nondemand or nonpayment expires, the landlord has two years after the removal of the disability within which to assert the landlord's rights.

HISTORY: An. Code 1957, art. 21, § 8-207; 1974, ch. 12, § 2; 1999, ch. 219.

NOTES:

CROSS REFERENCES. --As to limitation of actions generally, see §§ 5-101 to 5-205 of the Courts Article.

As to disabilities, see § 5-201 of the Courts Article.

MARYLAND LAW REVIEW. --For comment discussing sovereign immunity from statutes of limitation in Maryland, see 46 Md. L. Rev. 408 (1987).

CONSTITUTIONALITY OF FORMER SECTION. --See Safe Deposit & Trust Co. v. Marburg, 110 Md. 410, 72 A. 839 (1909).

LEGISLATIVE INTENT. --The General Assembly intended not only that the rent shall be conclusively presumed to have been extinguished, when there has been no demand or payment for more than 20 consecutive years, but that the reversionary interest of the owner of the fee should be barred and terminated. Safe Deposit & Trust Co. v. Marburg, 110 Md. 410, 72 A. 839 (1909).

Occupant of certain real property did not establish the existence of a lease between himself and the record owners of the land, so the fact that no rent had been demanded of nor paid by him for 20 years for his occupancy of the land did not vest title to the land in him, and the owners' estate could pursue an ejectment action against him. Delauter v. Shafer, 374 Md. 317, 822 A.2d 423 (2003).

This section, precluding a landlord from recovering property for which he had not demanded or collected rent for 20 years, applied when there was specific rent reserved out of particular property under a lease, and there was no demand or payment of the "specific rent" for 20 consecutive years, and it was anomalous to apply this statute in a case where no rent at all was provided for, and where parents simply furnished a place to live for their child and her spouse. Delauter v. Shafer, 374 Md. 317, 822 A.2d 423 (2003).

BAR OF REVERSIONARY INTEREST. --The effect of this section, when it is shown that rent has not been paid or demanded for more than 20 consecutive years, is not only to bar the rent due, but also to bar the reversionary interest of the owner of the fee, so that the lessee's rights are similar to those of one holding under adverse possession. Kolker v. Biggs, 203 Md. 137, 99 A.2d 743 (1953).

FAILURE TO DEMAND RENT FOR 20 YEARS VESTS FEE SIMPLE. --Nonpayment of rent reserved in original lease, without demand therefor for 20 years, vests fee simple title in tenant. Safe Deposit & Trust Co. v. Marburg, 110 Md. 410, 72 A. 839 (1909); Arnd v. Lerch, 162 Md. 318, 159 A. 587 (1932); Trustees of Sheppard & Enoch Pratt Hosp. v. Swift & Co., 178 Md. 200, 13 A.2d 174 (1940).

DEMAND OF ONE CENT RENT UPON THE HOLDER OF THE LEASEHOLD IN PART ONLY of the leased premises, the leasehold in the balance having been merged in the reversion by surrender, is not a demand of the rent due, the reversioners being entitled to only a portion of the rent, and consequently such demand does not prevent extinguishment of rent as result of failure to demand or pay rent for 20 years. Arnd v. Lerch, 162 Md. 318, 159 A. 587 (1932).

GROUND RENT OF TWO PEPPERCORNS, not demanded for more than 20 years, was extinguished. Lewis v. Kinnaird, 104 Md. 653, 65 A. 365 (1906).

EVIDENCE OF A DEMAND FOR RENT mailed in due course within 20 years, although its receipt was denied, held sufficient, in view of the presumption arising from the systematic handling of mail by the postal authorities, to sustain a finding that demand had been made. Kolker v. Biggs, 203 Md. 137, 99 A.2d 743 (1953).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.

a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 1. GENERAL RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-108 (2006)

§ 8-108. Judgment for renewal of lease

(a) In general. -- A court may enter judgment for the renewal of a lease that contains a covenant for renewal, including a lease for 99 years, renewable forever.

(b) Binding effect. -- A judgment for renewal of a lease is binding on each person who becomes a party to the action or has been served with process in accordance with Maryland Rule 2-122 and renews the title of all persons interested under the lease for the additional term, under the rent, and upon the covenants, conditions, and stipulations provided in the lease.

(c) Recordation. -- A judgment for the renewal of a lease shall be recorded among the land records of each county in which land that is subject to the lease is located.

HISTORY: An. Code 1957, art. 21, § 8-217; 1974, ch. 12, § 2; 1987, ch. 350.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 1. GENERAL RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-109 (2006)

§ 8-109. Effect of covenant for perpetual renewal in lease

Uninterrupted possession for 12 months after the expiration of the lease containing a covenant for perpetual renewal of all or part of the leased premises by the tenant or any

person claiming under the tenant operates as a renewal with respect to the entire premises. It conclusively is presumed in reference to the whole or any part of the leased premises, of which possession is retained, and in favor of the tenant or of the person claiming under the tenant, that a new lease of the whole of the leased premises was executed prior to the expiration of the lease by the landlord named in it, or by the person rightfully claiming under the landlord, to the tenant, or the person rightfully claiming under the tenant for the additional term under the rent and on the covenants, conditions, and stipulations as were provided in the lease.

HISTORY: An. Code 1957, art. 21, § 8-101; 1974, ch. 12, § 2; 1999, ch. 219.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 1. GENERAL RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-110 (2006)

§ 8-110. Redemption of certain reversions

(a) Applicability of section. --

(1) This section does not apply to leases of property leased for business, commercial, manufacturing, mercantile, or industrial purposes or any other purpose which is not primarily residential, where the term of the lease, including all renewals provided for, does not exceed 99 years. A lease of the entire property improved or to be improved by any apartment, condominium, cooperative, or other building for multiple-family use on the property constitutes a business and not a residential purpose. The term "multiple-family use" does not apply to any duplex or single-family structure converted to a multiple-dwelling unit.

(2) Except as provided in subsection (g) of this section, this section does not apply to irredeemable leases executed before April 9, 1884.

(3) This section does not apply to leases of the ground or site upon which dwellings or mobile homes are erected or placed in a mobile home development or mobile home park.

(b) Redemption of reversions in leases for longer than 15 years. --

(1) Except for apartment and cooperative leases, any reversion reserved in a lease for longer than 15 years is redeemable, at the option of the tenant, after 30 days' notice to the landlord. Notice shall be given by certified mail, return receipt requested, and by first-class mail to the last known address of the landlord.

(2) The reversion is redeemable:

(i) For a sum equal to the annual rent reserved multiplied by:

1. 25, which is capitalization at 4 percent, if the lease was executed from April 8, 1884 to April 5, 1888, both inclusive;

2. 8.33, which is capitalization at 12 percent, if the lease was or is created after July 1, 1982; or

3. 16.66, which is capitalization at 6 percent, if the lease was created at any other time;

(ii) For a lesser sum if specified in the lease; or

(iii) For a sum to which the parties may agree at the time of redemption.

(c) Time of redemption. -- If the lease is executed on or after July 1, 1971, the reversion is redeemable at the expiration of 3 years from the date of the lease. If the lease is executed on or after July 1, 1982 or between July 1, 1969 and July 1, 1971, the reversion is redeemable at the expiration of 5 years from the date of the lease. If the lease is executed before July 1, 1969, the reversion is redeemable at any time.

(d) Where reversion is vested in a person without a power of sale. -- If a tenant has power to redeem the reversion from a trustee or other person who does not have a power of sale, the reversion nevertheless may be redeemed in accordance with the procedures prescribed in the Maryland Rules.

(e) Applicability of federal regulatory changes. -- Notwithstanding subsections (b) and (c) of this section, any regulatory changes made by a federal agency, instrumentality, or subsidiary, including the Department of Housing and Urban Development, the Federal Housing Administration, the Government National Mortgage Association, the Federal National Mortgage Association, and the Veterans' Administration, shall be applicable to redemption of reversions of leases for longer than 15 years.

(f) Donation of reversion. --

(1) Before the entry of a judgment foreclosing an owner's right of redemption, a reversion in a ground rent or lease for 99 years renewable forever held on abandoned property in Baltimore City, as defined in § 14-817 of the Tax - Property Article, may be donated to Baltimore City or, at the option of Baltimore City, to an entity designated by Baltimore City.

(2) Valuation of the donation of a reversionary interest pursuant to this subsection shall be in accordance with subsection (b) of this section.

(g) Redemption or extinguishment of ground rents; reinstatement; disputes. --

(1) (i) A tenant who has given the landlord notice in accordance with subsection (b) of this section may apply to the State Department of Assessments and Taxation to redeem a ground rent as provided in this subsection.

(ii) When the Mayor and City Council of Baltimore City condemns property that is subject to an irredeemable ground rent, the City shall become the tenant of the ground rent and, after giving the landlord notice in accordance with subsection (b) of this section, may apply to the State Department of Assessments and Taxation to extinguish the ground rent as provided in this subsection.

(iii) When the Mayor and City Council of Baltimore City condemns abandoned or distressed property that is subject to a redeemable ground rent, the City shall become the tenant of the ground rent and, after giving the landlord notice in accordance with subsection (b) of this section, may apply to the State Department of Assessments and Taxation to redeem the

ground rent as provided in this subsection.

(2) The tenant shall provide to the State Department of Assessments and Taxation:

(i) Documentation satisfactory to the Department of the lease and the notice given to the landlord; and

(ii) Payment of a $ 20 fee, and any expediting fee required under § 1-203 of the Corporations and Associations Article.

(3) (i) On receipt of the items stated in paragraph (2) of this subsection, the Department shall post notice on its website that application has been made to redeem or extinguish the ground rent.

(ii) The notice shall remain posted for at least 90 days.

(4) Except as provided in paragraph (5) of this subsection, no earlier than 90 days after the application has been posted as provided in paragraph (3) of this subsection, a tenant seeking to redeem a ground rent shall provide to the Department:

(i) Payment of the redemption amount and up to 3 years' back rent to the extent required under this section and § 8-111.1 of this subtitle, in a form satisfactory to the Department; and

(ii) An affidavit made by the tenant, in the form adopted by the Department, certifying that:

1. The tenant has not received a bill for ground rent due or other communication from the landlord regarding the ground rent during the 3 years immediately before the filing of the documentation required for the issuance of a redemption certificate under this subsection; or

2. The last payment for ground rent was made to the landlord identified in the affidavit and sent to the same address where the notice required under subsection (b) of this section was sent.

(5) No earlier than 90 days after the application has been posted as provided in paragraph (3) of this subsection, a tenant seeking to extinguish an irredeemable ground rent or to redeem a redeemable ground rent on abandoned or distressed property that was acquired or is being acquired by the Mayor and City Council of Baltimore through condemnation shall provide to the Department:

(i) Payment of up to 3 years' back rent to the extent required under this section and § 8-111.1 of this subtitle, in a form satisfactory to the Department; and

(ii) An affidavit made by the Director of the Office of Property Acquisition and Relocation in the Baltimore City Department of Housing and Community Development certifying that:

1. The property is abandoned property, as defined in § 21-17(a)(2) of the Public Local Laws of Baltimore City, or distressed property, as defined in § 21-17(a)(3) of the Public Local Laws of Baltimore City;

2. The property was acquired or is being acquired by the Mayor and City Council of Baltimore City through condemnation;

3. A thorough title search has been conducted;

4. The landlord of the property cannot be located or identified; and

5. The existence of the ground rent is an impediment to redevelopment of the site.

(6) At any time, the tenant may submit to the Department notice that the tenant is no longer seeking redemption or extinguishment under this subsection.

(7) Upon receipt of the documentation, fees, and where applicable, the redemption amount and 3 years' back rent to the extent required under this section and § 8-111.1 of this subtitle, the Department shall issue to the tenant a ground rent redemption certificate or a ground rent extinguishment certificate, as appropriate.

(8) The redemption or extinguishment of the ground rent is effective to conclusively vest a fee simple title in the tenant, free and clear of any and all right, title, or interest of the landlord, any lien of a creditor of the landlord, and any person claiming by, through, or under the landlord when the tenant records the certificate in the land records of the county in which the property is located.

(9) The landlord, any creditor of the landlord, or any other person claiming by, through, or under the landlord may file a claim with the Department in order to collect all, or any portion of, where applicable, the redemption amount and 3 years' back rent to the extent required under this section and § 8-111.1 of this subtitle, without interest, by providing to the Department:

(i) Documentation satisfactory to the Department of the claimant's interest; and

(ii) Payment of a $ 20 fee, and any expediting fee required under § 1-203 of the Corporations and Associations Article.

(10) (i) A landlord whose ground rent has been extinguished may file a claim with the Baltimore City Director of Finance to collect an amount equal to the annual rent reserved multiplied by 16.66, which is capitalization at 6 percent, by providing to the Director:

1. Proof of payment to the landlord by the Department of back rent under paragraph (9) of this subsection; and

2. Payment of a $ 20 fee.

(ii) A landlord of abandoned or distressed property condemned by the Mayor and City Council of Baltimore City whose ground rent has been redeemed may file a claim with the Baltimore City Director of Finance to collect the redemption amount, by providing to the Director:

1. Proof of payment to the landlord by the Department of back rent under paragraph (9) of this subsection; and

2. Payment of a $ 20 fee.

(11) (i) In the event of a dispute regarding the extinguishment amount as calculated under paragraph (10)(i) of this subsection, the landlord may refuse payment from the Baltimore City Director of Finance and file an appeal regarding the valuation in the Circuit Court of Baltimore City.

(ii) In an appeal, the landlord is entitled to receive the fair market value of the landlord's interest in the property at the time of the extinguishment.

(12) In the event of a dispute regarding the payment by the Department to any person of all or any portion of the collected redemption amount and up to 3 years' back rent to the extent required by this section and § 8-111.1 of this subtitle, the Department may:

(i) File an interpleader action in the circuit court of the county where the property is located; or

(ii) Reimburse the landlord from the fund established in § 1-203.3 of the Corporations and Associations Article.

(13) The Department is not liable for any sum received by the Department that exceeds the sum of:

(i) The redemption amount; and

(ii) Up to 3 years' back rent to the extent required by this section and § 8-111.1 of this subtitle.

(14) The Department shall credit all fees and funds collected under this subsection to the fund established under § 1-203.3 of the Corporations and Associations Article. Redemption and extinguishment amounts received shall be held in a ground rent redemption and ground rent extinguishment account in that fund.

(15) The Department shall maintain a list of properties for which ground rents have been redeemed or extinguished under this subsection.

(16) The Department shall adopt regulations to carry out the provisions of this subsection.

(17) Any redemption or extinguishment funds not collected by a landlord under this subsection within 20 years after the date of the payment to the Department by the tenant shall escheat to the State. The Department shall annually transfer any funds that remain uncollected after 20 years to the State General Fund at the end of each fiscal year.

HISTORY: An. Code 1957, art. 21, § 8-102; 1974, ch. 12, § 2; 1976, ch. 572; 1982, ch. 317; 1983, ch. 626; 1989, ch. 670; 1996, ch. 558; 2002, ch. 401; 2003, ch. 464; 2004, ch. 480; 2005, ch. 18.

NOTES:
CROSS REFERENCES. --As to collection of fees for processing application for ground rent redemption, see § 1-203 of the Corporations and Associations Article.

EFFECT OF AMENDMENTS. --Chapter 401, Acts 2002, effective July 1, 2002, added (f).
Chapter 464, Acts 2003, effective Jan. 1, 2004, rewrote (b) and added (g).
Chapter 480, Acts 2004, effective Oct. 1, 2004, added the exception at the beginning of (a)(2); designated former (g)(1) as (g)(1)(i); added (g)(1)(ii); substituted "a tenant seeking to redeem a ground rent" for "the tenant" in (g)(4); added present (g)(5); redesignated former (g)(5) through (g)(8) as present (g)(6) through (g)(9), respectively; added present (g)(10) and (11); redesignated former (g)(9) through (g)(14) as present (g)(12) through (g)(17), respectively; in present (g)(14), inserted "and extinguishment" following "Redemption" and inserted "and ground rent extinguishment" preceding "account in"; inserted "or extinguished" following "redeemed" in (g)(15); and inserted "redemption or extinguishment" preceding "funds not collected" in (g)(17).
Chapter 18, Acts 2005, effective June 1, 2005, substituted "condemns" for "condemn" in (g)(1)(ii); added (g)(1)(iii); substituted "Except as provided in paragraph (5) of this subsection, no" for "No" in (g)(4); inserted (or to redeem ...through condemnation" after "ground rent" in (g)(5); rewrote (g)(10); and substituted "(10)(i)" for "(10)" in (g)(11)(i).

CONSTITUTIONALITY. --See Kingan Packing Ass'n v. Lloyd, 110 Md. 619, 73 A. 887 (1909).

PURPOSE OF SECTION. --See Kingan Packing Ass'n v. Lloyd, 110 Md. 619, 73 A. 887 (1909).
This section was passed for the purpose of breaking up long, irredeemable leases, rather than for any special consideration for the lessees. Walker v. Washington Grove Ass'n, 127 Md. 564, 96 A. 682 (1916).

EFFECT OF THIS SECTION is to give to the tenant the right to redeem the rents upon the terms and at the time set forth in the statute as fully as if the lease creating the rents had

contained a formal covenant on the part of the lessor to permit such redemption. Plaenker v. Smith, 95 Md. 389, 52 A. 606 (1902).

THIS SECTION, BEING REMEDIAL, SHOULD BE LIBERALLY INTERPRETED AGAINST IRREDEEMABLE LEASES for long terms. Poultney v. Emerson, 117 Md. 655, 84 A. 53 (1912).

THIS SECTION IS FOR THE BENEFIT OF THE PUBLIC and not out of consideration for the parties to lease. Brager v. Bigham, 127 Md. 148, 96 A. 277 (1915).

RIGHT OF REDEMPTION IS READ INTO THE LEASE. Brager v. Bigham, 127 Md. 148, 96 A. 277 (1915).

AND NO COVENANT CAN ESTOP LESSEE. --No covenant, however strong, can estop lessee from his right of redemption. Brager v. Bigham, 127 Md. 148, 96 A. 277 (1915).

LESSEES CAN BE RELIEVED OF COVENANT TO PAY ONLY BY REDEEMING RENT. --Lessees (even after they assign their interests) can only be relieved of their covenant to pay by redeeming rent under this section. Mayor of Baltimore v. Latrobe, 101 Md. 621, 61 A. 203 (1905).

SECTION APPLIES TO LEASES OF BUILDINGS. Marburg v. Mercantile Bldg. Co., 154 Md. 438, 140 A. 836 (1928).

This section draws no distinction between leases of ground and leases of buildings or building leases; generally the lease of a house or building carries with it the land upon which the building stands. Brager v. Bigham, 127 Md. 148, 96 A. 277 (1915).

SECTION IS PROSPECTIVE. --The legislation designed to prohibit the creation of irredeemable leases or subleases in this State was prospective and not retrospective in its character and effect. Trustees of Sheppard & Enoch Pratt Hosp. v. Swift & Co., 178 Md. 200, 13 A.2d 174 (1940).

AND DOES NOT AFFECT LEASES OR SUBLEASES IN EXISTENCE AT TIME OF ENACTMENT. --See Trustees of Sheppard & Enoch Pratt Hosp. v. Swift & Co., 178 Md. 200, 13 A.2d 174 (1940).

This section was held to have no application to a lease made prior to its adoption, although the lessor's title was perfected by the ratification of a sale in equity and a deed from the trustee after this section went into effect. Poultney v. Emerson, 117 Md. 655, 84 A. 53 (1912).

NOR ARE LEASES FOR LONGER THAN 15 YEARS PROHIBITED. --This section did not prohibit the execution of subsequent leases or subleases for a longer period than 15 years, but what they did was to subject them to the redemption provisions indicated in the respective acts, in the discretion of the lessee. Trustees of Sheppard & Enoch Pratt Hosp. v. Swift & Co., 178 Md. 200, 13 A.2d 174 (1940).

INAPPLICABLE TO LEASES MADE PRIOR TO ADOPTION. --This section has no application where the lease was made prior to its adoption. Silberstein v. Epstein, 146 Md. 254, 126 A. 74 (1924).

This section does not affect leases made prior to 1914 or 1922 as the case may be. Marburg v. Mercantile Bldg. Co., 154 Md. 438, 140 A. 836 (1928).

This section has no application where the plaintiff had the right to redeem the rent prior to its passage. Brager v. Bigham, 127 Md. 148, 96 A. 277 (1915).

THIS SECTION HAS NO APPLICATION TO A LEASE EXECUTED AFTER ITS PASSAGE, CONFIRMING A DEFECTIVE LEASE EXECUTED PRIOR THERETO. Jones v. Linden Bldg. Ass'n, 79 Md. 73, 29 A. 76 (1894).

LEASE EXECUTED PURSUANT TO COVENANT IN PRIOR LEASE ANTEDATING SECTION. --A lease executed subsequent to Acts 1888, ch. 395, purporting to be in pursuance of a covenant in a lease executed prior thereto, but which is inconsistent with such prior lease, is

redeemable under this section. Maulsby v. Page, 105 Md. 24, 65 A. 818 (1907).

A lease for 99 years, renewable forever, made in pursuance of a covenant in a sublease providing that the sublessor should execute such a lease in favor of the sublessee in case the sublessor acquired the fee simple in the property, is not subject to redemption under this section if the sublease was executed before there was any such statutory right of redemption, since the new lease springs out of the sublease. Trustees of Sheppard & Enoch Pratt Hosp. v. Swift & Co., 178 Md. 200, 13 A.2d 174 (1940).

FIVE YEARS BEGIN TO RUN FROM THE DATE OF THE LEASE. Brager v. Bigham, 127 Md. 148, 96 A. 277 (1915).

ACTS 1900, CH. 207, REPEALED AND REENACTED ACTS 1888, CH. 395. Swan v. Kemp, 97 Md. 686, 55 A. 441 (1903).

CHARACTER OF LEASEHOLD INTEREST WAS NOT CHANGED by Acts 1900, ch. 207, that act operating only as an option extended to the lessee to buy the fee-simple estate. Holzman v. Wager, 114 Md. 322, 79 A. 205 (1911).

AND SPECIFIC PERFORMANCE OF LEASE WAS NOT DEFEATED. --Specific performance of a lease for five years, with an agreement of renewal for 20 years, was held not to have been defeated by this section. King v. Kaiser, 126 Md. 213, 94 A. 780 (1915).

LEASE WITH RIGHT OF RENEWAL. --Lease for six years, with right of renewal for another period of eight years, and with right of further renewal for period of ten years, was held to be a lease for more than 15 years. Maryland Theatrical Corp. v. Manayunk Trust Co., 157 Md. 602, 146 A. 805 (1929).

LEASE EXECUTED IN RECOGNITION OF RIGHT OF RENEWAL BUT CONTAINING DIFFERENT COVENANTS. --Lease for ten years, executed in recognition of right of renewal in original lease, containing materially different covenants and made several weeks after expiration of original lease, is not continuance of former lease so that this section applies. Silberstein v. Epstein, 146 Md. 254, 126 A. 74 (1924).

LEASES FOR LESS THAN 15 YEARS MEAN LEASES WITHOUT A COVENANT FOR RENEWAL, and which are intended by the parties to the contract to end at the expiration of 15 years or a less period of time. Trustees of Sheppard & Enoch Pratt Hosp. v. Swift & Co., 178 Md. 200, 13 A.2d 174 (1940).

THIS SECTION APPLIES TO A LEASE FOR 14 YEARS WITH A COVENANT TO RENEW FOR A LIKE PERIOD, the second lease to contain the same covenants. No covenant can estop the tenant from his right of redemption. Stewart v. Gorter, 70 Md. 242, 16 A. 644 (1889).

LEASE RENEWABLE FOR EXACTLY 15 YEARS. --A lease for a term of five years with the privilege of renewal for two additional terms of five years each is a lease for a term of exactly 15 years and not a lease for "a longer period than 15 years" under this statute. Taylor v. Ogle, 202 Md. 273, 96 A.2d 24 (1953).

UNRECORDED LEASES. --Tenant in possession of leased property for 35 years was not entitled to right of redemption in suit to sell property for partition where leases were not recorded. Cook v. Boehl, 188 Md. 581, 53 A.2d 555 (1947).

INSUFFICIENT DESCRIPTION OF LEASED PROPERTY. --Description of property leased was held not sufficiently definite to authorize redemption under this section, or specific performance. Bellevue Club v. Punte, 148 Md. 589, 129 A. 900 (1925).

LEASE BY TESTAMENTARY TRUSTEE WHO HAD NO POWER TO SELL. --This section did not apply so as to give a right of redemption in case of a lease made for 18 years by a testamentary trustee who was without power to sell and convey. McCrory Stores Corp. v. Bennett, 159 Md. 568, 152 A. 258 (1930).

LEASE OF LOT BY CAMP MEETING ASSOCIATION AT INDEFINITE AND VARIABLE RENTALS. -- See Walker v. Washington Grove Ass'n, 127 Md. 564, 96 A. 682 (1916).

DISMISSAL OF BILL SEEKING CONSTRUCTION OF WILL TO DETERMINE TO WHOM NOTICE SHOULD BE GIVEN. --A bill in equity stating that the leaseholder is in doubt as to whom the notice of intention to redeem should be given, by reason of doubt as to the construction of a will, and asking the court to advise the plaintiff, etc., will be dismissed. Where the required notice has been given, however, a bill in the nature of one for specific performance will lie. Plaenker v. Smith, 95 Md. 389, 52 A. 606 (1902).

EFFECT OF TENDER ON RENT ACCRUING THEREAFTER. --Where lessee is entitled to redeem and tenders reversioner the money, former will not be relieved of rent accruing thereafter and before a decree directing conveyance to him, unless he keeps tender good. Maulsby v. Page, 105 Md. 24, 65 A. 818 (1907).

AS TO PROCEDURE WHERE REVERSIONER IS NONRESIDENT AND TENANT WISHES TO REDEEM, see Hollander v. Central Metal & Supply Co., 109 Md. 131, 71 A. 442 (1908).

WHERE TITLE TO ONLY PART OF GROUND RENT IS HELD BY TRUSTEE. --This section applies to a ground rent title to only part of which is held by a trustee. Kingan Packing Ass'n v. Lloyd, 110 Md. 619, 73 A. 887 (1909).

STATED IN U.S. Bank Trust N.A. v. Nielsen Enters. MD, 232 F. Supp. 2d 500 (D. Md. 2002).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 1. GENERAL RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-111 (2006)

§ 8-111. Back rent on renewal of lease

If a tenant named in a lease or an assignee of a lease applies to the tenant's landlord for a renewal under a covenant in the lease giving the tenant the right to renewal, and if the tenant cannot produce vouchers or satisfactory evidence showing payment of rent accrued for three years next preceding the tenant's demand and application, the landlord, before executing the renewal of the lease or causing it to be executed, is entitled to demand and recover not more than three years' back rent, in addition to any renewal fine that may be provided for in the lease. The tenant may plead this section in bar of the recovery of any larger amount of rent.

HISTORY: An. Code 1957, art. 21, § 8-206; 1974, ch. 12, § 2; 1999, ch. 219; 2000, ch. 61,

§ 1.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 1. GENERAL RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-111.1 (2006)

§ 8-111.1. Back rent pursuant to action by landlord or reversionary transferee

(a) Applicability. -- This section applies to all residential leases or subleases in effect on or after October 1, 1999, which have an initial term of 99 years and which create a leasehold estate, or subleasehold estate, subject to the payment of an annual ground rent.

(b) Three year limitation. -- In any suit, action, or proceeding by a landlord, or the transferee of the reversion in leased property, to recover back rent, the landlord, or the transferee of the reversion in leased property is entitled to demand or recover not more than 3 years back rent.

(c) Additional costs of collection not recoverable without notice. -- In addition to rent payable under subsection (b) of this section, a landlord may not receive reimbursement for any additional costs or expenses related to collection of the back rent unless the notice requirements of §§ 8-402.2 and 8-402.3 of this title are met.

HISTORY: 1999, ch. 675; 2003, ch. 80, § 2.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 80, Acts 2003, effective Oct. 1, 2003, added (c).

EDITOR'S NOTE. --Section 2, ch. 675, Acts 1999, provides that "this Act shall be construed only prospectively and may not be applied or interpreted to have any effect on or application to any suit, action, or proceeding for back rent before October 1, 1999."

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 1. GENERAL RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-112 (2006)

§ 8-112. Termination of tenancy for fire or unavoidable accident

If the improvements on property rented for a term of not more than seven years become untenantable by reason of fire or unavoidable accident, the tenancy terminates, and all liability for rent ceases on payment proportionately to the day of fire or unavoidable accident.

HISTORY: An. Code 1957, art. 21, § 8-208; 1974, ch. 12, § 2.

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "An Analysis of the Maryland Mobile Home Park Act: A Need for Amendment," see 8 U. Balt. L. Rev. 271 (1979).

INTENT OF SECTION. --This section was intended to change the common law rule as to the liability of a tenant for rent, in case the improvements on the property became untenantable by reason of fire or unavoidable accident, and it also provides that the tenancy should be terminated. Spear v. Baker, 117 Md. 570, 84 A. 62 (1912).

SECTION DOES NOT PROHIBIT AGREEMENTS IN LEASE. --There is nothing in this section or in the policy of the law which prohibits lessors and lessees from making their own contracts with regard to improvements on the property being rendered untenantable by reason of fire or unavoidable accident. If a lease does not provide for such contingencies, then the statute controls, in cases to which it is applicable, just as the common law did when the parties did not provide for them, but there is no reason that the parties should be prohibited from contracting in reference to them. Spear v. Baker, 117 Md. 570, 84 A. 62 (1912); Standard Indus., Inc. v. Alexander Smith, Inc., 214 Md. 214, 133 A.2d 460 (1957).

WHERE PROPERTY CAN BE RESTORED BY ORDINARY REPAIRS. --Where lease provides for termination of tenancy in case property is destroyed or made untenantable by fire, tenancy is not terminated if property can be restored by ordinary repairs in a few days. Barry v. Herring, 153 Md. 457, 138 A. 266 (1927); Standard Indus., Inc. v. Alexander Smith, Inc., 214 Md. 214, 133 A.2d 460 (1957).

"SUBSTANTIAL DESTRUCTION" CONSTRUED. --For substantial destruction to occur within the meaning of a provision of a lease giving the right to terminate in such case, the destruction must be such as to render the premises permanently untenantable or such that restoration would be practically the equivalent of a new building, or so extensive that the demised building, as a practical matter, lost its character as a building. Standard Indus., Inc. v. Alexander Smith, Inc., 214 Md. 214, 133 A.2d 460 (1957).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***

*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 1. GENERAL RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-113 (2006)

§ 8-113. Effect of covenant to surrender premises in good repair

A covenant or promise by the tenant to leave, restore, surrender, or yield the leased premises in good repair does not bind the tenant to erect any similar building or pay for any building destroyed by fire or otherwise without negligence or fault on the tenant's part.

HISTORY: An. Code 1957, art. 21, § 8-210; 1974, ch. 12, § 2; 1999, ch. 219.

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "An Analysis of the Maryland Mobile Home Park Act: A Need for Amendment," see 8 U. Balt. L. Rev. 271 (1979).

TENANT'S LIABILITY. --This section provides that a covenant by a tenant to restore, surrender, or yield leased premises in good repair does not bind the tenant to erect or pay for any building destroyed by fire or otherwise without negligence or fault on the tenant's part, and the implication from that statute is that such a clause, standing alone and in the absence of any inconsistent provision, will obligate the tenant to restore premises damaged as a result of the tenant's negligence or fault. Rausch v. Allstate Ins. Co., 388 Md. 690, 882 A.2d 801 (2005).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 1. GENERAL RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-114 (2006)

§ 8-114. Right of tenant to remove fixtures not impaired by subsequent lease

The right of a tenant to remove fixtures erected by the tenant is not lost or impaired by the tenant's acceptance of a subsequent lease of the same premises without any intermediate surrender of possession.

HISTORY: An. Code 1957, art. 21, § 8-209; 1974, ch. 12, § 2; 1999, ch. 219.

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "An Analysis of the Maryland Mobile Home Park Act: A Need for Amendment," see 8 U. Balt. L. Rev. 271 (1979).

HISTORY OF SECTION. --This section apparently grew out of the decision in Carlin v. Ritter, 68 Md. 478, 13 A. 370 (1888). George Bauernschmidt Brewing Co. v. McColgan, 89 Md. 135, 42 A. 907 (1899).

WHEN SECTION APPLICABLE. --This section is applicable although first lease is made to an individual and new lease to a corporation of which he owns substantially all the stock, where such individual is regarded by the lessors as the lessee in each case. This section has no application where rights of the parties accrued prior to its passage. Party to whom tenant has assigned lease and fixtures occupies same position relative to removing such fixtures as tenant who installed them. Rasch v. Safe Deposit & Trust Co., 136 Md. 435, 111 A. 121 (1920).

QUOTED IN Teddy-Rose Enters., Inc. v. Hartford Fire Ins. Co., 48 Md. App. 466, 427 A.2d 1081 (1981).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 1. GENERAL RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-115 (2006)

§ 8-115. Rent reserved as crops

(a) Lien on crops. -- If a share of growing crops is reserved as rent, the rent reserved is a lien on the crops.

(b) Rule in Calvert, Charles, Prince George's, St. Mary's, and Worcester counties. -- In Calvert, Charles, Prince George's, St. Mary's, and Worcester counties, if a share of growing crops is reserved as rent, or advances by the landlord are made on the faith of the crops to be grown, the reserved rent and advances made are a lien on the crops. However, the contract making the advances shall be written and executed by the landlord and tenant.

(c) Lien not divested by sale, insolvency, or process of law. -- Any lien provided for by this section is not divested by sale by the tenant, the personal representative of a deceased tenant, by the assignment of the tenant in bankruptcy or insolvency, or by process of law.

HISTORY: An. Code 1957, art. 21, § 8-215; 1974, ch. 12, § 2; 2002, ch. 19, § 10.

NOTES:
EDITOR'S NOTE. --Section 10, ch. 19, Acts 2002, provides that "the publisher of the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, "counties" has been substituted for "Counties" in the heading and text of (b).

HISTORY AND INTENT OF SECTION. --See Hopper v. Haines, 71 Md. 64, 18 A. 29 (1889).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 1. GENERAL RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-116 (2006)

§ 8-116. Stripping and marketing of tobacco

(a) Landlord may sell tobacco under certain circumstances. -- If tobacco is grown on leased property and the tenant fails to make reasonable progress within six months from September 1 to strip and place the tobacco on the market, the landlord may strip, pack, ship, and sell at the tenant's expense any time after March 1, tobacco grown on the leased premises by the tenant in any previous year. All expenses paid by the landlord in the stripping, packing, shipment, or sale shall be a first and prior lien on the tobacco and the proceeds of the sale, notwithstanding any other agreement or obligation of the tenant or provision of law.

(b) Interference by tenant prohibited. -- A tenant or the tenant's agent, who interferes, directly or indirectly with the stripping, packing, shipment, or sale of tobacco by the landlord, is guilty of a misdemeanor and, on conviction, is subject to a fine of not less than $ 100 or by imprisonment for not less than 90 days nor more than six months, or both.

HISTORY: An. Code 1957, art. 21, § 8-216; 1974, ch. 12, § 2; 1999, ch. 219.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.

a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 1. GENERAL RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-117 (2006)

§ 8-117. Ownership of propane gas container placed on leased land

(a) Container is movable property. -- If a propane gas container with a total capacity of 25 gallons or more is placed on land, whether aboveground or underground, by a person other than the owner of the land under a lease or bailment between the landowner and the person placing the container on the land, the container is movable property during the term of the lease or bailment.

(b) Not affected by sale of land. -- During the term of the lease or bailment, the ownership of the container:

(1) Is not affected by the public or private sale of the land on which it is placed; and

(2) Is not subordinate to the rights of any purchaser of the land at the sale.

HISTORY: 1978, ch. 212.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 1. GENERAL RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-118 (2006)

§ 8-118. Rent escrow account in certain landlord-tenant actions

(a) Tenant to pay rents into account. -- In an action under § 8-401, § 8-402, or § 8-402.1 of this title in which a party demands a jury trial, the District Court immediately shall enter an order directing the tenant or anyone holding under the tenant to pay all rents as they come due during the pendency of the action, as prescribed in subsection (b) of this section. The order shall require the rent to be paid as and when due under the lease starting with the next rent due date after the action was filed.

(b) Escrow accounts into which rents to be paid. -- The District Court shall order that the rents be paid:

(1) Into the registry of an escrow account of:

(i) The clerk of the circuit court; or

(ii) If directed by the District Court, an administrative agency of the county which is empowered by local law to hold rents in escrow pending investigation and disposition of complaints by tenants; or

(2) To the landlord if both the tenant and landlord agree or at the discretion of the District Court.

(c) Failure to pay rent; hearing. --

(1) In an action under § 8-401, § 8-402, or § 8-402.1 of this title, if the tenant or anyone holding under the tenant fails to pay rent as it comes due pursuant to the terms of the order, the circuit court, on motion of the landlord and certification of the clerk, the landlord, or agency of the status of the delinquent account, shall conduct a hearing within 30 days.

(2) The District Court's escrow order and the clerk's certification are presumed to be valid.

(3) The tenant may dispute the validity or terms of the District Court's escrow order or raise any other defense to the tenant's alleged noncompliance with the order.

(4) If the circuit court determines that the failure to pay is without legal justification, the court may treat the tenant's demand for jury trial as waived, and can either immediately conduct a nonjury trial or set the matter for a future nonjury trial on the merits of the landlord's claim.

(d) Distribution of rent escrow account. -- Upon final disposition of the action, the circuit court shall order distribution of the rent escrow account in accordance with the judgment. If no judgment is entered, the circuit court shall order distribution to the party entitled to the rent escrow account after hearing.

HISTORY: 1982, ch. 787; 1983, chs. 137, 161; 1989, ch. 685; 1999, ch. 649; 2000, ch. 61, § 1.

UNIVERSITY OF BALTIMORE LAW REVIEW. --For note discussing "Rent Escrow Statute Requiring Payment into Escrow of Accrued Rents Pursuant to Demand for Jury Trial in Summary Eviction Proceeding as an Unconstitutional Infringement of the Right to Jury Trial," see 16 U. Balt. L. Rev. 166 (1986).

SUBSECTION (A) VIOLATES TENANTS' PROCEDURAL DUE PROCESS RIGHTS because it amounts to a taking of their property without any procedural safeguards such as a hearing. Boston Heights v. Chesterfield Sharps, Law No. 1107198 (Cir. Ct. Anne Arundel Co., Feb. 20, 1984), .

DEFINITION OF "ACTION." --"Action," as it is used in this section, refers to the steps taken to enforce the common law right to possession when the real property is forcibly detained. Eubanks v. First Mt. Vernon Indus. Loan Ass'n, 125 Md. App. 642, 726 A.2d 837 (1999).

ACTION UNDER THIS SECTION AS AN ACTION UNDER § 8-402. --An action against forcible detainer is an action under § 8-402 of this title such that rent escrow relief may be awarded under this section. Eubanks v. First Mt. Vernon Indus. Loan Ass'n, 125 Md. App. 642, 726 A.2d 837 (1999).

RELIEF UNDER §§ 8-118 AND 8-402 FOUND MUTUALLY EXCLUSIVE. --Under the peculiar facts of the case, where a lender sought to have a borrower evicted both by "ejectment," and "forcible detainer," and the borrower then filed his own suit against the lender (eventually consolidated with the first case) alleging various acts of deception, a circuit court's order of the posting of a bond was improper, as the remedies available under this section and § 8-402 were mutually exclusive as applied to these facts. Eubanks v. First Mt. Vernon Indus. Loan Ass'n, 125 Md. App. 642, 726 A.2d 837 (1999).

CONSTRUCTION WITH COURT RULES. --Although subsection (c) does not expressly provide for a hearing, that subsection must be read in conjunction with Maryland Rule 2-311 (f) which prohibits a decision dispositive of a claim or defense without a hearing. Harris v. Housing Auth., 77 Md. App. 160, 549 A.2d 770 (1988).

SUBSECTION (C) MEETS DUE PROCESS REQUIREMENTS. --Subsection (c), when read in connection with Maryland Rule 2-311 (f), which prohibits "a decision that is dispositive of a claim or defense without a hearing", provides a tenant with a sufficient opportunity for a hearing in order to be constitutionally acceptable. Lucky Ned Pepper's Ltd. v. Columbia Park & Recreation Ass'n, 64 Md. App. 222, 494 A.2d 947 (1985).

SUBSECTION (A) CONSTITUTIONAL. --Subsection (a), to the extent that it provides for the payment of accruing (future) rents into escrow, is constitutional, as it is not unreasonable to require the tenant to pay for his use of the landlord's premises pending the civil jury trial. Lucky Ned Pepper's Ltd. v. Columbia Park & Recreation Ass'n, 64 Md. App. 222, 494 A.2d 947 (1985); Harris v. Housing Auth., 77 Md. App. 160, 549 A.2d 770 (1988).

But subsection (a), to the extent that it provides for payment of past due rent into escrow, is an unconstitutional infringement of one's right to a civil jury trial because it places a premium on the exercise of that right. Lucky Ned Pepper's Ltd. v. Columbia Park & Recreation Ass'n, 64 Md. App. 222, 494 A.2d 947 (1985).

HEARING REQUIRED WHERE ACCRUING RENTS ORDERED INTO ESCROW. --Due process requires a hearing in connection with a District Court order requiring the payment of accruing rents into escrow in summary eviction proceedings. Lucky Ned Pepper's Ltd. v. Columbia Park & Recreation Ass'n, 64 Md. App. 222, 494 A.2d 947 (1985); Harris v. Housing Auth., 77 Md. App. 160, 549 A.2d 770 (1988).

When the landlord has established the existence of a valid rent escrow and that the tenant has failed to comply with it, the trial judge must conduct a hearing on the merits of the underlying dispute between the parties. Harris v. Housing Auth., 77 Md. App. 160, 549 A.2d 770 (1988).

WAIVER OF JURY TRIAL. --Upon a showing by landlord that an escrow order is valid, and that tenant, without legal justification, has failed to comply with the order, a court may treat the tenant's prayer for a jury trial as waived. Harris v. Housing Auth., 77 Md. App. 160, 549 A.2d 770 (1988).

JUDGMENTS. --Where the issues raised with respect to the escrow order are the same as those raised with respect to the underlying controversy and the court's resolution of those issues in the former context will, in effect, resolve the latter, a second proceeding may be unnecessary; based upon its findings, the court could simply proceed to enter judgment; however, the judgment entered in that manner should be confined to those instances where the escrow hearing is dispositive of all factual disputes between the parties and should not be followed where the allegations of a material breach of lease provisions have not been litigated. Harris v. Housing Auth., 77 Md. App. 160, 549 A.2d 770 (1988).

PROPRIETY OF INTERLOCUTORY APPEAL OF A RENT ESCROW ORDER. --A circuit court's order with respect to monthly rent escrow payments is an appealable interlocutory order under § 12-303 of the Courts and Judicial Proceedings Article. Eubanks v. First Mt. Vernon Indus. Loan Ass'n, 125 Md. App. 642, 726 A.2d 837 (1999).

APPLIED IN Custer Envtl., Inc. v. 9305 Old Georgetown Rd. Partnership, 345 Md. 284, 691 A.2d 1336 (1997).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 1. GENERAL RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-118.1 (2006)

§ 8-118.1. Escrow account in wrongful detainer action

(a) Payment of monthly fair rental value. --

(1) In an action under § 8-402.4 of this title in which a party demands a jury trial, the District Court immediately shall enter an order directing the person or entity in possession to pay the monthly fair rental value of the premises that is subject to the action, or such other amount as the court may determine is proper, starting as of the date the action was filed, as required in subsection (b) of this section.

(2) The order shall require the amount determined by the court to be paid within 5 days of the date of the order.

(b) Rent payable to escrow account or plaintiff. -- The District Court shall order that the amount determined by the court be paid:

(1) Into the registry of an escrow account of the clerk of the circuit court; or

(2) To the plaintiff if both the defendant and the plaintiff agree or at the discretion of the District Court.

(c) Failure to pay -- Hearing; defenses. --

(1) If the person or entity fails to pay under the terms of the order, the circuit court, on motion of the person or entity claiming possession and certification of the clerk or the plaintiff, if the payment is made to the plaintiff, of the status of the account, shall conduct a hearing within 30 days.

(2) The District Court's escrow order and the clerk's certification are presumed to be valid.

(3) The person or entity in possession may dispute the validity or terms of the District Court's escrow order or raise any other defense to the person's alleged noncompliance with the order.

(d) Same -- Absence of legal justification. --

(1) If the circuit court determines that the failure to pay is without legal justification, the court may treat the person or entity in possession's demand for jury trial as waived, and can immediately conduct a nonjury trial or set the matter for a future nonjury trial on the merits of the claim of the person or entity claiming possession.

(2) If the circuit court, on motion, determines that either party is entitled to possession as a matter of law, the court shall enter a judgment in favor of that party for possession of the property and for any other appropriate relief.

(e) Distribution of account upon action's disposition. --

(1) Upon final disposition of the action, the circuit court shall order distribution of the escrow account in accordance with the judgment.

(2) If no judgment is entered, the circuit court shall order distribution to the party entitled to the escrow account after hearing.

HISTORY: 1999, ch. 649; 2000, ch. 61, § 1; 2003, ch. 21, § 6.

NOTES:
EDITOR'S NOTE. --Section 6, ch. 21, Acts 2003, provides that "any reference in the Annotated Code of Maryland rendered obsolete by an Act of the General Assembly of 2003 shall be corrected by the publisher of the Annotated Code, in consultation with and subject to the approval of the Department of Legislative Services, with no further action required by the General Assembly. The publisher shall adequately describe any such correction in an editor's note following the section affected." Pursuant to § 6 of ch. 21, " 8-402.4 of this title" was substituted for "§ 8-402.3 of this title" in (a)(1), following the amendment by ch. 80, Acts 2003.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 2. RESIDENTIAL LEASES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-201 (2006)

§ 8-201. Applicability of subtitle

(a) In general. -- This subtitle is applicable only to residential leases unless otherwise provided.

(b) Exceptions. -- This subtitle does not apply to a tenancy arising after the sale of owner-occupied residential property where the seller and purchaser agree that the seller may remain in possession of the property for a period of not more than 60 days after the settlement.

HISTORY: 1974, ch. 12, § 2; 1990, ch. 570.

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "The Uniform Residential Landlord and Tenant Act and Its Potential Effects Upon Maryland Landlord-Tenant Law," see 5 U. Balt. L. Rev. 247 (1976).

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 2. RESIDENTIAL LEASES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-202 (2006)

§ 8-202. Lease option agreements

(a) "Lease option agreement" defined. -- For the purposes of this section, a "lease option agreement" means any clause in a lease agreement or separate document that confers on the tenant some power, either qualified or unqualified, to purchase the landlord's interest in the property.

(b) Required statement in agreement. --

(1) A lease option agreement to purchase improved residential property, with or without a ground rent, executed after July 1, 1971 shall contain a statement in capital letters: THIS IS NOT A CONTRACT TO BUY.

(2) In addition, the agreement shall contain a clear statement of its purpose and effect with

respect to the ultimate purchase of the property which is the subject of the lease option.

(c) Failure to comply. -- If a lease option agreement fails to comply with subsection (b) of this section and is otherwise enforceable, the lease, the lease option agreement, or both may be voided at the option of the party that did not draft the lease option agreement.

HISTORY: An. Code 1957, art. 21, § 8-214; 1974, ch. 12, § 2; 1999, ch. 649.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 2. RESIDENTIAL LEASES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-203 (2006)

§ 8-203. Security deposits

(a) Definitions. --

(1) In this section the following words have the meanings indicated.

(2) "Landlord" means a landlord or a prospective landlord.

(3) "Security deposit" means any payment of money, including payment of the last month's rent in advance of the time it is due, given to a landlord by a tenant in order to protect the landlord against nonpayment of rent, damage due to breach of lease, or damage to the leased premises, common areas, major appliances, and furnishings.

(4) "Tenant" means a tenant or a prospective tenant.

(b) Maximum amount. --

(1) A landlord may not impose a security deposit in excess of the equivalent of two months' rent per dwelling unit, regardless of the number of tenants.

(2) If a landlord charges more than the equivalent of two months' rent per dwelling unit as a security deposit, the tenant may recover up to threefold the extra amount charged, plus reasonable attorney's fees.

(3) An action under this section may be brought at any time during the tenancy or within two years after its termination.

(c) Receipt. -- The landlord shall give the tenant a receipt for the security deposit as specified

in § 8-203.1 of this subtitle. The receipt may be included in a written lease.

(d) Maintenance of accounts or certificates of deposit in financial institutions; sale or transfer of landlord's interest. --

(1) (i) The landlord shall maintain all security deposits in federally insured financial institutions, as defined in § 1-101 of the Financial Institutions Article, which do business in the State.

(ii) Security deposit accounts shall be maintained in branches of the financial institutions which are located within the State and the accounts shall be devoted exclusively to security deposits and bear interest.

(iii) A security deposit shall be deposited in an account within 30 days after the landlord receives it.

(iv) The aggregate amount of the accounts shall be sufficient in amount to equal all security deposits for which the landlord is liable.

(2) (i) In lieu of the accounts described in paragraph (1) of this subsection, the landlord may hold the security deposits in insured certificates of deposit at branches of federally insured financial institutions, as defined in § 1-101 of the Financial Institutions Article, located in the State or in securities issued by the federal government or the State of Maryland.

(ii) In the aggregate certificates of deposit or securities shall be sufficient in amount to equal all security deposits for which the landlord is liable.

(3) (i) In the event of sale or transfer of the landlord's interest in the leased premises, including receivership or bankruptcy, the landlord or the landlord's estate, but not the managing agent or court appointed receiver, shall remain liable to the tenant and the transferee for maintenance of the security deposit as required by law, and the withholding and return of the security deposit plus interest as required by law, as to all or any portion of the security deposit that the landlord fails to deliver to the transferee together with an accounting showing the amount and date of the original deposit, the records of the interest rates applicable to the security deposit, if any, and the name and last known address of the tenant from whom, or on whose behalf, the deposit was received.

(ii) A security deposit under this section may not be attached by creditors of the landlord or of the tenant.

(4) Any successor in interest is liable to the tenant for failure to return the security deposit, together with interest, as provided in this section.

(e) Return of deposit to tenant; interest. --

(1) Within 45 days after the end of the tenancy, the landlord shall return the security deposit to the tenant together with simple interest which has accrued in the amount of 3 percent per annum, less any damages rightfully withheld.

(2) Interest shall accrue at six-month intervals from the day the tenant gives the landlord the security deposit. Interest is not compounded.

(3) Interest shall be payable only on security deposits of $ 50 or more.

(4) If the landlord, without a reasonable basis, fails to return any part of the security deposit, plus accrued interest, within 45 days after the termination of the tenancy, the tenant has an action of up to threefold of the withheld amount, plus reasonable attorney's fees.

(f) Withholding of deposit -- Generally; tenant's right to be present at inspection of premises. -

-

(1) (i) The security deposit, or any portion thereof, may be withheld for unpaid rent, damage due to breach of lease or for damage by the tenant or the tenant's family, agents, employees, guests or invitees in excess of ordinary wear and tear to the leased premises, common areas, major appliances, and furnishings owned by the landlord.

(ii) The tenant has the right to be present when the landlord or the landlord's agent inspects the premises in order to determine if any damage was done to the premises, if the tenant notifies the landlord by certified mail of the tenant's intention to move, the date of moving, and the tenant's new address.

(iii) The notice to be furnished by the tenant to the landlord shall be mailed at least 15 days prior to the date of moving.

(iv) Upon receipt of the notice, the landlord shall notify the tenant by certified mail of the time and date when the premises are to be inspected.

(v) The date of inspection shall occur within five days before or five days after the date of moving as designated in the tenant's notice.

(vi) The tenant shall be advised of the tenant's rights under this subsection in writing at the time of the tenant's payment of the security deposit.

(vii) Failure by the landlord to comply with this requirement forfeits the right of the landlord to withhold any part of the security deposit for damages.

(2) The security deposit is not liquidated damages and may not be forfeited to the landlord for breach of the rental agreement, except in the amount that the landlord is actually damaged by the breach.

(3) In calculating damages for lost future rents any amount of rents received by the landlord for the premises during the remainder if any, of the tenant's term, shall reduce the damages by a like amount.

(g) Same -- Notice to tenant. --

(1) If any portion of the security deposit is withheld, the landlord shall present by first-class mail directed to the last known address of the tenant, within 45 days after the termination of the tenancy, a written list of the damages claimed under subsection (f)(1) of this section together with a statement of the cost actually incurred.

(2) If the landlord fails to comply with this requirement, the landlord forfeits the right to withhold any part of the security deposit for damages.

(h) Tenant ejected or evicted or abandoning premises. --

(1) The provisions of subsections (e)(1) and (4) and (g)(1) and (2) of this section are inapplicable to a tenant who has been evicted or ejected for breach of a condition or covenant of a lease prior to the termination of the tenancy or who has abandoned the premises prior to the termination of the tenancy.

(2) (i) A tenant specified in paragraph (1) of this subsection may demand return of the security deposit by giving written notice by first-class mail to the landlord within 45 days of being evicted or ejected or of abandoning the premises.

(ii) The notice shall specify the tenant's new address.

(iii) The landlord, within 45 days of receipt of such notice, shall present, by first-class mail

to the tenant, a written list of the damages claimed under subsection (f)(1) of this section together with a statement of the costs actually incurred and shall return to the tenant the security deposit together with simple interest which has accrued in the amount of 3 percent per annum, less any damages rightfully withheld.

(3) (i) If a landlord fails to send the list of damages required by paragraph (2) of this subsection, the right to withhold any part of the security deposit for damages is forfeited.

(ii) If a landlord fails to return the security deposit as required by paragraph (2) of this subsection, the tenant has an action of up to threefold of the withheld amount, plus reasonable attorney's fees.

(4) Except to the extent specified, this subsection may not be interpreted to alter the landlord's duties under subsections (e) and (g) of this section.

(i) Security bond. --

(1) Under this subsection, a landlord:

(i) May not require the tenant to purchase a surety bond; and

(ii) Is not required to consent to the tenant's purchase of a surety bond.

(2) (i) Instead of paying all or part of a security deposit to a landlord under this section, a tenant may purchase a surety bond to protect the landlord against:

1. Nonpayment of rent;

2. Damage due to breach of lease; or

3. Damage caused by the tenant or the tenant's family, agents, employees, guests or invitees in excess of ordinary wear and tear to the leased premises, common areas, major appliances, or furnishings owned by the landlord.

(ii) A surety shall refund to a tenant any premium or other charge paid by the tenant in connection with a surety bond if, after the tenant purchases a surety bond, the landlord refuses to accept the surety bond or the tenant does not enter into a lease with the landlord.

(3) (i) The amount of a surety bond purchased instead of a security deposit may not exceed two months' rent per dwelling unit.

(ii) If a tenant purchases a surety bond and provides a security deposit in accordance with this section, the aggregate amount of both the surety bond and security deposit may not exceed two months' rent per dwelling unit.

(iii) 1. If a landlord consents to a surety bond but requires the surety bond to be in an amount in excess of two months' rent, the tenant may recover up to three times the extra amount charged for the surety bond, plus reasonable attorney's fees.

2. If a landlord consents to both a surety bond and a security deposit but requires the surety bond and the security deposit to be in an aggregate amount in excess of two months' rent, the tenant may recover up to three times the extra amount charged for the surety bond, plus reasonable attorney's fees.

(4) Before a tenant purchases a surety bond instead of paying all or part of a security deposit, a surety shall disclose in writing to the tenant that:

(i) Payment for a surety bond is nonrefundable;

(ii) The surety bond is not insurance for the tenant;

(iii) The surety bond is being purchased to protect the landlord against loss due to nonpayment of rent, breach of lease, or damages caused by the tenant;

(iv) The tenant may be required to reimburse the surety for amounts the surety paid to the landlord;

(v) Even after a tenant purchases a surety bond, the tenant is responsible for payment of:

1. All unpaid rent;

2. Damage due to breach of lease; and

3. Damage by the tenant or the tenant's family, agents, employees, guests, or invitees in excess of ordinary wear and tear to the leased premises, common areas, major appliances, or furnishings owned by the landlord;

(vi) The tenant has the right to pay the damages directly to the landlord or require the landlord to use the tenant's security deposit, if any, before the landlord makes a claim against the surety bond; and

(vii) If the surety fails to comply with the requirements of this paragraph, the surety forfeits the right to make any claim against the tenant under the surety bond.

(5) (i) A tenant who purchases a surety bond in accordance with this subsection has the right to have the dwelling unit inspected by the landlord in the tenant's presence for the purpose of making a written list of the damages that exist at the commencement of the tenancy, if the tenant requests an inspection by certified mail within 15 days of the tenant's occupancy.

(ii) A tenant who provides a surety bond under this subsection shall have all the rights provided under subsection (f)(1)(ii) through (v) of this section.

(iii) The surety or landlord shall deliver to a tenant a copy of any agreements or documents signed by the tenant at the time of the tenant's purchase of the surety bond.

(iv) A tenant shall be advised in writing of all of the tenant's rights under this subsection prior to the purchase of a surety bond.

(6) (i) A surety bond may be used to pay claims by a landlord for:

1. Unpaid rent;

2. Damage due to breach of lease; or

3. Damage by the tenant or the tenant's family, agents, employees, guests, or invitees in excess of ordinary wear and tear to the leased premises, common areas, major appliances, or furnishings owned by the landlord.

(ii) A surety bond does not represent liquidated damages and may not be used as payment to a landlord for breach of the rental agreement, except in the amount that the landlord is actually damaged by the breach.

(iii) Except as provided in subparagraphs (i) and (ii) of this paragraph, a surety may not, directly or indirectly, make any other payment to a landlord.

(7) At least 10 days before a landlord makes a claim against a surety bond subject to this subsection, the landlord shall send to the tenant by first-class mail directed to the last known

address of the tenant, a written list of the damages to be claimed and a statement of the costs actually incurred by the landlord.

(8) (i) A tenant shall have the right to pay any damages directly to the landlord or require the landlord to use the tenant's security deposit, if any, before the landlord makes a claim against the surety bond.

(ii) If a tenant pays any damages directly to the landlord or requires the landlord to use the tenant's security deposit under subparagraph (i) of this paragraph and the payment fully satisfies the claim, the landlord shall forfeit the right to make a claim under the surety bond for any damages covered by the tenant's payment or the amount deducted from the tenant's security deposit in accordance with subparagraph (i) of this paragraph.

(9) (i) The tenant may dispute the landlord's claim to the surety by sending a written response by first-class mail to the surety within 10 days after receiving the landlord's claim on the surety.

(ii) If the tenant disputes the claim, the surety may not report the claim to a credit reporting agency prior to obtaining a judgment for the claim against the tenant.

(10) In any proceeding brought by the surety against the tenant on a surety bond under this subsection:

(i) The tenant shall retain all rights and defenses otherwise available in a proceeding between a tenant and a landlord under this section; and

(ii) Damages may only be awarded to the surety to the extent that the tenant would have been liable to the landlord under this section.

(11) (i) If a landlord's interest in the leased premises is sold or transferred, the new landlord shall accept the tenant's surety bond and may not require:

1. During the current lease term, an additional security deposit from the tenant; or

2. At any lease renewal, a surety bond or a security deposit from the tenant that, in addition to any existing surety bond or security deposit, is in an aggregate amount in excess of two months' rent per dwelling unit.

(ii) If the aggregate amount described in subparagraph (i)2 of this paragraph is in excess of two months' rent, the tenant may recover up to three times the extra amount charged, plus reasonable attorney's fees.

(12) (i) If a landlord fails to comply with the requirements of this subsection, the landlord forfeits the right to make any claim against the surety bond.

(ii) If a surety fails to comply with the requirements of this subsection, the surety forfeits the right to make any claim against a tenant under the surety bond.

(13) If a surety, in an action against the tenant, asserts a claim under the surety bond without having a reasonable basis to assert the claim, the court may grant the tenant damages of up to three times the amount claimed plus reasonable attorney's fees.

(14) A surety bond issued under this subsection may only be issued by an admitted carrier licensed by the Maryland Insurance Administration.

(j) No waiver of section's provisions. -- No provision of this section may be waived in any lease.

HISTORY: An. Code 1957, art. 21, § 8-213; 1974, ch. 12, § 2; ch. 476; 1979, ch. 550; 1980,

ch. 536; 1994, ch. 3, § 1; 1999, chs. 219, 649; 2000, ch. 61, § 1; 2004, ch. 369; 2005, ch. 566; 2006, ch. 502.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 369, Acts 2004, effective Oct. 1, 2004, substituted "3 percent" for "4 percent" in (e)(1) and (h)(2)(iii).
Chapter 566, Acts 2005, effective October 1, 2005, added the (d)(3)(i) designation, and added (d)(3)(ii).
Chapter 502, Acts 2006, effective July 1, 2006, added (i); and redesignated former (i) as (j).

MARYLAND LAW REVIEW. --For comment, "Maryland's Consumer Protection Act: A Private Cause of Action for Unfair or Deceptive Trade Practices," see 38 Md. L. Rev. 733 (1979).
For article, "Survey of Developments in Maryland Law, 1986-87," see 47 Md. L. Rev. 739 (1988).

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "An Analysis of the Maryland Mobile Home Park Act: A Need for Amendment," see 8 U. Balt. L. Rev. 271 (1979).

DEPOSITS REQUIRED BY PROVIDER OF GROUP SHELTER HOUSING FOR ELDERLY. --Because this section applies only to security deposits paid to a landlord by a tenant, it does not apply to security deposits required by a provider of group shelter housing for the elderly. 78 Op. Att'y Gen. 249 (April 12, 1993).

STUDENT DEPOSITS NOT SECURITY DEPOSITS. --The terms and conditions of student residence indicate that the relationship between college and students is not a landlord-tenant relationship; therefore, this section is not applicable in these circumstances and student deposits are not security deposits within the meaning of this section. 60 Op. Att'y Gen. 425 (1975).

TERM "THE WITHHELD AMOUNT" IN SUBSECTION (F) (4) REFERS BACK TO AMOUNT MENTIONED EARLIER IN SENTENCE, the amount withheld without a reasonable basis. Rohrbaugh v. Estate of Stern, 305 Md. 443, 505 A.2d 113 (1986).

MAXIMUM DEPOSIT EXCEEDED. --Landlord violated paragraph (b) (1) of this section by demanding the equivalent of three months rent as a security deposit. Camer v. Lupinacci, 96 Md. App. 118, 623 A.2d 726 (1993).

LIMITATION ON AMOUNT OF TREBLE DAMAGES UNDER SUBSECTION (F) (4). --The ambiguous language in subsection (f) (4) of this section must be accorded the meaning of its pre-1974 precursor: The punitive damages recoverable under this section may not exceed threefold the amount of the security deposit withheld without a reasonable basis by the landlord, plus reasonable attorney's fees. Rohrbaugh v. Estate of Stern, 305 Md. 443, 505 A.2d 113 (1986).

PROOF OF ACTUAL LOSS NOT REQUIRED. --There is no requirement in subsection (b) that the tenants prove actual loss in order to recover treble damages. Camer v. Lupinacci, 96 Md. App. 118, 623 A.2d 726 (1993).

DECLARATORY RELIEF INAPPROPRIATE --Under the Maryland Declaratory Judgment Act, specifically § 3-409(a) of the Courts Article, a trial court did not abuse its discretion in dismissing a declaratory judgment suit as the issues under the Maryland Security Deposit and Application Fee Laws, §§ 8-203 and 8-213 of this article, would not resolve the dispute as to issues under the Maryland Consumer Protection Act (CPA), §§ 13-301 and 13-303 of the Commercial Law Article; the CPA issues were within the primary jurisdiction of the Maryland Consumer Protection Division. Converge Servs. Group, LLC v. Curran, 383 Md. 462, 860 A.2d 871 (2004).

TREBLE DAMAGES AND ATTORNEY'S FEES. --The granting of treble damages and attorney's

fees is discretionary and, although the preferrable practice by a trial court is to make a specific finding as to a landlord's reasonable basis, the trial judge did not abuse his discretion in denying treble damages and attorney's fees. Golt v. Phillips, 308 Md. 1, 517 A.2d 328 (1986).

POST-JUDGMENT ATTORNEY'S FEES --In accord with the remedial nature of the security deposit statute, the State's highest court held that tenants who were forced to litigate for years to recover a wrongfully withheld security deposit, statutory damages, and fees and costs could also recover their post-judgment attorney's fees; any other interpretation would have effectively deprived tenants of a remedy in any case in which a landlord decided to appeal. Pak v. Hoang, 378 Md. 315, 835 A.2d 1185 (2003).

ATTORNEY'S FEES LIMITED. --There existed no basis for the award of attorney's fees on duplicative counts which merely presented alternative theories under which tenant could recover pursuant to this section. Camer v. Lupinacci, 96 Md. App. 118, 623 A.2d 726 (1993).

APPLIED IN Bocchini v. Gorn Mgt. Co., 69 Md. App. 1, 515 A.2d 1179 (1986).

QUOTED IN Frankel v. Friolo, 170 Md. App. 441, 907 A.2d 363 (2006).

CITED IN St. Luke Evangelical Lutheran Church, Inc. v. Smith, 318 Md. 337, 568 A.2d 35 (1990); Admiral Mortgage, Inc. v. Cooper, 357 Md. 533, 745 A.2d 1026 (2000); Sallie v. Tax Sale Investors, Inc., 149 Md. App. 141, 814 A.2d 572 (2002); Hyder v. Montgomery County, 160 Md. App. 482, 864 A.2d 279 (2004), cert. denied, -- Md. --, 872 A.2d 47 (2005); Rausch v. Allstate Ins. Co., 388 Md. 690, 882 A.2d 801 (2005); Design Kitchen & Baths v. Lagos, 388 Md. 718, 882 A.2d 817 (2005).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 2. RESIDENTIAL LEASES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-203.1 (2006)

§ 8-203.1. Security deposit receipt

(a) Contents. -- A receipt for a security deposit shall notify the tenant of the following:

(1) The right to have the dwelling unit inspected by the landlord in the tenant's presence for the purpose of making a written list of damages that exist at the commencement of the tenancy if the tenant so requests by certified mail within 15 days of the tenant's occupancy;

(2) The right to be present when the landlord inspects the premises at the end of the tenancy in order to determine if any damage was done to the premises if the tenant notifies

the landlord by certified mail at least 15 days prior to the date of the tenant's intended move, of the tenant's intention to move, the date of moving, and the tenant's new address;

(3) The landlord's obligation to conduct the inspection within 5 days before or after the tenant's stated date of intended moving;

(4) The landlord's obligation to notify the tenant in writing of the date of the inspection;

(5) The tenant's right to receive, by first class mail, delivered to the last known address of the tenant, a written list of the charges against the security deposit claimed by the landlord and the actual costs, within 45 days after the termination of the tenancy;

(6) The obligation of the landlord to return any unused portion of the security deposit, by first class mail, addressed to the tenant's last known address within 45 days after the termination of the tenancy; and

(7) A statement that failure of the landlord to comply with the security deposit law may result in the landlord being liable to the tenant for a penalty of up to 3 times the security deposit withheld, plus reasonable attorney's fees.

(b) Retention for 2 years. -- The landlord shall retain a copy of the receipt for a period of 2 years after the termination of the tenancy, abandonment of the premises, or eviction of the tenant, as the case may be.

(c) Landlord penalty. -- The landlord shall be liable to the tenant in the sum of $ 25 if the landlord fails to provide a written receipt for the security deposit.

HISTORY: 1999, ch. 649.

NOTES:
CROSS REFERENCES. --As to application of subsection (b) of this section, see § 15-102 of this article.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 2. RESIDENTIAL LEASES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-204 (2006)

§ 8-204. Covenant of quiet enjoyment

(a) Applicability of section. -- This section is applicable only to single or multi-family dwelling units.

(b) Covenant of quiet enjoyment required. -- A landlord shall assure the tenant that the tenant, peaceably and quietly, may enter on the leased premises at the beginning of the term of any lease.

(c) Abatement of rent for failure to deliver. -- If the landlord fails to provide the tenant with possession of the dwelling unit at the beginning of the term of any lease, the rent payable under the lease shall abate until possession is delivered. The tenant, on written notice to the landlord before possession is delivered, may terminate, cancel, and rescind the lease.

(d) Liability of landlord. -- On termination of the lease under this section, the landlord is liable to the tenant for all money or property given as prepaid rent, deposit, or security.

(e) Consequential damages. -- If the landlord fails to provide the tenant with possession of the dwelling unit at the beginning of the term of any lease, whether or not the lease is terminated under this section, the landlord is liable to the tenant for consequential damages actually suffered by the tenant subsequent to the tenant's giving notice to the landlord of the tenant's inability to enter on the leased premises.

(f) Eviction of tenant holding over. -- The landlord may bring an action of eviction and damages against any tenant holding over after the end of the tenant's term even though the landlord has entered into a lease with another tenant, and the landlord may join the new tenant as a party to the action.

HISTORY: An. Code 1957, art. 21, § 8-218; 1974, ch. 12, § 2; 1986, ch. 5, § 1; 1999, ch. 219.

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "An Analysis of the Maryland Mobile Home Park Act: A Need for Amendment," see 8 U. Balt. L. Rev. 271 (1979).

UNIVERSITY OF BALTIMORE LAW FORUM. --For article, "Landlord Beware: Private Action by Tenants Under the Maryland Consumer Protection Act," see 18, No. 1 U. Balt. Law Forum 18 (1987).
Shields v. Wagman: A Landlord Who Knew of the Viciousness of a Tenant's Dog, but Failed to Rid the Premises of Such Danger, may be Liable for Injuries the Dog Inflicts on Invitees in the Common Areas of Property under the Landlord's Control, see 29 U. of Balt. Law Forum 73 (1999).

CONSTRUCTION WITH § 2-115. --Subsection (b) of this section does not detract from or circumscribe § 2-115 of this article but rather it extends the general covenant of quiet enjoyment. Bocchini v. Gorn Mgt. Co., 69 Md. App. 1, 515 A.2d 1179 (1986).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 2. RESIDENTIAL LEASES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-205 (2006)

§ 8-205. Landlord to give tenant receipt

(a) Required. --

(1) In Anne Arundel County, unless the tenant makes payment by check or rents the property for commercial or business purposes, if property is leased for any definite term or at will, the landlord shall give the tenant a receipt showing payment and the time period which the payment covers.

(2) On conviction of violating this section, any person or agent shall forfeit the rent for the period in question.

(b) Exception. -- Except as otherwise provided in subsection (a) of this section, the landlord or landlord's agent shall give the tenant a receipt if the tenant:

(1) Makes payment in cash; or

(2) Requests a receipt.

(c) Penalties. -- In addition to any other penalty, the landlord shall be liable to the tenant in the sum of $ 25 if the landlord fails to provide a written receipt as required by this section.

HISTORY: An. Code 1957, art. 21, § 8-212; 1974, ch. 12, § 2; 1986, ch. 237; 1999, ch. 649.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 2. RESIDENTIAL LEASES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-206 (2006)

§ 8-206. Retaliatory evictions in Montgomery County

(a) "Retaliatory evictions" defined. -- Evictions described in subsection (b) of this section are called "retaliatory evictions."

(b) Evictions under certain circumstances prohibited. -- No landlord may evict a tenant of any

residential property in Montgomery County because --

(1) The tenant has filed a complaint against the landlord with any public agency;

(2) The tenant has filed a lawsuit against the landlord; or

(3) The tenant is a member of any tenants' organization.

(c) Judgment for defendant. -- If the judgment is in favor of the tenant in any eviction proceeding for any of the defenses in subsection (b) of this section, the court may enter judgment for reasonable attorney fees and court costs against the landlord.

(d) Scope. -- Nothing in this section restricts the authority of Montgomery County to legislate in the area of landlord-tenant affairs.

(e) Authority for local agency to invoke enforcement procedures. -- In addition to any other remedies provided under this title, Montgomery County may, by local law, establish authorization for a local agency to invoke enforcement procedures upon an administrative determination that a proposed eviction is retaliatory as prohibited by State or local law. These enforcement procedures may include injunctive or other equitable relief.

HISTORY: An. Code 1957, art. 21, § 8-213.1; 1974, ch. 12, § 2; 1979, ch. 275; 2002, ch. 19, § 10.

NOTES:
CROSS REFERENCES. --For more recent provisions as to retaliatory evictions, see § 8-208.1 of this title.

EDITOR'S NOTE. --Section 10, ch. 19, Acts 2002, provides that "the publisher of the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, "of this section" has been inserted in (a) and (c).

SECTION DOES NOT PURPORT TO AMEND OR MODIFY THE SUMMARY EVICTION PROCEDURE CONTAINED IN § 8-402 (B) OF THIS TITLE. County Council v. Investors Funding Corp., 270 Md. 403, 312 A.2d 225 (1973).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 2. RESIDENTIAL LEASES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-207 (2006)

§ 8-207. Duty of aggrieved party to mitigate damages on breach of lease; secondary liability of tenant for rent

(a) Duty to mitigate damages. -- The aggrieved party in a breach of a lease has a duty to mitigate damages if the damages result from the landlord's or tenant's:

(1) Failure to supply possession of the dwelling unit;

(2) Failure or refusal to take possession at the beginning of the term; or

(3) Termination of occupancy before the end of the term.

(b) No obligation to lease vacated unit in preference to others. -- The provisions of subsection (a) of this section do not impose an obligation to show or lease, the vacated dwelling unit in preference to other available units.

(c) Sublease of unit where tenant does not take possession or vacates. -- If a tenant wrongly fails or refuses to take possession of or vacates the dwelling unit before the end of the tenant's term, the landlord may sublet the dwelling unit without prior notice to the tenant in default. The tenant in default is secondarily liable for rent for the term of the tenant's original agreement in addition to the tenant's liability for consequential damages resulting from the tenant's breach, if the landlord gives the tenant prompt notice of any default by the sublessee.

(d) Waiver prohibited. -- No provision in this section may be waived in any lease.

HISTORY: An. Code 1957, art. 21, § 8-218.1; 1974, ch. 12, § 2; 1999, ch. 219; 2002, ch. 19, § 10.

NOTES:
EDITOR'S NOTE. --Section 10, ch. 19, Acts 2002, provides that "the publisher of the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, "of this section" has been inserted in (b).

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "An Analysis of the Maryland Mobile Home Park Act: A Need for Amendment," see 8 U. Balt. L. Rev. 271 (1979).

LEGISLATIVE INTENT. --The General Assembly, in adopting this section, intended merely to adopt the minority rule which limits the landlord's choices either to accepting the abandonment or to an undertaking to relet the premises on behalf of the tenant. Wilson v. Ruhl, 277 Md. 607, 356 A.2d 544 (1976).

ABROGATION OF COMMON LAW. --This section abrogated the common law rule that a landlord was under no duty to mitigate his damages upon an abandonment of the premises by the tenant. Wilson v. Ruhl, 277 Md. 607, 356 A.2d 544 (1976).

STANDARD FOR MITIGATION. --This section only requires the landlord to exercise reasonable diligence in an effort to obtain a new tenant. Wilson v. Ruhl, 277 Md. 607, 356 A.2d 544 (1976).

QUESTION FOR TRIER OF FACT. --It is normally left to the trier of fact to determine whether the landlord's efforts to relet satisfied his duty to mitigate. Wilson v. Ruhl, 277 Md. 607, 356

A.2d 544 (1976).

SUFFICIENCY OF MITIGATION. --The duty to mitigate under this section requires no more than that the landlord seek out a reputable real estate broker and list the property for rent with that broker. Wilson v. Ruhl, 277 Md. 607, 356 A.2d 544 (1976).

The listing of the property for sale does not satisfy the duty to mitigate damages, but the listing of the property for sale or rent, and later for rent, does satisfy that duty. Wilson v. Ruhl, 277 Md. 607, 356 A.2d 544 (1976).

The landlord has not necessarily breached his duty to mitigate because a new tenant could not be found. Wilson v. Ruhl, 277 Md. 607, 356 A.2d 544 (1976).

BROKERAGE COMMISSION represents a necessary expense in the reletting of property only for that period which is within the term for which the tenant would have been liable. Wilson v. Ruhl, 277 Md. 607, 356 A.2d 544 (1976).

A brokerage commission is a necessary expense incurred when the landlord undertakes to mitigate damages, and is thus recoverable from the tenant. Wilson v. Ruhl, 277 Md. 607, 356 A.2d 544 (1976).

CITED IN Millison v. Clarke, 43 Md. App. 75, 403 A.2d 384 (1979), aff'd in part, rev'd in part, 287 Md. 420, 413 A.2d 198 (1980).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 2. RESIDENTIAL LEASES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-208 (2006)

§ 8-208. Written leases; supplementary rights afforded by local law or ordinance; prohibited provisions not enforceable; damages; severability

(a) Written leases -- In general. --

(1) On or after October 1, 1999, any landlord who offers 5 or more dwelling units for rent in the State may not rent a residential dwelling unit without using a written lease.

(2) If a landlord fails to comply with paragraph (1) of this subsection, the term of the tenancy is presumed to be 1 year from the date of the tenant's first occupancy unless the tenant elects to end the tenancy at an earlier date by giving 1 month's written notice.

(b) Same -- Copy of proposed form to prospective applicants. -- A landlord who rents using a written lease shall provide, upon written request from any prospective applicant for a lease, a copy of the proposed form of lease in writing, complete in every material detail, except for the

date, the name and address of the tenant, the designation of the premises, and the rental rate without requiring execution of the lease or any prior deposit.

(c) Same -- Contents. -- A lease shall include:

(1) A statement that the premises will be made available in a condition permitting habitation, with reasonable safety, if that is the agreement, or if that is not the agreement, a statement of the agreement concerning the condition of the premises; and

(2) The landlord's and the tenant's specific obligations as to heat, gas, electricity, water, and repair of the premises.

(d) Same -- Prohibited provisions. -- A landlord may not use a lease or form of lease containing any provision that:

(1) Has the tenant authorize any person to confess judgment on a claim arising out of the lease;

(2) Has the tenant agree to waive or to forego any right or remedy provided by applicable law;

(3) (i) Provides for a penalty for the late payment of rent in excess of 5% of the amount of rent due for the rental period for which the payment was delinquent; or

(ii) In the case of leases under which the rent is paid in weekly rental installments, provides for a late penalty of more than $ 3 per week or a total of no more than $ 12 per month;

(4) Has the tenant waive the right to a jury trial;

(5) Has the tenant agree to a period required for landlord's notice to quit which is less than that provided by applicable law; provided, however, that neither party is prohibited from agreeing to a longer notice period than that required by applicable law;

(6) Authorizes the landlord to take possession of the leased premises, or the tenant's personal property unless the lease has been terminated by action of the parties or by operation of law, and the personal property has been abandoned by the tenant without the benefit of formal legal process;

(7) Is against public policy and void pursuant to § 8-105 of this title; or

(8) Permits a landlord to commence an eviction proceeding or issue a notice to quit solely as retaliation against any tenant for planning, organizing, or joining a tenant organization with the purpose of negotiating collectively with the landlord.

(e) Same -- Automatic renewal provisions. --

(1) Except for a lease containing an automatic renewal period of 1 month or less, a lease that contains a provision calling for an automatic renewal of the lease term unless prior notice is given by the party or parties seeking to terminate the lease, shall have the provision distinctly set apart from any other provision of the lease and provide a space for the written acknowledgment of the tenant's agreement to the automatic renewal provision.

(2) An automatic renewal provision that is not specifically accompanied by either the tenant's initials, signature, or witnessed mark is unenforceable by the landlord.

(f) Supplementary rights afforded by local law or ordinance. -- No provision of this section shall be deemed to be a bar to the applicability of supplementary rights afforded by any public local law enacted by the General Assembly or any ordinance or local law enacted by any

municipality or political subdivision of this State; provided, however, that no such law can diminish or limit any right or remedy granted under the provisions of this section.

(g) Prohibited provisions not enforceable; damages. --

(1) Any lease provision which is prohibited by terms of this section shall be unenforceable by the landlord.

(2) If the landlord includes in any lease a provision prohibited by this section or made unenforceable by § 8-105 or § 8-203 of this title, at any time subsequent to July 1, 1975, and tenders a lease containing such a provision or attempts to enforce or makes known to the tenant an intent to enforce any such provision, the tenant may recover any actual damages incurred as a reason thereof, including reasonable attorney's fees.

(h) Severability. -- If any word, phrase, clause, sentence, or any part or parts of this section shall be held unconstitutional by any court of competent jurisdiction such unconstitutionality shall not affect the validity of the remaining parts of this section.

HISTORY: 1974, ch. 375, § 1; 1976, chs. 272, 789; 1980, ch. 65; 1999, chs. 219, 649; 2002, ch. 19, § 10.

NOTES:
EDITOR'S NOTE. --Section 3, ch. 375, Acts 1974, provides that the act shall apply only to residential leases.

Section 10, ch. 19, Acts 2002, provides that "the publisher of the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, "of this title" has been inserted in (d) (7).

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "An Analysis of the Maryland Mobile Home Park Act: A Need for Amendment," see 8 U. Balt. L. Rev. 271 (1979).

JUDGMENT BY CONFESSION UNAVAILABLE TO LANDLORD. --The judgment by confession procedure set forth in former Maryland Rule 645 (now Rules 2-115 d and 2-611 a, c, and d) is unavailable to a landlord, as a matter of law, in any claim arising out of a lease of residential property. 63 Op. Att'y Gen. 450 (1978).

APPLICABILITY. --Tenants' obligation to give notice to quit a tenancy was determined under the parties' lease and was not affected by §§ 8-402(b), 8-208(d)(5), or 8-501 of this title. Hyder v. Montgomery County, 160 Md. App. 482, 864 A.2d 279 (2004), cert. denied, -- Md. --, 872 A.2d 47 (2005).

STATED IN Twyman v. Rockville Hous. Auth., 99 F.R.D. 314 (D. Md. 1983).

CITED IN St. Luke Evangelical Lutheran Church, Inc. v. Smith, 318 Md. 337, 568 A.2d 35 (1990); Springlake Corp. v. Symmarron Ltd. Partnership, 81 Md. App. 694, 569 A.2d 715, cert. denied, 319 Md. 582, 573 A.2d 1337 (1990).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 2. RESIDENTIAL LEASES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-208.1 (2006)

§ 8-208.1. Retaliatory evictions

(a) Prohibited evictions. -- No landlord shall evict a tenant of any residential property or arbitrarily increase the rent or decrease the services to which the tenant has been entitled for any of the following reasons:

(1) Solely because the tenant or the tenant's agent has filed a good faith written complaint, or complaints, with the landlord or with any public agency or agencies against the landlord;

(2) Solely because the tenant or the tenant's agent has filed a lawsuit, or lawsuits, against the landlord; or

(3) Solely because the tenant is a member or organizer of any tenants' organization.

(b) "Retaliatory evictions" defined. -- Evictions described in subsection (a) of this section shall be called "retaliatory evictions".

(c) Attorney's fees and costs. --

(1) If in any eviction proceeding the judgment be in favor of the tenant for any of the aforementioned defenses, the court may enter judgment for reasonable attorney fees and court costs against the landlord.

(2) If in any eviction proceeding the court finds that a tenant's assertion of a retaliatory eviction defense was in bad faith or without substantial justification, the court may enter judgment for reasonable attorney fees and court costs against the tenant.

(d) Conditions for relief. -- The relief provided under this section is conditioned upon:

(1) In the case of tenancies measured by a period of one month or more, the court having not entered against the tenant more than 3 judgments of possession for rent due and unpaid in the 12-month period immediately prior to the initiation of the action by the tenant or by the landlord.

(2) In the case of tenancies requiring the weekly payment of rent, the court having not entered against the tenant more than 5 judgments of possession for rent due and unpaid in the 12-month period immediately prior to the initiation of the action by the tenant or by the landlord, or, if the tenant has lived on the premises 6 months or less, the court having not entered against the tenant 3 judgments of possession for rent due and unpaid.

(e) Evictions not deemed "retaliatory evictions". -- No eviction shall be deemed to be a "retaliatory eviction" for purposes of this section upon the expiration of a period of 6 months following the determination of the merits of the initial case by a court (or administrative agency) of competent jurisdiction.

(f) Rights not affected. -- Nothing in this section may be interpreted to alter the landlord's or the tenant's rights to terminate or not renew a tenancy governed by a written lease for a stated term of greater than 1 month at the expiration of the term or at any other time as the parties may specifically agree.

(g) Effect of ordinance comparable in subject matter. -- In the event any county or Baltimore City shall have enacted an ordinance comparable in subject matter to this section, that ordinance shall supersede the provisions of this section.

HISTORY: 1974, ch. 645; 1975, chs. 108, 323; 1980, ch. 843, § 1; 1989, ch. 5, § 1; ch. 813; 1990, ch. 6, § 2; 1996, ch. 10, § 1; 1998, ch. 21, § 1; 1999, chs. 219, 649.

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "An Analysis of the Maryland Mobile Home Park Act: A Need for Amendment," see 8 U. Balt. L. Rev. 271 (1979).

UNIVERSITY OF BALTIMORE LAW FORUM. --For article, "Landlord Beware: Private Action by Tenants Under the Maryland Consumer Protection Act," see 18, No. 1 U. Balt. Law Forum 18 (1987).

APPLICATION OF SECTION TO LEASES EXISTING ON DATE OF ENACTMENT WOULD NOT BE UNCONSTITUTIONAL, so long as an eviction has not been reduced to final judgment. 59 Op. Att'y Gen. 146 (1974).

CITED IN Donmar Md. Corp. v. Hawkesworth, 46 Md. App. 575, 420 A.2d 295 (1980).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 2. RESIDENTIAL LEASES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-208.2 (2006)

§ 8-208.2. Retaliatory actions for informing landlord of lead poisoning hazards

(a) Prohibited. -- Notwithstanding the provisions of § 8-208.1 of this subtitle, a landlord of real property subject to the provisions of Title 6, Subtitle 8 of the Environment Article may not evict or take any other retaliatory action against a tenant primarily as a result of the tenant providing information to the landlord under Title 6, Subtitle 8 of the Environment Article.

(b) Retaliatory actions. -- For purposes of this section, a retaliatory action includes:

(1) An arbitrary refusal to renew a lease;

(2) Termination of a tenancy;

(3) An arbitrary rent increase or decrease in services to which the tenant is entitled; or

(4) Any form of constructive eviction.

(c) Remedies. -- A tenant subject to an eviction or retaliatory action under this section is entitled to the relief, and is eligible for reasonable attorney's fees and costs, authorized under § 8-208.1 of this subtitle.

(d) Breach of lease provisions. -- Nothing in this section may be interpreted to alter the landlord's or the tenant's rights arising from a breach of any provision of a lease.

HISTORY: 1994, ch. 114, § 1; 2002, ch. 19, § 10.

NOTES:
EDITOR'S NOTE. --Section 1, ch. 114, Acts 1994, transferred former § 8-208.2 of this title to be present § 8-208.3 of this title.

Section 7, ch. 114, Acts 1994, as amended by § 1, ch. 616, Acts 1997, effective June 1, 1997, provides that "this Act shall be construed only prospectively and may not be applied or interpreted to have any effect on or application to any event or conditions occurring before February 24, 1996, except for:

(1) The case of a person at risk with an elevated blood lead of 25 micrograms per deciliter or more first documented by a test performed on or after February 24, 1996, or with an elevated blood lead of 20 micrograms per deciliter or more first documented by a test performed on or after February 24, 2001, if the elevated blood lead was caused by the ingestion of lead before February 24, 1996;

(2) The acceptance of a qualified offer under § 6-835 of the Environment Article, as enacted by this Act, if the alleged injury or loss caused by the ingestion of lead by the person at risk in the affected property occurred before February 24, 1996; or

(3) The obligation of an owner of an affected property to register and pay an annual fee for the affected property by December 31, 1995 and the obligation of an owner of a rental dwelling unit to pay an annual fee as required under § 6-843 (a) (3) of the Environment Article by December 31, 1995."

Section 8, ch. 114, Acts 1994, as amended by § 1, ch. 616, Acts 1997, provides that "notwithstanding other provisions of this Act, this Act shall apply to insurance policies issued or renewed on or after February 24, 1996."

Section 10, ch. 19, Acts 2002, provides that "the publisher of the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, "of this subtitle" has been substituted for "of this article" in (a) and for "of this title" in (c).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY

TITLE 8. LANDLORD AND TENANT
SUBTITLE 2. RESIDENTIAL LEASES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-208.3 (2006)

§ 8-208.3. Landlord to maintain record of rent paid

Every landlord shall maintain a records system showing the dates and amounts of rent paid to the landlord by the tenant or tenants and showing also the fact that a receipt of some form was given to each tenant for each cash payment of rent.

HISTORY: 1974, ch. 305; 1994, ch. 114, § 1; 1999, ch. 219.

NOTES:
EDITOR'S NOTE. --Section 1, ch. 114, Acts 1994, transferred former § 8-208.2 of this title to be present § 8-208.3 of this title.

MARYLAND LAW REVIEW. --For symposium, expanding pro bono legal assistance in civil cases to Maryland's poor, see 49 Md. L. Rev. 1 (1990).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 2. RESIDENTIAL LEASES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-209 (2006)

§ 8-209. Limitations on residential rental fee increases

Expired.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 2. RESIDENTIAL LEASES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-210 (2006)

§ 8-210. Information to be posted or provided by landlord

(a) Information to be posted. --

(1) The landlord of any residential rental property shall include in a written lease or post a sign in a conspicuous place on that property listing the name, address, and telephone number of:

(i) The landlord; or

(ii) The person, if any, authorized to accept notice or service of process on behalf of the landlord.

(2) If a landlord fails to comply with paragraph (1) of this subsection, notice or service of process shall be deemed to be proper if the tenant sends notice or service of process by any of the following means:

(i) To the person to whom the rent is paid;

(ii) To the address where the rent is paid; or

(iii) To the address where the tax bill is sent.

(b) Notice of use and occupancy restrictions in Montgomery County. --

(1) This subsection applies only in Montgomery County.

(2) In this subsection, "development" has the meaning provided in § 11B-101 of this article.

(3) (i) Before execution by a tenant of a lease for an initial term of 125 days or more, the owner of any residential rental property within any condominium or development shall provide to the prospective tenant, to the extent applicable, a copy of the rules, declaration, and recorded covenants and restrictions that limit or affect the use and occupancy of the property or common areas and to which the owner is obligated.

(ii) The written lease shall include a statement, if applicable, that the obligations of the owner that limit or affect the use and occupancy of the property are enforceable against the owner's tenant.

HISTORY: 1974, ch. 771; 1991, ch. 601; 1999, ch. 649.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 2. RESIDENTIAL LEASES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-211 (2006)

§ 8-211. Repair of dangerous defects; rent escrow

(a) Purpose. -- The purpose of this section is to provide tenants with a mechanism for encouraging the repair of serious and dangerous defects which exist within or as part of any residential dwelling unit, or upon the property used in common of which the dwelling unit forms a part. The defects sought to be reached by this section are those which present a substantial and serious threat of danger to the life, health and safety of the occupants of the dwelling unit, and not those which merely impair the aesthetic value of the premises, or which are, in those locations governed by such codes, housing code violations of a nondangerous nature. The intent of this section is not to provide a remedy for dangerous conditions in the community at large which exists apart from the leased premises or the property in common of which the leased premises forms a part.

(b) Sanctions and repair consistent with public policy. -- It is the public policy of Maryland that meaningful sanctions be imposed upon those who allow dangerous conditions and defects to exist in leased premises, and that an effective mechanism be established for repairing these conditions and halting their creation.

(c) Applicability -- Residential. -- This section applies to residential dwelling units leased for the purpose of human habitation within the State of Maryland. This section does not apply to farm tenancies.

(d) Same -- Ownership. -- This section applies to all applicable dwelling units whether they are (1) publicly or privately owned or (2) single or multiple units.

(e) Serious and substantial defects and conditions. -- This section provides a remedy and imposes an obligation upon landlords to repair and eliminate conditions and defects which constitute, or if not promptly corrected will constitute, a fire hazard or a serious and substantial threat to the life, health or safety of occupants, including, but not limited to:

(1) Lack of heat, light, electricity, or hot or cold running water, except where the tenant is responsible for the payment of the utilities and the lack thereof is the direct result of the tenant's failure to pay the charges;

(2) Lack of adequate sewage disposal facilities;

(3) Infestation of rodents in two or more dwelling units;

(4) The existence of any structural defect which presents a serious and substantial threat to the physical safety of the occupants; or

(5) The existence of any condition which presents a health or fire hazard to the dwelling unit.

(f) Minor defects not covered. -- This section does not provide a remedy for the landlord's failure to repair and eliminate minor defects or, in those locations governed by such codes, housing code violations of a nondangerous nature. There is a rebuttable presumption that the following conditions, when they do not present a serious and substantial threat to the life, health and safety of the occupants, are not covered by this section:

(1) Any defect which merely reduces the aesthetic value of the leased premises, such as the lack of fresh paint, rugs, carpets, paneling or other decorative amenities;

(2) Small cracks in the walls, floors or ceilings;

(3) The absence of linoleum or tile upon the floors, provided that they are otherwise safe and structurally sound; or

(4) The absence of air conditioning.

(g) Notice by tenant. -- In order to employ the remedies provided by this section, the tenant shall notify the landlord of the existence of the defects or conditions. Notice shall be given by (1) a written communication sent by certified mail listing the asserted conditions or defects, or (2) actual notice of the defects or conditions, or (3) a written violation, condemnation or other notice from an appropriate State, county, municipal or local government agency stating the asserted conditions or defects.

(h) Reasonable time for repair. -- The landlord has a reasonable time after receipt of notice in which to make the repairs or correct the conditions. The length of time deemed to be reasonable is a question of fact for the court, taking into account the severity of the defects or conditions and the danger which they present to the occupants. There is a rebuttable presumption that a period in excess of 30 days from receipt of notice is unreasonable.

(i) Refusal by landlord to make repairs or corrections; action of rent escrow. -- If the landlord refuses to make the repairs or correct the conditions, or if after a reasonable time the landlord has failed to do so, the tenant may bring an action of rent escrow to pay rent into court because of the asserted defects or conditions, or the tenant may refuse to pay rent and raise the existence of the asserted defects or conditions as an affirmative defense to an action for distress for rent or to any complaint proceeding brought by the landlord to recover rent or the possession of the leased premises.

(j) Relief -- In general. --

(1) Whether the issue of rent escrow is raised affirmatively or defensively, the tenant may request one or more of the forms of relief set forth in this section.

(2) In addition to any other relief sought, if within 90 days after the court finds that the conditions complained of by the tenant exist the landlord has not made the repairs or corrected the conditions complained of, the tenant may file a petition of injunction in the District Court requesting the court to order the landlord to make the repairs or correct the conditions.

(k) Same -- Prerequisites. -- Relief under this section is conditioned upon:

(1) Giving proper notice, and where appropriate, the opportunity to correct, as described by subsection (h) of this section.

(2) Payment by the tenant, into court, of the amount of rent required by the lease, unless this amount is modified by the court as provided in subsection (m).

(3) In the case of tenancies measured by a period of one month or more, the court having not entered against the tenant 3 prior judgments of possession for rent due and unpaid in the 12-month period immediately prior to the initiation of the action by the tenant or by the landlord.

(4) In the case of periodic tenancies measured by the weekly payment of rent, the court having not entered against the tenant more than 5 judgments of possession for rent due and unpaid in the 12-month period immediately prior to the initiation of the action by the tenant or by the landlord, or, if the tenant has lived on the premises six months or less, the court having not entered against the tenant 3 judgments of possession for rent due and unpaid.

(l) Sufficient defenses. -- It is a sufficient defense to the allegations of the tenant that the tenant, the tenant's family, agent, employees, or assignees or social guests have caused the asserted defects or conditions, or that the landlord or the landlord's agents were denied reasonable and appropriate entry for the purpose of correcting or repairing the asserted conditions or defects.

(m) Findings of fact; orders. -- The court shall make appropriate findings of fact and make any order that the justice of the case may require, including any one or a combination of the following:

(1) Order the termination of the lease and return of the leased premises to the landlord, subject to the tenant's right of redemption;

(2) Order that the action for rent escrow be dismissed;

(3) Order that the amount of rent required by the lease, whether paid into court or to the landlord, be abated and reduced in an amount determined by the court to be fair and equitable to represent the existence of the conditions or defects found by the court to exist; or

(4) Order the landlord to make the repairs or correct the conditions complained of by the tenant and found by the court to exist.

(n) Disbursement of rent escrow moneys. -- After rent escrow has been established, the court:

(1) Shall, after a hearing, if so ordered by the court or one is requested by the landlord, order that the moneys in the escrow account be disbursed to the landlord after the necessary repairs have been made;

(2) May, after an appropriate hearing, order that some or all moneys in the escrow account be paid to the landlord or the landlord's agent, the tenant or the tenant's agent, or any other appropriate person or agency for the purpose of making the necessary repairs of the dangerous conditions or defects;

(3) May, after a hearing if one is requested by the landlord, appoint a special administrator who shall cause the repairs to be made, and who shall apply to the court to pay for them out of the moneys in the escrow account;

(4) May, after an appropriate hearing, order that some or all moneys in the escrow account be disbursed to pay any mortgage or deed of trust on the property in order to stay a foreclosure;

(5) May, after a hearing, if one is requested by the tenant, order, if no repairs are made or if no good faith effort to repair is made within six months of the initial decision to place money in the escrow account, that the moneys in the escrow account be disbursed to the tenant. Such an order will not discharge the right on the part of the tenant to pay rent into court and an

appeal will stay the forfeiture; or

(6) May, after an appropriate hearing, order that the moneys in the escrow account be disbursed to the landlord if the tenant does not regularly pay, into that account, the rent owed.

(o) Effect of public local laws. -- Except as provided in § 8-211.1 (e) of this subtitle, in the event any county or Baltimore City is subject to a public local law or has enacted an ordinance or ordinances comparable in subject matter to this section, commonly referred to as a "Rent Escrow Law", any such ordinance or ordinances shall supersede the provisions of this section.

HISTORY: 1975, ch. 414; 1976, ch. 272; 1977, ch. 532; 1986, ch. 557; 1987, ch. 11, § 1; 1988, ch. 488; 1989, ch. 813; 1996, ch. 10, § 1; 1997, ch. 714; 1998, ch. 21, § 1; 1999, ch. 219; 2001, ch. 309.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 309, Acts 2001, effective Oct. 1, 2001, substituted "3 prior judgments" for "more than 3 judgments" near the middle of (k) (3).

MARYLAND LAW REVIEW. --For symposium, expanding pro bono legal assistance in civil cases to Maryland's poor, see 49 Md. L. Rev. 1 (1990).

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "An Analysis of the Maryland Mobile Home Park Act: A Need for Amendment," see 8 U. Balt. L. Rev. 271 (1979).

UNIVERSITY OF BALTIMORE LAW FORUM. --For article, "Landlord Beware: Private Action by Tenants Under the Maryland Consumer Protection Act," see 18, No. 1 U. Balt. Law Forum 18 (1987).

LEGISLATIVE INTENT. --Subsection (n) is designed to achieve some of the purposes set forth by the General Assembly by putting pressure on a landlord to make repairs by providing sanctions when that is not done and by affording relief when it is. Neal v. Fisher, 312 Md. 685, 541 A.2d 1314 (1988).

APPLICABILITY. --The language of this section limits its application to leased premises. Legg v. Castruccio, 100 Md. App. 748, 642 A.2d 906 (1994).

REMEDIES AFFORDED BY SECTION ARE AVAILABLE EXCLUSIVELY TO TENANTS. Verona Hous., Inc. v. St. Mary's County Metro. Comm'n, 45 Md. App. 421, 413 A.2d 270, cert. dismissed, 289 Md. 73, 421 A.2d 978 (1980).

ENACTMENT OF SECTION DID NOT PRECLUDE CITY FROM EXERCISING HOME RULE POWERS. --By enacting this section, the General Assembly did not so occupy the area of housing regulations or landlord-tenant relations as to clearly preclude a city from exercising its otherwise broad home rule powers to select additional and complimentary variations. 62 Op. Att'y Gen. 523 (1977).

MUNICIPAL ORDINANCE ESTABLISHING LANDLORD SECURITY DEPOSIT SYSTEM, under which the landlord of multiple dwelling units would be required to post security funds with the city to be used for emergency repairs to the units, is not clearly foreclosed by the Landlord-Tenant Title. 62 Op. Att'y Gen. 523 (1977).

CITY OF BALTIMORE HAS PUBLIC LOCAL LAW PROVISIONS ALMOST IDENTICAL TO THIS SECTION. Parkington Apts., Inc. v. Cordish, 296 Md. 143, 460 A.2d 52 (1983).

LOCAL LAW CONTROLS OVER GENERAL LAW IN CASE OF DIVERGENCE. --While the procedures set out in the general law and the local laws regarding summary ejectment and rent escrow are similar, where they diverge, the local laws (to the extent not made the subject of repeal in the general law) control by reason of the provisions of Article 1, § 13 of the Code.

Parkington Apts., Inc. v. Cordish, 296 Md. 143, 460 A.2d 52 (1983).

ACTUAL DAMAGES. --Landlord's failure to inform tenants of the fact that rental property was not licensed with the Department of Public Works did not, in itself, cause the tenants to suffer actual damage for the purposes of recovery under this section. Hallowell v. Citaramanis, 88 Md. App. 160, 594 A.2d 591 (1991), aff'd, 328 Md. 142, 613 A.2d 964 (1992).

In determining the damages due the consumer in a private action, only his actual loss or injury caused by the unfair or deceptive trade practices is to be taken into account. Hallowell v. Citaramanis, 88 Md. App. 160, 594 A.2d 591 (1991), aff'd, 328 Md. 142, 613 A.2d 964 (1992).

Housing code violations constitute actual damages for the purposes of an action brought under § 13-408 (a) of the Maryland Consumer Protection Act (§ 13-408 (a) of the Commercial Law Article). Hallowell v. Citaramanis, 88 Md. App. 160, 594 A.2d 591 (1991), aff'd, 328 Md. 142, 613 A.2d 964 (1992).

COLLAPSE OF CEILING. --Where a four-square-foot section of the living room ceiling in the subject apartment collapsed to the floor, carrying with it an accumulation of pigeon feces, dead pigeon bodies, and pigeon eggs, it was determined that the landlady had violated her obligations under paragraphs (e) (1), (5), and (6) of this section. Duk Hee Ro v. Heredia, 341 Md. 302, 670 A.2d 459 (1996).

PAYMENT OF ESCROW TO TENANT. --District Court has jurisdiction under subsection (n) (5) to order payment of the rent escrow fund to tenant, even though the tenant has failed to request a hearing for that purpose, as long as landlady was provided adequate notice of hearing for that purpose. Neal v. Fisher, 312 Md. 685, 541 A.2d 1314 (1988).

PAYMENT OF ESCROW TO LANDLORD. --Court may not order payment of the escrow fund to the landlady under subsection (n) (6) if the tenant has failed to pay rent into the fund after the District Court has ordered the fund paid to the tenant. Neal v. Fisher, 312 Md. 685, 541 A.2d 1314 (1988).

TENANT'S FAILURE TO PAY UTILITY BILL. --This section is ambiguous as to whether the exception for a tenant's failure to pay the utility bill includes a second tenant's failure to pay his or her respective share. Legg v. Castruccio, 100 Md. App. 748, 642 A.2d 906 (1994).

QUOTED IN Ronald Fishkind Realty v. Sampson, 306 Md. 269, 508 A.2d 478 (1986); Shum v. Gaudreau, 317 Md. 49, 562 A.2d 707 (1989).

STATED IN Williams v. Housing Auth., 361 Md. 143, 760 A.2d 697 (2000).

CITED IN Citaramanis v. Hallowell, 328 Md. 142, 613 A.2d 964 (1992); Pak v. Hoang, 378 Md. 315, 835 A.2d 1185 (2003); Law Offices of Taiwo Agbaje, P.C. v. JLH Props., II, LLC, 169 Md. App. 355, 901 A.2d 249 (2006).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY

TITLE 8. LANDLORD AND TENANT
SUBTITLE 2. RESIDENTIAL LEASES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-211.1 (2006)

§ 8-211.1. Failure of lessor to remove lead-based paint; rent escrow

(a) Right of lessee. -- Notwithstanding any provision of law or any agreement, whether written or oral, if a landlord fails to comply with the applicable risk reduction standard under § 6-815 or § 6-819 of the Environment Article, the tenant may deposit the tenant's rent in an escrow account with the clerk of the District Court for the district in which the premises are located.

(b) Other rights or remedies. -- The right of a tenant to deposit rent in an escrow account does not preclude the tenant from pursuing any other right or remedy available to the tenant at law or equity and is in addition to them.

(c) Release of escrow account. -- Money deposited in an escrow account shall be released under the following terms and conditions:

(1) To the lessor upon compliance by the lessor with the applicable risk reduction standard; or

(2) To the lessee or any other person who has complied with the applicable risk reduction standard on presentation of a bill for the reasonable costs of complying with the applicable risk reduction standard.

(d) No eviction. -- A lessee may not be evicted, the tenancy may not be terminated, and the rent may not be raised for a lessee who elects to seek the remedies under this section. It shall be presumed that any attempt to evict the lessee, to terminate the tenancy, or to raise the rent, except for nonpayment of rent, within two months after compliance with the applicable risk reduction standard is in retaliation for the lessee's proceeding under this section and shall be void.

(e) Preemption. -- This section shall preempt any public local law or ordinance concerning the deposit of rent into an escrow account based upon the existence of paint containing lead pigment on surfaces in or on a rental dwelling unit in the State and disposition of that rent.

HISTORY: 1973, ch. 615; 1977, ch. 34, § 2; 1978, ch. 27; 1997, ch. 714; 1999, ch. 219; 2000, ch. 61, § 1.

MARYLAND LAW REVIEW. --For article, "Survey of Developments in Maryland Law, 1986-87," see 47 Md. L. Rev. 739 (1988).
For symposium, expanding pro bono legal assistance in civil cases to Maryland's poor, see 49 Md. L. Rev. 1 (1990).
For note, "Recent Developments, The Maryland General Assembly," see 54 Md. L. Rev. 891 (1995).

UNIVERSITY OF BALTIMORE LAW FORUM. --For article, "Landlord Beware: Private Action by Tenants Under the Maryland Consumer Protection Act," see 18, No. 1 U. Balt. Law Forum 18 (1987).

THE GENERAL ASSEMBLY INTENDED this section to supplement and coexist with Baltimore City's local law, not that this section is a nullity in Baltimore City. Ronald Fishkind Realty v. Sampson, 306 Md. 269, 508 A.2d 478 (1986).

CONSTRUCTION WITH LOCAL LAWS. --This section has its own meaning independent of § 9-9 of the local laws of Baltimore City, operates concurrently with § 9-9, and does not conflict with § 9-9. Ronald Fishkind Realty v. Sampson, 306 Md. 269, 508 A.2d 478 (1986).

THE ABSENCE OF ADMINISTRATIVE PRACTICE UNDER OR CONSTRUCTION OF THIS SECTION furnishes no basis for filling the void with Baltimore City's administrative practice under a different law. Ronald Fishkind Realty v. Sampson, 306 Md. 269, 508 A.2d 478 (1986).

LIMITATION ON REMEDY REJECTED. --The court rejected the argument that this section offers a remedy only to tenants whose landlords have criminally applied lead paint. Ronald Fishkind Realty v. Sampson, 306 Md. 269, 508 A.2d 478 (1986).

CITED IN

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 2. RESIDENTIAL LEASES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-212 (2006)

§ 8-212. Liquidated damages clauses in Baltimore City

Repealed by Acts 1997, ch. 522, effective October 1, 1997.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

[Repealed/Reserved]

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY

TITLE 8. LANDLORD AND TENANT
SUBTITLE 2. RESIDENTIAL LEASES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-212.1 (2006)

§ 8-212.1. Liability of military personnel receiving certain orders

Notwithstanding any other provision of this title, if a person who is on active duty with the United States military enters into a residential lease of property and subsequently receives permanent change of station orders or temporary duty orders for a period in excess of 3 months, any liability of the person for rent under the lease may not exceed:

(1) 30 days' rent after written notice and proof of the assignment is given to the landlord; and

(2) The cost of repairing damage to the premises caused by an act or omission of the tenant.

HISTORY: 1985, ch. 449; 1999, ch. 649.

RIGHT TO TERMINATE RESIDENTIAL LEASE. --When military personnel receive change of station orders upon release from service, they have the same right to terminate a residential lease as personnel who are ordered to another post. 77 Op. Att'y Gen. 170 (September 15, 1992).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 2. RESIDENTIAL LEASES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-212.2 (2006)

§ 8-212.2. Limitation of liability of a tenant for rent

(a) Applicability of section. -- This section does not apply to a tenant under a residential lease that contains a liquidated damages clause or early termination clause that:

(1) Requires written notice to vacate of 1 month or less; and

(2) Imposes liability for rent less than or equal to 2 months' rent after the date on which the tenant vacates the leased premises.

(b) Term of limitation. -- Subject to subsection (a) of this section and notwithstanding any other provision of this title, if a tenant under a residential lease meets the conditions set forth in subsection (c) of this section, the tenant's liability for rent under the lease may not exceed 2 months' rent after the date on which the tenant vacates the leased premises.

(c) Written certification. -- To qualify for the limitation of liability under subsection (b) of this section, the tenant shall provide to the landlord before the tenant vacates the leased premises:

(1) Subject to the provisions of subsection (d) of this section, a written certification from a physician regarding an individual who is a named party in, or an authorized occupant under the terms of, the lease that states in substantially the following form:

"I, (name of physician), hereby certify that my patient, (name of patient), is no longer able to live at his or her leased premises, (address of leased premises), because the patient has a medical condition that:

(1) Substantially restricts the physical mobility of the patient within, or from entering and exiting, the leased premises; or

(2) Requires the patient to move to a home, facility, or institution to obtain a higher level of care than can be provided at the leased premises.

I certify further that the expected duration of the patient's medical condition will continue beyond the termination date of the patient's lease, which the patient states is (termination date of lease)."; and

(2) A written notice of the termination of the lease stating the date by when the tenant will vacate the leased premises.

(d) Same -- Form. -- A certification that is provided to a landlord under subsection (c)(1) of this section shall be:

(1) Written by a physician who is licensed by the State Board of Physicians to practice medicine in the State under Title 14 of the Health Occupations Article;

(2) Prepared on the letterhead or printed prescription form of the physician; and

(3) Signed by the physician.

HISTORY: 2005, ch. 475.

NOTES:
EDITOR'S NOTE. --Section 3, ch. 475, Acts 2005, provides that the act shall take effect October 1, 2005.
Section 2, ch. 475, Acts 2005, provides that "this Act may not be construed to affect a landlord's duty to mitigate damages, an obligation of the tenant under the lease to pay for the cost of repairing damage to the leased premises caused by an act or omission of the tenant, or the rights or obligations of a landlord or a tenant under the federal Fair Housing Act."

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 2. RESIDENTIAL LEASES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-213 (2006)

§ 8-213. Applications for leases; deposits

(a) Statement required in application for lease. -- An application for a lease shall contain a statement which explains:

(1) The liabilities which the tenant incurs upon signing the application; and

(2) The provisions of subsections (b) and (c) of this section.

(b) Fees other than security deposit. --

(1) (i) If a landlord requires from a prospective tenant any fees other than a security deposit as defined by § 8-203 (a) of this subtitle, and these fees exceed $ 25, then the landlord shall return the fees, subject to the exceptions below, or be liable for twice the amount of the fees in damages.

(ii) The return shall be made not later than 15 days following the date of occupancy or the written communication, by either party to the other, of a decision that no tenancy shall occur.

(2) The landlord may retain only that portion of the fees actually expended for a credit check or other expenses arising out of the application, and shall return that portion of the fees not actually expended on behalf of the tenant making application.

(c) Applicability of section. -- This section does not apply to any landlord who offers four or less dwelling units for rent on one parcel of property or at one location, or to seasonal or condominium rentals.

HISTORY: 1978, ch. 978; 1999, ch. 649.

DECLARATORY RELIEF INAPPROPRIATE --Under the Maryland Declaratory Judgment Act, specifically § 3-409(a) of the Courts Article, a trial court did not abuse its discretion in dismissing a declaratory judgment suit as the issues under the Maryland Security Deposit and Application Fee Laws, §§ 8-203 and 8-213 of this article, would not resolve the dispute as to issues under the Maryland Consumer Protection Act (CPA), §§ 13-301 and 13-303 of the Commercial Law Article; the CPA issues were within the primary jurisdiction of the Maryland Consumer Protection Division. Converge Servs. Group, LLC v. Curran, 383 Md. 462, 860 A.2d 871 (2004).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 2. RESIDENTIAL LEASES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-214 (2006)

§ 8-214. Keeping of household pets by elderly persons in Montgomery County

(a) Definitions. --

(1) In this section the following words have the meanings indicated.

(2) "Elderly person" means an individual who is 60 years old or older.

(3) "Landlord" means an owner of residential rental property who offers more than 3 dwelling units for rent on 1 parcel of property or at 1 location.

(b) Applicability. -- This section applies only to Montgomery County.

(c) Prohibition required to be in writing. -- If a tenant is an elderly person, a landlord may not prohibit the tenant from keeping a household pet, unless specifically prohibited in writing at the time occupancy took place.

(d) Liability of tenant for damages. -- A tenant is liable for any damage done to the premises by the tenant's pet.

(e) Rules. -- A landlord may establish reasonable rules governing the type, size, and number of pets allowed, disposal of pet waste, and aspects of pet conduct and pet control related to protection of the health and safety of other tenants and the property of the landlord.

HISTORY: 1985, ch. 373.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***

*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 3. DISTRESS FOR RENT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-301 (2006)

§ 8-301. Definitions

(a) In general. -- In this subtitle the following words have the meaning indicated unless otherwise apparent from context.

(b) Court. -- "Court" means the District Court.

(c) Defendant. -- "Defendant" means a tenant.

(d) Distress. -- "Distress" means an action of distress filed pursuant to the provisions of this subtitle.

(e) Goods. -- "Goods" means goods, chattels, grain, growing crops, produce, unborn young of animals, inventory, and equipment regardless of where found or located, and includes cash money found on the leased premises. "Goods" does not include choses in action, other forms of intangible property, written contracts, securities, bonds, notes, or other instruments for the payment of money.

HISTORY: An. Code 1957, art. 21, § 8-301; 1974, ch. 12, § 2.

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "An Analysis of the Maryland Mobile Home Park Act: A Need for Amendment," see 8 U. Balt. L. Rev. 271 (1979).

COMMON LAW AS TO DISTRESS FOR RENT HAS BEEN PREEMPTED BY THIS STATUTE. Quigley v. Simon, 24 Md. App. 493, 332 A.2d 270 (1975).

BECAUSE THE COMMON LAW REMEDY OF DISTRESS FOR RENT IS NOT VIABLE. Quigley v. Simon, 24 Md. App. 493, 332 A.2d 270 (1975).

CITED IN Kessler v. Equity Mgt., Inc., 82 Md. App. 577, 572 A.2d 1144 (1990); King v. Marriott Int'l, Inc., 160 Md. App. 689, 866 A.2d 895 (2005).

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***

*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 3. DISTRESS FOR RENT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-302 (2006)

§ 8-302. Action at law; jurisdiction; leases subject to distress; venue

(a) Action at law. -- Distress for rent is an action at law and shall be brought as provided in this section.

(b) Jurisdiction. -- Jurisdiction in a case of distress for rent is vested exclusively in the District Court regardless of the amount of rent for which distress is brought, notwithstanding any limitation imposed by law on the civil monetary jurisdiction of such court.

(c) Leases and tenancy subject to distress. -- An action of distress may be brought only for unpaid rent under a written lease for a term of more than three months, or under a tenancy at will or a periodic tenancy that has continued more than three months.

(d) Venue. -- An action of distress shall be brought in the county where the leased premises lie.

HISTORY: An. Code 1957, art. 21, § 8-302; 1974, ch. 12, § 2.

I. In General.

II. When and What Landlord May Distrain.

III. Proceedings.

I. IN GENERAL.

CROSS REFERENCES. --
As to exemptions from execution, see §§ 11-504 to 11-507 of the Courts Article.
As to distress against married women, see FL § 4-205.

MARYLAND LAW REVIEW. --For article on distress, see 13 Md. L. Rev. 185 (1953).

HISTORICAL DISCUSSION OF DISTRESS. --See Clark Transport Co. v. Robinson, Daily Record, March 17, 1978, (Balt. City Ct., Ross, J.).

MARYLAND LAW OF DISTRESS PRIOR TO 1966. --See Universal C.I.T. Credit Corp. v. Congressional Motors, Inc., 246 Md. 380, 228 A.2d 463 (1967).

CONSTRUCTION OF STATUTES. --As to construction of former statutes with regard to distress for rent, see Cross v. Tome, 14 Md. 247 (1859).

RENT IS A DEMAND OF HIGH NATURE. If a tenant makes default in its payment, the landlord has a remedy for its recovery by action or by distress. Calvert Bldg. & Constr. Co. v. Winakur, 154 Md. 519, 141 A. 355 (1928).

DISTRESS EXPRESSLY MADE ACTION. --Whereas distress at common law was a remedy and not an action, it is now expressly made an action. Quigley v. Simon, 24 Md. App. 493, 332 A.2d 270 (1975).

A DISTRESS IS RATHER A REMEDY UPON THE LAND THAN ON PERSON OF TENANT, although tenancy must exist. Howard v. Ramsay, 7 H. & J. 113 (1826).

DISTRESS IS NOT WITHIN ACT OF LIMITATIONS. Longwell v. Ridinger, 1 Gill 57 (1843).

PRIORITY BETWEEN LANDLORD'S LIEN AND PERFECTED UNIFORM COMMERCIAL CODE SECURITY INTEREST. --See Universal C.I.T. Credit Corp. v. Congressional Motors, Inc., 246 Md. 380, 228 A.2d 463 (1967).

COMMERCIAL CODE DID NOT ABOLISH OR PURPORT TO ABOLISH CONDITIONAL CONTRACTS OF SALE OR CHATTEL MORTGAGES; indeed, their continued use, subject to the rules of that Code, was contemplated. Universal C.I.T. Credit Corp. v. Congressional Motors, Inc., 246 Md. 380, 228 A.2d 463 (1967).

WHERE GOODS OF STRANGER ARE SOLD UNDER DISTRESS, he may buy the goods and sue lessee for what he pays, or allow them to be sold and sue lessee for their value. Swartz v. Gottlieb-Bauernschmidt-Straus Brewing Co., 109 Md. 393, 71 A. 854 (1909).

BONA FIDE PURCHASER OF DISTRAINED PROPERTY. --Where a landlord distrains but leaves property in possession of tenant for an unreasonable time, the lien continues as against tenant, but not as against bona fide purchaser without notice. LaMotte v. Wisner, 51 Md. 543 (1879).

RIGHT OF LANDLORD TO CLAIM INTEREST. --See Dennison v. Lee, 6 G. & J. 383 (1833); Longwell v. Ridinger, 1 Gill 57 (1843).

LIABILITY FOR DISTRAINING FOR MORE RENT THAN IS DUE. --No action lies for distraining for more rent than is due, even though it be done maliciously; it is otherwise if more goods are sold than necessary to satisfy true claim and costs. Hamilton v. Windolf, 36 Md. 301 (1872).

II. WHEN AND WHAT LANDLORD MAY DISTRAIN.

WHERE RENT IS RETAINED BY TENANT FOR REPAIRS. --Since a landlord in absence of covenant to repair is not bound to repair, he may distrain for rent retained by tenant for repairs. Bonaparte v. Thayer, 95 Md. 548, 52 A. 496 (1902).

WHEN NOTE GIVEN FOR RENT IS NOT PAID. --Where a note is given for the rent, landlord may distrain if it is not paid at maturity. Giles v. Ebsworth, 10 Md. 333 (1856).

AFTER DEATH OF TENANT. --Landlord may distrain for rent in arrears during the term after death of tenant and before administration granted. Keller v. Weber, 27 Md. 660 (1867).

WHERE TENANT IS TO MAKE IMPROVEMENTS IN LIEU OF RENT. --As to the right of landlord to distrain for rent where a tenant is to make certain improvements in lieu of rent, see Dailey v. Grimes, 27 Md. 440 (1867).

RENTAL AGREEMENT TOO VAGUE TO AUTHORIZE DISTRESS. --Where agreement of rental does not state when tenancy expires, when rent accrues nor whether rent was for past or future occupation, the terms thereof are too vague to authorize distress. Dailey v. Grimes, 27 Md. 440 (1867).

PROPERTY LIABLE TO DISTRESS GENERALLY. --All property on the demised premises, save such as is exempt by law, is liable to distress. Giles v. Ebsworth, 10 Md. 333 (1856); Kennedy v. Lange, 50 Md. 91 (1878); Swartz v. Gottlieb-Bauernschmidt-Straus Brewing Co., 109 Md. 393, 71 A. 854 (1909).

The landlord's remedy is not confined to the goods of his tenant; he may take any on the premises, not exempted by law. Giles v. Ebsworth, 10 Md. 333 (1856).

CHATTELS LIABLE TO DISTRAINT NOT CONFINED TO THOSE OF TENANT. --See Giles v. Ebsworth, 10 Md. 333 (1856); Kennedy v. Lange, 50 Md. 91 (1878); Emig v. Cunningham, 62 Md. 458 (1884); Swartz v. Gottlieb-Bauernschmidt-Straus Brewing Co., 109 Md. 393, 71 A. 854 (1909); Mears v. Perine, 156 Md. 56, 143 A. 591 (1928); Wilhem v. Boyd, 172 Md. 79, 190 A. 823 (1937); J. Holland & Sons v. Ettleman, 225 Md. 84, 169 A.2d 394 (1961).

THERE CAN BE NO DISTRAINT OF GOODS IN CUSTODIA LEGIS. Cromwell v. Owings, 7 H. & J. 55 (1826).

Property in hands of receivers is not liable to distress without permission of court having jurisdiction over receivership. Everett v. Neff, 28 Md. 176 (1868).

Chattels of a stranger on demised premises are not distrainable when in possession of trustee appointed by the court to sell under chattel mortgage as they are in custodia legis. Mears v. Perine, 156 Md. 56, 143 A. 591 (1928).

Where a party applies for the benefit of the insolvent laws, his property is thereafter in custodia legis, and not liable to distraint for rent due at time of application. Buckey v. Snouffer, 10 Md. 149 (1856); Fox v. Merfeld, 81 Md. 80, 31 A. 583 (1895).

GOODS IN HANDS OF COMMISSION MERCHANT. --The goods of a principal in the hands of his commission merchant for sale are not liable to distraint for rent due by latter. McCreery v. Clafflin, 37 Md. 435 (1873).

McCreery v. Claffin, 37 Md. 435 (1873), is still the law in Maryland, and a Maryland court would decide that a landlord who has leased to a tenant a public storage warehouse has no right to distrain on property which has been stored by members of the public with the tenant in the ordinary course of the tenant's business. United States v. National Capital Storage & Moving Co., 265 F. Supp. 50 (D. Md. 1967).

LANDLORD HAS QUASI LIEN ON GOODS UPON DEMISED PREMISES for arrearages of rent, and if attaching creditor has taken the goods, though they cannot be distrained upon, landlord's lien prevails and he must be first paid out of proceeds of sale. Thomson v. Baltimore & Susquehanna Steam Co., 33 Md. 312 (1870).

WHERE LANDLORD REENTERS ILLEGALLY HE IS LIABLE FOR VALUE OF PROPERTY DISTRAINED UPON. --Where landlord of store permitted tenants to continue "going out of business sale" beyond March 31 without objection and had accepted the April rent, his reentry on April 16 was illegal, he was not entitled to distrain early in June for the May and June rent and he was liable to tenants for the value of fixtures distrained upon. Toy Fair, Inc. v. Kimmel, 177 F. Supp. 129 (D. Md. 1959).

III. PROCEEDINGS.

AFFIDAVIT AND ACCOUNT. --See Joynes v. Wartman, 5 Md. 195 (1853); Cross v. Tome, 14 Md. 247 (1859); Jean v. Spurrier, 35 Md. 110 (1872); Waring v. Slingluff, 63 Md. 53 (1885); Burnett v. Bealmear, 79 Md. 36, 28 A. 898 (1894); State ex rel. German v. Timmons, 90 Md. 10, 44 A. 1003 (1899).

NO DEMAND IS NECESSARY BEFORE DISTRESS. Offutt v. Trail, 4 H. & J. 20 (1815).

WARRANT SIGNED BY LANDLORD'S AGENT. --See Jean v. Spurrier, 35 Md. 110 (1872).

RIGHT TO ABANDON DISTRESS AND LEVY ANOTHER. --See Everett v. Neff, 28 Md. 176

(1868).

AMENDMENTS. --As to amendment of distraint proceedings, see Waring v. Slingluff, 63 Md. 53 (1885).

DISTRESS MAY BE LEVIED BY DEPUTY SHERIFF. --See Giles v. Ebsworth, 10 Md. 333 (1856); Myers v. Smith, 27 Md. 91 (1867).

ENTRY TO MAKE DISTRESS. --See Cate v. Schaum, 51 Md. 299 (1879).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 3. DISTRESS FOR RENT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-303 (2006)

§ 8-303. Form and contents of petition; service

(a) Form and contents. -- An action of distress shall be brought by the landlord as plaintiff, the landlord's petition shall name the tenant as defendant and contain the following information:

(1) The name and address of the landlord;

(2) The name and address of the tenant; and

(3) The facts relating to (i) any assignment of a lease, if known, (ii) the premises leased, (iii) the date of the lease, (iv) the term of the lease, (v) the rent required to be paid by the lease, and (vi) the amount of the rent in arrears.

(b) Oath or affirmation. -- The petition shall be under oath or affirmation of the plaintiff, or the plaintiff's agent, that the facts recited are true and correct.

(c) Service on nonresident or defendant not amenable to service. -- If a defendant is not a resident of, or amenable to service in a county where the leased premises are located, service may be made by certified mail, return receipt requested, bearing a postmark from the United States Postal Service. If this service is returned by the Post Office Department or refused by the addressee or the addressee's agent, then process shall be sent by first-class mail and the defendant returned as summoned.

HISTORY: An. Code 1957, art. 21, §§ 8-303, 8-321; 1974, ch. 12, § 2; 1983, ch. 563; 1999,

ch. 219.

STATED IN Quigley v. Simon, 24 Md. App. 493, 332 A.2d 270 (1975).

CITED IN Vieira v. Prince George's County, 101 Md. App. 220, 645 A.2d 639 (1994), aff'd, 340 Md. 651, 667 A.2d 898 (1995); Prince George's County v. Vieira, 340 Md. 651, 667 A.2d 898 (1995).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 3. DISTRESS FOR RENT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-304 (2006)

§ 8-304. Show cause order

(a) Issuance. -- When an action of distress is filed, the clerk shall issue an order directing the defendant to appear and show cause at a stated time why levy under an action of distress should not be made. The hearing may be not earlier than seven days from date of service on the defendant.

(b) Additional contents. -- In addition, the order shall:

(1) Direct the time within which service of the petition and show cause order shall be made on the defendant; and

(2) Inform the defendant that (i) the defendant may appear at the time stated and present evidence on the defendant's behalf; and (ii) if the defendant fails to appear, all goods on the leased premises not exempted by law may be levied on and removed by the sheriff.

HISTORY: An. Code 1957, art. 21, § 8-303.1; 1974, ch. 12, § 2; 1999, ch. 219.

PURPOSE OF SECTION. --It was to meet recognized due process requirements that the General Assembly added this section. Clark Transport Co. v. Robinson, Daily Record, March 17, 1978, (Balt. City Ct., Ross, J.).

STATED IN Quigley v. Simon, 24 Md. App. 493, 332 A.2d 270 (1975).

CITED IN Prince George's County v. Vieira, 340 Md. 651, 667 A.2d 898 (1995).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 3. DISTRESS FOR RENT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-305 (2006)

§ 8-305. Order of levy; service of petition and order; inventory; return; amended levy and inventory

(a) Order of levy; service of order. -- On a determination of reasonable probability, the court promptly shall issue an order directing that all goods on the leased premises not exempted by law shall be levied on. A copy of the order of levy shall be served on each tenant on the leased premises. If no tenant is found on the premises, a copy of the order shall be affixed in a prominent place on the interior of the leased premises.

(b) Inventory. -- The officer making the levy then shall proceed to make an inventory of each article of goods distrained on and deliver a copy to each tenant found on the leased premises. If no tenant is found, the officer shall affix a copy to the premises as provided above in the case of the order.

(c) Return. -- The officer serving the order shall make a return of the officer's action to the court including the date and time of return.

(d) Amended levy and inventory. -- If the plaintiff by verified petition requests the court to include in the levy goods subject to distress and claimed to be on the leased premises but not included in the levy and inventory, the court, after service of a copy of the petition on the defendant and any person claiming an interest in the goods, shall conduct a hearing on the petition. The court may amend the levy and inventory to include those goods the court finds should be included.

HISTORY: An. Code 1957, art. 21, § 8-304; 1974, ch. 12, § 2; 1976, ch. 272; 1999, ch. 219.

STATED IN Quigley v. Simon, 24 Md. App. 493, 332 A.2d 270 (1975).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***

*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 3. DISTRESS FOR RENT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-306 (2006)

§ 8-306. Goods levied on; exclusions from levy

(a) Goods levied on. -- The levy under an action of distress shall be made solely on goods on the leased premises, regardless of whether the goods are the property of the tenant or of some other person, except as provided in this subtitle.

(b) Exclusions from levy. -- When the term of a lease is for more than 15 years, levy shall be made solely on the goods of the tenant or owner of the leasehold interest found on the leased premises. However, the goods of any subtenant or of any third party on the leased premises are not subject to levy under distress.

HISTORY: An. Code 1957, art. 21, § 8-305; 1974, ch. 12, § 2.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 3. DISTRESS FOR RENT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-307 (2006)

§ 8-307. Exemptions from levy; goods subject to security interest

(a) Exemptions from levy. -- The following are exempt from distress:

(1) Hand-powered and operated tools used by a tenant in the tenant's occupation or livelihood;

(2) Law books of an attorney;

(3) Hand-operated instruments of a physician;

(4) Medical books of a physician;

(5) Files and professional records of an attorney or physician; and

(6) The prior perfected security interest in all goods in which the tenant has an interest.

(b) Goods subject to security interest. -- The landlord in the landlord's petition shall certify as to the existence of a perfected security interest in any goods of the tenant. If the security interest was perfected prior to the levy under the distraint, the landlord either shall release the property from the distraint proceedings or pay to the holder of the security interest the balance due under the security interest. If the landlord pays the balance, it becomes a part of the costs in the distraint proceedings. However, the holder of the security interest, on demand by the landlord, shall give a true written statement of the balance due under the security interest, and, if the landlord pays the balance, the holder shall assign or release the security interest to the landlord.

HISTORY: An. Code 1957, art. 21, § 8-308; 1974, ch. 12, § 2; 1999, ch. 219.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 3. DISTRESS FOR RENT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-308 (2006)

§ 8-308. Levied goods in court

Goods levied on under distress shall be held in custodia legis.

HISTORY: An. Code 1957, art. 21, § 8-306; 1974, ch. 12, § 2.

STATED IN Quigley v. Simon, 24 Md. App. 493, 332 A.2d 270 (1975).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***

*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 3. DISTRESS FOR RENT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-309 (2006)

§ 8-309. Entry under levy; forcible entry; time of levy

(a) Entry under levy. -- In making levy under an action of distress, no forcible entry may be made into leased premises occupied and used as a dwelling without a court order. If the levying officer cannot gain entry, the plaintiff may file a verified petition with the court for an order directing forcible entry into the leased premises.

(b) Forcible entry. -- Forcible entry may be made for the purpose of levy into any property or building other than those specified in subsection (a) of this section.

(c) Time of levy. -- Levy under an action of distress may be made at any hour of the day or night.

HISTORY: An. Code 1957, art. 21, § 8-307; 1974, ch. 12, § 2; 2002, ch. 19, § 10.

NOTES:
EDITOR'S NOTE. --Section 10, ch. 19, Acts 2002, provides that "the publisher of the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, "of this section" has been added at the end of (b).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 3. DISTRESS FOR RENT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-310 (2006)

§ 8-310. Removal of levied goods; bond

On petition of any plaintiff in distress and a showing of a need for protection, the court may order the removal of any goods levied on from the leased premises to a place approved by the court pending the sale of the goods. Removal of goods may be conditioned on the giving of a bond by the plaintiff in the amount and in the form the court determines.

HISTORY: An. Code 1957, art. 21, § 8-309; 1974, ch. 12, § 2.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 3. DISTRESS FOR RENT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-311 (2006)

§ 8-311. Levy on goods of third person; finality of levy; removal of excluded goods

(a) Levy on goods of third person. -- Within seven days after the levy, any person who is not a tenant and whose goods are levied on under distress may file a petition with the court where the action of distress is pending for an order to exclude from levy the goods of the person not a tenant. The petition shall set forth the facts as to the ownership of the goods and shall be verified by the petitioner.

(b) Service. -- A copy of the petition shall be served on the plaintiff and defendant. If service cannot be made on either, the petitioner shall certify this fact to the court in writing, stating the reason for it.

(c) Order excluding goods; removal. -- After a hearing held on not more than ten days' notice, and on submission of proof satisfactory to the court that the goods are not the property of the tenant, the court shall issue an order excluding the goods from levy. This order authorizes the owner to remove the owner's goods from the leased premises at the owner's expense free of any claim of the landlord.

(d) Removal of excluded goods. -- The order shall provide that the claimant shall remove the claimant's goods at the claimant's expense from the leased premises within a time to be fixed by the court. If the claimant fails to remove the claimant's goods within the fixed time, then the goods claimed by the claimant no longer shall be excluded from distress and shall be subject to the landlord's claim for distress as though no petition for exclusion had been filed.

(e) Finality of levy. -- If no petition to determine ownership of goods is filed by any third

person within seven days after the date of a levy under distress, all goods on the leased premises and included in the inventory conclusively are presumed to be the goods of the tenant and may be disposed of according to the applicable provisions of this subtitle without any liability to the owner for the disposal.

HISTORY: An. Code 1957, art. 21, § 8-310; 1974, ch. 12, § 2; 1999, ch. 219.

SECTION UNCONSTITUTIONAL. --Since this section provides for a taking of property through a court proceeding without requiring some form of notice to the owner of the property, it contravenes the Fourteenth Amendment and it is therefore unconstitutional on its face. Clark Transport Co. v. Robinson, Daily Record, March 17, 1978, (Balt. City Ct., Ross, J.).

PURPOSE FOR ADOPTION OF THIS SECTION was to provide an effective and efficient procedure for the sale of all nonexempt goods on the leased premises free of claims against the landlord and the title of the purchaser at the distraint sale. Clark Transport Co. v. Robinson, Daily Record, March 17, 1978, (Balt. City Ct., Ross, J.).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 3. DISTRESS FOR RENT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-312 (2006)

§ 8-312. Effect of levy on title to goods; risk of loss of levied goods

(a) Effect of levy on title to goods. -- Levy on goods under distress does not affect or disturb the title to the goods. The claim or lien of the landlord under this subtitle on the goods continues until the goods are sold as provided in this subtitle.

(b) Risk of loss of levied goods. -- All risk of loss or destruction of goods of any nature is on the owner or the tenant of the leased premises, regardless of whether the goods were removed from the leased premises by the officer. However, the officer is responsible to the owner for willful damage to the goods.

HISTORY: An. Code 1957, art. 21, § 8-311; 1974, ch. 12, § 2; 2004, ch. 25.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 25, Acts 2004, approved April 13, 2004, and effective from date of enactment, substituted "subtitle" for "section" at the end of (a).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 3. DISTRESS FOR RENT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-313 (2006)

§ 8-313. Expense of removing goods; liability for removal of goods affixed to the property

(a) Expense of removing goods. -- The expense of removal of any goods from the leased premises to any other place for storage pending sale, including the expense of removal of goods which are affixed to the property, shall be included as a part of the costs of distress.

(b) Liability for removal of goods affixed to the property. -- An officer does not incur liability for removal of goods which are affixed to the property. The officer may require the plaintiff to mail or deliver an indemnity bond to the officer to protect the officer from any claim for damage or injury to any person or property caused by the officer's removal for sale of goods affixed to the property.

HISTORY: An. Code 1957, art. 21, § 8-312; 1974, ch. 12, § 2; 1999, ch. 219.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 3. DISTRESS FOR RENT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-314 (2006)

§ 8-314. Answer to petition; hearing; final order of sale

(a) Answer to petition. -- The defendant in an action of distress may file an answer, setting forth any defense the defendant may have to the action, including excessive rent distrained for or the rent sued is not distrainable.

(b) Hearing. -- Hearing on the defendant's answer shall be held on not more than ten days' notice sent by regular mail to all parties and claimants. However, the court may postpone the hearing on due notice to all parties. At the hearing the court may determine and decide all issues raised, and issue an order of sale of the goods and may make any order in connection with them as required.

(c) Final order of sale. -- In any final order for the sale of goods distrained, the court may increase the amount of the rent claim to an amount equal to the sum of the plaintiff's original claim plus rent accruing after the filing of the petition for distress up to the day prior to the date of sale on which rent may fall due.

(d) Order when defendant fails to file answer. -- If the tenant named as defendant in an action for distress fails to file an answer within seven days after a levy has been made, the court, on motion of the plaintiff or on its motion, may issue an order for sale of the goods distrained.

(e) Date of sale. -- The date of sale is in the discretion of the court but shall be held as soon as feasible.

HISTORY: An. Code 1957, art. 21, § 8-313; 1974, ch. 12, § 2; 1999, ch. 219.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 3. DISTRESS FOR RENT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-315 (2006)

§ 8-315. Order to follow removed goods; goods in another jurisdiction; entry under order to follow goods

(a) Order to follow removed goods. -- If a tenant removes the tenant's goods from the leased premises, and the officer can find no goods of the tenant on the premises, the officer shall report that fact to the court. If the court is satisfied the goods of the tenant have been removed, it may issue an order to follow goods under distress within six months after filing of an action of distress. The order shall authorize levy on the removed goods at any place the goods can be found within the jurisdiction of the court.

(b) Goods in another jurisdiction. -- If the goods are removed outside the court's jurisdiction, the plaintiff may file with the court in the jurisdiction where the goods are located, a certified copy of the original action of distress, together with a verified petition setting forth (i) the fact of the original petition for distress, (ii) the premises to which the tenant has removed the goods, and (iii) the name and address of the occupant of the premises. If the occupant of the premises to which the goods are removed is a person other than the tenant, an order shall be served by first-class mail or by an officer on the other person giving the occupant seven days from the date of service of the order to protest seizure of the goods. If not protested, the order becomes final and authorizes any officer to seize and remove the goods.

(c) Entry under following goods order. -- Entry to premises under an order to follow goods under distress may be forcible.

HISTORY: An. Code 1957, art. 21, § 8-314; 1974, ch. 12, § 2; 1999, ch. 219.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 3. DISTRESS FOR RENT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-316 (2006)

§ 8-316. Bond for return of levied goods; order to release goods

(a) Bond for return of levied goods. -- Any person whose goods are levied on or seized under distress may petition the court for the return of the goods, free of any claim for distress. However, the court may require the filing of a bond with the court in a form and in an amount the court determines. The bond shall run to the State and indemnify injured persons against all claims for damage or injury resulting from the release of the goods.

(b) Order to release goods. -- The court may order a complete or partial release from any claim for distress of any goods when requested in writing by all parties to the action of distress. No bond is required for release of any goods in this case.

HISTORY: An. Code 1957, art. 21, § 8-315; 1974, ch. 12, § 2.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.

a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 3. DISTRESS FOR RENT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-317 (2006)

§ 8-317. Order to make forcible entry after levy on goods

If goods are levied on under distress and remain on the leased premises and the officer is unable to gain access to the goods without force, the court may issue an order authorizing the officer to enter the premises by force.

HISTORY: An. Code 1957, art. 21, § 8-316; 1974, ch. 12, § 2.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 3. DISTRESS FOR RENT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-318 (2006)

§ 8-318. Notice of sale

(a) Publication by newspaper. -- Notice of sale of goods under an action of distress shall be given in a newspaper published at least once weekly and having general circulation within the jurisdiction of the court. The notice shall be published at least one time and an additional number of times as the court designates.

(b) Posting on courthouse. -- If no newspaper meets the requirements of this section, notice may be made by posting it on the door of the courthouse. The notice of sale shall be published or posted at least seven days in advance of the date of the sale and the sale shall be held not more than 28 days after notice of sale.

(c) Contents. -- The notice shall contain the time and location of the sale.

HISTORY: An. Code 1957, art. 21, § 8-317; 1974, ch. 12, § 2.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 3. DISTRESS FOR RENT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-319 (2006)

§ 8-319. Manner of sale; removal for sale

Sales under distress shall be held only at public auction. The officer may remove the goods from the leased premises to some suitable place for auction or hold the sale on the leased premises. Cost of the removal of goods for sale shall be included as costs of the sale.

HISTORY: An. Code 1957, art. 21, § 8-318; 1974, ch. 12, § 2.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 3. DISTRESS FOR RENT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-320 (2006)

§ 8-320. Disposition of unsold goods; surplus proceeds of sale; order in which goods to be sold

(a) Disposition of unsold goods; surplus proceeds of sale. -- Only those goods necessary to satisfy the claim for rent due and to pay all costs may be sold in a sale under distress. Any unsold goods shall be returned to the tenant if they have been removed or they shall be left on the premises. If a surplus of money remains after the sale and payment of the rent claim and all costs, it shall be returned to the tenant or paid as provided by order of the court. The cost of returning unsold goods to the premises, if removed, shall be included as costs of the sale.

(b) Order in which goods to be sold. -- Before any distrainable goods of others are sold at a sale, the goods of the tenant shall be sold first and in their entirety, if necessary, to satisfy the claim for rent and costs. The sale of goods of others shall be made only to the extent necessary to satisfy the rent claim and all costs.

(c) Payment of judgment or claim out of excess of money or goods. -- If any surplus money or unsold goods remain in the possession of an officer on completion of proceedings in an action of distress and after payment of all claims and costs incurred, a judgment creditor or other person claiming a right to the money or goods may petition the court in which the action was brought for payment of the creditor's or claimant's judgment or claim out of the excess of money or goods, plus court costs expended by the creditor or claimant. After a hearing on the petition, the court may direct payment of the money or goods or order the sale of goods in the same manner and after proceedings similar to those in attachment or execution. Any exemption allowed by law is permitted in these proceedings if claimed.

HISTORY: An. Code 1957, art. 21, § 8-319; 1974, ch. 12, § 2; 1999, ch. 219.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 3. DISTRESS FOR RENT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-321 (2006)

§ 8-321. Security for costs

The officer may require a plaintiff to indemnify the officer for the anticipated costs of sale either in the form of a surety bond or by a certified check payable to the order of the officer in an amount sufficient to pay all expenses of the sale.

HISTORY: An. Code 1957, art. 21, § 8-320; 1974, ch. 12, § 2.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 3. DISTRESS FOR RENT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-322 (2006)

§ 8-322. Costs

(a) Amount of costs. --

(1) The costs charged in actions of distress shall be as provided in this section.

(2) If the amount of rent distrained for is $ 500 or less, the cost for a petition for distress is $ 10 regardless of the number of defendants to be served at the leased premises.

(3) If the amount of rent distrained for exceeds $ 500, then in addition to the costs of paragraph (2) of this subsection, $ 5 shall be charged for each additional $ 500 or a fraction of $ 500 of rent distrained for.

(4) A $ 2 charge for each defendant to be served at an address other than the leased premises.

(5) The cost of any reissue of summons for a defendant is $ 2.

(6) If the distress leads to an actual sale of property, the officer may charge and collect a poundage fee not less than $ 3 or more than $ 500, computed on the sale price of the personal property sold, as follows:

(i) 3 percent of the first $ 5,000 of sale price;

(ii) 2 percent of the second $ 5,000 of sale price; and

(iii) 1 percent of any portion of the sale price over $ 10,000.

(7) For filing and serving a petition on one other party or claimant, the officer may charge and collect $ 2. There is a $ 2 charge for service on each additional person whether party, claimant, or attorney of record.

(8) Actual costs of sale, including publication of notice of sale, auctioneer's fees, cost of removal, storage of goods pending sale or for sale, and cost of returning unsold goods to the

premises after sale shall be charged.

(b) Time of payment. -- Filing costs shall be paid at the time of filing the action, and other costs at the time of filing subsequent petitions. The award and distribution of costs are in the discretion of the court.

HISTORY: An. Code 1957, art. 21, § 8-321; 1974, ch. 12, § 2; 2002, ch. 19, § 10.

NOTES:
EDITOR'S NOTE. --Section 10, ch. 19, Acts 2002, provides that "the publisher of the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, the introductory language of (a) has been designated as present (a) (1) and the subsequent paragraphs in (a) have been redesignated accordingly; and "paragraph (2) of this subsection" has been substituted for "paragraph (1)" in present (a) (3).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 3. DISTRESS FOR RENT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-323 (2006)

§ 8-323. Rights of third party when goods sold under distress

If the goods of a third party are distrained on and sold under an action of distress, the third party has a right of action against the tenant for damages for any loss sustained by the third party as a result of the levy and sale of the third party's goods under distress. The action for damages may be brought before the court before which the original action was brought, regardless of any monetary limitation of the civil jurisdiction of the court. If the action for damages is brought in any other court, only a certified copy of the record in the original court need be filed as evidence of the proceedings.

HISTORY: An. Code 1957, art. 21, § 8-322; 1974, ch. 12, § 2; 1999, ch. 219.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 3. DISTRESS FOR RENT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-324 (2006)

§ 8-324. Termination of leases; possession of premises

(a) Termination of leases. -- If the plaintiff in an action of distress makes an election in writing, the court may declare the lease terminated and of no further force and effect. This election may be made only if all tenants have been served with a copy of the action of distress and after sale of all goods levied on. The court may not terminate any residential lease which runs for more than 15 years.

(b) Termination when not served. -- If any tenant was not served with a copy of the action of distress, the court may declare the lease terminated if a copy of the nisi order of termination is twice returned non est as to the nonsummoned defendant.

(c) Possession of premises. -- If the court declares a lease terminated under subsection (a) of this section, the court on application of the plaintiff, may issue its order or judgment of restitution of the premises. The court shall issue its warrant to the officer commanding the officer to deliver immediately to the plaintiff, possession in full and ample manner as set forth in § 8-402 (b) of this title. The costs of this action are the same as in the case of a tenant holding over.

HISTORY: An. Code 1957, art. 21, § 8-323; 1974, ch. 12, § 2; 1997, ch. 14, § 1; 1999, ch. 219; 2002, ch. 19, § 10.

NOTES:
EDITOR'S NOTE. --Section 10, ch. 19, Acts 2002, provides that "the publisher of the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, "of this section" and "of this title" have been inserted in (c).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 3. DISTRESS FOR RENT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-325 (2006)

§ 8-325. Deficiency judgment; hearing; exemptions

(a) Deficiency judgment. -- If the amount received from a sale of goods under distress, after payment of all costs and expenses, is not sufficient to pay the plaintiff's claim, the plaintiff may file a verified petition with the court for a deficiency money judgment. Notice of the petition shall be served on the tenant, giving at least 14 days' notice of hearing on the petition. After the hearing, the court may order a money judgment entered for the deficiency against the defendant regardless of whether the amount exceeds the monetary limit of the civil jurisdiction of the court.

(b) Against tenant or assignee. -- A deficiency money judgment under a lease may be entered only against the person named in the lease as tenant, and who signed the lease as such, or against an assignee who has assumed a covenant in writing to pay rent.

(c) Exemptions. -- The general exemption laws of the State are applicable to the enforcement of any deficiency money judgment given in an action of distress.

HISTORY: An. Code 1957, art. 21, § 8-324; 1974, ch. 12, § 2.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 3. DISTRESS FOR RENT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-326 (2006)

§ 8-326. Levy on goods of husband and wife

In a lease naming either husband or wife as tenant, all goods on the leased premises belonging to either, or both, are subject to levy under distress to the same extent as if both were named in the lease as tenants.

HISTORY: An. Code 1957, art. 21, § 8-325; 1974, ch. 12, § 2.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 3. DISTRESS FOR RENT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-327 (2006)

§ 8-327. Amendment of petition or other pleading

A petition for distress, and any other petition or pleading filed, may be amended at any time on the terms the court orders.

HISTORY: An. Code 1957, art. 21, § 8-326; 1974, ch. 12, § 2.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 3. DISTRESS FOR RENT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-328 (2006)

§ 8-328. Death of tenant; corporate tenant ceasing to exist; order requiring posting of copy of

petition

(a) Death of tenant; corporate tenant ceasing to exist. -- If a tenant under a lease dies, or, if the tenant is a corporation and ceases to exist, distress may be brought against the tenant named in the lease regardless of death or nonexistence. The plaintiff shall give notice of an action of distress to the personal representative of a deceased defendant or to any person who was an officer at the time the corporation ceased to exist and the plaintiff shall certify to the court that the plaintiff has given notice. Then the plaintiff may proceed with levy and sale as provided in this subtitle.

(b) Order requiring posting of copy of petition. -- If a tenant dies and no personal representative is appointed by a court having jurisdiction, or if an officer of the nonexistent corporation cannot be found and, therefore, service of process is returned non est, then, on application of the plaintiff, an order may be passed requiring a copy of the petition for distress to be posted at the courthouse door at least one week before the date of sale. Failure of the plaintiff to apply for the order subjects the plaintiff to suit by the personal representative of the deceased tenant, or by the officer or surviving directors of the nonexistent corporation for any loss or damage sustained. If the plaintiff makes application for the order, the plaintiff is under no liability either to the estate of the deceased tenant, or to the surviving trustees or officers of the nonexistent corporation.

HISTORY: An. Code 1957, art. 21, § 8-327; 1974, ch. 12, § 2; 1999, ch. 219.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 3. DISTRESS FOR RENT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-329 (2006)

§ 8-329. Assignment of leases; liability of assignee

(a) Assignment of leases. -- If a lease for more than three months is assigned, the assignee is liable to distress for any goods on the leased premises as though originally named in the lease as tenant.

(b) Liability of assignee. -- Any goods of the assignee on the leased premises shall be subject to the landlord's distress claim to the same extent as though the assignee was originally a tenant. This liability of goods exists regardless of whether the assignment was oral or written and regardless of the terms set out in the assignment. The obligation of the assignee of the lease for personal liability shall be restricted to the terms and agreements contained in the assignment of lease. The exercise of any right of the landlord against the assignee provided in

this section does not bar any rights the landlord may have against the assignor.

HISTORY: An. Code 1957, art. 21, § 8-328; 1974, ch. 12, § 2.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 3. DISTRESS FOR RENT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-330 (2006)

§ 8-330. Service of process

Service of all process by the court following service of the original petition in distress may be made by first-class mail. Every party and claimant is charged with notice of each step of the proceeding and is bound by it. A claim of nonreceipt of a notice mailed to a party or claimant does not affect the validity of the order or notice given by first-class mail.

HISTORY: An. Code 1957, art. 21, § 8-329; 1974, ch. 12, § 2.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 3. DISTRESS FOR RENT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-331 (2006)

§ 8-331. Stay when notice not received

If the court finds that any notice required under this subtitle to be sent by mail actually has not been received by the person to whom the notice was addressed and that injustice will result, the court shall order a stay of further proceedings until it is satisfied that the person has had an opportunity to protect the person's interests.

HISTORY: An. Code 1957, art. 21, § 8-330; 1974, ch. 12, § 2; 1999, ch. 219.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 3. DISTRESS FOR RENT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-332 (2006)

§ 8-332. Right to appeal; time for taking; trial; stays

(a) Right to appeal. -- Any aggrieved party may appeal from any final order or judgment in an action of distress to the circuit court of the county. The appeal shall be taken within 14 days from the date of the order or judgment.

(b) Time for taking appeal; trial. -- On appeal the case shall be tried de novo. On the application of any party to the action for a prompt hearing of the appeal, it shall be set for trial as soon as possible. Any party has the right to a jury trial on application in accordance with the rules adopted by the appellate court.

(c) Appeal does not stay subsequent distress for rent; exception. -- An appeal does not stay or prevent a subsequent distress for rent falling due after the original petition for distress. However, the court may order a stay of all further proceedings, including those for subsequent rent, if the tenant files an appeal bond approved by the court.

(d) Stay of execution when approved appeal bond filed. -- An appeal does not stay execution of a judgment or order unless an approved appeal bond is filed.

HISTORY: An. Code 1957, art. 21, § 8-331; 1974, ch. 12, § 2; 1982, ch. 820, § 3.

CITED IN King v. Marriott Int'l, Inc., 160 Md. App. 689, 866 A.2d 895 (2005).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.

a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 4. LANDLORD'S REMEDIES OTHER THAN DISTRAINT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-401 (2006)

§ 8-401. Failure to pay rent

(a) Right to repossession. -- Whenever the tenant or tenants fail to pay the rent when due and payable, it shall be lawful for the landlord to have again and repossess the premises.

(b) Complaint; summons. --

(1) Whenever any landlord shall desire to repossess any premises to which the landlord is entitled under the provisions of subsection (a) of this section, the landlord or the landlord's duly qualified agent or attorney shall file the landlord's written complaint under oath or affirmation, in the District Court of the county wherein the property is situated:

(i) Describing in general terms the property sought to be repossessed;

(ii) Setting forth the name of each tenant to whom the property is rented or any assignee or subtenant;

(iii) Stating the amount of rent and any late fees due and unpaid;

(iv) Requesting to repossess the premises and, if requested by the landlord, a judgment for the amount of rent due, costs, and any late fees; and

(v) If the property to be repossessed is an affected property as defined in § 6-801 of the Environment Article, stating that the landlord has registered the affected property as required under § 6-811 of the Environment Article and renewed the registration as required under § 6-812 of the Environment Article and:

1. A. If the current tenant moved into the property on or after February 24, 1996, stating the inspection certificate number for the inspection conducted for the current tenancy as required under § 6-815(c) of the Environment Article; or

B. On or after February 24, 2006, stating the inspection certificate number for the inspection conducted for the current tenancy as required under § 6-815(c), § 6-817(b), or § 6-819(e) of the Environment Article; or

2. Stating that the owner is unable to provide an inspection certificate number because:

A. The owner has requested that the tenant allow the owner access to the property to perform the work required under Title 6, Subtitle 8 of the Environment Article;

B. The owner has offered to relocate the tenant in order to allow the owner to perform work if the work will disturb the paint on the interior surfaces of the property and to pay the

reasonable expenses the tenant would incur directly related to the relocation; and

C. The tenant has refused to allow access to the owner or refused to vacate the property in order for the owner to perform the required work.

(2) For the purpose of the court's determination under subsection (c) of this section the landlord shall also specify the amount of rent due for each rental period under the lease, the day that the rent is due for each rental period, and any late fees for overdue rent payments.

(3) The District Court shall issue its summons, directed to any constable or sheriff of the county entitled to serve process, and ordering the constable or sheriff to notify the tenant, assignee, or subtenant by first-class mail:

(i) To appear before the District Court at the trial to be held on the fifth day after the filing of the complaint; and

(ii) To answer the landlord's complaint to show cause why the demand of the landlord should not be granted.

(4) (i) The constable or sheriff shall proceed to serve the summons upon the tenant, assignee, or subtenant or their known or authorized agent as follows:

1. If personal service is requested and any of the persons whom the sheriff shall serve is found on the property, the sheriff shall serve any such persons; or

2. If personal service is requested and none of the persons whom the sheriff is directed to serve shall be found on the property and, in all cases where personal service is not requested, the constable or sheriff shall affix an attested copy of the summons conspicuously upon the property.

(ii) The affixing of the summons upon the property after due notification to the tenant, assignee, or subtenant by first-class mail shall conclusively be presumed to be a sufficient service to all persons to support the entry of a default judgment for possession of the premises, together with court costs, in favor of the landlord, but it shall not be sufficient service to support a default judgment in favor of the landlord for the amount of rent due.

(5) Notwithstanding the provisions of paragraphs (1) through (4) of this subsection, in Wicomico County, in an action to repossess any premises under this section, service of process on a tenant may be directed to any person authorized under the Maryland Rules to serve process.

(c) Adjournment to enable procurement of witnesses; judgment in favor of landlord; surrender of premises by tenant; effect of tender of rent. --

(1) If, at the trial on the fifth day indicated in subsection (b) of this section, the court is satisfied that the interests of justice will be better served by an adjournment to enable either party to procure their necessary witnesses, the court may adjourn the trial for a period not exceeding 1 day, except with the consent of all parties, the trial may be adjourned for a longer period of time.

(2) (i) The information required under subsection (b)(1)(v) of this section may not be an issue of fact in a trial under this section.

(ii) If, when the trial occurs, it appears to the satisfaction of the court, that the rent, or any part of the rent and late fees are actually due and unpaid, the court shall determine the amount of rent and late fees due as of the date the complaint was filed, if the trial occurs within the time specified by subsection (b)(3) of this section.

(iii) 1. If the trial does not occur within the time specified in subsection (b)(3)(i) of this

section and the tenant has not become current since the filing of the complaint, the court, if the complaint so requests, shall enter a judgment in favor of the landlord for possession of the premises and determine the rent and late fees due as of the trial date.

2. The determination of rent and late fees shall include the following:

A. Rent claimed in the complaint;

B. Rent accruing after the date of the filing of the complaint;

C. Late fees accruing in or prior to the month in which the complaint was filed; and

D. Credit for payments of rent and late fees made by the tenant after the complaint was filed.

(iv) The court may also give judgment in favor of the landlord for the amount of rent and late fees determined to be due together with costs of the suit if the court finds that the residential tenant was personally served with a summons, or, in the case of a nonresidential tenancy, there was such service of process or submission to the jurisdiction of the court as would support a judgment in contract or tort.

(v) A nonresidential tenant who was not personally served with a summons shall not be subject to personal jurisdiction of the court if that tenant asserts that the appearance is for the purpose of defending an in rem action prior to the time that evidence is taken by the court.

(3) The court, when entering the judgment, shall also order that possession of the premises be given to the landlord, or the landlord's agent or attorney, within 4 days after the trial.

(4) The court may, upon presentation of a certificate signed by a physician certifying that surrender of the premises within this 4-day period would endanger the health or life of the tenant or any other occupant of the premises, extend the time for surrender of the premises as justice may require but not more than 15 days after the trial.

(5) However, if the tenant, or someone for the tenant, at the trial, or adjournment of the trial, tenders to the landlord the rent and late fees determined by the court to be due and unpaid, together with the costs of the suit, the complaint against the tenant shall be entered as being satisfied.

(d) Removal of tenant for noncompliance with judgment in favor of landlord; stay of execution of warrant of restitution. --

(1) (i) Subject to the provisions of paragraph (2) of this subsection, if judgment is given in favor of the landlord, and the tenant fails to comply with the requirements of the order within 4 days, the court shall, at any time after the expiration of the 4 days, issue its warrant, directed to any official of the county entitled to serve process, ordering the official to cause the landlord to have again and repossess the property by putting the landlord (or the landlord's duly qualified agent or attorney for the landlord's benefit) in possession thereof, and for that purpose to remove from the property, by force if necessary, all the furniture, implements, tools, goods, effects or other chattels of every description whatsoever belonging to the tenant, or to any person claiming or holding by or under said tenant.

(ii) If the landlord does not order a warrant of restitution within sixty days from the date of judgment or from the expiration date of any stay of execution, whichever shall be the later, the judgment for possession shall be stricken.

(2) (i) The administrative judge of any district may stay the execution of a warrant of restitution of a residential property, from day to day, in the event of extreme weather conditions.

(ii) When a stay has been granted under this paragraph, the execution of the warrant of restitution for which the stay has been granted shall be given priority and completed within 3 days after the extreme weather conditions cease.

(e) Tenant's right to redeem leased premises prior to eviction. --

(1) In any action of summary ejectment for failure to pay rent where the landlord is awarded a judgment giving the landlord restitution of the leased premises, the tenant shall have the right to redemption of the leased premises by tendering in cash, certified check or money order to the landlord or the landlord's agent all past due amounts, as determined by the court under subsection (c) of this section, plus all court awarded costs and fees, at any time before actual execution of the eviction order.

(2) This subsection does not apply to any tenant against whom 3 judgments of possession have been entered for rent due and unpaid in the 12 months prior to the initiation of the action to which this subsection otherwise would apply.

(f) Appeal. --

(1) The tenant or the landlord may appeal from the judgment of the District Court to the circuit court for any county at any time within 4 days from the rendition of the judgment.

(2) The tenant, in order to stay any execution of the judgment, shall give a bond to the landlord with one or more sureties, who are owners of sufficient property in the State of Maryland, with condition to prosecute the appeal with effect, and answer to the landlord in all costs and damages mentioned in the judgment, and other damages as shall be incurred and sustained by reason of the appeal.

(3) The bond shall not affect in any manner the right of the landlord to proceed against the tenant, assignee or subtenant for any and all rents that may become due and payable to the landlord after the rendition of the judgment.

HISTORY: An. Code 1957, art. 21, § 8-401; 1974, ch. 12, § 2; ch. 656; 1975, ch. 642; 1977, ch. 475; 1978, chs. 225, 450; 1979, ch. 118; 1982, ch. 820, § 3; 1987, chs. 408, 740; 1988, ch. 766; 1989, ch. 5, § 1; ch. 813; 1992, ch. 22, § 1; 1996, ch. 586; 1997, ch. 692; 1999, chs. 219, 649; 2000, ch. 61, § 1; chs. 153, 638; 2001, ch. 29, § 1; 2002, ch. 19, § 10; 2004, ch. 540, § 2.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 29, Acts 2001, approved Apr. 10, 2001, and effective from date of enactment, added "or" at the end of (b) (4) (i) 1.
Chapter 540, Acts 2004, effective Oct. 1, 2004, added (b)(1)(v); inserted present (c)(2)(i) and redesignated the remaining subsections accordingly.

EDITOR'S NOTE. --Section 10, ch. 19, Acts 2002, provides that "the publisher of the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, a comma has been inserted following "assignee" in the introductory language of (b) (4) (i).

MARYLAND LAW REVIEW. --For note discussing tenant's due process rights in eviction proceedings, see 36 Md. L. Rev. 255 (1976).
For discussion of double jeopardy clause permitting retrial when a finding on appeal of trial error results in there being insufficient evidence to support a defendant's conviction, see 39 Md. L. Rev. 498 (1980).
For article, "Survey of Developments in Maryland Law, 1983-84," see 44 Md. L. Rev. 624 (1985).

For symposium, expanding pro bono legal assistance in civil cases to Maryland's poor, see 49 Md. L. Rev. 1 (1990).

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "The Uniform Residential Landlord and Tenant Act and Its Potential Effects upon Maryland Landlord-Tenant Law," see 5 U. Balt. L. Rev. 247 (1976).

For article, "An Analysis of the Maryland Mobile Home Park Act: A Need for Amendment," see 8 U. Balt. L. Rev. 271 (1979).

For note discussing "Rent Escrow Statute Requiring Payment into Escrow of Accrued Rents Pursuant to Demand for Jury Trial in Summary Eviction Proceeding as an Unconstitutional Infringement of the Right to Jury Trial," see 16 U. Balt. L. Rev. 166 (1986).

MATTER OF WHAT CONSTITUTES "RENT" WITHIN THE MEANING OF THIS SECTION is best left for determination on a case-to-case basis, depending upon the provisions of the lease, express or implied, verbal or written, and, where appropriate, the attendant circumstances. University Plaza Shopping Ctr., Inc. v. Garcia, 279 Md. 61, 367 A.2d 957 (1977).

The General Assembly prescribed certain rights and liabilities under this section which accrued upon the failure to pay "rent." Although it could have set out what was to be included as rent within the ambit of the section, it did not do so. There being no statutory definition of rent, the common law and the case law must supply what this section lacks. University Plaza Shopping Ctr., Inc. v. Garcia, 279 Md. 61, 367 A.2d 957 (1977).

Costs defined as rent may be treated as such if they are reasonably ascertainable and if they were incurred for work performed on tenant's behalf, to adapt the premises to the use permitted by the lease. Shum v. Gaudreau, 317 Md. 49, 562 A.2d 707 (1989).

Since installation of artesian well was not included within tenant's covenant respecting "repairs and renovations," the cost of that work could not be treated as additional rent within the lease's definition, and the landlord could not have included that claim in summary ejectment action. Shum v. Gaudreau, 317 Md. 49, 562 A.2d 707 (1989).

NOTICE PROVISION OF SUBSECTION (B) CONSTITUTIONAL. --The notice provided by posting and mailing pursuant to subsection (b) of this section provides adequate due process under the particular circumstances of summary repossession proceedings, would withstand constitutional challenge in the courts, and is sufficient to support entry of a default judgment pursuant to subsection (c) (2) of this section. 61 Op. Att'y Gen. 528 (1976).

TENDER BY TENANT OF RENT DUE at the time of a hearing in the People's Court of Baltimore which was refused but was not renewed in a subsequent proceeding in the Superior Court at which time more rent had accrued, was not sufficient. Frederick Motor Sales, Inc. v. B & O R.R., 202 Md. 491, 97 A.2d 326 (1953).

APPLICATION OF DISMISSAL PROVISION OF SUBSECTION (D). --The 60-day dismissal provision of subsection (d) of this section cannot be applied to cases where a money judgment has been entered by the court. 61 Op. Att'y Gen. 528 (1976).

INTENT OF SUBSECTION (E). --The legislative intent of subsection (e) of this section was to enable avoidance of a forfeiture by meliorating the plight of the tenant who might be unable to pay the rent on the day it falls due but can manage to pay it before he is actually evicted. Berlin v. Aluisi, 57 Md. App. 390, 470 A.2d 388 (1984).

JURISDICTION. --The actions encompassed by § 4-401 (4) of the Courts Article, in which the District Court is given exclusive original jurisdiction regardless of the amount involved, refers to landlord and tenant actions as authorized by this section. Greenbelt Consumer Servs., Inc. v. Acme Mkts., Inc., 272 Md. 222, 322 A.2d 521 (1974).

WAIVER OF DEFAULT. --The failure to admit testimony that officers of the landlord corporation had waived the right to proceed for defaults prior to June 6, 1950, was immaterial in view of the uncontradicted evidence that rent after that date was in default. Frederick Motor Sales, Inc. v. B & O R.R., 202 Md. 491, 97 A.2d 326 (1953).

TENANT HOLDING OVER AND TENANT WHOSE LANDLORD SEEKS TO VOID LEASE DISTINGUISHED. --The statute reflects the common law philosophical differences between the cases of tenants who, since they hold over after the expiration of a prior lease, occupy and use the premises without an express agreement as to rent, and cases of tenants whose landlords seek to void their leases calling for a specified rent, and are successful only after the passage of an extended period of time. West v. Humble Oil & Ref. Co., 261 Md. 190, 274 A.2d 82 (1971).

SECTION REFLECTS PHILOSOPHY OF COMMON LAW IN REGARD TO ONE WHO IS A TENANT, bound to pay a specified rent that the landlord has agreed to receive, and whose obligation so to pay continues until the appellate court finally rules that it no longer exists and this is exactly what this section indicates his obligation to be. West v. Humble Oil & Ref. Co., 261 Md. 190, 274 A.2d 82 (1971).

CONTRACT DETERMINES LANDLORD'S RECOVERY FOR RENTS WHILE APPEAL PENDING. -- Where an express contract exists as to amount of rental, said amount generally determines landlord's recovery for rents becoming due and payable while appeal pending, and landlord is not entitled to fair rental value in excess of contractual rental. West v. Humble Oil & Ref. Co., 261 Md. 190, 274 A.2d 82 (1971).

During period of appeal by tenant from judgment of ouster for failure to pay rent, tenant is bound to pay a specified rent that landlord has agreed to receive. West v. Humble Oil & Ref. Co., 261 Md. 190, 274 A.2d 82 (1971).

JOINDER OF GENERAL CONTRACT DAMAGES CLAIM NOT PERMITTED IN SUMMARY EJECTMENT ACTION. --Because the relief available in a summary ejectment action is limited to a judgment for repossession of premises and rent actually due, landlord could not have joined a claim for general contract damages claim in that proceeding. Shum v. Gaudreau, 317 Md. 49, 562 A.2d 707 (1989).

CIVIL RIGHTS VIOLATIONS DO NOT CONSTITUTE A DEFENSE to an eviction action for failure to pay rent; rather, such a civil rights claim would be cognizable as a counterclaim. Yesteryears, Inc. v. Waldorf Restaurant, Inc., 730 F. Supp. 1341 (D. Md. 1989).

TENANT'S RIGHT TO REDEEM --Tenant's right to redeem was among the bundle of rights that the defendant conveyed and assigned to the mortgagee pursuant to a leasehold deed of trust, so the defendant could not relinquish or waive the right to redeem. Concomitantly, the mortgagee had the right to redeem, which it exercised; the payment sent by the mortgagee on and received by the landlord was timely, and its receipt effectively cured the payment default under the lease. U.S. Bank Trust N.A. v. Nielsen Enters. MD, 232 F. Supp. 2d 500 (D. Md. 2002).

TENANT RETAINS EXPECTATION OF PRIVACY IN PERSONAL EFFECTS. --Although the tenant's nonpayment of rent and the landlord's compliance under this section to repossess the apartment may have terminated the tenant's expectation of privacy in the apartment, he still retained a legitimate and justifiable expectation of privacy in his personal effects, diminished only to the extent of the intrusion necessary for the removal of these effects. Boone v. State, 39 Md. App. 20, 383 A.2d 412, modified and aff'd, 284 Md. 1, 393 A.2d 1361 (1978).

AND LANDLORD ACQUIRES NO INTEREST IN SUCH EFFECTS UPON EXECUTION OF WARRANT OF RESTITUTION. --Because the execution of a warrant of restitution returned only the possession and control of an apartment to the landlord, the landlord did not acquire any proprietary interest in tenant's personal effects. Boone v. State, 39 Md. App. 20, 383 A.2d 412, modified and aff'd, 284 Md. 1, 393 A.2d 1361 (1978).

SEARCH EXECUTED PURSUANT TO WARRANT OF RESTITUTION WAS NOT INVENTORY SEARCH under a community caretaking function. State v. Boone, 284 Md. 1, 393 A.2d 1361 (1978).

WARRANT OF RESTITUTION DOES NOT REQUIRE DELIVERY OR SERVICE OF PAPER. --A warrant of restitution neither requires nor contemplates its delivery to anyone or in any way

suggests that service of a paper is involved; the summary ejectment papers referred to in § 7-402 (a) (1) of the Courts Article do not include the warrant of restitution. Schuman, Kane, Felts & Everngam v. Aluisi, 341 Md. 115, 668 A.2d 929 (1995).

SEIZURE OF ALLEGEDLY STOLEN CREDIT CARDS PURSUANT TO EXECUTION OF WARRANT OF RESTITUTION WAS CONSTITUTIONALLY UNREASONABLE. --Where deputy sheriff was lawfully on the leased premises by virtue of a duly issued warrant of restitution, he was there for only one purpose, which was to enable the landlord to have the premises again, and to accomplish this, the deputy sheriff had statutory authority to remove all the goods on the premises. However, the deputy sheriff was concerned about placing on the street contraband and goods which "would be a health hazard or dangerous" and in order to prevent this, it was "standard procedure" to search for such items before clearing the premises, and, apparently, when such articles were found, they would be taken into custody. Where, during such search, allegedly stolen credit cards were found, the taking of the credit cards by the deputy sheriff was an unreasonable seizure in the contemplation of the Fourth Amendment in that they were not contraband and they were not dangerous or a hazard to health in the usual meaning of those terms, and the seizure of them was not removed from the constitutional proscription as being the taking of abandoned goods. State v. Boone, 284 Md. 1, 393 A.2d 1361 (1978).

CITY OF BALTIMORE HAS PUBLIC LOCAL LAW PROVISIONS ALMOST IDENTICAL TO THIS SECTION. Parkington Apts., Inc. v. Cordish, 296 Md. 143, 460 A.2d 52 (1983).

LOCAL LAW CONTROLS OVER GENERAL LAW IN CASE OF DIVERGENCE. --While the procedures set out in the general law and the local laws regarding summary ejectment and rent escrow are similar, where they diverge, the local laws (to the extent not made the subject of repeal in the general law) control by reason of the provisions of Article 1, § 13 of the Code. Parkington Apts., Inc. v. Cordish, 296 Md. 143, 460 A.2d 52 (1983).

TO REDEEM LEASEHOLD ESTATE FROM FORFEITURE, TENANT IS REQUIRED TO PAY ONLY SUM THERETOFORE JUDICIALLY DETERMINED DUE and not such other rent and late fees as may have accrued thereafter. Berlin v. Aluisi, 57 Md. App. 390, 470 A.2d 388 (1984).

TENDER OF RENT DUE RESTRAINS SHERIFF FROM CARRYING OUT EVICTION ORDER. --The sheriff's authority and duty derive from and are measured by the precise language of the warrant and if the tenant tenders rent determined by the court to be due, the sheriff is restrained from carrying out any further eviction order. Berlin v. Aluisi, 57 Md. App. 390, 470 A.2d 388 (1984).

TENANT'S RIGHT TO ASSERT RIGHT TO RENT ABATEMENT AS A DEFENSE TO EJECTMENT. --Where a lease provides for an abatement of rent, the tenant may assert the abatement provision in an ejectment proceeding instituted under this section. Law Offices of Taiwo Agbaje, P.C. v. JLH Props., II, LLC, 169 Md. App. 355, 901 A.2d 249 (2006).

RENT ABATEMENT RELATED TO SEWAGE LEAKAGE. --Trial court erred in granting summary judgment to a lessor as to an ejectment action under this section, where the issue of how much of the total rent was abated by sewage leakage in the property was an issue of fact for the jury to decide. Law Offices of Taiwo Agbaje, P.C. v. JLH Props., II, LLC, 169 Md. App. 355, 901 A.2d 249 (2006).

LANDLORD'S REJECTION OF TENANT'S TENDER FOR REDEMPTION MAY TERMINATE LEASE, releasing tenant from liability, even though tenant waived the right to redeem the premises under subsection (e). Zazanis v. Gold Coast Mall, Inc., 63 Md. App. 364, 492 A.2d 953 (1985).

APPLIED IN Custer Envtl., Inc. v. 9305 Old Georgetown Rd. Partnership, 345 Md. 284, 691 A.2d 1336 (1997); United Cable Television of Baltimore Ltd. Partnership v. Burch, 354 Md. 658, 732 A.2d 887 (1999).

QUOTED IN Annapolis Mall Ltd. Partnership v. Yogurt Tree of Annapolis, Inc., 299 Md. 244, 473 A.2d 32 (1984).

STATED IN Brown v. Housing Opportunities Comm'n, 350 Md. 570, 714 A.2d 197 (1998); Carter v. Md. Mgmt. Co., 377 Md. 596, 835 A.2d 158 (2003).

CITED IN Doug-Dun Corp. v. Simms, 31 Md. App. 350, 357 A.2d 392 (1976); Purvis v. Forrest St. Apts., 286 Md. 398, 409 A.2d 388 (1979); Legal Aid Bureau, Inc. v. Farmer, 74 Md. App. 707, 539 A.2d 1173 (1988); Harris v. Housing Auth., 77 Md. App. 160, 549 A.2d 770 (1988); Kessler v. Equity Mgt., Inc., 82 Md. App. 577, 572 A.2d 1144 (1990); Patel v. Healthplus, Inc., 112 Md. App. 251, 684 A.2d 904 (1996); Eubanks v. First Mt. Vernon Indus. Loan Ass'n, 125 Md. App. 642, 726 A.2d 837 (1999); United Cable Television of Baltimore Ltd. Partnership v. Burch, 354 Md. 658, 732 A.2d 887 (1999); King v. Marriott Int'l, Inc., 160 Md. App. 689, 866 A.2d 895 (2005).

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 4. LANDLORD'S REMEDIES OTHER THAN DISTRAINT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-402 (2006)

§ 8-402. Holding over

(a) Liability. --

(1) A tenant under any periodic tenancy, or at the expiration of a lease, and someone holding under the tenant, who shall unlawfully hold over beyond the expiration of the lease or termination of the tenancy, shall be liable to the landlord for the actual damages caused by the holding over.

(2) The damages awarded to a landlord against the tenant or someone holding under the tenant, may not be less than the apportioned rent for the period of holdover at the rate under the lease.

(3) (i) Any action to recover damages under this section may be brought by suit separate from the eviction or removal proceeding or in the same action and in any court having jurisdiction over the amount in issue.

(ii) The court may also give judgment in favor of the landlord for the damages determined to be due together with costs of the suit if the court finds that the residential tenant was personally served with a summons, or, in the case of a nonresidential tenancy, there was such

service of process or submission to the jurisdiction of the court as would support a judgment in contract or tort.

(iii) A nonresidential tenant who was not personally served with a summons shall not be subject to personal jurisdiction of the court if that tenant asserts that the appearance is for the purpose of defending an in rem action prior to the time that evidence is taken by the court.

(4) Nothing contained herein is intended to limit any other remedies which a landlord may have against a holdover tenant under the lease or under applicable law.

(b) Notice to quit. --

(1) (i) Where any tenancy is for any definite term or at will, and the landlord shall desire to repossess the property after the expiration of the term for which it was leased and shall give notice in writing one month before the expiration of the term or determination of the will to the tenant or to the person actually in possession of the property to remove from the property at the end of the term, and if the tenant or person in actual possession shall refuse to comply, the landlord may make complaint in writing to the District Court of the county where the property is located.

(ii) 1. The court shall issue a summons directed to any constable or sheriff of the county entitled to serve process, ordering the constable or sheriff to notify the tenant, assignee, or subtenant to appear on a day stated in the summons before the court to show cause why restitution should not be made to the landlord.

2. The constable or sheriff shall serve the summons on the tenant, assignee, or subtenant on the property, or on the known or authorized agent of the tenant, assignee, or subtenant.

3. If, for any reason those persons cannot be found, the constable or sheriff shall affix an attested copy of the summons conspicuously on the property.

4. After notice to the tenant, assignee, or subtenant by first-class mail, the affixing of the summons on the property shall be conclusively presumed to be a sufficient service to support restitution.

(iii) Upon the failure of either of the parties to appear before the court on the day stated in the summons, the court may continue the case to a day not less than six nor more than ten days after the day first stated and notify the parties of the continuance.

(2) (i) If upon hearing the parties, or in case the tenant or person in possession shall neglect to appear after the summons and continuance the court shall find that the landlord had been in possession of the leased property, that the said tenancy is fully ended and expired, that due notice to quit as aforesaid had been given to the tenant or person in possession and that the tenant or person in possession had refused so to do, the court shall thereupon give judgment for the restitution of the possession of said premises and shall forthwith issue its warrant to the sheriff or a constable in the respective counties commanding the tenant or person in possession forthwith to deliver to the landlord possession thereof in as full and ample manner as the landlord was possessed of the same at the time when the tenancy was made, and shall give judgment for costs against the tenant or person in possession so holding over.

(ii) Either party shall have the right to appeal therefrom to the circuit court for the county within ten days from the judgment.

(iii) If the tenant appeals and files with the District Court an affidavit that the appeal is not taken for delay, and also a good and sufficient bond with one or more securities conditioned that the tenant will prosecute the appeal with effect and well and truly pay all rent in arrears and all costs in the case before the District Court and in the appellate court and all loss or damage which the landlord may suffer by reason of the tenant's holding over, including the

value of the premises during the time the tenant shall so hold over, then the tenant or person in possession of said premises may retain possession thereof until the determination of said appeal.

(iv) The appellate court shall, upon application of either party, set a day for the hearing of the appeal, not less than five nor more than 15 days after the application, and notice for the order for a hearing shall be served on the opposite party or that party's counsel at least 5 days before the hearing.

(v) If the judgment of the District Court shall be in favor of the landlord, a warrant shall be issued by the appellate court to the sheriff, who shall proceed forthwith to execute the warrant.

(3) (i) The provisions of this subsection shall apply to all cases of tenancies at the expiration of a stated term, tenancies from year to year, tenancies of the month and by the week. In case of tenancies from year to year (including tobacco farm tenancies), notice in writing shall be given three months before the expiration of the current year of the tenancy, except that in case of all other farm tenancies, the notice shall be given six months before the expiration of the current year of the tenancy; and in monthly or weekly tenancies, a notice in writing of one month or one week, as the case may be, shall be so given.

(ii) This paragraph (3), so far as it relates to notices, does not apply in Baltimore City.

(iii) In Montgomery County, except in the case of single family dwellings, the notice by the landlord shall be two months in the case of residential tenancies with a term of at least month to month but less than from year to year.

(4) When the tenant shall give notice by parol to the landlord or to the landlord's agent or representatives, at least one month before the expiration of the lease or tenancy in all cases except in cases of tenancies from year to year, and at least three months' notice in all cases of tenancy from year to year (except in all cases of farm tenancy, the notice shall be six months), of the intention of the tenant to remove at the end of that year and to surrender possession of the property at that time, and the landlord, the landlord's agent, or representative shall prove the notice from the tenant by competent testimony, it shall not be necessary for the landlord, the landlord's agent or representative to provide a written notice to the tenant, but the proof of such notice from the tenant as aforesaid shall entitle the landlord to recover possession of the property hereunder. This paragraph shall not apply in Baltimore City.

(5) Acceptance of any payment after notice but before eviction shall not operate as a waiver of any notice to quit, notice of intent to vacate or any judgment for possession unless the parties specifically otherwise agree in writing. Any payment accepted shall be first applied to the rent or the equivalent of rent apportioned to the date that the landlord actually recovers possession of the premises, then to court costs, including court awarded damages and legal fees and then to any loss of rent caused by the holdover. Any payment which is accepted in excess of the foregoing shall not bear interest but will be returned to the tenant in the same manner as security deposits as defined under § 8-203 of this title but shall not be subject to the penalties of that section.

(c) Tenancy of holdover tenant remaining with landlord's consent. -- Unless stated otherwise in the written lease and initialed by the tenant, when a landlord consents to a holdover tenant remaining on the premises, the holdover tenant becomes a periodic week-to-week tenant if the tenant was a week-to-week tenant before the tenant's holding over, and a periodic month-to-month tenant in all other cases.

HISTORY: An. Code 1957, art. 21, § 8-402; 1974, ch. 12, § 2; 1974, ch. 375, § 2; 1976, ch. 272; 1977, ch. 487; 1978, chs. 27, 224, 334; 1980, ch. 126; 1981, ch. 111; 1982, ch. 786; ch. 820, § 3; 1985, ch. 181, § 1; 1986, ch. 5, § 1; 1997, ch. 14, § 1; 1999, chs. 219, 649; 2000, ch. 61, § 1; 2001, ch. 700.

NOTES:
CROSS REFERENCES. --As to application of subsection (a) of this section, see § 15-102 (18) of this article.

EFFECT OF AMENDMENTS. --Chapter 700, Acts 2001, effective Oct. 1, 2001, in (a) (1), substituted "periodic tenancy, or at the expiration of a lease, and" for "lease or," inserted "expiration of the lease or," and substituted "termination of the tenancy" for "termination of the lease"; substituted "tenancy is" for "interest in property shall be leased" in (b) (1) (i); in (b) (2) (i), substituted "said tenancy" for "said lease or estate" and substituted "tenancy was made" for "leasing was made"; and inserted "at the expiration of a stated term, tenancies" in (b) (3) (i).

EDITOR'S NOTE. --Section 3, ch. 375, Acts 1974, provides that the act shall apply only to residential leases.

MARYLAND LAW REVIEW. --For article "Notes on the Law of Landlord and Tenant," see 20 Md. L. Rev. 1 (1960).
For article, "Retaliatory Evictions: Landlords, Tenants and Law Reform," see 29 Md. L. Rev. 193 (1969).
For note discussing tenant's due process rights in eviction proceedings, see 36 Md. L. Rev. 255 (1976).

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "The Uniform Residential Landlord and Tenant Act and Its Potential Effects upon Maryland Landlord-Tenant Law," see 5 U. Balt. L. Rev. 247 (1976).
For article, "An Analysis of the Maryland Mobile Home Park Act: A Need for Amendment," see 8 U. Balt. L. Rev. 271 (1979).

HISTORY OF SECTION. --See Gibbs v. Didier, 125 Md. 486, 94 A. 100 (1915).
This section is a substantial reenactment of the second section of the statute of 4 George II, ch. 28. The latter statute applies to a perpetual lease and dispenses with a previous demand of rent and reentry, and substitutes service of a copy of declaration in ejectment, in all cases where landlord has right by law to reenter. Campbell v. Shipley, 41 Md. 81 (1874).
This section is a modification of the second section of the statute of 4 George II, ch. 28, providing how and in what manner process shall be served. The fourth section of the last-named statute is in force in Maryland and has not been modified. Chesapeake Realty Co. v. Patterson, 138 Md. 244, 113 A. 725 (1921).

COMMON LAW. --At common law no notice to quit is necessary to dissolve the relation of landlord and tenant in a tenancy for a definite period of time, because such a tenancy terminates by lapse of that time, and the landlord may at once resume possession. But in order to exercise the summary remedy provided by statute for the repossession of land after the expiration of a definite term, the landlord must give written notice one month before the expiration of the term to the tenant to remove at the end of the term. Trotter v. Lewis, 185 Md. 528, 45 A.2d 329 (1946).

THIS SECTION HAS BEEN IN FORCE FOR OVER A CENTURY. Messall v. Merlands Club, Inc., 244 Md. 18, 222 A.2d 627 (1966), cert. denied, 386 U.S. 1009, 87 S. Ct. 1349, 18 L. Ed. 2d 435 (1967); County Council v. Investors Funding Corp., 270 Md. 403, 312 A.2d 225 (1973).

APPLICABILITY. --Tenants' obligation to give notice to quit a tenancy was determined under the parties' lease and was not affected by §§ 8-402(b), 8-208(d)(5), or 8-501 of this title. Hyder v. Montgomery County, 160 Md. App. 482, 864 A.2d 279 (2004), cert. denied, -- Md. --, 872 A.2d 47 (2005).

IT PROVIDES A METHOD FOR REPOSSESSING PROPERTY BY A SUMMARY PROCEEDING before the District Court. Messall v. Merlands Club, Inc., 244 Md. 18, 222 A.2d 627 (1966), cert denied, 386 U.S. 1009, 87 S. Ct. 1349, 18 L. Ed. 2d 435 (1967).

SECTION APPLIES ESSENTIAL PHILOSOPHY OF COMMON LAW IN REGARD TO WRONGFUL HOLDOVERS. West v. Humble Oil & Ref. Co., 261 Md. 190, 274 A.2d 82 (1971).

THIS SECTION GOVERNS CASES IN WHICH THE TENANCY HAS ENDED and, in such case, provides that if the former tenant who holds over does not win his appeal from the judgment of dispossession, he may be liable for damages including the value of said premises during the time he shall so hold over. West v. Humble Oil & Ref. Co., 261 Md. 190, 274 A.2d 82 (1971).

AND LANDLORD CANNOT RELY ON SECTION WHERE TENANCY NOT ENDED. --The landlord could not rely on this section since the tenant was a tenant when the proceeding was filed. West v. Humble Oil & Ref. Co., 261 Md. 190, 274 A.2d 82 (1971).

THE SECTION IS INAPPLICABLE OUTSIDE OF AN ACTUAL LANDLORD-TENANT RELATIONSHIP. Eubanks v. First Mt. Vernon Indus. Loan Ass'n, 125 Md. App. 642, 726 A.2d 837 (1999).

APPLICABILITY TO AN ACTION UNDER § 8-118. --An action against forcible detainer is an action under this section such that rent escrow relief may be awarded under § 8-118 of this title. Eubanks v. First Mt. Vernon Indus. Loan Ass'n, 125 Md. App. 642, 726 A.2d 837 (1999).

RELIEF UNDER § 8-118 AND THIS SECTION FOUND MUTUALLY EXCLUSIVE. --Under the peculiar facts of the case, where a lender sought to have a borrower evicted both by "ejectment," and "forcible detainer," and the borrower then filed his own suit against the lender (eventually consolidated with the fist case) alleging various acts of deception, a circuit court's order of the posting of a bond was improper, as the remedies available under §§ 8-118 and 8-402 are mutually exclusive as applied to these facts. Eubanks v. First Mt. Vernon Indus. Loan Ass'n, 125 Md. App. 642, 726 A.2d 837 (1999).

ACTION FOR ABATEMENT OF NUISANCE COMPARED. --Restitution, under § 14-120 of this article, suffices to terminate a tenancy and, in both form and effect, is no different than an action under this section against a tenant holding over, the latter form of relief being subject to trial by jury. Martin v. Howard County, 107 Md. App. 331, 667 A.2d 992 (1995).

FORCIBLE ENTRY AND DETAINER AS RIGHTS OF ACTION HAVE BEEN MODIFIED BY THIS SECTION to include a remedy by which a landlord may recover possession of leased premises from a tenant holding over without force, and by delineating the procedure for bringing any one of them. Greenbelt Consumer Servs., Inc. v. Acme Mkts., Inc., 272 Md. 222, 322 A.2d 521 (1974).

SECTION 8-206 OF THIS TITLE DOES NOT PURPORT TO AMEND OR MODIFY THE SUMMARY EVICTION PROCEDURE CONTAINED IN SUBSECTION (B) OF THIS SECTION. County Council v. Investors Funding Corp., 270 Md. 403, 312 A.2d 225 (1973).

SECTION INSURES SUBSTANTIVE RIGHT TO REMEDY. --While this section has provided some procedural details, it also insures the substantive right to such a remedy, and therefore, cannot be modified by a conflicting local law. County Council v. Investors Funding Corp., 270 Md. 403, 312 A.2d 225 (1973).

LANDLORD IS BOUND TO ASSURE DUE PROCESS TO THE TENANT. Green v. Copperstone Ltd. Partnership, 28 Md. App. 498, 346 A.2d 686 (1975).

DUE PROCESS REQUIRES A HEARING AND PROOF OF GOOD CAUSE FOR EVICTION after notice of the grounds upon which eviction is sought. Green v. Copperstone Ltd. Partnership, 28 Md. App. 498, 346 A.2d 686 (1975).

MERE EXPIRATION OF THE TERM OF A LEASE IS NOT GOOD CAUSE for eviction. Green v. Copperstone Ltd. Partnership, 28 Md. App. 498, 346 A.2d 686 (1975).

GOOD CAUSE SHOWN IN FEDERALLY SUBSIDIZED TENANCIES --Tenancies under which the

landlord received a subsidy pursuant to the voucher program created by the interaction of 26 U.S.C.S. § 42 and 42 U.S.C.S. § 1437f were subject to termination only for good cause, even during the period of holding over; nonetheless, in the case before it, the high court held that the landlord had shown good cause in the form of repeated incidences of major property damage. Carter v. Md. Mgmt. Co., 377 Md. 596, 835 A.2d 158 (2003).

TENANT HOLDING OVER AND TENANT WHOSE LANDLORD SEEKS TO VOID LEASE DISTINGUISHED. --The statute reflects the common law philosophical differences between the cases of tenants who, since they hold over after the expiration of a prior lease, occupy and use the premises without an express agreement as to rent, and cases of tenants whose landlords seek to void their leases calling for a specified rent, and are successful only after the passage of an extended period of time. West v. Humble Oil & Ref. Co., 261 Md. 190, 274 A.2d 82 (1971).

LIABILITY OF TENANT HOLDING OVER FOR USE AND OCCUPATION. --At common law a tenant wrongfully holding over had no liability for rent because the obligation to pay rent flows from a contract and ordinarily there is neither a contract to pay rent after the term nor a reservation of rent then to accrue. On the other hand, a tenant holding over without legal justification is liable in assumpsit for use and occupation for the period of the holding over. West v. Humble Oil & Ref. Co., 261 Md. 190, 274 A.2d 82 (1971).

TENANCY UNDER UNENFORCEABLE LEASE CONSIDERED ONE FROM YEAR TO YEAR. --In case of lease for more than seven years which was not executed, acknowledged or recorded as required by statute, the lessee is considered a tenant from year to year. Darling Shops Del. Corp. v. Baltimore Ctr. Corp., 191 Md. 289, 60 A.2d 669 (1948).

RIGHT OR TITLE OF THIRD PERSON MUST ACCRUE SUBSEQUENT TO LEASE. --Under the provisions of this section the court is only authorized to forbear restoring the landlord to possession when the title is disputed, or claimed by some person, in virtue of a right or title accrued or happening since the commencement of the lease. Mousley v. Wilson, 1 Md. Ch. 388 (1848).

Fact that prior to expiration of A's term, landlord has leased premises to B, such lease to begin upon expiration of A's term, cannot be availed of as defense under this section. Gelston v. Sigmund, 27 Md. 345 (1867).

REQUIREMENTS FOR NOTICE GENERALLY. --The General Assembly intended that the notice to the tenant must be such as to clearly inform him by whom or on whose behalf it was sent, to what property it related and of what facts it was intended to inform him. Benton v. Stokes, 109 Md. 117, 71 A. 532 (1908).

A notice to quit will be held good if upon the whole it is intelligible and so certain that the tenant cannot reasonably misunderstand it. An obvious mistake in some part will not invalidate it, if it is otherwise so explicit that the party receiving it cannot be misled. Cook v. Creswell, 44 Md. 581 (1876); Benton v. Stokes, 109 Md. 117, 71 A. 532 (1908).

Notice to quit addressed to husband instead of wife held sufficient. Cook v. Creswell, 44 Md. 581 (1876).

NOTICE TO QUIT WHERE PROPERTY SOLD. --As to who should sign notice to quit where property has been sold, see Walker v. Kirwan, 137 Md. 139, 111 A. 775 (1920).

FORM FOR NOTICE OF COMPLAINT NOT SPECIFIED. --This section does not specify the form of the notice, the method of its service, or the style of details of the complaint to be made to the court, other than to require both to be in writing. Benton v. Stokes, 109 Md. 117, 71 A. 532 (1908).

AND NEITHER NOTICE NOR COMPLAINT NEED BE SIGNED BY LANDLORD IN PERSON. --This section does not in terms require that either the notice to the tenant or the complaint made to the court be signed by the landlord in person. Benton v. Stokes, 109 Md. 117, 71 A. 532 (1908).

A landlord's agent having authority to rent a property is presumed to have like authority to

give to the tenant a notice to quit. Thus a notice to quit signed by the agent is sufficient under this section. Benton v. Stokes, 109 Md. 117, 71 A. 532 (1908).

The signing of a petition to the justice by the counsel of a landlord is both appropriate and sufficient. Benton v. Stokes, 109 Md. 117, 71 A. 532 (1908).

TIME REQUIREMENTS FOR HEARINGS. --The five to 15 day hearing requirement should be interpreted as supplementing the procedural rules by providing for an expedited hearing in de novo appeals, and as applicable to appeals on the record only after a complete record has been transmitted pursuant to Maryland Rule 1325 (a) (see now Rule 7-108(a)). Johnson v. Swann, 314 Md. 285, 550 A.2d 703 (1988).

SUFFICIENCY OF COMPLAINT. --See Walker v. Kirwan, 137 Md. 139, 111 A. 775 (1920).

As to what the complaint must state, see Burrell v. Lamm, 67 Md. 580, 11 A. 56 (1887).

ASSERTION OF TITLE BY CLAIMANT. --The claimant must assert his title before the court in the manner above prescribed. Clark v. Vannort, 78 Md. 216, 27 A. 982 (1893).

BOND REQUIREMENT. --Under the present language a subsection (b) (3) bond may only be ordered in a landlord-tenant situation in which a tenant disputes the existence of title in the landlord at a point in time subsequent to execution of the lease. Eubanks v. First Mt. Vernon Indus. Loan Ass'n, 125 Md. App. 642, 726 A.2d 837 (1999).

PLAINTIFF MUST SHOW EITHER FORCIBLE ENTRY AND DETAINER, OR FORCIBLE DETAINER AFTER TERMINATION OF LEASE. Frederick Innkeepers Corp. v. Krisch, 230 F. Supp. 800 (D. Md. 1964).

NOTICE TO QUIT IS UNNECESSARY IN FORCIBLE ENTRY AND DETAINER. A notice to quit must always precede the summons for a tenant holding over, but one who holds possession by force is entitled to no preliminary notice at all. Clark v. Vannort, 78 Md. 216, 27 A. 982 (1893).

WHEN REQUIRED AFFIDAVIT SHOULD BE FILED. --See Walter v. Alexander, 2 Gill 204 (1844).

JURY TRIAL. --The Seventh and Fourteenth Amendments to the federal Constitution do not require that petitioner be afforded a jury trial in a landlord-tenant action in the Maryland courts. Bringe v. Collins, 274 Md. 338, 335 A.2d 670 (1975), application for stay of execution and enforcement of judgment denied, 421 U.S. 983, 95 S. Ct. 1986, 44 L. Ed. 2d 475 (1975).

Subsection (b) of this section is not subject to any constitutional infirmity on the ground that it denies a party the right to a jury trial. Bringe v. Collins, 274 Md. 338, 335 A.2d 670 (1975), application for stay of execution and enforcement of judgment denied, 421 U.S. 983, 95 S. Ct. 1986, 44 L. Ed. 2d 475 (1975).

Subsection (b) of this section does not deny a jury trial to a party in a suit under this section. It authorizes the filing of a District Court action by a landlord for restitution of his premises, and sets forth certain procedural requirements for the action, but it is silent, and neutral, with respect to the right to a jury trial. Bringe v. Collins, 274 Md. 338, 335 A.2d 670 (1975), application for stay of execution and enforcement of judgment denied, 421 U.S. 983, 95 S. Ct. 1986, 44 L. Ed. 2d 475 (1975).

For a party in a landlord-tenant action to be entitled to a jury trial, there must either be a claim for money damages over $500 or a claim that the value of the right to possession exceeds $500. Bringe v. Collins, 274 Md. 338, 335 A.2d 670 (1975), application for stay of execution and enforcement of judgment denied, 421 U.S. 983, 95 S. Ct. 1986, 44 L. Ed. 2d 475 (1975).

RIGHT TO PRODUCE EVIDENCE IN OPEN COURT THAT RENT WAS IN DEFAULT. --The provision of this section as to the filing of an affidavit does not deny the plaintiff the right to produce evidence in open court that the rent was in default. Charles T. Brandt, Inc. v. YWCA, 169 Md. 607, 182 A. 452 (1936).

DEFENSE BY TENANT. --The tenant may assert, by way of defense, any equitable right or claim he may have. Gelston v. Sigmund, 27 Md. 334 (1867).

DAMAGES AND MESNE PROFITS. --Not only plaintiff's right of possession, but damages and mesne profits, may be recovered under this section. Gibbs v. Didier, 125 Md. 486, 94 A. 100 (1915).

RENT AND TAXES. --In a proceeding under this section, rent falling due subsequent to filing of declaration cannot be recovered, qua rent; such rent may, however, be considered in fixing plaintiff's damages. The right to rent and taxes due prior to filing of declaration is not extinguished by action of ejectment. Gibbs v. Didier, 125 Md. 486, 94 A. 100 (1915).

WHEN JUDGMENT BY DEFAULT IS BAR TO LEASE. --To make a judgment by default a bar to a lease under the statute of 4 George II, ch. 28 (of which this section is a substantial reenactment), record must disclose such facts and circumstances as shown that court designed to exercise the authority conferred by statute. Walter v. Alexander, 2 Gill 204 (1844).

EFFECT OF PROCEEDINGS ON RIGHTS OF MORTGAGEE OF LEASEHOLD INTEREST. --As to the effect of ejectment proceedings by the landlord upon the rights of a mortgagee of the leasehold interest, see Abrahams v. Tappe, 60 Md. 317 (1883).

SECTION NOT APPLIED WHERE WRITTEN LEASE EXPRESSLY PROVIDES FOR TERMINATION ON DEFAULT. --The Court of Appeals has never applied this statutory provision to a case where there is a written lease which, by its express terms, makes provision for termination upon the happening of certain defaults. Streeter v. Middlemas, 240 Md. 169, 213 A.2d 471 (1965).

LEASE ENTITLING LANDLORD TO IMMEDIATE POSSESSION IF RENT MORE THAN 90 DAYS IN ARREARS. --Where a lease provided that if rent were more than 90 days in arrears landlord should be entitled to immediate possession, ejectment might be brought without a previous demand. Shanfelter v. Horner, 81 Md. 621, 32 A. 184 (1895).

INTENT OF 1974 AMENDMENT. --By enacting Chapter 375, Acts 1974, the General Assembly intended that Montgomery County comply with the written-notice-to-quit requirements of a lease in conformity with the rest of the State. Cottman v. Department of Natural Resources, 44 Md. App. 224, 407 A.2d 802 (1979), cert. denied, 287 Md. 751 (1980).

PROVISIONS OF LOCAL ACT NOT IN CONFLICT WITH PROCEDURE UNDER SUBSECTION (B). --Provisions of a local landlord-tenant relations act which require that all leases entered into after its effective date be offered for an initial term of two years at the tenant's option, unless a reasonable cause exists for offering an initial term other than two years do not conflict with the procedure established by subsection (b) (1), (4) and (5), nor deprive anyone of a right intended to be secured by that public general law. County Council v. Investors Funding Corp., 270 Md. 403, 312 A.2d 225 (1973).

PROVISIONS OF LOCAL ACT IN CONFLICT WITH SUBSECTION (B) OF THIS SECTION. --Provisions of a local landlord-tenant relations act, which make retaliatory evictions unlawful, are in conflict with subsection (b), which grants a landlord a substantive legal right to evict, whether in retaliation or otherwise, and are therefore invalid under Md. Const., Article XI-A, § 3. County Council v. Investors Funding Corp., 270 Md. 403, 312 A.2d 225 (1973).

JURISDICTION. --The actions encompassed by § 4-401 (4) of the Courts Article, in which the District Court is given exclusive original jurisdiction regardless of the amount involved, refers to actions for forcible entry and detainer, including those for a tenant holding over, as authorized by this section. Greenbelt Consumer Servs., Inc. v. Acme Mkts., Inc., 272 Md. 222, 322 A.2d 521 (1974).

TRIAL COURT HAS JURISDICTION TO AWARD RESTITUTION OF PROPERTY TO OWNER in accordance with the right of reentry reserved to her in the lease, and reentry onto the leasehold property pursuant to the terms of the lease, after the default judgment, works a forfeiture of the lease. Jones v. Albert, 50 Md. App. 685, 440 A.2d 416 (1982).

OWNERSHIP AS TENANTS BY THE ENTIRETY PRECLUDES ACTION FOR REPOSSESSION BROUGHT BY ONE PARTY ONLY. --Where a husband and wife own land as tenants by the entireties and only the husband has given notice of termination of the tenancy to a tenant at will, an action for repossession of the premises may not be maintained. Arbesman v. Winer, 298 Md. 282, 468 A.2d 633 (1983).

APPEALS GENERALLY. --On appeal to Court of Appeals from action of circuit court on appeal from a lower court in a case instituted under this section, the only question open for determination is whether circuit court had jurisdiction. Matthews v. Whiteford, 119 Md. 122, 85 A. 1040 (1912).

If a lower court has jurisdiction over proceedings for restitution of leased property, a circuit court has jurisdiction on appeal and no appeal lies to Court of Appeals. Walker v. Kirwan, 137 Md. 139, 111 A. 775 (1920).

In case of forcible detainer for recovery of land in Baltimore City, it was held that People's Court had jurisdiction and that if error was made by said court, the only way to correct it was by appeal and not by writ of certiorari. Schmidt v. Rhynhart, Daily Record, Jan. 20, 1944, (Baltimore City Ct.).

On the landlord's appeal, the appellate court has no jurisdiction unless the tenant was summoned. Mears v. Remare, 33 Md. 246 (1870).

APPEAL FROM CIRCUIT COURT OR BALTIMORE CITY COURT. --No appeal will lie from judgment of circuit court or Baltimore City Court in exercise of its appellate jurisdiction as conferred by this section, provided magistrate had jurisdiction. Mears v. Remare, 33 Md. 246 (1870); Burrell v. Lamm, 67 Md. 580, 11 A. 56 (1887); Clark v. Vannort, 78 Md. 216, 27 A. 982 (1893); Roth v. State, 89 Md. 524, 43 A. 769 (1899); Benton v. Stokes, 109 Md. 117, 71 A. 532 (1908).

Proper method of raising, in Court of Appeals (on appeal from circuit court), question of constitutionality of statutes conferring jurisdiction on magistrate is by a writ of certiorari founded on that specific ground. Roth v. State, 89 Md. 524, 43 A. 769 (1899).

AVAILABILITY OF INTERLOCUTORY APPEAL. --Under the peculiar facts of the case, where a lender sought to have a borrower evicted both by "ejectment" and "forcible detainer," and the borrower then filed his own suit against the lender (eventually consolidated with the first case) alleging various acts of deception, a circuit court's order of the posting of a bond was subject to immediate appellate review under § 12-303 (1) of the Courts Article; this was true because the purpose of the order was to protect the value of a borrower's retention of the property pending resolution of the underlying dispute. Eubanks v. First Mt. Vernon Indus. Loan Ass'n, 125 Md. App. 642, 726 A.2d 837 (1999).

THE FIXING OF THE AMOUNT OF THE APPEAL BOND and the approval of the sureties are judicial acts. Knell v. Briscoe, 49 Md. 414 (1878).

LIABILITY FOR RENT WHERE TENANT APPEALS. --In case tenant appeals, he and his appeal bond are liable for rent as long as he occupies the premises. Hopkins v. Holland, 84 Md. 84, 35 A. 11 (1896).

TRANSCRIPT RECORDS. --Tenant's right to appeal judgment should not have been dismissed on basis that complete transcript record had not been filed within time set for conducting expedited appeal. Johnson v. Swann, 314 Md. 285, 550 A.2d 703 (1988).

LANDLORD'S ACCEPTANCE OF RENT ACCRUING SUBSEQUENT TO EXPIRATION OF LEASE is not a waiver of his right to enforce his judgment of restitution. Hopkins v. Holland, 84 Md. 84, 35 A. 11 (1896).

APPLIED IN Kirsner v. Edelmann, 65 Md. App. 185, 499 A.2d 1313 (1985); Md. Port Admin. v. Premier Auto. Servs. (In re Premier Auto. Servs.), 343 B.R. 501 (Bankr. D. Md. 2006).

STATED IN Purvis v. Forrest St. Apts., 286 Md. 398, 409 A.2d 388 (1979).

CITED IN Wiggins v. United States Dep't of HUD, 523 F. Supp. 1170 (D. Md. 1981); Carroll v. Housing Opportunities Comm'n, 306 Md. 515, 510 A.2d 540 (1986); Harris v. Housing Auth., 77 Md. App. 160, 549 A.2d 770 (1988).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 4. LANDLORD'S REMEDIES OTHER THAN DISTRAINT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-402.1 (2006)

§ 8-402.1. Breach of lease

(a) Complaint to District Court; summons to appear; notice; continuance. --

(1) (i) Where an unexpired lease for a stated term provides that the landlord may repossess the premises prior to the expiration of the stated term if the tenant breaches the lease, the landlord may make complaint in writing to the District Court of the county where the premises is located if:

1. The tenant breaches the lease;

2. A. The landlord has given the tenant 30 days' written notice that the tenant is in violation of the lease and the landlord desires to repossess the leased premises; or

B. The breach of the lease involves behavior by a tenant or a person who is on the property with the tenant's consent, which demonstrates a clear and imminent danger of the tenant or person doing serious harm to themselves, other tenants, the landlord, the landlord's property or representatives, or any other person on the property and the landlord has given the tenant or person in possession 14 days' written notice that the tenant or person in possession is in violation of the lease and the landlord desires to repossess the leased premises; and

3. The tenant or person in actual possession of the premises refuses to comply.

(ii) The court shall summons immediately the tenant or person in possession to appear before the court on a day stated in the summons to show cause, if any, why restitution of the possession of the leased premises should not be made to the landlord.

(2) (i) If, for any reason, the tenant or person in actual possession cannot be found, the constable or sheriff shall affix an attested copy of the summons conspicuously on the property.

(ii) After notice is sent to the tenant or person in possession by first-class mail, the affixing of the summons on the property shall be conclusively presumed to be a sufficient service to support restitution.

(3) If either of the parties fails to appear before the court on the day stated in the summons, the court may continue the case for not less than six nor more than 10 days and notify the parties of the continuance.

(b) Judgment of District Court; appeal. --

(1) If the court determines that the tenant breached the terms of the lease and that the breach was substantial and warrants an eviction, the court shall give judgment for the restitution of the possession of the premises and issue its warrant to the sheriff or a constable commanding the tenant to deliver possession to the landlord in as full and ample manner as the landlord was possessed of the same at the time when the lease was entered into. The court shall give judgment for costs against the tenant or person in possession.

(2) Either party may appeal to the circuit court for the county, within ten days from entry of the judgment. If the tenant (i) files with the District Court an affidavit that the appeal is not taken for delay; (ii) files sufficient bond with one or more securities conditioned upon diligent prosecution of the appeal; (iii) pays all rent in arrears, all court costs in the case; and (iv) pays all losses or damages which the landlord may suffer by reason of the tenant's holding over, the tenant or person in possession of the premises may retain possession until the determination of the appeal. Upon application of either party, the court shall set a day for the hearing of the appeal not less than five nor more than 15 days after the application, and notice of the order for a hearing shall be served on the other party or that party's counsel at least five days before the hearing. If the judgment of the District Court is in favor of the landlord, a warrant shall be issued by the court which hears the appeal to the sheriff, who shall execute the warrant.

(c) Payments accepted after notice but before eviction. --

(1) Acceptance of any payment after notice but before eviction shall not operate as a waiver of any notice of breach of lease or any judgment for possession unless the parties specifically otherwise agree in writing.

(2) Any payment accepted shall be first applied to the rent or the equivalent of rent apportioned to the date that the landlord actually recovers possession of the premises, then to court costs, including court awarded damages and legal fees and then to any loss of rent caused by the breach of lease.

(3) Any payment which is accepted in excess of the rent referred to in paragraph (2) of this subsection shall not bear interest but will be returned to the tenant in the same manner as security deposits as defined under § 8-203 of this title but shall not be subject to the penalties of that section.

HISTORY: 1978, ch. 478; 1982, ch. 820, § 3; 1987, ch. 11, § 1; 1996, ch. 668; 1999, chs. 219, 649; 2001, chs. 689, 711.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 689, Acts 2001, effective Oct. 1, 2001, rewrote (a).
Chapter 711, Acts 2001, effective Oct. 1, 2001, in (a) (1) (i), substituted "an unexpired lease for a stated term" for "a lease" and inserted "prior to the expiration of the stated term."
Neither of the 2001 amendments to this section referred to the other, and effect has been given herein to both.

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "An Analysis of the Maryland Mobile Home Park Act: A Need for Amendment," see 8 U. Balt. L. Rev. 271 (1979).

DUE PROCESS. --The procedures of this section meet the requirements of due process of law. Wiggins v. United States Dep't of HUD, 523 F. Supp. 1170 (D. Md. 1981).

Landlord's motion to remand was denied because the landlord failed to comply with (a)(2)(ii), since neither it nor anyone else ever sent the retailer notice of the eviction proceeding by first-class mail; thus, notice of the landlord's termination of the lease was insufficient, the retailer did not have actual notice until February 15, 2005, and the notice of removal was timely. Safeway, Inc. v. Sugarloaf P'ship, LLC, 423 F. Supp. 2d 531 (D. Md. 2006).

EXTENT OF BREACH. --This section requires not just a "substantial breach" of the lease, but also that the breach warrants an eviction. Brown v. Housing Opportunities Comm'n, 350 Md. 570, 714 A.2d 197 (1998).

"SUBSTANTIAL BREACH." --A tenant was unjustly evicted following an altercation with police where she had resided at the dwelling for 17 years without prior incident, and where the most serious criminal conduct was caused by another who was no longer living with her. Brown v. Housing Opportunities Comm'n, 350 Md. 570, 714 A.2d 197 (1998).

QUOTED IN Housing Opportunities Comm'n v. Lacey, 322 Md. 56, 585 A.2d 219 (1991); Darnestown Valley-WHM Ltd. Partnership v. McDonald's Corp., 102 Md. App. 577, 650 A.2d 1365 (1994), cert. denied, 338 Md. 201, 657 A.2d 795 (1995).

STATED IN Carter v. Md. Mgmt. Co., 377 Md. 596, 835 A.2d 158 (2003).

CITED IN Harris v. Housing Auth., 77 Md. App. 160, 549 A.2d 770 (1988); Eubanks v. First Mt. Vernon Indus. Loan Ass'n, 125 Md. App. 642, 726 A.2d 837 (1999).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 4. LANDLORD'S REMEDIES OTHER THAN DISTRAINT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-402.2 (2006)

§ 8-402.2. Ejectment

(a) Ejectment where 6 months ground rent is due. -- Whenever, in a case that involves a 99-year ground lease renewable forever, at least 6 months ground rent is in arrears and the landlord has the lawful right to reenter for the nonpayment of the rent, the landlord, no less than 45 days after sending to the tenant by certified mail, return receipt requested, at the tenant's last known address, and also by first class mail to the title agent or attorney listed on the deed to the property or the intake sheet recorded with the deed, a bill for the ground rent due, may bring an action for possession of the property under § 14-108.1 of this article; if the

tenant cannot be personally served or there is no tenant in actual possession of the property, service by posting notice on the property may be made in accordance with the Maryland Rules. Personal service or posting in accordance with the Maryland Rules shall stand in the place of a demand and reentry.

(b) Notice of judgment. --

(1) Before entry of a judgment the landlord shall give written notice of the pending entry of judgment to each mortgagee of the lease, or any part of the lease, who before entry of the judgment has recorded in the land records of each county where the property is located a timely request for notice of judgment. A request for notice of judgment shall:

(i) Be recorded in a separate docket or book that is indexed under the name of the mortgagor;

(ii) Identify the property on which the mortgage is held and refer to the date and recording reference of that mortgage;

(iii) State the name and address of the holder of the mortgage; and

(iv) Identify the ground lease by stating:

1. The name of the original lessor;

2. The date the ground lease was recorded; and

3. The office, docket or book, and page where the ground lease is recorded.

(2) The landlord shall mail the notice by certified mail return receipt requested to the mortgagee at the address stated in the recorded request for notice of judgment. If the notice is not given, judgment in favor of the landlord does not impair the lien of the mortgagee. Except as otherwise provided in subsection (b) of this section, the property is discharged from the lease and the rights of all persons claiming under the lease are foreclosed unless, within 6 calendar months after execution of the judgment for possession, the tenant or any other person claiming under the lease:

(i) Pays the ground rent, arrears, and all costs awarded against that person; and

(ii) Commences a proceeding to obtain relief from the judgment.

(c) Payment by tenant of costs and damages sustained by landlord. -- This section does not bar the right of any mortgagee of the lease, or any part of the lease, who is not in possession at any time before expiration of 6 calendar months after execution of the judgment awarding the landlord possession, to pay all costs and damages sustained by the landlord and to perform all the covenants and agreements that are to be performed by the tenant.

(d) Additional costs of collection not recoverable without notice. -- Except as otherwise provided by law, a landlord may not receive reimbursement for any additional costs or expenses related to collection of the back rent unless the notice requirements of this section and § 8-403.3 of this subtitle are met.

HISTORY: An. Code 1957, art. 21, § 8-402; 1974, ch. 12, § 2; ch. 375, § 2; 1976, ch. 272; 1977, ch. 487; 1978, chs. 27, 224, 334; 1980, ch. 126; 1981, ch. 111; 1982, ch. 786; ch. 820, § 3; 1985, ch. 181, §§ 1, 2; 1986, ch. 669; 1987, ch. 633; 2003, ch. 80, § 2.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 80, Acts 2003, effective Oct. 1, 2003, in (a), substituted "45 days" for "30 days" and inserted "and also by first class mail ... recorded with the deed"; and added (d).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 4. LANDLORD'S REMEDIES OTHER THAN DISTRAINT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-402.3 (2006)

§ 8-402.3. Reimbursement expenses for recovery of past-due ground rents

(a) "Ground rent" defined. -- In this section, "ground rent" means a residential lease or sublease in effect on or after October 1, 2003, that has an initial term of 99 years renewable forever and creates a leasehold estate subject to the payment of semiannual installments of an annual lease amount.

(b) Reimbursement for certain expenses. --

(1) A holder of a ground rent that is at least 6 months in arrears is entitled to reimbursement for actual expenses not exceeding $ 500 incurred in the collection of that past due ground rent and in complying with the notice requirements under § 8-402.2 (a) of this subtitle, including:

(i) Title abstract and examination fees;

(ii) Judgment report fees;

(iii) Photocopying and postage fees; and

(iv) Attorney's fees.

(2) Upon filing an action for ejectment, the plaintiff or holder of a ground rent is entitled to reimbursement for reasonable expenses incurred in the preparation and filing of the ejectment action, including:

(i) Filing fees and court costs;

(ii) Expenses incurred in the service of process or otherwise providing notice;

(iii) Title abstract and examination fees not included under paragraph (1) of this subsection, not exceeding $ 300;

(iv) Reasonable attorney's fees not exceeding $ 700; and

(v) Taxes, including interest and penalties, that have been paid by the plaintiff or holder of a ground rent.

(c) Other expenses not recoverable. -- Except as provided in subsection (b) of this section or in § 8-402.2 (c) of this subtitle, the plaintiff or holder of a ground rent is not entitled to reimbursement for any other expenses incurred in the collection of a ground rent.

(d) Notice requirements. --

(1) The holder of a ground rent may not be reimbursed for expenses under subsection (b) of this section unless the holder sends the tenant as identified in the records of the State Department of Assessments and Taxation written notice at least 30 days before taking any action in accordance with § 8-402.2 (a) of this subtitle and § 14-108.1 of this article.

(2) The notice shall be in 14 point, bold font, and contain the following:

(i) The amount of the past due ground rent;

(ii) A statement that unless the past due ground rent is paid within 30 days, further action will be taken in accordance with § 8-402.2 (a) of this subtitle and § 14-108.1 of this article and the tenant will be liable for the expenses and fees incurred in connection with the collection of the past due ground rent as provided in this section.

(3) The holder of the ground rent shall:

(i) Mail the notice by first class mail to the tenant's last known address as shown in the records of the State Department of Assessments and Taxation; and

(ii) Obtain a certificate of mailing from the United States Postal Service.

HISTORY: 2003, ch. 80, § 2.

NOTES:
EDITOR'S NOTE. --Section 1, ch. 80, Acts 2003, redesignated former § 8-402.3 of this article as § 8-402.4 of this article. Section 2 of ch. 80 added present § 8-402.3 of this article.
Section 3, ch. 80, Acts 2003, provides that the act shall take effect Oct. 1, 2003.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 4. LANDLORD'S REMEDIES OTHER THAN DISTRAINT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-402.4 (2006)

§ 8-402.4. Wrongful detainer

(a) "Wrongful detainer" defined. -- In this subtitle, "wrongful detainer" means to hold possession of a property without the right of possession.

(b) Possession pursuant to entitlement under law. -- A person may not hold possession of property unless the person is entitled to possession of the property under the law.

(c) Complaint; summons. --

(1) If a person other than a tenant holding over violates subsection (b) of this section, a person claiming possession may make complaint in writing to the District Court of the county in which the property is located.

(2) On receipt of a complaint under paragraph (1) of this subsection, the court shall summons immediately the person in possession to appear before the court on the day specified in the summons to show cause, if any, why restitution of the possession of the property to the person filing the complaint should not be made.

(3) If, for any reason, the person in actual possession cannot be found, the person authorized to serve process by the Maryland Rules shall affix an attested copy of the summons conspicuously on the property.

(4) If notice of the summons is sent to the person in possession by first class mail, the affixing of the summons in accordance with paragraph (3) of this subsection shall constitute sufficient service to support restitution of possession.

(d) Counterclaims or cross-claims prohibited. -- A counterclaim or cross-claim may not be filed in an action brought under this section.

(e) Judgment of court; effect of personal service. --

(1) If the court determines that the complainant is legally entitled to possession, the court shall:

(i) Give judgment for restitution of the possession of the property to the complainant; and

(ii) Issue its warrant to the sheriff or constable commanding the sheriff or constable to deliver possession to the complainant.

(2) The court may also give judgment in favor of the complainant for damages due to the wrongful detainer and for court costs and attorney fees if:

(i) The complainant claimed damages in the complaint; and

(ii) The court finds that:

1. The person in actual possession was personally served with the summons; or

2. There was service of process or submission to the jurisdiction of the court as would support a judgment in contract or tort.

(3) A person in actual possession who is not personally served with a summons is not subject to the personal jurisdiction of the District Court if the person appears in response to the summons and prior to the time that evidence is taken by the court and asserts that the appearance is only for the purpose of defending an in rem action.

(f) Appeal; retention of possession; hearing date; notice. --

(1) Not later than 10 days from the entry of the judgment of the District Court, either party may appeal to the circuit court for the county in which the property is located.

(2) The person in actual possession of the property may retain possession until the determination of the appeal if the person:

(i) Files with the court an affidavit that the appeal is not taken for delay; and

(ii) 1. Files sufficient bond with one or more securities conditioned on diligent prosecution of the appeal; or

2. Pays to the complainant or into the appellate court:

A. The fair rental value of the property for the entire period of possession up to the date of judgment;

B. All court costs in the case;

C. All losses or damages other than the fair rental value of the property up to the day of judgment that the court determined to be due because of the detention of possession; and

D. The fair rental value of the property during the pendency of the appeal.

(3) On application of either party, the court shall set a hearing date for the appeal that is not less than 5 days or more than 15 days after the application for appeal.

(4) Notice of the order for a hearing shall be served on the parties or the parties' counsels not less than 5 days before the hearing.

(g) Issuance and execution of warrant. -- If the judgment of the circuit court shall be in favor of the landlord, a warrant shall be issued by the court to the sheriff, who shall proceed immediately to execute the warrant.

HISTORY: 1999, ch. 649; 2003, ch. 80, § 1.

NOTES:
EDITOR'S NOTE. --Section 1, ch. 80, Acts 2003, effective Oct. 1, 2003, redesignated former § 8-402.3 of this article to be § 8-402.4 of this article.

PURCHASER'S ACTION PROPERLY DENIED. --Trial court properly denied a purchaser's action under § 8-402.4 of the Real Property Article, seeking possession of property purchased at a foreclosure sale; when a purchaser at a foreclosure sale sought to acquire actual possession of the purchased property through judicial means, the purchaser had to file a motion under Rule 14-102(a). Empire Properties, L.L.C. v. Hardy, 386 Md. 628, 873 A.2d 1187 (2005).
Rule 14-102 provided the exclusive means for a purchaser at a foreclosure sale to seek the ouster of a mortgage debtor who refused to relinquish possession; it was clear from the legislative history of § 8-402.4 of the Real Property Article that the wrongful detainer action established in that provision applied solely where the person who remained in possession had formerly been the tenant of the party seeking to recover possession. Empire Properties, L.L.C. v. Hardy, 386 Md. 628, 873 A.2d 1187 (2005).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.

a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 4. LANDLORD'S REMEDIES OTHER THAN DISTRAINT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-403 (2006)

§ 8-403. Payment of rents into court or administrative agency

(a) Payment into court. -- If the court in any case brought under § 8-401, § 8-402, or § 8-402.4 of this subtitle orders an adjournment of the trial for a longer period than provided for in the section under which the case has been instituted, the tenant or the person in possession shall pay into the court exercising jurisdiction in the case an amount and in the manner determined by the court to be appropriate as specified in § 8-118 of this title or, in the case of wrongful detainer, § 8-118.1 of this title.

(b) Payment into administrative agency. -- However, the court may order a tenant to pay rents due and as come due into an administrative agency of any county which is empowered by local law to hold rents in escrow pending investigation and disposition of complaints by tenants; the court also may refer that case to the administrative agency for investigation and report to the court.

(c) Date of payment. -- The payment into the court shall be due before the date to which the trial is adjourned or within 5 days after adjournment if the trial is adjourned more than 5 days, or to the administrative agency within 5 days after the court has ordered the rent paid into an administrative agency.

(d) Failure to pay. -- If, on motion of the plaintiff and after hearing, the court determines that the payment was not made as ordered by the court and that there is no legal justification for the failure to pay, the court shall give judgment in favor of the plaintiff and issue a warrant for possession in accordance with the provisions of the section under which the case is brought.

HISTORY: 1975, ch. 728; 1979, ch. 638; 1999, chs. 219, 649; 2000, ch. 61, § 1; 2003, ch. 21, § 6.

NOTES:
EDITOR'S NOTE. --Section 6, ch. 21, Acts 2003, provides that "any reference in the Annotated Code of Maryland rendered obsolete by an Act of the General Assembly of 2003 shall be corrected by the publisher of the Annotated Code, in consultation with and subject to the approval of the Department of Legislative Services, with no further action required by the General Assembly. The publisher shall adequately describe any such correction in an editor's note following the section affected." Pursuant to § 6 of ch. 21, "§ 8-402.4 of this subtitle" was substituted for "§ 8-402.3 of this subtitle" in (a), following the amendment by ch. 80, Acts 2003.

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "An Analysis of the Maryland Mobile Home Park Act: A Need for Amendment," see 8 U. Balt. L. Rev. 271 (1979).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 4. LANDLORD'S REMEDIES OTHER THAN DISTRAINT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-404 (2006)

§ 8-404. Disputed claims to possession

(a) Definition. -- In this section, "claimant" means the person identified by a tenant or person in possession as someone who claims title to the property leased or possessed by the tenant or person in possession.

(b) Remedy. --

(1) In any action brought under § 8-401, § 8-402, or § 8-402.4 of this subtitle, if the tenant or person in possession shall allege that the title to the property is disputed and in the case of a lease, that title is claimed by a claimant whom the tenant shall name, by virtue of a right or title accruing or happening since the commencement of the lease, by descent or deed from or by devise under the last will or testament of the landlord and, otherwise, if the person in possession or any claimant is alleged to have title, then the court shall, upon determination that title is relevant, forbear to give judgment for possession and costs.

(2) The tenant or person in possession so claiming shall cause a summons to be immediately issued to the claimant by the District Court and made returnable within 5 days next following.

(3) The claimant shall appear before the court and shall under oath, declare that the claimant claims title to the property which is the subject of the action and shall, with two sufficient securities, enter into bond to the plaintiff or parties in interest, in such sum as the court shall determine to be proper and reasonable security to said plaintiff or parties in interest, to prosecute with effect the claimant's claim in the circuit court for the county.

(4) If the said claim shall not be commenced in the circuit court within 10 days of the first appearance of the claimant in the District Court, the District Court shall proceed to give judgment for possession and costs and issue its warrant.

HISTORY: 1999, ch. 649; 2003, ch. 21, § 6.

NOTES:
EDITOR'S NOTE. --Section 6, ch. 21, Acts 2003, provides that "any reference in the Annotated Code of Maryland rendered obsolete by an Act of the General Assembly of 2003 shall be corrected by the publisher of the Annotated Code, in consultation with and subject to the approval of the Department of Legislative Services, with no further action required by the

General Assembly. The publisher shall adequately describe any such correction in an editor's note following the section affected." Pursuant to § 6 of ch. 21, "§ 8-402.4 of this subtitle" was substituted for "§ 8-402.3 of this subtitle" in (b)(1), following the amendment by ch. 80, Acts 2003.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 5. TENANT REMEDIES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-501 (2006)

§ 8-501. Time of notice to terminate tenancy

No written agreement between a landlord and tenant shall provide for a longer notice period to be furnished by the tenant to the landlord in order to terminate the tenancy than that required of the landlord to the tenant in order to terminate the tenancy.

HISTORY: 1974, ch. 699.

APPLICABILITY. --Tenants' obligation to give notice to quit a tenancy was determined under the parties' lease and was not affected by §§ 8-402(b), 8-208(d)(5), or 8-501 of this title. Hyder v. Montgomery County, 160 Md. App. 482, 864 A.2d 279 (2004), cert. denied, -- Md. --, 872 A.2d 47 (2005).

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 6. JURY DEMANDS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-601 (2006)

§ 8-601. Authorized

Any party to an action brought in the District Court under this title in which the amount in controversy meets the requirements for a trial by jury may, in accordance with this subtitle, demand a trial by jury.

HISTORY: 1999, ch. 649; 2000, ch. 61, § 1.

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 6. JURY DEMANDS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-602 (2006)

§ 8-602. Pleadings; time of filings

(a) Separate written pleading required; time of filing. -- A jury demand must be made by a separate written pleading. Except as provided in subsection (b) of this section, a jury demand under this subsection shall be filed with the court as provided in item (1) or (2) of this subsection or the right to trial by jury is waived:

(1) In nonresidential cases, within fifteen days of posting or personal service, or at the parties' first scheduled appearance before the court, whichever occurs sooner; and

(2) In residential cases, at the parties' first scheduled appearance before the court.

(b) Filing extensions. -- The time for filing the jury demand may be extended by agreement of all parties and that extension shall not be later than the first scheduled appearance of the parties.

HISTORY: 1999, ch. 649.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 6. JURY DEMANDS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-603 (2006)

§ 8-603. Waivers in lease

(a) Enforceability -- Lease for tenant's primary residence. -- A provision contained within a residential lease in which a tenant is occupying the space as that tenant's primary residence which waives a trial by jury shall be invalid and unenforceable.

(b) Same -- Other leases. -- A provision in any lease other than that specified in subsection (a) of this section which waives a trial by jury shall be valid and enforceable.

HISTORY: 1999, ch. 649.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8. LANDLORD AND TENANT
SUBTITLE 6. JURY DEMANDS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8-604 (2006)

§ 8-604. Appellate review

(a) In general. -- A demand for trial by jury under this subtitle shall be subject to review by

the District Court.

(b) Objection -- Where demand filed at first scheduled appearance. -- If the jury demand is filed at the first scheduled appearance in accordance with § 8-602 (b) of this subtitle, then any party to the action contesting the jury demand shall, at the first scheduled appearance, object to the jury demand and describe the basis of the invalidity of the jury demand.

(c) Same -- Where demand filed at time other than first scheduled appearance. -- If the jury demand is filed at a time other than the first scheduled appearance in accordance with § 8-602 (a) or (b) of this subtitle, then any other party to the action contesting the validity of the jury demand shall file an "objection to jury demand" within 10 days of the filing of the jury demand which such objection shall describe the basis of the invalidity of the jury demand, provided, however, that the "objection to jury demand" shall be filed at the first scheduled appearance if that occurs prior to the expiration of the period set forth in § 8-602 of this subtitle.

(d) Consideration of demand by court. -- In the event that a jury demand and an "objection to jury demand" is filed in accordance with § 8-602 of this subtitle and subsection (b) of this section:

(1) If an "objection to jury demand" is filed under subsection (b) of this section, the court shall consider the validity of the jury demand at the time of the first scheduled appearance of the parties;

(2) If an "objection to jury demand" is filed under subsection (c) of this section at a time other than trial, the court shall set the objection in for a hearing before the trial; or

(3) If the "objection to jury demand" is filed at the time of trial under subsection (c) of this section, the court shall consider the validity of the jury demand at trial.

(e) Transfer to circuit court -- In general. -- In the event a jury demand is filed prior to the first scheduled appearance and the time for filing an objection under subsection (c) of this section shall not have expired prior to the first scheduled appearance, and all other parties to the action file a "nonobjection to jury demand" at least 1 day prior to the first scheduled appearance, or if the time for filing an objection under subsection (c) of this section shall have expired prior to the first scheduled appearance and no objection having been filed, then the action shall be removed from the docket and transferred to the circuit court.

(f) Same -- Review by District Court. -- In the event that a jury demand is made under this subtitle, the District Court shall not be divested of jurisdiction and the matter shall not be removed to the circuit court until such time as the District Court has reviewed the jury demand, provided, however, that any hearing on the validity of a jury demand under this subtitle must occur within 10 days of the date of jury demand.

(g) Scope of District Court review. --

(1) The District Court's review of the validity of a jury demand shall be limited to:

(i) Timeliness of the jury demand;

(ii) The amount in controversy; and

(iii) The existence of a valid waiver.

(2) In the event that the District Court finds that the jury demand is invalid, the matter shall proceed in the District Court; however, upon conclusion of the District Court trial any party filing a jury demand determined invalid by the court may include the validity of the jury demand in an appeal, as set forth under the Maryland Rules.

HISTORY: 1999, ch. 649; 2000, ch. 61, § 1.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8A. MOBILE HOME PARKS
SUBTITLE 1. DEFINITIONS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8A-101 (2006)

§ 8A-101. Definitions

(a) In general. -- In this title the following words have the meanings indicated.

(b) Gratuity. -- "Gratuity" includes donation, bonus, fee, or gift.

(c) Mobile home. --

(1) "Mobile home" means a structure:

(i) Transportable in one or more sections;

(ii) 8 or more body feet in width and 30 or more body feet in length;

(iii) Built on a permanent chassis; and

(iv) Designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities.

(2) "Mobile home" includes the plumbing, heating, air conditioning, and electrical systems contained in the structure.

(d) Park owner. -- "Park owner" means any person who has interest in the park and includes any person acting as the agent of a park owner as to the managerial or operations acts taken as the agent of the owner.

(e) Park. -- "Park" means any property leased or held out for lease to two or more residents or prospective residents.

(f) Park fee. -- "Park fee" means any fee, charge, or assessment charged for the use of the park or for services rendered.

(g) Premises. -- "Premises" means any:

(1) Lot, plot, site, or parcel in the park; or

(2) Building, structure, or mobile home in the park.

(h) Rent. -- "Rent" means any money or other consideration given for the right of use, possession, and occupancy of the premises.

(i) Rental agreement. -- "Rental agreement" means any written understanding between a resident and park owner whereby the resident is entitled to place his mobile home on a site in the park for payment of consideration to the park owner.

(j) Resident. --

(1) "Resident" means a mobile home owner who leases or rents a site for residential use and resides in a mobile home park.

(2) "Resident" includes a person who maintains a permanent residence with the mobile home owner, and who obtains title to the mobile home after the death of the owner under the terms of a will or by operation of law.

(k) Rule. -- "Rule" means any rule established by the owner.

(l) Utility service. -- "Utility service" means any service available to the premises from a private or public central source. Such services may include sewer, water, electricity, telephone, gas, oil, and cable television.

(m) Security deposit. -- "Security deposit" means any payment of money, including payment of last month's rent in advance of the time it is due, given to a park owner by a resident in order to protect the park owner against nonpayment of rent or damage to the leased premises.

HISTORY: 1976, ch. 479; 1977, ch. 532; 1980, ch. 843, § 3; 1991, ch. 600; 1994, ch. 582.

NOTES:
EDITOR'S NOTE. --Chapter 843, Acts 1980, effective July 1, 1980, repealed former §§ 8A-101 to 8A-114 under the subtitle "Mobile Home Parks," and enacted present §§ 8A-101 to 8A-1802. Where the provisions of the new sections are similar to those of the former sections, the earlier acts are included in the historical citation which follows each section.

CITED IN Legal Aid Bureau, Inc. v. Farmer, 74 Md. App. 707, 539 A.2d 1173 (1988); Marmion v. M.O.M., Inc., 75 Md. App. 386, 541 A.2d 659, cert. denied, 313 Md. 612, 547 A.2d 189 (1988).

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***

*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8A. MOBILE HOME PARKS
SUBTITLE 2. RENTAL AGREEMENT, WRITTEN RENTAL AGREEMENT, DISCLOSURES TO CURRENT AND PROSPECTIVE RESIDENTS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8A-201 (2006)

§ 8A-201. Duties of park owner

Before a current or prospective resident signs a rental agreement or occupies the premises a park owner shall:

(1) Provide the prospective resident with a written notice identifying the availability, capacity, and connection fee of all utility services at the proposed site in order to assure the proper and adequate installation of the mobile home. The prospective resident shall furnish to the park owner a written acknowledgment of this notification and acceptance of the site as proposed.

(2) Deliver a copy of the rules and an explanation of any provision for amendment of the rule.

(3) Deliver a copy of the rental agreement which shall contain the following:

(i) A specific identification of the site to be leased;

(ii) A term of tenancy of at least 1 year;

(iii) A stipulation of:

1. The total amount of annual rental for the site;

2. The term of payment, whether monthly, quarterly, semiannually, or annually;

3. The amount due for each installment;

4. The amount of any late payment fee; and

5. All park fees, in a manner that identifies the service to be provided for each park fee;

(iv) A description of each general obligation of the resident and park owner;

(v) A description of each service, facility, and utility service that the park owner will provide;

(vi) A description of any termination and renewal option;

(vii) The text of § 8A-202 (c) of this subtitle, which defines "qualified resident"; and

(viii) A specific reference to this title as the law that governs the relationships between the resident and park owner.

HISTORY: 1980, ch. 843, § 3; 1990, ch. 565.

NOTES:
EDITOR'S NOTE. --Section 2, ch. 565, Acts 1990, provides that "the provisions of this Act shall apply to any rental agreement entered into or renewed after January 1, 1991."

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8A. MOBILE HOME PARKS
SUBTITLE 2. RENTAL AGREEMENT, WRITTEN RENTAL AGREEMENT, DISCLOSURES TO CURRENT AND PROSPECTIVE RESIDENTS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8A-202 (2006)

§ 8A-202. Rental agreement

(a) Minimum term. -- A park owner shall offer all current and prospective year-round residents a rental agreement for a period of not less than 1 year.

(b) Expiration of initial term. -- Upon the expiration of the initial term, the resident shall be on a month-to-month term, unless a longer term is agreed to by the parties, subject to the modified provisions relating to the amount and payment of rent.

(c) Qualified resident. --

(1) In this subsection, "qualified resident" means a year-round resident who:

(i) Has made rental payments on the due date or within any grace period commonly permitted in the park during the preceding year;

(ii) Within the preceding 6-month period has not committed a repeated violation of any rule or provision of the rental agreement and, at the time the term expires, no substantial violation exists; and

(iii) Owns a mobile home that meets the standards of the park.

(2) (i) Before the expiration of a 1-year term, or upon request of the resident at any time during a month-to-month term, a park owner shall offer to a qualified resident a rental agreement for a 1-year period.

(ii) An offer of a rental agreement for a 1-year term to a qualified resident shall:

1. Be delivered to the resident no later than 30 days before the expiration of the existing term;

2. Explain, in clear language, a qualified resident's right to the 1-year term; and

3. Contain a statement that, if the resident chooses not to enter into a 1-year agreement, the lease will continue on a month-to-month term that can be discontinued by either party, upon 30 days' notice.

(3) If the use of land is changed, all residents shall be entitled to a 1-year prior written notice of termination notwithstanding the provisions of a longer term in a rental agreement.

(4) If a resident's rental agreement is not renewed on the basis that the resident is not a qualified resident, the park owner shall, within 5 days, provide the resident with a written statement of the specific reason for nonrenewal of the rental agreement.

(5) A resident who has been offered a 1-year rental agreement under this section, and who has selected a month-to-month term and has not requested a 1-year rental agreement under this section, is not entitled to a 1-year rental agreement after a notice to terminate is delivered by certified mail to the resident by the park owner.

(d) Automatic renewal of lease term. -- If any rental agreement contains a provision calling for an automatic renewal of the lease term unless prior notice is given by the party or parties seeking to terminate the rental agreement, that provision shall be distinctly set apart from any other provision of the rental agreement and provide a space for the written acknowledgment of the resident's agreement to the automatic renewal provision. Such provision not specifically accompanied by either the resident's initials, signature, or witnessed mark is unenforceable by the park owner.

(e) Prohibited contents. -- A rental agreement may not contain:

(1) A provision whereby the resident authorizes any person to confess judgment on a claim arising out of the rental agreement.

(2) A provision whereby the resident agrees to waive or to forego any right or remedy provided by applicable law.

(3) Any provision whereby the resident waives his right to a jury trial.

(4) Any provision authorizing the park owner to take possession of the leased premises, or the resident's personal property therein unless the rental agreement has been terminated by action of the parties or by operation of law, and such personal property has been abandoned by the mobile home resident without the benefit of formal legal process.

(f) Terms to be same as month-to-month resident. -- Any rental agreement offered under this section shall contain the same terms, including rent, fees, and conditions, as a rental agreement offered to a resident or prospective resident on a month-to-month term.

(g) Rights and duties of residents obtaining ownership of mobile home. --

(1) Within 30 days after obtaining ownership of a mobile home, a resident as defined under § 8A-101 (j) (2) of this title shall:

(i) Offer the mobile home for sale;

(ii) Apply to the park owner to enter into a rental agreement; or

(iii) Take reasonable steps to remove the mobile home from the park.

(2) A park owner may not unreasonably deny an application submitted under paragraph (1) (ii) of this subsection.

(3) Notwithstanding any other provision of law, a resident as defined under § 8A-101 (j) (2) of this title shall remove the resident's mobile home from the park:

(i) If settlement on a sale offered under paragraph (1) (i) of this subsection has not occurred within 1 year of the resident's obtaining ownership; or

(ii) Within 6 months after an application submitted under paragraph (1) (ii) of this subsection is denied.

HISTORY: 1980, ch. 843, § 3; 1985, ch. 583; 1986, ch. 5, § 1; 1990, ch. 565; 1991, ch. 668; 1994, ch. 582.

NOTES:
EDITOR'S NOTE. --Section 2, ch. 565, Acts 1990, provides that "the provisions of this Act shall apply to any rental agreement entered into or renewed after January 1, 1991."

TERMINATION OF MONTH-TO-MONTH LEASES. --There is nothing in subsection (c) (2) of this section to prevent a park owner from terminating a month-to-month tenancy if there has not been a request for a one-year lease by the tenant. Marmion v. M.O.M., Inc., 75 Md. App. 386, 541 A.2d 659, cert. denied, 313 Md. 612, 547 A.2d 189 (1988).

WHEN LEASE TO BE REQUESTED. --If subsection (c) of this section does give qualified month-to-month tenants the right to demand a one-year lease at any time, the onus is on the tenant to request such a lease before the park owner decides not to renew the tenancy. Marmion v. M.O.M., Inc., 75 Md. App. 386, 541 A.2d 659, cert. denied, 313 Md. 612, 547 A.2d 189 (1988).

REQUESTING TENANT NOT UNLAWFUL HOLDOVER. --If subsection (c) (2) of this section explicitly gives a qualified month-to-month tenant the right to demand a one-year lease, a tenant who does so cannot be considered an unlawful holdover. Marmion v. M.O.M., Inc., 75 Md. App. 386, 541 A.2d 659, cert. denied, 313 Md. 612, 547 A.2d 189 (1988).

CITED IN Legal Aid Bureau, Inc. v. Farmer, 74 Md. App. 707, 539 A.2d 1173 (1988).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8A. MOBILE HOME PARKS
SUBTITLE 3. RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8A-301 (2006)

§ 8A-301. Rules

(a) Establishment and enforcement generally. --

(1) A park owner shall establish reasonable rules related to the order, peace, health, safety, and qualification standards of mobile homes, residents, and the operation of the park.

(2) A rule established under paragraph (1) of this subsection may not be enforced unless it is in writing and is delivered to each resident in the park.

(b) Appearance and construction standards; enforcement. --

(1) A park owner shall prescribe reasonable, written standards for the mobile homes to be placed or retained in the park, their size, quality, appearance, material specification, construction and safety condition.

(2) A rule adopted pursuant to paragraph (1) of this subsection setting a standard for the size, quality, material specification, or construction of mobile homes may not be enforced against any individual:

(i) Who, at the time the standard is adopted, is the owner or tenant of a mobile home in the park, as to that mobile home; or

(ii) Who purchases a mobile home from the individual who owned the home at the time the standard was adopted.

(c) Maintenance standards. -- A park owner shall prescribe reasonable, written maintenance standards for any mobile home in the park or immediate area surrounding the mobile home, in accordance with the State or county health laws or regulations.

(d) Fair and reasonable; uniform application. -- All rules and standards shall be fair and reasonable and, except as provided in paragraph (b) (2) of this section, shall apply uniformly to all residents in the park.

(e) Notice. -- A rule or standard is not enforceable unless the park owner:

(1) Delivers a copy of the rule or standard to each resident affected thereby; and

(2) Posts a copy of the rule or standard in a conspicuous place in the park.

(f) Effectiveness of amendment. -- An amendment to a rule or standard is not effective until the later of:

(1) The date specified in the amendment; or

(2) 30 days after the park owner delivers to each resident written notice of the proposed amendment.

HISTORY: 1976, ch. 479; 1980, ch. 843, § 3; 1982, ch. 850; 1991, ch. 55, § 1; 1993, chs. 332, 449.

MOBILE HOME PARK OPERATOR HAD A STATUTORY RIGHT TO DISAPPROVE THE RETENTION OF A MOBILE HOME IN THE PARK after sale based upon noncompliance with standards promulgated pursuant to subsection (b). VanSickle v. M.O.M., Inc., 74 Md. App. 700, 539 A.2d 1169 (1988).

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8A. MOBILE HOME PARKS
SUBTITLE 4. PARK FEES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8A-401 (2006)

§ 8A-401. Increase in park fee

(a) Notice required. -- A park owner only may increase a park fee if he delivers to each resident a notice in writing, of the increase at least 30 days before the effective date of the increased park fee.

(b) Failure to notify. -- If a park owner fails to so notify a resident affected by the increase, he may not collect the increased amount of the park fee from the resident.

HISTORY: 1976, ch. 479; 1980, ch. 843, § 3.

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8A. MOBILE HOME PARKS
SUBTITLE 4. PARK FEES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8A-402 (2006)

§ 8A-402. Prohibited fees; inspection fees

(a) Entrance or exit fees. -- An entrance or exit fee is prohibited.

(b) Fee for renewal of rental agreement; fee for qualification. -- A fee may not be charged:

(1) In connection with the renewal of a rental agreement; or

(2) To determine if a resident is qualified under § 8A-202 (c) of this title.

(c) Inspection fee. -- Except if a material change results in the deterioration of the home, a park owner may not charge a fee for inspecting a home for resale more than one time within a 12-month period.

(d) Maximum inspection fee. -- The fee for inspecting a home for resale may not exceed $ 60.

HISTORY: 1980, ch. 843, § 3; 1991, ch. 668; 2002, ch. 19, § 10.

NOTES:
EDITOR'S NOTE. --Section 10, ch. 19, Acts 2002, provides that "the publisher of the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, "title" has been substituted for "subtitle" in (b) (2).

CITED IN Legal Aid Bureau, Inc. v. Farmer, 74 Md. App. 707, 539 A.2d 1173 (1988).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8A. MOBILE HOME PARKS
SUBTITLE 4. PARK FEES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8A-403 (2006)

§ 8A-403. Service fee

(a) Amount. -- A park owner may charge the resident a reasonable service fee, based on an amount that the park owner directly incurs, for installing, placing on or removal of a mobile home from the site.

(b) Written description required. -- In each case where a fee has been charged by a park owner, a written description detailing the fee shall be provided by the park owner to the resident.

HISTORY: 1980, ch. 843, § 3.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8A. MOBILE HOME PARKS
SUBTITLE 4. PARK FEES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8A-404 (2006)

§ 8A-404. Late payment fee

A park owner may charge a late payment fee if:

(1) The rental agreement provides for the fee;

(2) The fee does not exceed 5 percent of the rent due or $ 5, whichever is higher; and

(3) The rent is not paid within 5 days after the due date specified in the rental agreement.

HISTORY: 1976, ch. 479; 1980, ch. 843, § 3.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8A. MOBILE HOME PARKS
SUBTITLE 4. PARK FEES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8A-405 (2006)

§ 8A-405. Guest fee

A park owner may not charge a resident or his guest any fee to enter, leave, or remain on the site unless, without the consent of the park owner, the guest stays more than 15 consecutive days, or during a year, 30 total days.

HISTORY: 1980, ch. 843, § 3.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8A. MOBILE HOME PARKS
SUBTITLE 4. PARK FEES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8A-406 (2006)

§ 8A-406. Receipt

A park owner shall provide to a resident on request, a written receipt for a park fee or other financial transaction between the park owner and resident.

HISTORY: 1980, ch. 843, § 3.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY

TITLE 8A. MOBILE HOME PARKS
SUBTITLE 5. PROHIBITIONS AGAINST OWNER

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8A-501 (2006)

§ 8A-501. Prohibited actions by park owner

A park owner may not:

(1) Require, as a condition of tenancy, the purchase of any permanent improvement that would become the property of the park owner;

(2) Require any current resident or prospective resident to purchase from any particular person a mobile home, materials, or equipment, including the equipment required by the applicable law, necessary for installation of the mobile home, except in connection with the initial leasing or renting of a newly-constructed lot not previously leased or rented to any other person;

(3) Restrict the supplier of any product or service that the park owner does not supply to all residents in the park, except as the restriction directly relates to the safety of the residents;

(4) Restrict the installation, service, or maintenance of any electric or gas appliance if the installation complies with the applicable building code and other laws;

(5) Restrict any interior improvement of a mobile home if the improvement complies with the applicable code and other laws;

(6) Directly or indirectly, receive, collect, or accept any gratuity from any person that is made to facilitate, influence, or procure any advantage over other prospective residents in connection with the lease, use, or occupation of the premises; or

(7) (i) Enforce the designation of an area in a park for exclusive occupancy by adults against any individual who, at the time the designation is made, is the owner or tenant of a mobile home in the park, as to that mobile home at its location at the time of the designation.

(ii) Subparagraph (i) does not apply if only a part of the park is so designated, and

1. The park owner:

A. Has made available to the individual, under comparable terms and conditions, another reasonably equivalent site for the mobile home in an area of the park that is not so designated and the individual shall accept or reject the proposed site within 60 days from the time the equivalent site is made available; and

B. Has assumed the responsibility of moving the mobile home at the park owner's expense; or

2. The mobile home is not moved.

HISTORY: 1976, ch. 479; 1980, ch. 843, § 3; 1982, ch. 834.

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under

the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8A. MOBILE HOME PARKS
SUBTITLE 5. PROHIBITIONS AGAINST OWNER

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8A-502 (2006)

§ 8A-502. Award in action to recover gratuity

In any action to recover any gratuity, the court shall award:

(1) A double amount of the gratuity; and

(2) The court costs.

HISTORY: 1976, ch. 479; 1980, ch. 843, § 3.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8A. MOBILE HOME PARKS
SUBTITLE 5. PROHIBITIONS AGAINST OWNER

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8A-503 (2006)

§ 8A-503. Charge for utility service

A park owner who purchases from a publicly regulated utility any electricity, gas, or other utility service for resale to a resident may not charge directly or indirectly for the resale, an

amount that exceeds the amount that the utility charges the park owner.

HISTORY: 1980, ch. 843, § 3.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8A. MOBILE HOME PARKS
SUBTITLE 6. SALES AND TRANSFER OF MOBILE HOMES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8A-601 (2006)

§ 8A-601. Prohibited actions by park owner

A park owner may not:

(1) Prevent a resident from selling his mobile home in the park; and

(2) Require the resident to remove the mobile home from the park because of the sale of the mobile home.

HISTORY: 1976, ch. 479; 1980, ch. 843, § 3.

THIS TITLE DOES NOT CONSTITUTE AN UNCONSTITUTIONAL TAKING OF PRIVATE PROPERTY. Cider Barrel Mobile Home v. Eader, 287 Md. 571, 414 A.2d 1246 (1980).

PURPOSE OF THIS SECTION is to insure the residents' ability to sell their mobile homes unimpaired by a requirement that the homes be removed from the park if sold. Cider Barrel Mobile Home v. Eader, 287 Md. 571, 414 A.2d 1246 (1980).

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8A. MOBILE HOME PARKS
SUBTITLE 6. SALES AND TRANSFER OF MOBILE HOMES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8A-602 (2006)

§ 8A-602. Approval of buyer

A park owner may prescribe by rule that, in any sale of a mobile home by which the mobile home is to be retained in the park, he reserves the right to approve the buyer and the standards of the mobile home. A park owner may not unreasonably withhold approval of a buyer.

HISTORY: 1976, ch. 479; 1980, ch. 843, § 3.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8A. MOBILE HOME PARKS
SUBTITLE 6. SALES AND TRANSFER OF MOBILE HOMES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8A-603 (2006)

§ 8A-603. Collection of commission

A park owner may only collect a commission in connection with the sale of a mobile home if he has acted as an agent for either party to the sale pursuant to a separate written agreement.

HISTORY: 1976, ch. 479; 1980, ch. 843, § 3.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8A. MOBILE HOME PARKS
SUBTITLE 6. SALES AND TRANSFER OF MOBILE HOMES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8A-604 (2006)

§ 8A-604. Notice of resident's intention to sell

A resident shall provide the park owner with a 30-day prior written notice of the resident's intention to sell the mobile home which will be removed from the site or retained on the site after resale, subject to the provisions of this title.

HISTORY: 1980, ch. 843, § 3.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8A. MOBILE HOME PARKS
SUBTITLE 6. SALES AND TRANSFER OF MOBILE HOMES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8A-605 (2006)

§ 8A-605. Notice of park rules to be given to buyer.

(a) Notice when seller is agent of owner, or owner, of park where mobile home to be located. --

(1) This subsection applies to a person who sells a mobile home and, in connection with the sale:

(i) Is, or acts as an agent for, the owner of the park in which the home is to be located; and

(ii) Negotiates with the buyer to place the home in a park.

(2) Prior to the execution of a contract for the sale of a mobile home, the seller of the mobile home shall provide to the buyer a copy of any rules established under Subtitle 3 of this title by the owner of the park in which the mobile home is to be located.

(3) A contract is unenforceable by a person described in paragraph (1) of this subsection if the person does not comply with paragraph (2) of this subsection.

(b) Notice in other cases. -- If subsection (a) of this section does not apply, the seller shall provide the buyer with a notice, in writing, separate from the contract, and in substantially the following form:

"If the mobile home you are purchasing is to be placed in a mobile home park, the park may have rules and lease provisions that affect you and your home.

You should contact the park office to obtain and carefully review a copy of the lease and rules for the park before you enter into a contract to purchase a mobile home.

Due to land use restrictions in many areas in this State, a mobile home may only be placed on property that is within a mobile home park."

HISTORY: 1993, ch. 332.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8A. MOBILE HOME PARKS
SUBTITLE 7. COVENANT OF QUIET ENJOYMENT; RIGHTS OF ENTRY

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8A-701 (2006)

§ 8A-701. Right of entry at beginning of term of lease

(a) Right of entry. -- A park owner shall assure the resident that the resident, peaceably and quietly, may enter on the leased premises at the beginning of the term of any lease.

(b) Abatement of rent until possession delivered. -- If the park owner fails to provide the resident with possession of the site at the beginning of the term of any lease, the rent payable under the rental agreement shall abate until possession is delivered. The resident on written notice to the park owner before possession is delivered may terminate, cancel, and rescind the rental agreement.

HISTORY: 1980, ch. 843, § 3.

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8A. MOBILE HOME PARKS
SUBTITLE 7. COVENANT OF QUIET ENJOYMENT; RIGHTS OF ENTRY

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8A-702 (2006)

§ 8A-702. Refund of prepaid rent, deposit, or security

On termination of the rental agreement under this subtitle, the park owner shall refund to the resident all money or property given as prepaid rent, deposit, or security.

HISTORY: 1980, ch. 843, § 3.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8A. MOBILE HOME PARKS
SUBTITLE 7. COVENANT OF QUIET ENJOYMENT; RIGHTS OF ENTRY

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8A-703 (2006)

§ 8A-703. Consequential damages

If due to the fault of the park owner, the park owner fails to provide the resident with

possession of the site at the beginning of the term of any lease, whether or not the lease is terminated under this section, the park owner is liable to the prospective resident for consequential damages actually suffered by him subsequent to the prospective resident giving notice to the park owner of his inability to enter on the leased premises.

HISTORY: 1980, ch. 843, § 3.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8A. MOBILE HOME PARKS
SUBTITLE 7. COVENANT OF QUIET ENJOYMENT; RIGHTS OF ENTRY

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8A-704 (2006)

§ 8A-704. Right of entry in certain circumstances

(a) Right of entry onto mobile home site. -- A park owner has at all reasonable times a right of entry onto the mobile home site to repair or replace any utility and to protect the park. Except in the case of an emergency, the entry may not be made in a manner and at a time that interferes unreasonably with the quiet enjoyment of the site by the resident.

(b) Right of entry to mobile home. -- Except in the case of an emergency or to prevent imminent danger to a mobile home or its occupant, a park owner does not have any right of entry to the mobile home without the prior written consent of the resident. The resident may revoke at any time and in writing a consent to entry.

HISTORY: 1980, ch. 843, § 3.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY

TITLE 8A. MOBILE HOME PARKS
SUBTITLE 8. PARK OWNER -- GENERAL OBLIGATIONS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8A-801 (2006)

§ 8A-801. Duties of park owner; discrimination

(a) Duties. -- The park owner at all times shall:

(1) Comply with all applicable building, housing, zoning, and health codes;

(2) Keep in good repair the leased site and all permanent fixtures that the park owner provides;

(3) Keep in a good state of appearance, repair, safety, and cleanliness the common areas and buildings;

(4) Provide at all reasonable times for the benefit of residents access to common areas, including their buildings and improvements, which access may not infringe on the leased site of any resident; and

(5) Keep in good repair each utility service.

(b) Discrimination prohibited. -- A park owner or operator of a mobile home park, or his agent or employee, may not refuse, withhold from, or deny to any person any of the accommodations, advantages, facilities, or privileges of the mobile home park or leases to the premises because of race, creed, color, sex, or national origin of that person.

HISTORY: 1976, ch. 479; 1980, ch. 843, § 3.

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "An Analysis of the Maryland Mobile Home Park Act: A Need for Amendment," see 8 U. Balt. L. Rev. 271 (1979).

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8A. MOBILE HOME PARKS
SUBTITLE 9. RESIDENT -- GENERAL OBLIGATIONS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8A-901 (2006)

§ 8A-901. Duties of resident

A resident and his guest at all times shall:

(1) Comply with park rules by conducting himself in a manner that does not disturb unreasonably other residents and that does not constitute a breach of the peace;

(2) Comply with all obligations imposed on the residents by applicable building, housing, zoning, and health codes; and

(3) Keep clean and sanitary the leased site.

HISTORY: 1980, ch. 843, § 3.

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8A. MOBILE HOME PARKS
SUBTITLE 10. SECURITY DEPOSITS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8A-1001 (2006)

§ 8A-1001. Security deposits

(a) Imposition; amount; recovery of excess charges. --

(1) A park owner may not impose a security deposit in excess of the equivalent of 2 months' rent, or $ 50, whichever is greater. If a security deposit exceeds this amount, the resident may recover up to threefold the extra money charged, plus reasonable attorney's fees.

(2) (i) After receiving payment of the initial security deposit from the resident, a park owner may not increase the security deposit.

(ii) If the resident was not required to pay a security deposit during a prior lease or rental

term, a park owner may not impose a security deposit.

(b) Timeliness of action. -- An action under this section may be brought at any time during the tenancy or within 2 years after its termination.

(c) Receipt. -- The park owner shall give the resident a receipt for the security deposit.

(1) The receipt may be included in a written rental agreement.

(2) The park owner shall be liable to the resident in the sum of $ 25 if the park owner fails to provide a written receipt for the security deposit.

(3) The receipt or rental agreement shall contain language informing the resident of his rights under this section to receive from the park owner a written list of all existing damages if the resident makes a written request of the park owner within 15 days of the resident's occupancy.

(d) List of existing damages. --

(1) If the park owner imposes a security deposit, on written request, he promptly shall provide the resident with a written list of all existing damages. The request must be made within 15 days of the resident's occupancy.

(2) Failure to provide the resident with this written statement renders the park owner liable to the resident for threefold the amount of the security deposit. The total amount of damages shall be subject to a setoff for damages and unpaid rent which reasonably could be withheld under this section.

(e) Security deposits account. --

(1) The park owner shall maintain all security deposits in a banking or savings institution in the State. This account shall be devoted exclusively to security deposits and bear interest.

(2) A security deposit shall be deposited in the account within 30 days after the park owner receives it.

(3) In the event of sales or transfer of any sort, including receivership or bankruptcy, the security deposit is binding on the successor in interest to the person to whom the deposit is given. Security deposits are free from any attachment by creditors.

(4) Any successor in interest is liable to the resident for failure to return the security deposit, together with interest, as provided in this section.

(f) Interest. --

(1) Within 45 days after the end of the tenancy, the park owner shall return the security deposit to the resident together with simple interest which has accrued in the amount of 3 percent per annum less any damages rightfully withheld.

(2) Interest shall accrue at 6-month intervals from the day the resident gives the park owner the security deposit. Interest is not compounded.

(3) Interest shall be payable only on security deposits of $ 50 or more.

(4) If the park owner, without a reasonable basis, fails to return any part of the security deposit, plus accrued interest, within 45 days after the termination of the tenancy, the resident has an action of up to threefold of the withheld amount, plus reasonable attorney's fees.

(g) Withholding for damages. --

(1) The security deposit, or any portion of the security deposit, may be withheld for unpaid rent, damage due to breach of the rental agreement, or damage to the leased premises by the resident or the resident's family, agents, employees, or social guests in excess of ordinary wear and tear.

(2) The resident has the right to be present when the park owner or his agent inspects the premises in order to determine if any damage was done to the premises, if the resident notifies the park owner in writing of his intention to move, the date of moving and his new address. The notice to be furnished by the resident to the park owner shall be mailed at least 15 days prior to the date of moving. Upon receipt of the notice, the park owner shall notify the resident in writing of the time and date when the premises are to be inspected. The date of inspection shall occur within 5 days after the moving as designated in the resident's notice. The resident shall be advised of his rights under this subsection in writing which may be included in the rental agreement at the time of his payment of the security deposit. Failure by the park owner to comply with this requirement forfeits the right of the park owner to withhold any part of the security deposit for damages.

HISTORY: 1980, ch. 843, § 3; 1992, ch. 534; 1996, ch. 10, § 1; 2005, ch. 23; 2006, ch. 44.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 23, Acts 2005, effective October 1, 2005, substituted "3 percent" for "4 percent" in (f)(1).
Chapter 44, Acts 2006, enacted April 7, 2006, pursuant to art. II, § 17(b) of the Maryland Constitution and effective from the date of enactment, in (g)(1), substituted "of the security deposit" for "thereof", deleted "for" before "damage to", substituted "or the resident's" for "his" before "family" and made minor, related changes.

EDITOR'S NOTE. --Section 2, ch. 23, Acts 2005, provides that "this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any mobile home park tenancy created or renewed before the effective date of this Act."

CITED IN St. Luke Evangelical Lutheran Church, Inc. v. Smith, 318 Md. 337, 568 A.2d 35 (1990).

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8A. MOBILE HOME PARKS
SUBTITLE 11. EVICTION OF RESIDENT -- PARK OWNER'S REMEDIES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8A-1101 (2006)

§ 8A-1101. Eviction of resident

(a) Grounds. -- A park owner may only evict a resident for:

(1) Nonpayment of rent; or

(2) Violations:

(i) Making or causing to be made, with knowledge, any false or misleading statement on an application for tenancy;

(ii) Violation of a federal, State, or local law that is detrimental to the safety and welfare of other residents in the park; or

(iii) Repeated violation of any rule or provision of the rental agreement occurring within a 6-month period.

(b) Notice. -- A park owner shall deliver to the resident by certified mail, regular mail, or personal delivery a written notice of the violation at least 30 days before the date the resident is required to vacate the premises. The notice shall be specifically addressed to the resident in question and shall provide a specific reason for the eviction.

HISTORY: 1976, ch. 479; 1980, ch. 843, § 3; 1984, ch. 383; 1997, ch. 14, § 1.

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "An Analysis of the Maryland Mobile Home Park Act: A Need for Amendment," see 8 U. Balt. L. Rev. 271 (1979).

GROUNDS FOR EVICTION. --A mobile home park tenant may be evicted only for committing one of the four specified grounds for eviction. Marmion v. M.O.M., Inc., 75 Md. App. 386, 541 A.2d 659, cert. denied, 313 Md. 612, 547 A.2d 189 (1988).

RIGHT TO REMAIN ON PREMISES. --This section does not give a tenant who is otherwise qualified the right to remain on the premises in perpetuity as a month-to-month tenant. Marmion v. M.O.M., Inc., 75 Md. App. 386, 541 A.2d 659, cert. denied, 313 Md. 612, 547 A.2d 189 (1988).

EVICTION OF UNLAWFUL HOLDOVERS. --There is nothing in the statute that indicates § 8A-1702 of this title was not intended to provide a substantive right to evict tenants who unlawfully hold over on the premises beyond the expiration of the lease term. Marmion v. M.O.M., Inc., 75 Md. App. 386, 541 A.2d 659, cert. denied, 313 Md. 612, 547 A.2d 189 (1988).

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***

*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8A. MOBILE HOME PARKS
SUBTITLE 12. TERMINATION OF TENANCY -- CHANGE IN LAND USE

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8A-1201 (2006)

§ 8A-1201. Plan for dislocated residents upon change in land use

When a mobile home park owner submits an application for a change in the land use of a park, the owner shall submit, as part of the application, a plan for alternative arrangements for each resident to be dislocated as a result of the change.

HISTORY: 1994, ch. 582.

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8A. MOBILE HOME PARKS
SUBTITLE 13. RETALIATORY EVICTIONS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8A-1301 (2006)

§ 8A-1301. Retaliatory evictions

(a) Prohibited reasons. -- A park owner may not evict a resident or arbitrarily increase the rent or decrease the services to which the resident has been entitled for any of the following reasons:

(1) Solely because the resident or his agent has filed a written complaint, or complaints, with the park owner or with any public agency or agencies against the park owner;

(2) Solely because the resident or his agent has filed a lawsuit, or lawsuits, against the park owner; or

(3) Solely because the resident is a member or organizer of any tenant's organization.

(b) Defined. -- Evictions described in subsection (a) of this section shall be called retaliatory evictions.

(c) Attorney's fees and court costs. -- If in any eviction proceeding the judgment is in favor of the resident for any of the aforementioned defenses, the court may enter judgment for reasonable attorney's fees and court costs against the park owner.

(d) Expiration of 6 months following determination of merits of initial case. -- An eviction may not be deemed to be a "retaliatory eviction" for purposes of this section upon the expiration of a period of 6 months following the determination of the merits of the initial case by a court or administrative agency of competent jurisdiction.

(e) Section not to be interpreted to alter other rights. -- Nothing in this section may be interpreted to alter the park owner's or the resident's rights arising from breach of any provision of a rental agreement or rule, or either party's right to terminate or not renew a rental agreement pursuant to the terms of the rental agreement or the provisions of other applicable law.

HISTORY: 1980, ch. 843, § 3; 1981, ch. 2, § 3; 1982, ch. 17, § 7; 1997, ch. 14, § 1.

CITED IN Johnson v. Swann, 314 Md. 285, 550 A.2d 703 (1988).

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8A. MOBILE HOME PARKS
SUBTITLE 14. ABANDONMENT OF MOBILE HOME

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8A-1401 (2006)

§ 8A-1401. Abandonment of mobile home

Repealed by Acts 1991, ch. 600, effective July 1, 1991.

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

[Repealed/Reserved]

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8A. MOBILE HOME PARKS
SUBTITLE 15. GENERAL ENFORCEMENT AUTHORITY
PART I. CIVIL ACTIONS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8A-1501 (2006)

§ 8A-1501. Civil actions

(a) Obligation of good faith. -- This title and each rental agreement made under it impose an obligation of good faith in performance and enforcement.

(b) Enforcement by civil action. --

(1) A resident or a park owner may enforce by civil action any right or duty under this title.

(2) If either the park owner or the resident fails to comply with the rental agreement or with this title, the aggrieved party may recover the damages caused by the noncompliance.

(3) In an action by or against a resident, if the resident prevails and if the rental agreement contains a provision that allows attorney's fees to the park owner, the court also may allow reasonable attorney's fees to the resident.

(4) In an action by a resident, the court may award equitable relief that it considers necessary, including the enjoining of further violations. The losing party may be liable for court costs and reasonable attorney's fees incurred by the prevailing party.

HISTORY: 1980, ch. 843, § 3.

CITED IN St. Luke Evangelical Lutheran Church, Inc. v. Smith, 318 Md. 337, 568 A.2d 35 (1990).

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8A. MOBILE HOME PARKS
SUBTITLE 15. GENERAL ENFORCEMENT AUTHORITY
PART II. SPECIFIC ENFORCEMENT AUTHORITY

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8A-1502 (2006)

§ 8A-1502. Unconscionability of rental agreement or park rule

(a) Presentation of evidence. -- If it is claimed or appears to the court that a rental agreement or park rule may be unconscionable, the court may give to the parties a reasonable opportunity to present evidence as to the meaning of the rental agreement or park rule, relationship of the parties, purpose, and other relevant factors to aid the court in making a determination.

(b) Rebuttable presumption of unfairness. -- A park rule that does not apply uniformly to all residents in a park creates a rebuttable presumption of unfairness.

(c) Factors in court's consideration. -- In determining if a provision of a rental agreement or of a park rule is unconscionable the court may consider if the provision:

(1) Promotes the convenience, safety, or welfare of residents;

(2) Preserves from abusive use property of the park owner;

(3) Promotes a fair distribution of services or facilities held out to residents generally;

(4) Relates reasonably to its purpose;

(5) Applies to all residents in a fair manner;

(6) Are sufficiently explicit for a resident to comply; and

(7) Is for the purpose of evading an obligation of the park owner.

(d) Finding of unconscionability. -- If a court finds that any provision of a rental agreement or park rule is unconscionable, the court may:

(1) Refuse to enforce the rental agreement or park rule;

(2) Enforce the remainder of the rental agreement or park rule without the unconscionable provision; or

(3) Limit the application of any unconscionable provision as to avoid any unconscionable result.

(e) Provisions void as against public policy. -- If the effect of any provision of a rental agreement is to indemnify the park owner, hold him harmless, or preclude or exonerate him from any liability to a mobile home resident, or to any other person, for any injury, loss, damage, or liability arising from any omission, fault, negligence, or other misconduct of the

park owner on or about the leased premises not within the exclusive control of the mobile home resident, the provision is against public policy and void. An insurer may not claim a right of subrogation by reason of the invalidity of this provision.

HISTORY: 1980, ch. 843, § 3.

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8A. MOBILE HOME PARKS
SUBTITLE 16. NONPAYMENT OF RENT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8A-1601 (2006)

§ 8A-1601. Action for eviction based on nonpayment of rent or recovery of unpaid rent

(a) Defenses. -- In an action by the park owner for eviction based on nonpayment of rent or for recovery of unpaid rent, the resident may raise:

(1) A defense of material noncompliance with this title if, before the due date of rent, the resident gave to the park owner written notice that based on the noncompliance the resident did not intend to pay rent and specified in detail the provision of noncompliance; or

(2) Any other legal or equitable defense.

(b) Appointment of trustee. -- If, in an action by the park owner for eviction based on nonpayment of rent, the resident raises a defense other than payment, the resident may petition the circuit court for the appointment of a trustee to receive the rent of the resident, apply the same to correcting the deficiency complained of and make a full accounting thereof to the court. The court shall give the parties a reasonable opportunity to present evidence as to the controversy before a trustee is appointed.

HISTORY: 1980, ch. 843, § 3; 1994, ch. 3, § 1.

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland

Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8A. MOBILE HOME PARKS
SUBTITLE 17. PARK OWNER'S REPOSSESSION REMEDIES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8A-1701 (2006)

§ 8A-1701. Repossession of premises

(a) Failure to pay rent. -- Whenever the resident under any rental agreement, express or implied, verbal or written, shall fail to pay the rent when due and payable, it shall be lawful for the park owner to have again and repossess the premises so rented.

(b) Complaint; service of process. -- Whenever any park owner shall desire to repossess any premises to which he is entitled, he or his duly qualified agent or attorney, shall make his written complaint under oath or affirmation, before the District Court of the county wherein the property is situated, describing in general terms the property sought to be repossessed, and also setting forth the name of the resident to whom the property is rented or his assignee or subtenant with the amount of rent due and unpaid; and praying by warrant to repossess the premises, together with judgment for the amount of rent due and costs. The District Court shall issue its summons, directed to any constable or sheriff of the county entitled to serve process, and ordering him to notify by first-class mail the tenant, assignee, or subtenant to appear before the District Court at the trial to be held on the fifth day after the filing of the complaint, to answer the park owner's complaint to show cause why the prayer of the park owner should not be granted, and the constable or sheriff shall proceed to serve the summons upon the resident, assignee, or subtenant in the property or upon his known or authorized agent, but if for any reason, neither the resident, assignee, or subtenant, nor his agent, can be found, then the constable or sheriff shall affix an attested copy of the summons conspicuously upon the mobile home. The affixing of the summons upon the mobile home after due notification to the resident, assignee, or subtenant by first-class mail shall conclusively be presumed to be a sufficient service to all persons to support the entry of a default judgment for possession of the premises, together with court costs, in favor of the park owner, but it shall not be sufficient service to support a default judgment in favor of the park owner for the amount of rent due.

(c) Adjournment; judgment; extension of time for surrender of premises; satisfaction of complaint. --

(1) If, at the trial on the fifth day indicated in subsection (b) of this section, the court is satisfied that the interests of justice will be better served by an adjournment to enable either party to procure his necessary witnesses, he may adjourn the trial for a period not exceeding 1 day, except that if the consent of all parties is obtained, the trial may be adjourned for a longer period of time.

(2) If, when the trial occurs, it appears to the satisfaction of the court, that the rent, or any part of the rent, is actually due and unpaid, the court shall determine the amount of rent due and enter a judgment in favor of the park owner for possession of the premises. The court may also give judgment in favor of the park owner for the amount of rent determined to be

due together with costs of the suit if the court finds that the actual service of process made on the defendant would have been sufficient to support a judgment in an action in contract or tort.

(3) The court, when entering the judgment, shall also order the resident to yield and render possession of the premises to the park owner, or his agent or attorney, within 30 days after the trial.

(4) The court may, upon presentation of a certificate signed by a physician certifying that surrender of the premises within this 30-day period would endanger the health or life of the resident or any other occupant of the premises, extend the time for surrender of the premises as justice may require. However, the court may not extend the time for the surrender of the premises beyond 45 days after the trial.

(5) However, if the resident, or someone for him, at the trial, or adjournment of the trial, tenders to the park owner the rent determined by the court to be due and unpaid, together with the costs of the suit, the complaint against the resident shall be entered as being satisfied.

(d) Warrant of restitution. -- If judgment is given in favor of the park owner, and the resident fails to comply with the requirements of the order within 15 days, the court shall, at any time after the expiration of the 15 days, issue its warrant, directed to any official of the county entitled to serve process, ordering him to cause the park owner to have again and repossess the property by putting him (or his duly qualified agent or attorney for his benefit) in possession thereof, and for that purpose to remove from the property, by force if necessary, the mobile home and all additions or attachments of every description whatsoever belonging to the resident, or to any person claiming or holding by or under said resident. If the park owner does not order a warrant of restitution within 60 days from the date of judgment or from the expiration date of any stay of execution, whichever shall be the later, the judgment for possession shall be stricken.

(e) Right to redemption. -- In any action of summary ejectment for failure to pay rent where the park owner is awarded a judgment giving him restitution of the leased premises, the resident shall have the right to redemption of the leased premises by tendering in cash, certified check, or money order to the park owner or his agent all past due rent and late fees, plus all court awarded costs and fees, at any time before actual execution of the eviction order. This subsection does not apply to any resident against whom 3 judgments of possession have been entered for rent due and unpaid in the 12 months prior to the initiation of the action to which this subsection otherwise would apply.

(f) Appeal of judgment. -- The resident or the park owner may appeal from the judgment of the District Court to the circuit court for any county at any time within 2 days from the rendition of the judgment. The resident, in order to stay any execution of the judgment, shall give a bond to the park owner with one or more sureties, who are owners of sufficient property in the State of Maryland, with condition to prosecute the appeal with effect, and answer to the park owner in all costs and damages mentioned in the judgment, and such other damages as shall be incurred and sustained by reason of the appeal. The bond shall not affect in any manner the right of the park owner to proceed against the resident, assignee, or subtenant for any and all rents that may become due and payable to the park owner after the rendition of the judgment.

HISTORY: 1980, ch. 843, § 3; 1982, ch. 820, § 3; 1989, ch. 813.

SUBSECTIONS (C) (5) AND (E) relate to different stages of the proceeding; neither is subsumed in the other and neither controls the other. Legal Aid Bureau, Inc. v. Farmer, 74 Md. App. 707, 539 A.2d 1173 (1988).

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8A. MOBILE HOME PARKS
SUBTITLE 17. PARK OWNER'S REPOSSESSION REMEDIES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8A-1702 (2006)

§ 8A-1702. Holding over beyond termination of rental agreement

(a) Liability; amount of damages; action; other remedies. --

(1) A resident under any lease or someone holding under him, who shall unlawfully hold over beyond the termination of the rental agreement, shall be liable to the park owner for the actual damages caused by the holding over.

(2) The damages awarded to a park owner against the resident or someone holding under him, may not be less than the apportioned rent for the period of holdover at the rate under the rental agreement.

(3) Any action to recover damages under this section may be brought by suit separate from the eviction or removal proceeding or in the same action and in any court having jurisdiction over the amount in issue.

(4) Nothing contained herein is intended to limit any other remedies which a park owner may have against a holdover resident under the rental agreement or under applicable law.

(b) Complaint; summons; judgment; appeal; application of subsection; notice by parole. --

(1) Where any interest in property shall be leased for any definite term or at will, and the park owner shall desire to repossess the property after the expiration of the term for which it was leased and shall give notice in writing 1 month before the expiration of the term or determination of the will to the resident or to the person actually in possession of the property to remove from the property at the end of the term, and if the resident or person in actual possession shall refuse to comply, the park owner may make complaint in writing to the District Court of the county where the property is located. The court shall issue its summons to the resident or person in possession that he appear on a day stated in the summons before the court to show cause (if any he have) why restitution of the possession of the estate leased should not be made to the park owner. Upon the failure of either of the parties to appear before the court on the day stated in the summons, the court may continue the case to a day not less than 6 nor more than 10 days after the day first stated and notify the parties of the continuance.

(2) If upon hearing the parties, or in case the resident or person in possession shall neglect to appear after the summons and continuance the court shall find that the park owner had been in possession of the leased property, that the said lease or estate is fully ended and expired, that due notice to quit as aforesaid had been given to the resident or person in possession and that he had refused so to do, the court shall thereupon give judgment for the restitution of the possession of said premises and shall forthwith issue its warrant to the sheriff or a constable in the respective counties commanding him forthwith to deliver to the park owner possession thereof in as full and ample manner as the park owner was possessed of the same at the time when the leasing was made, and shall give judgment for costs against the resident or person in possession so holding over. Either party shall have the right to appeal therefrom to the circuit court for the county within ten days from the judgment. If the resident appeals and files with the District Court an affidavit that the appeal is not taken for delay, and also a good and sufficient bond with one or more securities conditioned that he will prosecute the appeal with effect and well and truly pay all rent in arrears and all costs in the case before the District Court and in the appellate court and all loss or damage which the park owner may suffer by reason of the resident's holding over, including the value of the premises during the time he shall so hold over, then the resident or person in possession of said premises may retain possession thereof until the determination of said appeal. The appellate court shall, upon application of either party, set a day for the hearing of the appeal, not less than 5 nor more than 15 days after the application, and notice for the order for a hearing shall be served on the opposite party or his counsel at least 5 days before the hearing. If the judgment of the District Court shall be in favor of the park owner, a warrant shall be issued by the appellate court to the sheriff, who shall proceed forthwith to execute the warrant.

(3) The provisions of this section shall apply to all cases of tenancies from year to year, tenancies of the month and by the week. In case of tenancies from year to year, notice in writing shall be given 3 months before the expiration of the current year of the tenancy, and in monthly or weekly tenancies, a notice in writing of 1 month, shall be so given; and the same proceeding shall apply, so far as may be, to cases of forcible entry and detainer.

(4) When the resident shall give notice by parole to the park owner or to his agent or representatives, at least 1 month before the expiration of the lease or tenancy in all cases except in cases of tenancies from year to year, and at least 3 months' notice in all cases of tenancy from year to year, of the intention of the tenant to remove at the end of that year and to surrender possession of the property at that time, and the park owner, his agent, or representative shall prove the notice from the resident by competent testimony, it shall not be necessary for the park owner, his agent or representative to provide a written notice to the resident, but the proof of such notice from the resident as aforesaid shall entitle the park owner to recover possession of the property hereunder.

HISTORY: 1980, ch. 843, § 3; 1982, ch. 820, § 3; 1989, ch. 640; 1997, ch. 14, § 1.

LEGISLATIVE INTENT. --There is nothing in the statute that indicates this section was not intended to provide a substantive right to evict tenants who unlawfully hold over on the premises beyond the expiration of the lease term. Marmion v. M.O.M., Inc., 75 Md. App. 386, 541 A.2d 659, cert. denied, 313 Md. 612, 547 A.2d 189 (1988).

RIGHT TO REMAIN ON PREMISES. --Section 8A-1101 of this title does not give a tenant who is otherwise qualified the right to remain on the premises in perpetuity as a month-to-month tenant. Marmion v. M.O.M., Inc., 75 Md. App. 386, 541 A.2d 659, cert. denied, 313 Md. 612, 547 A.2d 189 (1988).

CITED IN Johnson v. Swann, 314 Md. 285, 550 A.2d 703 (1988).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland

Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8A. MOBILE HOME PARKS
SUBTITLE 17. PARK OWNER'S REPOSSESSION REMEDIES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8A-1703 (2006)

§ 8A-1703. Judicial action to repossess premises

(a) Complaint; summons; continuance. -- When a rental agreement provides that the park owner may repossess the premises if the resident breaches the rental agreement, and the park owner has given the resident 1 month's written notice that the resident is in violation of the rental agreement and the park owner desires to repossess the premises, and if the resident or person in actual possession refuses to comply, the park owner may make complaint in writing to the District Court of the county where the premises is located. The court shall summons immediately the resident or person in possession to appear before the court on a day stated in the summons to show cause, if any, why restitution of the possession of the leased premises should not be made to the park owner. If either of the parties fails to appear before the court on the day stated in the summons, the court may continue the case for not less than 6 nor more than 10 days and notify the parties of the continuance.

(b) Judgment; appeal. -- If the court determines that the resident breached the terms of the rental agreement and that the breach warrants an eviction, the court shall give judgment for the restitution of the possession of the premises and issue its warrant to the sheriff or a constable commanding him to deliver possession to the park owner in as full and ample manner as the park owner was possessed of the same at the time when the rental agreement was entered into. The court shall give judgment for costs against the resident or person in possession. Either party may appeal to the circuit court for the county within 10 days from entry of the judgment. If the resident (1) files with the District Court an affidavit that the appeal is not taken for delay; (2) files sufficient bond with one or more securities conditioned upon diligent prosecution of the appeal; (3) pays all rent in arrears, all court costs in the case; and (4) pays all losses or damages which the park owner may suffer by reason of the resident's holding over, the resident or person in possession of the premises may retain possession until the determination of the appeal. Upon application of either party, the court shall set a day for the hearing of the appeal not less than 5 nor more than 15 days after the application, and notice of the order for a hearing shall be served on the other party or his counsel at least 5 days before the hearing. If the judgment of the District Court is in favor of the park owner, a warrant shall be issued by the court which hears the appeal to the sheriff, who shall execute the warrant.

HISTORY: 1980, ch. 843, § 3; 1982, ch. 820, § 3; 2002, ch. 19, § 10.

NOTES:
EDITOR'S NOTE. --Section 10, ch. 19, Acts 2002, provides that "the publisher of the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly,

with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, "month's" has been substituted for "month" in (a).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8A. MOBILE HOME PARKS
SUBTITLE 18. APPLICABILITY, ENFORCEMENT AND SHORT TITLE

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8A-1801 (2006)

§ 8A-1801. Applicability of supplementary rights

No provision of this title shall be deemed to be a bar to the applicability of supplementary rights afforded by any public local law enacted by the General Assembly or any ordinance or any local law enacted by any municipality or political subdivision of this State; provided, however, that no such law can diminish or limit any right or remedy granted under the provisions of this title.

HISTORY: 1980, ch. 843, § 3; 1981, ch. 2, § 3.

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8A. MOBILE HOME PARKS
SUBTITLE 18. APPLICABILITY, ENFORCEMENT AND SHORT TITLE

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8A-1802 (2006)

§ 8A-1802. Enforcement

(a) By Consumer Protection Division of Office of Attorney General. -- To the extent that a violation of any provision of this title affects a resident or prospective resident, that violation shall be within the scope of the enforcement duties and powers of the Division of Consumer Protection of the Office of the Attorney General, as described in Title 13 of the Commercial Law Article.

(b) By other State agencies. -- The provisions of this title shall otherwise be enforced by each agency of the State within the scope of its authority.

HISTORY: 1982, ch. 811, § 2.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 8A. MOBILE HOME PARKS
SUBTITLE 18. APPLICABILITY, ENFORCEMENT AND SHORT TITLE

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 8A-1803 (2006)

§ 8A-1803. Short title

This title may be cited as the Maryland Mobile Home Parks Act of 1980.

HISTORY: 1976, ch. 479; 1980, ch. 843, § 3; 1982, ch. 811, § 1.

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "An Analysis of the Maryland Mobile Home Park Act: A Need for Amendment," see 8 U. Balt. L. Rev. 271 (1979).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***

*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 9. STATUTORY LIENS ON REAL PROPERTY
SUBTITLE 1. MECHANICS' LIENS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 9-101 (2006)

§ 9-101. Definitions

(a) In general. -- In this subtitle the following words have the meanings indicated.

(b) Building. -- "Building" includes any unit of a nonresidential building that is leased or separately sold as a unit.

(c) Contract. -- "Contract" means an agreement of any kind or nature, express or implied, for doing work or furnishing material, or both, for or about a building as may give rise to a lien under this subtitle.

(d) Contractor. -- "Contractor" means a person who has a contract with an owner.

(e) Land. -- "Land" means the land to which a lien extends under this subtitle or the land within the boundaries established by proceedings in accordance with the Maryland Rules. "Land" includes the improvements to the land.

(f) Owner. -- "Owner" means the owner of the land except that, when the contractor executes the contract with a tenant for life or for years, "owner" means the tenant.

(g) Subcontractor. -- "Subcontractor" means a person who has a contract with anyone except the owner or his agent.

HISTORY: 1976, ch. 349, § 3; 1983, ch. 23.

MARYLAND LAW REVIEW. --For article discussing mechanics' liens in Maryland, see 36 Md. L. Rev. 733 (1977).
For article, "Survey of Developments in Maryland Law, 1983-84," see 44 Md. L. Rev. 331 (1985).
For article, "Survey of Developments in Maryland Law, 1984-85," see 45 Md. L. Rev. 836 (1986).
For article, "Survey of Developments in Maryland Law, 1988-89," see 49 Md. L. Rev. 509 (1990).
For survey, "Developments in Maryland Law, 1989-90," see 50 Md. L. Rev. 1027 (1991).

UNIVERSITY OF BALTIMORE LAW REVIEW. --For note discussing Maryland's new mechanics' lien law, see 6 U. Balt. L. Rev. 181 (1976).
For article, "The Maryland Rules -- A Time for Overhaul," see 9 U. Balt. L. Rev. 1 (1979).
For article, "Merger of Law and Equity Under the Revised Maryland Rules: Does It Threaten Trial by Jury?" see 14 U. Balt. L. Rev. 1 (1984).
For article, "The Maryland Construction Trust Statute: New Personal Liability--Its Scope and Federal Bankruptcy Implications," see 17 U. Balt. L. Rev. 482 (1989).
For comment, "Employees As Subcontractors: Maryland's Interpretation of Its Mechanics' Lien Statute," see 33 U. Balt. L. Rev. 97 (2003).

CONSTITUTIONALITY. --The present mechanics' lien law does not deprive an owner of his

property without due process of law and does not result in an unconstitutional "taking" of property. AMI Operating Partners Ltd. Partnership v. JAD Enters., Inc., 77 Md. App. 654, 551 A.2d 888, cert. denied, 315 Md. 307, 554 A.2d 393 (1989).

OBJECT OF THIS SUBTITLE is the protection of those who furnish labor and materials in construction. Riley v. Abrams, 287 Md. 348, 412 A.2d 996 (1980).

The purpose of Maryland's Mechanics' Lien Statute is to protect those who furnish labor and materials during the construction process. Bennett Heating & Air Conditioning, Inc. v. NationsBank, 103 Md. App. 749, 654 A.2d 949 (1995), rev'd on other grounds, 342 Md. 169, 674 A.2d 534 (1996).

THIS SUBTITLE WAS ENACTED TO CURE THE ILLS OF THE FORMER SUBTITLE. Tyson v. Masten Lumber & Supply, Inc., 44 Md. App. 293, 408 A.2d 1051 (1979).

DUE PROCESS. --The Mechanics' Lien Act procedures do not necessarily represent the minimal requirements of constitutional procedural due process. Golden Sands Club Condominium, Inc. v. Waller, 313 Md. 484, 545 A.2d 1332 (1988).

CONTRACTOR ALSO THE "OWNER." --The General Assembly intended that a subcontractor can invoke the mechanics' lien law when it contracts with a contractor who also happens to be the property owner. Skinner Logsdon Constr. & Equip., Inc. v. First United Church, 88 Md. App. 434, 594 A.2d 1245 (1991).

CREATION OF LIEN. --The major change made by the 1976 revision is that the claimant does not get his lien until the court establishes it, and the court may not establish it until, after considering any response by the owner to the claimant's petition, the court finds at least probable cause to believe that the claimant is entitled to a lien. Caretti, Inc. v. Colonnade Ltd. Partnership, 104 Md. App. 131, 655 A.2d 64 (1995), cert. denied, 339 Md. 641, 664 A.2d 885 (1995).

NATURE OF MECHANICS' LIEN. --A mechanics' lien is a statutorily created in rem remedy. As an in rem proceeding against property, an action to establish and enforce a mechanics' lien is effective against the owner of the property, for the benefit of subcontractors who perform their contractual obligations but are not paid. Wolf Org., Inc. v. Oles, 119 Md. App. 357, 705 A.2d 40 (1998).

The mechanics' lien law allows a creditor for labor or materials to proceed in rem against improved property even though he could show no privity of contract with the owner, nor personal liability of the owner to him; without the mechanics' lien remedy, such a creditor would have no recourse against the property or the ultimate owner of the property, even though the owner would enjoy the improvements to the property made possible by the creditor's work and materials. Wolf Org., Inc. v. Oles, 119 Md. App. 357, 705 A.2d 40 (1998).

CONTRACT PREREQUISITE TO ESTABLISHING LIEN. --Reading subsections (d) and (g) of this section in tandem with § 9-102 (a) of this subtitle, it is clear that, prerequisite to the establishment of a lien on a building on which work has been done and/or materials furnished, there must have been a contract for that work and/or for those materials. Kaufman v. Miller, 75 Md. App. 545, 542 A.2d 391 (1988).

COLLECTIVE BARGAINING AGREEMENT HELD NOT "CONTRACT." --A collective bargaining agreement that set forth the terms and conditions of employment for electrical workers is not a contract for work because the agreement does not relate to work to be done "for or about a building." National Elec. Indus. Fund v. Bethlehem Steel Corp., 296 Md. 541, 463 A.2d 858 (1983).

INDIVIDUAL WORKER EMPLOYED PURSUANT TO COLLECTIVE BARGAINING AGREEMENT HELD NOT "SUBCONTRACTOR." --Each individual electrical worker, employed pursuant to a collective bargaining agreement, who performed work for his contractor at the site of another, was a subcontractor. National Elec. Indus. Fund v. Bethlehem Steel Corp., 296 Md. 541, 463 A.2d 858 (1983).

FINDING THAT PARTY IS "OWNER" WITHIN MEANING OF SUBSECTION (F) of this section will not be disturbed on review unless it is clearly erroneous. Hill v. Parkway Indus. Ctr., 49 Md. App. 676, 435 A.2d 472 (1981), cert. denied, 292 Md. 376 (1982).

EXECUTOR OF A CONTRACT TO PURCHASE REAL PROPERTY IS NOT AN "OWNER." --One who executes a contract with an owner/builder to purchase real property improved by a dwelling to be constructed during the executory period is not at "owner" of the property, whose equitable interest may be reached by a mechanics' lien. Wolf Org., Inc. v. Oles, 119 Md. App. 357, 705 A.2d 40 (1998).

ACCOUNTS RECEIVABLE LENDER NOT "SUCONTRACTOR." --The broad definition of "subcontractor" in § 9-101(g) is narrowed by § 9-101(b) which defines "contract" as an agreement for doing work and/or furnishing material; therefore, defendant accounts receivable lender was not a subcontractor as contemplated by this section because it neither did work nor furnished materials on the projects. Phillips Way, Inc. v. Presidential Fin. Corp., 137 Md. App. 209, 768 A.2d 94 (2001).

QUOTED IN York Roofing, Inc. v. Adcock, 333 Md. 158, 634 A.2d 39 (1993); Hartford Ins. Co. v. American Automatic Sprinkler Sys., 23 F. Supp. 2d 623 (D. Md. 1998), aff'd, 201 F.3d 538 (4th Cir. 2000); Judd Fire Protection, Inc. v. Davidson, 138 Md. App. 654, 773 A.2d 573 (2001).

CITED IN Residential Indus. Loan Co. v. Weinberg, 279 Md. 483, 369 A.2d 563, cert. denied, 434 U.S. 876, 98 S. Ct. 227, 54 L. Ed. 2d 156 (1977); Reisterstown Lumber Co. v. Tsao, 319 Md. 623, 574 A.2d 307 (1990); Johnson Hydro Seeding Corp. v. Ian Homes, Inc., 126 Bankr. 933 (Bankr. D. Md. 1991); Mardirossian Family Enters. v. Clearail, Inc., 324 Md. 191, 596 A.2d 1018 (1991); Sterling Mirror of Md., Inc. v. Rahbar, 90 Md. App. 193, 600 A.2d 899 (1992); National Glass, Inc. v. J.C. Penney Properties, Inc., 329 Md. 300, 619 A.2d 528 (1993); National Glass, Inc. v. J.C. Penney Properties, Inc., 336 Md. 606, 650 A.2d 246 (1994); Westpointe Plaza II Ltd. Partnership v. Kalkreuth Roofing & Sheet Metal, Inc., 109 Md. App. 569, 675 A.2d 571 (1996); May Dep't Stores v. Montgomery County, 118 Md. App. 441, 702 A.2d 988 (1997); United States v. Schecter, 251 F.3d 490 (4th Cir. 2001); Brendsel v. Winchester Constr. Co., 162 Md. App. 558, 875 A.2d 789 (2005), aff'd, 898 A.2d 472, 2006 Md. LEXIS 255 (2006).

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 9. STATUTORY LIENS ON REAL PROPERTY
SUBTITLE 1. MECHANICS' LIENS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 9-102 (2006)

§ 9-102. Property subject to lien

(a) Buildings. -- Every building erected and every building repaired, rebuilt, or improved to the extent of 15 percent of its value is subject to establishment of a lien in accordance with this subtitle for the payment of all debts, without regard to the amount, contracted for work done for or about the building and for materials furnished for or about the building, including the drilling and installation of wells to supply water, the construction or installation of any swimming pool or fencing, the sodding, seeding or planting in or about the premises of any shrubs, trees, plants, flowers or nursery products, the grading, filling, landscaping, and paving of the premises, the provision of building or landscape architectural services, engineering services, or land surveying services, and the leasing of equipment, with or without an operator, for use for or about the building or premises.

(b) Waterlines, sewers, drains and streets in development. -- If the owner of land or the owner's agent contracts for the installation of waterlines, sanitary sewers, storm drains, or streets to service all lots in a development of the owner's land, each lot and its improvements, if any, are subject, on a basis pro rata to the number of lots being developed, to the establishment of a lien as provided in subsection (a) of this section for all debts for work and material in connection with the installation.

(c) Machines, wharves, and bridges. -- Any machine, wharf, or bridge erected, constructed, or repaired within the State may be subjected to a lien in the same manner as a building is subjected to a lien in accordance with this subtitle.

(d) Exemptions. -- However, a building or the land on which the building is erected may not be subjected to a lien under this subtitle if, prior to the establishment of a lien in accordance with this subtitle, legal title has been granted to a bona fide purchaser for value.

(e) Filing of petition constitutes notice to purchaser. -- The filing of a petition under § 9-105 shall constitute notice to a purchaser of the possibility of a lien being perfected under this subtitle.

HISTORY: An. Code 1957, art. 21, §§ 9-101, 9-111; 1974, ch. 12, § 2; 1976, ch. 349, § 3; 1977, ch. 749; 1980, ch. 319; 1984, ch. 595; 1987, ch. 267; 1996, chs. 435, 440; 2006, ch. 198.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 198, Acts 2006, effective October 1, 2006, inserted "the provision of building or landscape architectural services, engineering services, or land surveying services" near the end of (a).

I. General Consideration.

II. Who Entitled to Lien.

III. Lienable Items.

IV. Property Subject to Lien.

V. Enforcement of Lien.

I. GENERAL CONSIDERATION.

MARYLAND LAW REVIEW. --For article discussing the scope and effect of the Maryland mechanics' lien law, see 28 Md. L. Rev. 225 (1968).
For article discussing contractor's payment bonds, see 32 Md. L. Rev. 226 (1972).
For article discussing mechanics' liens in Maryland, see 36 Md. L. Rev. 733 (1977).
For article, "Survey of Developments in Maryland Law, 1983-84," see 44 Md. L. Rev. 644 (1985).

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "The Maryland Rules -- A Time for Overhaul," see 9 U. Balt. L. Rev. 1 (1979).
For article, "Merger of Law and Equity Under the Revised Maryland Rules: Does It Threaten Trial by Jury?" see 14 U. Balt. L. Rev. 1 (1984).
For comment, "Employees As Subcontractors: Maryland's Interpretation of Its Mechanics' Lien Statute," see 33 U. Balt. L. Rev. 97 (2003).

MECHANICS' LIEN LAW. --The mechanics' lien law was passed to protect materialmen. T. Dan Kolker, Inc. v. Shure, 209 Md. 290, 121 A.2d 223 (1956); Reisterstown Lumber Co. v. Reeder, 224 Md. 499, 168 A.2d 385 (1961).
The mechanics' lien law seeks to protect materialmen who are not in a position to protect themselves if the owner negligently pays the contractor without first ascertaining that the materialmen have been paid. Dickerson Lumber Co. v. Herson, 230 Md. 487, 187 A.2d 689 (1963).
Intermediate appellate court did not err in affirming the trial court's judgment that granted the contractor's petition to compel arbitration and found that under the totality of the circumstances, the contractor had not waived its right to arbitration merely by seeking and obtaining an interlocutory mechanics' lien; seeking and obtaining the lien was the contractor's way of protecting itself from a claim that it violated the time period for filing for a lien and as a means of insuring that it would be paid, and did not indicate any intent to waive the right to arbitrate. Brendsel v. Winchester Constr. Co., 392 Md. 601, 898 A.2d 472 (2006).

SECTION IS PREREQUISITE TO LIEN ISSUANCE. --The Court of Special Appeals and the Court of Appeals have consistently applied this section as a legal prerequisite for the issuance of a mechanics' lien. It is a mandatory requirement that must be satisfied before a circuit court can issue a mechanics' lien. Westpointe Plaza II Ltd. Partnership v. Kalkreuth Roofing & Sheet Metal, Inc., 109 Md. App. 569, 675 A.2d 571 (1996).

IT IS TO BE INTERPRETED IN FAVOR OF MECHANICS AND MATERIALMEN. --The mechanics' lien law is to be interpreted in the most liberal and comprehensive manner in favor of mechanics and materialmen. T. Dan Kolker, Inc. v. Shure, 209 Md. 290, 121 A.2d 223 (1956); Johnson v. Metcalfe, 209 Md. 537, 121 A.2d 825 (1956); Reisterstown Lumber Co. v. Reeder, 224 Md. 499, 168 A.2d 385 (1961); Giles & Ransome, Inc. v. First Nat'l Realty Corp., 238 Md. 203, 208 A.2d 582 (1965).
The mechanics' lien law is to be construed in favor of those for whom it was enacted. Caton Ridge, Inc. v. Bonnett, 245 Md. 268, 225 A.2d 853 (1967).

SUBSECTION (A) IS NOT A DEFENSE THAT IS WAIVED if the owner does not file an answer. Westpointe Plaza II Ltd. Partnership v. Kalkreuth Roofing & Sheet Metal, Inc., 109 Md. App. 569, 675 A.2d 571 (1996).

NATURE AND EXTENT OF MECHANICS' LIEN. --See Sodini v. Winter, 32 Md. 130 (1870); Blake v. Pitcher, 46 Md. 453 (1877); Treusch v. Shryock, 51 Md. 162 (1879); McLaughlin v. Reinhart, 54 Md. 71 (1880); Reindollar v. Flickinger, 59 Md. 469 (1883); Willison v. Douglas, 66 Md. 99, 6 A. 530 (1886); Wilson v. Simon, 91 Md. 1, 45 A. 1022 (1900); Evans Marble Co. v. International Trust Co., 101 Md. 210, 60 A. 667 (1905).

MECHANICS' LIEN EXISTS ONLY BY VIRTUE OF STATUTE, and there can be no lien for anything that does not fall within the statutory provision. House v. Fissell, 188 Md. 160, 51 A.2d 669 (1947).
The right to a mechanics' lien is not a vested one, but is a remedy only, created by statute; right to lien depends entirely upon statute, and party seeking remedy must come within

provisions of statute. Maryland Cas. Co. v. Lacios, 121 Md. 686, 89 A. 323 (1913).

A mechanics' lien is a claim created by statute and is obtainable only if the requirements of the statute are complied with. Freeform Pools, Inc. v. Strawbridge Home for Boys, Inc., 228 Md. 297, 179 A.2d 683 (1962).

While it is true that the mechanics' lien law is remedial and to be construed in the most liberal and comprehensive manner in favor of mechanics and materialmen, courts have no power to extend it to cases beyond the obvious designs and plain requirements of the statute. Freeform Pools, Inc. v. Strawbridge Home for Boys, Inc., 228 Md. 297, 179 A.2d 683 (1962).

Where a person is not within the statutory provisions, the scope of the law may not be extended by the courts. Giles & Ransome, Inc. v. First Nat'l Realty Corp., 238 Md. 203, 208 A.2d 582 (1965).

The party seeking a lien must come within the plain meaning and obvious purpose of the statute. Giles & Ransome, Inc. v. First Nat'l Realty Corp., 238 Md. 203, 208 A.2d 582 (1965).

There can be no lien for anything that does not fall within the provisions of the mechanics' lien law. Caton Ridge, Inc. v. Bonnett, 245 Md. 268, 225 A.2d 853 (1967).

The mechanics' lien law was unknown at common law and exists by virtue of a statutory remedy within the precise ambit of which the claimant must place himself. Frederick Contractors v. Bel Pre Medical Ctr., Inc., 274 Md. 307, 334 A.2d 526 (1975).

A mechanics' lien is a creature of statute, and there is no entitlement to a lien beyond that created by statute. F. Scott Jay & Co. v. Vargo, 112 Md. App. 354, 685 A.2d 799 (1996).

AND GENERAL ASSEMBLY'S INTENTION WAS TO EMBRACE ALL RIGHTS WITHIN STATUTE. -- The intention of the General Assembly in passing the mechanics' lien law was to embrace within that statute all rights to a lien of such character upon real estate not previously known either at common law or in equity. Freeform Pools, Inc. v. Strawbridge Home for Boys, Inc., 228 Md. 297, 179 A.2d 683 (1962).

CONTRACT PREREQUISITE TO LIEN. --Reading § 9-101 (d) and (g) of this subtitle in tandem with subsection (a) of this section, it is clear that, prerequisite to the establishment of a lien on a building on which work has been done and/or material furnished, there must have been a contract for that work and/or for those materials. Kaufman v. Miller, 75 Md. App. 545, 542 A.2d 391 (1988).

THE COURT OF APPEALS HAS NO POWER TO EXTEND THE MECHANICS' LIEN LAW to cases beyond its obvious designs and plain requirements. Caton Ridge, Inc. v. Bonnett, 245 Md. 268, 225 A.2d 853 (1967).

RIGHT TO MECHANICS' LIEN FOR MATERIALS FURNISHED IS NOT A VESTED RIGHT, but an extraordinary remedy only, which the State may discontinue at pleasure. Aviles v. Eshelman Elec. Corp., 281 Md. 529, 379 A.2d 1227 (1977).

MECHANICS' LIENS INVOLVE STATE ACTION since they are created, regulated, and enforced by the State. Barry Properties, Inc. v. Fick Bros. Roofing Co., 277 Md. 15, 353 A.2d 222 (1976).

FAILURE BY CONTRACTOR TO PAY SUMS INTO TRUST FUNDS as promised under a collective bargaining agreement created a debt contracted for work for or about a building within the meaning of subsection (a) of this section. National Elec. Indus. Fund v. Bethlehem Steel Corp., 296 Md. 541, 463 A.2d 858 (1983).

WORD "BUILDING" IS NOT DEFINED in the mechanics' lien law. Taken in its broadest sense it can mean only an erection intended for use and occupancy as a habitation, or for some purpose of trade, manufacture, ornament, or use, such as a house, store, or a church. Freeform Pools, Inc. v. Strawbridge Home for Boys, Inc., 228 Md. 297, 179 A.2d 683 (1962).

The word "building" cannot be said to include every type of structure on land. Freeform Pools, Inc. v. Strawbridge Home for Boys, Inc., 228 Md. 297, 179 A.2d 683 (1962).

The common, ordinary signification of the word "building" is the structure as a whole and for there to be a lien for improvements the whole structure must have been improved to the extent of 25 percent of its value. Hurst v. V & M of Va., Inc., 293 Md. 575, 446 A.2d 55

(1982).

LIEN CLAIMANT HAS INSURABLE INTEREST IN BUILDING PRIOR TO FILING HIS CLAIM. Franklin Fire Ins. Co. v. Coates, 14 Md. 285 (1859); Sodini v. Winter, 32 Md. 130 (1870).

ASSIGNEE OF A MECHANICS' LIEN CLAIM TAKES IT SUBJECT TO EQUITIES enforceable against it in hands of assignor. Goldman v. Brinton, 90 Md. 259, 44 A. 1029 (1899).

FACT THAT PLAINTIFF'S CLAIM IS LESS THAN $20 IS IMMATERIAL. --Under this section the fact that plaintiff's claim is less than $20 is immaterial. Watts v. Whittington, 48 Md. 353 (1878).

LIEN NOT PERMITTED WHERE VALUE LESS THAN 15% OF VALUE OF GOLF COURSE. --Contractor was not entitled, under (a), to place a mechanic's lien on the golf course for repair work it did to an asphalt path used by the golf carts because the value of the work done by the contractor was less than 15% of the value of the golf course, the "building" against which the lien was sought. L.W. Wolfe Enters. v. Md. Nat'l Golf, L.P., 165 Md. App. 339, 885 A.2d 826 (2005), cert. denied, 894 A.2d 546, 2006 Md. LEXIS 165 (2006).

MECHANICS' LIEN FOR WORK AND LABOR ON BUILDING PREFERRED TO UNRECORDED INSTALLMENT CONTRACT OF SALE OF LAND for unpaid purchase price where vendors of land permitted, without warning or protest, work on improvements order by vendee in spite of vendee's default. Moreland v. Meade, 162 Md. 95, 159 A. 101 (1932).

WAIVER OF MECHANICS' LIEN; ESTOPPEL. --See Goldman v. Brinton, 90 Md. 259, 44 A. 1029 (1899); Dickerson Lumber Co. v. Herson, 230 Md. 487, 187 A.2d 689 (1963).

RIGHT OF CREDITOR TO PROCEED IN REM AGAINST IMPROVED PROPERTY PRESERVED. --The very valuable right which was preserved when the Court of Appeals found the former mechanics' lien statute unconstitutional was the right of a creditor for labor or materials to proceed in rem against improved property even though he could show no privity of contract with the owner, nor personal liability of the owner to him. Mervin L. Blades & Son v. Lighthouse Sound Marina & Country Club, 37 Md. App. 265, 377 A.2d 523 (1977).

LIEN STATUTES DESIGNED TO ENCOURAGE CONSTRUCTION. --Mechanics' lien statutes, in an endeavor to provide for the public welfare, are designed to encourage construction by ensuring that those who contribute to a project are compensated for their efforts. Barry Properties, Inc. v. Fick Bros. Roofing Co., 277 Md. 15, 353 A.2d 222 (1976).

PROPERTY DOES NOT, IPSO FACTO, LOSE ALL VALUE BECAUSE IT NEEDS REPAIRS. Westpointe Plaza II Ltd. Partnership v. Kalkreuth Roofing & Sheet Metal, Inc., 109 Md. App. 569, 675 A.2d 571 (1996).

SWIMMING POOLS PRIOR TO 1966. --See Freeform Pools, Inc. v. Strawbridge Home for Boys, Inc., 228 Md. 297, 179 A.2d 683 (1962).

THIS SUBTITLE MAKES NO DISTINCTIONS BETWEEN MATERIALMEN AND LABORERS. Diener v. Cubbage, 259 Md. 555, 270 A.2d 471 (1970).

PUBLIC POLICY IN REGARD TO ENFORCEMENT OF CONTRACTS APPLIES TO MECHANICS' LIEN. --Even though the mechanics' lien is created by statute such a lien is provided for the enforcement of a contract for work done and materials furnished. The same public policy is involved in regard to this remedy as is present in regard to other remedies to enforce contracts, and courts of equity will not lend their aid to enforce an illegal contract. Harry Berenter, Inc. v. Berman, 258 Md. 290, 265 A.2d 759 (1970).

RECOVERY FOR RENTALS still cannot be made under mechanics' lien law. Williams Constr. Co. v. Construction Equip., Inc., 253 Md. 60, 251 A.2d 864 (1969).

INTERLOCUTORY LIENS. --Even if the interlocutory lien attached to the property after it was purchased at the foreclosure sale, that lien would be junior to the lien of the mortgage and, therefore, would be extinguished as a lien on the land no later than upon ratification of the foreclosure sale. IA Constr. Corp. v. Carney, 341 Md. 703, 672 A.2d 650 (1996).

CLAIMANT HAS BURDEN. --It was claimant's burden to establish a sufficient factual basis that the circuit court could rely upon in order to establish a mechanics' lien. Westpointe Plaza II Ltd. Partnership v. Kalkreuth Roofing & Sheet Metal, Inc., 109 Md. App. 569, 675 A.2d 571 (1996).

PETITION HELD INSUFFICIENT. --A petition was not in compliance with this section where it did not contain any information with respect to whether the building in question was a single family dwelling, and failed to allege the amount of the indebtedness of the property owners to the general contractor at the time notice of intent to seek the lien was given. Jerome v. Winkler Constr. Co., 123 Md. App. 546, 720 A.2d 1 (1998).

QUOTED IN Tyson v. Masten Lumber & Supply, Inc., 44 Md. App. 293, 408 A.2d 1051 (1979), cert. denied, 287 Md. 758 (1980); Reisterstown Lumber Co. v. Tsao, 319 Md. 623, 574 A.2d 307 (1990); York Roofing, Inc. v. Adcock, 333 Md. 158, 634 A.2d 39 (1993); Wolf Org., Inc. v. Oles, 119 Md. App. 357, 705 A.2d 40 (1998); Ridge Heating, Air Conditioning & Plumbing, Inc. v. Brennen, 135 Md. App. 247, 762 A.2d 161 (2000).

STATED IN Scott & Wimbrow, Inc. v. Wisterco Invs., Inc., 36 Md. App. 274, 373 A.2d 965, cert. denied, 281 Md. 743 (1977).

II. WHO ENTITLED TO LIEN.

MATERIALMAN'S RIGHT TO LIEN IS NOT AFFECTED BY WHETHER OWNER HAS MONEY IN HIS HANDS DUE BUILDER, or whether former has performed his contract with latter. Treusch v. Shryock, 51 Md. 162 (1879); Richardson v. Saltz, 127 Md. 388, 96 A. 524 (1916).

APPLICATION OF MONEY PAID TO CONTRACTOR BY OWNER. --The contractor can apply his money on any bill he owes. It does not have to be applied on the bill for the materials for the house from the contract for which he obtained it. The contractor's obligation to the owner is to finish and turn over the house without liens, but this does not prevent him from using his receipts from one contract to pay on another. Nor does it prevent the materialman who receives money from the contractor and applies it on bills for materials which went into other buildings from having his lien, unless he agrees that it shall be done this way, in order that he may get his other bills paid and may collect double from the owner. That, of course, would be a fraud. Bounds v. Nuttle, 181 Md. 400, 30 A.2d 263 (1943).

If the owners' failure to protect themselves against an impecunious contractor causes them to have to pay twice for materials, it is their own fault. The mechanics' lien law was passed to cover just such a situation and to protect materialmen. The theory of it is that the owner gets the benefit of the materials, and he has control of the money. If he negligently and carelessly pays the money out to the contractor without taking precautions to see that it is applied to the payment of the materials which go in the building, then he must stand the loss rather than the materialman, who has no opportunity to protect himself once he has delivered the materials. Bounds v. Nuttle, 181 Md. 400, 30 A.2d 263 (1943); T. Dan Kolker, Inc. v. Shure, 209 Md. 290, 121 A.2d 223 (1956); Reisterstown Lumber Co. v. Reeder, 224 Md. 499, 168 A.2d 385 (1961).

IT IS NO DEFENSE TO MECHANICS' LIEN CLAIM THAT MATERIALS WERE FURNISHED ON PERSONAL CREDIT OF CONTRACTOR. Blake v. Pitcher, 46 Md. 453 (1877).

OR THAT THERE WAS NO CONTRACT BETWEEN MATERIALMAN AND OWNER. --See Sodini v. Winter, 32 Md. 130 (1870); Blake v. Pitcher, 46 Md. 453 (1877).

BONA FIDE PURCHASERS FOR VALUE. --Subsection (d) makes it clear that this section was

not intended to protect subcontractors against bona fide purchasers for value. Sterling Mirror of Md., Inc. v. Rahbar, 90 Md. App. 193, 600 A.2d 899 (1992).

The mere taking of legal title prior to the establishment of a lien does not serve to exempt the property under subsection (d); this section plainly requires that the intervening purchaser be a bona fide purchaser for value. IA Constr. Corp. v. Carney, 104 Md. App. 378, 656 A.2d 369 (1995), aff'd, 341 Md. 703, 672 A.2d 650 (1996).

The claimant's burden of establishing the right to a lien includes proving that an intervening owner is not a bona fide purchaser for value. Sterling Mirror of Md., Inc. v. Rahbar, 90 Md. App. 193, 600 A.2d 899 (1992); IA Constr. Corp. v. Carney, 104 Md. App. 378, 656 A.2d 369 (1995), aff'd, 341 Md. 703, 672 A.2d 650 (1996).

Purchaser, at the time he was granted legal title to a tract of land via mortgage, was a bona fide purchaser for value, and therefore, under subsection (d) of this section and § 7-105 (a) of this article, took free and clear of contractor's right to establish a mechanic's lien against the property, when he obtained beneficial and equitable title to the subject property at a foreclosure sale after the date a mechanic's lien petition was filed, but before the establishment of a final lien. IA Constr. Corp. v. Carney, 104 Md. App. 378, 656 A.2d 369 (1995), aff'd, 341 Md. 703, 672 A.2d 650 (1996).

An owner need only allege that it is a bona fide purchaser for value in order to claim the benefit of the exemption provided in subsection (d) of this section; it is the claimant's burden to show that the owner is not a bona fide purchaser for value, and the owner need offer no evidence of his status except in response to evidence first offered by the claimant tending to show that he is not a bona fide purchaser for value. F. Scott Jay & Co. v. Vargo, 112 Md. App. 354, 685 A.2d 799 (1996).

CONTRACTOR MAY MAINTAIN LIEN. --A contractor is entitled to maintain an action to establish a mechanics' lien. Kaufman v. Miller, 75 Md. App. 545, 542 A.2d 391 (1988).

SUBSEQUENT CONTRACTOR MAY ALSO OBTAIN LIEN. --A contractor may obtain a lien for work done upon a structure in which the contractor's predecessors in interest may have a superior interest. In re Reese, 194 Bankr. 782 (Bankr. D. Md. 1996).

IT IS NOT NECESSARY THAT THERE BE A BINDING CONTRACT BETWEEN THE CONTRACTOR AND FURNISHER FOR ALL THE MATERIALS if the parties in their dealings with each other treat the project as a single enterprise and the goods are delivered continuously as needed during the building operation. T. Dan Kolker, Inc. v. Shure, 209 Md. 290, 121 A.2d 223 (1956).

It is not incumbent upon the claimant to establish the fact that there was an express antecedent contract made with respect to the exact quantity of work or materials to be done or furnished by him. In the absence of evidence of such express contract, the character of the account, the time within which the work was done or the materials were furnished, and the object of the work or materials, may afford proper grounds for the presumption that the work was done or the materials were furnished with reference to an understanding from the commencement that such work or materials should be done or furnished, if required by the builder. Trustees of German Lutheran Evangelical St. Matthew's Congregation v. Heise, 44 Md. 453 (1876); T. Dan Kolker, Inc. v. Shure, 209 Md. 290, 121 A.2d 223 (1956).

BUT CONTRACT BETWEEN OWNER AND CONTRACTOR MUST BE SHOWN. --Before owner can be made responsible for materials furnished contractor, an active and subsisting contract must be established between owner and contractor. Greenway v. Turner, 4 Md. 296 (1853).

WHERE MATERIALS ARE FURNISHED ON A CONTRACT WITH ONE PARTNER and used by both partners in construction of building, they being owners as well as builders, the lien can be enforced against the other partner and his assignee. Real Estate & Imp. Co. v. Phillips, 90 Md. 515, 45 A. 174 (1900).

WHERE OPERATORS OF LEASED EQUIPMENT WERE EMPLOYEES OF LESSEE, lessor was not entitled to a lien, since it had done no work for or about the premises. Giles & Ransome, Inc. v. First Nat'l Realty Corp., 238 Md. 203, 208 A.2d 582 (1965).

ARCHITECT. --Where the contract between an architect and a party provides for the

preparation of plans and the supervision of the erection of the building for which the plans have been prepared, the architect, having performed his contract, is entitled to a mechanic's lien under the provisions of the mechanics' lien law. Caton Ridge, Inc. v. Bonnett, 245 Md. 268, 225 A.2d 853 (1967).

ARTICLES HELD FURNISHED UNDER AUTHORITY OF OWNER. --For a case holding that articles were furnished under authority of owner, and hence that lien could be enforced, see Weber v. Weatherby, 34 Md. 656 (1871).

FACT THAT PART OF BUILDER'S COMPENSATION IS TO BE ONE OF HOUSES BUILT does not affect fastening of lien. McLaughlin v. Reinhart, 54 Md. 71 (1880).

LABOR SUBCONTRACTORS AND SUB-SUBCONTRACTORS ARE ENTITLED TO RELIEF under the mechanics' lien law. Diener v. Cubbage, 259 Md. 555, 270 A.2d 471 (1970).

Although subcontractor accepted payment for services to date and represented to the contractor that its employees had likewise been paid in full and could claim no lien against the project, the purported release did not deprive the employees, who were not parties to the release, of their right to a mechanic's lien under the statute, when they were, in fact, not paid in full for their services. Unless the potential lienholders for labor individually waive or release their rights to a lien expressly or by clear implication, their right to a lien is maintained and cannot be released by a third party. Judd Fire Protection, Inc. v. Davidson, 138 Md. App. 654, 773 A.2d 573 (2001).

INDUSTRY FUND, which was to receive a percentage of the payroll under a collective bargaining agreement for subcontracting workers, had sufficient standing to assert mechanics' lien claims. National Elec. Indus. Fund v. Bethlehem Steel Corp., 296 Md. 541, 463 A.2d 858 (1983).

UNION TRUSTS, operating for the benefit of workers, have standing to assert mechanics' lien claims on behalf of the workers who are subcontractors. National Elec. Indus. Fund v. Bethlehem Steel Corp., 296 Md. 541, 463 A.2d 858 (1983).

UNION HAS STANDING TO ASSERT MECHANICS' LIEN CLAIMS FOR UNION DUES WITHHELD BY CONTRACTOR in violation of collective bargaining agreement since the union is an assignee of the subcontracting workers. National Elec. Indus. Fund v. Bethlehem Steel Corp., 296 Md. 541, 463 A.2d 858 (1983).

III. LIENABLE ITEMS.

MECHANICS' LIEN LAW HAS BEEN REPEATEDLY AMENDED TO INCLUDE SPECIFIC LIENABLE STRUCTURES. Freeform Pools, Inc. v. Strawbridge Home for Boys, Inc., 228 Md. 297, 179 A.2d 683 (1962).

AND IT SHOULD NOT BE STRETCHED TO INCLUDE STRUCTURES NOT CLEARLY WITHIN THE DEFINITION OF THE ITEMS INCLUDED. Freeform Pools, Inc. v. Strawbridge Home for Boys, Inc., 228 Md. 297, 179 A.2d 683 (1962).

BUILDER MAY RECOVER HIS PROFIT ON BOTH LABOR AND MATERIAL UNDER A COST-PLUS CONTRACT by means of a mechanics' lien. House v. Fissell, 188 Md. 160, 51 A.2d 669 (1947).

WORK NEED NOT BE DONE ON PREMISES ERECTED. --A subcontractor who does the work in the sense of giving it direction and being responsible for its execution is entitled to lien, and it makes no difference that work was not done on premises erected. Evans Marble Co. v. International Trust Co., 101 Md. 210, 60 A. 667 (1905).

LIEN MAY BE DEFEATED WHERE LIENABLE AND NONLIENABLE ITEMS ARE INCLUDED IN ONE CONTRACT. --Where lienable and nonlienable items are included in one contract for a specific

sum, and it cannot be seen from the contract what proportion is chargeable to each, the benefit of the mechanics' lien law is lost. Evans Marble Co. v. International Trust Co., 101 Md. 210, 60 A. 667 (1905); House v. Fissell, 188 Md. 160, 51 A.2d 669 (1947).

When lienable and nonlienable items are included in one entire contract for a lump sum, there being no apportionment between them, lien cannot be enforced. The fact, however, that in connection with operation of a steam shovel, coal, oil, depreciation and profit were included in lump price, does not defeat right to lien. Gill v. Mullan, 140 Md. 1, 116 A. 563 (1922).

REPAIRS AND IMPROVEMENTS. --The cost of all repairs and improvements to property should be considered in determining the percentage of value requirement set forth in this section. O-Porto Constr. Co. v. Devon/Lanham, L.L.C., 129 Md. App. 301, 741 A.2d 576 (1999).

RENTAL OF EQUIPMENT, WITHOUT MECHANIC TO OPERATE IT, IS NOT A LIENABLE ITEM. Giles & Ransome, Inc. v. First Nat'l Realty Corp., 238 Md. 203, 208 A.2d 582 (1965).

By limiting recovery of a lien to work done and materials furnished for or about the premises without specification as to what is includable, there was an intention to exclude recovery for rentals of equipment. Giles & Ransome, Inc. v. First Nat'l Realty Corp., 238 Md. 203, 208 A.2d 582 (1965).

In order for the plaintiff corporation to come within the plain meaning and obvious purpose of the statute it was necessary for it to have actually participated in the performance of the work done, and this necessitated something more than taking equipment to the site of the job, keeping it in running order while it was there, and removing it when the grading was completed. Giles & Ransome, Inc. v. First Nat'l Realty Corp., 238 Md. 203, 208 A.2d 582 (1965).

COAL AND OIL SUPPLIED FOR STEAM SHOVEL; DEPRECIATION OF SHOVEL. --By the weight of authority such items as coal and oil supplied for a steam shovel and depreciation upon the shovel were not "materials" within the meaning of the statute. Gill v. Mullan, 140 Md. 1, 116 A. 563 (1922).

GASOLINE AND OIL USED IN TRUCKS HAULING MATERIALS; STORAGE OF LUMBER; ARCHITECTS' FEES. --Gasoline and oil used in trucks hauling materials are not materials within meaning of statute but cost may be included as debts contracted for work done about building, but claim for storage of lumber where no rental was paid and architects' fees, where plans were not drawn by licensed architects for which no charge was made, disallowed. House v. Fissell, 188 Md. 160, 51 A.2d 669 (1947).

RANGE, FURNACE, HEATERS, REGISTERS, etc., for heating a dwelling are within contemplation of this section. Stebbins v. Culbreth, 86 Md. 656, 39 A. 321 (1898).

COST OF REPAIRS MUST BE ONE-FOURTH VALUE OF BUILDING. --Where cost of heating plant is not one-fourth of value of building in which it is installed, there can be no lien under this section. Shacks v. Ford, 128 Md. 287, 97 A. 511 (1916).

IV. PROPERTY SUBJECT TO LIEN.

PROPERTY NOT LISTED IN THIS SECTION or not complying with the specific statutory requirements is not subject to the attachment of a lien. Westpointe Plaza II Ltd. Partnership v. Kalkreuth Roofing & Sheet Metal, Inc., 109 Md. App. 569, 675 A.2d 571 (1996).

LANDS OR BUILDINGS OF STATE NOT SUBJECT TO LIEN. --Lands or buildings belonging to the State (such as a building being erected for Springfield State Hospital) are not subject to mechanics' liens. In re Fowble, 213 F. 676 (D. Md. 1914).

LIEN WILL ATTACH THOUGH OWNER HAS ONLY EQUITABLE INTEREST. --A materialman's lien will attach although owner of lots upon which houses are built has only an equitable interest. Goldheim v. Clark, 68 Md. 498, 13 A. 363 (1888).

LAND HELD BY ENTIRETIES. --In Maryland, a tenant by the entirety has no separate interest which can be seized and sold on execution and can therefore be subject to the lien of a judgment against him alone. For like reasons he has no separate interest which can be subjected to a mechanic's lien for a debt contracted by him alone. Blenard v. Blenard, 185 Md. 548, 45 A.2d 335 (1946).

MECHANICS' LIENS FOR CONCRETE DELIVERED BY AGREEMENT TO THE SITE OF A HOUSING DEVELOPMENT were held valid even though it was shown that none of the concrete for which the liens were claimed went into the particular houses against which the liens were filed, where it was shown that the concrete was used in the construction of other houses in the development, at a time when the particular houses were owned by the developer. Clark Certified Concrete Co. v. Lindberg, 216 Md. 576, 141 A.2d 685 (1958).

The fact that the particular houses involved in a suit to enforce mechanics' liens were sold before the liens were filed did not render them unenforceable, as the mere fact of conveyance did not divest the statutory liens for the concrete delivered prior thereto, which liens attached upon such delivery. Clark Certified Concrete Co. v. Lindberg, 216 Md. 576, 141 A.2d 685 (1958).

SHIFTING BURDEN OF LIENS TO UNSOLD SUBDIVISION LOTS. --Where a number of the lots in a subdivision have been sold to bona fide purchasers for value and no third persons would be damaged by shifting the burden of a mechanic's lien for work done for the benefit of the entire subdivision onto the remaining lots held by the owner, a lien creditor may properly shift the burden to such lots. Celta Corp. v. A.G. Parrott Co., 94 Md. App. 312, 617 A.2d 632 (1993).

WHERE AN ENTIRE CONTRACT IS ENTERED INTO FOR WORK ON A ROW OF HOUSES, THE LIEN EXTENDS TO ALL HOUSES, and it makes no difference as to how much material went into any one house. The claimant need not show that the materials actually went into buildings, provided they were contracted for and delivered. And the lien will be enforced notwithstanding errors in the account; the auditor can correct them. John W. Wilson & Son v. Wilson, 51 Md. 159 (1879); Maryland Brick Co. v. Spilman, 76 Md. 337, 25 A. 297 (1892); Maryland Brick Co. v. Dunkerly, 85 Md. 199, 36 A. 761 (1897); Fulton v. Parlett & Parlett, 104 Md. 62, 64 A. 58 (1906).

EFFECT OF RELEASE AS TO CERTAIN HOUSES. --Where materials are furnished for two houses, and materialman releases his lien as to one of them, he cannot claim lien against the other for materials furnished for house so released. John W. Wilson & Son v. Wilson, 51 Md. 159 (1879); Nickel v. Blanch, 67 Md. 456, 10 A. 234 (1887).

Where there is an entire contract to furnish materials for certain houses, and claimant releases some of houses from his lien, the burden is on parties attacking lien to show which materials went into houses released, and for which therefore there should be no lien. Maryland Brick Co. v. Dunkerly, 85 Md. 199, 36 A. 761 (1897).

SALE OF HOUSE IN PROCESS OF ERECTION. --The sale of a house and lot while the building is in process of erection cannot affect right to a lien of a mechanic previously employed, and who continues to be employed thereafter. Miller v. Barroll, 14 Md. 173 (1859).

PREPARATION OF PLANS used in the erection of a building literally is work done for the building. Morris J. Liebergott & Assocs. v. Investment Bldg. Corp., 249 Md. 584, 241 A.2d 138 (1968).

MACHINE CONTEMPLATED IS ONE WHICH RETAINS CHARACTER OF MOVABLE CHATTEL. --The machine contemplated by this section is one which has not lost its character as a movable chattel. A heating apparatus, consisting of boiler, furnace, etc., is not such a machine. Stebbins v. Culbreth, 86 Md. 656, 39 A. 321 (1898); Nicolai v. Mayor of Baltimore, 100 Md. 579, 60 A. 627 (1905); Shacks v. Ford, 128 Md. 287, 97 A. 511 (1916).

BUT SECTION IS INAPPLICABLE TO MACHINE MOVABLE IN OPERATION OR USE. --This section

is not applicable to coal cars, nor to any machinery movable in its operation or use. New England Car Spring Co. v. B & O R.R., 11 Md. 81 (1857).

AND TO MACHINE FOR MANUFACTURING MATERIALS FOR BRIDGE OR CARRYING SUCH MATERIALS. --This section does not give a lien for machinery purchased for manufacturing materials for a bridge, nor for appliances used to carry such materials to the bridge. Basshor v. B & O R.R., 65 Md. 99, 3 A. 285 (1886).

WALL OR BULKHEAD BUILT TO RETAIN REFUSE DUMPED BEHIND IT WAS HELD NOT TO BE WHARF within the meaning of this section. Canton Lumber Co. v. Cooper, 75 F.2d 92 (4th Cir. 1935).

MODULAR BUILDINGS. --Materials furnished to build modules constructed at a site distant from the condominium site and moved to the site and stacked to complete the building subject to liens. 5500 Coastal Hwy. Ltd. Partnership v. Electrical Equip. Co., 305 Md. 532, 505 A.2d 533 (1986).

MERELY TAKING LEGAL TITLE PRIOR TO ESTABLISHMENT OF LIEN DOES NOT EXEMPT PROPERTY UNDER SUBSECTION (D) of this section, which requires that an intervening purchaser be a bona fide purchaser for value. Talbott Lumber Co. v. Tymann, 48 Md. App. 647, 428 A.2d 1229, cert. denied, 290 Md. 723 (1981); Sterling Mirror of Md., Inc. v. Rahbar, 90 Md. App. 193, 600 A.2d 899 (1992).

ENTRY OF LIEN PRIOR TO FILING PETITION UNDER SUBSECTION (E). --Under subsection (e), a mechanics' lien cannot be entered against the property when purchasers acquired equitable title prior to the filing of the petition for a mechanics' lien. Himmighoefer v. Medallion Indus., Inc., 302 Md. 270, 487 A.2d 282 (1985).

V. ENFORCEMENT OF LIEN.

PROCEEDINGS FOR ENFORCEMENT OF MECHANICS' LIENS ARE EXCLUSIVELY IN REM. The court need not determine whether party named as owner in claim as filed is real owner. Shryock v. Hensel, 95 Md. 614, 53 A. 412 (1902).

ALL PARTIES HAVING LIENS NEED NOT BE JOINED. --It is not necessary under the mechanic's lien law to join all parties having liens in a bill to enforce a specific lien. If they are not joined, and a decree is passed for the sale of the property, they can file their claims with the auditor against the proceeds. Bounds v. Nuttle, 181 Md. 400, 30 A.2d 263 (1943).

BUT HOLDERS OF OTHER LIENS MAY BE JOINED. --The holders of other liens may be made parties, and in the trial of the case they may present their evidence as to their claims, and the court can then and there pass on them. Bounds v. Nuttle, 181 Md. 400, 30 A.2d 263 (1943).

AND WHEN LIENHOLDER IS MADE DEFENDANT HE MUST PRESENT TESTIMONY IN SUPPORT OF HIS LIEN. --Where a party is made a defendant and answers and sets up his lien and then participates in the trial of the case, he is bound in the course of that trial to present testimony in support of his lien. He cannot wait and file a subsequent bill for its enforcement, or file it with the auditor and have a later adjudication of it. His day in court is the day that his case is tried. Bounds v. Nuttle, 181 Md. 400, 30 A.2d 263 (1943).

ENFORCEMENT OF LIEN BY SURETIES WHO GUARANTEED AGAINST LIEN. --See Trustees of German Lutheran Evangelical St. Matthew's Congregation v. Heise, 44 Md. 453 (1876).

EQUITY JURISDICTION. --While it may be said that a mechanics' lien rests upon an equitable basis, yet without the benefit of a statute a court of equity cannot assume jurisdiction. Freeform Pools, Inc. v. Strawbridge Home for Boys, Inc., 228 Md. 297, 179 A.2d 683 (1962).

Plaintiff who failed to meet the requirements of the mechanics' lien law must also fail in his

effort to establish an equitable lien, since the statute is the source from which the lien for labor and materials is derived and it can only exist when a statute allows it. Freeform Pools, Inc. v. Strawbridge Home for Boys, Inc., 228 Md. 297, 179 A.2d 683 (1962).

PROOF OF DELIVERY OF MATERIALS. --One who asserts a lien for materials furnished has the burden of proving his cause of action, including the delivery of the materials to the defendant, but it is not necessary that he show in which buildings the specific materials were used, or that they were actually used, if they were purchased for and delivered to the site of the work. District Heights Apts., Section D-E, Inc. v. Noland Co., 202 Md. 43, 95 A.2d 90 (1953).

Where a materialman establishes that he shipped materials to the defendant, it will be presumed that all materials shipped were delivered in the absence of some direct evidence to the contrary. District Heights Apts., Section D-E, Inc. v. Noland Co., 202 Md. 43, 95 A.2d 90 (1953).

EVIDENCE HELD SUFFICIENT to show that materials for which a lien was claimed went into the buildings involved. Holcomb v. Fender, 203 Md. 480, 101 A.2d 814 (1954).

INTEREST. --The claimant is entitled to interest from the time his claim is filed. Trustees of German Lutheran Evangelical St. Matthew's Congregation v. Heise, 44 Md. 453 (1876); Hensel v. Johnson, 94 Md. 729, 51 A. 575 (1902); T. Dan Kolker, Inc. v. Shure, 209 Md. 290, 121 A.2d 223 (1956); Johnson v. Metcalfe, 209 Md. 537, 121 A.2d 825 (1956); Eastover Stores, Inc. v. Minnix, 219 Md. 658, 150 A.2d 884 (1959).

SETOFF OF AMOUNT PAID ANOTHER CONTRACTOR PROPERLY TO COMPLETE WORK. --In a suit to enforce a mechanics' lien, where the testimony showed that defendants had to employ another contractor to complete the work, complainant was entitled to the amount of his claim, less a setoff for the amounts defendants paid the other contractor to properly complete the work, with interest from the date the lien was filed. Johnson v. Metcalfe, 209 Md. 537, 121 A.2d 825 (1956).

ESTOPPEL TO CHALLENGE VALIDITY OF LIEN CLAIMED AGAINST WRONG PROPERTY. --See Brunecz v. DiLeo, 263 Md. 481, 283 A.2d 606 (1971).

BANKRUPTCY TRUSTEE MAY AVOID LIEN NOT PERFECTED AT TIME OF BANKRUPTCY FILING. --Where State law does not provide that perfection of the lien relates back to the time of the underlying debt's creation, the bankruptcy trustee, in his capacity as hypothetical judgment lien creditor, is entitled to avoid any mechanics' lien not perfected at time of bankruptcy filing. Johnson Hydro Seeding Corp. v. Ian Homes, Inc., 126 Bankr. 933 (Bankr. D. Md. 1991).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 9. STATUTORY LIENS ON REAL PROPERTY
SUBTITLE 1. MECHANICS' LIENS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 9-103 (2006)

§ 9-103. Extent of lien

(a) In general. -- A lien established in accordance with this subtitle shall extend to the land covered by the building and to as much other land, immediately adjacent and belonging in like manner to the owner of the building, as may be necessary for the ordinary and useful purposes of the building. The quantity and boundaries of the land may be designated as provided in this section.

(b) Designation of boundaries. -- An owner of any land who desires to erect any building or to contract with any person for its erection may define, in writing, the boundaries of the land appurtenant to the building before the commencement of construction, and then file the boundaries for record with the clerk of the circuit court for the county. The designation of boundaries shall be binding on all persons. If the boundaries are not designated before the commencement of a building, the owner of the land or any person having a lien or encumbrance on the land by mortgage, judgment, or otherwise entitled to establish a lien in accordance with this subtitle may apply, by written petition, to the circuit court for the county to designate the boundaries.

(c) Unfinished building; repaired or rebuilt building. --

(1) If a building is commenced and not finished, a lien established in accordance with this subtitle shall attach to the extent of the work done or material furnished.

(2) If a building is erected, or repaired, rebuilt or improved to the extent of 25 percent of its value, by a tenant for life or years or by a person employed by the tenant, any lien established in accordance with this subtitle applies only to the extent of the tenant's interest.

HISTORY: An. Code 1957, art. 21, § 9-102; 1974, ch. 12, § 2; 1976, ch. 349, § 3; 1977, ch. 532.

MARYLAND LAW REVIEW. --For article discussing mechanics' liens in Maryland, see 36 Md. L. Rev. 733 (1977).

UNIVERSITY OF BALTIMORE LAW REVIEW. --For note discussing Maryland's new mechanics' lien law, see 6 U. Balt. L. Rev. 181 (1976).
For article, "The Maryland Rules -- A Time for Overhaul," see 9 U. Balt. L. Rev. 1 (1979).

LIEN ESSENTIALLY AGAINST BUILDING. --The lien established under the mechanics' lien statute is essentially against the building itself and the land is only incidentally involved. Scott & Wimbrow, Inc. v. Wisterco Invs., Inc., 36 Md. App. 274, 373 A.2d 965 (1977).

WORD "BUILDING" IS NOT DEFINED. --The common, ordinary signification of the word "building" is the structure as a whole and for there to be a lien for improvements the whole structure must have been improved to the extent of 25 percent of its value. Hurst v. V & M of Va., Inc., 293 Md. 575, 446 A.2d 55 (1982).

LIEN REMAINS WITH BUILDING. --A mechanics' lien filed by tenant's contractor remains with the building, under subsection (c) (2), even though the tenant had departed, the lease had terminated, and the landlord had repossessed the building. Cabana, Inc. v. Eastern Air Control, Inc., 61 Md. App. 609, 487 A.2d 1209, cert. denied, 302 Md. 680, 490 A.2d 718 (1985).

FAILURE OF OWNER TO AVAIL HIMSELF OF SECTION. --Where owner fails to avail himself of this section, he cannot avoid lien merely because too much land is claimed. Caltrider v. Isberg, 148 Md. 657, 130 A. 53 (1925).

Where owner fails to avail himself of this section, the decree will not be reversed because more land was directed to be sold than was necessary for ordinary and useful purposes of buildings. Fulton v. Parlett & Parlett, 104 Md. 62, 64 A. 58 (1906).

CONTIGUOUS, BUT DISTINCT, ETC. --Where two lots though contiguous are wholly distinct, and buildings are not located on smaller lot, which is not necessary for ordinary and useful purposes of buildings, latter will not be sold in enforcing lien. Fulton v. Parlett & Parlett, 104 Md. 62, 64 A. 58 (1906).

LIEN NOT EXTENDED TO ADJOINING LAND OWNED BY DEFENDANT. --A lien for erection of buildings for school was held to be restricted to farm tract on which such buildings were located, and not to extend to adjoining land owned by defendant. Filston Farm Co. v. Henderson & Co., 106 Md. 335, 67 A. 228 (1907).

RIPARIAN RIGHTS. --In suit to enforce mechanics' lien, where it was contended that pond near house gave it much of its value and that dam provided water power for electric lights, held that, though decree for sale of riparian rights, with building and adjacent land, was not definite as to what rights in pond were necessary for use of property as residence, owners were not harmed by it. Bounds v. Nuttle, 181 Md. 400, 30 A.2d 263 (1943).

HEATING PLANT INSTALLED AFTER BUILDING COMPLETED. --Where a heating plant is not put in until after the building is completed, there can be no lien under this section. Shacks v. Ford, 128 Md. 287, 97 A. 511 (1916).

NINETY-NINE-YEAR LEASE RENEWABLE FOREVER. --This section applied where land upon which buildings were erected had been leased for 99 years renewable forever. Mills v. Matthews, 7 Md. 315 (1854); Gable v. Preachers' Fund Soc'y, 59 Md. 455 (1883); Lenderking v. Rosenthal, 63 Md. 28 (1885); Beehler v. Injams, 72 Md. 193, 19 A. 646 (1890); Hoffman v. McColgan, 81 Md. 390, 32 A. 179 (1895).

SUFFICIENCY OF PROPERTY DESCRIPTION. --Trial court erred by dismissing a subcontractor's petition for a mechanic's lien as a matter of law for failing to adequately describe the property, because the subcontractor's petition included the street addresses with street numbers and the nine-digit zip code used by the postal service and by the owners themselves in describing the location of their home. The addresses, combined with the information in the state tax assessment print-out and the 141 photographs included with the petition, were sufficient to enable interested parties to identify the land and the building that were the subject of the lien claim; therefore, the subcontractor sufficiently pled a prima facie claim for a mechanic's lien. Martino v. Arfaa, 169 Md. App. 692, 906 A.2d 945 (2006).

STATED IN Golden Sands Club Condominium, Inc. v. Waller, 313 Md. 484, 545 A.2d 1332 (1988).

CITED IN Riley v. Abrams, 287 Md. 348, 412 A.2d 996 (1980).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY

TITLE 9. STATUTORY LIENS ON REAL PROPERTY
SUBTITLE 1. MECHANICS' LIENS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 9-104 (2006)

§ 9-104. Notice to owner by subcontractor

(a) Notice required to entitle subcontractor to lien. --

(1) A subcontractor doing work or furnishing materials or both for or about a building other than a single family dwelling being erected on the owner's land for his own residence is not entitled to a lien under this subtitle unless, within 120 days after doing the work or furnishing the materials, the subcontractor gives written notice of an intention to claim a lien substantially in the form specified in subsection (b) of this section.

(2) A subcontractor doing work or furnishing materials or both for or about a single family dwelling being erected on the owner's land for his own residence is not entitled to a lien under this subtitle unless, within 120 days after doing work or furnishing materials for or about that single family dwelling, the subcontractor gives written notice of an intention to claim a lien in accordance with subsection (a) (1) of this section and the owner has not made full payment to the contractor prior to receiving the notice.

(b) Form of notice. -- The form of notice is sufficient for the purposes of this subtitle if it contains the information required and is substantially in the following form:

"Notice to Owner or Owner's Agent of
Intention to Claim a Lien

.....
(Subcontractor)
did work or furnished material for or about the building generally designated or briefly described as
.....
.....

The total amount earned under the subcontractor's undertaking to the date hereof is $ ..... of which $ ..... is due and unpaid as of the date hereof. The work done or materials provided under the subcontract were as follows: (insert brief description of the work done and materials furnished, the time when the work was done or the materials furnished, and the name of the person for whom the work was done or to whom the materials were furnished).

I do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing notice are true to the best of the affiant's knowledge, information, and belief.

.....
(Individual)

on behalf of .....
(Subcontractor)
(Insert if subcontractor is not
an individual)"

(c) Notice by mail or personal delivery. -- The notice is effective if given by registered or certified mail, return receipt requested, or personally delivered to the owner by the claimant or his agent.

(d) More than one owner. -- If there is more than one owner, the subcontractor may comply with this section by giving the notice to any of the owners.

(e) Notice by posting. -- If notice cannot be given on account of absence or other causes, the subcontractor, or his agent, in the presence of a competent witness and within 120 days, may place the notice on the door or other front part of the building. Notice by posting according to this subsection is sufficient in all cases where the owner of the property has died and his successors in title do not appear on the public records of the county.

(f) Payments by owner to contractor after notice; limitation on lien against certain single family dwellings. --

(1) On receipt of notice given under this section, the owner may withhold, from sums due the contractor, the amount the owner ascertains to be due the subcontractor giving the notice.

(2) If the subcontractor giving notice establishes a lien in accordance with this subtitle, the contractor shall receive only the difference between the amount due him and that due the subcontractor giving the notice.

(3) Notwithstanding any other provision of this section to the contrary, the lien of the subcontractor against a single family dwelling being erected on the land of the owner for his own residence shall not exceed the amount by which the owner is indebted under the contract at the time the notice is given.

HISTORY: An. Code 1957, art. 21, §§ 9-103, 9-104; 1974, ch. 12, § 2; 1976, ch. 349, § 3; 1982, ch. 251; 1996, ch. 10, § 1; ch. 377.

I. General Consideration.

II. When Notice Required.

III. Sufficiency of Notice.

IV. Time for Giving Notice.

I. GENERAL CONSIDERATION.

MARYLAND LAW REVIEW. --
For article discussing mechanics' liens in Maryland, see 36 Md. L. Rev. 733 (1977).

For survey, "Developments in Maryland Law, 1989-90," see 50 Md. L. Rev. 1027 (1991).

UNIVERSITY OF BALTIMORE LAW REVIEW. --For note discussing Maryland's new mechanics' lien law, see 6 U. Balt. L. Rev. 181 (1976).

For article, "The Maryland Rules -- A Time for Overhaul," see 9 U. Balt. L. Rev. 1 (1979).

For article, "Merger of Law and Equity Under the Revised Maryland Rules: Does It Threaten Trial by Jury?" see 14 U. Balt. L. Rev. 1 (1984).

For comment, "Employees As Subcontractors: Maryland's Interpretation of Its Mechanics' Lien Statute," see 33 U. Balt. L. Rev. 97 (2003).

CONSTITUTIONALITY. --The present mechanics' lien law does not deprive an owner of his property without due process of law and does not result in an unconstitutional "taking" of property. AMI Operating Partners Ltd. Partnership v. JAD Enters., Inc., 77 Md. App. 654, 551 A.2d 888, cert. denied, 315 Md. 307, 554 A.2d 393 (1989).

EFFECT OF SECTION AMENDMENTS. --In amending paragraphs (a) (2) and (f) (3) of this section, the legislature did not amend § 9-105 of this subtitle to require a subcontractor to plead any facts concerning the new provisions. Winkler Constr. Co. v. Jerome, 355 Md. 231, 734 A.2d 212 (1999).

PURPOSE OF NOTICE PROVISIONS. --It was the intent of the General Assembly in enacting the notice provisions of this section, not only to protect the subcontractor by the efficient and timely imposition of the lien, but also to provide some assurance that the owner would not be placed in the position of having to pay twice for the same work. Clearail, Inc. v. Mardirossian Family Enters., 84 Md. App. 497, 581 A.2d 36 (1990), rev'd on other grounds, 324 Md. 191, 596 A.2d 1018 (1991).

The general purpose of the mechanics' lien statute is to protect labor and material suppliers in the construction industry, however, the notice provided by this section is required for the protection of the property owner because of the significant property interest that is at stake. Clearail, Inc. v. Mardirossian Family Enters., 84 Md. App. 497, 581 A.2d 36 (1990), rev'd on other grounds, 324 Md. 191, 596 A.2d 1018 (1991).

The purpose of the notice required by this section is to inform the property owner of the nature and amount of the claim intended to be fixed as a lien upon his property and allow him an opportunity to retain in his hands, out of the money payable to the general contractor, the amount claimed by the subcontractor. Clearail, Inc. v. Mardirossian Family Enters., 84 Md. App. 497, 581 A.2d 36 (1990), rev'd on other grounds, 324 Md. 191, 596 A.2d 1018 (1991).

Notice is required under this section for the protection of the owner of the property; on receipt of notice, the owner is afforded an opportunity to withhold, from the sums due the contractor, the amount the owner ascertains to be due the subcontractor. National Glass, Inc. v. J.C. Penney Properties, Inc., 329 Md. 300, 619 A.2d 528 (1993).

Contrary to the general purpose of the overall mechanic's lien statute to protect subcontractors and materialmen, this section has as its purpose an intent to shift responsibility for insuring payment of a subcontractor from the owner of the dwelling to the prime contractor, therefore limiting the subcontractor's ability to lien the single family residence. Best Drywall, Inc. v. Berry, 108 Md. App. 381, 672 A.2d 116 (1996).

OBJECT AND POLICY OF SECTION. --See Shryock v. Hensel, 95 Md. 614, 53 A. 412 (1902).

The purpose of the statute is to authorize the creation of a lien against the property for work done and materials furnished, without the consent of the owner but with notice to the owner or reputed owner. Gaybis v. Palm, 201 Md. 78, 93 A.2d 269 (1952).

MECHANICS' LIEN LAW WAS PASSED TO PROTECT THE MATERIALMEN. The theory of it is that the owner gets the benefit of the material, and he has control of the money. If he negligently and carelessly pays the money out to the contractor without taking precautions to see that it is applied to the payment of the materials which go in the building, then he must stand the loss rather than the materialman, who has no opportunity to protect himself once he has delivered the materials. Palmer Park Ltd. Partnership v. Marvelite, Inc., 255 Md. 121, 257 A.2d 169 (1968).

MECHANICS' LIEN LAW WAS DESIGNED TO PROVIDE PROPERTY OWNERS AS SECOND SOURCE OF PAYMENT since they receive the ultimate benefit of services and materials and, as a practical consideration, control the cash. Hill v. Parkway Indus. Ctr., 49 Md. App. 676, 435 A.2d 472 (1981), cert. denied, 292 Md. 376 (1982).

THIS SECTION IS NOT AS DETAILED AS FORMER MARYLAND RULES, RULE 306 (NOW RULES 1-321 (A) AND (B) AND 1-323), AND PROBABLY NOT AS BROAD. Jakenjo, Inc. v. Blizzard, 221 Md. 46, 155 A.2d 661 (1959).

UNCONSTITUTIONALITY OF FORMER MECHANICS' LIEN LAW. --See Barry Properties, Inc. v. Fick Bros. Roofing Co., 277 Md. 15, 353 A.2d 222 (1976).

OBJECT OF NOTICE TO OWNER. --See Treusch v. Shryock, 51 Md. 162 (1879).

Notice is required to protect the owners of property. William Penn Supply Corp. v. Watterson, 218 Md. 291, 146 A.2d 420 (1958); Himelfarb v. B & M Welding & Iron Works, Inc., 254 Md. 37, 253 A.2d 842 (1969).

The purpose of the notice required by this section was to afford the owner an opportunity to protect his property against liens. Noland Co. v. Allied Contractors, 273 F.2d 917 (4th Cir. 1959).

The purpose of the statutory requirement is to afford an opportunity to the owner to retain the amount claimed out of any moneys payable by him to the principal contractor. G. Edgar Harr Sons v. Newton, 220 Md. 618, 155 A.2d 480 (1959); Palmer Park Ltd. Partnership v. Marvelite, Inc., 255 Md. 121, 257 A.2d 169 (1968).

The notice provided for by this section is required for the protection of the owner of the property. Mimsco Steel Corp. v. Holloway Concrete Constr. Co., 261 Md. 137, 274 A.2d 90 (1971).

PURPOSE OF "SINGLE FAMILY DWELLING" EXCEPTION. --In seeking to protect the owner of a single family dwelling, the General Assembly sought to protect the family by limiting the exposure of their residence to the potential liability of a mechanic's lien as opposed to protecting the commercial enterprise of multiple family dwellings. Grubb Contractors v. Abbott, 84 Md. App. 384, 579 A.2d 1185 (1990).

"SINGLE FAMILY DWELLING" CONSTRUED. --Single family dwelling designates the joint occupancy and use of the dwelling by all of those who live there. The word "single" precludes the segregation of certain portions or rooms for rental. It forecloses multiple occupancy of certain portions of the unit for rental as a segregated part, or parts, of the unit. Grubb Contractors v. Abbott, 84 Md. App. 384, 579 A.2d 1185 (1990).

"Dwelling" means the whole of the premises used for living purposes. It must include the use of the common rooms, such as the kitchen, dining room, living room, if any, by all occupants. It refers to, and reinforces, the concept of singular use, as opposed to multiple. The "dwelling" cannot be fragmentized into broken bits of housing for rental return. Grubb Contractors v. Abbott, 84 Md. App. 384, 579 A.2d 1185 (1990).

"Family" signifies living as a family; it inhibits the breaking up of the premises into segregated units. It does not necessarily compel the use of the unit by more than one person. The word must then, instead, refer to the use of the premises as a family, or in the manner of a family. Grubb Contractors v. Abbott, 84 Md. App. 384, 579 A.2d 1185 (1990).

Addition of homeowner's mother as a resident did not disqualify the home as a single family dwelling for purposes of this section. Grubb Contractors v. Abbott, 84 Md. App. 384, 579 A.2d 1185 (1990).

"RESIDENCE" INCLUDES VACATION HOME. --The term "residence" in this section includes a single family dwelling that is the owner's secondary, vacation home; had the General Assembly intended to distinguish between a primary and a secondary residence in parsing out the protection afforded by the statutory limitation on a subcontractor's ability to lien a single family dwelling, it would have explicitly done so. Best Drywall, Inc. v. Berry, 108 Md. App. 381, 672 A.2d 116 (1996).

SUBSECTION (F) (3) APPLIES WHETHER DWELLING IS BEING "ERECTED" OR "REMODELED". -

-Subsection (f) (3) of this section is to be read as distinguishing between the homeowner and the commercial owner, as opposed to drawing a distinction between whether the single family dwelling is being "erected" or "remodeled." The exception to the mechanics' lien statute was enacted to protect the owner of a home, regardless of the kind of construction conducted on his or her residence. Ridge Heating, Air Conditioning & Plumbing, Inc. v. Brennen, 135 Md. App. 247, 762 A.2d 161 (2000).

OBLIGATION OF COMPLYING WITH THIS SECTION IS IMPERATIVE. Hill v. Kaufman, 98 Md. 247, 56 A. 783 (1904).

Mechanics' lien is remedy created by statute and statutory notice must be complied with. Dente v. Bullis, 196 Md. 238, 76 A.2d 158 (1950).

The lien, having been created by statute, is obtainable only if the requirements of the law are substantially complied with. Himelfarb v. B & M Welding & Iron Works, Inc., 254 Md. 37, 253 A.2d 842 (1969).

The party seeking a lien must come within the plain meaning and obvious purpose of the statute. Himelfarb v. B & M Welding & Iron Works, Inc., 254 Md. 37, 253 A.2d 842 (1969).

Where a person is not within the statutory provisions, the scope of the law may not be extended by the courts. Himelfarb v. B & M Welding & Iron Works, Inc., 254 Md. 37, 253 A.2d 842 (1969).

It is true that this section giving the remedy is not to receive the strict and rigid construction applicable to an act in derogation of the common law; yet there must be a substantial compliance with its requirements as plainly expressed. This lien is not the creature of contract. It exists and is operative by virtue of statutory provisions; and unless the requirements of the General Assembly enactment are observed, the claimant is beyond the scope of the remedy. United States Tile & Marble Co. v. B & M Welding & Iron Works, Inc., 254 Md. 81, 253 A.2d 838 (1969).

LIBERAL CONSTRUCTION. --The mechanics' lien law is to be liberally interpreted in favor of mechanics and material men. Himelfarb v. B & M Welding & Iron Works, Inc., 254 Md. 37, 253 A.2d 842 (1969).

The statute is to be construed in the most liberal and comprehensive manner in favor of mechanics and materialmen. Himelfarb v. B & M Welding & Iron Works, Inc., 254 Md. 37, 253 A.2d 842 (1969).

SECTION COMPARED TO MILLER ACT. --There is similarity between the notice provisions in the Miller Act, former 40 U.S.C.S. § 270 (see now 40 U.S.C.S. § 3131 et seq.), and in the Mechanics' Lien Law of Maryland, and a reasoned argument may be made that the same construction should be given to both. Noland Co. v. Allied Contractors, 273 F.2d 917 (4th Cir. 1959).

The language of the Miller Act, former 40 U.S.C.S § 270b (see now 40 U.S.C.S. § 3131 et seq.), regarding notice to a general contractor, is comparable to that contained in this section requiring notice to the owner. United States ex rel. Noland Co. v. Allied Contractors, 171 F. Supp. 569 (D. Md.), rev'd on other grounds, 273 F.2d 917 (4th Cir. 1959).

But the construction of this section by the Maryland court is not binding upon a federal court in construing the Miller Act, former 40 U.S.C. § 270 (see now 40 U.S.C.S. § 3131 et seq.). Noland Co. v. Allied Contractors, 273 F.2d 917 (4th Cir. 1959).

COMPLIANCE REQUIRED. --It is well settled that the requirement of timely notice of intention must be at least substantially complied with. Bukowitz v. Maryland Lumber Co., 210 Md. 148, 122 A.2d 486 (1956).

Mechanics' lien is remedy created by statute and statutory notice must be complied with. Dente v. Bullis, 196 Md. 238, 76 A.2d 158 (1950).

This section does not require mathematical precision. By its very terms, what is needed is substantial compliance. Tyson v. Masten Lumber & Supply, Inc., 44 Md. App. 293, 408 A.2d 1051 (1979), cert. denied, 287 Md. 758 (1980).

BURDEN OF PROOF. --The claimant had the burden of proving that notice in writing had been given to the owner. Prima Paint Corp. v. Ammerman, 264 Md. 392, 287 A.2d 27 (1972).

ACTUAL KNOWLEDGE MAY SUPPLANT FORMAL STATUTORY NOTIFICATION. Tyson v. Masten Lumber & Supply, Inc., 44 Md. App. 293, 408 A.2d 1051 (1979), cert. denied, 287 Md. 758 (1980).

CLAIMANT MUST SHOW THAT NOTICE COULD NOT BE SERVED PERSONALLY. --Before the claimant can rely upon the notice attached to the building, he must show affirmatively that there was no owner or agent in Baltimore County, or that there were other causes why the notice could not be served personally. Kenly v. Sisters of Charity, 63 Md. 306 (1885); Bounds v. Nuttle, 181 Md. 400, 30 A.2d 263 (1943).

This section does not give a claimant an option, but is available only where it is shown that there is no owner or agent in the county where the work or materials were furnished, or there are other reasons why the notice could not be given personally. Jakenjo, Inc. v. Blizzard, 221 Md. 46, 155 A.2d 661 (1959).

EVIDENCE OF COMPLIANCE. --In action against attorney for failure to file mechanics' lien, evidence showed plaintiff had served notice on owner of intention to claim lien as required by this section. Caltrider v. Weant, 147 Md. 338, 128 A. 72 (1925).

LAW RAISES NO ASSUMPSIT BETWEEN OWNER AND CLAIMANT. --While lien may be enforced if this section is complied with, the law raises no assumpsit as between owner and claimant. Kees v. Kerney, 5 Md. 419 (1854).

REQUIREMENTS NECESSARY TO HOLD OWNER LIABLE FOR LIEN. --Before the owner can be held liable for a mechanics' lien two things are made essentially necessary by the statute. One is that a notice should be given to the owner within 90 days from the furnishing of the materials, and the other is that the lien claim shall be filed within six months after the materials have been furnished. Accrocco v. Fort Washington Lumber Co., 255 Md. 682, 259 A.2d 60 (1969).

RETENTION OF AMOUNT CLAIMED IN NOTICE. --When the owner of a building receives a supplier's notice of intent, he has the right granted by subsection (f) of this section to retain the amount claimed in the notice from the general contractor. Palmer Park Ltd. Partnership v. Marvelite, Inc., 255 Md. 121, 257 A.2d 169 (1968).

Under subsection (f) of this section, the owner is afforded an opportunity to retain in his hands, out of the money payable by him to the general contractor, the amount claimed by the subcontractor, to be applied by the owner to the payment of the lien which may be filed against his property. Himelfarb v. B & M Welding & Iron Works, Inc., 254 Md. 37, 253 A.2d 842 (1969).

LIEN ATTACHES TO INTEREST PERSON HAS IN PROPERTY. --A mechanics' lien ordinarily attaches to whatever interest the person responsible for the improvements has in the property. United States Tile & Marble Co. v. B & M Welding & Iron Works, Inc., 254 Md. 81, 253 A.2d 838 (1969).

LIEN MAY BE ASSERTED AGAINST TENANT IN COMMON AND JOINT TENANT. --A lien may be asserted against the undivided interest of one tenant in common in possession. There is no reason why this rule should not apply to the undivided interest of one joint tenant, once execution has been had. United States Tile & Marble Co. v. B & M Welding & Iron Works, Inc., 254 Md. 81, 253 A.2d 838 (1969).

LESSOR OF EQUIPMENT NOT ENTITLED TO LIEN. --A lessor of equipment to a contractor or subcontractor is not included within the class of persons entitled to a lien. Giles & Ransome, Inc. v. First Nat'l Realty Corp., 238 Md. 203, 208 A.2d 582 (1965).

TIME FOR DETERMINING WHETHER IMPROVEMENTS ARE FOR OWNER'S RESIDENCE. --Whether the improvements are for the owner's own residence is determined as of the time when the subcontractor commences an otherwise substantially uninterrupted performance of work for, or selling of materials to, the contractor. Reisterstown Lumber Co. v. Tsao, 319 Md. 623, 574 A.2d 307 (1990).

PRESUMPTION OF INDEBTEDNESS. --If a subcontractor who has supplied labor or material to a single family dwelling properly alleges that which is required under the law, it may be presumed that, at the time the contractor's notice was sent, the owner was indebted to the prime contractor in an amount at least equivalent to the subcontractor's claim. Winkler Constr. Co. v. Jerome, 355 Md. 231, 734 A.2d 212 (1999).

AMOUNT OF INDEBTEDNESS. --A subcontractor may only establish a lien up to the amount of an enforceable obligation of the owner to the prime contractor. Ridge Sheet Metal Co. v. Morrell, 69 Md. App. 364, 517 A.2d 1133 (1986).

Where a subcontractor seeks to establish a lien against a single family residence, it is the subcontractor's burden to demonstrate the extent to which the homeowner was indebted to the general contractor at the time that the homeowner received notice of the lien; this information would normally be obtained through discovery. F. Scott Jay & Co. v. Vargo, 112 Md. App. 354, 685 A.2d 799 (1996).

HOMEOWNERS' EXCEPTION APPLIES TO ADDITION TO EXISTING HOME. --Homeowners' exception to mechanics lien statute applied where the construction at issue was an addition to an existing home; the mechanics lien was defeated because the homeowners had paid the prime contractor in full. Ridge Heating, Air Conditioning & Plumbing, Inc. v. Brennen, 366 Md. 336, 783 A.2d 691 (2001).

APPLIED IN Kaufman v. Miller, 75 Md. App. 545, 542 A.2d 391 (1988).

QUOTED IN Golden Sands Club Condominium, Inc. v. Waller, 313 Md. 484, 545 A.2d 1332 (1988); J.C. Snavely & Sons v. Wheeler, 74 Md. App. 428, 538 A.2d 324 (1988).

STATED IN Reisterstown Lumber Co. v. Royer, 91 Md. App. 746, 605 A.2d 980 (1992); In re Reese, 194 Bankr. 782 (Bankr. D. Md. 1996).

CITED IN Greens at Hilton Run I Ltd. Partnership v. Rollin Bldg. Supply Co., 87 Md. App. 220, 589 A.2d 536, cert. denied, 324 Md. 122, 596 A.2d 627 (1991); Judd Fire Protection, Inc. v. Davidson, 138 Md. App. 654, 773 A.2d 573 (2001).

II. WHEN NOTICE REQUIRED.

FOUNDATION OF LIEN IS PRIOR NOTICE TO BE GIVEN TO OWNER. It is required for the protection of the owner, who is authorized to retain in his hands the amount due to the party giving the notice. Bukowitz v. Maryland Lumber Co., 210 Md. 148, 122 A.2d 486 (1956); Kenly v. Sisters of Charity, 63 Md. 306 (1885).

AND SUBCONTRACTOR IS NOT ENTITLED TO LIEN UNLESS OWNER IS NOTIFIED OF CLAIM. --Subcontractor is not entitled to lien for materials furnished for work unless owner is notified of claim. Parker V. Tilghman v. Morgan, Inc., 170 Md. 7, 183 A. 224 (1936).

EXISTENCE OF GENERAL CONTRACT DOES NOT DISPENSE WITH NECESSITY OF NOTICE OF CLAIMS OF SUPPLIERS or constitute the builder an agent for the owners. Bukowitz v. Maryland Lumber Co., 210 Md. 148, 122 A.2d 486 (1956).

AND IT IS IMMATERIAL THAT OWNER IS PARTNER IN FIRM WITH WHICH CONTRACT WAS MADE. --The notice required by this section is essential, and fact that owner is one of partners in firm with whom contract for materials was made does not dispense with such notice. Reindollar v. Flickinger, 59 Md. 469 (1883).

NOTICE PRIOR TO PERFORMING WORK. --Due process does not require that subcontractors be required to inform an owner of their involvement before performing any work. AMI Operating Partners Ltd. Partnership v. JAD Enters., Inc., 77 Md. App. 654, 551 A.2d 888, cert. denied, 315 Md. 307, 554 A.2d 393 (1989).

CONTRACTS HELD NOT TO DISPENSE WITH NECESSITY OF NOTICE. --See Reindollar v. Flickinger, 59 Md. 469 (1883).

MATERIAL SUPPLIER WHO CONTRACTED DIRECTLY WITH THE OWNER IS NOT A SUBCONTRACTOR AND NEED NOT SERVE NOTICE TO OWNER. --When a material supplier has contracted directly with the owner, the supplier is not a subcontractor. Thus, the supplier need not serve the owner with notice of intention to claim a mechanics' lien under this section, because the owner is in privity with the supplier and, therefore, has actual notice that a lien may be claimed against the property to remedy his failure to pay. Wolf Org., Inc. v. Oles, 119 Md. App. 357, 705 A.2d 40 (1998).

WAIVER OF NOTICE. --The notice required to be given the owner by this section may be waived, but the waiver must be clearly and unequivocably expressed and notice is not waived by a conference between the contractor, materialman and owner, at which the amount of the materialman's claim was discussed. Welch v. Humphrey, 200 Md. 410, 90 A.2d 686 (1952).

ESTOPPEL. --See Frederick County Nat'l Bank v. Dunn, 125 Md. 392, 93 A. 984 (1915).

PLACE OF RESIDENCE OF OWNER PASSED UPON. --See Hill v. Kaufman, 98 Md. 247, 56 A. 783 (1904).

III. SUFFICIENCY OF NOTICE.

INTENTION OF THIS SECTION IS THAT NOTICE SHALL BE SERVED PERSONALLY ON OWNER whenever that can be done. Hill v. Kaufman, 98 Md. 247, 56 A. 783 (1904).

Subcontractor's petition to establish a mechanic's lien was properly dismissed as his notice did not substantially comply with (a) as it did not provide the time when the work was done or the materials were furnished; even if the church had actual knowledge of the subcontractor's claim due to an earlier notice, which also did not state the time when the work was done, that did not mean that the church had actual knowledge of the time when the work was done or the materials furnished. Gravett v. Covenant Life Church, 154 Md. App. 640, 841 A.2d 342 (2004).

Subcontractor's argument that because (b) contains a form of notice, which its predecessor, Article 63, § 11(a) did not, caselaw under § 11(a) was inapplicable was rejected. Gravett v. Covenant Life Church, 154 Md. App. 640, 841 A.2d 342 (2004).

NOTICE SHOULD BE ADDRESSED TO PERSON FOR WHOM IT IS INTENDED. --The notice prescribed by this section should be addressed to the person for whom it is intended, the owner or his agent, naming him. Kenly v. Sisters of Charity, 63 Md. 306 (1885); Hensel v. Johnson, 94 Md. 729, 51 A. 575 (1902).

THAT NOTICE IS ADDRESSED TO OTHERS BESIDES OWNER IS IMMATERIAL where claim filed states who owner or reputed owner is. Hensel v. Johnson, 94 Md. 729, 51 A. 575 (1902).

MULTIPLE OWNERS. --Under (d), if there is more than one owner, the subcontractor may comply with this section by giving notice to any of the owners. Subsection (d) applies if the owners are tenants in common of a single unit, or a single parcel of property, but not where each entity owns separate, individual units -- separate parcels of real property -- in a condominium regime. S. Mgmt. Corp. v. Kevin Willes Constr. Co., 382 Md. 524, 856 A.2d 626 (2004).

NOTICE TO ALL CONDOMINIUM OWNERS REQUIRED. --As a condominium regime lawfully existed at a building under § 11-102 of this article, notice had to be given to all condominium unit owners under § 9-104 of this article, and all such owners had to be parties to the case before a mechanic's lien could be established as against the entire building. Since only one of the two owners had been named a party, the trial court erred in entering an order establishing

a mechanic's lien. S. Mgmt. Corp. v. Kevin Willes Constr. Co., 382 Md. 524, 856 A.2d 626 (2004).

CLAIMANT MUST AFFIRMATIVELY DEMONSTRATE NOTICE. --Lack of notice is not an affirmative defense to the establishment of a mechanic's lien, but instead, the claimant must affirmatively demonstrate that proper notice has been given. F. Scott Jay & Co. v. Vargo, 112 Md. App. 354, 685 A.2d 799 (1996).

AMENDMENT OF NOTICE. --See Dugan v. Howard, 130 Md. 114, 99 A. 966 (1917).

EXACT TIME OF PERFORMANCE NEED NOT BE SPECIFIED. --This section does not require that the exact time when the work was performed or materials furnished, or both, be specified in the notice, so long as the notice is given "within ninety days after furnishing the same." G. Edgar Harr Sons v. Newton, 220 Md. 618, 155 A.2d 480 (1959).

Exact time need not be specified if the notice makes it clear that the work was performed or the materials supplied at sometime within 90 days. Himelfarb v. B & M Welding & Iron Works, Inc., 254 Md. 37, 253 A.2d 842 (1969).

The statement in the notice of intent that the materials were delivered within 90 days was in substantial compliance with this section. Palmer Park Ltd. Partnership v. Marvelite, Inc., 255 Md. 121, 257 A.2d 169 (1968).

NOTICE HELD SUFFICIENT. --See Fulton v. Parlett, 104 Md. 62, 64 A. 58 (1906).

The notice required by this section held to have been given. Wilson v. Simon, 91 Md. 1, 45 A. 1022 (1900); Hensel v. Johnson, 94 Md. 729, 51 A. 575 (1902); Bounds v. Nuttle, 181 Md. 400, 30 A.2d 263 (1943).

Where the notice of intention to claim a mechanics' lien and the lien claim itself clearly showed that there was but one indivisible contract, and each showed the date of completion of the work and the period during which the work was done, and the only work that the notice and lien could have referred to was the plastering of 26 named houses for the agreed total contract price, the statements substantially met statutory requirements. There was no need to set forth separately the amount of the materials furnished, because the indivisible contract covered both the work and the materials, and the particulars set out the total contract price. Parkway Estates, Inc. v. Burnham, 210 Md. 64, 122 A.2d 326 (1956).

Where contract was for a single indivisible undertaking, notice: (a) that it was done (as per plans and specifications," which were sufficiently identified so that the owner could have referred to them, and (b) that "all of which work done and materials supplied" (including specified extras and deletions) "has been furnished within ninety days last past," gave the owner adequate information as to just what had been done and when, and was a sufficient compliance with this section. Mashkes v. Jakenjo, Inc., 220 Md. 457, 154 A.2d 439 (1959).

Where notice specifically set forth sum to be withheld and indicated that subcontractor was a paint company, a reasonable man could surmise that material furnished was paint. Palmer Park Ltd. Partnership v. Marvelite, Inc., 255 Md. 121, 257 A.2d 169 (1968).

Where notice gives name of apartment complex, streets it is bounded by, liber and folio of property, this is sufficient description of location of property. Palmer Park Ltd. Partnership v. Marvelite, Inc., 255 Md. 121, 257 A.2d 169 (1968).

Notices of intent to claim a lien and lien petitions filed by a union, union trusts, and industry fund on behalf of subcontracting workers for amounts due under a collective bargaining agreement were sufficient where the workers who rendered the labor were identified and the total debt claimed was specified. National Elec. Indus. Fund v. Bethlehem Steel Corp., 296 Md. 541, 463 A.2d 858 (1983).

COMPLIANCE WITH STATUTORY REQUIREMENTS SUFFICIENT TO WARRANT FINDING OF NOTICE. --The mailing of a letter addressed to the landowner entitled "Notice of Intention to File Mechanics' Lien" was a sufficient compliance with statutory requirements to warrant a finding of notice to the owner of a claimed lien despite the fact that the signature on the receipt returned by the post office was not sufficiently legible to be identified. Landover Assocs. Ltd. Partnership v. Fabricated Steel Prods., Inc., 35 Md. App. 673, 371 A.2d 1140, cert. denied, 281 Md. 740 (1977).

A registered mail notice under this section, sent within 90 days and received thereafter, is

effective. Riley v. Abrams, 287 Md. 348, 412 A.2d 996 (1980).

NOTICE HELD DEFECTIVE. --See Dugan v. Howard, 130 Md. 114, 99 A. 966 (1917).

A notice which fails to state nature and kind of materials furnished, or amount claimed, and makes no reference to claim filed, is not sufficient. Thomas v. Barber, 10 Md. 380 (1857).

A notice to an owner by one claiming a lien for materials furnished a contractor in the construction of 45 houses, which fails to specify the houses on which liens were claimed, or the amount claimed was insufficient. Welch v. Humphrey, 200 Md. 410, 90 A.2d 686 (1952).

Prior to the 1959 amendment to former Article 21, § 9-103 allowing notice to be served on either husband or wife, a materialman, without any prior notice of its intention, filed a mechanic's lien in the clerk's office. On the same day it sent the owners, who were husband and wife, a registered letter in which it enclosed two copies of the lien and the usual itemized statement and advised the owners of the entry of the lien. The husband, who received the letter, took it to his attorney, but did not discuss it with his wife. The wife was not served with anything -- notice of intention or lien and statement. It was held the chancellor was clearly right when he found that the wife had not received a proper notice from the materialman of its intention to claim a lien. William Penn Supply Corp. v. Watterson, 218 Md. 291, 146 A.2d 420 (1958).

A notice of intention to claim a lien, because it omitted to particularize the time when the work was done or the materials furnished, was fatally defective and, without a proper notice, there was no basis for the filing of a valid claim. Mimsco Steel Corp. v. Holloway Concrete Constr. Co., 261 Md. 137, 274 A.2d 90 (1971).

In the absence of an assertion that the work was done or the material supplied within 90 days, the owner has no way of determining whether the claim is lienable. Himelfarb v. B & M Welding & Iron Works, Inc., 254 Md. 37, 253 A.2d 842 (1969).

NOTICE BY MAIL. --Subsection (c) does not specify that notice must be given only by registered or certified mail, and it is possible that there would be compliance if the notice were sent by regular mail. Clearail, Inc. v. Mardirossian Family Enters., 84 Md. App. 497, 581 A.2d 36 (1990).

If the method chosen to satisfy the notice requirement is certified or registered mail, that mail must be received by the property owner. Mardirossian Family Enters. v. Clearail, Inc., 324 Md. 191, 596 A.2d 1018 (1991).

ORAL NOTICE NOT SUFFICIENT. --This section specifically provides that a materialman is not entitled to a lien unless the required notice is given in writing. An oral notice is not sufficient. William Penn Supply Corp. v. Watterson, 218 Md. 291, 146 A.2d 420 (1958).

LETTER FROM MATERIALMAN TO OWNER HELD NOT TO AMOUNT TO NOTICE. --See Richardson v. Saltz, 127 Md. 388, 96 A. 524 (1916).

THE RETURN OF A REGISTERED LETTER MARKED "REFUSED" did not permit an inference that both addressees, tenants by the entireties, declined to receive it, knowing its contents. Bukowitz v. Maryland Lumber Co., 210 Md. 148, 122 A.2d 486 (1956).

PERSONAL SERVICE REQUIRED. --Assuming, without deciding, that a copy of a duly recorded mechanics' lien and the accompanying particulars thereof, if and when properly served, was sufficient to constitute written notice of any intention to claim a lien, it is certain the copy of the lien must be personally served as this section contemplates. William Penn Supply Corp. v. Watterson, 218 Md. 291, 146 A.2d 420 (1958).

WHO MAKES PERSONAL SERVICE IMMATERIAL. --Where actual receipt of notice is shown, it is immaterial whether such receipt is the result of personal service by the sheriff, or by a postman, or other person. Jakenjo, Inc. v. Blizzard, 221 Md. 46, 155 A.2d 661 (1959).

SERVICE UPON RESIDENT AGENT OF CORPORATION. --A subcontractor may lawfully serve notice of his intention to claim a mechanics' lien upon the resident agent of a corporation listed in the records of the State Department of Assessments and Taxation. Jakenjo, Inc. v. Blizzard, 221 Md. 46, 155 A.2d 661 (1959).

SERVICE OF NOTICE UPON THE SECRETARY OR RESIDENT AGENT OF CORPORATION held effective, where she receipted for the letter giving notice, signed the resident agent's name as agent for that purpose, and her authority to do so was not denied. Jakenjo, Inc. v. Blizzard, 221 Md. 46, 155 A.2d 661 (1959).

FILING OF LIEN IS NOT CONSTRUCTIVE NOTICE. --The filing of a mechanics' lien within the time the materialman is required by this section to give the owners notice of its intention to claim a lien does not constitute constructive notice to the owners of such intention. William Penn Supply Corp. v. Watterson, 218 Md. 291, 146 A.2d 420 (1958).

PETITION HELD INSUFFICIENT. --A petition was not in compliance with § 9-102 of this subtitle when it did not contain any information with respect to whether the building in question was a single family dwelling, and failed to allege the amount of the indebtedness of the property owners to the general contractor at the time notice of intent to seek the lien was given. Jerome v. Winkler Constr. Co., 123 Md. App. 546, 720 A.2d 1 (1998).

POSTING OF NOTICE AUTHORIZED WHEN OWNERS NOT RESIDENTS OF COUNTY in which the construction site is located. Diener v. Cubbage, 259 Md. 555, 270 A.2d 471 (1970).

RULE ADOPTED. --Maryland has adopted the rule that where a materialman delivers materials to the site of construction of a number of buildings comprised in a single project, it is not essential to the validity of a mechanics' lien claim that he must show in which buildings the specific materials were used or even that the materials were actually used on the project if they were purchased for and delivered to the site of the work. It is reasoned that to require positive testimony that each article was used in a certain building would make the mechanics' lien law more of a burden than a benefit. Palmer Park Ltd. Partnership v. Marvelite, Inc., 255 Md. 121, 257 A.2d 169 (1968).

RECEIPT OF ACTUAL NOTICE. --If the subcontractor is notified that the registered or certified mailing containing the notice is unclaimed, he is on notice that the owner has not received actual notice of the lien, and though the lien comes into existence the extent of the coverage of the lien depends upon the diligence of the subcontractor in perfecting actual service; until actual service, the property owner is protected to the extent that he acts in good faith, in that he does not attempt to frustrate the claim of the subcontractor by willfully acting to avoid receiving the notice. Clearail, Inc. v. Mardirossian Family Enters., 84 Md. App. 497, 581 A.2d 36 (1990), rev'd on other grounds, 324 Md. 191, 596 A.2d 1018 (1991).

CONTENTS OF NOTICE. --Specification of the time when the work was done or when the materials were furnished is mandatory if notice given to an owner or his agent under this section is to constitute a valid notice. United States Tile & Marble Co. v. B & M Welding & Iron Works, Inc., 254 Md. 81, 253 A.2d 838 (1969).

It is necessary to state in the notice that the work was done or the materials were supplied within the 90-day period. Mimsco Steel Corp. v. Holloway Concrete Constr. Co., 261 Md. 137, 274 A.2d 90 (1971).

If the notice is given to the owner of the property before the lien claim is filed, it should definitely state the intention of the claimant to claim the lien, and also fully and specifically state the particulars of the claim and the nature and kind of work done or materials furnished, the time when done or furnished and the amount of the claim. Himelfarb v. B & M Welding & Iron Works, Inc., 254 Md. 37, 253 A.2d 842 (1969).

The notice to the owner must state the intention of the claimant to claim the lien; and if this statement be omitted, the notice will be fatally defective. It should also specify the nature or kind of the work done or materials furnished, the time when done or furnished, together with the amount or sum due; and the omission of any of these particulars will, in like manner, be fatal to the notice. Himelfarb v. B & M Welding & Iron Works, Inc., 254 Md. 37, 253 A.2d 842 (1969).

IV. TIME FOR GIVING NOTICE.

FACT THAT SURETY OF CONTRACTOR HAS TAKEN OVER LATTER'S WORK DOES NOT PREVENT SUBCONTRACTOR FROM GIVING NOTICE within 90 days. Gill v. Mullan, 140 Md. 1, 116 A. 563 (1922).

WHEN MATERIALS ARE FURNISHED UNDER SEPARATE CONTRACTS, rights to lien dates from time different materials are furnished and not from last item. The same rule applies to work done. Gill v. Mullan, 140 Md. 1, 116 A. 563 (1922).

Where materials are furnished for separate and distinct purposes or under separate contracts, even though intended to be used by the same contractor, the right to a lien dated from the time of furnishing the different parcels and not from the last item. District Heights Apts., Section D-E, Inc. v. Noland Co., 202 Md. 43, 95 A.2d 90 (1953); T. Dan Kolker, Inc. v. Shure, 209 Md. 290, 121 A.2d 223 (1956).

Unless there is a continuing contract to furnish materials on a project, notice must be given within 90 days of furnishing material under each separate order. United States ex rel. Noland Co. v. Allied Contractors, 171 F. Supp. 569 (D. Md.), rev'd on other grounds, 273 F.2d 917 (4th Cir. 1959).

In Trustees of German Lutheran Evangelical St. Matthew's Congregation v. Heise, 44 Md. 453 (1876), where the construction of the notice provision in the Mechanics' Lien Law of Maryland was first laid down in 1875, emphasis was laid upon the term "contract" between the builder and the supplier of materials and the notice was held to run from the completion of each distinct contract or order. Noland Co. v. Allied Contractors, 273 F.2d 917 (4th Cir. 1959).

As to when notice required may be given in 90 days from last item on the account and when it must be given in 90 days from time of furnishing of different parcels of materials or doing of different portions of work -- when contracts are entire and when separate and distinct -- and sufficiency of notices and time and manner of service thereof, see Hensel v. Johnson, 94 Md. 729, 51 A. 575 (1902); Trustees of German Lutheran Evangelical St. Matthew's Congregation v. Heise, 44 Md. 453 (1876); Hill v. Kaufman, 98 Md. 247, 56 A. 783 (1904); Brunt v. Farinholt-Meredith Co., 121 Md. 126, 88 A. 42 (1913).

Where the materials are furnished for separate and distinct purposes, or at different times, and at considerable intervals, or under distinct contracts or orders, though to be used by the contractor or builder in executing one and the same contract with the owner, no such presumption will arise, and the right to take the lien must date from the time of furnishing the different parcels of material, and not from the last item in the account. Palmer Park Ltd. Partnership v. Marvelite, Inc., 255 Md. 121, 257 A.2d 169 (1968).

IN THE ABSENCE OF AN EXPRESS CONTRACT, the character of the act, the time within which the materials were furnished and the object of the materials may afford proper grounds for the presumption that the materials were furnished with reference to an understanding from the beginning that such materials would be furnished if required by the builder; and in such case, the notice dates from the last item in the account. Noland Co. v. Allied Contractors, 273 F.2d 917 (4th Cir. 1959); Palmer Park Ltd. Partnership v. Marvelite, Inc., 255 Md. 121, 257 A.2d 169 (1968).

WHEN VARIOUS UNDERTAKINGS CONNECTED TO SHOW ONE SETTLEMENT CONTEMPLATED. --The crucial date is the date of completion, even though most of the work and materials are furnished prior to the time specified in the statute, if the various undertakings are so connected together as to show that the parties contemplated that all of the deliveries form one entire matter for settlement. G. Edgar Harr Sons v. Newton, 220 Md. 618, 155 A.2d 480 (1959).

Where work begun earlier was delayed for approximately one year and performed later under a single complete contract held by each subcontractor, the crucial date was the date of completion, even though most of the work and materials were furnished prior to the time specified in the statute. Mount Airy Plumbing & Heating, Inc. v. Grey Dawn Dev. Co., 237 Md. 38, 205 A.2d 299 (1964).

GOODS DELIVERED OR WORK DONE FOR PURPOSE OF EXTENDING TIME. --If after contract is completed, goods are delivered by materialman for purpose of extending time within which

notice may be served on owner, lien is invalid. Greenway v. Turner, 4 Md. 296 (1853).

A materialman may not keep alive or revive his right to a lien by furnishing materials outside of, and in addition to, those contemplated by a contract, or under a separate contract, after first contract has been performed. Brunt v. Farinholt-Meredith Co., 121 Md. 126, 88 A. 42 (1913); United States ex rel. Noland Co. v. Allied Contractors, 171 F. Supp. 569 (D. Md.), rev'd on other grounds, 273 F.2d 917 (4th Cir. 1959); Reisterstown Lumber Co. v. Reeder, 224 Md. 499, 168 A.2d 385 (1961).

This section requires a notice to be given in order that the owner may have the opportunity to protect his property against liens, in case the contractor does not pay for materials he purchases, and, hence, it is important that the materialman should not be permitted to extend the time within which he is required to give notice, in order to obtain a lien for materials furnished under one contract, by counting from a later period, when he furnished materials under a subsequent contract or order. United States ex rel. Noland Co. v. Allied Contractors, 171 F. Supp. 569 (D. Md.), rev'd on other grounds, 273 F.2d 917 (4th Cir. 1959).

Where the time allowed for the filing of a mechanics' lien has begun to run, the claimant for the lien cannot thereafter extend the time within which the lien may be filed or the 90 days' notice given, by doing or furnishing small additional items and thereby fixing a new date from which the period must again begin to run, where the real intention is to save or restore a right which is already lost or where the additional work is done or additional material furnished without the knowledge, request or consent of the owner. T. Dan Kolker, Inc. v. Shure, 209 Md. 290, 121 A.2d 223 (1956).

Quaere, whether notice was filed in time since it was not clear that certain work was not done to keep lien in force without notice to owner and without recording it. Dugan v. Howard, 130 Md. 114, 99 A. 966 (1917).

MATERIALS HELD NOT FURNISHED IN ORDER TO EXTEND TIME. --Where materials delivered to a job by a materialman after his subcontractor had made an assignment were similar to those delivered before and were furnished to the same subcontractor, under the same contract, and were not trivial items, it was held that they were not made in order to extend the time for giving notice under this section, but for the purpose of completing the contract and a notice given within 90 days of the last deliveries was timely. District Heights Apts., Section D-E, Inc. v. Noland Co., 202 Md. 43, 95 A.2d 90 (1953).

Where the last delivery was made in good faith at the request of the owner for the purpose of completing the contract, the period for filing the lien and giving the notice of intention to claim a lien ran from the furnishing of that material irrespective of the value thereof. T. Dan Kolker, Inc. v. Shure, 209 Md. 290, 121 A.2d 223 (1956).

Where all the lumber for which a lien was claimed was furnished for the same purpose, and even though it was delivered at different times, these deliveries were so connected as to show that the parties contemplated that all of the deliveries formed one entire matter for settlement, the requirements of this section, as to a contract for the furnishing of such materials, were satisfied whether deliveries were treated as made under a separate contract for the rough lumber, or under a single contract for the mill work and rough lumber as the parties apparently regarded it. T. Dan Kolker, Inc. v. Shure, 209 Md. 290, 121 A.2d 223 (1956).

Where deliveries made on June 17 and July 11, 1958, were in fulfillment of a single building contract within the contemplation of the parties, and were made with the knowledge and consent and at the request of the owner and builder, it is obvious that on June 2, 1958, the contract was not completed; in other words, the supplier in this event had not fully performed his contract, since specific items needed to be replaced, and if he failed to do that he would have been legally liable for damages. Moreover, the replacements were made at the specific request of the owners. That the materialmen acted in good faith and not to circumvent the statute is not doubted. Therefore, since all deliveries were made pursuant to one complete contract, the mechanics' lien was not defective for failure to give notice of intention to claim the lien within the time prescribed by this section. Reisterstown Lumber Co. v. Reeder, 224 Md. 499, 168 A.2d 385 (1961).

While it is true that a lienor may not revive a lost lien or extend an existing one simply by performing further work without the knowledge or consent of the owner, that was not the situation where the chancellor found as a fact, on the evidence produced, that the notice was timely, such finding being justified on either of two legal bases: (1) that the installation of the

thermostats was necessary for the performance of the subcontract; or (2) that the acts and omissions of the owner prevented the subcontractor from fully completing his contract. Brosenne v. Warthen, 226 Md. 168, 172 A.2d 485 (1961).

Where completion of work begun earlier was delayed one year, but the lapse of time was explained by testimony of the subcontractor's representatives, no bad faith was shown, certain work could not be checked until electricity was supplied and the work and materials were necessary for the completion of the contracts, notice given within 90 days of the date work was completed was timely. Mount Airy Plumbing & Heating, Inc. v. Grey Dawn Dev. Co., 237 Md. 38, 205 A.2d 299 (1964).

CONTRACT HELD NOT TO HAVE BEEN WHOLLY PERFORMED UNTIL JULY, and consequently a notice given on 7th of August was in time. Frederick County Nat'l Bank v. Dunn, 125 Md. 392, 93 A. 984 (1915).

NOTICE OF LIEN HELD TO HAVE BEEN GIVEN IN TIME though subcontractor had taken away his steam shovel and other implements, when a quantity of stone, etc., remained to be removed, which work was included in contract. Gill v. Mullan, 140 Md. 1, 116 A. 563 (1922).

Notice held to have been served upon the owner in due time after the completion of the building. Hermann v. Mertens, 87 Md. 725, 39 A. 618 (1898).

LIEN HELD UNENFORCEABLE because time for service of notice had passed. Alter v. Eckhardt, 143 Md. 658, 123 A. 388 (1923).

CONTRACTOR NOT ENTITLED TO HAVE PAYMENT APPLIED TO LAST ITEM. --A general contractor was not entitled to have a check he sent a materialman applied in part to the payment of the last item so as to prevent enforcement of the lien on the ground that the only item delivered within the 90-day period for notice had been paid, where the contractor had given the materialman bad checks for earlier items furnished. The materialman properly applied the check on account to pay off the earlier unpaid debts, rather than to the last items purchased, as the contractor indicated by adding machine tape attached to the check he wanted done. T. Dan Kolker, Inc. v. Shure, 209 Md. 290, 121 A.2d 223 (1956).

UNION CLAIM FOR WORKERS UNDER COLLECTIVE BARGAINING AGREEMENT. --Since a collective bargaining agreement is not a contract under mechanics' lien law and a union's petition represents merely a joinder of claims of individual workers, the 90-day notice requirement is not measured by the last day in which any of the employees worked, but the time requirement is measured against each individual claim. National Elec. Indus. Fund v. Bethlehem Steel Corp., 296 Md. 541, 463 A.2d 858 (1983).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 9. STATUTORY LIENS ON REAL PROPERTY
SUBTITLE 1. MECHANICS' LIENS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 9-105 (2006)

§ 9-105. Filing of claims

(a) In general. -- In order to establish a lien under this subtitle, a person entitled to a lien shall file proceedings in the circuit court for the county where the land or any part of the land is located within 180 days after the work has been finished or the materials furnished. The proceedings shall be commenced by filing with the clerk, the following:

(1) A petition to establish the mechanic's lien, which shall set forth at least the following:

(i) The name and address of the petitioner;

(ii) The name and address of the owner;

(iii) The nature or kind of work done or the kind and amount of materials furnished, the time when the work was done or the materials furnished, the name of the person for whom the work was done or to whom the materials were furnished and the amount or sum claimed to be due, less any credit recognized by the petitioner;

(iv) A description of the land, including a statement whether part of the land is located in another county, and a description adequate to identify the building; and

(v) If the petitioner is a subcontractor, facts showing that the notice required under § 9-104 of this subtitle was properly mailed or served upon the owner, or, if so authorized, posted on the building. If the lien is sought to be established against two or more buildings on separate lots or parcels of land owned by the same person, the lien will be postponed to other mechanics' liens unless the petitioner designates the amount he claims is due him on each building;

(2) An affidavit by the petitioner or some person on his behalf, setting forth facts upon which the petitioner claims he is entitled to the lien in the amount specified; and

(3) Either original or sworn, certified or photostatic copies of material papers or parts thereof, if any, which constitute the basis of the lien claim, unless the absence thereof is explained in the affidavit.

(b) Docketing; process; pleadings. -- The clerk shall docket the proceedings as an action in equity, and all process shall issue out of and all pleadings shall be filed in the one action.

HISTORY: An. Code 1957, art. 21, § 9-105; 1974, ch. 12, § 2; 1975, ch. 108; 1976, ch. 349, § 3; 1994, ch. 563; 1995, ch. 3, § 1.

MARYLAND LAW REVIEW. --For article discussing mechanics' liens in Maryland, see 36 Md. L. Rev. 733 (1977).
For article, "The Law/Equity Dichotomy in Maryland," see 39 Md. L. Rev. 427 (1980).
For comment discussing sovereign immunity from statutes of limitation in Maryland, see 46 Md. L. Rev. 408 (1987).

UNIVERSITY OF BALTIMORE LAW REVIEW. --For note discussing Maryland's new mechanics' lien law, see 6 U. Balt. L. Rev. 181 (1976).
For article, "The Maryland Rules -- A Time for Overhaul," see 9 U. Balt. L. Rev. 1 (1979).
For article, "Merger of Law and Equity Under the Revised Maryland Rules: Does It Threaten Trial by Jury?" see 14 U. Balt. L. Rev. 1 (1984).

OBJECT OF SECTION. --See Brunt v. Farinholt-Meredith Co., 121 Md. 126, 88 A. 42 (1913).

UNCONSTITUTIONALITY OF FORMER MECHANICS' LIEN LAW. --See Barry Properties, Inc. v. Fick Bros. Roofing Co., 277 Md. 15, 353 A.2d 222 (1976).

CIRCUIT COURTS HAVE JURISDICTION TO HEAR MECHANICS' LIEN CASES. --Where owner of shopping plaza contended that the facts were not legally sufficient to establish a mechanics' lien, and therefore, the circuit court lacked jurisdiction to award the lien, this jurisdictional argument was misplaced. Jurisdiction refers to two quite distinct concepts: (i) the power of a court to render a valid decree, and (ii) the propriety of granting the relief sought. Maryland law specifically provides that circuit courts have jurisdiction to hear mechanics' lien cases. Westpointe Plaza II Ltd. Partnership v. Kalkreuth Roofing & Sheet Metal, Inc., 109 Md. App. 569, 675 A.2d 571 (1996).

THIS SECTION CAN ONLY APPLY TO A CONTRACTOR. By its express terms, it excludes a subcontractor in that a person is not entitled to the establishment of a lien unless there is a contract for the performance of work and/or for the furnishing of material in connection with a project covered by the mechanics' lien law; that contract necessarily must be between the owner and the person who agrees to do the work and/or furnish the materials or between the contractor and another for work to be performed and/or for materials to be supplied, in connection with the contract between the owner and the contractor. Kaufman v. Miller, 75 Md. App. 545, 542 A.2d 391 (1988).

LIEN IS MEANS OF RECEIVING PAYMENT. --While it is true that a mechanics' lien does not attach until it is established by the court after procedural conformity, the lien is only a means of receiving payment, it is not the claim upon which the lien is founded. Hill v. Parkway Indus. Ctr., 49 Md. App. 676, 435 A.2d 472 (1981), cert. denied, 292 Md. 376 (1982).

Intermediate appellate court did not err in affirming the trial court's judgment that granted the contractor's petition to compel arbitration and found that under the totality of the circumstances, the contractor had not waived its right to arbitration merely by seeking and obtaining an interlocutory mechanics' lien; seeking and obtaining the lien was the contractor's way of protecting itself from a claim that it violated the time period for filing for a lien and as a means of insuring that it would be paid, and did not indicate any intent to waive the right to arbitrate. Brendsel v. Winchester Constr. Co., 392 Md. 601, 898 A.2d 472 (2006).

"MATERIAL" CONSTRUED. --The word "material," even when restricted to its adjectival form, has a very broad meaning which, in part, must be shaped by the noun it modifies and the context of its use; at the very least, and as a general or common concept, however, "material" denotes: Something important; more or less necessary; having influence or effect; going to the merits. AMI Operating Partners Ltd. Partnership v. JAD Enters., Inc., 77 Md. App. 654, 551 A.2d 888, cert. denied, 315 Md. 307, 554 A.2d 393 (1989).

EFFECT OF SECTION AMENDMENTS. --In amending § 9-104 (a) (2) and (f) (3) of this subtitle, the legislature did not amend this section to require a subcontractor to plead any facts concerning the new provisions. Winkler Constr. Co. v. Jerome, 355 Md. 231, 734 A.2d 212 (1999).

FILING NECESSARY AS AGAINST TAX LIEN. --A mechanics' lien which had not been "perfected," that is, filed as required by this section, at the time a lien for federal taxes under former 26 U.S.C.S. § 3670 (now see 26 U.S.C.S. § 6321) attached, was not prior to the claim of the United States. United States v. Eisinger Mill & Lumber Co., 202 Md. 613, 98 A.2d 81 (1953).

FURNISHING OF MATERIAL PAPERS. --Partial failure to comply with requirement to furnish material papers constituting the basis of the lien claim, although not sufficing to negate the entire claim, did warrant a reduction in the amount of the lien as to certain claims. AMI Operating Partners Ltd. Partnership v. JAD Enters., Inc., 77 Md. App. 654, 551 A.2d 888, cert. denied, 315 Md. 307, 554 A.2d 393 (1989).

CLAIM PERFORMS OFFICE OF DECLARATION. --A claim filed in compliance with this section performs the office of a declaration. Kees v. Kerney, 5 Md. 419 (1854).

CLAIM MUST STATE OWNER. --It is essential that lien claim state the owner of the building.

Wehr v. Shryock, 55 Md. 334 (1881); Reindollar v. Flickinger, 59 Md. 469 (1883).

BUT CLAIMANT MAY USE DESIGNATION OF OWNER AS PRUDENCE SUGGESTS. Shryock v. Hensel, 95 Md. 614, 53 A. 412 (1902).

CLAIMANT MAY NAME PERSON APPEARING AS OWNER ON PUBLIC RECORDS. --A claimant is justified in naming as owner person appearing as such on public records. Shryock v. Hensel, 95 Md. 614, 53 A. 412 (1902).

AND IF DESIGNATION IS MADE IN GOOD FAITH, LIEN IS NOT LOST. --If designation as owner or reputed owner is made in good faith, lien will not be lost because it subsequently appears that some other person is owner. Shryock v. Hensel, 95 Md. 614, 53 A. 412 (1902).

LIEN FILED AGAINST LESSER INTEREST THAN IT MIGHT HAVE BEEN NOT DESTROYED. --The fact that a lien is filed against a lesser interest than it might have been does not destroy it. Goldheim v. Clark, 68 Md. 498, 13 A. 363 (1888).

COMPLAINT DEFICIENT FOR NOT NAMING ALL OWNERS OF CONDOMINIUM UNITS. --Where a contractor's complaint to establish a mechanics' lien alleged that only one of two condominium owners and its managing agent were the owners of a building, but a second condominium owner had a separate property interest in the building, the complaint was deficient under (a)(1)(ii) and Rule 12-302(b) for not naming the second owner as an owner. S. Mgmt. Corp. v. Kevin Willes Constr. Co., 382 Md. 524, 856 A.2d 626 (2004).

OBJECT OF REQUIREMENT THAT CLAIM SHOW TIME MATERIALS WERE FURNISHED. --See Rust v. Chisolm, 57 Md. 376 (1882).

CLAIMS HELD DEFECTIVE FOR FAILURE TO SHOW SUCH TIME. --Claims held defective because neither accounts nor any paper accompanying them showed at what time materials were furnished. Rust v. Chisolm, 57 Md. 376 (1882).

LIEN CLAIM IS INSUFFICIENT IF NO DATE IS GIVEN as to time when materials were furnished or labor done. Dugan v. Howard, 130 Md. 114, 99 A. 966 (1917).

CLAIM UNDER TWO OR MORE CONTRACTS SHOULD GIVE DATES FOR EACH. --A lien claim which includes work and materials under two or more contracts should give dates for each, and general statement that work had been finished and materials furnished within less than six months is not sufficient. Clark v. Boarman, 89 Md. 428, 43 A. 926 (1899).

PARTICULARS REGARDING NATURE OF WORK DONE AND MATERIALS FURNISHED MUST BE SET FORTH. --The particulars in regard to the nature of the work done and materials furnished, as well as when the work was done and the materials were furnished, must be set forth in the mechanics' lien. Continental Steel Corp. v. Sugarman, 266 Md. 541, 295 A.2d 493 (1972).

NO STATEMENT REGARDING OWNER'S INDEBTEDNESS REQUIRED. --There is no requirement that a subcontractor's complaint include a statement regarding an owner's indebtedness to the prime contractor. Winkler Constr. Co. v. Jerome, 355 Md. 231, 734 A.2d 212 (1999).

LIEN WILL BE ENFORCED NOTWITHSTANDING ERRORS IN THE ACCOUNT. The auditor can correct such errors. Maryland Brick Co. v. Spilman, 76 Md. 337, 25 A. 297 (1892).

WHOLE CLAIM NOT INVALIDATED BY IMPROPER INCLUSION OF CERTAIN ITEMS. --Certain errors in account annexed to lien claim, did not invalidate such lien; whole claim is not invalidated by improper inclusion of certain items. Whicher Dev. Corp. v. Ross, 142 Md. 522, 121 A. 372 (1923).

WHERE CONTRACT IS FOR LUMP SUM FOR WORK AND MATERIALS. --Where contract is to do certain work and to furnish certain materials for a lump sum, claim filed under this section

need not do more than set out contract price, no amount having been fixed on work or materials separately. Gunther v. Bennett, 72 Md. 384, 19 A. 1048 (1890).

If the contract had been for a sum certain for all of the work done and materials furnished, the claimant would only be required to set forth the contract lump sum price inasmuch as under the contract itself, no amount has been fixed, either for the work or materials separately. Continental Steel Corp. v. Sugarman, 266 Md. 541, 295 A.2d 493 (1972).

CONTENTS OF PETITION. --Where mechanics' lien claim and annexed bill of particulars contained no suggestion of the nature or kind of work done, no itemization or generalization of the kind and amount of materials furnished nor did it state any time when materials were furnished or work done, it failed to comply with this section. Mervin L. Blades & Son v. Lighthouse Sound Marina & Country Club, 37 Md. App. 265, 377 A.2d 523 (1977).

To file a mechanics' lien the nature or kind of work and the kind and amount of materials furnished must be specified to determine if that work and material were for or about the building, and the owner of the building, the latter's locality and a description sufficient to identify the building must be provided. Scott & Wimbrow, Inc. v. Wisterco Invs., Inc., 36 Md. App. 274, 373 A.2d 965, cert. denied, 281 Md. 743 (1977).

PROPERTY SUBJECTED TO LIEN. --A mechanics' lien claimant may file a petition to establish a lien during the 180 day period pursuant to subsection (a) of this section, but only so long as the property itself is subject to a lien. York Roofing, Inc. v. Adcock, 333 Md. 158, 634 A.2d 39 (1993).

Once equitable title has been transferred to a bona fide purchaser for value, the property is no longer subject to a lien. York Roofing, Inc. v. Adcock, 333 Md. 158, 634 A.2d 39 (1993).

SUFFICIENCY OF PROPERTY DESCRIPTION. --Trial court erred by dismissing a subcontractor's petition for a mechanic's lien as a matter of law for failing to adequately describe the property, because the subcontractor's petition included the street addresses with street numbers and the nine-digit zip code used by the postal service and by the owners themselves in describing the location of their home. The addresses, combined with the information in the state tax assessment print-out and the 141 photographs included with the petition, were sufficient to enable interested parties to identify the land and the building that were the subject of the lien claim; therefore, the subcontractor sufficiently pled a prima facie claim for a mechanic's lien. Martino v. Arfaa, 169 Md. App. 692, 906 A.2d 945 (2006).

INSUFFICIENT DESCRIPTION OF PROPERTY. --Designation of an entire 770 acre tract as the locale of the building or buildings covered by a mechanics' lien did not constitute a sufficient description of the property under this section. Mervin L. Blades & Son v. Lighthouse Sound Marina & Country Club, 37 Md. App. 265, 377 A.2d 523 (1977).

INSUFFICIENT DESCRIPTION OF BUILDING. --The phrase "a building or buildings" in a mechanics' lien claim did not constitute a description from which anyone could undertake to identify a building. Mervin L. Blades & Son v. Lighthouse Sound Marina & Country Club, 37 Md. App. 265, 377 A.2d 523 (1977).

MECHANICS' LIEN HELD INVALID. --Where the claimant filed a mechanics' lien for $92,470.75, but nothing appeared in the mechanics' lien to show how this figure was calculated and the claimant did not state with particularity the nature of the material furnished and work done nor the time when material was furnished or work done and where the claimant did not file as an exhibit a written contract between it and the property owner and in any event, said contract did not provide for a lump sum price, the trial court correctly held that the mechanics' lien was invalid because it did not give the property owner sufficient notice of the nature of and time when work and material were furnished to the property, as required by the second requirement of this section. Continental Steel Corp. v. Sugarman, 266 Md. 541, 295 A.2d 493 (1972).

SECTION COMPLIED WITH. --See Pue v. Hetzell, 16 Md. 539 (1861); Plummer v. Eckenrode, 50 Md. 225 (1879); Treusch v. Shryock, 51 Md. 162 (1879).

ITEMS HELD SUFFICIENT. --See Brunt v. Farinholt-Meredith Co., 121 Md. 126, 88 A. 42 (1913).

LIEN CLAIMS ALLOWED. --See Rust v. Chisolm, 57 Md. 376 (1882).

LIEN CLAIM HELD INSUFFICIENT, as not showing the nature and character of the contract. Baker v. Winter, 15 Md. 1 (1860).

PUBLIC POLICY IN REGARD TO ENFORCEMENT OF CONTRACTS APPLIES TO MECHANICS' LIEN. --Even though the mechanics' lien is created by statute, such a lien is provided for the enforcement of a contract for work done and materials furnished. The same public policy is involved in regard to this remedy as is present in regard to other remedies to enforce contracts, and courts of equity will not lend their aid to enforce an illegal contract. Harry Berenter, Inc. v. Berman, 258 Md. 290, 265 A.2d 759 (1970).

LIEN CLAIMED ON PART OF PROJECT. --Where a contractor agreed to build 135 houses as a part of a single project, a materialman might claim a lien on a portion of the project although the portion of the supplies furnished for which payment had not been made went into other houses in the project. Humphrey v. Harrison Bros., 196 F.2d 630 (4th Cir. 1952).

FAILURE TO APPORTION CLAIM. --Where a lien is claimed on a contract involving more than one building, the failure to apportion the amount claimed among the buildings does not defeat the lien, but postpones it "to other lien creditors." Humphrey v. Harrison Bros., 196 F.2d 630 (4th Cir. 1952).

A failure to apportion a claim does not defeat the claim, but postpones it "to other lien creditors." Fulton v. Parlett & Parlett, 104 Md. 62, 64 A. 58 (1906); Whicher Dev. Corp. v. Ross, 142 Md. 522, 121 A. 372 (1923); Caltrider v. Isberg, 148 Md. 657, 130 A. 53 (1925).

WHERE MATERIALS GOING INTO CERTAIN HOUSES ONLY HAVE BEEN FURNISHED WITHIN SIX MONTHS. --Where materials are furnished for a row of houses under one contract, and materials going into certain houses only have been furnished within six months, the lien is valid as to all of the houses, and amount due by each house will be apportioned under this section. Okisko Co. v. Matthews, 3 Md. 168 (1852).

TWO ROWS OF HOUSES SEPARATED BY ALLEY. --Where materials for two rows of houses are furnished under an entire contract, the fact that the two rows are separated by an alley does not prevent a mechanics' lien from attaching to, and being apportioned among, all the houses. Goldheim v. Clark, 68 Md. 498, 13 A. 363 (1888).

DELIVERY OF MATERIALS MUST BE PROVED WITHIN SIX MONTHS OF FILING CLAIM. --Unless delivery of materials is proved within six months of filing of the claim, there can be no lien. John W. Wilson & Son v. Wilson, 51 Md. 159 (1879); Ortwine v. Caskey, 43 Md. 134 (1875).

WHEN SIX MONTHS BEGIN TO RUN. --The six months begin to run as to labor, from time building is completed; as to materials, from time they are furnished. Heath v. Tyler, 44 Md. 312 (1876).

The claim must be filed within six months from completion of work for which claim is filed, and not from completion of building. Okisko Co. v. Matthews, 3 Md. 168 (1852); Trustees of German Lutheran Evangelical St. Matthew's Congregation v. Heise, 44 Md. 453 (1876); Watts v. Whittington, 48 Md. 353 (1878); John W. Wilson & Son v. Wilson, 51 Md. 159 (1879); Maryland Brick Co. v. Dunkerly, 85 Md. 199, 36 A. 761 (1897); Clark v. Boarman, 89 Md. 428, 43 A. 926 (1899); Hensel v. Johnson, 94 Md. 729, 51 A. 575 (1902); Wix v. Bowling, 120 Md. 265, 87 A. 759 (1913).

Where completion of work begun earlier was delayed one year, but the lapse of time was explained by testimony of the subcontractor's representatives, no bad faith was shown, certain work could not be checked until electricity was supplied and the work and materials were necessary for the completion of the contracts, lien claims filed within six months of the date work was completed were timely. Mount Airy Plumbing & Heating, Inc. v. Grey Dawn Dev. Co., 237 Md. 38, 205 A.2d 299 (1964).

Where work begun earlier is delayed for approximately one year and performed later under a single complete contract held by each subcontractor, the crucial date is the date of completion, even though most of the work and materials are furnished prior to the time specified in the statute. Mount Airy Plumbing & Heating, Inc. v. Grey Dawn Dev. Co., 237 Md. 38, 205 A.2d 299 (1964).

Where a claimant, after a contract is substantially completed, does additional work or furnishes additional material which is necessary for the proper performance of his contract, and which is done in good faith at the request of the owner or for the purpose of fully completing the contract, and not merely as a gratuity or act of friendly accommodation, the period for filing the lien will run from the doing of such work or the furnishing of such materials, irrespective of the value thereof. Mount Airy Plumbing & Heating, Inc. v. Grey Dawn Dev. Co., 237 Md. 38, 205 A.2d 299 (1964); Wohlmuther v. Mount Airy Plumbing & Heating, Inc., 244 Md. 321, 223 A.2d 562 (1966).

This section requires that the claim be filed no later than six months after the claimant has furnished labor or materials. Kitchen v. Himelfarb, 254 Md. 372, 254 A.2d 694 (1968); Brunecz v. DiLeo, 263 Md. 481, 283 A.2d 606 (1971); Aviles v. Eshelman Elec. Corp., 281 Md. 529, 379 A.2d 1227 (1977).

If, after a contract is substantially completed, a builder furnishes additional work or materials necessary to the performance of the contract and this is done in good faith at the request of the owner and not merely as a friendly gesture or a gratuity or to circumvent the statute, then the period for filing the lien runs from the date the work is done, regardless of the value of the work. Goodman v. Winskowski, 249 Md. 546, 241 A.2d 407 (1968).

"THE WORK HAS BEEN FINISHED," as used in this section, refers alone to work for which a lien may be taken. Harrison v. Stouffer, 193 Md. 46, 65 A.2d 895 (1949).

COMPUTATION OF TIME. --See Okisko Co. v. Matthews, 3 Md. 168 (1852); Trustees of German Lutheran Evangelical St. Matthew's Congregation v. Heise, 44 Md. 453 (1876); Watts v. Whittington, 48 Md. 353 (1878); John W. Wilson & Son v. Wilson, 51 Md. 159 (1879); Maryland Brick Co. v. Dunkerly, 85 Md. 199, 36 A. 761 (1897); Clark v. Boarman, 89 Md. 428, 43 A. 926 (1899); Hensel v. Johnson, 94 Md. 729, 51 A. 575 (1902); Wix v. Bowling, 120 Md. 265, 87 A. 759 (1913).

WHERE MATERIALS ARE FURNISHED OR WORK DONE UNDER DISTINCT CONTRACTS, the materialman or mechanic is not entitled to a lien under all the contracts by simply an accounting from the date of the last item of one of them. He must file his claim within six months after the work is finished or the materials furnished under each contract. Johnson v. Metcalfe, 209 Md. 537, 121 A.2d 825 (1956).

ENTIRE AND SEPARATE CONTRACTS. --As to when claim may be filed in six months from last item on account, and when it must be filed in six months from time of furnishing of different parcels of materials or doing of different portions of the work, when contracts are entire and when separate and distinct, see Okisko Co. v. Matthews, 3 Md. 168 (1852); Trustees of German Lutheran Evangelical St. Matthew's Congregation v. Heise, 44 Md. 453 (1876); Watts v. Whittington, 48 Md. 353 (1878); John W. Wilson & Son v. Wilson, 51 Md. 159 (1879); Maryland Brick Co. v. Dunkerly, 85 Md. 199, 36 A. 761 (1897); Clark v. Boarman, 89 Md. 428, 43 A. 926 (1899); Hensel v. Johnson, 94 Md. 729, 51 A. 575 (1902); Wix v. Bowling, 120 Md. 265, 87 A. 759 (1913).

CLAIM OF LIEN FOR MATERIALS FURNISHED FOR SEVERAL BUILDINGS. --Where bricks are furnished, as ordered, for a number of houses without a special contract, and three of them are completed more than six months before filing of the lien and are sold of record before filing of the lien, the delivery of bricks for certain of the other houses within the six months will not extend time so as to give contractor a lien on three houses so completed and sold. Ortwine v. Caskey, 43 Md. 134 (1875).

MATERIALS FURNISHED MERELY IN ORDER TO EXTEND TIME FOR FILING CLAIM. --A claim will not be allowed where it is proven that certain materials were furnished merely for purpose of extending time within which claim might be filed. Heath v. Tyler, 44 Md. 312 (1876);

Reisterstown Lumber Co. v. Reeder, 224 Md. 499, 168 A.2d 385 (1961).

The time for filing will not be extended where small additional items are furnished only to circumvent the statutory requirement. Mount Airy Plumbing & Heating, Inc. v. Grey Dawn Dev. Co., 237 Md. 38, 205 A.2d 299 (1964); Wohlmuther v. Mount Airy Plumbing & Heating, Inc., 244 Md. 321, 223 A.2d 562 (1966).

The courts will not extend the statutory period and uphold a lien where the work done is of an inconsequential nature and done only for the purpose of circumventing the limitations of the statute. Goodman v. Winskowski, 249 Md. 546, 241 A.2d 407 (1968).

WHERE THERE ARE CONTINUOUS DELIVERIES OF MATERIALS at a "going price," pursuant to an undertaking to supply materials as needed, a lien may be filed within six months from the delivery of the last item, provided such delivery is made in good faith and not as a subterfuge to toll the statute. Clark Certified Concrete Co. v. Lindberg, 216 Md. 576, 141 A.2d 685 (1958).

LIEN FILED BY CORPORATION AFTER FORFEITURE OF CHARTER. --Where a mechanics' lien was filed by corporation after its charter had been forfeited, so that corporation could not file bill for its enforcement, subsequent bill by person trading by name of said corporation, involved new suit for enforcement of new lien which was filed after statutory time. Atlantic Mill & Lumber Realty Co. v. Keefer, 179 Md. 496, 20 A.2d 178 (1941).

CLAIMS HELD TO HAVE BEEN FILED IN TIME. --See Baker v. Winter, 15 Md. 1 (1860); Trustees of German Lutheran Evangelical St. Matthew's Congregation v. Heise, 44 Md. 453 (1876); Jean v. John W. Wilson & Son, 38 Md. 288 (1873); Maryland Brick Co. v. Dunkerly, 85 Md. 199, 36 A. 761 (1897).

CLAIM HELD DEFECTIVE because it failed to show that work charged and materials referred to in two items had been performed and furnished within the six months. Wix v. Bowling, 120 Md. 265, 87 A. 759 (1913).

A lien claim which failed to set forth the locality of the building or buildings and a description adequate to describe them was incurably defective. Mervin L. Blades & Son v. Lighthouse Sound Marina & Country Club, 37 Md. App. 265, 377 A.2d 523 (1977).

DEMURRER TO BILL TO ENFORCE LIEN WAS PROPERLY SUSTAINED for failure to describe the building or buildings, for failure to situate them in a reasonable locale, and for failure to describe the nature or kind of work or the kind and amount of materials furnished. Scott & Wimbrow, Inc. v. Wisterco Invs., Inc., 36 Md. App. 274, 373 A.2d 965, cert. denied, 281 Md. 743 (1977).

EVIDENCE WAS INSUFFICIENT TO BRING CLAIM WITHIN REQUIREMENTS OF THIS SECTION where there was no proof that plaintiff sold materials to defendant and held him responsible for the debt. Alter v. Eckhardt, 143 Md. 658, 123 A. 388 (1923).

AMENDMENT OF CLAIM. --After expiration of time within which lien may be filed, claim as filed cannot be amended so as to change location of property. Gault v. Wittman, 34 Md. 35 (1871).

CLAIMANT ENTITLED TO INTEREST FROM FILING OF CLAIM. --The claimant is entitled to interest from the time his claim is filed. Trustees of German Lutheran Evangelical St. Matthew's Congregation v. Heise, 44 Md. 453 (1876); Hensel v. Johnson, 94 Md. 729, 51 A. 575 (1902).

HAS INSURABLE INTEREST PRIOR TO FILING CLAIM. --A lien claimant has an insurable interest in a building prior to filing of his claim under this section. Franklin Fire Ins. Co. v. Coates, 14 Md. 285 (1859); Sodini v. Winter, 32 Md. 130 (1870).

REQUIREMENTS NECESSARY TO HOLD OWNER LIABLE FOR MECHANICS' LIEN. --Before the owner can be held liable for a mechanics' lien two things are made essentially necessary by the statute. One is that a notice should be given to the owner within 90 days from the furnishing of the materials, and the other is that the lien claim shall be filed within six months

after the materials have been furnished. Accrocco v. Fort Washington Lumber Co., 255 Md. 682, 259 A.2d 60 (1969).

SUBCONTRACTOR ENTITLED TO PRESUMPTION OF INDEBTEDNESS. --If a subcontractor who has supplied labor or material to a single family dwelling properly alleges that which is required under the law, it may be presumed that, at the time the contractor's notice was sent, the owner was indebted to the prime contractor in an amount at least equivalent to the subcontractor's claim. Winkler Constr. Co. v. Jerome, 355 Md. 231, 734 A.2d 212 (1999).

A VOLUNTARY ADVANCE BY A SENIOR LIENOR with actual knowledge of intervening liens ranks behind those intervening liens. Riggs Nat'l Bank v. Welsh, 254 Md. 207, 254 A.2d 172, rehearing denied, 254 Md. 217, 255 A.2d 289 (1969).

CONSTRUCTION LOAN LIENOR MAY MAKE ADVANCES. --A construction loan lienor, absent fraud or bad faith, may make advances permitted by his loan instruments when there are no other liens outstanding without losing his lien to creditors of the builder who may eventually become lienors. Riggs Nat'l Bank v. Welsh, 254 Md. 207, 254 A.2d 172, rehearing denied, 254 Md. 217, 255 A.2d 289 (1969).

OWNER IN BANKRUPTCY. --Where State law does not provide that perfection of the lien relates back to the time of the underlying debt's creation, the bankruptcy trustee, in his capacity as hypothetical judgment lien creditor, is entitled to avoid any mechanics' lien not perfected at time of bankruptcy filing. Johnson Hydro Seeding Corp. v. Ian Homes, Inc., 126 Bankr. 933 (Bankr. D. Md. 1991).

ASSERTION OF ADVERSE PARTY'S DEFENSE. --This section does not require that a party or an attorney assert an adverse party's defense, much less produce evidence in support of it, when the party disputes that defense. Winkler Constr. Co. v. Jerome, 355 Md. 231, 734 A.2d 212 (1999).

APPLIED IN National Elec. Indus. Fund v. Bethlehem Steel Corp., 296 Md. 541, 463 A.2d 858 (1983); Golden Sands Club Condominium, Inc. v. Waller, 313 Md. 484, 545 A.2d 1332 (1988).

QUOTED IN Riley v. Abrams, 287 Md. 348, 412 A.2d 996 (1980); Talbott Lumber Co. v. Tymann, 48 Md. App. 647, 428 A.2d 1229, cert. denied, 290 Md. 723 (1981); Wolf Org., Inc. v. Oles, 119 Md. App. 357, 705 A.2d 40 (1998).

STATED IN Tyson v. Masten Lumber & Supply, Inc., 44 Md. App. 293, 408 A.2d 1051 (1979), cert. denied, 287 Md. 758 (1980); McCormick Constr. Co. v. 9690 Deerco Rd. Ltd. Partnership, 79 Md. App. 177, 556 A.2d 292 (1989).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 9. STATUTORY LIENS ON REAL PROPERTY
SUBTITLE 1. MECHANICS' LIENS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 9-106 (2006)

§ 9-106. Procedure following filing of claim

(a) Review of pleadings and documents filed; order to show cause; opposing affidavit; answer showing cause. --

(1) When a petition to establish a mechanic's lien is filed, the court shall review the pleadings and documents on file and may require the petitioner to supplement or explain any of the matters therein set forth. If the court determines that the lien should attach, it shall pass an order that directs the owner to show cause within 15 days from the date of service on the owner of a copy of the order, together with copies of the pleadings and documents on file, why a lien upon the land or building and for the amount described in the petition should not attach. Additionally, the order shall inform the owner that:

(i) He may appear at the time stated in the order and present evidence in his behalf or may file a counteraffidavit at or before that time; and

(ii) If he fails to appear and present evidence or file a counteraffidavit, the facts in the affidavit supporting the petitioner's claim shall be deemed admitted and a lien may attach to the land or buildings described in the petition.

(2) If the owner desires to controvert any statement of fact contained in the affidavit supporting the petitioner's claim, he must file an affidavit in support of his answer showing cause. The failure to file such opposing affidavit shall constitute an admission for the purposes of the proceedings of all statements of fact in the affidavit supporting the petitioner's claim, but shall not constitute an admission that such petition or affidavit in support thereof is legally sufficient.

(3) An answer showing cause why a lien should not be established in the amount claimed shall be set down for hearing at the earliest possible time.

(b) Final order; interlocutory order. --

(1) If the pleadings, affidavits and admissions on file, and the evidence, if any, show that there is no genuine dispute as to any material fact and that the lien should attach as a matter of law, then a final order shall be entered establishing the lien for want of any cause shown to the contrary. Further, if it appears that there is no genuine dispute as to any portion of the lien claim, then the validity of that portion shall be established and the action shall proceed only on the disputed amount of the lien claim.

(2) If the pleadings, affidavits and admissions on file and the evidence, if any, show that there is no genuine dispute as to any material fact and that the petitioner failed to establish his right to a lien as a matter of law, then a final order shall be entered denying the lien for cause shown.

(3) If the court determines from the pleadings, affidavits and admissions on file, and the evidence, if any, that the lien should not attach, or should not attach in the amount claimed, as a matter of law, by any final order, but that there is probable cause to believe the petitioner is entitled to a lien, the court shall enter an interlocutory order which:

(i) Establishes the lien;

(ii) Describes the boundaries of the land and the buildings to which the lien attaches;

(iii) States the amount of the claim for which probable cause is found;

(iv) Specifies the amount of a bond that the owner may file to have the land and building released from the lien;

(v) May require the claimant to file a bond in an amount that the court believes sufficient for damages, including reasonable attorney's fees; and

(vi) Assigns a date for the trial of all the matters at issue in the action, which shall be within a period of six months. The owner or any other person interested in the property, however, may, at any time, move to have the lien established by the interlocutory order modified or dissolved.

(c) Bond. -- The amount of and the surety on any bond shall be determined and approved pursuant to the Maryland Rules except as set forth in this subtitle. The petitioner, or any other person interested in the property, however, if not satisfied with the sufficiency of a surety or with the amount of any bond given, may, at any time before entry of a final decree, apply to the court for an order requiring an additional bond, and upon notice to the other parties involved, the court may order the giving of such additional bond as it may deem proper. In lieu of filing bond, any party may deposit money in an amount equal to the amount of the bond which would otherwise be required, pursuant to the Maryland Rules.

(d) Trial on matters at issue. -- Until a final order is entered either establishing or denying the lien, the action shall proceed to trial on all matters at issue, as in the case of any other proceedings in equity.

HISTORY: 1976, ch. 349, § 3; 1989, ch. 5, § 1; 1997, ch. 14, § 1.

MARYLAND LAW REVIEW. --For article discussing mechanics' liens in Maryland, see 36 Md. L. Rev. 733 (1977).
For article, "The Law/Equity Dichotomy in Maryland," see 39 Md. L. Rev. 427 (1980).

UNIVERSITY OF BALTIMORE LAW REVIEW. --For note discussing Maryland's new mechanics' lien law, see 6 U. Balt. L. Rev. 181 (1976).
For article, "The Maryland Rules -- A Time for Overhaul," see 9 U. Balt. L. Rev. 1 (1979).
For article, "Merger of Law and Equity Under the Revised Maryland Rules: Does It Threaten Trial by Jury?" see 14 U. Balt. L. Rev. 1 (1984).

THE PROBABLE CAUSE DETERMINATION IN SUBSECTION (B) (3) is similar to that in a criminal case: whether, based on the pleadings and evidence before the trial judge, and weighing the facts, the trial judge believes that the petitioner is more or less likely to prevail at the trial on the merits. Reisterstown Lumber Co. v. Royer, 91 Md. App. 746, 605 A.2d 980 (1992).
Probable cause exists where the facts and circumstances, taken as a whole, would lead a reasonably cautious person to believe that the petitioner is entitled to an interlocutory mechanic's lien. The trial judge, in entering such a lien, must point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warranted the imposition of an interlocutory mechanic's lien on the defendant's property. Reisterstown Lumber Co. v. Royer, 91 Md. App. 746, 605 A.2d 980 (1992).

WHEN LIEN ATTACHES. --No mechanics' lien attaches to the property until the claimant has prevailed in an appropriate proceeding to establish the lien's existence. Residential Indus. Loan Co. v. Weinberg, 279 Md. 483, 369 A.2d 563, cert. denied, 434 U.S. 876, 98 S. Ct. 227, 54 L. Ed. 2d 156 (1977).
Prior to a hearing no lien attaches to real estate. Landover Assocs. Ltd. Partnership v. Fabricated Steel Prods., Inc., 35 Md. App. 673, 371 A.2d 1140, cert. denied, 281 Md. 740 (1977).
The mechanics' lien claimant has no lien until he has gone to court and has prevailed in what would be, in essence, a debt suit at law, without a jury. Mervin L. Blades & Son v.

Lighthouse Sound Marina & Country Club, 37 Md. App. 265, 377 A.2d 523 (1977).

No final order establishing the lien should be entered until, and unless, the petitioner prevails in an appropriate proceeding. Tyson v. Masten Lumber & Supply, Inc., 44 Md. App. 293, 408 A.2d 1051 (1979), cert. denied, 287 Md. 758 (1980).

Trial court did not err in entering a final order that established a mechanics' lien on the church's property pursuant to an arbitration award in favor of the subcontractor for work it performed on a church building project; the church did not show cause why the final order should not be entered and, indeed, did not contradict the allegations in the subcontractor's complaint regarding its entitlement to a lien. Cottage City Mennonite Church, Inc. v. JAS Trucking, Inc., 167 Md. App. 694, 894 A.2d 609 (2006).

OWNER OBLIGED TO FILE ANSWER TO RECEIVE HEARING. --Owner of shopping plaza who had a lien filed against it had an obligation to file an answer in order to receive a hearing. Westpointe Plaza II Ltd. Partnership v. Kalkreuth Roofing & Sheet Metal, Inc., 109 Md. App. 569, 675 A.2d 571 (1996).

OWNER NEED ONLY DENY VALIDITY OF LIEN. --The owner, in order to allege a prima facie cause of action under this section and former Maryland Rule BG73 (see now Rule 12-304), need only deny the validity of the mechanics' lien and require the claimant to prove its validity. Talbott Lumber Co. v. Tymann, 48 Md. App. 647, 428 A.2d 1229, cert. denied, 290 Md. 723 (1981).

INTERLOCUTORY ORDER. --Where the evidence, affidavits and pleadings, demonstrate that there is a genuine dispute of a material fact, the judge should not enter a final order, but instead, he should follow the clear direction of subsection (b) (3) of this section and should pass an interlocutory order setting out the perimeters of the lien and setting the matter for the trial of all issues necessary to final adjudication. Tyson v. Masten Lumber & Supply, Inc., 44 Md. App. 293, 408 A.2d 1051 (1979), cert. denied, 287 Md. 758 (1980).

ARBITRATION. --Absent a requirement to arbitrate disputes arising as to any breach of an agreement, subsection (b) would operate without delay. With arbitration, the court cannot continue, for the reason that a finding of probable cause to establish a lien entails consideration of the merits which the parties have agreed is arbitrable. McCormick Constr. Co. v. 9690 Deerco Rd. Ltd. Partnership, 79 Md. App. 177, 556 A.2d 292 (1989).

Since a mechanic's lien was merely a means of seeking to obtain payment, and not a claim in itself, an unpaid construction contractor's action in filing a lien was not the type of unequivocal act that evidenced an intent to waive a contractual right of arbitration of a dispute with the property owners. Brendsel v. Winchester Constr. Co., 162 Md. App. 558, 875 A.2d 789 (2005), aff'd, 898 A.2d 472, 2006 Md. LEXIS 255 (2006).

NO LIEN EXISTS UNTIL FINAL ORDER IS ENTERED pursuant to subsection (b) of this section. Himmighoefer v. Medallion Indus., Inc., 302 Md. 270, 487 A.2d 282 (1985).

CONTRACT UNENFORCEABLE. --A contract between an electrical contractor and an electric supply company for materials to be used in a construction project, which contract was tainted with illegality because made in consideration of the securing of a permit for the unlicensed contractor via the business license of an interlocking corporation of the supply company, all in violation of certain county safety ordinances, would not be enforced by a mechanics' lien. United Elec. Supply Co. v. Greencastle Gardens Section III Ltd. Partnership, 36 Md. App. 70, 373 A.2d 42 (1977).

SCOPE OF JUDGMENT under the mechanics' lien statute may not exceed that to which the lien sought was entitled to attach. Landover Assocs. Ltd. Partnership v. Fabricated Steel Prods., Inc., 35 Md. App. 673, 371 A.2d 1140, cert. denied, 281 Md. 740 (1977).

COLLECTABILITY OF DEBT AND JUDGMENT ON DEBT DISTINGUISHED. --Because the mechanics' lien proceeding is still in rem, the collectability of the debt is limited to the particular property described in the lien claim while a judgment on the debt is in personam and subjects all of the properties of the judgment debtor to its claim. Scott & Wimbrow, Inc. v.

Wisterco Invs., Inc., 36 Md. App. 274, 373 A.2d 965, cert. denied, 281 Md. 743 (1977).

BURDEN OF ESTABLISHING VALIDITY IS ON CLAIMANT. --The burden of establishing the validity of the mechanics' lien is placed on the claimant and no requirement is imposed upon the owner to state why the owner believes the mechanics' lien to be invalid. Talbott Lumber Co. v. Tymann, 48 Md. App. 647, 428 A.2d 1229, cert. denied, 290 Md. 723 (1981).

The claimant's general burden of establishing his right to a lien includes proving that an intervening owner is not a bona fide purchaser for value. Talbott Lumber Co. v. Tymann, 48 Md. App. 647, 428 A.2d 1229, cert. denied, 290 Md. 723 (1981).

TRIAL COURT ERRED IN REFUSING TO CONSIDER ISSUE OF AMOUNT OF LIEN and to consider evidence of waiver of liens on the issue of amount. Ocean Plaza Joint Venture v. Crouse Constr. Co., 62 Md. App. 435, 490 A.2d 252 (1985).

APPLIED IN Gannon & Son v. Emerson, 291 Md. 443, 435 A.2d 449 (1981); E.L. Gardner, Inc. v. Bowie Joint Venture, 64 Md. App. 302, 494 A.2d 988, cert. denied, 304 Md. 296, 498 A.2d 1183 (1985); Winkler Constr. Co. v. Jerome, 355 Md. 231, 734 A.2d 212 (1999).

QUOTED IN AMI Operating Partners Ltd. Partnership v. JAD Enters., Inc., 77 Md. App. 654, 551 A.2d 888, cert. denied, 315 Md. 307, 554 A.2d 393 (1989); Wolf Org., Inc. v. Oles, 119 Md. App. 357, 705 A.2d 40 (1998).

STATED IN Golden Sands Club Condominium, Inc. v. Waller, 313 Md. 484, 545 A.2d 1332 (1988); AMI Operating Partners Ltd. Partnership v. JAD Enters., Inc., 77 Md. App. 654, 551 A.2d 888, cert. denied, 315 Md. 307, 554 A.2d 393 (1989); York Roofing, Inc. v. Adcock, 333 Md. 158, 634 A.2d 39 (1993); IA Constr. Corp. v. Carney, 104 Md. App. 378, 656 A.2d 369 (1995), aff'd, 341 Md. 703, 672 A.2d 650 (1996); Prince George's County v. Vieira, 340 Md. 651, 667 A.2d 898 (1995); In re Reese, 194 Bankr. 782 (Bankr. D. Md. 1996).

CITED IN NSC Contractors v. Borders, 317 Md. 394, 564 A.2d 408 (1989); National Glass, Inc. v. J.C. Penney Properties, Inc., 329 Md. 300, 619 A.2d 528 (1993); Vieira v. Prince George's County, 101 Md. App. 220, 645 A.2d 639 (1994), aff'd, 340 Md. 651, 667 A.2d 898 (1995); F. Scott Jay & Co. v. Vargo, 112 Md. App. 354, 685 A.2d 799 (1996); IA Constr. Corp. v. Carney, 341 Md. 703, 672 A.2d 650 (1996); S. Mgmt. Corp. v. Kevin Willes Constr. Co., 382 Md. 524, 856 A.2d 626 (2004).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 9. STATUTORY LIENS ON REAL PROPERTY
SUBTITLE 1. MECHANICS' LIENS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 9-107 (2006)

§ 9-107. Attachment of lien to land in another county

(a) Filing of documents with clerk. -- If any part of the land is located within another county and the petitioner desires that the lien attach to the land in that county, the petitioner shall file a certified copy of the docket entries, of the court order, and of any required bond with the clerk of the circuit court for that county.

(b) Time of attachment. -- A lien attaches to the land or building in a county as of the time the documents required to be filed under subsection (a) of this section are filed with the clerk of the circuit court of that county.

HISTORY: 1976, ch. 349, § 3; 2002, ch. 19, § 10.

NOTES:
EDITOR'S NOTE. --Section 10, ch. 19, Acts 2002, provides that "the publisher of the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, "of this section" has been inserted in (b).

MARYLAND LAW REVIEW. --For article discussing mechanics' liens in Maryland, see 36 Md. L. Rev. 733 (1977).

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "The Maryland Rules -- A Time for Overhaul," see 9 U. Balt. L. Rev. 1 (1979).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 9. STATUTORY LIENS ON REAL PROPERTY
SUBTITLE 1. MECHANICS' LIENS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 9-108 (2006)

§ 9-108. Sale under foreclosure or execution of land against which lien established

If all or any part of the land or buildings against which a mechanic's lien has been established pursuant to this subtitle shall be sold under foreclosure or a judgment, execution or any other court order, all liens and encumbrances on such property shall be satisfied in accordance with their priority, subject to the limitation in the next sentence of this section. If the proceeds of the sale are insufficient to satisfy all liens established pursuant to this subtitle, then all proceeds available to satisfy each such lien shall be stated by the court auditor as one

fund, and the amount to be disbursed to satisfy each lien established pursuant to this subtitle shall bear the same proportion to that fund as the amount of such lien bears to the total amount secured by all such liens, without regard to priority among such liens.

HISTORY: 1976, ch. 349, § 3.

MARYLAND LAW REVIEW. --For comment on Frank J. Klein & Sons v. Laudeman, 270 Md. 152, 311 A.2d 780 (1973), cited in the notes below, see 34 Md. L. Rev. 663 (1974).
For article discussing mechanics' liens in Maryland, see 36 Md. L. Rev. 733 (1977).

UNIVERSITY OF BALTIMORE LAW REVIEW. --For note discussing Maryland's new mechanics' lien law, see 6 U. Balt. L. Rev. 181 (1976).
For article, "The Maryland Rules -- A Time for Overhaul," see 9 U. Balt. L. Rev. 1 (1979).
For article, "Merger of Law and Equity Under the Revised Maryland Rules: Does It Threaten Trial by Jury?" see 14 U. Balt. L. Rev. 1 (1984).

UNCONSTITUTIONALITY OF FORMER MECHANICS' LIEN LAW. --See Barry Properties, Inc. v. Fick Bros. Roofing Co., 277 Md. 15, 353 A.2d 222 (1976).

PURPOSE OF THE MECHANICS' LIEN LAW IS TO PROTECT THE MATERIALMEN. Frank J. Klein & Sons v. Laudeman, 270 Md. 152, 311 A.2d 780 (1973).

AND THIS LAW IS TO BE CONSTRUED IN THE MOST LIBERAL AND COMPREHENSIVE MANNER IN THEIR FAVOR. Frank J. Klein & Sons v. Laudeman, 270 Md. 152, 311 A.2d 780 (1973).

MORTGAGE FORECLOSURE EXTINGUISHES JUNIOR MECHANICS' LIENS. --Alleging an agreement among defendants to have bank foreclose so that mechanics' liens will be wiped out is not a sufficient allegation, without more, to justify setting aside a mortgage foreclosure sale. If the sale is a lawful public sale, the fact that it has the intended consequence of wiping out junior liens is legally insufficient to prevent ratification. One of the lawful consequences of a mortgage foreclosure is that junior mechanics' liens are extinguished. Bennett Heating & Air Conditioning, Inc. v. NationsBank, 342 Md. 169, 674 A.2d 534 (1996).

BANKRUPTCY TRUSTEE MAY AVOID LIEN NOT PERFECTED AT TIME OF BANKRUPTCY FILING. --Where State law does not provide that perfection of the lien relates back to the time of the underlying debt's creation, the bankruptcy trustee, in his capacity as hypothetical judgment lien creditor, is entitled to avoid any mechanics' lien not perfected at time of bankruptcy filing. Johnson Hydro Seeding Corp. v. Ian Homes, Inc., 126 Bankr. 933 (Bankr. D. Md. 1991).

INTERLOCUTORY LIENS. --An interlocutory lien, or even a final lien, that is not satisfied out of the proceeds on foreclosure of a senior mortgage does not survive the mortgage foreclosure and does not encumber the improved land after legal title has been conveyed to the mortgage foreclosure purchaser. IA Constr. Corp. v. Carney, 341 Md. 703, 672 A.2d 650 (1996).

STATED IN IA Constr. Corp. v. Carney, 104 Md. App. 378, 656 A.2d 369 (1995), aff'd, 341 Md. 703, 672 A.2d 650 (1996).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 9. STATUTORY LIENS ON REAL PROPERTY
SUBTITLE 1. MECHANICS' LIENS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 9-109 (2006)

§ 9-109. Expiration of right to enforce lien

The right to enforce any lien established under this subtitle expires at the end of one year from the day on which the petition to establish the lien was first filed. During this time the claimant may file a petition in the lien proceedings to enforce the lien or execute on any bond given to obtain a release of the land and building from the lien. If such petition is filed within the one-year period, the right to a lien or the lien, or any bond given to obtain a release of lien, shall remain in full force and effect until the conclusion of the enforcement proceedings and thereafter only in accordance with the decree entered in the case.

HISTORY: 1976, ch. 349, § 3.

MARYLAND LAW REVIEW. --For article discussing mechanics' liens in Maryland, see 36 Md. L. Rev. 733 (1977).
For comment discussing sovereign immunity from statutes of limitation in Maryland, see 46 Md. L. Rev. 408 (1987).

UNIVERSITY OF BALTIMORE LAW REVIEW. --For note discussing Maryland's new mechanics' lien law, see 6 U. Balt. L. Rev. 181 (1976).
For article, "The Maryland Rules -- A Time for Overhaul," see 9 U. Balt. L. Rev. 1 (1979).
For article, "Merger of Law and Equity Under the Revised Maryland Rules: Does It Threaten Trial by Jury?" see 14 U. Balt. L. Rev. 1 (1984).

QUOTED IN S. Mgmt. Corp. v. Kevin Willes Constr. Co., 382 Md. 524, 856 A.2d 626 (2004).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 9. STATUTORY LIENS ON REAL PROPERTY
SUBTITLE 1. MECHANICS' LIENS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 9-110 (2006)

§ 9-110. No waiver by giving credit or taking security

No person having the right to establish a mechanics' lien waives the right by granting a credit, or receiving a note or other security, unless it is received as payment or the lien right is expressly waived.

HISTORY: An. Code 1957, art. 21, § 9-108; 1974, ch. 12, § 2; 1976, ch. 349, § 3.

MARYLAND LAW REVIEW. --For article discussing mechanics' liens in Maryland, see 36 Md. L. Rev. 733 (1977).

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "The Maryland Rules -- A Time for Overhaul," see 9 U. Balt. L. Rev. 1 (1979).

MORTGAGE AND CONTRACT HELD NOT TO AMOUNT TO WAIVER OF LIEN. --See Sodini v. Winter, 32 Md. 130 (1870); McLaughlin v. Reinhart, 54 Md. 71 (1880); Maryland Brick Co. v. Spilman, 76 Md. 337, 25 A. 297 (1892).

LIEN HELD TO BE WAIVED BY SPECIAL CONTRACT. --See Willison v. Douglas, 66 Md. 99, 6 A. 530 (1886); Pinning v. Skipper, 71 Md. 347, 18 A. 659 (1889).

CIRCUMSTANCES RAISING INFERENCE THAT NOTE WAS REGARDED AS PAYMENT. --While mere acceptance of a note and its transfer by claimant is not a waiver of his lien, if endorsee, when the note comes due with knowledge and assent of claimant, accepts a new note from maker without claimant's endorsement, and so disposes of new note that it is beyond the control of claimant and cannot be produced or accounted for by him, the inference arises that the note was regarded as a payment and that claimant waived his lien. Wix v. Bowling, 120 Md. 265, 87 A. 759 (1913).

WHERE MATERIALMAN INFORMED OWNER THAT HE COULD PAY CONTRACTOR FOR MATERIALS after owner offered to pay him, he was estopped from subsequently asserting mechanics' lien against owner's property upon failure of contractor to pay him. Crane Co. v. Onley, 194 Md. 43, 69 A.2d 903 (1949).

LIEN HELD WAIVED OR CLAIMANT ESTOPPED TO CLAIM PRIORITY. --See Goldman v. Brinton, 90 Md. 259, 44 A. 1029 (1899).

LIEN NOT WAIVED. --That a materialman furnished supplies on open account on the personal credit of a contractor does not constitute a waiver of his lien. Humphrey v. Harrison Bros., 196 F.2d 630 (4th Cir. 1952).

FRAUD IN OBTAINING CREDIT HELD NOT ESTABLISHED. --See Thomas v. Turner, 16 Md. 105 (1860).

APPROVAL NOT PREREQUISITE TO SUIT. --Where a contract referred to approval of the house by FHA before occupancy, but did not expressly require approval before final payment which was to be due on completion date, the filing of a mechanics' lien and institution of suit for enforcement were not premature. Brosius Homes Corp. v. Bennett, 202 Md. 433, 96 A.2d 612 (1953).

THERE IS NO PUBLIC POLICY AGAINST WAIVER OF RIGHT TO FILE MECHANICS' LIEN (including a waiver to a prime contractor by a subcontractor), and the law of Maryland contemplates with approval that there will be waivers. Port City Constr. Co. v. Adams & Douglass, Inc., 260 Md. 585, 273 A.2d 121 (1971).

TO BE EFFECTIVE A WAIVER MUST BE CLEAR AND UNAMBIGUOUS. Port City Constr. Co. v. Adams & Douglass, Inc., 260 Md. 585, 273 A.2d 121 (1971).

AND THE CONTRACT MUST BE READ AS A WHOLE in construing the waiver language. Port City

Constr. Co. v. Adams & Douglass, Inc., 260 Md. 585, 273 A.2d 121 (1971).

WAIVER LANGUAGE CONSTRUED. --The sentence, "Subcontractor hereby expressly waives the right to file any lien or claim against the property of the owner or contractor or contractor's payment bond, if any, or against money due contractor under the prime contractor," is plain, clear and unambiguous. Port City Constr. Co. v. Adams & Douglass, Inc., 260 Md. 585, 273 A.2d 121 (1971).

The use of the word "hereby" indicates that the waiver is made by the single sentence which contains the word "waives." The waiver is expressly as to "any lien" and the use of the word "any" would seem to leave no room for limiting the waiver. Port City Constr. Co. v. Adams & Douglass, Inc., 260 Md. 585, 273 A.2d 121 (1971).

SUBCONTRACTOR WHO WAIVES LIEN CAN SUE AT LAW. --Although he has waived his lien, the subcontractor can sue the contractor at law for money due him. Port City Constr. Co. v. Adams & Douglass, Inc., 260 Md. 585, 273 A.2d 121 (1971).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 9. STATUTORY LIENS ON REAL PROPERTY
SUBTITLE 1. MECHANICS' LIENS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 9-111 (2006)

§ 9-111. Right to institute personal action

Nothing in this subtitle affects the right of any person, to whom any debt is due for work done or material furnished, to maintain any personal action against the owner of the building or any other person liable for the debt.

HISTORY: An. Code 1957, art. 21, § 9-109; 1974, ch. 12, § 2; 1976, ch. 349, § 2.

MARYLAND LAW REVIEW. --For article discussing mechanics' liens in Maryland, see 36 Md. L. Rev. 733 (1977).

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "The Maryland Rules -- A Time for Overhaul," see 9 U. Balt. L. Rev. 1 (1979).

For article, "Merger of Law and Equity Under the Revised Maryland Rules: Does It Threaten Trial by Jury?" see 14 U. Balt. L. Rev. 1 (1984).

COLLECTABILITY OF DEBT AND JUDGMENT ON DEBT DISTINGUISHED. --Because the mechanics' lien proceeding is still in rem, the collectability of the debt is limited to the particular property described in the lien claim while a judgment on the debt is in personam and subjects all of the properties of the judgment debtor to its claim. Scott & Wimbrow, Inc. v.

Wisterco Invs., Inc., 36 Md. App. 274, 373 A.2d 965, cert. denied, 281 Md. 743 (1977).

SUBCONTRACTOR WHO WAIVES LIEN CAN SUE AT LAW. --Although he has waived his lien, the subcontractor can sue the contractor at law for money due him. Port City Constr. Co. v. Adams & Douglass, Inc., 260 Md. 585, 273 A.2d 121 (1971).

CLAIMANT ABLE TO SHOW PERSONAL LIABILITY OF OWNER MAY WELL PREFER TO OBTAIN IN PERSONAM MONEY JUDGMENT in a suit at law, which would be an immediate lien against all real estate of the owner, and would afford other means of collection as well. Mervin L. Blades & Son v. Lighthouse Sound Marina & Country Club, 37 Md. App. 265, 377 A.2d 523 (1977).

RES JUDICATA. --Judgment in contractor's favor against property owners in suit to enforce mechanics' lien would be res judicata in subsequent proceeding under this section, where parties and issues were identical. Brunecz v. DiLeo, 263 Md. 481, 283 A.2d 606 (1971).

APPLIED IN Ridge Sheet Metal Co. v. Morrell, 69 Md. App. 364, 517 A.2d 1133 (1986).

STATED IN Ridge Heating, Air Conditioning & Plumbing, Inc. v. Brennen, 135 Md. App. 247, 762 A.2d 161 (2000).

CITED IN Barry Properties, Inc. v. Fick Bros. Roofing Co., 277 Md. 15, 353 A.2d 222 (1976); NSC Contractors v. Borders, 317 Md. 394, 564 A.2d 408 (1989).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 9. STATUTORY LIENS ON REAL PROPERTY
SUBTITLE 1. MECHANICS' LIENS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 9-112 (2006)

§ 9-112. Subtitle a remedial law; amendment to proceedings

This law is remedial and shall be so construed to give effect to its purpose. Any amendment shall be made in the proceedings, commencing with the claim or lien to be filed and extending to all subsequent proceedings, as may be necessary and proper. However, the amount of the claim or lien filed may not be enlarged by amendment.

HISTORY: An. Code 1957, art. 21, § 9-110; 1974, ch. 12, § 2; 1976, ch. 349, § 2.

MARYLAND LAW REVIEW. --For article discussing mechanics' liens in Maryland, see 36 Md. L. Rev. 733 (1977).

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "Merger of Law and Equity Under the

Revised Maryland Rules: Does It Threaten Trial by Jury?" see 14 U. Balt. L. Rev. 1 (1984).

LEGISLATIVE INTENT. --The General Assembly expressly stated its intention to extend or even expand the liberal leave to amend in mechanics' lien proceedings. Scott & Wimbrow, Inc. v. Wisterco Invs., Inc., 36 Md. App. 274, 373 A.2d 965, cert. denied, 281 Md. 743 (1977).

SUBTITLE IS TO BE CONSTRUED LIBERALLY in favor of mechanics and materialmen. Aviles v. Eshelman Elec. Corp., 281 Md. 529, 379 A.2d 1227 (1977).

BUT RELIEF IS NARROWLY CIRCUMSCRIBED. --The relief provided by the mechanics' lien statute to mechanics and materialmen is narrowly circumscribed, even when liberally construed. Scott & Wimbrow, Inc. v. Wisterco Invs., Inc., 36 Md. App. 274, 373 A.2d 965, cert. denied, 281 Md. 743 (1977).

This subtitle's provisions are to be construed in favor of those for whom it was enacted, but no lien arises for anything that does not fall within the purview of the statutory provision, and the courts may not extend the scope of the mechanics' lien law beyond the obvious designs and plain requirements of the statute. Hurst v. V & M of Va., Inc., 293 Md. 575, 446 A.2d 55 (1982).

The need for a liberal construction is particularly important with respect to subcontractors who have no direct contractual relationship with the owner and therefore cannot otherwise subject the owner's property or assets to the payment of their claims. Winkler Constr. Co. v. Jerome, 355 Md. 231, 734 A.2d 212 (1999).

COMPLIANCE REQUIRED FOR RELIEF. --The bent of the statute in favor of subcontractors is subject to the caveat that a mechanic's lien is only obtainable if the requirements of the statute are complied with. Winkler Constr. Co. v. Jerome, 355 Md. 231, 734 A.2d 212 (1999).

NOTICE OF LIEN CANNOT BE AMENDED AFTER EXPIRATION OF TIME FOR FILING. --See Kenly v. Sisters of Charity, 63 Md. 306 (1885).

OPERATION OF SECTION LIMITED. --See New England Car Spring Co. v. B & O R.R., 11 Md. 81 (1857); Plummer v. Echenrode, 50 Md. 225 (1879); Kenly v. Sisters of Charity, 63 Md. 306 (1885).

IT DOES NOT DISPENSE WITH THE FORMS OF PLEADING. Kess v. Kerney, 5 Md. 419 (1854).

LIMITATIONS ON RIGHT OF AMENDMENT. --See Gault v. Wittman, 34 Md. 35 (1871); Real Estate & Imp. Co. v. William Phillips & Sons, 90 Md. 515, 45 A. 174 (1900).

NATURE OF AMENDATORY POWER. --It is difficult to imagine any more extensive power of amendment than that allowed in proceedings concerning mechanics' liens. Baltimore Contractors v. Valley Mall Assocs., 27 Md. App. 695, 341 A.2d 845 (1975).

RIGHTS TO AMEND ARE STATED IN THIS SECTION AND MARYLAND RULE BG72 (SEE NOW RULE 12-303). Mervin L. Blades & Son v. Lighthouse Sound Marina & Country Club, 37 Md. App. 265, 377 A.2d 523 (1977).

RULE PREVAILED IN CONFLICT. --To the extent that there was a conflict between this section and former Maryland Rule BG72 (see now Rule 12-303), the rule prevailed until repealed or modified by a subsequent statute or rule. Scott & Wimbrow, Inc. v. Wisterco Invs., Inc., 36 Md. App. 274, 373 A.2d 965, cert. denied, 281 Md. 743 (1977).

CHANGING LOCATION OF PROPERTY AFTER EXPIRATION OF TIME FOR FILING CLAIM. --After expiration of time within which lien might be filed, a claimant cannot amend same, so as to change location of property. Gault v. Wittman, 34 Md. 35 (1871); Real Estate & Imp. Co. v. William Phillips & Sons, 90 Md. 515, 45 A. 174 (1900).

SECTION DOES NOT PERMIT INDIVIDUAL TO TAKE ADVANTAGE OF LIEN FILED BY NONEXISTENT CORPORATION. --The broad provisions for amendment given by this section do

not permit an individual to take advantage of a lien previously filed by a nonentity, a corporation whose charter has been forfeited. Atlantic Mill & Lumber Realty Co. v. Keefer, 179 Md. 496, 20 A.2d 178 (1941).

The court does not construe this section as permitting an individual to take advantage of a lien previously filed by a nonentity. Kitchen v. Himelfarb, 254 Md. 372, 254 A.2d 694 (1969).

WHAT AMENDMENTS WILL BE ALLOWED. --See Real Estate & Imp. Co. v. William Phillips & Sons, 90 Md. 515, 45 A. 174 (1900).

AMENDMENT ALLOWED WHERE OWNERSHIP IMPROPERLY STATED. --If ownership is improperly stated in lien proceedings, amendments may be made. Wilhelm v. Roe, 158 Md. 615, 149 A. 438 (1930); Brunecz v. DiLeo, 263 Md. 481, 283 A.2d 606 (1971).

Where a claim, as filed, states that A is contractor and B owner, it may be amended after time within which it might be filed, so as to show that A and C are both builders and equitable owners. Real Estate & Imp. Co. v. William Phillips & Sons, 90 Md. 515, 45 A. 174 (1900).

BUT NOT TO CORRECT IMPROPER DESCRIPTION OF PROPERTY. --An improper description of the property against which the lien is asserted may not be corrected after the time for filing the lien has passed, because this would amount to an entirely new claim of lien. Brunecz v. DiLeo, 263 Md. 481, 283 A.2d 606 (1971).

SURPLUS WORDS IN BILL OF PARTICULARS MAY BE STRICKEN. --Court may permit surplus words in bill of particulars attached to claim to be stricken out. Caltrider v. Isberg, 148 Md. 657, 130 A. 53 (1925).

RIGHT TO AMEND EXTENDS BEYOND TIME OF ENTRY OF DECREE. --The right to amend extends beyond the time when judgment or decree has been entered. Rust v. Chisolm, 57 Md. 376 (1882); Real Estate & Imp. Co. v. William Phillips & Sons, 90 Md. 515, 45 A. 174 (1900).

BUT CLAIM CANNOT BE AMENDED IN COURT OF APPEALS. --The lien claim cannot be amended in the Court of Appeals. Baker v. Winter, 15 Md. 1 (1860).

EFFECT OF FAILURE TO FILE AMENDED CLAIM AFTER LEAVE GRANTED. --The failure of plaintiff, who has been granted leave in an equity proceeding to amend, to file an amended claim is not a bar to the enforcement of the amended claim against parties to equity case; it is otherwise, perhaps, as to bona fide purchasers for value without notice of amendment. Lucas v. Taylor, 105 Md. 90, 66 A. 26 (1907).

AMENDED MECHANICS' LIEN should not be considered as an amendment, but as new lien. Kitchen v. Himelfarb, 254 Md. 372, 254 A.2d 694 (1968).

TRIAL JUDGE SHOULD NOT HAVE FORECLOSED PLAINTIFF'S ATTEMPT TO AMEND. Baltimore Contractors v. Valley Mall Assocs., 27 Md. App. 695, 341 A.2d 845 (1975).

AMENDMENT HELD TO MATERIALLY ALTER DESCRIPTION OF PROPERTY. --An amendment of the lien claim which would set forth the locality of the building, or buildings, and a description adequate to identify them would materially alter the description of the property against which the lien claim was recorded. Mervin L. Blades & Son v. Lighthouse Sound Marina & Country Club, 37 Md. App. 265, 377 A.2d 523 (1977).

APPLIED IN Martino v. Arfaa, 169 Md. App. 692, 906 A.2d 945 (2006).

QUOTED IN Barry Properties, Inc. v. Fick Bros. Roofing Co., 277 Md. 15, 353 A.2d 222 (1976).

STATED IN Skinner Logsdon Constr. & Equip., Inc. v. First United Church, 88 Md. App. 434, 594 A.2d 1245 (1991).

CITED IN Celta Corp. v. A.G. Parrott Co., 94 Md. App. 312, 617 A.2d 632 (1993); Westpointe Plaza II Ltd. Partnership v. Kalkreuth Roofing & Sheet Metal, Inc., 109 Md. App. 569, 675 A.2d

571 (1996).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 9. STATUTORY LIENS ON REAL PROPERTY
SUBTITLE 1. MECHANICS' LIENS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 9-113 (2006)

§ 9-113. Prohibited provisions in executory contracts

(a) In general. -- An executory contract between a contractor and any subcontractor that is related to construction, alteration, or repair of a building, structure, or improvement may not waive or require the subcontractor to waive the right to:

(1) Claim a mechanics' lien; or

(2) Sue on a contractor's bond.

(b) Provisions conditioning payment to subcontractor on payment of contractor. -- A provision in an executory contract between a contractor and a subcontractor that is related to construction, alteration, or repair of a building, structure, or improvement and that conditions payment to the subcontractor on receipt by the contractor of payment from the owner or any other third party may not abrogate or waive the right of the subcontractor to:

(1) Claim a mechanics' lien; or

(2) Sue on a contractor's bond.

(c) Void provisions. -- Any provision of a contract made in violation of this section is void as against the public policy of this State.

HISTORY: 1981, ch. 756; 1994, ch. 626; 1995, ch. 3, § 1.

NOTES:
EDITOR'S NOTE. --Section 2, ch. 626, Acts 1994, provides that "this Act does not apply to any contract entered into prior to October 1, 1994."

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "Merger of Law and Equity Under the Revised Maryland Rules: Does It Threaten Trial by Jury?" see 14 U. Balt. L. Rev. 1 (1984).

PROVISIONS WAIVING RIGHT TO MECHANIC'S LIEN. --Parties' contractual provision waiving

the right to claim a mechanic's lien, although valid in Pennsylvania, was unenforceable in Maryland. National Glass, Inc. v. J.C. Penney Properties, Inc., 336 Md. 606, 650 A.2d 246 (1994).

QUOTED IN Allied Bldg. Prods. Corp. v. United Pac. Ins. Co., 77 Md. App. 220, 549 A.2d 1163 (1988); National Glass, Inc. v. J.C. Penney Properties, Inc., 329 Md. 300, 619 A.2d 528 (1993).

CITED IN General Fed. Constr., Inc. v. D.R. Thomas, Inc., 52 Md. App. 700, 451 A.2d 1250 (1982); Three M Enters. v. Tex. D.A.R. Enters., 368 F. Supp. 2d 450 (D. Md. 2005).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 9. STATUTORY LIENS ON REAL PROPERTY
SUBTITLE 1. MECHANICS' LIENS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 9-114 (2006)

§ 9-114. Releases from material suppliers and subcontractors

(a) Signed release of lien. -- At the time of settlement or payment in full between a contractor and an owner, the contractor shall give to the owner a signed release of lien from each material supplier and subcontractor who provided work or materials under the contract.

(b) Effect of signed release. -- An owner is not subject to a lien and is not otherwise liable for any work or materials included in the release under subsection (a) of this section.

HISTORY: 1982, ch. 251.

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "Merger of Law and Equity Under the Revised Maryland Rules: Does It Threaten Trial by Jury?" see 14 U. Balt. L. Rev. 1 (1984).

PURPOSE OF SECTION. --The General Assembly intended by this section to shift the risk of loss from the owner of a single family dwelling to the prime contractor. Ridge Sheet Metal Co. v. Morrell, 69 Md. App. 364, 517 A.2d 1133 (1986).

SUBCONTRACTOR ENTITLED TO PRESUMPTION OF INDEBTEDNESS. --If a subcontractor who has supplied labor or material to a single family dwelling properly alleges that which is required under the law, it may be presumed that, at the time the contractor's notice was sent, the owner was indebted to the prime contractor in an amount at least equivalent to the subcontractor's claim. Winkler Constr. Co. v. Jerome, 355 Md. 231, 734 A.2d 212 (1999).

STATED IN Grubb Contractors v. Abbott, 84 Md. App. 384, 579 A.2d 1185 (1990); Ridge

Heating, Air Conditioning & Plumbing, Inc. v. Brennen, 135 Md. App. 247, 762 A.2d 161 (2000).

CITED IN Reisterstown Lumber Co. v. Tsao, 319 Md. 623, 574 A.2d 307 (1990).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 9. STATUTORY LIENS ON REAL PROPERTY
SUBTITLE 2. TRUST RELATIONSHIPS IN THE CONSTRUCTION INDUSTRY

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 9-201 (2006)

§ 9-201. Moneys to be held in trust; commingling

(a) Definition. -- For the purposes of this subtitle, "managing agent" means an employee of a contractor or subcontractor who is responsible for the direction over or control of money held in trust by the contractor or subcontractor under subsection (b) of this section.

(b) Moneys to be held in trust. --

(1) Any moneys paid under a contract by an owner to a contractor, or by the owner or contractor to a subcontractor for work done or materials furnished, or both, for or about a building by any subcontractor, shall be held in trust by the contractor or subcontractor, as trustee, for those subcontractors who did work or furnished materials, or both, for or about the building, for purposes of paying those subcontractors.

(2) An officer, director, or managing agent of a contractor or subcontractor who has direction over or control of money held in trust by a contractor or subcontractor under paragraph (1) of this subsection is a trustee for the purpose of paying the money to the subcontractors who are entitled to it.

(c) Commingling. --

(1) Nothing contained in this subtitle shall be construed as requiring moneys held in trust by a contractor or subcontractor under subsection (b) of this section to be placed in a separate account.

(2) If a contractor or subcontractor commingles moneys held in trust under this section with other moneys, the mere commingling of the moneys does not constitute a violation of this subtitle.

HISTORY: 1987, ch. 345; 1988, ch. 6, § 1; 1995, ch. 3, § 22; ch. 436.

MARYLAND LAW REVIEW. --For survey, "Developments in Maryland Law, 1992-93," see 53 Md. L. Rev. 616 (1994).

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "The Maryland Construction Trust Statute: New Personal Liability -- Its Scope and Federal Bankruptcy Implications," see 17 U. Balt. L. Rev. 482 (1989).

PURPOSE. --This subtitle was enacted to protect subcontractors from dishonest practices by general contractors and other subcontractors for whom they might work. Ferguson Trenching Co. v. Kiehne, 329 Md. 169, 618 A.2d 735 (1993).

APPLICABILITY. --This subtitle applies only to State-financed buildings and to those subject to the Maryland mechanics' lien statute, § 9-102 of this title; federal construction projects are not subject to the Maryland mechanics' lien statute, and are, therefore, not subject to this subtitle. United States ex rel. Allied Bldg. Prods. Corp. v. Federal Ins. Co., 729 F. Supp. 477 (D. Md. 1990).

EFFECT OF SECTION. --This section creates a trust relationship between the contractor or subcontractor that has been paid by the owner and the subcontractor for whose work the owner has paid; upon receiving payment from the owner, the contractor or subcontractor holds the funds in trust for the benefit of the subcontractor that has performed work or provided materials for the project. Ferguson Trenching Co. v. Kiehne, 329 Md. 169, 618 A.2d 735 (1993); Wilcoxon Constr. v. Woodall, 177 Bankr. 517 (Bankr. D. Md. 1995).

A VIOLATION OF THIS SUBTITLE CANNOT BE THE SOLE BASIS FOR FINDING A DEBT TO BE NONDISCHARGEABLE FOR BREACH OF FIDUCIARY DUTY; however, the mere reference in the subject complaint to this subtitle did not render the complaint vulnerable to a motion to dismiss, as the complaint set forth other independent bases for relief. Hemelt v. Pontier, 165 Bankr. 797 (Bankr. D. Md. 1994).

FIDUCIARY RELATIONSHIPS. --Nothing in this section makes a corporate officer, director, or employee a fiduciary with respect to a party that has entered into a contract with the corporation. Ferguson Trenching Co. v. Kiehne, 329 Md. 169, 618 A.2d 735 (1993); Wilcoxon Constr. v. Woodall, 177 Bankr. 517 (Bankr. D. Md. 1995).

APPLICATION OF UNALLOCATED PAYMENTS TO SERIES OF INVOICES. --The circuit court correctly rejected the argument of a payment and performance bond provider that a material supplier was violating the construction trust statute when it applied unallocated payments from a subcontractor to the latter's oldest invoices, thus leaving unpaid the most recent invoices for materials supplied. Insurance Co. of N. Am. v. Genstar Stone Prods., 338 Md. 161, 656 A.2d 1232 (1995).

APPLIED IN Southcoast Bldrs. of Md., Inc. v. Potter Heating & Elec., Inc., 94 Md. App. 160, 616 A.2d 441 (1992); Phillips Way, Inc. v. Presidential Fin. Corp., 137 Md. App. 209, 768 A.2d 94 (2001).

CITED IN Stanley H. Silverblatt Elec. Contractor v. Marino, 139 Bankr. 380 (Bankr. D. Md. 1992); National Glass, Inc. v. J.C. Penney Properties, Inc., 329 Md. 300, 619 A.2d 528 (1993).

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.

a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 9. STATUTORY LIENS ON REAL PROPERTY
SUBTITLE 2. TRUST RELATIONSHIPS IN THE CONSTRUCTION INDUSTRY

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 9-202 (2006)

§ 9-202. Liability for retention or use of moneys held in trust under § 9-201 of this subtitle

Any officer, director, or managing agent of any contractor or subcontractor, who knowingly retains or uses the moneys held in trust under § 9-201 of this subtitle, or any part thereof, for any purpose other than to pay those subcontractors for whom the moneys are held in trust, shall be personally liable to any person damaged by the action.

HISTORY: 1987, ch. 345; 1995, ch. 436.

APPLICABILITY. --This section applies to both private and public construction projects, but not to contracts for the construction and sale of a single family residential dwelling, or to home improvement contracts by licensed home improvement contractors. Ferguson Trenching Co. v. Kiehne, 329 Md. 169, 618 A.2d 735 (1993).

INTENT TO DEFRAUD. --Underlying an "intent to defraud" is some form of bad faith by the defendant; in order to have an intent to defraud, the defendant must act dishonestly or at least with reckless indifference. Ferguson Trenching Co. v. Kiehne, 329 Md. 169, 618 A.2d 735 (1993).

Proof that trust funds were diverted to a purpose other than paying subcontractors on the job is not equivalent to conclusive proof of intent to defraud. Ferguson Trenching Co. v. Kiehne, 329 Md. 169, 618 A.2d 735 (1993).

APPLIED IN Southcoast Bldrs. of Md., Inc. v. Potter Heating & Elec., Inc., 94 Md. App. 160, 616 A.2d 441 (1992).

STATED IN Wilcoxon Constr. v. Woodall, 177 Bankr. 517 (Bankr. D. Md. 1995).

CITED IN Phillips Way, Inc. v. Presidential Fin. Corp., 137 Md. App. 209, 768 A.2d 94 (2001).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 9. STATUTORY LIENS ON REAL PROPERTY
SUBTITLE 2. TRUST RELATIONSHIPS IN THE CONSTRUCTION INDUSTRY

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 9-203 (2006)

§ 9-203. Misuse of funds prima facie evidence of intent to defraud

Repealed by Acts 1995, ch. 436, effective October 1, 1995.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

[Repealed/Reserved]

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 9. STATUTORY LIENS ON REAL PROPERTY
SUBTITLE 2. TRUST RELATIONSHIPS IN THE CONSTRUCTION INDUSTRY

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 9-204 (2006)

§ 9-204. Applicability of subtitle; definitions

(a) In general. -- This subtitle applies to contracts subject to Title 17, Subtitle 1 of the State Finance and Procurement Article, known as the "Maryland Little Miller Act", as well as property subject to § 9-102 of this title.

(b) Exceptions contracts. -- This subtitle does not apply to:

(1) A contract for the construction and sale of a single family residential dwelling; or

(2) A home improvement contract by a contractor licensed under the Maryland Home Improvement Law.

(c) Definitions. -- In this subtitle, "owner", "contractor", and "subcontractor" have the same meanings as in § 9-101 of this title.

HISTORY: 1987, ch. 345; 1991, ch. 55, § 1; 1992, ch. 26, § 2.

NOTES:

CROSS REFERENCES. --As to Maryland Home Improvement Law, see § 8-701 et seq of the Business Regulation Article.

APPLICABILITY. --This subtitle applies only to State-financed buildings and to those subject to the Maryland mechanics' lien statute, § 9-102 of this title; federal construction projects are not subject to the Maryland mechanics' lien statute, and are, therefore, not subject to this subtitle. United States ex rel. Allied Bldg. Prods. Corp. v. Federal Ins. Co., 729 F. Supp. 477 (D. Md. 1990).

STATED IN Ferguson Trenching Co. v. Kiehne, 329 Md. 169, 618 A.2d 735 (1993).

CITED IN Phillips Way, Inc. v. Presidential Fin. Corp., 137 Md. App. 209, 768 A.2d 94 (2001).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 9. STATUTORY LIENS ON REAL PROPERTY
SUBTITLE 3. CONSTRUCTION CONTRACTS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 9-301 (2006)

§ 9-301. Definitions

(a) In general. -- In this subtitle the following words have the meanings indicated.

(b) Contract. --

(1) "Contract" means an agreement of any kind or nature, express or implied, for doing work or furnishing materials, or both, for or about a building.

(2) "Contract" includes an agreement for:

(i) The erection, repair, rebuilding, or improvement of a building;

(ii) The drilling and installation of wells to supply water;

(iii) The construction or installation of any swimming pool or fencing;

(iv) The grading, filling, landscaping, and paving of the premises;

(v) The installation of waterlines, sanitary sewers, storm drains, or streets; or

(vi) The erection, repair, rebuilding, or improvement of a wharf.

(c) Contractor. -- "Contractor" means a person who has a contract with an owner.

(d) Owner. -- "Owner" means:

(1) The owner of the land; or

(2) An owner's tenant for life or for years, provided the tenant enters into the contract with the contractor.

(e) Subcontractor. --

(1) "Subcontractor" means a person who has a contract with anyone except the owner or the owner's agent.

(2) "Subcontractor" includes a supplier.

(f) Undisputed amount. -- "Undisputed amount" means an amount owed on a contract for which there is no good faith dispute, including any retainage withheld.

HISTORY: 1989, ch. 553.

NOTES:
CROSS REFERENCES. --As to Maryland Home Improvement Law, see BR § 8-701 et seq.

EDITOR'S NOTE. --Section 2, ch. 486, Acts 1990, effective July 1, 1990, provides that "this Act does not apply to any contract entered into prior to July 1, 1989."

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 9. STATUTORY LIENS ON REAL PROPERTY
SUBTITLE 3. CONSTRUCTION CONTRACTS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 9-302 (2006)

§ 9-302. Prompt payment

(a) In general; exception. -- Except for work done or materials furnished under a contract enumerated in § 9-304 of this subtitle, a contractor or subcontractor who does work or furnishes material under a contract shall be entitled to prompt payment under subsection (b) of this section.

(b) Time for payments. --

(1) If the contract is with an owner, the owner shall:

(i) If the contract does not provide for specific dates or times of payment, pay to the contractor undisputed amounts owed under the terms of the written contract, within the earlier of:

1. 30 days after the day on which the occupancy permit is granted; or

2. 30 days after the day on which the owner or the owner's agent takes possession; or

(ii) If the contract provides for specific dates or times of payment, pay to the contractor undisputed amounts owed within 7 days after the date or time specified in the contract.

(2) Paragraph (1) of this subsection does not apply to any contract between the contractor and:

(i) The State;

(ii) A county;

(iii) A municipal corporation;

(iv) A board of education; or

(v) A public authority or instrumentality.

(3) If the contract is not with an owner, the contractor or subcontractor shall pay undisputed amounts owed to its subcontractors within 7 days after receipt by the contractor or subcontractor of each payment received for its subcontractors' work or materials.

HISTORY: 1989, ch. 553; 1990, ch. 486.

NOTES:
EDITOR'S NOTE. --Section 2, ch. 486, Acts 1990, effective July 1, 1990, provides that "this Act does not apply to any contract entered into prior to July 1, 1989."

AMOUNT OWED IN DISPUTE. --The awarding of interest and costs turns on the fact that the amount owed is undisputed, but where the parties disagreed on the amount owed, the court denied plaintiff's motion for interest and costs. Capitol Indem. Corp. v. Mountbatten Sur. Co., -- F. Supp. 2d -- (D. Md. Jan. 9, 2001).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 9. STATUTORY LIENS ON REAL PROPERTY
SUBTITLE 3. CONSTRUCTION CONTRACTS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 9-303 (2006)

§ 9-303. Remedies

(a) In general. -- In addition to any other remedy provided under any other provision of law, a court of competent jurisdiction, for good cause shown may:

(1) Award any equitable relief for prompt payment of undisputed amounts that it considers necessary, including the enjoining of further violations; and

(2) In any action, award to the prevailing party:

(i) Interest from the date the court determines that the amount owed was due; and

(ii) Any reasonable costs incurred.

(b) Attorneys' fees. -- If a court determines that an owner, contractor, or subcontractor has acted in bad faith by failing to pay any undisputed amounts owed as required under § 9-302 of this subtitle, the court may award to the prevailing party reasonable attorney's fees.

HISTORY: 1989, ch. 553; 2002, ch. 19, § 10.

NOTES:
EDITOR'S NOTE. --Section 10, ch. 19, Acts 2002, provides that "the publisher of the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, a comma has been inserted following "contractor" in (b).

AMOUNT OWED IN DISPUTE. --The awarding of interest and costs turns on the fact that the amount owed is undisputed, but where the parties disagreed on the amount owed, the court denied plaintiff's motion for interest and costs. Capitol Indem. Corp. v. Mountbatten Sur. Co., -- F. Supp. 2d -- (D. Md. Jan. 9, 2001).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 9. STATUTORY LIENS ON REAL PROPERTY
SUBTITLE 3. CONSTRUCTION CONTRACTS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 9-304 (2006)

§ 9-304. Exceptions

This subtitle does not:

(1) Affect the rights of contracting parties under Title 9, Subtitle 1 of this article;

(2) Apply to a contract for the construction and sale of a single family residential dwelling;

(3) Apply to any transaction under the Custom Home Protection Act, Title 10, Subtitle 5 of this article; and

(4) Apply to a home improvement contract by a contractor licensed under the Maryland Home Improvement Law.

HISTORY: 1989, ch. 553; 1990, ch. 6, § 2; ch. 486; 1992, ch. 26, § 2.

NOTES:
CROSS REFERENCES. --As to Maryland Home Improvement Law, see § 8-701 et seq of the Business Regulation Article.

EDITOR'S NOTE. --Section 2, ch. 486, Acts 1990, effective July 1, 1990, provides that "this act does not apply to any contract entered into prior to July 1, 1989."

CITED IN King v. Marriott Int'l, Inc., 160 Md. App. 689, 866 A.2d 895 (2005).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 1. LAND INSTALLMENT CONTRACTS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-101 (2006)

§ 10-101. Definitions

(a) In general. -- In this subtitle the following words have the meanings indicated unless otherwise apparent from context.

(b) Land installment contract. -- "Land installment contract" means a legally binding executory agreement under which:

(1) The vendor agrees to sell an interest in property to the purchaser and the purchaser agrees to pay the purchase price in five or more subsequent payments exclusive of the down payment, if any; and

(2) The vendor retains title as security for the purchaser's obligation.

(c) Down payment. -- "Down payment" means the payment made by the purchaser to the vendor on account of the purchase price at or before the time of the execution of a land installment contract.

(d) Property. -- "Property" means improved property or improved chattels real, occupied or to be occupied by the purchaser as a dwelling, or an unimproved, subdivided lot or lots intended to be improved for residential purposes.

(e) Purchaser. -- "Purchaser" means a natural person who purchases property subject to a land installment contract, or any legal successor in interest to him regardless of whether the person has entered into an agreement as to extension, default, or refund.

(f) Vendor. -- "Vendor" means any person who makes a sale of property by means of a land installment contract.

HISTORY: An. Code 1957, art. 21, § 10-101; 1974, ch. 12, § 2; 1975, ch. 605; 1997, ch. 14, § 1.

MARYLAND LAW REVIEW. --For article discussing forfeiture under land installment contracts, see 9 Md. L. Rev. 99 (1948).
For article, "Survey of Developments in Maryland Law, 1984-85," see 45 Md. L. Rev. 836 (1986).

PURPOSE OF TITLE. --One purpose of this title was to provide a mechanism whereby a vendee would not lose the equity and interest he had built in his home in the event of default. Russ v. Barnes, 23 Md. App. 691, 329 A.2d 767 (1974).

APPLICABILITY TO CONTRACT NOT INVOLVING INSTALLMENT SALES. --The General Assembly never intended the definition of property provided by subsection (d) to apply to the disclosure requirements of a contract not involving installment sales. Harrison v. John F. Pilli & Sons, 321 Md. 336, 582 A.2d 1231 (1990).

LAND INSTALLMENT CONTRACT LAW IS REMEDIAL IN CHARACTER and intended to curb serious actual or potential evils. Hudson v. Maryland State Hous. Co., 207 Md. 320, 114 A.2d 421 (1955); Spruell v. Blythe, 215 Md. 117, 137 A.2d 183 (1957).
The General Assembly enacted the land installment contract law in an effort to curb serious actual or potential evils. Szaleski v. Goodman, 260 Md. 24, 271 A.2d 524 (1970).

THIS SUBTITLE IS VERY SIMILAR TO THE RETAIL INSTALLMENT SALES ACT (§§ 12-601 et seq. of the Commercial Law Article) in its requirements of setting out specified items in a certain order and manner and its definition of the final figure as the "principal balance." Falcone v. Palmer Ford, Inc., 242 Md. 487, 219 A.2d 808 (1966).

PROVISIONS OF THE RETAIL INSTALLMENT SALES ACT (§ 12-601 et seq. of the Commercial Law Article) cannot be imported into the Land Installment Contract Law. Hudson v. Maryland State Hous. Co., 207 Md. 320, 114 A.2d 421 (1955).

PAYMENTS REQUIRED TO BRING CONTRACT UNDER ACT. --When installment payments are all-inclusive, embodying both interest and principal, five or more of those payments will bring

a contract under the act if its other criteria are satisfied, but not when interest and principal payments are separately specified, unless there are at least five principal payments in addition to the down payment. Sidhu v. Shigo, 61 Md. App. 61, 484 A.2d 1033 (1984).

SUFFICIENT DESCRIPTION OF LAND. --As to what constitutes a sufficient description of real estate in land installment contracts, see Maryland State Hous. Co. v. Fish, 208 Md. 331, 118 A.2d 491 (1955).

VOID CONTRACT NOT A "LAND INSTALLMENT CONTRACT." --Since this section defines a "land installment contract" as a legally binding executory contract, the Land Installment Contract Law cannot be availed of by a vendor to enforce a contract void for indefiniteness. Szaleski v. Goodman, 260 Md. 24, 271 A.2d 524 (1970).

FAILURE TO COMPLY WITH RECORDING REQUIREMENTS OF AN INSTALLMENT CONTRACT -- Trial court erred in ruling in favor of a vendor in a dispute over property, because the agreement between the vendor and a purchaser was a land installment contract under (b), as the agreement allowed the purchaser to pay for the property in installments, and the vendor failed to record the agreement as required by § 10-102 of this subtitle, and thus the purchaser was entitled to a refund of principal and interest paid under the agreement. Whitaker v. Whitaker, 169 Md. App. 312, 901 A.2d 223 (2006).

PROPERTY FORFEITED GAVE SELLER UNDER INSTALLMENT LAND CONTRACT NO GREATER RIGHTS. --Where defendant used illegally laundered money to purchase real property from claimant under an installment land contract, and the property was forfeited, in the absence of foreclosure, allocation of funds for payment of mortgage on forfeited property fully compensated seller for his security interest in the forfeited property, and reoccupation did not constitute an implied bona fide repurchase. United States v. Schecter, 251 F.3d 490 (4th Cir. 2001).

PROPERTY HAVING A FAIR MARKET VALUE WAS REALIZED BY THE VENDOR upon execution of a standard land installment contract giving in personam rights in the nature of a mortgage. Kaufman v. Commissioner, 372 F.2d 789 (4th Cir. 1966).

HOMEOWNER'S "CIRCUIT BREAKER" TAX CREDIT MAY NOT BE GRANTED under former Article 81, § 12F-1 (now see §§ 9-102 and 9-104 of the Tax-Property Article), to an individual who has entered into an installment contract for the purchase of real property under this subtitle. 64 Op. Att'y Gen. 15 (1979).

QUOTED IN Harrison v. John F. Pilli & Sons, 78 Md. App. 199, 552 A.2d 971 (1989), vacated in part, 321 Md. 336, 582 A.2d 375 (1990); Becker v. State, 363 Md. 77, 767 A.2d 816 (2001).

STATED IN Collins v. Morris, 122 Md. App. 764, 716 A.2d 384 (1998).

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 1. LAND INSTALLMENT CONTRACTS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-102 (2006)

§ 10-102. Form and delivery of land installment contracts

(a) Signed writing by all parties containing terms of agreement necessary. -- Every land installment contract shall be evidenced by a contract signed by all parties to it and containing all the terms to which they have agreed.

(b) Vendor to give copy of instrument and purchaser to give receipt. -- At or before the time the purchaser signs the instrument, the vendor shall deliver to him an exact copy and the purchaser shall give the vendor a receipt showing that he has received the copy of the instrument. If the copy was not executed by the vendor at the time the purchaser signed, the vendor shall deliver a copy of the instrument signed by him within 15 days after he receives notice that the purchaser has signed and the purchaser shall give the vendor a receipt showing that he has received the copy. If the vendor fails to deliver the copy within 15 days, the contract signed by the purchaser is void at his option, and the vendor, immediately, on demand, shall refund to the purchaser all payments and deposits that have been made.

(c) Receipt. -- The receipt for the delivery of a copy of a contract shall be printed in 12-point bold type or larger, typewritten or written in legible handwriting. If contained in the contract, the receipt shall be printed, typewritten, or written immediately below the signature on the contract and shall be signed separately.

(d) Right of purchaser to cancel and receive refund until copy instrument is given him. -- Until the purchaser signs a land installment contract and receives a copy signed by the vendor, the purchaser has an unconditional right to cancel the contract and to receive immediate refund of all payments and deposits made on account of or in contemplation of the contract. A request for a refund operates to cancel the contract.

(e) Vendor to give purchaser receipt for payment or deposit. -- When any payment or deposit is accepted by the vendor from a purchaser, before the purchaser signs a land installment contract and receives a copy, the vendor immediately shall deliver to him a receipt, which clearly states in 12-point type or larger, in typewriting or in legible handwriting, his rights under subsection (d).

(f) Vendor to record contract. -- Within 15 days after the contract is signed by both the vendor and purchaser, the vendor shall cause the contract to be recorded among the land records of the county where the property lies and shall mail the recorder's receipt to the purchaser. This duty of recordation and mailing of receipt shall be written clearly or printed on the contract. Failure to do so, or to record as required under this section within the time stipulated, gives the purchaser the unconditional right to cancel the contract and to receive immediate refund of all payments and deposits made on account of or in contemplation of the contract, if the purchaser exercises the right to cancel before the vendor records the contract.

HISTORY: An. Code 1957, art. 21, § 10-102; 1974, ch. 12, § 2; 1991, ch. 283.

THIS SECTION HAS A STRINGENT PENALTY CLAUSE, though remedial in nature. Russ v. Barnes, 23 Md. App. 691, 329 A.2d 767 (1974).

COMPARISON OF THIS SECTION AND §§ 10-103 AND 10-107 OF THIS SUBTITLE. --A most

casual reading of the act will disclose the difference between this section and §§ 10-103 and 10-107 of this subtitle. In §§ 10-103 and 10-107 there is no specific provision that makes a failure to comply with their terms sufficient reason to render the contract voidable; nor is there any provision that states what the rights of the purchaser are for failure to comply therewith. On the other hand, subsection (d) of this section states, without qualification, that a failure to comply with it renders the contract voidable at the pleasure of the purchaser, and further states what his rights are upon his cancellation of the contract. Spruell v. Blythe, 215 Md. 117, 137 A.2d 183 (1958).

SCOPE OF SUBSECTION (D). --Subsection (d) of this section makes no provision whatever for an allowance to the seller of an amount equivalent to the reasonable rental value of the property during the period of the purchaser's occupancy. It provides in sweeping and all-inclusive terms for the return of all deposits and payments for complete noncompliance with the statute, and it makes no exceptions. Spruell v. Blythe, 215 Md. 117, 137 A.2d 183 (1958).

PURPOSE OF SUBSECTION (F). --Pursuant to subsection (f), the General Assembly intended to give the purchaser the right to cancel the contract and recover all payments if recording is not accomplished within the specified 15 days, provided that the election is made and communicated before recording is actually accomplished. D & Y, Inc. v. Winston, 320 Md. 534, 578 A.2d 1177 (1990).

VOID CONTRACT NOT A "LAND INSTALLMENT CONTRACT." --Since § 10-101 of this subtitle defines a "land installment contract" as a legally binding executory contract, the Land Installment Contract Law cannot be availed of by a vendor to enforce a contract void for indefiniteness. Szaleski v. Goodman, 260 Md. 24, 271 A.2d 524 (1970).

HENCE, RELIEF UNDER THIS SECTION NOT AVAILABLE TO PURCHASER UNDER UNENFORCEABLE CONTRACT. --A purchaser under an unenforceable contract cannot assert a right, such as a demand for the return of all of the payments he had made, which would not have been available to him but for the Land Installment Contract Law. Szaleski v. Goodman, 260 Md. 24, 271 A.2d 524 (1970).

BUT THE VENDOR UNDER A VOID CONTRACT MAY BE REQUIRED TO ACCOUNT TO THE PURCHASER for the difference between the total amount paid by the purchaser and the fair rental value of the property. Szaleski v. Goodman, 260 Md. 24, 271 A.2d 524 (1970).

FAILURE TO COMPLY WITH RECORDING REQUIREMENTS OF AN INSTALLMENT CONTRACT -- Trial court erred in ruling in favor of a vendor in a dispute over property, because the agreement between the vendor and a purchaser was a land installment contract under § 10-101(b) of this subtitle, as the agreement allowed the purchaser to pay for the property in installments, and the vendor failed to record the agreement as required by this section, and thus the purchaser was entitled to a refund of principal and interest paid under the agreement. Whitaker v. Whitaker, 169 Md. App. 312, 901 A.2d 223 (2006).

RIGHT OF PURCHASER TO CANCEL NOT WAIVED. --Where the agreement for the purchase of real property came within the provisions of the Land Installment Contract Law but there never was any written contract, it was held that the enactment of subsection (d) of this section was a declaration of public policy of Maryland, that its provisions could not be waived and that the purchaser was entitled to refund of all payments made by her and to a lien upon the property to secure the same. Spruell v. Blythe, 215 Md. 117, 137 A.2d 183 (1958).

WHERE VENDOR AND PURCHASER SIGNED A LAND INSTALLMENT CONTRACT AND PURCHASER RECEIVED A COPY, purchaser could not take advantage of relief afforded by subsection (d) of this section. Szaleski v. Goodman, 260 Md. 24, 271 A.2d 524 (1970).

CONTRACT VOIDABLE AT OPTION OF PURCHASER. --The failure of the vendor to furnish the purchaser with a copy of the contract signed by the vendor within 15 days after notice that the purchaser has signed, and the failure of vendor to furnish the purchaser with a receipt in the form prescribed by subsection (e) of this section renders the contract voidable at the option of

the purchaser, but not void. Hudson v. Maryland State Hous. Co., 207 Md. 320, 114 A.2d 421 (1955).

CONTRACT SUBSTITUTED FOR VOIDABLE CONTRACT VALID. --The fact that first land installment contract was voidable under this section because of failure of vendor to furnish purchaser with copy within 15 days as required by subsection (b) of this section and failure to furnish purchaser with receipt in the form prescribed by subsection (e) of this section did not render second contract between the parties voidable where second contract was substituted for first and purchaser voluntarily, wilfully and knowingly entered into second contract. Hudson v. Maryland State Hous. Co., 207 Md. 320, 114 A.2d 421 (1955).

SECTION 226.23 OF THE FEDERAL TRUTH IN LENDING ACT REGULATIONS (12 C.F.R. § 226.23) does not concern recordation of instruments and it does not therefore conflict with or control subsection (f). D & Y, Inc. v. Winston, 74 Md. App. 157, 536 A.2d 1169 (1988), rev'd on other grounds, 320 Md. 534, 578 A.2d 1177 (1990).

QUOTED IN Bock v. Insurance Comm'r, 84 Md. App. 724, 581 A.2d 857 (1990); Collins v. Morris, 122 Md. App. 764, 716 A.2d 384 (1998).

CITED IN Dennis v. Mayor of Rockville, 286 Md. 184, 406 A.2d 284 (1979); Moxley v. Acker, 294 Md. 47, 447 A.2d 857 (1982); Brown v. Doug Griffith Dodge City, Inc., 52 Md. App. 687, 452 A.2d 984 (1982), cert. denied, 295 Md. 440 (1983).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 1. LAND INSTALLMENT CONTRACTS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-103 (2006)

§ 10-103. Contents of contract; application of payments; payments and mortgage when land sold

(a) Contents of contract generally. -- Every land installment contract shall contain all the following information:

(1) The full name, the place of residence, and post office address of every party to the contract;

(2) The date when signed by the purchaser;

(3) A legal description of the property covered by the contract;

(4) A disclosure, with respect to the six-month period prior to the date of purchase, of every transfer of title to the property, the sale price of each transfer, and the substantiated cost to the vendor of repairs or improvements;

(5) A provision that the vendee has the right to accelerate any installment payment;

(6) Provisions stating clearly (i) any collateral security taken for the purchaser's obligation under the contract, and (ii) whether or not the vendor has received any written notice from any public agency requiring any repairs or improvements to be made to the property described in the contract;

(7) The following notice in 12-point bold type or larger, typewritten or handwritten legibly directly above the space reserved in the contract for the signature of the purchaser:

Notice to Purchaser

You are entitled to a copy of this contract at the
time you sign it;

(8) The following notice, in 12-point bold type or larger, typewritten or handwritten legibly, directly below the space reserved in the contract for the signature of the purchaser acknowledging the receipt of a copy of the contract:

In the event of default,
the purchaser may be liable to a default judgment.

(b) Contents of contract listed in tabular form. -- The contract also shall recite in simple tabular form, the following separate items in the following order:

(1) The cash price of the property sold;

(2) Any charge or fee for any service which is included in the contract separate from the cash price;

(3) The cost to the purchaser of any insurance coverage from the date of the contract, for the payment of which credit is to be extended to the purchaser, the amount or extent and expiration date of the coverage, a concise description of the type of coverage, and every party to whom the insurance is payable;

(4) The sum of items (1), (2), and (3);

(5) The amount of any down payment on behalf of the purchaser;

(6) The principal balance owed, which is the sum of item (4) less item (5);

(7) The amount and time of each installment payment and the total number of periodic installments;

(8) The interest on the unpaid balance not exceeding the percentage per annum allowed by § 12-404 (b) of the Commercial Law Article, provided that points may not be charged;

(9) Any ground rent, taxes, and other public charges.

(c) Application of payments. -- The installment payments first shall be applied by the vendor to the payment of:

(1) Taxes, assessments, and other public charges levied or assessed against the property and paid by the vendor;

(2) Any ground rent paid by the vendor;

(3) Insurance premiums on the property paid by the vendor;

(4) Interest on unpaid balance owed by the purchaser at a rate not exceeding the percentage per annum allowed by § 12-404 (b) of the Commercial Law Article;

(5) Principal balance owed by purchaser.

(d) Amount of mortgage and payments when land is sold. -- No vendor may place or hold any mortgage on any property sold under a land installment contract in any amount greater than the balance due under the contract, nor may any mortgage require payments in excess of the periodic payments required under the contract.

HISTORY: An. Code 1957, art. 21, § 10-103; 1974, ch. 12, § 2; 1975, ch. 605; ch. 817, § 9; 1981, chs. 598, 781; 1982, ch. 17, § 7; 1997, ch. 14, § 1; 2002, ch. 10, § 19.

NOTES:
EDITOR'S NOTE. --Section 10, ch. 19, Acts 2002, provides that "the publisher of the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, "of the Code" has been deleted following "Article" in (b) (8) and (c) (4).

PURCHASER MAY WAIVE RIGHTS. --A purchaser under a land installment contract may waive whatever rights may have accrued to him by reason of deficiencies of the contract and information herein contained with regard to insurance. Hudson v. Maryland State Hous. Co., 207 Md. 320, 114 A.2d 421 (1955).

STATED IN Collins v. Morris, 122 Md. App. 764, 716 A.2d 384 (1998).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 1. LAND INSTALLMENT CONTRACTS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-104 (2006)

§ 10-104. Recordation

Every land installment contract shall be indexed and recorded among the land records in the office of the clerk of the circuit court of the county where the property which is the subject of the contract is located. With regard to any person who claims any interest in or lien on the property arising after the time of recording, the property is deemed to be held from the time of recording by the then record owner of fee simple or leasehold title to the property, subject to the rights and interest of the purchaser of the contract as stated in the contract.

HISTORY: An. Code 1957, art. 21, § 10-104; 1974, ch. 12, § 2; 1982, ch. 820, § 3.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 1. LAND INSTALLMENT CONTRACTS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-105 (2006)

§ 10-105. Purchase money mortgage

(a) Right to demand grant upon execution of mortgage; expenses. -- If the contract fixes no earlier period, when 40 percent or more of the original cash price of the property is paid, the purchaser may demand a grant of the premises mentioned in the contract, on the condition that he execute a purchase money mortgage to the vendor, or to a mortgagee procured by the purchaser. If any mortgage is executed pursuant to the purchaser's demand for grant under this subsection, the purchaser is liable for expenses, such as title search, drawing deed and mortgage, one half of cost of federal and State revenue stamps, notary fees, recording, reasonable building association fees, judgment reports, and tax lien report.

(b) Payments. -- The periodic principal and interest payments required by the mortgage may not exceed the periodic principal and interest payments otherwise required by the land installment contract, except with the consent of the mortgagor. This consent may be evidenced by the execution of a mortgage.

(c) Covenants; remedies on default. -- The mortgagee may require the usual covenants by the mortgagor for the payment of the mortgage debt, the taxes on the mortgaged property, any ground rent, and the premiums on fire and extended coverage insurance in an amount equal to the mortgage indebtedness, if obtainable, and if not, then in the highest amount of insurance obtainable. The mortgage also may require the usual remedies on default by way of a power of sale to the mortgagee, his assigns, or his attorney or assent to a decree for sale by the mortgagor pursuant to the Maryland Rules, or both.

(d) Deed and mortgage supersedes land installment contract. -- The deed and mortgage executed pursuant to this section shall supersede entirely the land installment contract.

HISTORY: An. Code 1957, art. 21, § 10-103; 1974, ch. 12, § 2.

CITED IN Russ v. Barnes, 23 Md. App. 691, 329 A.2d 767 (1974); Sidhu v. Shigo, 61 Md. App. 61, 484 A.2d 1033 (1984); Collins v. Morris, 122 Md. App. 764, 716 A.2d 384 (1998).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 1. LAND INSTALLMENT CONTRACTS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-106 (2006)

§ 10-106. Compliance with terms and conditions by purchaser on or before date designated in notice to terminate

If the purchaser, on or before the date designated in a notice from the vendor of intention to terminate a land installment contract due to the purchaser's default, complies with the terms and conditions in respect to which the default has occurred, the contract continues in full force and effect, notwithstanding any contrary provision in the contract.

HISTORY: An. Code 1957, art. 21, § 10-105; 1974, ch. 12, § 2.

CITED IN Sidhu v. Shigo, 61 Md. App. 61, 484 A.2d 1033 (1984).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY

TITLE 10. SALES OF PROPERTY
SUBTITLE 1. LAND INSTALLMENT CONTRACTS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-107 (2006)

§ 10-107. Statement to be furnished by vendor

(a) Furnishing of statement required. -- Every vendor under a land installment contract shall mail or deliver a statement to the purchaser:

(1) When 40 percent of the original cash price has been paid; and

(2) (i) Annually within 30 days of January 1; or

(ii) On demand of the purchaser no more than twice a year.

(b) Contents of statement. -- The statement shall show:

(1) The total amount paid for any ground rent, insurance, taxes, and any other periodic charge;

(2) The amount credited to principal and interest; and

(3) The balance due.

HISTORY: An. Code 1957, art. 21, § 10-106; 1974, ch. 12, § 2; 1976, ch. 272.

FAILURE TO FURNISH STATEMENT DOES NOT INVALIDATE CONTRACT. --The failure of vendor subsequent to execution of an installment land contract to furnish purchaser with a statement under this section pertaining to payments does not invalidate the contract, because there is no provision which undertakes to invalidate the contract because of vendor's failure to deliver statements subsequent to delivery of the receipt, etc., required by § 10-102 of this subtitle. Hudson v. Maryland State Hous. Co., 207 Md. 320, 114 A.2d 421 (1955).

This section does not impose the penalty of making the contract either void or voidable for failure to comply fully with the terms of this section. Hudson v. Maryland State Hous. Co., 207 Md. 320, 114 A.2d 421 (1955).

APPLIED IN Russ v. Barnes, 23 Md. App. 691, 329 A.2d 767 (1974).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 1. LAND INSTALLMENT CONTRACTS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-108 (2006)

§ 10-108. Right of purchaser to enforce provisions of subtitle

If a vendor fails to comply with the provisions of § 10-105 or § 10-107 of this subtitle, the purchaser has the right to enforce these sections in a court of equity. If the court finds that the vendor has failed to comply with these provisions, the court shall grant appropriate relief and shall require the vendor to assume all court costs as well as a reasonable counsel fee for the purchaser's attorney.

HISTORY: An. Code 1957, art. 21, § 10-107; 1974, ch. 12, § 2; 1976, ch. 272.

APPLICATION TO ORAL CONTRACTS. --This section applies to any legally binding executory agreement meeting the definition in § 10-101 (b) of this subtitle, whether or not in writing. Collins v. Morris, 122 Md. App. 764, 716 A.2d 384 (1998).

ATTORNEY'S FEES. --This section requires the award of attorney's fees only if relief is granted pursuant to this section. Collins v. Morris, 122 Md. App. 764, 716 A.2d 384 (1998).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 1. LAND INSTALLMENT CONTRACTS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-109 (2006)

§ 10-109. Disclosure of estimated cost of deferred water and sewer charges

Repealed by Acts 1981, ch. 262, effective Jan. 1, 1982.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

[Repealed/Reserved]

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.

a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 1. LAND INSTALLMENT CONTRACTS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-110 (2006)

§ 10-110. Notice in contract of sale of property in Prince George's County creating subdivision

Transferred.

NOTES:
EDITOR'S NOTE. --Chapter 6, Acts 1990, approved Feb. 16, 1990, and effective from date of passage, transferred this section to be § 10-601 of this title; however, due to the addition of a new Subtitle 6 to Title 10 by ch. 223, Acts 1990, former § 10-110 of this subtitle has been transferred to be § 10-701 of this title under the subtitle heading "Subtitle 7. Contracts of Sale -- Miscellaneous Provisions."

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Md. *Real Property* Code

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 2. EXPRESS AND IMPLIED WARRANTIES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-202 (2006)

§ 10-202. Creation of express warranties; exclusion or modification of express warranty

(a) Creation of warranties. -- Express warranties by a vendor are created as follows:

(1) Any written affirmation of fact or promise which relates to the improvement and is made a part of the basis of the bargain between the vendor and the purchaser creates an express

warranty that the improvement conforms to the affirmation or promise.

(2) Any written description of the improvement, including plans and specifications of it, which is made a part of the basis of the bargain between the vendor and the purchaser creates an express warranty that the improvement conforms to the description.

(3) Any sample or model which is made a part of the basis of the bargain between the vendor and the purchaser creates an express warranty that the improvement conforms substantially to the sample or model.

(b) Formal words unnecessary. -- To create an express warranty, it is not necessary to use formal words, such as "warranty" or "guarantee," or that there be a specific intention to make a warranty. However, an affirmation merely of the value of the improvement or a statement purporting to be an opinion or commendation of the improvement does not create a warranty.

(c) Exclusion or modification of express warranty. -- If an express warranty is made under subsection (a), neither words in the contract of sale, the deed, other instrument of grant, nor merger of the contract of sale into the deed or any other instrument of grant is effective to exclude or modify the warranty. At any time after the execution of the contract of sale, the warranty may be excluded or modified wholly or partially by a written instrument, signed by the purchaser, setting forth in detail the warranty to be excluded or modified, the consent of the purchaser to exclusion or modification, and the terms of the new agreement with respect to it.

HISTORY: An. Code 1957, art. 21, § 10-202; 1974, ch. 12, § 2.

MARYLAND LAW REVIEW. --For comment, "Maryland's Consumer Protection Act: A Private Cause of Action for Unfair or Deceptive Trade Practices," see 38 Md. L. Rev. 733 (1979).

TITLE 11 WARRANTIES ARE ADDITIONAL, NOT EXCLUSIVE, REMEDIES. --Warranties contained in this section and § 10-203 of this subtitle operate concurrently with the warranties contained in § 11-131 of this article, so aggrieved purchasers may proceed under either or both theories of recovery. Milton Co. v. Council of Unit Owners of Bentley Place Condominium, 354 Md. 264, 729 A.2d 981 (1999).

LIMITATION OF ACTIONS RELATING TO CONDOMINIUMS. --The two-year limitation of actions in § 10-204 of this subtitle applied to condominium units prior to July 1, 1981, the effective date of Title 11 of this article. Antigua Condominium Ass'n v. Melba Investors Atl., Inc., 307 Md. 700, 517 A.2d 75 (1986).

APPLIED IN Hartford Accident & Indem. Co. v. Scarlett Harbor Assocs., 109 Md. App. 217, 674 A.2d 106 (1996).

CITED IN Krol v. York Terrace Bldg., Inc., 35 Md. App. 321, 370 A.2d 589 (1977); Starfish Condominium Ass'n v. Yorkridge Serv. Corp., 292 Md. 557, 440 A.2d 373 (1982).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 2. EXPRESS AND IMPLIED WARRANTIES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-203 (2006)

§ 10-203. Implied warranties

(a) Warranties which are implied. -- Except as provided in subsection (b) or unless excluded or modified pursuant to subsection (d), in every sale, warranties are implied that, at the time of the delivery of the deed to a completed improvement or at the time of completion of an improvement not completed when the deed is delivered, the improvement is:

(1) Free from faulty materials;

(2) Constructed according to sound engineering standards;

(3) Constructed in a workmanlike manner; and

(4) Fit for habitation.

(b) Exception. -- The warranties of subsection (a) do not apply to any condition that an inspection of the premises would reveal to a reasonably diligent purchaser at the time the contract is signed.

(c) Implied warranty of fitness for a particular purpose. -- If the purchaser, expressly or by implication, makes known to the vendor the particular purpose for which the improvement is required, and it appears that the purchaser relies on the vendor's skill and judgment, there is an implied warranty that the improvement is reasonably fit for the purpose.

(d) Exclusion or modification of implied warranty. -- Neither words in the contract of sale, nor the deed, nor merger of the contract of sale into the deed is effective to exclude or modify any implied warranty. However, if the contract of sale pertains to an improvement then completed, an implied warranty may be excluded or modified wholly or partially by a written instrument, signed by the purchaser, setting forth in detail the warranty to be excluded or modified, the consent of the purchaser to exclusion or modification, and the terms of the new agreement with respect to it.

HISTORY: An. Code 1957, art. 21, § 10-203; 1974, ch. 12, § 2; 1976, ch. 572; 1999, ch. 200.

MARYLAND LAW REVIEW. --For comment, "Maryland's Consumer Protection Act: A Private Cause of Action for Unfair or Deceptive Trade Practices," see 38 Md. L. Rev. 733 (1979).
For survey, "Developments in Maryland Law, 1992-93," see 53 Md. L. Rev. 616 (1994).

UNIVERSITY OF BALTIMORE LAW REVIEW. --For comment discussing cases and legislation imposing implied warranties in sales of residential condominiums, see 14 U. Balt. L. Rev. 116 (1984).

LEGISLATIVE INTENT. --The General Assembly, though not imposing liability without fault and providing for exemption through specific contractual agreement, nonetheless indicated its intent that because the vendor has a superior knowledge of the structure it had built or sold and profited by receiving a fair price, as between it and the innocent purchaser, the purchaser should be protected from latent defects that render his new dwelling not "fit for habitation."

Loch Hill Constr. Co. v. Fricke, 284 Md. 708, 399 A.2d 883 (1979).

SECTION DEFINES SCOPE OF IMPLIED WARRANTIES IN SALE OF NEW HOUSE. Loch Hill Constr. Co. v. Fricke, 284 Md. 708, 399 A.2d 883 (1979).

THIS SECTION AND § 10-204 (B) OF THIS SUBTITLE MUST BE READ TOGETHER. Krol v. York Terrace Bldg., Inc., 35 Md. App. 321, 370 A.2d 589 (1977).

"SALE," as used in this section, means a sale from a vendor to a purchaser. Starfish Condominium Ass'n v. Yorkridge Serv. Corp., 295 Md. 693, 458 A.2d 805 (1983).

IMPLIED WARRANTIES UNDER THIS SECTION RUN ONLY TO ORIGINAL PURCHASERS of condominium units. Starfish Condominium Ass'n v. Yorkridge Serv. Corp., 295 Md. 693, 458 A.2d 805 (1983).

NARROW READING OF SUBSECTION (A) FRUSTRATES LEGISLATIVE PURPOSE. --To read subsection (a) of this section as narrowing the scope of the protection afforded the purchaser would totally frustrate the purpose of the General Assembly in protecting the buyer from any latent defect that, although apparently not in existence at the time of possession or delivery of the deed, nonetheless becomes patent during the first year of occupancy. Loch Hill Constr. Co. v. Fricke, 284 Md. 708, 399 A.2d 883 (1979).

REASONABLENESS TEST. --In determining whether an existing condition, relating to a new dwelling, renders it uninhabitable under subsection (a) (4) of this section, the test is one of reasonableness. Loch Hill Constr. Co. v. Fricke, 284 Md. 708, 399 A.2d 883 (1979).

TITLE 11 WARRANTIES ARE ADDITIONAL, NOT EXCLUSIVE, REMEDIES. --Title 11 remedies for breach of warranties are in addition to, not in place of, existing Title 10 warranty remedies. Milton Co. v. Council of Unit Owners, 121 Md. App. 100, 708 A.2d 1047 (1998), aff'd, 354 Md. 264, 729 A.2d 981 (1999).

CONSTRUCTION OF RETAINING WALLS. --Warranties under this section include work done by the builder on retaining walls, even though such work was not in or on the dwelling house. Andrulis v. Levin Constr. Corp., 331 Md. 354, 628 A.2d 197 (1993).

CONDITIONS THAT MAY RENDER RESIDENCE UNINHABITABLE are not only those caused by structural defects resulting from material or workmanship failure, but also include those that relate to characteristics of the site upon which the new dwelling is built. Loch Hill Constr. Co. v. Fricke, 284 Md. 708, 399 A.2d 883 (1979).

NONCOMPLIANCE WITH BUILDING CODE REQUIREMENT. --Although compliance with an applicable building code requirement is an implied contractual condition, such noncompliance, in and of itself, does not breach the implied warranty of habitability. Loch Hill Constr. Co. v. Fricke, 284 Md. 708, 399 A.2d 883 (1979).

FAILURE OF ADEQUATE WATER SUPPLY VIOLATES SUBSECTION (A) (4). --The very failure of an adequate water supply in a newly-constructed house less than two weeks after possession of the house is sufficient evidence that the house was not fit for habitation. Krol v. York Terrace Bldg., Inc., 35 Md. App. 321, 370 A.2d 589 (1977).

Unless exempted or excluded by this section, a new dwelling that is without a proper supply of water breaches a vendor's implied warranty of habitability. Loch Hill Constr. Co. v. Fricke, 284 Md. 708, 399 A.2d 883 (1979).

INSPECTION OF WELL NOT EXCEPTED BY SUBSECTION (B). --Whether a well will properly supply a new residence with water is not normally a condition that an inspection of a premises would reveal to a reasonably diligent purchaser at the time the contract is signed, and thus would not be excepted by subsection (b) of this section from the implied warranties of this section. Loch Hill Constr. Co. v. Fricke, 284 Md. 708, 399 A.2d 883 (1979).

LIMITATION OF ACTIONS RELATING TO CONDOMINIUMS. --The two-year limitation of actions in § 10-204 of this subtitle applied to condominium units prior to July 1, 1981, the effective date of Title 11 of this article. Antigua Condominium Ass'n v. Melba Investors Atl., Inc., 307 Md. 700, 517 A.2d 75 (1986).

UNDER THE "DISCOVERY RULE" PLAINTIFFS' CLAIMS WERE TIME-BARRED under § 10-204 (d) of this subtitle, because the running of the statute of limitations commenced when plaintiffs first discovered that their respective driveways had been damaged, not five months later when they discovered the purported cause of the damage. Lumsden v. Design Tech Builders, Inc., 358 Md. 435, 749 A.2d 796 (2000).

EXCLUSION PROVISION HELD INSUFFICIENT UNDER SUBSECTION (D). --A provision in the form of contract of sale used in sales to unit owners which reads: "The Unit and the appliances and fixtures contained therein are sold 'as is' and except as may be provided for on exhibit 'B' attached hereto, the Seller is under no obligation to decorate, repaint, replace or repair any item or matter contained therein," where there was no standard exhibit "B," does not satisfy the requirements of subsection (d) of this section. Starfish Condominium Ass'n v. Yorkridge Serv. Corp., 295 Md. 693, 458 A.2d 805 (1983).

MERE SHOWING BY HOMEOWNER THAT HIS WELL DID NOT PRODUCE SUFFICIENT WATER does not preclude the vendor from demonstrating that there was no warranty violation on its part. Loch Hill Constr. Co. v. Fricke, 284 Md. 708, 399 A.2d 883 (1979).

HOMES NOT UNFIT FOR HABITATION UNDER (A)(4). --Plaintiffs' homes were fit for habitation as a matter of law, and the minor inconveniences resulting from the methane detectors did not rise to the level of making plaintiffs' homes unfit for habitation pursuant to § 10-203(a)(4). Adams v. NVR Homes, Inc., 135 F. Supp. 2d 675 (D. Md. 2001).

DAMAGES. --Unless the vendor can satisfy the trier of fact by probative evidence that the absence of a proper water supply following the transfer of title resulted solely from acts of another for which the vendor was not responsible, or was caused by a phenomenon of such suddenness and magnitude that it can properly be classified as an "act of God," establishing such a water shortage entitles the purchaser to a verdict for the damages he suffered. Loch Hill Constr. Co. v. Fricke, 284 Md. 708, 399 A.2d 883 (1979).

APPLIED IN Hartford Accident & Indem. Co. v. Scarlett Harbor Assocs., 109 Md. App. 217, 674 A.2d 106 (1996).

STATED IN Hall v. Lovell Regency Homes Ltd. Partnership, 121 Md. App. 1, 708 A.2d 344 (1998), cert. denied, 350 Md. 487, 713 A.2d 980 (1998).

CITED IN Bay State Ins. Co. v. Hill, 34 Md. App. 593, 368 A.2d 1024 (1977); Starfish Condominium Ass'n v. Yorkridge Serv. Corp., 292 Md. 557, 440 A.2d 373 (1982); Council of Co-Owners Atlantis Condominium, Inc. v. Whiting-Turning Contracting Co., 308 Md. 18, 517 A.2d 336 (1986); Morris v. Osmose Wood Preserving, 340 Md. 519, 667 A.2d 624 (1995).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 2. EXPRESS AND IMPLIED WARRANTIES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-204 (2006)

§ 10-204. Breach of warranty; expiration of warranty; limitation of actions

(a) Breach of warranty. -- If any warranty provided for in this subtitle is breached, the court may award legal or equitable relief, or both, as justice requires.

(b) Expiration of warranty. -- Unless an express warranty specifies a longer period of time, the warranties provided for in this subtitle expire:

(1) In the case of a dwelling completed at the time of the delivery of the deed to the original purchaser, one year after the delivery or after the taking of possession by the original purchaser, whichever occurs first;

(2) In the case of a dwelling not completed at the time of delivery of the deed to the original purchaser, one year after the date of the completion or taking of possession by the original purchaser, whichever occurs first; and

(3) In the case of structural defects, two years after the date of completion, delivery, or taking possession, whichever occurs first.

(c) Same -- Subsequent sale of dwelling. -- The warranties provided under this section do not expire on the subsequent sale of a dwelling by the original purchaser to a subsequent purchaser, but continue to protect the subsequent purchaser until the warranties provided under subsection (b) of this section expire. The warranties provided under this section do not apply to any defect caused by the original purchaser.

(d) Limitations of actions. -- Any action arising under this subtitle shall be commenced within two years after the defect was discovered or should have been discovered or within two years after the expiration of the warranty, whichever occurs first.

HISTORY: An. Code 1957, art. 21, § 10-204; 1974, ch. 12, § 2; 1985, ch. 761; 1990, ch. 223; 2002, ch. 19, § 10.

NOTES:
EDITOR'S NOTE. --Section 10, ch. 19, Acts 2002, provides that "the publisher of the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, "two" has been substituted for "2" in (b) (3).

MARYLAND LAW REVIEW. --For comment discussing sovereign immunity from statutes of limitation in Maryland, see 46 Md. L. Rev. 408 (1987).

UNIVERSITY OF BALTIMORE LAW REVIEW. --For comment discussing cases and legislation imposing implied warranties in sales of residential condominiums, see 14 U. Balt. L. Rev. 116 (1984).

SUBSECTION (B) READ TOGETHER WITH § 10-203 OF THIS SUBTITLE. --Subsection (b) of this section, which sets forth the life of the warranty, is part of the statutory scheme and must be read together with § 10-203 of this subtitle. Krol v. York Terrace Bldg., Inc., 35 Md. App. 321, 370 A.2d 589 (1977).

LIMITATION OF ACTIONS RELATING TO CONDOMINIUMS. --The two-year limitation of actions in this section applied to condominium units prior to July 1, 1981, the effective date of Title 11 of this article. Antigua Condominium Ass'n v. Melba Investors Atl., Inc., 307 Md. 700, 517 A.2d 75 (1986).

PERIOD OF LIMITATIONS RUNS FROM DATE OF BREACH. --Where there was privity of contract between the parties, the period of limitations begins to run from the date of the breach, for it is then that the cause of action accrued and becomes enforceable. Gensler v. Korb Roofers, Inc., 37 Md. App. 538, 378 A.2d 180 (1977).

ACTION UNTIMELY. --Where a breach of warranty occurred in July, 1973, so that limitations began to run at that time, plaintiff had until July, 1975, to institute his cause of action in warranty, but because the original declaration was not brought until May, 1976, plaintiff is barred from recovering in that cause. Gensler v. Korb Roofers, Inc., 37 Md. App. 538, 378 A.2d 180 (1977).

UNDER THE "DISCOVERY RULE" PLAINTIFFS' CLAIMS WERE TIME-BARRED under subsection (d) of this section, because the running of the statute of limitations commenced when plaintiffs first discovered that their respective driveways had been damaged, not five months later when they discovered the purported cause of the damage. Lumsden v. Design Tech Builders, Inc., 358 Md. 435, 749 A.2d 796 (2000).

APPLIED IN Potterton v. Ryland Group, Inc., 289 Md. 371, 424 A.2d 761 (1981); Georgia-Pacific Corp. v. Benjamin, 394 Md. 59, 904 A.2d 511 (2006).

STATED IN Milton Co. v. Council of Unit Owners, 121 Md. App. 100, 708 A.2d 1047 (1998), aff'd, 354 Md. 264, 729 A.2d 981 (1999).

CITED IN Bay State Ins. Co. v. Hill, 34 Md. App. 593, 368 A.2d 1024 (1977); Loch Hill Constr. Co. v. Fricke, 284 Md. 708, 399 A.2d 883 (1979); Hartford Accident & Indem. Co. v. Scarlett Harbor Assocs., 109 Md. App. 217, 674 A.2d 106 (1996); Greene Tree Home Owners Ass'n v. Greene Tree Assocs., 358 Md. 453, 749 A.2d 806 (2000).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 2. EXPRESS AND IMPLIED WARRANTIES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-205 (2006)

§ 10-205. Grant to intermediate purchaser to evade liability

If a vendor grants an improvement to an intermediate purchaser to evade any liability to a user and purchaser imposed by this subtitle, the vendor is liable on the subsequent sale of the improvement by the intermediate purchaser as if the subsequent sale had been effectuated by the vendor without regard to the intervening grant.

HISTORY: An. Code 1957, art. 21, § 10-205; 1974, ch. 12, § 2; 1986, ch. 360.

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "Common Law Doctrine of Merger: The Exceptions Are the Rule," see 13 U. Balt. L. Rev. 19 (1983).
For article, "Residential Real Estate Transactions: A Comparison of the Uniform Land Transactions Act and Maryland Law," see 13 U. Balt. L. Rev. 43 (1983).

QUOTED IN Starfish Condominium Ass'n v. Yorkridge Serv. Corp., 295 Md. 693, 458 A.2d 805 (1983).

CITED IN Krol v. York Terrace Bldg., Inc., 35 Md. App. 321, 370 A.2d 589 (1977).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 3. DEPOSITS ON NEW HOMES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-301 (2006)

§ 10-301. Escrow accounts, surety bonds or irrevocable letters of credit to be maintained by vendor or builder receiving deposit

(a) When required. -- If, in connection with the sale and purchase of a new single-family residential unit which is not completed at the time of contracting the sale, the vendor or builder obligates the purchaser to pay and the vendor or builder receives any sum of money before completion of the unit and grant of the realty to the purchaser, the builder or vendor shall:

(1) Deposit or hold the sum in an escrow account segregated from all other funds of the vendor or builder to assure the return of the sum to the purchaser in the event the purchaser becomes entitled to a return of the sum;

(2) Obtain and maintain a corporate surety bond in the form and in the amounts set forth in § 10-302 of this subtitle, conditioned on the return of the sum to the purchaser in the event the purchaser becomes entitled to the return of the money; or

(3) Obtain and maintain an irrevocable letter of credit issued by a Maryland bank in the form and in the amounts set forth in § 10-303 of this subtitle.

(b) Maintenance until certain events. -- The vendor or builder shall maintain the escrow account, surety bond, or irrevocable letter of credit until the happening of the earlier of:

(1) The granting of a deed to the property on which the residential unit is located to the purchaser;

(2) The return of the sum of money to the purchaser; or

(3) The forfeiture of the sum by the purchaser, under the terms of the contract of sale relating to the purchase of the residential unit.

HISTORY: An. Code 1957, art. 21, § 10-301; 1974, ch. 12, § 2; 1976, ch. 272; 1985, ch. 732; 1987, ch. 309; 1989, ch. 563; 1995, ch. 58, § 2; 1998, ch. 144.

APPLIED IN Gindes v. Khan, 346 Md. 143, 695 A.2d 163 (1997).

STATED IN Att'y Griev. Comm'n v. Lazerow, 320 Md. 507, 578 A.2d 779 (1990).

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 3. DEPOSITS ON NEW HOMES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-301.1 (2006)

§ 10-301.1. Interest on and investment of trust moneys

(a) Deposit of trust moneys. -- A vendor or builder may deposit trust moneys in:

(1) A noninterest bearing checking account;

(2) One or more savings accounts; or

(3) Any combination of accounts in any bank or savings and loan association authorized by federal or State law to do business in the State.

(b) Investment of trust moneys in other investment vehicles. -- Trust moneys in the hands of

the vendor or builder may be invested in any other investment vehicle specified by the client or beneficial owner or as they and the licensee may agree.

HISTORY: 1985, ch. 732; 1987, ch. 309; 1995, ch. 58, § 2; 1998, ch. 144.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 3. DEPOSITS ON NEW HOMES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-302 (2006)

§ 10-302. Bond payable to State; deposit; form of bond; penalty of blanket bond

(a) Bond to be payable to State; deposit. -- The bond shall be payable to the State for the use and benefit of every person protected by the provisions of this subtitle. The vendor or purchaser shall deposit the bond with the Consumer Protection Division of the Office of the Attorney General.

(b) Form of surety bond generally. -- The corporate surety bond obtained pursuant to the provisions of § 10-301 (a) shall be in a form approved by the Consumer Protection Division of the Office of the Attorney General. The bond may be either in the form of an individual bond for each deposit accepted by a vendor or builder or if the total amount of money and deposits accepted by the builder or vendor exceeds $ 10,000, it may be in the form of a blanket bond assuring the return of the deposits received by the vendor or builder.

(c) Bond penalty in case of blanket bond. -- If the bond is a blanket bond, the penalty of the bond shall be in accordance with the following schedule:

Total Amount of Deposits Held	Penalty of Bond
(1) $ 10,000 to $ 75,000	Full amount of deposit held
(2) $ 75,000 to $ 200,000	$ 75,000

(3) $ 200,000 to $ 500,000	$ 200,000
(4) Over $ 500,000	$ 500,000

(d) Determination of total amount of deposits. -- For the purpose of determining the penalty of any blanket bond which the vendor or builder maintains in any calendar year, the total amount of deposits considered held by a vendor or builder shall be determined as of May 31 of any given calendar year and the penalty of the bond shall be in accordance with the amount of deposits held as of May 31.

HISTORY: An. Code 1957, art. 21, § 10-301; 1974, ch. 12, § 2; 1989, ch. 563; 1997, ch. 70, § 4; 1998, ch. 144; 2002, ch. 492.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 492, Acts 2002, effective July 1, 2002, substituted "the Consumer Protection Division of the Office of the Attorney General" for "the Department of Labor, Licensing, and Regulation" in the second sentence in (a) and in the first sentence in (b).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 3. DEPOSITS ON NEW HOMES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-303 (2006)

§ 10-303. Irrevocable letters of credit

(a) Requirements. -- An irrevocable letter of credit obtained under § 10-301 of this subtitle shall be:

(1) Payable to the Office of the Attorney General for the use and benefit of every person protected by the provisions of this subtitle; and

(2) In a form approved by the Consumer Protection Division of the Office of the Attorney General.

(b) Form. -- An irrevocable letter of credit may be either in the form of an individual letter of credit for each deposit accepted by a vendor or builder or if the total amount of money and deposits accepted by the builder exceeds $ 10,000, the letter of credit may be in the form of a blanket letter of credit assuring the return of the deposits received by the vendor or builder.

(c) Blanket letter of credit. -- If the letter of credit is a blanket letter of credit, the amount of the letter of credit shall be in accordance with the following schedule:

Total Amount of Deposits Held	Amount of Letter of Credit
(1) $ 10,000 to $ 75,000	Full amount of deposit held
(2) $ 75,000 to $ 200,000	$ 75,000
(3) $ 200,000 to $ 500,000	$ 200,000
(4) Over $ 500,000	$ 500,000

(d) Determination of amount. -- For the purpose of determining the amount of any blanket letter of credit which the vendor or builder maintains in any calendar year, the total amount of deposits considered held by a vendor or builder shall be determined as of May 31 of any given calendar year and the amount of the letter of credit shall be in accordance with the amount of deposits held as of May 31.

HISTORY: 1989, ch. 563; 1995, ch. 120, § 19; 1998, ch. 144; 2002, ch. 492.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 492, Acts 2002, effective July 1, 2002, substituted "the Office of the Attorney General" for "the Department of Labor, Licensing, and Regulation" in (a) (1); and substituted "the Consumer Protection Division of the Office of the Attorney General" for "the Department" in (a) (2).

EDITOR'S NOTE. --Chapter 563, Acts 1989, effective July 1, 1989, repealed former § 10-303 and enacted a new section in lieu thereof.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 3. DEPOSITS ON NEW HOMES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-303.1 (2006)

§ 10-303.1. Regulations

The Consumer Protection Division of the Office of the Attorney General shall adopt regulations for the administration of the provisions of this subtitle relating to bonds and letters of credit.

HISTORY: 1989, ch. 563; 1995, ch. 120, § 19; 1998, ch. 144; 2002, ch. 492.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 492, Acts 2002, effective July 1, 2002, substituted "The Consumer Protection Division of the Office of the Attorney General" for "The Department of Labor, Licensing, and Regulation."

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 3. DEPOSITS ON NEW HOMES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-304 (2006)

§ 10-304. Sales exempt from subtitle

The provisions of this subtitle do not apply to a sale by or through a licensed real estate broker in connection with which all sums of money in the nature of deposits, escrow money, or binder money are paid to a broker to be held in the escrow account of the broker.

HISTORY: An. Code 1957, art. 21, § 10-301; 1974, ch. 12, § 2; 1987, ch. 520; 1989, ch. 563.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***

*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 3. DEPOSITS ON NEW HOMES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-305 (2006)

§ 10-305. Penalties; unfair or deceptive trade practices

(a) Penalties. -- If a person willfully and knowingly fails to obtain and maintain a corporate surety bond or irrevocable letter of credit or to hold sums of money in an escrow account as required under this subtitle, the person is guilty of a felony and, on conviction, shall make restitution to the purchaser as determined by the court, and be subject to a fine not exceeding $ 10,000 or imprisonment not exceeding 15 years or both.

(b) Unfair or deceptive trade practices. -- In addition to any other penalty or relief afforded by law or equity, any conduct that fails to comply with this subtitle is an unfair or deceptive trade practice within the meaning of Title 13 of the Commercial Law Article and is subject to all of the provisions of that title except § 13-411 of the Commercial Law Article.

(c) Liability of corporate officers, directors, or employees. -- Any officer, director, or employee of a corporation, who knowingly participates in any act or omission which is part of the violation, is subject to the penalties of this section.

HISTORY: An. Code 1957, art. 21, § 10-301; 1974, ch. 12, § 2; 1989, ch. 563; 1995, ch. 569; 1997, ch. 14, § 1.

APPLIED IN Gindes v. Khan, 346 Md. 143, 695 A.2d 163 (1997).

CITED IN Att'y Griev. Comm'n v. Lazerow, 320 Md. 507, 578 A.2d 779 (1990).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 3. DEPOSITS ON NEW HOMES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-306 (2006)

§ 10-306. Disclosure forms

(a) Development; availability. -- The Division of Consumer Protection of the Office of the Attorney General shall develop and make available a standard new home disclosure form that advises purchasers of the purchasers' rights under this subtitle.

(b) Provision of copy to purchaser; signatures. -- Prior to the execution of any contract for the sale of a new home under this subtitle, the vendor or builder shall:

(1) Provide the purchaser with a copy of the new home disclosure form as provided in subsection (a) of this section; and

(2) Obtain the purchaser's signature certifying that the purchaser has received the disclosure form.

HISTORY: 1995, ch. 569.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 4. RECORDED LAND CONTRACTS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-401 (2006)

§ 10-401. Limitation on enforcement of recorded land contract

When the buyer is not in possession of the property, no recorded contract for the sale of the property is enforceable or constitutes an encumbrance of the title, as against persons other than the original parties, unless within five years after the date set out in the recorded contract for the delivery of the deed, an action or proceeding is commenced to enforce the contract. If no date for the delivery of the deed is designated in the recorded contract, any action or proceeding shall be commenced within five years after the date when, according to the terms of the recorded contract, the final payment or installment of the purchase price was required to be paid. The existence of a disability on the part of either party to the contract at the commencement of this five-year period does not operate to extend this five-year period.

HISTORY: An. Code 1957, art. 21, § 10-401; 1974, ch. 12, § 2.

NOTES:
CROSS REFERENCES. --As to application of this section, see § 15-102 of this article.

MARYLAND LAW REVIEW. --For comment discussing sovereign immunity from statutes of limitation in Maryland, see 46 Md. L. Rev. 408 (1987).

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 4. RECORDED LAND CONTRACTS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-402 (2006)

§ 10-402. Recorded options as notice

A recorded instrument, recorded modification, or any amendment of a recorded instrument or recorded modification creating an option to purchase property, or any memorandum of option recorded under § 3-101 (f) of this article ceases to be actual or constructive notice to any person or to put any person on inquiry as to existence or exercise of the option, if:

(1) The instrument according to its terms has expired;

(2) One year has elapsed since the time of expiration; and

(3) No grant or other instrument has been recorded showing that the option has been exercised.

HISTORY: An. Code 1957, art. 21, § 10-402; 1974, ch. 12, § 2; 1999, ch. 689.

NOTES:
CROSS REFERENCES. --As to application of this section, see § 15-102 of this article.

EDITOR'S NOTE. --Section 2, ch. 689, Acts 1999, provides that "this Act shall be construed only prospectively and may not be applied or interpreted to have any effect on or application to any memorandum of option recorded before October 1, 1999."

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 5. CUSTOM HOME PROTECTION ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-501 (2006)

§ 10-501. Definitions

(a) In general. -- In this subtitle the following words have the meanings indicated.

(b) Buyer. -- "Buyer" means any person who seeks or enters into a contract for the construction of a custom home.

(c) Custom home. -- "Custom home" means a single-family dwelling constructed for the buyer's residence on land currently or previously owned by the buyer.

(d) Custom home builder. -- "Custom home builder" means any person who seeks, enters into, or performs custom home contracts.

(e) Custom home contract. -- "Custom home contract" means any contract entered into with the buyer, with a value equal to or greater than $ 20,000, to furnish labor and material in connection with the construction, erection, or completion of a custom home. A custom home contract does not mean an agreement for work to be done by a licensed home improvement contractor and subject to the provisions of Maryland Home Improvement Law.

(f) Deposit. -- "Deposit" means any sum paid to a custom home builder at the time of the execution of a custom home contract.

(g) Draw schedule. -- "Draw schedule" means a form that sets forth with particularity the sum to which the custom home builder shall be entitled as progress payment on the custom home contract after certain specified items of work have been completed on the custom home.

(h) Person. -- "Person" includes an individual, corporation, business trust, estate, partnership, association, 2 or more persons having a joint or common interest, or any other legal or commercial entity.

HISTORY: 1986, ch. 853.

PURPOSE. --The purpose of the Maryland Custom Home Protection Act is to provide a specific remedy for custom home owners dealing with impecunious contractors. Schwartz v. State, 103 Md. App. 378, 653 A.2d 958 (1995), cert. denied, 339 Md. 168, 661 A.2d 701 (1995).

CUSTOM HOME BUILDER. --Builder who entered into a contract with the homeowners to finish building the exterior of the homeowners' log cabin home, where according to the contract the builder would supply the labor and the homeowners would supply the materials was actually a subcontractor to the homeowners' general contractor and not a "custom home builder" under (d). Thus, the homeowners could not assert a claim for a violation of the Maryland Custom Home Protection Act, § 10-501 et seq. of this subtitle, against the builder as the Act was not applicable to the parties. Deyesu v. Donhauser, 156 Md. App. 124, 846 A.2d 28 (2004), cert. denied, 382 Md. 685, 856 A.2d 721 (2004).

CUSTOM HOME CONTRACT. --Because the contract for a builder to complete the exterior of the homeowners' log home did not include materials, only the builder's labor necessary to assemble the materials already purchased by the homeowners, it was not a "custom home contract" subject to the Maryland Custom Home Protection Act, § 10-501 et seq. of this subtitle. Thus, the trial court correctly determined that the Act did not apply to the parties. Deyesu v. Donhauser, 156 Md. App. 124, 846 A.2d 28 (2004), cert. denied, 382 Md. 685, 856 A.2d 721 (2004).

CITED IN Hemelt v. Pontier, 165 Bankr. 797 (Bankr. D. Md. 1994).

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 5. CUSTOM HOME PROTECTION ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-502 (2006)

§ 10-502. Payments to custom home builders held in trust

Any consideration received by a custom home builder in connection with a custom home contract shall be held in trust for the benefit of the buyer. Payments made to subcontractors or suppliers in connection with the custom home contract shall be consistent with the trust.

HISTORY: 1986, ch. 853.

SPECIFIC PENALTY PRECLUDES PUNISHMENT AS FIDUCIARY. --As the General Assembly provided a specific penalty for custom home builders who violate this subtitle, defendant could not be punished as a fiduciary under a former similar version of § 7-113 of the Criminal Law Article. Schwartz v. State, 103 Md. App. 378, 653 A.2d 958 (1995), cert. denied, 339 Md. 168, 661 A.2d 701 (1995).

CITED IN Deyesu v. Donhauser, 156 Md. App. 124, 846 A.2d 28 (2004), cert. denied, 382 Md. 685, 856 A.2d 721 (2004).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.

a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 5. CUSTOM HOME PROTECTION ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-503 (2006)

§ 10-503. Same -- Presumption of appropriation in violation of trust

Except with the express written approval of the buyer not to pay, in the event a subcontractor or supplier fails, in the opinion of the custom home builder, to perform in accordance with the contract between the subcontractor or the supplier and the custom home builder, the failure of a custom home builder to pay or cause to be paid the lawful claims of any person furnishing labor or material, including fuel, within a reasonable period after the receipt from the buyer of consideration paid to satisfy the claims, shall create a rebuttable presumption that the consideration received by the custom home builder has been used or appropriated in violation of the trust established by this subtitle.

HISTORY: 1986, ch. 853.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 5. CUSTOM HOME PROTECTION ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-504 (2006)

§ 10-504. Escrow accounts

(a) When required; commingling funds; advance payments. --

(1) Except as provided under paragraph (4) of this subsection and in subsection (e) of this section, a custom home builder who receives consideration from a buyer in connection with

the performance of a custom home contract shall place the consideration into an escrow account to the extent that the consideration is a payment in advance of the completion of the labor or the receipt of the materials for which the consideration is paid.

(2) The escrow account under paragraph (1) of this subsection shall be separate and apart from the regular funds of the builder in order to assure that the advance payment in the escrow account can be returned to the buyer if the buyer becomes entitled to the return of the advance payment. However, a builder may place advance payments received in connection with more than one home into a single escrow account.

(3) If the advance payment under paragraph (1) of this subsection is made in the form of a check or draft, a custom home builder may accept the advance payment only in the name of the escrow account.

(4) If consideration received under the home contract in advance of the completion of the labor or the receipt of materials for which the consideration is paid does not total in excess of 5 percent of the home contract price, that consideration need not be placed in an escrow account under paragraph (1) of this subsection.

(b) Withdrawals. -- A custom home builder may make withdrawals from an escrow account established in compliance with subsection (a) (1) of this section solely for the purpose of:

(1) Returning all or a portion of the sum of money to the buyer;

(2) Paying documented claims of persons who have furnished labor or material, including fuel, according to the draw schedule in the custom home contract for which the funds were advanced;

(3) Paying a sum of money to the custom home builder if the buyer forfeits the sum under the terms of the contract of sale; or

(4) Final payment upon the issuance of an occupancy permit or possession.

(c) Accounts in lieu of escrow account. -- In lieu of the escrow account required under subsection (a) of this section, a custom home builder may establish and maintain a separate escrow account for each custom home contract for which he receives consideration that he would be required to place into escrow under subsection (a). Each individual escrow account shall require the signature of both the buyer and the custom home builder for any withdrawal. Deposits and withdrawals to and from this account shall be governed by the requirements of subsections (a) and (b) of this section.

(d) Same -- Surety bond. --

(1) In lieu of the escrow accounts required under subsection (a) or (c) of this section, a custom home builder may obtain and maintain a corporate surety bond in the form and in the amounts required of a vendor or builder under § 10-302 of this title.

(2) The surety bond obtained shall be conditioned on the return of the sum to the buyer in the event the buyer becomes entitled to the return of the money.

(3) The custom home builder shall maintain the surety bond until the custom home builder complies with § 9-114 of this article.

(e) Applicability of section. -- This section does not apply to:

(1) A custom home contract financed by a mortgage loan issued by a federally chartered financial institution or a financial institution regulated under the Financial Institutions Article; and

(2) A sale by or through a licensed real estate broker in connection with which all sums of money in the nature of deposits, escrow money, or binder money are paid to a broker to be held in the escrow account of the broker.

HISTORY: 1986, ch. 853; 1987, chs. 520, 529; 1995, ch. 569; 1998, ch. 144.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 5. CUSTOM HOME PROTECTION ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-505 (2006)

§ 10-505. Contracts between custom home builders and buyers

Every custom home contract between a custom home builder and the buyer must be in writing. The custom home contract shall:

(1) Include a draw schedule that shall be set forth on a separate sheet of paper and that shall be separately signed by the buyer and the custom home builder;

(2) Identify to the extent known the names of the primary subcontractors who will be working on the custom home;

(3) Expressly state that any and all changes that are to be made to the contract shall be recorded as "change orders" that specify the change in the work ordered and the effect of the change on the price of the house;

(4) Set forth in bold type whether or not the vendor or builder is covered by a warranty program guaranteed by a third party;

(5) Require the vendor or builder to deliver to the purchaser within 30 days after each progress payment a list of the subcontractors, suppliers, or materialmen who have provided more than $ 500 of goods or services to date and indicate which of them have been paid by the vendor or builder; and

(6) Require that the custom home builder provide waivers of liens from all applicable subcontractors, suppliers, or materialmen within a reasonable time after the final payment for the goods or services they provide.

HISTORY: 1986, ch. 853; 1995, ch. 569.

APPLICABILITY --Custom home builder under the Maryland Custom Home Protection Act, § 10-501 et seq. of this subtitle is a person who occupies the position of a general contractor with respect to the building of the home. Thus, the trial court was correct in determining that the Act was inapplicable concerning a dispute where the homeowners themselves were engaged in the process of building their log cabin home, and for all practical purposes acted as their own general contractor by purchasing the materials for the home, securing a loan from a bank, hiring the labor necessary to assemble the home, authorizing payments for that work, and obtaining all licenses and permits for the work. Deyesu v. Donhauser, 156 Md. App. 124, 846 A.2d 28 (2004), cert. denied, 382 Md. 685, 856 A.2d 721 (2004).

STATED IN DeReggi Constr. Co. v. Mate, 130 Md. App. 648, 747 A.2d 743 (2000).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 5. CUSTOM HOME PROTECTION ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-506 (2006)

§ 10-506. Contracts between custom home builders and buyers -- Disclosures

(a) Buyer's risk under mechanics' lien laws. --

(1) A custom home builder must include in each custom home contract a disclosure concerning the buyer's risk under mechanics' lien laws.

(2) The disclosure concerning the buyer's risk under mechanics' lien laws under paragraph (3) of this subsection shall:

(i) Be on a separate page of the custom home contract; and

(ii) Be separately signed by the buyer.

(3) The disclosure required under paragraph (1) of this subsection shall state:

"BUYER'S RISK UNDER MECHANICS' LIEN LAWS

Unless your builder pays each subcontractor, materialman, or supplier, the subcontractor, materialman, or supplier may become entitled to place a lien against your property in order to

ensure payment to the subcontractor, materialman, or supplier for services rendered or goods delivered on or to your home. This could mean that your home could be sold to satisfy the lien. Your builder is required by law to give you periodic reports that list the subcontractors, suppliers, and materialmen who have provided more than $ 500 of goods or services to your custom home, and indicate whether they have been paid. If at any time you have any questions or concerns about whether a subcontractor has been properly paid you should discuss them with your builder, your subcontractor, and your financing institution."

(b) Certification by builder. --

(1) A custom home builder shall include in each custom home contract a certification by the builder.

(2) The certification by the builder under paragraph (3) of this subsection shall be:

(i) On a separate page of the custom home contract; and

(ii) Separately signed by the buyer.

(3) Except as provided under paragraph (4) of this subsection, the certification required under paragraph (1) of this subsection shall state:

"CERTIFICATION BY BUILDER

I (name of builder) hereby certify that to the best of my knowledge, both I and any business entity in which I had an ownership interest in excess of 51 percent have not:

(1) Within the past 3 years been adjudged by a court of competent jurisdiction in Maryland to have failed to comply with any provision of the Custom Home Protection Act or the Consumer Protection Act as it applies to the construction of new homes; or

(2) Been adjudged liable for a final judgment in connection with a custom home contract, which judgment currently remains unsatisfied."

(4) If a custom home builder is unable to execute the certification under paragraph (2) of this subsection truthfully, then another certification shall be substituted, which shall state:

"CERTIFICATION BY BUILDER

I (name of builder) hereby certify that, to the best of my knowledge, the information provided below includes all instances in which I or any business entity in which I had an ownership interest in excess of 51 percent have:

(1) Within the past 3 years been adjudged by a court of competent jurisdiction in Maryland to have failed to comply with any provision of the Custom Home Protection Act or the Consumer Protection Act as it applies to the construction of a new home.

(2) Been adjudged liable for a currently unsatisfied final judgment in connection with a custom home contract.

Adverse adjudication(s):

( ).

Unsatisfied judgment(s):

( )."

(c) Escrow account requirement notice. --

(1) A custom home builder shall include in each custom home contract an escrow account requirement notice under paragraph (3) of this subsection.

(2) The escrow account requirement notice under paragraph (3) of this subsection shall:

(i) Be on a separate page of the custom home contract; and

(ii) Be separately signed by the buyer.

(3) The escrow account requirement notice required under paragraph (1) of this subsection shall state:

"ESCROW ACCOUNT REQUIREMENT

Unless your contract is financed by a mortgage issued by a federally chartered financial institution or a financial institution supervised under the Financial Institutions Article of the Annotated Code of Maryland, or unless all deposits, escrow money, binder money, or any other money paid in advance, or is paid to the licensed real estate broker, to be held in the escrow account of the broker, Maryland law requires that all consideration exceeding 5 percent of the total contract price which is paid by a buyer to a custom home builder in advance of the completion of the custom home shall be deposited in an escrow account and paid out of that account only for certain purposes specified by law. To ensure this, the law requires that your builder may only accept such payment in the name of the escrow account. Thus, you should make out your check to "(name of builder), escrow account". Records of payments out of this account must be carefully maintained by your builder, and the builder must permit you reasonable access to escrow account records. Your builder, however, may choose to establish a separate escrow account for your project which will require your signature for any withdrawals."

HISTORY: 1986, ch. 853; 1987, ch. 11, § 1; chs. 520, 529; 1988, ch. 6, § 1; 1989, ch. 5, § 1; 1995, ch. 569.

STATED IN DeReggi Constr. Co. v. Mate, 130 Md. App. 648, 747 A.2d 743 (2000).

CITED IN Deyesu v. Donhauser, 156 Md. App. 124, 846 A.2d 28 (2004), cert. denied, 382 Md. 685, 856 A.2d 721 (2004).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 5. CUSTOM HOME PROTECTION ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-507 (2006)

§ 10-507. Violations

(a) Conduct constituting unfair or deceptive trade practices. -- In addition to any other penalty provided elsewhere in the Annotated Code, any conduct that fails to comply with this subtitle, or any breach of any trust created by this subtitle, is:

(1) An unfair or deceptive trade practice within the meaning of Title 13 of the Commercial Law Article; and

(2) Is subject to all of the provisions of that title except § 13-411 of the Commercial Law Article.

(b) Penalties. --

(1) A person is guilty of a felony, if the person willfully and knowingly:

(i) Fails to obtain and maintain a corporate surety bond or to hold sums of money in an escrow account as required under this subtitle;

(ii) Fails to make a disclosure required under § 10-506 (b) (4) of this subtitle; or

(iii) Commits a breach of the trust provided in § 10-502 of this subtitle.

(2) A person convicted under paragraph (1) of this subsection shall make restitution to the purchaser as determined by the court and be subject to a fine not exceeding $ 10,000 or imprisonment not exceeding 15 years or both.

(3) Other than the conduct described in paragraph (1) of this subsection, any conduct that fails to comply with this subtitle, or any breach of any trust created by this subtitle, is a misdemeanor, and on conviction, any violator is subject to a fine not exceeding $ 1,000 or imprisonment not exceeding 1 year, or both.

(c) Injunctions. --

(1) Subject to the limitations under paragraph (2) of this subsection, a court may order, in addition to any other penalty provided elsewhere in the Annotated Code, that an individual violating this subtitle may not be permitted to seek, enter into, or perform any contract for the construction of real property in the State for a period of time to be specified by the court.

(2) A court may make an order under paragraph (1) of this subsection only if the court determines:

(i) That a criminal offense that resulted in financial losses to the victims has been committed by a violation of this subtitle or by a breach of any trust created by this subtitle; and

(ii) That it would not be inconsistent with a plan for restitution ordered in any other proceeding brought to enforce this subtitle.

HISTORY: 1986, ch. 853; 1995, ch. 569.

APPLICABILITY OF CONSUMER PROTECTION ACT --Because the trial court properly concluded that the Maryland Custom Home Protection Act, § 10-501 et seq. of this subtitle, did not apply to a case, it necessarily would have found no violation of the Maryland Consumer Protection Act, §§ 13-301 et seq. of the Commercial Law Article. Deyesu v. Donhauser, 156 Md. App. 124, 846 A.2d 28 (2004), cert. denied, 382 Md. 685, 856 A.2d 721 (2004).

PENALTY IS EXCLUSIVE. --The penalty provided in this section is exclusive. Schwartz v. State, 103 Md. App. 378, 653 A.2d 958 (1995), cert. denied, 339 Md. 168, 661 A.2d 701 (1995).

SPECIFIC PENALTY PRECLUDES PUNISHMENT AS FIDUCIARY. --As the General Assembly provided a specific penalty for custom home builders who violate this subtitle, defendant could not be punished as a fiduciary under a former similar version of § 7-113 of the Criminal Law Article. Schwartz v. State, 103 Md. App. 378, 653 A.2d 958 (1995), cert. denied, 339 Md. 168, 661 A.2d 701 (1995).

STATED IN DeReggi Constr. Co. v. Mate, 130 Md. App. 648, 747 A.2d 743 (2000).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 5. CUSTOM HOME PROTECTION ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-508 (2006)

§ 10-508. Applicability of subtitle

Repealed by Acts 1987, chs. 520 and 529, effective January 1, 1988.

NOTES:
EDITOR'S NOTE. --This section derived from ch. 853, Acts 1986.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

[Repealed/Reserved]

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 5. CUSTOM HOME PROTECTION ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-509 (2006)

§ 10-509. Citation of subtitle

This subtitle may be cited as the Maryland Custom Home Protection Act.

HISTORY: 1986, ch. 853.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 6. NEW HOME WARRANTIES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-601 (2006)

§ 10-601. Definitions

(a) In general. -- In this subtitle the following words have the meanings indicated.

(b) Appliances, fixtures and items of equipment. -- "Appliances, fixtures, and items of equipment" means furnaces, boilers, oil tanks and fittings, air purifiers, air handling equipment, ventilating fans, air conditioning equipment, water heaters, pumps, stoves, refrigerators, garbage disposals, compactors, dishwashers, automatic door openers, washers and dryers, bathtubs, sinks, toilets, faucets and fittings, lighting fixtures, circuit breakers, and other similar items.

(c) Builder. -- "Builder" means any person, corporation, partnership or other legal entity:

(1) That is engaged in the business of erecting or otherwise constructing a new home; or

(2) That purchases a completed new home for resale in the course of its business.

(d) Division. -- "Division" means the Consumer Protection Division of the Office of the Attorney General.

(e) Electrical systems. -- "Electrical systems" means all wiring, electrical boxes, switches, outlets and connections up to the public utility connection.

(f) Heating, cooling and ventilating systems. -- "Heating, cooling, and ventilating systems" means all duct work, steam, water and refrigerant lines, registers, convectors, radiation elements and dampers.

(g) Load-bearing portions of the home. -- "Load-bearing portions of the home" means the load-bearing portions of the:

(1) Foundation system and footings;

(2) Beams;

(3) Girders;

(4) Lintels;

(5) Columns;

(6) Walls and partitions;

(7) Floor systems; and

(8) Roof framing system.

(h) Local jurisdiction. -- "Local jurisdiction" means any county and any municipal corporation in Maryland subject to the provisions of Article XI-E of the Constitution.

(i) New home. --

(1) "New home" means every newly constructed private dwelling unit in the State and the fixtures and structure that are made a part of a newly constructed private dwelling unit at the time of construction.

(2) "New home" does not include:

(i) Outbuildings, including detached garages and detached carports, except outbuildings that contain plumbing, electrical, heating, cooling, or ventilation systems serving the new home;

(ii) Driveways;

(iii) Walkways;

(iv) Patios and decks;

(v) Boundary walls;

(vi) Retaining walls not necessary for the structural stability of the new home;

(vii) Landscaping;

(viii) Fences;

(ix) Off-site improvements;

(x) Appurtenant recreational facilities; and

(xi) Other similar items as determined by the Secretary.

(j) New home warranty. -- "New home warranty" means a series of written promises made by a builder that meets the requirements of this subtitle.

(k) New home warranty security plan. -- "New home warranty security plan" means a plan that meets the requirements of § 10-606 of this subtitle.

(l) Owner. -- "Owner" means the purchaser of a new home who uses the home primarily for residential purposes during the warranty period.

(m) Plumbing systems. -- "Plumbing systems" means:

(1) Gas supply lines and fittings;

(2) Water supply, waste, and vent pipes and their fittings;

(3) Septic tanks and their drain fields; and

(4) (i) Water, gas, and sewer service piping and their extensions to the tie-in of a public utility connection; or

(ii) On-site wells and sewage disposal systems.

(n) Structural defect. --

(1) "Structural defect" means any defect in the load-bearing portions of a new home that adversely affects its load-bearing function to the extent that the home becomes or is in serious danger of becoming unsafe, unsanitary, or otherwise uninhabitable.

(2) "Structural defect" includes damage due to subsidence, expansion, or lateral movement of soil that has been located or relocated by the builder.

(3) "Structural defect" does not include damage caused by movement of the soil:

(i) Resulting from a flood or earthquake; or

(ii) For which compensation has been provided.

(o) Warranty date. -- "Warranty date" means the first day that the owner occupies the new home, settles on the new home, makes the final contract payment on the new home, or obtains an occupancy permit for the new home if the home is built on the owner's property, whichever is earlier.

HISTORY: 1990, ch. 223; 1994, ch. 3, § 1; 1995, ch. 120, § 19; 2002, ch. 19, § 10; ch. 492.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 492, Acts 2002, effective July 1, 2002, substituted the present language of (d) for ""Department' means the Department of Labor, Licensing, and Regulation"; and deleted former (n) and redesignated the remaining subsections accordingly.

EDITOR'S NOTE. --Section 10, ch. 19, Acts 2002, provides that "the publisher of the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the

Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, "subtitle" has been substituted for "title" in (k).

MARYLAND LAW REVIEW. --For survey, "Developments in Maryland Law, 1992-93," see 53 Md. L. Rev. 616 (1994).

QUOTED IN Adams v. NVR Homes, Inc., 135 F. Supp. 2d 675 (D. Md. 2001).

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 6. NEW HOME WARRANTIES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-602 (2006)

§ 10-602. Disclosure by builders generally

(a) In general. -- Prior to entering into a contract for sale or construction of a new home, the builder shall disclose in writing to the owner whether:

(1) The builder participates in a new home warranty security plan through which:

(i) The builder must provide the owner with a new home warranty; or

(ii) The builder may provide a new home warranty to the owner at the owner's option; or

(2) The builder does not participate in a new home warranty security plan.

(b) Form. -- The disclosure will be made on a form approved by the Division.

HISTORY: 1990, ch. 223; 2002, ch. 492.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 492, Acts 2002, effective July 1, 2002, substituted "the Division" for "the Secretary" at the end of (b).

CITED IN Andrulis v. Levin Constr. Corp., 331 Md. 354, 628 A.2d 197 (1993).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 6. NEW HOME WARRANTIES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-603 (2006)

§ 10-603. Homes not covered by warranty; disclosure by builders; acknowledgment; right of rescission by owner

(a) Disclosure by nonparticipating builders; acknowledgment by owner. -- If the builder does not participate in a new home warranty security plan:

(1) The builder must make a disclosure at the time of the purchase or construction contract containing an explanation in 12 point type that:

(i) The owner should be aware that builders of new homes in the State of Maryland are required to be registered with the Consumer Protection Division of the Office of the Attorney General;

(ii) Without a new home warranty or other express warranties, the owner may be afforded only certain limited implied warranties as are provided by law; and

(iii) 1. Describes any hazardous or regulated materials, including asbestos, lead-based paint, radon, methane, underground storage tanks, licensed landfills, unlicensed landfills, licensed rubble fills, unlicensed rubble fills, or other environmental hazards, present on the site of the new home of which the builder has actual knowledge; or

2. States that the builder is making no representations or warranties as to whether there is any hazardous or regulated material on the site of the new home;

(2) The owner shall acknowledge in writing that the owner understands that the builder does not participate in a new home warranty security plan and that the owner has read and understood the disclosure pursuant to paragraph (1) of this subsection; and

(3) Any purchase or construction contract entered into which does not contain the acknowledgment required by paragraph (2) of this subsection is voidable by the owner.

(b) Rescission by owner. --

(1) An owner who has made the acknowledgment described in subsection (a) (2) of this section may rescind the contract within 5 working days from the date of the contract by providing the builder with written notice of the owner's rescission of the contract; and

(2) Upon rescission, the owner shall be entitled to a refund of any money paid to the builder for the new home.

HISTORY: 1990, ch. 223; 1997, ch. 14, § 1; 1999, ch. 610; 2002, ch. 492.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 492, Acts 2002, effective July 1, 2002, inserted "at the time of the purchase or construction contract" in the introductory language of (a) (1); and in (a) (1) (i), substituted "are required to be registered with the Consumer Protection Division of the Office of the Attorney General" for "are not required to be licensed by the State and are not licensed in most local jurisdictions."

EDITOR'S NOTE. --Section 2, ch. 610, Acts 1999, provides that "the requirements of this Act are intended to be in addition to the requirements of any other ordinance, resolution, law, or rule, and that this Act may not be construed to preempt or prevail over any ordinance, resolution, law, or rule more stringent than this Act."

CITED IN Andrulis v. Levin Constr. Corp., 331 Md. 354, 628 A.2d 197 (1993); Adams v. NVR Homes, Inc., 135 F. Supp. 2d 675 (D. Md. 2001).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 6. NEW HOME WARRANTIES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-604 (2006)

§ 10-604. Homes covered by warranty; terms, etc

(a) Terms of warranty. --

(1) Except for coverage excluded under paragraph (2) of this subsection, a new home warranty provided under a new home warranty security plan shall warrant at a minimum that:

(i) For 1 year, beginning on the warranty date, the new home is free from any defects in materials and workmanship;

(ii) For 2 years, beginning on the warranty date, the new home is free from any defect in the electrical, plumbing, heating, cooling, and ventilating systems, except that in the case of appliances, fixtures and items of equipment, the warranty may not exceed the length and scope of the warranty offered by the manufacturer; and

(iii) For 5 years, beginning on the warranty date, the new home is free from any structural defect.

(2) A new home warranty provided under a new home warranty security plan may exclude the following:

(i) Damage to real property that is not part of the home covered by the warranty or that is not included in the purchase price of the home;

(ii) Bodily injury or damage to personal property;

(iii) Any defect in materials supplied or work performed by anyone other than the builder or the builder's employees, agents, or subcontractors;

(iv) Any damage that the owner has not taken timely action to minimize or for which the owner has failed to provide timely notice to the builder;

(v) Normal wear and tear or normal deterioration;

(vi) Insect damage, except where the builder has failed to use proper materials or construction methods designed to prevent insect infestation;

(vii) Any loss or damage that arises while the home is being used primarily for nonresidential purposes;

(viii) Any damage to the extent it is caused or made worse by negligence, improper maintenance or improper operations by anyone other than the builder or its employees, agents, or subcontractors;

(ix) Any damage to the extent it is caused or made worse by changes of the grading of the ground by anyone other than the builder, its employees, agents, or subcontractors; and

(x) Any loss or damage caused by acts of God.

(b) Actions required of participating builders. -- A builder who has disclosed that the builder participates in a new home warranty security plan shall:

(1) Furnish to the owner at the time of the purchase or construction contract:

(i) The name and phone number of the builder's new home warranty security plan;

(ii) Details of the warranty coverage provided under the plan; and

(iii) In a form to be determined by the Division, evidence that:

1. The builder currently is a participant in good standing with a plan that satisfies the requirements of § 10-606 (a) of this subtitle; and

2. The new home is eligible for registration or has been registered in the builder's new home warranty security plan;

(2) Disclose to the owner at the time of the purchase or construction contract:

(i) Any actual knowledge that the builder has of any hazardous or regulated materials, including asbestos, lead-based paint, radon, methane, underground storage tanks, licensed landfills, unlicensed landfills, licensed rubble fills, unlicensed rubble fills, or other environmental hazards, present on the site of the new home; or

(ii) That the builder is making no representations or warranties as to whether there is any

hazardous or regulated material on the site of the new home; and

(3) Either:

(i) Provide the new home with a new home warranty if the builder belongs to a new home warranty security plan that:

1. Requires the builder to register every new home that the builder builds; or

2. Does not require the builder to register every new home but the builder has decided to sell the new home with a new home warranty; or

(ii) If the builder belongs to a new home warranty security plan that does not require the builder to register every new home and the builder has not decided whether or not to sell the new home with a new home warranty, give the owner the option of:

1. Purchasing the new home with the new home warranty provided by the builder's new home warranty security plan; or

2. Waiving the right to warranty coverage by making the affirmative waiver described in § 10-607 of this subtitle.

(c) Breach of contract. --

(1) If the purchase or construction contract provides that the new home shall be covered by a new home warranty under a new home warranty security plan it shall constitute a material breach of the contract if either:

(i) The builder was not a participant in good standing on the date of the contract with a new home warranty security plan that satisfies the requirements of § 10-606 (a) of this subtitle; or

(ii) The new home has not been registered in the plan on or before the warranty date.

(2) If there has been a material breach of the contract, the owner shall be entitled to whatever remedies are provided by law including, but not limited to:

(i) Rescission of the contract; and

(ii) Except in the case of a construction contract for a new home built on the owner's property, a refund of any money paid to the builder for the new home.

(d) Notice. --

(1) The builder shall notify the new home warranty security plan of each new home being constructed by the builder on the earlier of the date of the purchase or construction contract or the start of construction of the new home.

(2) Upon receipt of notification by the builder as required in paragraph (1) of this subsection, the new home shall be eligible for registration in the builder's new home warranty security plan.

(e) Commencement of coverage; documents provided to owner. --

(1) Upon registration of the new home in the new home warranty security plan, warranty coverage which has not been waived by the owner shall be provided beginning on the warranty date for the new home constructed by the builder, provided that the builder was in good standing with the new home warranty security plan at the time of the contract.

(2) On the warranty date, the builder shall provide the owner with evidence, in a form approved by the Division that the new home is covered by a new home warranty that meets the requirements of this subtitle.

(3) Within 60 days from the warranty date, the builder's new home warranty security plan shall provide the owner with validated new home warranty documents.

(f) Successor in title. -- A new home warranty shall benefit any successor in title to the owner who occupies the home for residential purposes during the warranty period.

HISTORY: 1990, ch. 223; 1991, ch. 55, § 1; 1996, ch. 10, § 1; 1999, ch. 610; 2000, ch. 61, § 1; 2002, ch. 492.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 492, Acts 2002, effective July 1, 2002, substituted "the Division" for "the Secretary" in the introductory language of (b) (1) (iii) and in (e) (2); added the introductory language of (b) (2); and deleted "Disclose to the owner" at the beginning of (b) (2) (i) and (b) (2) (ii).

EDITOR'S NOTE. --Section 2, ch. 610, Acts 1999, provides that "the requirements of this Act are intended to be in addition to the requirements of any other ordinance, resolution, law, or rule, and that this Act may not be construed to preempt or prevail over any ordinance, resolution, law, or rule more stringent than this Act."

BREACH OF CONTRACT CLAIM UNDER (C)(1)(I) DENIED. --Plaintiffs' claim of breach of contract asserted under § 10-604(c)(1)(i) was denied because the defendants' new home warranty security plan was approved by the Secretary of Labor, Licensing and Regulation and because it met all of the requirements of the Secretary in full satisfaction of § 10-606(a)(7). Adams v. NVR Homes, Inc., 135 F. Supp. 2d 675 (D. Md. 2001).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 6. NEW HOME WARRANTIES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-605 (2006)

§ 10-605. Notice to purchaser of home covered by warranty

A builder who sells a new home with a new home warranty pursuant to § 10-604 (b) of this title which has not been waived by the owner shall provide the owner with a notice that shall be incorporated in a conspicuous manner in the contract and that shall include the following language in type at least as large as 12 point type:

"Notice to Purchaser

Your new home will be covered by a new home warranty that meets the minimum requirements established under Title 10, Subtitle 6 of the Real Property Article of the Annotated Code of Maryland. Before you sign this contract, your builder is required to give you a copy of the warranty coverage you will receive.

The name of the new home warranty security plan in which your builder is currently a participant is ..... . You are strongly encouraged to call the new home warranty security plan at ..... to verify (i) that your builder is in good standing with this company, and (ii) that your new home will be covered by a warranty from this company.

If the builder is not a participant in good standing with this company on the date of this contract, or if the new home has not been registered in the plan on or before the warranty date, then it is a material breach of the contract and you are entitled to whatever remedies are provided by law, including, but not limited to, rescission or cancellation of this contract and, except in the case of a construction contract for a new home built on your own property, a refund of any money paid to the builder for your new home.

On the day that you first occupy the new home, settle on the new home, make the final payment to the builder on your new home, or obtain an occupancy permit for a new home if the new home is built on your own property, whichever is earlier, you will be provided with evidence that a new home warranty exists for your new home and that coverage begins on that date. You will be provided with a signed new home warranty within 60 days from the date the coverage begins.

The terms used in this notice shall have the same meanings as provided in Title 10, Subtitle 6 of the Real Property Article of the Annotated Code of Maryland."

HISTORY: 1990, ch. 223.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 6. NEW HOME WARRANTIES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-606 (2006)

§ 10-606. Duties of plan; revocation or suspension of approval

(a) Duties of plan. -- A new home warranty security plan shall:

(1) Provide for the payment of claims against a builder for defects warranted under this subtitle;

(2) Be operated by a corporation, partnership, or other legal entity authorized to do business in Maryland;

(3) Demonstrate to the Division that the plan will maintain financial security to cover the total number of claims that the plan reasonably anticipates will be filed against participating builders;

(4) File with the Division a surety bond or an irrevocable letter of credit from a federally insured financial institution in an amount set by the Division, but not less than $ 100,000, for the benefit of owners injured by the failure of the new home warranty security plan to pay claims as required under this subtitle;

(5) Provide within the new home warranty documents the performance standards that describe the builder's obligations for defects warranted under this subtitle;

(6) Provide for the mediation of disputes between an owner and a builder before a claim will be paid by the builder's new home warranty security plan; and

(7) Meet any other requirements determined by the Division and be approved by the Division.

(b) Revocation or suspension of approval; grounds. --

(1) The Division may revoke or suspend approval for a new home warranty security plan if the Division determines that the plan:

(i) Is unable to meet its obligations under a new home warranty; or

(ii) Is administered in a manner that denies owners the warranty coverage required under this subtitle.

(2) Except for new homes that were registered in the new home warranty security plan prior to the revocation or suspension and for which a purchase or construction contract has been executed, during the time period that approval for a new home warranty security plan is revoked or suspended by the Division, the new home warranty security plan may not provide warranty coverage for any new homes built in Maryland.

(c) Same -- Notice. --

(1) Unless the Division determines that a shorter notice period is needed to protect the interests of the builders and owners, the Division shall give a new home warranty security plan at least 90 days' notice that the Division's approval of the plan is being revoked or suspended; and

(2) A new home warranty security plan shall give to its participating builders at least 60 days' notice of the plan's revocation or suspension, or such shorter time as specified by the Division if the plan receives less than 90 days' notice.

HISTORY: 1990, ch. 223; 2002, ch. 492; 2003, ch. 21, § 1.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 492, Acts 2002, effective July 1, 2002, substituted "the Division" for "the Secretary" throughout the section; and substituted "the Division's" for "the Secretary's" in (c)(1).
Chapter 21, Acts 2003, approved April 8, 2003, and effective from date of enactment, substituted "days'" for "days" in (c)(1).

SUBSECTION (A)(7) SATISFIED. --Plaintiffs' claim of breach of contract asserted under § 10-604 (c)(1)(i) was denied because the defendants' new home warranty security plan was approved by the Secretary of Labor, Licensing and Regulation and because it met all of the requirements of the Secretary in full satisfaction of § 10-606 (a)(7). Adams v. NVR Homes, Inc., 135 F. Supp. 2d 675 (D. Md. 2001).

CITED IN Andrulis v. Levin Constr. Corp., 331 Md. 354, 628 A.2d 197 (1993).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 6. NEW HOME WARRANTIES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-607 (2006)

§ 10-607. Waiver by owner

(a) In general. -- If in accordance with § 10-604 (b) (3) of this subtitle an owner does not wish to require that the new home be covered by a new home warranty, the owner shall make an affirmative waiver of the coverage at the time of the purchase or construction contract.

(b) Information supplied by builder. -- Before an owner makes a waiver under this section, the owner must be informed in writing by the builder of the cost, nature, and extent of warranty coverage that would be provided under the builder's new home warranty security plan if not waived by the owner.

(c) Rescission of waiver. -- An owner who has made an affirmative waiver under this section may rescind the waiver and request a new home warranty in accordance with the provisions of this subtitle within 3 working days from the date of the contract by providing the builder with written notice of the owner's rescission of the waiver.

(d) Waiver to be made on form. -- The waiver under this section shall be made on a form determined by the Division and shall contain a section in which an owner who has made a waiver may rescind the waiver pursuant to subsection (c) of this section.

(e) Contents of form. -- The form shall clearly and concisely explain in 12 point boldface type on a separate piece of paper:

(1) The cost, nature, and extent of warranty coverage that would be provided under the builder's new home warranty security plan if not waived by the owner;

(2) That the failure of the owner to make a waiver requires the builder to provide a new

home warranty;

(3) That a builder may not refuse to build a new home for the owner because the owner refuses to waive warranty coverage;

(4) That the owner should be aware that builders of new homes in the State of Maryland are required to be registered with the Consumer Protection Division of the Office of the Attorney General;

(5) Without a new home warranty or other express warranties, the owner may be afforded only certain limited implied warranties as are provided by law; and

(6) That an owner who has made an affirmative waiver of the warranty coverage still may rescind the waiver and request a new home warranty in accordance with the provisions of Title 10, Subtitle 6 of the Real Property Article, within 3 working days from the date of the contract by providing the builder with written notice of the owner's rescission of the waiver.

HISTORY: 1990, ch. 223; 1999, ch. 610; 2002, ch. 492.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 492, Acts 2002, effective July 1, 2002, substituted "the Division" for "the Secretary" in (d); and in (e) (4), substituted "are required to be registered with the Consumer Protection Division of the Office of the Attorney General" for "are not required to be licensed by the State and most local jurisdictions."

EDITOR'S NOTE. --Section 2, ch. 610, Acts 1999, provides that "the requirements of this Act are intended to be in addition to the requirements of any other ordinance, resolution, law, or rule, and that this Act may not be construed to preempt or prevail over any ordinance, resolution, law, or rule more stringent than this Act."

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 6. NEW HOME WARRANTIES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-608 (2006)

§ 10-608. Warranties supplemental; noncompliance as unfair trade practice

(a) Warranties supplemental. -- Any warranties provided in accordance with the requirements of this subtitle are in addition to all other implied or express warranties provided by law or agreement.

(b) Noncompliance or misrepresentation. -- In addition to any other penalty imposed by law, the failure to comply with the provisions of this subtitle or the knowing misrepresentation that a new home warranty exists is an unfair and deceptive trade practice, as defined in § 13-301 of the Commercial Law Article.

HISTORY: 1990, ch. 223; 1991, ch. 55, § 1.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 6. NEW HOME WARRANTIES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-609 (2006)

§ 10-609. Violation; penalty

Any person that knowingly violates the provisions of this subtitle or knowingly misrepresents the existence of a new home warranty shall be subject to a fine not exceeding $ 50,000 or imprisonment for not more than 2 years or both in addition to any other penalties provided for in this subtitle.

HISTORY: 1990, ch. 223.

CITED IN Andrulis v. Levin Constr. Corp., 331 Md. 354, 628 A.2d 197 (1993).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 6. NEW HOME WARRANTIES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-610 (2006)

§ 10-610. Applicability

This subtitle does not apply to new homes built, new home warranties offered, or new home warranty security plans operating in Montgomery County, except that it shall apply:

(1) To any municipality in Montgomery County that has exempted itself from the application of Chapter 31C, New Home Warranty and Builder Licensing, of the Montgomery County Code; or

(2) If Chapter 31C, New Home Warranty and Builder Licensing, of the Montgomery County Code is no longer in effect or is amended in such a manner that it becomes less stringent than the requirements of this subtitle.

HISTORY: 1990, ch. 223; 1991, ch. 55, § 1.

CITED IN Andrulis v. Levin Constr. Corp., 331 Md. 354, 628 A.2d 197 (1993).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 7. CONTRACTS OF SALE -- MISCELLANEOUS PROVISIONS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-701 (2006)

§ 10-701. Notice in contract of sale of property in Prince George's County creating subdivision

In Prince George's County, a contract of sale of real property creating a subdivision for which a plat of subdivision has not been recorded, shall contain the following notice:

"The subdivision of land to be created by this transaction has not been approved by the Maryland-National Capital Park and Planning Commission, the Department of Health and Mental Hygiene, or any other agency of the State or county. The approval of one or more of these agencies may be necessary before any building permit is issued."

HISTORY: 1980, ch. 239; 1982, ch. 770, § 4; 1990, ch. 6, § 2.

NOTES:
EDITOR'S NOTE. --Chapter 6, Acts 1990, approved Feb. 16, 1990, and effective from date of passage, transferred former § 10-110 of this title to be § 10-601 of this title, and added the

Subtitle 6 heading; however, due to the addition of a new Subtitle 6 to Title 10 by ch. 223, Acts 1990, former § 10-110 of this title has been transferred to be § 10-701 of this subtitle under the heading "Subtitle 7. Contracts of Sale -- Miscellaneous Provisions."

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 7. CONTRACTS OF SALE -- MISCELLANEOUS PROVISIONS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-702 (2006)

§ 10-702. Single family residential real property disclosure requirements.

(a) "Latent defects" defined. -- In this section, "latent defects" means material defects in real property or an improvement to real property that:

(1) A purchaser would not reasonably be expected to ascertain or observe by a careful visual inspection of the real property; and

(2) Would pose a direct threat to the health or safety of:

(i) The purchaser; or

(ii) An occupant of the real property, including a tenant or invitee of the purchaser.

(b) Applicability of section. --

(1) This section applies only to single family residential real property improved by four or fewer single family units.

(2) This section does not apply to:

(i) The initial sale of single family residential real property:

1. That has never been occupied; or

2. For which a certificate of occupancy has been issued within 1 year before the vendor and purchaser enter into a contract of sale;

(ii) A transfer that is exempt from the transfer tax under § 13-207 of the Tax - Property Article, except land installment contracts of sale under § 13-207(a)(11) of the Tax - Property Article and options to purchase real property under § 13-207(a)(12) of the Tax - Property Article;

(iii) A sale by a lender or an affiliate or subsidiary of a lender that acquired the real property by foreclosure or deed in lieu of foreclosure;

(iv) A sheriff's sale, tax sale, or sale by foreclosure, partition, or by court appointed trustee;

(v) A transfer by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;

(vi) A transfer of single family residential real property to be converted by the buyer into a use other than residential use or to be demolished; or

(vii) A sale of unimproved real property.

(c) Duty of vendor; development of form. --

(1) A vendor of single family residential real property shall complete and deliver to each purchaser:

(i) A written residential property condition disclosure statement on a form provided by the State Real Estate Commission; or

(ii) A written residential property disclaimer statement on a form provided by the State Real Estate Commission.

(2) The State Real Estate Commission shall develop by regulation a single standardized form that includes the residential property condition disclosure and disclaimer statements required by this subsection.

(d) Contents of residential property disclaimer statement. -- The residential property disclaimer statement shall:

(1) Disclose any latent defects of which the vendor has actual knowledge that a purchaser would not reasonably be expected to ascertain by a careful visual inspection and that would pose a direct threat to the health or safety of the purchaser or an occupant; and

(2) State that:

(i) Except for latent defects disclosed under item (1) of this subsection, the vendor makes no representations or warranties as to the condition of the real property or any improvements on the real property; and

(ii) The purchaser will be receiving the real property "as is", with all defects, including latent defects, that may exist, except as otherwise provided in the contract of sale of the real property.

(e) Contents of residential property disclosure statement. --

(1) The residential property disclosure statement shall disclose those items that, to carry out the provisions of this section, the State Real Estate Commission requires to be disclosed about the physical condition of the property.

(2) The disclosure form shall include a list of defects, including latent defects, or information of which the vendor has actual knowledge in relation to the following:

(i) Water and sewer systems, including the source of household water, water treatment systems, and sprinkler systems;

(ii) Insulation;

(iii) Structural systems, including the roof, walls, floors, foundation, and any basement;

(iv) Plumbing, electrical, heating, and air conditioning systems;

(v) Infestation of wood-destroying insects;

(vi) Land use matters;

(vii) Hazardous or regulated materials, including asbestos, lead-based paint, radon, underground storage tanks, and licensed landfills;

(viii) Any other material defects of which the vendor has actual knowledge; and

(ix) Whether the smoke detectors will provide an alarm in the event of a power outage.

(3) The disclosure form shall contain:

(i) A notice to prospective purchasers and vendors that the prospective purchaser or vendor may wish to obtain professional advice about or an inspection of the property;

(ii) A notice to prospective purchasers that disclosure by the seller is not a substitute for an inspection by an independent home inspection company, and that the purchaser may wish to obtain such an inspection;

(iii) A notice to purchasers that the information contained in the disclosure statement is the representation of the vendor and is not the representation of the real estate broker or salesperson, if any; and

(iv) A notice to purchasers that the information contained in the disclosure statement is not a warranty by the vendor as to:

1. The condition of the property of which the vendor has no actual knowledge; or

2. Other conditions of which the vendor has no actual knowledge.

(4) The vendor is not required to undertake or provide an independent investigation or inspection of the property in order to make the disclosures required by this section.

(f) Delivery of disclosure or disclaimer statement. --

(1) Except as provided in paragraphs (2) and (3) of this subsection, the vendor shall deliver the completed disclosure or disclaimer statement required by this section to the purchaser on or before entering into a contract of sale by the vendor and the purchaser.

(2) The disclosure or disclaimer statement shall be delivered to each purchaser before the execution of the contract of sale by the purchaser in the case of a land installment contract, as defined in § 10-101 of this title.

(3) The disclosure or disclaimer statement shall be delivered to each purchaser before the execution by the purchaser of an option to purchase agreement or a lease agreement containing an option to purchase provision.

(4) At the time the disclosure or disclaimer statement is delivered, each purchaser shall date

and sign a written acknowledgment of receipt, which shall be included in or attached to the contract of sale.

(g) Right to rescission -- Limitations. -- A purchaser who receives the disclosure or disclaimer statement on or before entering into the contract of sale does not have the right to rescind the contract of sale based upon the information contained in the statement.

(h) Same -- Accrual; termination. --

(1) A purchaser who does not receive the disclosure or disclaimer statement on or before entering into the contract of sale has the unconditional right, upon written notice to the vendor or vendor's agent:

(i) To rescind the contract of sale at any time before the receipt of the disclosure or disclaimer statement or within 5 days following receipt of the disclosure or disclaimer statement; and

(ii) To the immediate return of any deposits made on account of the contract.

(2) A purchaser's right to rescind the contract of sale under this subsection terminates if not exercised:

(i) Before making a written application to a lender for a mortgage loan, if the lender discloses in writing at or before the time application is made that the right to rescind terminates on submission of the application; or

(ii) Within 5 days following receipt of a written disclosure from a lender who has received the purchaser's application for a mortgage loan, if the lender's disclosure states that the purchaser's right to rescind terminates at the end of that 5-day period.

(i) Limitation on liability. --

(1) A disclosure statement made under this section does not constitute a warranty by the vendor as to:

(i) The condition of the property of which the vendor has no actual knowledge; or

(ii) Other conditions of which the vendor has no actual knowledge.

(2) A vendor is not liable for an error, inaccuracy, or omission in a disclosure statement made under this section if the error, inaccuracy, or omission was based upon information that was:

(i) Not within the actual knowledge of the vendor;

(ii) Provided to the vendor by a unit or instrumentality of the State government or of a political subdivision; or

(iii) Provided to the vendor by a report or opinion prepared by a licensed engineer, land surveyor, geologist, wood-destroying insect control expert, contractor, or other home inspection expert, dealing with matters within the scope of the professional's license or expertise.

(j) Expert reports on opinions. --

(1) A report or opinion prepared by an expert shall satisfy the requirement of subsection (i)(2)(iii) of this section if the information is provided to the vendor pursuant to a written or oral request for the information.

(2) In responding to a request for information, the reporting party:

(i) May indicate, in writing, an understanding that the information provided will be used in fulfilling the requirements of this section; and

(ii) If so indicating, shall indicate the required disclosures, or parts of required disclosures, to which the information being provided is applicable.

(3) If the reporting party provides the statement under paragraph (2)(ii) of this subsection, the reporting party is not responsible for any items of information, or parts of items, other than those expressly set forth in the statement.

(k) Waiver of purchaser's rights. --

(1) The rights of a purchaser under this section may not be waived in the contract of sale and any attempted waiver is void.

(2) Any rights of the purchaser to terminate the contract provided by this section are waived conclusively if not exercised before:

(i) Closing or occupancy by the purchaser, whichever occurs first, in the event of a sale; or

(ii) Occupancy, in the event of a lease with option to purchase.

(l) Notice of purchaser's rights. -- Each contract of sale shall include a conspicuous notice advising the purchaser of the purchaser's rights as set forth in this section.

(m) Duty of real estate licensee. --

(1) The real estate licensee representing a vendor of residential real property as the listing broker has a duty to inform the vendor of the vendor's rights and obligations under this section.

(2) The real estate licensee representing a purchaser of residential real property, or, if the purchaser is not represented by a licensee, the real estate licensee representing an owner of residential real estate and dealing with the purchaser, has a duty to inform the purchaser of the purchaser's rights and obligations under this section.

(3) If a real estate licensee performs the duties specified in this subsection, the licensee:

(i) Shall have no further duties under this section to the parties to a residential real estate transaction; and

(ii) Is not liable to any party to a residential real estate transaction for a violation of this section.

HISTORY: 1993, ch. 640; 1994, ch. 3, § 1; 1995, ch. 3, § 1; ch. 384; 2001, ch. 636; 2005, chs. 135, 548.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 636, Acts 2001, effective Oct. 1, 2001, added (d) (2) (ix).
Chapters 135 and 548, Acts 2005, both effective October 1, 2005, made similar changes. Each added present (a) and redesignated the remaining subsections accordingly; rewrote (d); substituted "of which the vendor has actual knowledge" for "known to the vendor" in (e)(2)(viii); and substituted "(i)(2)(iii) of this section" for "(h)(2)(iii) of this section" in (j)(1).

EDITOR'S NOTE. --Section 2, ch. 640, Acts 1993, provides that "this Act shall apply to

contracts of sale of real property, land installment contracts, option to purchase agreements, and lease agreements containing an option to purchase provision entered into on or after January 1, 1994."

Section 2, ch. 636, Acts 2001, provides that "this Act shall be construed only prospectively and may not be applied or interpreted to have any effect on or application to any lease or residential property disclosure statement for an existing residential dwelling unit executed before October 1, 2001."

Section 2, ch. 135, Acts 2005, provides that "when the State Real Estate Commission revises the standardized residential property condition disclosure and disclaimer statement form to reflect the provisions of this Act, the Commission shall include a definition or explanation of the term "latent defects".

Chapters 135 and 548, Acts 2005, both amended this section. Neither of the 2005 amendments referred to the other, and effect has been given to the additional language of ch. 548 in (d); otherwise, they made identical amendments.

BILL REVIEW LETTER. --Chapter 135 and Chapter 548, Acts 2005 (Senate Bill 192 and House Bill 412) were approved for constitutionality and legal sufficiency, notwithstanding the substantive differences between the two bills, mainly that House Bill 412 refers to "certain latent defects" whereas Senate Bill 192 refers to "any latent defect," and that Senate Bill 192 includes uncodified language providing that "when the State Real Estate Commission revises the standardized residential property condition disclosure and disclaimer statement form to reflect the provisions of this Act, the Commission shall include a definitions or explanation of the term 'latent defects"'; if both bills are signed, the language in the last signed will prevail. (Letter of the Attorney General dated April 22, 2005.)

MARYLAND LAW REVIEW. --For article, "Let the Buyer Be Well Informed? -- Doubting the Demise of Caveat Emptor," see 55 Md. L. Rev. 387 (1996).

UNIVERSITY OF BALTIMORE LAW FORUM. --Recent Developments: Romm v. Flax: Court of Appeals Rejects Literal Definition of "Void" as It Appears in the Context of the Real Property Article, 26.3 U. Balt. Law Forum 55 (1996).

PURPOSE. --The main purpose of this section is to provide the buyer with information that permits an informed decision whether to make an offer or, if an offer was already made and accepted, to rescind the contract. 79 Op. Att'y Gen. 402 (March 11, 1994).

A related purpose of the time frames in this section is to ensure finality in transactions by putting limits on the buyer's ability to rescind. 79 Op. Att'y Gen. 402 (March 11, 1994).

CONSTRUCTION OF SECTION. --This section should be construed to apply the same time frames to a disclaimer statement as are expressly applied to a disclosure statement; hence, a seller's delivery of a disclaimer statement after the execution of the contract would leave the buyer and the seller in the same position as if the seller delivered a disclosure statement at that time. 79 Op. Att'y Gen. 402 (March 11, 1994).

In addition to outlining the contents of the disclosure and disclaimer statements, this section also attempts to lay out the details of the delivery of the statements, the rights of the buyer upon receipt of a statement, and certain deadlines; unfortunately, the seeming statutory objective, to make uniform the procedures governing disclosure statements and disclaimer statements, given that seller has the freedom to choose which statement to deliver, is not fully carried out in the drafting of the provisions. 79 Op. Att'y Gen. 402 (March 11, 1994).

RESCISSION RIGHTS AT OPTION OF PURCHASERS ONLY. --Clear legislative intent of this section is to require sellers to deliver a disclosure or disclaimer statement and to grant rescission rights at the option of the purchasers only; a literal interpretation of the term "void" would grant sellers a right of rescission, allow them to benefit from non-compliance with the duty to prepare a disclosure or disclaimer statement, create a new class of option contracts, and alter the common law -- results that are unreasonable and inconsistent with the General Assembly's intention in passing this section. Romm v. Flax, 340 Md. 690, 668 A.2d 1 (1995).

DISCLOSURE AND DISCLAIMER STATEMENTS DISTINGUISHED. --Nothing in the legislative

history suggests a decision by the General Assembly to differentiate disclosure and disclaimer statements in contexts where no reasoned distinction appears to exist; to the contrary, the legislative history suggests that the omission of a reference to a disclaimer statement in subsections (f) and (g) of this section was the result of an amendment process that focused on policy issues rather than drafting details. 79 Op. Att'y Gen. 402 (March 11, 1994).

APPLICABILITY OF SUBSECTION (G). --If a seller delivers a disclaimer statement to a buyer after the execution of the contract but not later than three days after execution, the buyer has a right of rescision as specified in subsection (g) (2) of this section, just as if the seller delivered a disclosure statement at that time; if a seller delivers a disclaimer statement after that time, subsection (g) (1) of this section applies to the contract, just as it would if a disclosure statement were delivered that late. 79 Op. Att'y Gen. 402 (March 11, 1994).

FAILURE TO PROVIDE CONSTITUTED BREACH OF CONTRACT. --Auctioneer, who contracted with seller of real property to provide all forms necessary to produce a sale, breached the auction contract by failing to provide to the buyer of the property the standardized disclaimer or disclosure form created and distributed by the State Real Estate Commission pursuant to this section. Auction & Estate Representatives, Inc. v. Ashton, 354 Md. 333, 731 A.2d 441 (1999).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 7. CONTRACTS OF SALE -- MISCELLANEOUS PROVISIONS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-703 (2006)

§ 10-703. Notice pertaining to land use in contract of sale of single family residence in Anne Arundel County

(a) Application. -- This section applies only to single family residential real property in Anne Arundel County improved by four or fewer single family units.

(b) Form of notice. -- All contracts of sale for residential real property shall contain the following notice:

"The buyer fully understands that in order to become more fully informed of the current and future land-use plans, facility plans, public works plans, school plans, or other plans affecting the property or area, the buyer should consult the appropriate county agency or county Internet website for information regarding these plans."

(c) Conflict with local law. -- All local laws requiring disclosure to home buyers of information substantially similar to subsection (b) of this section prevail over the requirements of this

section.

HISTORY: 2002, ch. 60, § 2.

NOTES:
CROSS REFERENCES. --As to contracts for sale of property generally, see § 14-117 of this article.

EDITOR'S NOTE. --Section 3, ch. 60, Acts 2002, provides that "this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any contract of sale entered into before October 1, 2002."
Section 4, ch. 60, Acts 2002, provides that the act shall take effect October 1, 2002.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 7. CONTRACTS OF SALE -- MISCELLANEOUS PROVISIONS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-704 (2006)

§ 10-704. Notice in contract of sale of property subject to certain taxes or fees in Frederick County.

(a) In general. -- In Frederick County, the vendor of a property that is subject to a tax or fee of a special taxing district as authorized in Article 23A, § 44A(b) of the Code or by a community development authority as authorized in § 2-7-125(b) of the Public Local Laws of Frederick County may not enforce a contract for the sale of the property unless within 20 calendar days after entering into the contract, the purchaser of the property is provided the following information in writing:

(1) In conspicuous, bold, and underscored type, substantially the same as the following clause:

"This sale is subject to a tax or fee of a (special taxing district or community development authority). State law requires that the seller disclose to you at or before the time the contract is entered into, or within 20 calendar days after entering into the contract, certain information concerning the property you are purchasing. The content of the information to be disclosed is set forth in § 10-704 of the Real Property Article of the Maryland Annotated Code and includes the amount of the current annual tax or fee of the (special taxing district or community development authority) for the property, the number of years remaining for the tax or fee of the (special taxing district or community development authority), and a statement of whether any tax or fee of the (special taxing district or community development authority) against the property is delinquent.";

(2) The amount of the current annual tax or fee of the special taxing district or community development authority for the property;

(3) The number of years remaining for the tax or fee of the special taxing district or community development authority on the property; and

(4) Whether any tax or fee of the special taxing district or community development authority against the property is delinquent.

(b) Requirements. -- The requirements of subsection (a) of this section shall be deemed fulfilled if the information required to be provided to the purchaser is done so in writing, in a clear and concise manner.

(c) How provided. -- The statement required under subsection (a)(1) of this section may be provided to the purchaser by the inclusion of the statement as a clause in the contract for sale of the property.

HISTORY: 2006, ch. 93.

NOTES:
EDITOR'S NOTE. --Section 2, ch. 93, Acts 2006, provides that "this Act shall take effect October 1, 2006, and shall be applicable to all contracts entered into on or after October 1, 2006."

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 10. SALES OF PROPERTY
SUBTITLE 8. HOME INSPECTIONS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 10-801 (2006)

§ 10-801. Home inspection disclosures and reports

Repealed by Acts 2001, ch. 470, § 1, effective October 1, 2001.

NOTES:
CROSS REFERENCES. --For the Maryland Real Estate Appraisers and Home Inspectors Act, see Title 16 of the Business Occupations and Professions Article.

EDITOR'S NOTE. --Section 1, ch. 470, Acts 2001, also repealed the Subtitle 8 heading, "Home Inspections."

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

[Repealed/Reserved]

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-101 (2006)

§ 11-101. Definitions

(a) In general. -- In this title the following words have the meanings indicated unless otherwise apparent from context.

(b) Board of directors. --

(1) "Board of directors" means the persons to whom some or all of the powers of the council of unit owners have been delegated under this title or under the condominium bylaws.

(2) "Board of directors" includes any reference to "board".

(c) Common elements. --

(1) "Common elements" means all of the condominium except the units.

(2) "Limited common elements" means those common elements identified in the declaration or on the condominium plat as reserved for the exclusive use of one or more but less than all of the unit owners.

(3) "General common elements" means all the common elements except the limited common elements.

(d) Common expenses and common profits. -- "Common expenses and common profits" means the expenses and profits of the council of unit owners.

(e) Condominium. -- "Condominium" means property subject to the condominium regime established under this title.

(f) Council of unit owners. -- "Council of unit owners" means the legal entity described in § 11-109 of this title.

(g) Developer. -- "Developer" means any person who subjects his property to the

condominium regime established by this title.

(h) Electronic transmission. -- "Electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that:

(1) May be retained, retrieved, and reviewed by a recipient of the communication; and

(2) May be reproduced directly in paper form by a recipient through an automated process.

(i) Governing body. -- "Governing body" means the council of unit owners, board of directors, or any committee of the council of unit owners or board of directors.

(j) Housing agency. -- "Housing agency" means a housing agency of a county or incorporated municipality or some other agency or entity of a county or incorporated municipality designated as such by law or ordinance.

(k) Mortgagee. -- "Mortgagee" means the holder of any recorded mortgage, or the beneficiary of any recorded deed of trust, encumbering one or more units.

(l) Moving expenses. -- "Moving expenses" means costs incurred to:

(1) Hire contractors, labor, trucks, or equipment for the transportation of personal property;

(2) Pack and unpack personal property;

(3) Disconnect and install personal property;

(4) Insure personal property to be moved; and

(5) Disconnect and reconnect utilities such as telephone service, gas, water, and electricity.

(m) Occupant. -- "Occupant" means any lessee or guest of a unit owner.

(n) Percentage interests. -- "Percentage interests" means the interests, expressed as a percentage, fraction or proportion, established in accordance with § 11-107 of this title.

(o) Property. -- "Property" means unimproved land, land together with improvements thereon, improvements without the underlying land, or riparian or littoral rights associated with land. Property may consist of noncontiguous parcels or improvements.

(p) Rental facility. -- "Rental facility" means property containing dwelling units intended to be leased to persons who occupy the dwellings as their residences.

(q) Unit. -- "Unit" means a three-dimensional space identified as such in the declaration and on the condominium plat and shall include all improvements contained within the space except those excluded in the declaration, the boundaries of which are established in accordance with § 11-103(a)(3) of this title. A unit may include 2 or more noncontiguous spaces.

(r) Unit owner. -- "Unit owner" means the person, or combination of persons, who hold legal title to a unit. A mortgagee or a trustee designated under a deed of trust, as such, may not be deemed a unit owner.

HISTORY: An. Code 1957, art. 21, § 11-101; 1974, ch. 12, § 2; ch. 641; 1975, ch. 108; 1976, ch. 348, § 1; 1981, ch. 246; 1982, ch. 836, § 1; 1983, ch. 562, §§ 1, 2; 1985, chs. 532, 550; 1989, ch. 5, § 1; 1991, ch. 289; 1995, ch. 576; 1998, chs. 440, 564; 2004, ch. 286.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 286, Acts 2004, effective Oct. 1, 2004, inserted present

(h) and redesignated the remaining subsections accordingly.

EDITOR'S NOTE. --Section 3, ch. 246, Acts 1981, provides that "this title shall be regarded as supplemental and additional to the powers and authority conferred upon or now existing in the Montgomery County government as set forth in Chapter 648, Laws of Maryland, 1980, or as set forth in any local laws enacted pursuant thereto."

MARYLAND LAW REVIEW. --For article, "Survey of Developments in Maryland Law, 1983-84," see 44 Md. L. Rev. 331 (1985).
For article, "Survey of Developments in Maryland Law, 1984-85," see 45 Md. L. Rev. 836 (1986).

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "Franchise Law Compliance: Before the Logo Hits the Streets," see 10 U. Balt. L. Rev. 1 (1980).
For comment discussing cases and legislation imposing implied warranties in sales of residential condominiums, see 14 U. Balt. L. Rev. 116 (1984).

A CONDOMINIUM OWNER HOLDS A HYBRID PROPERTY INTEREST consisting of an exclusive ownership of a particular unit or apartment and a tenancy in common with the other co-owners in the common elements; in exchange for the benefits of owning property in common, condominium owners agree to be bound by rules governing the administration, maintenance, and use of the property. Ridgely Condominium Ass'n v. Smyrnioudis, 343 Md. 357, 681 A.2d 494 (1996).

COMMON ELEMENTS INCLUDE --Common elements include the improved and unimproved land within the property boundaries described in the condominium declaration. 64 Op. Att'y Gen. 334 (1979).

NO EASEMENT BY PRESCRIPTION FOUND IN COMMON ELEMENT. --Trial court properly entered summary judgment for a condominium council as to a unit owner's prescriptive easement claim as the owner did not acquire a prescriptive easement of a specific parking place as: (1) The parking space was a common element under the Maryland Condominium Act, § 11-109(e) of this subtitle and the condominium declaration, which had never been changed into a limited common element by the unanimous consent of the unit owners as required by § 11-103(c)(1)(iv) of this subtitle and by the declaration; (2) § 11-107(a) and the declaration forbade any unit owner from bringing an action for partition of the general common elements of the condominium; (3) the owner's deed made no mention of the acquisition of an exclusive interest in the parking space; (4) the owner's use of the parking space was not adverse to the condominium council as the owner had permission to use the parking space; and (5) the owner did not meet the 20-year period required for a prescriptive easement as the owner could not tack his use onto the use by prior owners of his unit as they did not have possession of the parking space under separate color of title. Jurgensen v. New Phoenix Atl. Condo. Council of Unit Owners, 380 Md. 106, 843 A.2d 865 (2004).

BYLAW AMENDMENT LIMITING USE OF LOBBY WAS INVALID LIMITATION OF PROPERTY INTEREST. --It was beyond the power of a condominium association by bylaw amendment to purport to deprive the owners of first floor professional office units of their rights under the condominium declaration and under the Maryland Condominium Act to the enjoyment of the building lobby for the ingress and egress of their business invitees; such a rule affected an interest in property, and not a mere personal privilege which could be affected by bylaw amendment. Ridgely Condominium Ass'n v. Smyrnioudis, 343 Md. 357, 681 A.2d 494 (1996).

MONTGOMERY COUNTY CODE'S "FIRST RIGHT TO BUY" PROVISION UNCONSTITUTIONAL. --Application of the Montgomery County Code's first right to buy law to a sale and purchase, with intent to convert, in the interval between the contract and the transfer of title violates Md. Const., Article XI-A, § 3, even though during that period the property is not a "condominium" under the definition in this section, and even though the contract purchaser is not yet an "owner" of the property as that term is used in § 11-102 (a) of this title. Rockville Grosvenor, Inc. v. Montgomery County, 289 Md. 74, 422 A.2d 353 (1980).

Trial court erred by setting aside a second foreclosure sale with regard to a condominium unit, because the debtor failed to file an injunction prior to the sale and, upon completion of the sale, the debtor lost his right of redemption. The debtor should have sought to enjoin the sale from proceeding by filing a motion to enjoin under Md. R. 14-209.11-110, as substantial compliance by tendering a payment to satisfy the debt after the sale occurred was insufficient once the decree of foreclosure was entered. Greenbriar Condo. v. Brooks, 387 Md. 683, 878 A.2d 528 (2005).

Debtor may seek to enjoin a foreclosure sale from proceeding by filing a motion to enjoin prior to the sale, as provided for in Rule 14-209 but, if the debtor fails to do so and the sale occurs, the debtor's later filing of exceptions can only challenge any procedural irregularities regarding the sale, or the debtor can challenge the statement of indebtedness by filing exceptions to the auditor's statement of account. Ultimately, the foreclosure sale extinguishes a debtor's right of redemption, and substantial compliance by tendering a payment to satisfy the outstanding debt is insufficient once the decree of foreclosure has been declared. Greenbriar Condo. v. Brooks, 387 Md. 683, 878 A.2d 528 (2005).

APPLIED IN Antigua Condominium Ass'n v. Melba Investors Atl., Inc., 307 Md. 700, 517 A.2d 75 (1986); Garfink v. Cloisters at Charles, Inc., 392 Md. 374, 897 A.2d 206 (2006).

QUOTED IN Condominium Owners 5-7 Slade Ave. v. Supervisor of Assmts., 283 Md. 29, 388 A.2d 116 (1978); Andrews v. City of Greenbelt, 293 Md. 69, 441 A.2d 1064 (1982); Sea Watch Stores Ltd. Liab. Co. v. Council of Unit Owners, 115 Md. App. 5, 691 A.2d 750 (1997).

STATED IN Milton Co. v. Council of Unit Owners of Bentley Place Condominium, 354 Md. 264, 729 A.2d 981 (1999).

CITED IN Supervisor of Assmts. v. Southgate Harbor, 279 Md. 586, 369 A.2d 1053 (1977); Boulden v. Mayor of Elkton, 311 Md. 411, 535 A.2d 477 (1988); Alpert v. Le'Lisa Condominium, 107 Md. App. 239, 667 A.2d 947 (1995); Cornell v. Council of Unit Owners Hawaiian Village Condominiums, Inc., 983 F. Supp. 640 (D. Md. 1997).

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-102 (2006)

§ 11-102. Establishment of condominium regime

(a) By recording declaration, bylaws and plat; exception. --

(1) The fee simple owner or lessee under a lease that exceeds 60 years of any property in the State may subject the property to a condominium regime by recording among the land records of the county where the property is located, a declaration, bylaws, and condominium plat that comply with the requirements specified in this title.

(2) (i) Notwithstanding the provisions of paragraph (1) of this subsection, a leasehold estate may not be subjected to a condominium regime if it is used for residential purposes unless the State, a county that has adopted charter home rule under Article XI-A of the Maryland Constitution, a municipal corporation, or, subject to the provisions of subparagraph (ii) of this paragraph, the Washington Metropolitan Area Transit Authority is the owner of the reversionary fee simple estate.

(ii) The Washington Metropolitan Area Transit Authority may establish a leasehold estate for a condominium regime that is used for residential purposes under subparagraph (i) of this paragraph if, when the initial term of the lease expires, there is a provision in the lease that allows the lessee to automatically renew the lease for another term.

(3) Notwithstanding paragraph (2) of this subsection or any declaration, rule, or bylaw, a developer or any other person may not be prohibited from granting a leasehold estate in an individual unit used for residential purposes.

(b) Property lying in two counties. -- If any property lying partly in one county and partly in any other county is subjected to a condominium regime, the declaration, bylaws, and condominium plat shall be recorded in all counties where any portion of the property is located. Subsequent instruments affecting the title to a unit which is physically located entirely within a single county shall be recorded only in that county, notwithstanding the fact that the common elements are not physically located entirely within that county.

(c) Recording and taxing instruments affecting title. -- All instruments affecting title to units shall be recorded and taxed as in other real property transactions. However, no State or local tax may be imposed by reason of the execution or recordation of the declaration, bylaws, condominium plat, or any statement of condominium lien recorded pursuant to the provisions of § 11-110 of this title.

(d) Indexing declaration, bylaws and plat. -- The declaration, bylaws, and condominium plat shall be indexed in the grantor index under the name of the developer and under the name of the condominium. Subsequent amendments shall be indexed under the name of the condominium.

HISTORY: An. Code 1957, art. 21, §§ 11-102, 11-108; 1974, ch. 12, § 2; ch. 641; 1981, ch. 246; 1982, ch. 836, § 1; 1984, ch. 23; 1989, ch. 5, § 1; 1990, ch. 519; 1995, ch. 360; 1996, chs. 483, 660; 2006, ch. 526.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 526, Acts 2006, effective June 1, 2006, added "a municipal corporation" in (a)(2)(i).

EDITOR'S NOTE. --Section 2, ch. 660, Acts 1996, provides that "this Act shall be construed only prospectively and may not be applied or interpreted to have any effect on or application to any condominium regime that exists on or before July 1, 1996."

BILL REVIEW LETTER. --Chapter 526, Acts 2006 (Senate Bill 544) was approved for constitutionality and legal sufficiency, although it was determined that the title of SB 544, which purports to permit the leaseholder, not the municipal corporation, to establish a condominium regime on the property, does not accurately reflect the bill's contents, as required by Article III, § 29 of the Maryland Constitution. For this reason, it was recommended

that the implementing agencies not give effect to the bill until curative legislation is enacted. (Letter of the Attorney General dated May 9, 2006.)

UNIVERSITY OF BALTIMORE LAW REVIEW. --For note discussing the exercise of police power by a non-legislative body, see 11 U. Balt. L. Rev. 158 (1981).
For comment discussing cases and legislation imposing implied warranties in sales of residential condominiums, see 14 U. Balt. L. Rev. 116 (1984).

ESTABLISHMENT ON LAND SUBJECT TO LEASEHOLD ESTATE. --The State Horizontal Property Act permits the establishment of a condominium regime on land that is subject to a leasehold estate. 66 Op. Att'y Gen. 50 (1981).

CONTROL ASSUMED UPON RECORDING. --Upon the recording of the documents mentioned in subsection (a) of the section, the council of unit owners immediately assumes control over the affairs of the condominium. 64 Op. Att'y Gen. 71 (1979).

EVIDENCE SUFFICIENT TO ESTABLISH CONDOMINIUM REGIME. --Condominium regime was created at a project site by the recording of a "condominium regime declaration" that included all of the elements required by this section, i.e., bylaws and plat description; no other evidence had been required to prove the existence of the condominium regime. S. Mgmt. Corp. v. Kevin Willes Constr. Co., 382 Md. 524, 856 A.2d 626 (2004).

NOTICE TO UNIT OWNERS REQUIRED WHEN CONDOMINIUM REGIME IS ESTABLISHED. --As a condominium regime lawfully existed at a building under § 11-102 of this article, notice had to be given to all condominium unit owners under § 9-104 of this article, and all such owners had to be parties to the case before a mechanic's lien could be established as against the entire building. Since only one of the two owners had been named a party, the trial court erred in entering an order establishing a mechanic's lien. S. Mgmt. Corp. v. Kevin Willes Constr. Co., 382 Md. 524, 856 A.2d 626 (2004).

MONTGOMERY COUNTY CODE'S "FIRST RIGHT TO BUY" PROVISION UNCONSTITUTIONAL. --Application of the Montgomery County Code's first right to buy law to a sale and purchase, with intent to convert, in the interval between the contract and the transfer of title violates Md. Const., Article XI-A, § 3, even though during that period the property is not a "condominium" under the definition in this section, and even though the contract purchaser is not yet an "owner" of the property as that term is used in § 11-102 (a) of this title. Rockville Grosvenor, Inc. v. Montgomery County, 289 Md. 74, 422 A.2d 353 (1980).

APPROPRIATE STANDARD OF REVIEW FOR EVALUATING BYLAW AMENDMENT. --The appropriate standard of review for evaluating a condominium bylaw amendment containing a use restriction is reasonableness; while a more deferential standard may be employed when considering provisions contained in original condominium documentation, later adopted provisions that are passed by less than unanimous approval of all unit owners have the potential to discriminate against certain classes of owners. Ridgely Condominium Ass'n v. Smyrnioudis, 105 Md. App. 404, 660 A.2d 942 (1995), aff'd, 343 Md. 357, 68 A.2d 494 (1996).

APPLIED IN Garfink v. Cloisters at Charles, Inc., 392 Md. 374, 897 A.2d 206 (2006).

STATED IN Andrews v. City of Greenbelt, 293 Md. 69, 441 A.2d 1064 (1982); Ridgely Condominium Ass'n v. Smyrnioudis, 343 Md. 357, 681 A.2d 494 (1996).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.

a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-102.1 (2006)

§ 11-102.1. Notice prior to conversion of residential property to condominium

(a) Giving of notice. --

(1) Before a residential rental facility is subjected to a condominium regime, the owner, and the landlord of each tenant in possession of any portion of the residential rental facility as his residence, if other than the owner, shall give the tenant a notice in the form specified in subsection (f) of this section. The notice shall be given after registration with the Secretary of State under § 11-127 of this title and concurrently and together with any offer required to be given under § 11-136 of this title.

(2) The owner and the landlord, if other than the owner, shall inform in writing each tenant who first leases any portion of the premises as his residence after the giving of the notice required by this subsection that the notice has been given. The tenant shall be informed at or before the signing of lease or the taking of possession, whichever occurs first.

(3) A copy of the notice, together with a list of each tenant to whom the notice was given, shall be given to the Secretary of State at the time the notice is given to each tenant.

(b) Method of delivery. -- The notice shall be considered to have been given to each tenant if delivered by hand to the tenant or mailed, certified mail, return receipt requested, postage prepaid, to the tenant's last-known address.

(c) Vacation of premises. -- A tenant leasing any portion of the residential rental facility as his residence at the time the notice referred to in subsection (a) of this section is given to him may not be required to vacate the premises prior to the expiration of 180 days from the giving of the notice except for:

(1) Breach of a covenant in his lease occurring before or after the giving of the notice;

(2) Nonpayment of rent occurring before or after the giving of the notice; or

(3) Failure of the tenant to vacate the premises at the time that is indicated by the tenant in a notice given to his landlord under subsection (e) of this section.

(d) Extension of lease term. -- The lease term of any tenant leasing any portion of the residential rental facility as his residence at the time the notice referred to in subsection (a) of this section is given to him and which lease term would ordinarily terminate during the 180-day period shall be extended until the expiration of the 180-day period. The extended term shall be at the same rent and on the same terms and conditions as were applicable on the last day of the lease term.

(e) Termination of lease. -- Any tenant leasing any portion of the residential rental facility as

his residence at the time the notice referred to in subsection (a) of this section is given to him may terminate his lease, without penalty for termination upon at least 30 days' written notice to his landlord.

(f) Form of notice. -- The notice referred to in subsection (a) of this section shall be sufficient for the purposes of this section if it is in substantially the following form. As to rental facilities containing less than 10 units, "Section 2" of the notice is not required to be given.

"NOTICE OF INTENTION TO
CREATE A CONDOMINIUM

..... (Date)

This is to inform you that the rental facility known as ..... may be converted to a condominium regime in accordance with the Maryland Condominium Act. You may be required to move out of your residence after 180 days have passed from the date of this notice, or in other words, after ..... (Date).

Section 1

Rights that apply to all tenants

If you are a tenant in this rental facility and you have not already given notice that you intend to move, you have the following rights, provided you have previously paid your rent and continue to pay your rent and abide by the other conditions of your lease.

(1) You may remain in your residence on the same rent, terms, and conditions of your existing lease until either the end of your lease term or until ..... (Date) (the end of the 180-day period), whichever is later. If your lease term ends during the 180-day period, it will be extended on the same rent, terms, and conditions until ..... (Date) (the end of the 180-day period). In addition, certain households may be entitled to extend their leases beyond the 180 days as described in Section 2.

(2) You have the right to purchase your residence before it can be sold publicly. A purchase offer describing your right to purchase is included with this notice.

(3) If you do not choose to purchase your unit, and the annual income for all present members of your household did not exceed ..... (the applicable income eligibility figure or figures for the appropriate area) for 20...., you are entitled to receive $ 375 when you move out of your residence. You are also entitled to be reimbursed for moving expenses as defined in the Maryland Condominium Act over $ 375 up to $ 750 which are actually and reasonably incurred. If the annual income for all present members of your household did exceed ..... (the applicable income eligibility figure or figures for the appropriate area) for 20...., you are entitled to be reimbursed up to $ 750 for moving expenses as defined in the Maryland Condominium Act actually and reasonably incurred. To receive reimbursement for

moving expenses, you must make a written request, accompanied by reasonable evidence of your expenses, within 30 days after you move. You are entitled to be reimbursed within 30 days after your request has been received.

(4) If you want to move out of your residence before the end of the 180-day period or the end of your lease, you may cancel your lease without penalty by giving at least 30 days prior written notice. However, once you give notice of when you intend to move, you will not have the right to remain in your residence beyond that date.

Section 2

Right to 3-year lease extension or 3-month rent payment for certain individuals with disabilities and senior citizens

The developer who converts this rental facility to a condominium must offer extended leases to qualified households for up to 20 percent of the units in the rental facility. Households which receive extended leases will have the right to continue renting their residences for at least 3 years from the date of this notice. A household may cancel an extended lease by giving 3 months' written notice if more than 1 year remains on the lease, and 1 month's written notice if less than 1 year remains on the lease.

Rents under these extended leases may only be increased once a year and are limited by increases in the cost of living index. Read the enclosed lease to learn the additional rights and responsibilities of tenants under extended leases.

In determining whether your household qualifies for an extended lease, the following definitions apply:

(1) (i) "Disability" means:

1. A physical or mental impairment that substantially limits one or more of an individual's major life activities; or

2. A record of having a physical or mental impairment that substantially limits one or more of an individual's major life activities.

(ii) "Disability" does not include the current illegal use of or addiction to:

1. A controlled dangerous substance as defined in § 5-101 of the Criminal Law Article; or

2. A controlled substance as defined in 21 U.S.C. § 802.

(2) "Senior citizen" means a person who is at least 62 years old on the date of this notice.

(3) "Annual income" means the total income from all sources for all present members of your household for the income tax year immediately preceding the

year in which this notice is issued but shall not include unreimbursed medical expenses if the tenant provides reasonable evidence of the unreimbursed medical expenses or consents in writing to authorize disclosure of relevant information regarding medical expense reimbursement at the time of applying for an extended lease. "Total income" means the same as "gross income" as defined in § 9-104(a)(7) of the Tax - Property Article.

(4) "Unreimbursed medical expenses" means the cost of medical expenses not otherwise paid for by insurance or some other third party, including medical and hospital insurance premiums, co-payments, and deductibles; Medicare A and B premiums; prescription medications; dental care; vision care; and nursing care provided at home or in a nursing home or home for the aged.

To qualify for an extended lease you must meet all of the following criteria:

(1) A member of the household must be an individual with a disability or a senior citizen and must be living in your unit as of the date of this notice and must have been a member of your household for at least 12 months preceding the date of this notice; and

(2) Annual income for all present members of your household must not have exceeded ..... (the applicable income eligibility figure or figures for the appropriate area) for 20....; and

(3) You must be current in your rental payments and otherwise in good standing under your existing lease.

If you meet all of these qualifications and desire an extended lease, then you must complete the enclosed form and execute the enclosed lease and return them. The completed form and executed lease must be received at the office listed below within 60 days of the date of this notice, or in other words, by ..... (Date). If your completed form and executed lease are not received within that time, you will not be entitled to an extended lease.

If the number of qualified households requesting extended leases exceeds the 20 percent limitation, priority will be given to qualified households who have lived in the rental facility for the longest time.

Due to the 20 percent limitation your application for an extended lease must be processed prior to your lease becoming final. Your lease will become final if it is determined that your household is qualified and falls within the 20 percent limitation.

If you return the enclosed form and lease by ..... (Date) you will be notified within 75 days of the date of this notice, or in other words, by ..... (Date), whether you are qualified and whether your household falls within the 20 percent limitation.

You may apply for an extended lease and, at the same time, choose to purchase your unit. If you apply for and receive an extended lease, your purchase contract will be void. If you do not receive an extended lease, your purchase contract will be effective and you will be obligated to buy your unit.

If you qualify for an extended lease, but due to the 20 percent limitation, your lease is not finalized, the developer must pay you an amount equal to 3 months rent within 15 days after you move. You are also entitled to up to $ 750 reimbursement for your moving expenses, as described in Section 1.

If you qualify for an extended lease, but do not want one, you are also entitled to both the moving expense reimbursement previously described, and the payment equal to 3 months' rent. In order to receive the 3 month rent payment, you must complete and return the enclosed form within 60 days of the date of this notice or by ..... (Date), but you should not execute the enclosed lease.

All application forms, executed leases, and moving expense requests should be addressed or delivered to:

.....

.....

....."

(g) Affirmation of developer. -- A declaration may not be received for record unless there is attached thereto an affirmation of the developer in substantially the following form:

"I hereby affirm under penalty of perjury that the notice requirements of § 11-102.1 of the Real Property Article, if applicable, have been fulfilled.

Developer

By ....."

(h) Failure to give notice is defense. -- Failure of a landlord or owner to give notice as required by this section is a defense to an action for possession.

(i) Effect on condominium regime appropriately established. -- Failure to fulfill the provisions of this section does not affect the validity of a condominium regime otherwise established in accordance with the provisions of this title.

(j) Applicability to non-renewing tenant. -- This section does not apply to any tenant whose lease term expires during the 180-day period and who has given notice of his intent not to renew the lease prior to the giving of the

notice required by subsection (a) of this section.

(k) Waiver of rights; month-to-month tenant. --

(1) A tenant may not waive his rights under this section except as provided under § 11-137 of this title.

(2) At the expiration of the 180-day period a tenant shall become a tenant from month-to-month subject to the same rent, terms, and conditions as those existing at the giving of the notice required by subsection (a) of this section, if the tenant's initial lease has expired and the tenant has not:

(i) Entered into a new lease;

(ii) Vacated under subsection (e) of this section; or

(iii) Been notified in accordance with applicable law prior to the expiration of the 180-day period that he must vacate at the end of that period.

HISTORY: 1974, ch. 704; 1975, ch. 786, § 1; 1976, ch. 272; ch. 348, § 1; 1981, ch. 246; 1982, ch. 836, § 2; 1983, ch. 8; 1984, chs. 525, 575; 1985, ch. 480, § 1; chs. 510, 550; 1986, ch. 360; 1989, ch. 5, § 1; 2000, ch. 61, § 2; 2006, chs. 370, 451.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 370, Acts 2006, approved May 2, 2006, and effective from date of enactment, in (f), rewrote (3) in Section 1; added (4) in the third undesignated paragraph of Section 2; and, in the fourth undesignated paragraph of Section 2, substituted "the applicable income eligibility figure or figures for the appropriate area" for "80 percent of applicable median income" in (2).
Chapter 451, Acts 2006, effective October 1, 2006, in (f), substituted "individuals with disabilities" for "handicapped citizens" in the Section 2 heading; rewrote (1) in the third undesignated paragraph of Section 2; and, in the fourth undesignated paragraph of Section 2, substituted "an individual with a disability" for "a handicapped citizen" in (1).

EDITOR'S NOTE. --Chapters 370 and 451, Acts 2006, each amended (f). Neither of the 2006 amendments referred to the other, and the language has been resolved to give effect to both, as each amended a different portion of (f).
Section 2, ch. 370, Acts 2006, provides that "this Act shall apply to any residential rental facility for which an application for registration has not been filed with the Secretary of State, in accordance with § 11-127 of the Real Property Article, on or before March 15, 2006."
Section 2, ch. 451, Acts 2006, provides that "this Act shall apply to any residential rental facility for which the notice to the tenants required under § 11-102.1 of the Real Property Article has not been given on or before March 16, 2006."

COMBINATION OF STATE AND LOCAL NOTICE PROVISIONS CONSTITUTIONAL. --The combination of the 180-day notice period under this section with the 60-day filing period under the Montgomery County Code, for an effective waiting period of at least 240 days before property may be subjected to a condominium regime, does not offend due process. Rockville Grosvenor, Inc. v. Montgomery County, 289 Md. 74, 422 A.2d 353 (1980).

SECTION MEASURES MINIMUM PERIOD OF NOTICE. --This section merely measures back in time from the filing of the documents which create a condominium regime the minimum period of notice which residential tenants are required to receive before conversion. It does not fix an event or combination of circumstances as the beginning of a specific period of time after which conversion may be accomplished as a matter of State law right. Rockville Grosvenor, Inc. v. Montgomery County, 289 Md. 74, 422 A.2d 353 (1980).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-102.2 (2006)

§ 11-102.2. Termination of leases

(a) Definition. -- In this section, "terminate" means:

(1) A giving of notice terminating a periodic tenancy of a dwelling within a residential rental facility; or

(2) The failure to renew or continue an existing lease for a dwelling in a residential rental facility upon its expiration.

(b) Termination without notice prohibited. -- The owner of a residential facility may not terminate the lease of any tenant occupying any portion of the owner's residential facility in order to avoid such owner's obligation to give the tenant the notice required under § 11-102.1 of this title.

(c) List of terminated leases required in application for registration. -- The application for registration for a residential rental facility under § 11-127 of this subtitle shall include, to the extent reasonably available, a list of all tenants whose leases were terminated during the 180-day period prior to the filing of the application for registration.

(d) Rejection of application for violation. -- After an agency hearing, if the Secretary of State determines that an owner has violated subsection (b) of this section within 180 days prior to filing an application for registration, the Secretary of State shall reject the application for registration filed by the owner.

(e) Revocation of application for violation. -- After a public offering statement has been registered, if the Secretary of State determines that an owner has violated subsection (b) of this section during the 12-month period prior to the time units are offered for sale, the Secretary of State shall revoke the registration.

(f) Determination of violation. -- In determining whether an owner has violated subsection (b) of this section, the Secretary of State shall consider:

(1) (i) Whether the termination was due to the nonpayment of rent;

(ii) Whether the termination was due to a breach of the lease; or

(iii) Whether the owner intended at the time of termination to convert the residential facility to a condominium; and

(2) Any other factors as the Secretary of State deems appropriate.

(g) Correction of violation. -- If an application for registration is rejected by the Secretary of State pursuant to subsection (d) of this section, or if a registration is revoked by the Secretary of State pursuant to subsection (e) of this section, the Secretary of State may not accept the application or reinstate the registration unless and until the owner has tendered to every tenant whose lease was terminated in violation of subsection (a) of this section an award for reasonable expenses.

HISTORY: 1987, ch. 769.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-103 (2006)

§ 11-103. Declaration

(a) Required particulars. -- The declaration shall express at least the following particulars:

(1) The name by which the condominium is to be identified, which name shall include the word "condominium" or be followed by the phrase "a condominium".

(2) A description of the condominium sufficient to identify it with reasonable certainty together with a statement of the owner's intent to subject the property to the condominium regime established under this title.

(3) A general description of each unit, including its perimeters, location, and any other data sufficient to identify it with reasonable certainty. As to condominiums created on or after July 1, 1981, except as provided by the declaration or the plat:

(i) If walls, floors, or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors, or ceilings are a part of the common elements.

(ii) If any chute, flue, duct, wire, conduit, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a part of that unit, and any portion thereof serving more than one unit or any portion of the

common elements is a part of the common elements.

(iii) Subject to the provisions of subparagraph (ii) of this paragraph, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit.

(iv) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

(4) A general description of the common elements together with a designation of those portions of the common elements that are limited common elements and the unit to which the use of each is restricted initially.

(5) The percentage interests appurtenant to each unit as provided in § 11-107 of this title.

(6) The number of votes at meetings of the council of unit owners appurtenant to each unit.

(b) Reference to plat. -- The information required by subsection (a) (2) through (4) of this section may be incorporated in the declaration by reference to the condominium plat.

(c) Amendments or orders of reformation. --

(1) Except for a corrective amendment under § 11-103.1 of this title or as provided in paragraph (2) of this subsection, the declaration may be amended only with the written consent of 80 percent of the unit owners listed on the current roster. Amendments under this section are subject to the following limitations:

(i) Except to the extent expressly permitted or expressly required by other provisions of this title, an amendment to the declaration may not change the boundaries of any unit, the undivided percentage interest in the common elements of any unit, the liability for common expenses or rights to common profits of any unit, or the number of votes in the council of unit owners of any unit without the written consent of every unit owner and mortgagee.

(ii) An amendment to the declaration may not modify in any way rights expressly reserved for the benefit of the developer or provisions required by any governmental authority or for the benefit of any public utility.

(iii) Except to the extent expressly permitted by the declaration, an amendment to the declaration may not change residential units to nonresidential units or change nonresidential units to residential units without the written consent of every unit owner and mortgagee.

(iv) Except as otherwise expressly permitted by this title and by the declaration, an amendment to the declaration may not redesignate general common elements as limited common elements without the written consent of every unit owner and mortgagee.

(v) No provision of this title shall be construed in derogation of any requirement in the declaration or bylaws that all or a specified number of the mortgagees of the condominium units approve specified actions contemplated by the council of unit owners.

(2) (i) The council of unit owners may petition the circuit court in equity for the county in which the condominium is located to correct:

1. An improper description of the units or common elements; or

2. An improper assignment of the percentage interests in the common elements, common expenses, and common profits.

(ii) The petition may be brought only if:

1. The unit owners, at a special meeting called for that purpose, vote to petition the court to correct a specific error by a vote of at least 662/3 percent of the unit owners present and voting at a properly convened meeting;

2. The council of unit owners gives notice of the special meeting to each mortgagee of record for the condominium; and

3. An opportunity is provided for the mortgagees to speak at the special meeting upon written request to the council of unit owners.

(iii) The court may reform the declaration to correct the error or omission as the court considers appropriate, if:

1. The council of unit owners gives notice of the filing of the petition to each mortgagee and unit owner within 15 days of filing;

2. The council of unit owners files an affidavit with the court stating that the conditions of subparagraph (ii) of this paragraph have been met;

3. The council of unit owners proves, by a preponderance of the evidence, that there is an error or omission as provided in subparagraph (i) of this paragraph;

4. Any mortgagee with an interest in the condominium is permitted to intervene in the proceedings upon filing a motion to intervene as provided in the Maryland Rules;

5. The reformation does not substantially impair the property rights of any unit owner or mortgagee; and

6. The court issues an order of reformation.

(iv) A final order of reformation may be appealed by any party within 30 days of its issuance. An order of reformation may not be recorded until the appeal period has lapsed or all appeals have been completed.

(3) An amendment or order of reformation becomes effective on recordation in the same manner as the declaration. If the condominium is registered with the Secretary of State, the council of unit owners shall file a copy of the order of reformation with the Secretary of State within 15 days of recordation.

HISTORY: An. Code 1957, art. 21, § 11-109; 1974, ch. 12, § 2; ch. 641; 1975, ch. 786, § 1; 1981, ch. 246; 1982, ch. 836, § 3; 1983, ch. 525; 1984, ch. 580; 1989, ch. 5, § 1; 1995, ch. 576; 1997, ch. 14, § 1; 2002, ch. 19, § 10.

NOTES:
EDITOR'S NOTE. --Section 10, ch. 19, Acts 2002, provides that "the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, "title" has been substituted for "subtitle" in the introductory language of (c) (1).

ESTABLISHMENT OF CONDOMINIUM ON LAND SUBJECT TO LEASEHOLD INTEREST. --The State Horizontal Property Act permits the establishment of a condominium regime on land that is subject to a leasehold estate. 66 Op. Att'y Gen. 50 (1981).

UNANIMOUS CONSENT REQUIRED --Trial court properly entered summary judgment for a

condominium council as to a unit owner's prescriptive easement claim as the owner did not acquire a prescriptive easement of a specific parking place as: (1) The parking space was a common element under § 11-109(e) of this subtitle and the condominium declaration, which had never been changed into a limited common element by the unanimous consent of the unit owners as required by (c)(1)(iv) and by the declaration; (2) § 11-107(a) of this subtitle and the declaration forbade any unit owner from bringing an action for partition of the general common elements of the condominium; (3) the owner's deed made no mention of the acquisition of an exclusive interest in the parking space; (4) the owner's use of the parking space was not adverse to the condominium council as the owner had permission to use the parking space; and (5) the owner did not meet the 20-year period required for a prescriptive easement as the owner could not tack his use onto the use by prior owners of his unit as they did not have possession of the parking space under separate color of title. Jurgensen v. New Phoenix Atl. Condo. Council of Unit Owners, 380 Md. 106, 843 A.2d 865 (2004).

Trial court properly dismissed a condominium unit owner's equitable estoppel claim against a condominium council as the owner failed to show that the council made a representation concerning the owner's use of a specific parking space and that he detrimentally relied on that representation as: (1) the owner had the means of acquiring the knowledge that the parking space was part of the general common elements of the condominium; (2) none of the council's representations regarding the parking space warranted the application of equitable estoppel to limit the council's rights as to its alteration of the disputed parking space; (3) § 11-103(c)(1)(iv) required the unanimous consent of all owners in order for the entity to make any binding representations that would estop it from asserting full rights in the general common elements of the condominium; (4) the council had the authority to reconfigure the condominium general common element parking area, and none of the council's actions could have made the owner reasonably believe that the parking space would remain permanently unchanged in its dimensions, or that the area that the parking space would always be for the exclusive use of the owner of his unit; and (5) as the reconfiguration did not alter the owner's rights in the general common elements of the condominium as he still owned the same percentage interest in the general common elements, the reconfiguration did not interfere with the owner's property rights as the owner of his unit, even if it frustrated his investment expectations. Jurgensen v. New Phoenix Atl. Condo. Council of Unit Owners, 380 Md. 106, 843 A.2d 865 (2004).

EASEMENT GRANTED IN CONDOMINIUM DOCUMENTS. --Traditional easement law applied to easements granted in condominium documents, and the specific provisions of both the condominium's declaration and bylaws allowed a condominium owner to repair an inherent construction defect that related to the safe use of her premises without prior approval. Therefore, under the factual circumstances, the owner was within the bounds of the express grant of the easement to install an exterior dryer exhaust vent to correct a defect in the dryer exhaust system of the owner's condominium without the prior approval of the council and, under the limited circumstances presented, was not subject to the prior approval provision in the condominium's bylaws; in any event, because it came under an exception contained in the bylaws, the owner's action did not violate the bylaws' provisions. Garfink v. Cloisters at Charles, Inc., 392 Md. 374, 897 A.2d 206 (2006).

STATED IN Ridgely Condominium Ass'n v. Smyrnioudis, 105 Md. App. 404, 660 A.2d 942 (1995), aff'd, 343 Md. 357, 68 A.2d 494 (1996); Ridgely Condominium Ass'n v. Smyrnioudis, 343 Md. 357, 681 A.2d 494 (1996).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***

*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-103.1 (2006)

§ 11-103.1. Corrective amendments

(a) In general. -- Unless the declaration or bylaws provide otherwise and subject to subsections (b) and (c) of this section, the council of unit owners or the board of directors may execute and record an amendment to the declaration, bylaws, or plat, to correct:

(1) A typographical error or other error in the percentage interests or number of votes appurtenant to any unit;

(2) A typographical error or other incorrect reference to another prior recorded document; or

(3) A typographical error or other incorrect unit designation or assignment of limited common elements if the affected unit owners and their mortgagees consent in writing to the amendment, and the consent documents are recorded with the amendment.

(b) Supporting documents. -- If a council of unit owners or board of directors executes and records an amendment under subsection (a) of this section, the council or board shall also record with the amendment:

(1) During the time that the developer has an interest:

(i) The consent of the developer; or

(ii) An affidavit by the council or board that any developer who has an interest in the condominium has been provided a copy of the amendment and a notice that the developer may object in writing to the amendment within 30 days of receipt of the amendment and notice, that 30 days have passed since delivery of the amendment and notice, and that the developer has made no written objection; and

(2) An affidavit by the council or board that at least 30 days before recordation of the amendment a copy of the amendment was sent by first class mail to each unit owner at the last address on record with the council of unit owners.

(c) Entitlement to record; effective date. -- An amendment under this section is entitled to be recorded and is effective upon recordation if accompanied by the supporting documents required by this section.

HISTORY: 1995, ch. 576.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.

a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-104 (2006)

§ 11-104. Bylaws

(a) Bylaws to govern administration. -- The administration of every condominium shall be governed by bylaws which shall be recorded with the declaration. If the council of unit owners is incorporated, these bylaws shall be the bylaws of that corporation.

(b) Contents. -- The bylaws shall express at least the following particulars:

(1) The form of administration, indicating whether the council of unit owners shall be incorporated or unincorporated, and whether, and to what extent, the duties of the council of unit owners may be delegated to a board of directors, manager, or otherwise, and specifying the powers, manner of selection, and removal of them;

(2) The mailing address of the council of unit owners;

(3) The method of calling the unit owners to assemble; the attendance necessary to constitute a quorum at any meeting of the council of unit owners; the manner of notifying the unit owners of any proposed meeting; who presides at the meetings of the council of unit owners, who keeps the minute book for recording the resolutions of the council of unit owners, and who counts votes at meetings of the council of unit owners; and

(4) The manner of assessing against and collecting from unit owners their respective shares of the common expenses.

(c) Permissible additional provisions. -- The bylaws also may contain any other provision regarding the management and operation of the condominium including any restriction on or requirement respecting the use and maintenance of the units and the common elements.

(d) Prohibiting voting by certain unit owners. -- The bylaws may contain a provision prohibiting any unit owner from voting at a meeting of the council of unit owners if the council of unit owners has recorded a statement of condominium lien on his unit and the amount necessary to release the lien has not been paid at the time of the meeting.

(e) Amendments. --

(1) A corrective amendment to the bylaws may be made in accordance with § 11-103.1 of this title, or as provided in paragraph (2) of this subsection.

(2) Unless a higher percentage is required in the bylaws, the bylaws may be amended by the affirmative vote of unit owners having at least 66 2/3 percent of the votes in the council of unit owners.

(3) (i) Except as provided in paragraph (4) of this subsection, if the declaration or bylaws

contain a provision requiring any action on the part of the holder of a mortgage or deed of trust on a unit in order to amend the bylaws, that provision shall be deemed satisfied if the procedures under this paragraph are satisfied.

(ii) If the declaration or bylaws contain a provision described in subparagraph (i) of this paragraph, the council of unit owners shall cause to be delivered to each holder of a mortgage or deed of trust entitled to notice, a copy of the proposed amendment to the bylaws.

(iii) If a holder of the mortgage or deed of trust that receives the proposed amendment fails to object, in writing, to the proposed amendment within 60 days from the date of actual receipt of the proposed amendment, the holder shall be deemed to have consented to the adoption of the amendment.

(4) Paragraph (3) of this subsection does not apply to amendments that:

(i) Alter the priority of the lien of the mortgage or deed of trust;

(ii) Materially impair or affect the unit as collateral; or

(iii) Materially impair or affect the right of the holder of the mortgage or deed of trust to exercise any rights under the mortgage, deed of trust, or applicable law.

(5) Each particular set forth in subsection (b) of this section shall be expressed in the bylaws as amended. An amendment under paragraph (2) of this subsection shall be entitled to be recorded if accompanied by a certificate of the person specified in the bylaws to count votes at the meeting of the council of unit owners that the amendment was approved by unit owners having the required percentage of the votes and shall be effective on recordation. This certificate shall be conclusive evidence of approval.

HISTORY: An. Code 1957, art. 21, §§ 11-110, 11-111; 1974, ch. 12, § 2; ch. 641; 1975, ch. 786, § 1; 1978, ch. 526; 1980, chs. 591, 681; 1981, ch. 246; 1984, ch. 580; 1986, ch. 360; 1989, ch. 5, § 1; 1990, ch. 6, § 2; 1993, ch. 587; 1995, ch. 576; 1996, ch. 185.

INTENT OF SECTION. --This section intends to eliminate the mandatory effect that was explicitly provided for in former § 11-111 (f) of this title. The new language, "also may contain," drastically changed the import of the bylaws and their content. Dulaney Towers Maintenance Corp. v. O'Brey, 46 Md. App. 464, 418 A.2d 1233 (1980).

IT IS THE EXCEPTION RATHER THAN THE RULE THAT BYLAWS CONTAIN SPECIFIC RESTRICTIONS respecting use of units and common areas. Dulaney Towers Maintenance Corp. v. O'Brey, 46 Md. App. 464, 418 A.2d 1233 (1980).

ENFORCEMENT OF HOUSE RULE. --If a house rule is reasonable, consistent with the law, and enacted in accordance with the bylaws, then it will be enforced. Dulaney Towers Maintenance Corp. v. O'Brey, 46 Md. App. 464, 418 A.2d 1233 (1980).

APPROPRIATE STANDARD OF REVIEW FOR EVALUATING BYLAW AMENDMENT. --The appropriate standard of review for evaluating a condominium bylaw amendment containing a use restriction is reasonableness; while a more deferential standard may be employed when considering provisions contained in original condominium documentation, later adopted provisions that are passed by less than unanimous approval of all unit owners have the potential to discriminate against certain classes of owners. Ridgely Condominium Ass'n v. Smyrnioudis, 105 Md. App. 404, 660 A.2d 942 (1995), aff'd, 343 Md. 357, 68 A.2d 494 (1996).

BYLAW AMENDMENT LIMITING USE OF LOBBY WAS INVALID LIMITATION OF PROPERTY INTEREST. --It was beyond the power of a condominium association by bylaw amendment to purport to deprive the owners of first floor professional office units of their rights under the condominium declaration and under the Maryland Condominium Act to the enjoyment of the

building lobby for the ingress and egress of their business invitees; such a rule affected an interest in property, and not a mere personal privilege which could be affected by bylaw amendment. Ridgely Condominium Ass'n v. Smyrnioudis, 343 Md. 357, 681 A.2d 494 (1996).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-105 (2006)

§ 11-105. Condominium plat

(a) To be filed for record. -- When the declaration and bylaws are recorded, the developer shall record a condominium plat.

(b) Required particulars. -- The condominium plat may consist of one or more sheets and shall contain at least the following particulars:

(1) The name of the condominium;

(2) A boundary survey of the property described in the declaration showing the location of all buildings on the property and the physical markings at the corners of the property;

(3) Diagrammatic floor plans of each building on the property which show the measured dimensions, floor area, and location of each unit in it. Common elements shall be shown diagrammatically to the extent feasible; and

(4) The elevation, or average elevation in case of minor variances, above sea level, or from a fixed known point, of the upper and lower boundaries of each unit delineated on the condominium plat.

(c) Designation of units. -- Each unit shall be designated on the condominium plat by a letter or number, or a combination of them, or other appropriate designation.

(d) Surveyor's certificate. -- A condominium plat or any amendment to a condominium plat is sufficient for the purposes of this title if there is attached to, or included in it, a certificate of a professional land surveyor or property line surveyor authorized to practice in the State that:

(1) The plat, together with the applicable wording of the declaration, is a correct representation of the condominium described; and

(2) The identification and location of each unit and the common elements, as constructed, can be determined from them.

(e) Amendments or orders of reformation. --

(1) Except as provided in paragraph (2) of this subsection or otherwise provided in this title, the condominium plat may be amended in the same manner and to the same extent as the declaration under § 11-103 (c) (1) of this title.

(2) (i) The council of unit owners may petition the circuit court in equity for the county in which the condominium is located to correct an improper description of the units or common elements.

(ii) The petition may be brought only if:

1. The unit owners, at a special meeting called for that purpose, vote to petition the court to correct a specific error by a vote of at least 662/3 percent of the unit owners present and voting at a properly convened meeting;

2. The council of unit owners gives notice of the special meeting to each mortgagee of record for the condominium; and

3. An opportunity is provided for the mortgagees to speak at the special meeting upon written request to the council of unit owners.

(iii) The court may reform the condominium plat to correct the error or omission as the court considers appropriate, if:

1. The council of unit owners gives notice of the filing of the petition to each mortgagee and unit owner within 15 days of filing;

2. The council of unit owners files an affidavit with the court stating that the conditions of subparagraph (ii) of this paragraph have been met;

3. The council of unit owners proves, by a preponderance of the evidence, that there is an error or omission as provided in subparagraph (i) of this paragraph;

4. Any mortgagee with an interest in the condominium is permitted to intervene in the proceedings upon filing a motion to intervene as provided in the Maryland Rules;

5. The reformation does not substantially impair the property rights of any unit owner or mortgagee; and

6. The court issues an order of reformation.

(iv) A final order of reformation may be appealed by any party within 30 days of its issuance. An order of reformation may not be recorded until the appeal period has lapsed or all appeals have been completed.

(3) An amendment or order of reformation becomes effective upon recordation in the same manner as the condominium plat. If the condominium is registered with the Secretary of State, the council of unit owners shall file a copy of the reformation amendment with the Secretary of State within 15 days of recordation.

HISTORY: An. Code 1957, art. 21, § 11-112; 1974, ch. 12, § 2; ch. 641; 1975, ch. 786, § 1; 1976, ch. 348, § 3; 1981, ch. 246; 1982, ch. 836, § 3; 1983, chs. 381, 525; 1984, chs. 266, 580; 1989, ch. 236, § 2; 1997, ch. 14, § 1; 2000, ch. 61, § 1.

ESTABLISHMENT OF CONDOMINIUM ON LAND SUBJECT TO LEASEHOLD INTEREST. --The State Horizontal Property Act permits the establishment of a condominium regime on land that is subject to a leasehold estate. 66 Op. Att'y Gen. 50 (1981).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-106 (2006)

§ 11-106. Status and description of units

(a) Incidents of real property. -- Each unit in a condominium has all of the incidents of real property.

(b) Description of units. -- A description in any deed or other instrument affecting title to any unit which makes reference to the letter or number or other appropriate designation on the condominium plat together with a reference to the plat shall be a good and sufficient description for all purposes.

HISTORY: An. Code 1957, art. 21, §§ 11-103, 11-104, 11-112; 1974, ch. 12, § 2; ch. 641; 1981, ch. 246.

MECHANICS' LIEN COMPLAINT DEFECTIVE FOR FAILING TO NAME ALL CONDOMINIUM UNIT OWNERS. --As a condominium regime lawfully existed at a building under § 11-102 of this article, notice had to be given to all condominium unit owners under § 9-104 of this article, and all such owners had to be parties to the case before a mechanic's lien could be established as against the entire building. Since only one of the two owners had been named a party, the trial court erred in entering an order establishing a mechanic's lien. S. Mgmt. Corp. v. Kevin Willes Constr. Co., 382 Md. 524, 856 A.2d 626 (2004).

EASEMENT GRANTED IN CONDOMINIUM DOCUMENTS. --Traditional easement law applied to easements granted in condominium documents, and the specific provisions of both the condominium's declaration and bylaws allowed a condominium owner to repair an inherent construction defect that related to the safe use of her premises without prior approval. Therefore, under the factual circumstances, the owner was within the bounds of the express grant of the easement to install an exterior dryer exhaust vent to correct a defect in the dryer exhaust system of the owner's condominium without the prior approval of the council and, under the limited circumstances presented, was not subject to the prior approval provision in the condominium's bylaws; in any event, because it came under an exception contained in the bylaws, the owner's action did not violate the bylaws' provisions. Garfink v. Cloisters at Charles, Inc., 392 Md. 374, 897 A.2d 206 (2006).

QUOTED IN Hurst v. V & M of Va., Inc., 293 Md. 575, 446 A.2d 55 (1982); Ridgely Condominium Ass'n v. Smyrnioudis, 343 Md. 357, 681 A.2d 494 (1996); Sea Watch Stores Ltd. Liab. Co. v. Council of Unit Owners, 115 Md. App. 5, 691 A.2d 750 (1997).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-107 (2006)

§ 11-107. Percentage interests

(a) Undivided percentage interest in common elements. -- Each unit owner shall own an undivided percentage interest in the common elements equal to that set forth in the declaration. Except as specifically provided in this title, the common elements shall remain undivided. Except as provided in this title, no unit owner, nor any other person, may bring a suit for partition of the common elements, and any covenant or provision in any declaration, bylaws, or other instrument to the contrary is void.

(b) Percentage interest in common expenses and common profits. -- Each unit owner shall have a percentage interest in the common expenses and common profits equal to that set forth in the declaration.

(c) Change in percentage interest. -- The percentage interest provided in subsections (a) and (b) of this section may be identical or may vary. The percentage interests shall have a permanent character and, except as specifically provided by this title, may not be changed without the written consent of all of the unit owners and their mortgagees. Any change shall be evidenced by an amendment to the declaration, recorded among the appropriate land records. The percentage interests may not be separated from the unit to which they appertain. Any instrument, matter, circumstance, action, occurrence, or proceeding in any manner affecting a unit also shall affect, in like manner, the percentage interests appurtenant to the unit.

(d) Grant of part of unit; subdividing unit; consolidating units. --

(1) Notwithstanding any other provision of this title, but subject to any provision in the declaration or bylaws, a unit owner may:

(i) Grant by deed part of a unit and incorporate it as part of another unit if a portion of the percentage interests of the grantor is granted to the grantee and the grant is evidenced by an amendment to the declaration specifically describing the part granted, the percentage interests reallocated and the new percentage interest of the grantor and the grantee; and

(ii) Subdivide his unit into 2 or more units if the original percentage interests and votes appurtenant to the original unit are allocated to the resulting units and the subdivision is evidenced by an amendment to the declaration describing the resulting units and the

percentage interests and votes allocated to each unit.

(2) When appropriate, a plat may be attached to the amendment. The transfer or subdivision may be made without the consent of all of the unit owners if the amendment to the declaration is executed by the unit owners and mortgagees of the units involved and by the council of unit owners or its authorized designee.

(3) If the unit owner of 2 or more adjacent units or the unit owner of a unit and an adjacent part of another unit transferred in accordance with this subsection desires to consolidate them, the council of unit owners or its authorized designee may authorize the unit owner to remove all or part of any walls separating the units or portions of them if the removal does not violate any applicable statute or regulation.

HISTORY: An. Code 1957, art. 21, §§ 11-105, 11-106; 1974, ch. 12, § 2; ch. 641; 1975, ch. 786, § 1; 1981, ch. 246; 1982, ch. 836, § 3; 1989, ch. 5, § 1; 1997, ch. 14, § 1.

UNIVERSITY OF BALTIMORE LAW REVIEW. --For comment discussing cases and legislation imposing implied warranties in sales of residential condominiums, see 14 U. Balt. L. Rev. 116 (1984).

FEE SIMPLE INTEREST. --Each owner of a unit in a condominium obtains both a fee simple interest in his or her own unit and a fee simple interest as a tenant in common in the common elements. 64 Op. Att'y Gen. 334 (1979).

PARTITION OF COMMON ELEMENTS PROHIBITED --Trial court properly entered summary judgment for a condominium council as to a unit owner's prescriptive easement claim as the owner did not acquire a prescriptive easement of a specific parking place as: (1) The parking space was a common element under § 11-109(e) of this subtitle and the condominium declaration, which had never been changed into a limited common element by the unanimous consent of the unit owners as required by § 11-103(c)(1)(iv) of this subtitle and by the declaration; (2) subsection (a) of this section and the declaration forbade any unit owner from bringing an action for partition of the general common elements of the condominium; (3) the owner's deed made no mention of the acquisition of an exclusive interest in the parking space; (4) the owner's use of the parking space was not adverse to the condominium council as the owner had permission to use the parking space; and (5) the owner did not meet the 20-year period required for a prescriptive easement as the owner could not tack his use onto the use by prior owners of his unit as they did not have possession of the parking space under separate color of title. Jurgensen v. New Phoenix Atl. Condo. Council of Unit Owners, 380 Md. 106, 843 A.2d 865 (2004).

EASEMENT GRANTED IN CONDOMINIUM DOCUMENTS. --Traditional easement law applied to easements granted in condominium documents, and the specific provisions of both the condominium's declaration and bylaws allowed a condominium owner to repair an inherent construction defect that related to the safe use of her premises without prior approval. Therefore, under the factual circumstances, the owner was within the bounds of the express grant of the easement to install an exterior dryer exhaust vent to correct a defect in the dryer exhaust system of the owner's condominium without the prior approval of the council and, under the limited circumstances presented, was not subject to the prior approval provision in the condominium's bylaws; in any event, because it came under an exception contained in the bylaws, the owner's action did not violate the bylaws' provisions. Garfink v. Cloisters at Charles, Inc., 392 Md. 374, 897 A.2d 206 (2006).

DEPARTURE FROM COMMON LAW UNAUTHORIZED. --No provision of the Horizontal Property Act authorizes a departure from the common law rule that no individual cotenant and no group of cotenants, less than all of them may effectively exercise the body of rights appurtenant to the common property as a whole. 64 Op. Att'y Gen. 334 (1979).

APPLIED IN Andrews v. City of Greenbelt, 293 Md. 69, 441 A.2d 1064 (1982); S. Mgmt. Corp. v. Kevin Willes Constr. Co., 382 Md. 524, 856 A.2d 626 (2004).

QUOTED IN Starfish Condominium Ass'n v. Yorkridge Serv. Corp., 295 Md. 693, 458 A.2d 805 (1983).

STATED IN King v. State Rds. Comm'n, 294 Md. 236, 449 A.2d 390 (1982); Ridgely Condominium Ass'n v. Smyrnioudis, 343 Md. 357, 681 A.2d 494 (1996); Milton Co. v. Council of Unit Owners, 121 Md. App. 100, 708 A.2d 1047 (1998), aff'd, 354 Md. 264, 729 A.2d 981 (1999).

CITED IN Ridgely Condominium Ass'n v. Smyrnioudis, 105 Md. App. 404, 660 A.2d 942 (1995), aff'd, 343 Md. 357, 68 A.2d 494 (1996); Milton Co. v. Council of Unit Owners of Bentley Place Condominium, 354 Md. 264, 729 A.2d 981 (1999).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-108 (2006)

§ 11-108. Use of common elements

(a) In general. -- Subject to the provisions of subsection (c) of this section, the common elements may be used only for the purposes for which they were intended and, except as provided in the declaration, the common elements shall be subject to mutual rights of support, access, use, and enjoyment by all unit owners. However, subject to the provisions of subsection (b) of this section, any portion of the common elements designated as limited common elements shall be used only by the unit owner of the unit to which their use is limited in the declaration or condominium plat.

(b) Use of limited common elements. -- Any unit owner or any group of unit owners of units to which the use of any limited common element is exclusively restricted may grant by deed the exclusive use, or the joint use in common with one or more of the grantors, of the limited common elements to any one or more unit owners. A copy of the deed shall be furnished to the council of unit owners.

(c) Meetings by unit owners. --

(1) This subsection does not apply to any meetings of unit owners occurring at any time before the unit owners elect officers or a board of directors in accordance with § 11-109 (c) (16) of this title.

(2) Subject to reasonable rules adopted by the governing body under § 11-111 of this title, unit owners may meet for the purpose of considering and discussing the operation of and

matters relating to the operation of the condominium in any common elements or in any building or facility in the common elements that the governing body of the condominium uses for scheduled meetings.

HISTORY: An. Code 1957, art. 21, § 11-107; 1974, ch. 12, § 2; ch. 641; 1975, ch. 786, § 1; 1976, ch. 348, § 1; 1977, ch. 532; 1981, ch. 246; 1982, ch. 836, § 3; 1989, ch. 5, § 1; 1998, chs. 440, 564; 2002, ch. 19, § 10.

NOTES:
EDITOR'S NOTE. --Section 10, ch. 19, Acts 2002, provides that "the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, "title" has been substituted for "subtitle" in (c) (2).

APPLICABILITY OF MARYLAND CONDOMINIUM ACT. --This act does not apply to a dispute regarding common parking areas between a homeowner association, as defined in § 11B-101 (g) (now (i)) of this article, and owner-members within a subdivision. Oakhampton Ass'n v. Reeve, 99 Md. App. 428, 637 A.2d 879 (1994).

DEPARTURE FROM COMMON LAW UNAUTHORIZED. --No provision of the Horizontal Property Act authorizes a departure from the common law rule that no individual cotenant and no group of cotenants, less than all of them, may effectively exercise the body of rights appurtenant to the common property as a whole. 64 Op. Att'y Gen. 334 (1979).

GENERAL COMMON ELEMENTS CANNOT BE COUNTED as part of a required 20 percent of the frontage adjoining or opposite a development site seeking a conditional use authorization unless all owners of units in the condominium unanimously join in protest of the conditional use. 64 Op. Att'y Gen. 334 (1979).

LIABILITY FOR WORK DONE ON COMMON ELEMENTS. --As a condominium unit owner did not own every unit in the condominium, it could not, under (b), be held to bear the burden, for mechanics' lien purposes, of the entire renovation work done by a contractor on the common elements of the condominium. S. Mgmt. Corp. v. Kevin Willes Constr. Co., 382 Md. 524, 856 A.2d 626 (2004).

QUOTED IN Ridgely Condominium Ass'n v. Smyrnioudis, 343 Md. 357, 681 A.2d 494 (1996).

STATED IN Alpert v. Le'Lisa Condominium, 107 Md. App. 239, 667 A.2d 947 (1995).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-108.1 (2006)

§ 11-108.1. Responsibility for maintenance, repair, and replacement

Except to the extent otherwise provided by the declaration or bylaws, the council of unit owners is responsible for maintenance, repair, and replacement of the common elements, and each unit owner is responsible for maintenance, repair, and replacement of his unit.

HISTORY: 1981, ch. 246; 1982, ch. 836, § 3.

UNIVERSITY OF BALTIMORE LAW REVIEW. --For comment discussing cases and legislation imposing implied warranties in sales of residential condominiums, see 14 U. Balt. L. Rev. 116 (1984).

CITED IN Milton Co. v. Council of Unit Owners, 121 Md. App. 100, 708 A.2d 1047 (1998), aff'd, 354 Md. 264, 729 A.2d 981 (1999); Swinson v. Lords Landing Village Condo., 360 Md. 462, 758 A.2d 1008 (2000).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-109 (2006)

§ 11-109. Council of unit owners

(a) Legal entity; composition. -- The affairs of the condominium shall be governed by a council of unit owners which, even if unincorporated, is constituted a legal entity for all purposes. The council of unit owners shall be comprised of all unit owners.

(b) Delegation of powers. -- The bylaws may authorize or provide for the delegation of any power of the council of unit owners to a board of directors, officers, managing agent, or other person for the purpose of carrying out the responsibilities of the council of unit owners.

(c) Meeting of council of unit owners or board of directors -- Notice, quorum and procedural requirements. --

(1) A meeting of the council of unit owners or board of directors may not be held on less

notice than required by this section.

(2) The council of unit owners shall maintain a current roster of names and addresses of each unit owner to which notice of meetings of the board of directors shall be sent at least annually.

(3) Each unit owner shall furnish the council of unit owners with his name and current mailing address. A unit owner may not vote at meetings of the council of unit owners until this information is furnished.

(4) A regular or special meeting of the council of unit owners may not be held on less than 10 nor more than 90 days':

(i) Written notice delivered or mailed to each unit owner at the address shown on the roster on the date of the notice; or

(ii) Notice sent to each unit owner by electronic transmission, if the requirements of § 11-139.1 of this title are met.

(5) Notice of special meetings of the board of directors shall be given:

(i) As provided in the bylaws; or

(ii) If the requirements of § 11-139.1 of this title are met, by electronic transmission.

(6) Except as provided in § 11-109.1 of this title, a meeting of a governing body shall be open and held at a time and location as provided in the notice or bylaws.

(7) (i) This paragraph does not apply to any meeting of the governing body that occurs at any time before the meeting at which the unit owners elect officers or a board of directors in accordance with paragraph (16) of this subsection.

(ii) Subject to subparagraph (iii) of this paragraph and to reasonable rules adopted by the governing body under § 11-111 of this title, a governing body shall provide a designated period of time during a meeting to allow unit owners an opportunity to comment on any matter relating to the condominium.

(iii) During a meeting at which the agenda is limited to specific topics or at a special meeting, the unit owners' comments may be limited to the topics listed on the meeting agenda.

(iv) The governing body shall convene at least one meeting each year at which the agenda is open to any matter relating to the condominium.

(8) (i) Unless the bylaws provide otherwise, a quorum is deemed present throughout any meeting of the council of unit owners if persons entitled to cast 25 percent of the total number of votes appurtenant to all units are present in person or by proxy.

(ii) If the number of persons present in person or by proxy at a properly called meeting of the council of unit owners is insufficient to constitute a quorum, another meeting of the council of unit owners may be called for the same purpose if:

1. The notice of the meeting stated that the procedure authorized by this paragraph might be invoked; and

2. By majority vote, the unit owners present in person or by proxy call for the additional meeting.

(iii) 1. Fifteen days' notice of the time, place, and purpose of the additional meeting shall

be delivered, mailed, or sent by electronic transmission if the requirements of § 11-139.1 of this title are met, to each unit owner at the address shown on the roster maintained under paragraph (2) of this subsection.

2. The notice shall contain the quorum and voting provisions of subparagraph (iv) of this paragraph.

(iv) 1. At the additional meeting, the unit owners present in person or by proxy constitute a quorum.

2. Unless the bylaws provide otherwise, a majority of the unit owners present in person or by proxy:

A. May approve or authorize the proposed action at the additional meeting; and

B. May take any other action that could have been taken at the original meeting if a sufficient number of unit owners had been present.

(v) This paragraph may not be construed to affect the percentage of votes required to amend the declaration or bylaws or to take any other action required to be taken by a specified percentage of votes.

(9) At meetings of the council of unit owners each unit owner shall be entitled to cast the number of votes appurtenant to his unit. Unit owners may vote by proxy, but the proxy is effective only for a maximum period of 180 days following its issuance, unless granted to a lessee or mortgagee.

(10) Any proxy may be revoked at any time at the pleasure of the unit owner or unit owners executing the proxy.

(11) A proxy who is not appointed to vote as directed by a unit owner may only be appointed for purposes of meeting quorums and to vote for matters of business before the council of unit owners, other than an election of officers and members of the board of directors.

(12) Only a unit owner voting in person or by electronic transmission if the requirements of § 11-139.2 of this title are met or a proxy voting for candidates designated by a unit owner may vote for officers and members of the board of directors.

(13) Unless otherwise provided in the bylaws, a unit owner may nominate himself or any other person to be an officer or member of the board of directors. A call for nominations shall be sent to all unit owners not less than 45 days before notice of an election is sent. Only nominations made at least 15 days before notice of an election shall be listed on the election ballot. Candidates shall be listed on the ballot in alphabetical order, with no indicated candidate preference. Nominations may be made from the floor at the meeting at which the election to the board is held.

(14) Election materials prepared with funds of the council of unit owners shall list candidates in alphabetical order and may not indicate a candidate preference.

(15) Unless otherwise provided in this title, and subject to provisions in the bylaws requiring a different majority, decisions of the council of unit owners shall be made on a majority of votes of the unit owners listed on the current roster present and voting.

(16) A meeting of the council of unit owners shall be held within 60 days from the date that units representing 50 percent of the votes in the condominium have been conveyed by the developer to the initial purchasers of units to elect officers or a board of directors for the council of unit owners, as provided in the condominium declaration or bylaws.

(d) Council -- Incorporation and powers. -- The council of unit owners may be either incorporated as a nonstock corporation or unincorporated and it is subject to those provisions of Title 5, Subtitle 2 of the Corporations and Associations Article which are not inconsistent with this title. The council of unit owners has, subject to any provision of this title, and except as provided in paragraph (22) of this subsection, the declaration, and bylaws, the following powers:

(1) To have perpetual existence, subject to the right of the unit owners to terminate the condominium regime as provided in § 11-123 of this title;

(2) To adopt and amend reasonable rules and regulations;

(3) To adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners;

(4) To sue and be sued, complain and defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium;

(5) To transact its business, carry on its operations and exercise the powers provided in this subsection in any state, territory, district, or possession of the United States and in any foreign country;

(6) To make contracts and guarantees, incur liabilities and borrow money, sell, mortgage, lease, pledge, exchange, convey, transfer, and otherwise dispose of any part of its property and assets;

(7) To issue bonds, notes, and other obligations and secure the same by mortgage or deed of trust of any part of its property, franchises, and income;

(8) To acquire by purchase or in any other manner, to take, receive, own, hold, use, employ, improve, and otherwise deal with any property, real or personal, or any interest therein, wherever located;

(9) To hire and terminate managing agents and other employees, agents, and independent contractors;

(10) To purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligation of corporations of the State, or foreign corporations, and of associations, partnerships, and individuals;

(11) To invest its funds and to lend money in any manner appropriate to enable it to carry on the operations or to fulfill the purposes named in the declaration or bylaws, and to take and to hold real and personal property as security for the payment of funds so invested or loaned;

(12) To regulate the use, maintenance, repair, replacement, and modification of common elements;

(13) To cause additional improvements to be made as a part of the general common elements;

(14) To grant easements, rights-of-way, licenses, leases in excess of 1 year, or similar interests through or over the common elements in accordance with § 11-125 (f) of this title;

(15) To impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than limited common elements;

(16) To impose charges for late payment of assessments and, after notice and an

opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, and rules and regulations of the council of unit owners, under § 11-113 of this title;

(17) To impose reasonable charges for the preparation and recordation of amendments to the declaration, bylaws, rules, regulations, or resolutions, resale certificates, or statements of unpaid assessments;

(18) To provide for the indemnification of and maintain liability insurance for officers, directors, and any managing agent or other employee charged with the operation or maintenance of the condominium;

(19) To enforce the implied warranties made to the council of unit owners by the developer under § 11-131 of this title;

(20) To enforce the provisions of this title, the declaration, bylaws, and rules and regulations of the council of unit owners against any unit owner or occupant;

(21) Generally, to exercise the powers set forth in this title and the declaration or bylaws and to do every other act not inconsistent with law, which may be appropriate to promote and attain the purposes set forth in this title, the declaration or bylaws; and

(22) To designate parking for individuals with disabilities, notwithstanding any provision in the declaration, bylaws, or rules and regulations.

(e) Unit owner's interest in council's property. -- A unit owner may not have any right, title, or interest in any property owned by the council of unit owners other than as holder of a percentage interest in common expenses and common profits appurtenant to his unit.

(f) Unit owner's rights as holder of percentage interest. -- A unit owner's rights as holder of a percentage interest in common expenses and common profits are such that:

(1) A unit owner's right to possess, use, or enjoy property of the council of unit owners shall be as provided in the bylaws; and

(2) A unit owner's interest in the property is not assignable or attachable separate from his unit except as provided in §§ 11-107 (d) and 11-112 (g) of this title.

HISTORY: 1974, ch. 641; 1975, ch. 374, § 16; 1976, ch. 348, § 1; 1980, ch. 681; 1981, ch. 246; 1982, ch. 836, § 3; 1983, ch. 562, § 2; 1984, chs. 525, 576, 583; 1987, ch. 330; 1989, ch. 5, § 1; 1990, ch. 139; 1996, ch. 10, § 1; 1997, ch. 610; 1998, ch. 21, § 1; chs. 440, 564; 2001, ch. 255; 2002, ch. 19, §§ 4, 10; 2003, ch. 225; 2004, ch. 286; 2005, ch. 25, § 1.

NOTES:
EFFECT OF AMENDMENTS. --Section 4, ch. 19, Acts 2002, approved April 9, 2002, and effective from date of enactment, validated a previously made technical correction in (d)(22).
Chapter 225, Acts 2003, effective July 1, 2003, added (c)(8)(ii) through (c)(8)(v).
Chapter 286, Acts 2004, effective Oct. 1, 2004, added (c)(4)(ii); redesignated former (c)(4) as present introductory language of (c)(4) and (c)(4)(i); added (c)(5)(ii); redesignated former (c)(5) as present introductory language of (c)(5) and (c)(5)(i); in (c)(8)(iii)1., deleted "or" preceding "mailed" and inserted "or sent by electronic transmission if the requirements of § 11-139.2 are met"; and inserted "or by electronic transmission if the requirements of § 11-139.2 are met" in (c)(12).
Section 1, ch. 25, Acts 2005, approved April 12, 2005, and effective from the date of enactment, substituted "title" for "subtitle" in (c)(4)(ii) and (c)(5)(ii), substituted "§ 11-139.1 of this title" for "§ 11-139.2" in (c)(8)(iii), and inserted "§ 11-139.2 of this title" in (c)(12).

EDITOR'S NOTE. --Chapter 255, Acts 2001, effective June 1, 2001, provides that "(1) The publisher of the Annotated Code of Maryland, in consultation with the Department of Legislative Services, shall identify all references in the Code describing a person or individual

as "handicapped" and make nonsubstantive corrections as necessary to change those references to "individual with a disability";

(2) The publisher of the Annotated Code shall print any provision of law affected by a change under paragraph (1) of this Section in the supplements and any replacement volumes of the Code incorporating all legislation passed during the 2001 Session and enacted into law; and

(3) The publisher of the Annotated Code of Maryland shall complete the requirements of this Act by September 1, 2001, and the changes made under this Act shall be validated by the General Assembly in the annual Corrective Bill submitted to and passed by the General Assembly at the 2002 Session."

Pursuant to ch. 255, appropriate changes have been made in (d) (22).

Section 10, ch. 19, Acts 2002, provides that "the publisher of the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, "title" has been substituted for "subtitle" in (c) (7) (ii); and "of the Code" has been deleted following "Article" in the introductory language of (d).

UNIVERSITY OF BALTIMORE LAW REVIEW. --For comment discussing cases and legislation imposing implied warranties in sales of residential condominiums, see 14 U. Balt. L. Rev. 116 (1984).

A CONDOMINIUM OWNER HOLDS A HYBRID PROPERTY INTEREST consisting of an exclusive ownership of a particular unit or apartment and a tenancy in common with the other co-owners in the common elements; in exchange for the benefits of owning property in common, condominium owners agree to be bound by rules governing the administration, maintenance, and use of the property. Ridgely Condominium Ass'n v. Smyrnioudis, 343 Md. 357, 681 A.2d 494 (1996).

PARKING PLACE WAS COMMON ELEMENT --Trial court properly entered summary judgment for a condominium council as to a unit owner's prescriptive easement claim as the owner did not acquire a prescriptive easement of a specific parking place as: (1) The parking space was a common element under subsection (e) of this section and the condominium declaration, which had never been changed into a limited common element by the unanimous consent of the unit owners as required by § 11-103(c)(1)(iv) of this subtitle and by the declaration; (2) § 11-107(a) of this subtitle and the declaration forbade any unit owner from bringing an action for partition of the general common elements of the condominium; (3) the owner's deed made no mention of the acquisition of an exclusive interest in the parking space; (4) the owner's use of the parking space was not adverse to the condominium council as the owner had permission to use the parking space; and (5) the owner did not meet the 20-year period required for a prescriptive easement as the owner could not tack his use onto the use by prior owners of his unit as they did not have possession of the parking space under separate color of title. Jurgensen v. New Phoenix Atl. Condo. Council of Unit Owners, 380 Md. 106, 843 A.2d 865 (2004).

DEPARTURE FROM COMMON LAW UNAUTHORIZED. --No provision of the Horizontal Property Act authorizes a departure from the common law rule that no individual cotenant and no group of cotenants, less than all of them, may effectively exercise the body of rights appurtenant to the common property as a whole. 64 Op. Att'y Gen. 334 (1979).

THIS SECTION DOES NOT PREEMPT AUTHORITY OF LOCAL JURISDICTIONS to regulate the meeting and voting procedures of the councils of unit owners of condominiums if the local regulation is "for the protection of a consumer" within the meaning of, and does not conflict with, this title. 67 Op. Att'y Gen. 13 (1982).

COUNCIL BECOMES A LEGAL ENTITY on the establishment of a condominium regime. 64 Op. Att'y Gen. 71 (1979).

CONTROL ASSUMED UPON RECORDING. --Upon the recording of the documents mentioned in § 11-102 (a) of this title, the council of unit owners immediately assumes control over the affairs of the condominium. 64 Op. Att'y Gen. 71 (1979).

CONDOMINIUM COUNCIL STANDING. --A condominium council could sue under this section on behalf of its unit owners for claims based on defects that were common to many individual units at the condominium. Milton Co. v. Council of Unit Owners of Bentley Place Condominium, 354 Md. 264, 729 A.2d 981 (1999).

STANDING GRANTED UNDER PARAGRAPH (D) (4) IS NOT LIMITED TO SUITS FOR STATUTORY IMPLIED WARRANTIES. --Any single unit owner or group of owners may bring suit and seek the entire damage to the common elements. Standing to seek such damages is not exclusive to § 11-131 (c) [now (d)]. Milton Co. v. Council of Unit Owners, 121 Md. App. 100, 708 A.2d 1047 (1998), aff'd, 354 Md. 264, 729 A.2d 981 (1999).

The plain language of paragraph (d) (4) of this section, by distinguishing between an action brought by a council on behalf of itself and an action brought by a council on behalf of "two or more unit owners," clearly permits a council to act in a representative capacity for two or more unit owners, so long as the subject of the litigation or administrative proceedings is one "affecting the condominium." Milton Co. v. Council of Unit Owners of Bentley Place Condominium, 354 Md. 264, 729 A.2d 981 (1999).

REPAIR BY OWNER WITHOUT APPROVAL. --Traditional easement law applied to easements granted in condominium documents, and the specific provisions of both the condominium's declaration and bylaws allowed a condominium owner to repair an inherent construction defect that related to the safe use of her premises without prior approval. Therefore, under the factual circumstances, the owner was within the bounds of the express grant of the easement to install an exterior dryer exhaust vent to correct a defect in the dryer exhaust system of the owner's condominium without the prior approval of the council and, under the limited circumstances presented, was not subject to the prior approval provision in the condominium's bylaws; in any event, because it came under an exception contained in the bylaws, the owner's action did not violate the bylaws' provisions. Garfink v. Cloisters at Charles, Inc., 392 Md. 374, 897 A.2d 206 (2006).

DELEGATION OF POWERS AUTHORIZED. --A council of unit owners in a condominium may delegate its powers of administration or management to a board of directors which may in turn make reasonable rules and regulations concerning conduct, not inconsistent with the master deed, declaration and bylaws. Dulaney Towers Maintenance Corp. v. O'Brey, 46 Md. App. 464, 418 A.2d 1233 (1980).

EFFECT OF RULES AND REGULATIONS. --All rules and regulations properly adopted by a council of unit owners or its designee that apply to an owner's unit are as binding on the residents of a condominium as those that apply to the common areas. Dulaney Towers Maintenance Corp. v. O'Brey, 46 Md. App. 464, 418 A.2d 1233 (1980).

VOTING REQUIRES HOLDING LEGAL TITLE. --The votes exercised at the meetings of the council of unit owners are exercised by persons holding legal title to the units of the condominium, as shown in the declaration and plat. 64 Op. Att'y Gen. 71 (1979).

POWERS EXERCISED BY LESS THAN UNANIMOUS VOTE. --This section does authorize unit owners to exercise certain powers by less than unanimous vote, but those powers may be exercised only through the council of unit owners, subject to the condominium's declaration and bylaws. 64 Op. Att'y Gen. 334 (1979).

VOTING BY DEVELOPER. --Once the condominium regime has been established, a developer may control the affairs of the condominium only to the extent that the developer holds a controlling number of votes in the council of unit owners, either as a result of holding legal title to units of the condominium or by proxy. 64 Op. Att'y Gen. 71 (1979).

The developer, who initially holds legal title to all units, may exercise the votes of those

units for which it retains legal title. Once title has passed to another, the developer may not exercise these votes, unless given a proxy by the new owners in accordance with subsection (c) (4) (now see (c) (8)) of this section. 64 Op. Att'y Gen. 71 (1979).

INQUISITION FORM SUBMITTED TO JURY IN CONDEMNATION ACTION INSUFFICIENT WHERE COUNCIL OF UNIT OWNERS NAMED AS DEFENDANT. --It is not enough that the inquisition form submitted to the jury in an action to condemn a portion of the general common elements of the condominium named the council of unit owners of the condominium as the defendant because, even though the council is a legal entity comprised of all unit owners, it does not have legal title to the collectively held property and nothing in this section allows the association, acting in a representative capacity for the unit owners, to transfer title to regime property. Andrews v. City of Greenbelt, 293 Md. 69, 441 A.2d 1064 (1982).

APPLIED IN Starfish Condominium Ass'n v. Yorkridge Serv. Corp., 295 Md. 693, 458 A.2d 805 (1983).

QUOTED IN Ridgely Condominium Ass'n v. Smyrnioudis, 105 Md. App. 404, 660 A.2d 942 (1995), aff'd, 343 Md. 357, 68 A.2d 494 (1996); Jurgensen v. New Phoenix Atl. Condo. Council of Unit Owners, 380 Md. 106, 843 A.2d 865 (2004).

STATED IN Alpert v. Le'Lisa Condominium, 107 Md. App. 239, 667 A.2d 947 (1995).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-109.1 (2006)

§ 11-109.1. Closed meetings of board of directors

(a) Permitted for certain enumerated purposes. -- A meeting of the board of directors may be held in closed session only for the following purposes:

(1) Discussion of matters pertaining to employees and personnel;

(2) Protection of the privacy or reputation of individuals in matters not related to the council of unit owners' business;

(3) Consultation with legal counsel;

(4) Consultation with staff personnel, consultants, attorneys, or other persons in connection with pending or potential litigation;

(5) Investigative proceedings concerning possible or actual criminal misconduct;

(6) Complying with a specific constitutional, statutory, or judicially imposed requirement protecting particular proceedings or matters from public disclosure; or

(7) On an individually recorded affirmative vote of two-thirds of the board members present, for some other exceptional reason so compelling as to override the general public policy in favor of open meetings.

(b) Scope of permissible action limited; inclusion of certain statements, records, and authority required in minutes. -- If a meeting is held in closed session under subsection (a) of this section:

(1) An action may not be taken and a matter may not be discussed if it is not permitted by subsection (a) of this section; and

(2) A statement of the time, place, and purpose of any closed meeting, the record of the vote of each board member by which any meeting was closed, and the authority under this section for closing any meeting shall be included in the minutes of the next meeting of the board of directors.

HISTORY: 1983, ch. 562, § 2; 1989, ch. 5, § 1.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-109.2 (2006)

§ 11-109.2. Annual proposed budget

(a) Preparation and submission. -- The council of unit owners shall cause to be prepared and submitted to the unit owners an annual proposed budget at least 30 days before its adoption.

(b) Items required to be included. -- The annual budget shall provide for at least the following items:

(1) Income;

(2) Administration;

(3) Maintenance;

(4) Utilities;

(5) General expenses;

(6) Reserves; and

(7) Capital items.

(c) Adoption. -- The budget shall be adopted at an open meeting of the council of unit owners or any other body to which the council of unit owners delegates responsibilities for preparing and adopting the budget.

(d) Certain expenditures in excess of 15 percent of budgeted amount to be approved by amendment. -- Any expenditure made other than those made because of conditions which, if not corrected, could reasonably result in a threat to the health or safety of the unit owners or a significant risk of damage to the condominium, that would result in an increase in an amount of assessments for the current fiscal year of the condominium in excess of 15 percent of the budgeted amount previously adopted, shall be approved by an amendment to the budget adopted at a special meeting, upon not less than 10 days written notice to the council of unit owners.

(e) Authority of council to obligate itself for certain expenditures unimpaired. -- The adoption of a budget shall not impair the authority of the council of unit owners to obligate the council of unit owners for expenditures for any purpose consistent with any provision of this title.

(f) Applicability to condominiums occupied and used solely for nonresidential purposes. -- The provisions of this section do not apply to a condominium that is occupied and used solely for nonresidential purposes.

HISTORY: 1983, ch. 562, § 2; 1986, ch. 572.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-110 (2006)

§ 11-110. Common expenses and profits; assessments; liens

(a) Disposition of common profits. -- All common profits shall be disbursed to the unit owners, be credited to their assessments for common expenses in proportion to their percentage interests in common profits and common expenses, or be used for any other purpose as the council of unit owners decides.

(b) Funds for payment of common expenses obtained by assessments. --

(1) Funds for the payment of current common expenses and for the creation of reserves for the payment of future common expenses shall be obtained by assessments against the unit owners in proportion to their percentage interests in common expenses and common profits.

(2) (i) Where provided in the declaration or the bylaws, charges for utility services may be assessed and collected on the basis of usage rather than on the basis of percentage interests.

(ii) If provided by the declaration, assessments for expenses related to maintenance of the limited common elements may be charged to the unit owner or owners who are given the exclusive right to use the limited common elements.

(iii) Assessments for charges under this paragraph may be enforced in the same manner as assessments for common expenses.

(c) Liability for assessments. -- A unit owner shall be liable for all assessments, or installments thereof, coming due while he is the owner of a unit. In a voluntary grant the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor for his share of the common expenses up to the time of the voluntary grant for which a statement of lien is recorded, without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee for such assessments. Liability for assessments may not be avoided by waiver of the use or enjoyment of any common element or by abandonment of the unit for which the assessments are made.

(d) Imposition of lien. -- Payment of assessments, together with interest, late charges, if any, costs of collection and reasonable attorney's fees may be enforced by the imposition of a lien on a unit in accordance with the provisions of the Maryland Contract Lien Act. Suit for any deficiency following foreclosure may be maintained in the same proceeding, and suit to recover any money judgment for unpaid assessments may also be maintained in the same proceeding, without waiving the right to seek to impose a lien under the Maryland Contract Lien Act.

(e) Interest on unpaid assessment; late charges; demand for payment of remaining annual assessment. --

(1) Any assessment, or installment thereof, not paid when due shall bear interest, at the option of the council of unit owners, from the date when due until paid at the rate provided in the bylaws, not exceeding 18 percent per annum, and if no rate is provided, then at 18 percent per annum.

(2) The bylaws also may provide for a late charge of $ 15 or one tenth of the total amount of any delinquent assessment or installment, whichever is greater, provided the charge may not be imposed more than once for the same delinquent payment and may only be imposed if the delinquency has continued for at least 15 calendar days.

(3) If the declaration or bylaws provide for an annual assessment payable in regular installments, the declaration or bylaws may further provide that if a unit owner fails to pay an installment when due, the council of unit owners may demand payment of the remaining annual assessment coming due within that fiscal year. A demand by the council is not enforceable unless the council, within 15 days of a unit owner's failure to pay an installment, notifies the unit owner that if the unit owner fails to pay the monthly installment within 15 days of the notice, full payment of the remaining annual assessment will then be due and shall constitute a lien on the unit as provided in this section.

HISTORY: An. Code, 1957, art. 21, §§ 11-116, 11-118; 1974, ch. 12, § 2; ch. 641; 1975, ch. 786, § 1; 1976, ch. 348, § 1; 1981, ch. 246; 1982, ch. 836, § 3; 1983, ch. 563; 1984, chs. 255, 525, 581; 1985, chs. 552, 736; 1986, ch. 359.

CONSTITUTIONALITY. --Statutes which regulate the amount and timing of a late charge, which provide that such charges are not interest, which authorize late charges without fixing any maximum late charge, and which state that any late charge permitted by statute is neither interest nor a finance charge, expressly permit charges which would otherwise be constitutionally impermissible. United Cable Television of Baltimore Ltd. Partnership v. Burch, 354 Md. 658, 732 A.2d 887 (1999).

Debtor may seek to enjoin a foreclosure sale from proceeding by filing a motion to enjoin prior to the sale, as provided for in Rule 14-209 but, if the debtor fails to do so and the sale occurs, the debtor's later filing of exceptions can only challenge any procedural irregularities regarding the sale, or the debtor can challenge the statement of indebtedness by filing exceptions to the auditor's statement of account. Ultimately, the foreclosure sale extinguishes a debtor's right of redemption, and substantial compliance by tendering a payment to satisfy the outstanding debt is insufficient once the decree of foreclosure has been declared. Greenbriar Condo. v. Brooks, 387 Md. 683, 878 A.2d 528 (2005).

FORECLOSURE SALE SET ASIDE. --Trial court erred by setting aside a second foreclosure sale with regard to a condominium unit, because the debtor failed to file an injunction prior to the sale and, upon completion of the sale, the debtor lost his right of redemption. The debtor should have sought to enjoin the sale from proceeding by filing a motion to enjoin under Md. R. 14-209.11-110, as substantial compliance by tendering a payment to satisfy the debt after the sale occurred was insufficient once the decree of foreclosure was entered. Greenbriar Condo. v. Brooks, 387 Md. 683, 878 A.2d 528 (2005).

APPLIED IN Swinson v. Lords Landing Village Condo., 360 Md. 462, 758 A.2d 1008 (2000).

CITED IN Golden Sands Club Condominium, Inc. v. Waller, 313 Md. 484, 545 A.2d 1332 (1988); St. Luke Evangelical Lutheran Church, Inc. v. Smith, 318 Md. 337, 568 A.2d 35 (1990); United Cable Television of Baltimore Ltd. Partnership v. Burch, 354 Md. 658, 732 A.2d 887 (1999).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-111 (2006)

§ 11-111. Rules and regulations

(a) Adoption of rules; notice to owners. -- The council of unit owners or the body delegated

in the bylaws of a condominium to carry out the responsibilities of the council of unit owners may adopt rules for the condominium if:

(1) Each unit owner is mailed or delivered:

(i) A copy of the proposed rule;

(ii) Notice that unit owners are permitted to submit written comments on the proposed rule; and

(iii) Notice of the proposed effective date of the proposed rule;

(2) (i) Before a vote is taken on the proposed rule, an open meeting is held to allow each unit owner or tenant to comment on the proposed rule;

(ii) The meeting held under this paragraph may not be held unless:

1. Each unit owner receives written notice at least 15 days before the meeting; and

2. A quorum of the council of unit owners or the body delegated in the bylaws of the condominium to carry out the responsibilities of the council of unit owners is present; and

(3) After notice has been given to unit owners as provided in this subsection, the proposed rule is passed at a regular or special meeting by a majority vote of those present and voting of the council of unit owners or the body delegated in the bylaws of the condominium to carry out the responsibilities of the council of unit owners.

(b) When adopted rules not final; special meetings. --

(1) The vote on the proposed rule shall be final unless:

(i) Within 15 days after the vote, to adopt the proposed rule, 15 percent of the council of unit owners sign and file a petition with the body that voted to adopt the proposed rule, calling for a special meeting;

(ii) A quorum of the council of unit owners attends the meeting; and

(iii) At the meeting, 50 percent of the unit owners present and voting disapprove the proposed rule, and the unit owners voting to disapprove the proposed rule are more than 33 percent of the total votes in the condominium.

(2) During the special meetings held under paragraph (1) of this subsection, unit owners, tenants, and mortgagees may comment on the proposed rule.

(3) A special meeting held under paragraph (1) of this subsection shall be held:

(i) After the unit owners and any mortgagees have at least 15 days' written notice of the meeting; and

(ii) Within 30 days after the day on which the petition is received by the body.

(c) Individual exceptions. --

(1) Each unit owner or tenant may request an individual exception to a rule adopted while the individual was the unit owner or tenant of the condominium.

(2) The request for an individual exception under paragraph (1) of this subsection shall be:

(i) Written;

(ii) Filed with the body that voted to adopt the proposed rule; and

(iii) Filed within 30 days after the effective date of the rule.

(d) General requirements and exceptions. --

(1) Each rule adopted under this section shall state that the rule was adopted under the provisions of this section.

(2) A rule may not be adopted under this section after July 1, 1984 if the rule is inconsistent with the condominium declaration or bylaws.

(3) This section does not apply to rules adopted before July 1, 1984.

HISTORY: 1984, ch. 584, § 2; 1986, ch. 385.

A CONDOMINIUM OWNER HOLDS A HYBRID PROPERTY INTEREST consisting of an exclusive ownership of a particular unit or apartment and a tenancy in common with the other co-owners in the common elements; in exchange for the benefits of owning property in common, condominium owners agree to be bound by rules governing the administration, maintenance, and use of the property. Ridgely Condominium Ass'n v. Smyrnioudis, 343 Md. 357, 681 A.2d 494 (1996).

APPROPRIATE STANDARD OF REVIEW FOR EVALUATING BYLAW AMENDMENT. --The appropriate standard of review for evaluating a condominium bylaw amendment containing a use restriction is reasonableness; while a more deferential standard may be employed when considering provisions contained in original condominium documentation, later adopted provisions that are passed by less than unanimous approval of all unit owners have the potential to discriminate against certain classes of owners. Ridgely Condominium Ass'n v. Smyrnioudis, 105 Md. App. 404, 660 A.2d 942 (1995), aff'd, 343 Md. 357, 68 A.2d 494 (1996).

BYLAW AMENDMENT LIMITING USE OF LOBBY WAS INVALID LIMITATION OF PROPERTY INTEREST. --It was beyond the power of a condominium association by bylaw amendment to purport to deprive the owners of first floor professional office units of their rights under the condominium declaration and under the Maryland Condominium Act to the enjoyment of the building lobby for the ingress and egress of their business invitees; such a rule affected an interest in property, and not a mere personal privilege which could be affected by bylaw amendment. Ridgely Condominium Ass'n v. Smyrnioudis, 343 Md. 357, 681 A.2d 494 (1996).

INTENT OF § 11-104 OF THIS TITLE. --Section 11-104 of this title intends to eliminate the mandatory effect that was explicitly provided for in former § 11-111 (f) of this title. The new language, "also may contain," drastically changed the import of the bylaws and their content. Dulaney Towers Maintenance Corp. v. O'Brey, 46 Md. App. 464, 418 A.2d 1233 (1980).

IT IS THE EXCEPTION RATHER THAN THE RULE THAT BYLAWS CONTAIN SPECIFIC RESTRICTIONS respecting use of units and common areas. Dulaney Towers Maintenance Corp. v. O'Brey, 46 Md. App. 464, 418 A.2d 1233 (1980).

ENFORCEMENT OF HOUSE RULE. --If a house rule is reasonable, consistent with the law, and enacted in accordance with the bylaws, then it will be enforced. Dulaney Towers Maintenance Corp. v. O'Brey, 46 Md. App. 464, 418 A.2d 1233 (1980).

CITED IN Alpert v. Le'Lisa Condominium, 107 Md. App. 239, 667 A.2d 947 (1995).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-111.1 (2006)

§ 11-111.1. Family day care homes

(a) Definitions. --

(1) In this section the following words have the meanings indicated.

(2) "Day care provider" means the adult who has primary responsibility for the operation of a family day care home.

(3) "Family day care home" means a unit registered under Title 5, Subtitle 5 of the Family Law Article.

(4) "No-impact home-based business" means a business that:

(i) Is consistent with the residential character of the dwelling unit;

(ii) Is subordinate to the use of the dwelling unit for residential purposes and requires no external modifications that detract from the residential appearance of the dwelling unit;

(iii) Uses no equipment or process that creates noise, vibration, glare, fumes, odors, or electrical or electronic interference detectable by neighbors or that causes an increase of common expenses that can be solely and directly attributable to a no-impact home-based business; and

(iv) Does not involve use, storage, or disposal of any grouping or classification of materials that the United States Secretary of Transportation or the State or any local governing body designates as a hazardous material.

(b) Applicability. --

(1) The provisions of this section relating to family day care homes do not apply to a condominium that is limited to housing for older persons, as defined under the federal Fair Housing Act.

(2) The provisions of this section relating to no-impact home-based businesses do not apply to a condominium that has adopted, prior to July 1, 1999, procedures in accordance with its covenants, declaration, or bylaws for the regulation or prohibition of no-impact home-based businesses.

(c) Permitted activities. --

(1) Subject to the provisions of subsections (d) and (e)(1) of this section, a recorded covenant or restriction, a provision in a declaration, or a provision of the bylaws or rules of a condominium that prohibits or restricts commercial or business activity in general, but does not expressly apply to family day care homes or no-impact home-based businesses, may not be construed to prohibit or restrict:

(i) The establishment and operation of family day care homes or no-impact home-based businesses; or

(ii) Use of the roads, sidewalks, and other common elements of the condominium by users of the family day care home.

(2) Subject to the provisions of subsections (d) and (e)(1) of this section, the operation of a family day care home or no-impact home-based business shall be:

(i) Considered a residential activity; and

(ii) A permitted activity.

(d) Express prohibition. --

(1) (i) Subject to the provisions of paragraphs (2) and (3) of this subsection, a condominium may include in its declaration, bylaws, or rules and restrictions a provision expressly prohibiting the use of a unit as a family day care home or no-impact home-based business.

(ii) A provision described under subparagraph (i) of this paragraph expressly prohibiting the use of a unit as a family day care home or no-impact home-based business shall apply to an existing family day care home or no-impact home-based business in the condominium.

(2) A provision described under paragraph (1)(i) of this subsection expressly prohibiting the use of a unit as a family day care home or no-impact home-based business may not be enforced unless it is approved by a simple majority of the total eligible voters of the condominium under the voting procedures contained in the declaration or bylaws of the condominium.

(3) If a condominium includes in its declaration, bylaws, or rules and restrictions, a provision prohibiting the use of a unit as a family day care home or no-impact home-based business, it shall also include a provision stating that the prohibition may be eliminated and family day care homes or no-impact home-based businesses may be approved by a simple majority of the total eligible voters of the condominium under the voting procedures contained in the declaration or bylaws of the condominium.

(4) If a condominium includes in its declaration, bylaws, or rules and restrictions a provision expressly prohibiting the use of a unit as a family day care home or no-impact home-based business, the prohibition may be eliminated and family day care or no-impact home-based business activities may be permitted by the approval of a simple majority of the total eligible voters of the condominium under the voting procedures contained in the declaration or bylaws of the condominium.

(e) Regulation of operation. -- A condominium may include in its declaration, bylaws, or rules and restrictions a provision that:

(1) Regulates the number or percentage of family day care homes operating in the condominium, provided that the percentage of family day care homes permitted may not be less than 7.5 percent of the total units of the condominium;

(2) Requires day care providers to pay on a pro rata basis based on the total number of

family day care homes operating in the condominium any increase in insurance costs of the condominium that are solely and directly attributable to the operation of family day care homes in the condominium; and

(3) Imposes a fee for use of common elements in a reasonable amount not to exceed $ 50 per year on each family day care home or no-impact home-based business which is registered and operating in the condominium.

(f) Notice. --

(1) If the condominium regulates the number or percentage of family day care homes under subsection (e)(1) of this section, in order to assure compliance with the regulation, the condominium may require residents to notify the condominium before opening a family day care home.

(2) The condominium may require residents to notify the condominium before opening a no-impact home-based business.

(g) Liability insurance. --

(1) A day care provider in a condominium:

(i) Shall obtain the liability insurance described under §§ 19-106 and 19-203 of the Insurance Article in at least the minimum amount described under that statute; and

(ii) May not operate without the liability insurance described under item (i) of this paragraph.

(2) A condominium may not require a day care provider to obtain insurance in an amount greater than the minimum amount required under paragraph (1) of this subsection.

(h) Restriction. -- A condominium may restrict or prohibit a no-impact home-based business in any common elements.

(i) Section controlling. -- To the extent that this section is inconsistent with any other provision of this subtitle, this section shall take precedence over any inconsistent provision.

HISTORY: 1989, chs. 491, 492; 1997, ch. 70, § 4; 1998, ch. 341; 2002, ch. 19, § 10; 2006, ch. 44, § 6.

NOTES:
EDITOR'S NOTE. --Section 10, ch. 19, Acts 2002, provides that "the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, the comma following "section" in (a)(1) has been deleted.

Section 5, ch. 44, Acts 2006, enacted April 7, 2006, pursuant to art. II, § 17(b) of the Maryland Constitution and effective from date of enactment, provides that "any reference in the Annotated Code of Maryland rendered obsolete by an Act of the General Assembly of 2006 shall be corrected by the publisher of the Annotated Code, in consultation with and subject to the approval of the Department of Legislative Services, with no further action required by the General Assembly. The publisher shall adequately describe any such correction in an editor's note following the section affected." Pursuant to § 5 of ch. 44, "§ 19-203" was substituted for "§ 19-202" in (g)(1)(i), following the amendment by ch. 388, Acts 2006, effective January 1, 2007.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-111.2 (2006)

§ 11-111.2. Restrictions on candidate signs and propositions

(a) Defined. -- In this section, "candidate sign" means a sign on behalf of a candidate for public office or a slate of candidates for public office.

(b) Exceptions. -- Except as provided in subsection (c) of this section, a recorded covenant or restriction, a provision in a declaration, or a provision in the bylaws or rules of a condominium may not restrict or prohibit the display of:

(1) A candidate sign; or

(2) A sign that advertises the support or defeat of any question submitted to voters in accordance with the Election Law Article.

(c) Restrictions. -- A recorded covenant or restriction, a provision in a declaration, or a provision in the bylaws or rules of a condominium may restrict the display of a candidate sign or a sign that advertises the support or defeat of any proposition:

(1) In the common elements;

(2) In accordance with provisions of federal, State, and local law; or

(3) If a limitation to the time period during which signs may be displayed is not specified by a law of the jurisdiction in which the condominium is located, to a time period not less than:

(i) 30 days before the primary election, general election, or vote on the proposition; and

(ii) 7 days after the primary election, general election, or vote on the proposition.

HISTORY: 1998, ch. 439; 2002, ch. 303, § 2.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 303, Acts 2002, effective Jan. 1, 2003, substituted "the Election Law Article" for "Article 33 of the Code" in (b) (2).

EDITOR'S NOTE. --Section 7, ch. 303, Acts 2002, provides "that §§ 1 and 2 of this Act shall take effect January 1, 2003, contingent on the taking effect of Chapter 291 (S.B. 1) of the

Acts of the General Assembly of 2002, and if Chapter 291 does not become effective, this Act shall be null and void without the necessity of further action by the General Assembly." Section 13, ch. 291, Acts 2002, provides that the act shall take effect January 1, 2003.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-111.3 (2006)

§ 11-111.3. Distribution of written information or materials

(a) Applicability of section. -- This section does not apply to the distribution of information or materials at any time before the unit owners elect officers or a board of directors in accordance with § 11-109 (c) (16) of this title.

(b) Door-to-door distribution. -- In this section, the door-to-door distribution of any of the following information or materials may not be considered a distribution for purposes of determining the manner in which a governing body distributes information or materials under this section:

(1) Any information or materials reflecting the assessments imposed on unit owners in accordance with a recorded covenant, the declaration, bylaw, or rule of the condominium; and

(2) Any meeting notices of the governing body.

(c) Distribution of written information or materials. -- Except for reasonable restrictions to the time of distribution, a recorded covenant or restriction, a provision in a declaration, or a provision of the bylaws or rules of a condominium may not restrict a unit owner from distributing written information or materials regarding the operation of or matters relating to the operation of the condominium in any manner or place that the governing body distributes written information or materials.

HISTORY: 1998, chs. 440, 564.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-112 (2006)

§ 11-112. Eminent domain

(a) Meaning of "taking under the power of eminent domain". -- In this section, the term "taking under the power of eminent domain" includes any sale in settlement of any pending or threatened condemnation proceeding.

(b) Allocation of award -- Provisions in declaration or bylaws. -- The declaration or bylaws may provide for an allocation of any award for a taking under the power of eminent domain of all or a part of the condominium. The declaration or bylaws also may provide for (1) reapportionment or other change of the percentage interests appurtenant to each unit remaining after any taking; (2) the rebuilding, relocation, or restoration of any improvements so taken in whole or in part; and (3) the termination of the condominium regime following any taking.

(c) Same -- In absence of provisions in declaration or bylaws. -- Unless otherwise provided in the declaration or bylaws, any damages for a taking of all or part of a condominium shall be awarded as follows:

(1) Each unit owner shall be entitled to the entire award for the taking of all or part of his respective unit and for consequential damages to his unit.

(2) Any award for the taking of limited common elements shall be allocated to the unit owners of the units to which the use of those limited common elements is restricted in proportion to their respective percentage interests in the common elements.

(3) Any award for the taking of general common elements shall be allocated to all unit owners in proportion to their respective percentage interests in the common elements.

(d) Reconstruction following taking. -- Unless otherwise provided in the declaration or bylaws, following the taking of a part of a condominium, the council of unit owners shall not be obligated to replace improvements taken but promptly shall undertake to restore the remaining improvements of the condominium to a safe and habitable condition. Any costs of such restoration shall be a common expense.

(e) Adjustment of percentage interests following taking; effect of taking on votes appurtenant to unit. -- Unless provided in the declaration or bylaws, following the taking of all or a part of any unit, the percentage interests appurtenant to the unit shall be adjusted in proportion as the amount of floor area of the unit so taken bears to the floor area of the unit prior to the taking. The council of unit owners promptly shall prepare and record an amendment to the declaration reflecting the new percentage interests appurtenant to the unit. Subject to subsection (g) of this section:

(1) Following the taking of part of a unit the votes appurtenant to that unit shall be appurtenant to the remainder of that unit; and

(2) Following the taking of all of a unit the right to vote appurtenant to the unit shall terminate.

(f) Priority in distribution of damages for each unit. -- All damages for each unit shall be distributed in accordance with the priority of interests at law or in equity in each respective unit.

(g) Taking not to include percentage interests or votes. -- Except to the extent specifically described in the condemnation declaration or grant in lieu thereof, a taking of all or part of a unit may not include any of the percentage interests or votes appurtenant to the unit.

HISTORY: 1974, ch. 641; 1976, ch. 348, § 1; 1981, ch. 246; 1989, ch. 5, § 1.

UNIVERSITY OF BALTIMORE LAW REVIEW. --For comment discussing cases and legislation imposing implied warranties in sales of residential condominiums, see 14 U. Balt. L. Rev. 116 (1984).

THREE GUIDELINES FOR DETERMINING WHEN TWO SEPARATE PROPERTY INTERESTS CONSTITUTE SAME PHYSICAL UNIT in the eminent domain context are: (1) unity of ownership; (2) unity of use; and (3) unity of contiguity. Andrews v. City of Greenbelt, 293 Md. 69, 441 A.2d 1064 (1982).

"UNITY OF OWNERSHIP." --For there to be "unity of ownership" in two tracts of land, there must be some common property interest in both parcels of land. The condominium owner, therefore, possesses "unity of ownership" by way of his fee simple interest in his unit together with his undivided percentage interest in the common elements. Andrews v. City of Greenbelt, 293 Md. 69, 441 A.2d 1064 (1982).

"UNITY OF USE." --There exists "unity of use" between a condominium's common elements and the individual's particular unit in that the full enjoyment of this type of proprietorship would not be possible unless the unit owner had a right to utilize the common elements, be they general or limited. Andrews v. City of Greenbelt, 293 Md. 69, 441 A.2d 1064 (1982).

"UNITY OF CONTIGUITY." --"Unity of contiguity" is ordinarily met by the unique relationship between a unit and its percentage interest in the common elements of a condominium regime. A unit is merely a portion of space surrounded by and dependent upon the common elements, the two being required to coexist in order to meet the statutory requirement for the legal creation of a condominium. Andrews v. City of Greenbelt, 293 Md. 69, 441 A.2d 1064 (1982).

UNIT OWNER'S INTEREST IN COMMON ELEMENTS AND IN HIS UNIT CONSTITUTES SINGLE PARCEL of real property for purposes of condemnation actions. Andrews v. City of Greenbelt, 293 Md. 69, 441 A.2d 1064 (1982).

WHEN UNIT OWNER MAY RECOVER FOR DAMAGES TO UNIT FOLLOWING APPROPRIATION OF COMMON ELEMENTS. --Because a condominium unit and its respective share of the common elements, within the complex, constitute one parcel, an individual unit owner may recover consequential damages to his particular unit following an appropriation of the common elements as long as his unit, separate from the whole, is injured. Andrews v. City of Greenbelt, 293 Md. 69, 441 A.2d 1064 (1982).

FAILURE TO INCLUDE NAMES OF UNIT OWNERS AND MORTGAGEES ON INQUISITION FORM HELD ERROR. --While a trial judge is correct in directing that condominium unit owners and any mortgagees be added as parties to a suit to condemn a portion of the general common elements of the condominium, he subsequently errs when he fails to include their names on the inquisition form submitted to the jury. Andrews v. City of Greenbelt, 293 Md. 69, 441 A.2d 1064 (1982).

It is not enough that the inquisition form submitted to the jury in an action to condemn a portion of the general common elements of the condominium named the council of unit owners of the condominium as the defendant because, even though the council is a legal

entity comprised of all unit owners, it does not have legal title to the collectively held property and nothing in § 11-109 of this title allows the association, acting in a representative capacity for the unit owners, to transfer title to regime property. Andrews v. City of Greenbelt, 293 Md. 69, 441 A.2d 1064 (1982).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-113 (2006)

§ 11-113. Dispute settlement mechanism

(a) Application of section. -- Unless the declaration or bylaws state otherwise, the dispute settlement mechanism provided by this section is applicable to complaints or demands formally arising on or after January 1, 1982.

(b) Procedure prior to imposition of sanction for rule violation. -- The council of unit owners or board of directors may not impose a fine, suspend voting, or infringe upon any other rights of a unit owner or other occupant for violations of rules until the following procedure is followed:

(1) Written demand to cease and desist from an alleged violation is served upon the alleged violator specifying:

(i) The alleged violation;

(ii) The action required to abate the violation; and

(iii) A time period, not less than 10 days, during which the violation may be abated without further sanction, if the violation is a continuing one, or a statement that any further violation of the same rule may result in the imposition of sanction after notice and hearing if the violation is not continuing.

(2) Within 12 months of the demand, if the violation continues past the period allowed in the demand for abatement without penalty or if the same rule is violated subsequently, the board serves the alleged violator with written notice of a hearing to be held by the board in session. The notice shall contain:

(i) The nature of the alleged violation;

(ii) The time and place of the hearing, which time may be not less than 10 days from the giving of the notice;

(iii) An invitation to attend the hearing and produce any statement, evidence, and witnesses on his or her behalf; and

(iv) The proposed sanction to be imposed.

(3) A hearing occurs at which the alleged violator has the right to present evidence and present and cross-examine witnesses. The hearing shall be held in executive session pursuant to this notice and shall afford the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. This proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer or director who delivered the notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(4) A decision pursuant to these procedures shall be appealable to the courts of Maryland.

(c) Liability for damages; injunction. -- If any unit owner fails to comply with this title, the declaration, or bylaws, or a decision rendered pursuant to this section, the unit owner may be sued for damages caused by the failure or for injunctive relief, or both, by the council of unit owners or by any other unit owner. The prevailing party in any such proceeding is entitled to an award for counsel fees as determined by court.

(d) Effect of failure to enforce provisions. -- The failure of the council of unit owners to enforce a provision of this title, the declaration, or bylaws on any occasion is not a waiver of the right to enforce the provision on any other occasion.

HISTORY: 1981, ch. 246; 1982, ch. 836, § 3; 1985, ch. 553.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-114 (2006)

§ 11-114. Required insurance coverage; reconstruction

(a) Duty of council of unit owners to maintain property and liability insurance. -- Commencing not later than the time of the first conveyance of a unit to a person other than the developer, the council of unit owners shall maintain, to the extent reasonably available:

(1) Property insurance on the common elements and units, exclusive of improvements and betterments installed in units by unit owners, insuring against those risks of direct physical

loss commonly insured against, in amounts determined by the council of unit owners but not less than any amounts specified in the declaration or bylaws; and

(2) Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the council of unit owners, but not less than any amount specified in the declaration or bylaws, covering occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

(b) Other insurance. -- The council of unit owners shall give notice to all unit owners of the termination of any insurance policy within 10 days of termination. The declaration or bylaws may require the council of unit owners to carry any other insurance, and the council of unit owners in any event may carry any other insurance it deems appropriate to protect the council of unit owners or the unit owners.

(c) Provisions of property and liability insurance policies. -- Insurance policies carried pursuant to subsection (a) of this section shall provide that:

(1) Each unit owner is an insured person under the policy with respect to liability arising out of his ownership of an undivided interest in the common elements or membership in the council of unit owners;

(2) The insurer waives its right to subrogation under the policy against any unit owner of the condominium or members of his household;

(3) An act or omission by any unit owner, unless acting within the scope of his authority on behalf of the council of unit owners, does not void the policy and is not a condition to recovery under the policy; and

(4) If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same property covered by the policy, the policy is primary insurance not contributing with the other insurance.

(d) Disbursement of proceeds of property policy. -- Any loss covered by the property policy under subsection (a) (1) of this section shall be adjusted with the council of unit owners, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the council of unit owners, and not to any mortgagee. The insurance trustee or the council of unit owners shall hold any insurance proceeds in trust for unit owners and lien holders as their interests may appear. Subject to the provisions of subsection (g) of this section, the proceeds shall be disbursed first for the repair or restoration of the damaged common elements and units, and unit owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the common elements and units have been completely repaired or restored, or the condominium is terminated.

(e) Insurance for unit owner's benefit. -- An insurance policy issued to the council of unit owners does not prevent a unit owner from obtaining insurance for his own benefit.

(f) Certificates or memoranda of insurance; notice prior to cancellation. -- An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the council of unit owners and, upon request, to any unit owner, mortgagee, or beneficiary under a deed of trust. The insurance may not be canceled until 30 days after the notice of the proposed cancellation has been mailed to the council of unit owners, each unit owner and each mortgagee to whom certificates of insurance have been issued.

(g) Repair or reconstruction. --

(1) Any portion of the condominium damaged or destroyed shall be repaired or replaced promptly by the council of unit owners unless:

(i) The condominium is terminated;

(ii) Repair or replacement would be illegal under any State or local health or safety statute or ordinance; or

(iii) 80 percent of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild.

(2) (i) 1. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense.

2. A property insurance deductible is not a cost of repair or replacement in excess of insurance proceeds.

(ii) If the cause of any damage to or destruction of any portion of the condominium originates from the common elements, the council of unit owners' property insurance deductible is a common expense.

(iii) 1. Except as otherwise provided in the council of unit owners' bylaws, if the cause of any damage to or destruction of any portion of the condominium originates from a unit, the council of unit owners' property insurance deductible is a common expense.

2. If the council of unit owners' bylaws provides that the owner of the unit where the cause of the damage or destruction originated is responsible for the council of unit owners' property insurance deductible, the unit owner's responsibility may not exceed $ 1,000.

3. The council of unit owners' property insurance deductible amount exceeding the $ 1,000 responsibility of the unit owner is a common expense.

(iv) In the same manner as provided under § 11-110 of this subtitle, the council of unit owners may make an annual assessment against the unit owner responsible under subparagraph (iii) of this paragraph.

(3) If the damaged or destroyed portion of the condominium is not repaired or replaced:

(i) The insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium;

(ii) The insurance proceeds attributable to units and limited common elements which are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements were assigned; and

(iii) The remainder of the proceeds shall be distributed to all the unit owners in proportion to their percentage interest in the common elements.

(4) If the unit owners vote not to rebuild any unit, that unit's entire common element interest, votes in the council of unit owners, and common expense liability are automatically reallocated upon the vote as if the unit had been condemned under § 11-112 of this title, and the council of unit owners promptly shall prepare, execute, and record an amendment to the declaration reflecting the reallocations. Notwithstanding the provisions of this subsection, § 11-123 of this title governs the distribution of insurance proceeds if the condominium is terminated.

(h) Inspection of insurance policies. -- The council of unit owners shall maintain and make available for inspection a copy of all insurance policies maintained by the council of unit owners.

(i) Section inapplicable to condominium intended for nonresidential use. -- The provisions of

this section do not apply to a condominium all of whose units are intended for nonresidential use.

HISTORY: 1981, ch. 246; 1982, ch. 836, § 3; 1984, ch. 525; 1986, ch. 360; 1989, ch. 5, § 1; 2001, ch. 694.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 694, Acts 2001, effective Oct. 1, 2001, reenacted (a) and (c) without change; and added (g) (2) (i) 2 and (g) (2) (ii) through (iv).

APPLICATION OF SUBSECTION (D). --Subsection (d) of this section applied and the monies received by a condominium association and retained by them in their accounts, would belong to the condominium, to be distributed among all the owners on a pro rata basis; therefore, any claim that appellant had against these funds was only as a pro rata portion of them. Moshyedi v. Council of Unit Owners of Annapolis Rd. Med. Ctr. Condo., 132 Md. App. 184, 752 A.2d 279 (2000).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-115 (2006)

§ 11-115. Improvements, alterations or additions by unit owner

Subject to the provisions of the declaration or bylaws and other provisions of law, a unit owner:

(1) May make any improvements or alterations to his unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium;

(2) May not alter, make additions to, or change the appearance of the common elements, or the exterior appearance of a unit or any other portion of the condominium, without permission of the council of unit owners;

(3) After acquiring an adjoining unit or an adjoining part of an adjoining unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium. However, prior approval shall be given by the council of unit owners or its authorized designee and an amendment to the declaration and plat(s) shall be filed among the land records of the county in which the condominium is located under the name of the condominium. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries.

HISTORY: 1981, ch. 246; 1982, ch. 836, § 3.

STATUTE SUBORDINATE TO OTHER AGREEMENTS. --If condominium documents conflict with the provisions of paragraph (3) of this section, the condominium documents control, because this section is made subject to the provisions of declarations, bylaws, or other provisions of law. Sea Watch Stores Ltd. Liab. Co. v. Council of Unit Owners, 115 Md. App. 5, 691 A.2d 750 (1997).

REPAIR BY OWNER WITHOUT APPROVAL. --Traditional easement law applied to easements granted in condominium documents, and the specific provisions of both the condominium's declaration and bylaws allowed a condominium owner to repair an inherent construction defect that related to the safe use of her premises without prior approval. Therefore, under the factual circumstances, the owner was within the bounds of the express grant of the easement to install an exterior dryer exhaust vent to correct a defect in the dryer exhaust system of the owner's condominium without the prior approval of the council and, under the limited circumstances presented, was not subject to the prior approval provision in the condominium's bylaws; in any event, because it came under an exception contained in the bylaws, the owner's action did not violate the bylaws' provisions. Garfink v. Cloisters at Charles, Inc., 392 Md. 374, 897 A.2d 206 (2006).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-116 (2006)

§ 11-116. Books and records to be kept; audit; inspection of records

(a) Books and records to be kept. -- The council of unit owners shall keep books and records in accordance with good accounting practices on a consistent basis.

(b) Audit. -- On the request of the unit owners of at least 5 percent of the units, the council of unit owners shall cause an audit of the books and records to be made by an independent certified public accountant, provided an audit shall be made not more than once in any consecutive 12-month period. The cost of the audit shall be a common expense.

(c) Inspection of records. --

(1) Except as provided in paragraph (2) of this subsection, all books and records, including insurance policies, kept by the council of unit owners shall be maintained in Maryland or within 50 miles of its borders and shall be available at some place designated by the council of unit owners within the county where the condominium is located for examination and copying by

any unit owner, his mortgagee, and their respective duly authorized agents or attorneys, during normal business hours, and after reasonable notice.

(2) Books and records kept by or on behalf of a council of unit owners may be withheld from public inspection to the extent that they concern:

(i) Personnel records;

(ii) An individual's medical records;

(iii) An individual's financial records;

(iv) Records relating to business transactions that are currently in negotiation;

(v) The written advice of legal counsel; or

(vi) Minutes of a closed meeting of the board of directors or other governing body of the council of unit owners.

(d) Reasonable charge. -- The council of unit owners may impose a reasonable charge upon a person desiring to review or copy the books and records.

HISTORY: An. Code 1957, art. 21, § 11-115; 1974, ch. 12, § 2; ch. 641; 1975, ch. 786, § 1; 1981, ch. 246; 1982, ch. 836, § 3; 1984, ch. 525; 2004, ch. 382.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 382, Acts 2004, effective Oct. 1, 2004, substituted "Except as provided in paragraph (2) of this subsection, all books and records" for "Every record" at the beginning of (c)(1); and added (c)(2) and (d).

Debtor may seek to enjoin a foreclosure sale from proceeding by filing a motion to enjoin prior to the sale, as provided for in Rule 14-209 but, if the debtor fails to do so and the sale occurs, the debtor's later filing of exceptions can only challenge any procedural irregularities regarding the sale, or the debtor can challenge the statement of indebtedness by filing exceptions to the auditor's statement of account. Ultimately, the foreclosure sale extinguishes a debtor's right of redemption, and substantial compliance by tendering a payment to satisfy the outstanding debt is insufficient once the decree of foreclosure has been declared. Greenbriar Condo. v. Brooks, 387 Md. 683, 878 A.2d 528 (2005).

Trial court erred by setting aside a second foreclosure sale with regard to a condominium unit, because the debtor failed to file an injunction prior to the sale and, upon completion of the sale, the debtor lost his right of redemption. The debtor should have sought to enjoin the sale from proceeding by filing a motion to enjoin under Md. R. 14-209.11-110, as substantial compliance by tendering a payment to satisfy the debt after the sale occurred was insufficient once the decree of foreclosure was entered. Greenbriar Condo. v. Brooks, 387 Md. 683, 878 A.2d 528 (2005).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***

*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-117 (2006)

§ 11-117. Taxation

Repealed by Acts 1985, ch. 480, § 2, effective February 1, 1986.

NOTES:
CROSS REFERENCES. --As to present provisions similar to those of the repealed section, see TP § 8-207.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

[Repealed/Reserved]

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-118 (2006)

§ 11-118. Mechanics' and materialmen's liens

(a) In general. -- Any mechanics' lien or materialmen's lien arising as a result of repairs to or improvements of a unit by a unit owner shall be a lien only against the unit.

(b) Payment of lien. -- Any mechanics' or materialmen's lien arising as a result of repairs to or improvements of the common elements, if authorized in writing by the council of unit owners, shall be paid by the council as a common expense and until paid shall be a lien against each unit in proportion to its percentage interest in the common elements. On payment of the proportionate amount by any unit owner to the lienor or on the filing of a written undertaking in the manner specified by Maryland Rule 12-307, the unit owner is entitled to a recordable release of his unit from the lien and the council of unit owners is not entitled to assess his unit for payment of the remaining amount due for the repairs or improvements.

(c) Personal liability of unit owner. -- Except in proportion to his percentage interest in the

common elements, a unit owner personally is not liable (1) for damages as a result of injuries arising in connection with the common elements solely by virtue of his ownership of a percentage interest in the common elements; or (2) for liabilities incurred by the council of unit owners. On payment by any unit owner of his proportionate amount of any judgment resulting from that liability, the unit owner is entitled to a recordable release of his unit from the lien of the judgment and the council of unit owners is not entitled to assess his unit for payment of the remaining amount due.

HISTORY: An. Code 1957, art. 21, § 11-124; 1974, ch. 12, § 2; ch. 641; 1975, ch. 786, § 2; 1981, ch. 246; 1998, ch. 21, § 1.

COMPLAINT DEFECTIVE FOR FAILING TO NAME ALL CONDOMINIUM UNIT OWNERS. --As a condominium regime lawfully existed at a building under § 11-102 of the Real Property Article, notice had to be given to all condominium unit owners under § 9-104 of the Real Property Article, and all such owners had to be parties to the case before a mechanic's lien could be established as against the entire building. Since only one of the two owners had been named a party, the trial court erred in entering an order establishing a mechanic's lien. S. Mgmt. Corp. v. Kevin Willes Constr. Co., 382 Md. 524, 856 A.2d 626 (2004).

QUOTED IN Hurst v. V & M of Va., Inc., 293 Md. 575, 446 A.2d 55 (1982).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-119 (2006)

§ 11-119. Resident agent

A person may bring suit against the council of unit owners, or against the condominium unit owners as a whole in any cause relating to the common elements, by service as follows:

(1) If the council of unit owners is a corporation, in the same manner as the Maryland Rules authorize service on a corporation; or

(2) If the council of unit owners is not a corporation, in the same manner as the Maryland Rules authorize service on an unincorporated association.

HISTORY: An. Code 1957, art. 21, § 11-123; 1974, ch. 12, § 2; ch. 641; 1975, ch. 786, § 3; 1981, ch. 246; 1982, ch. 836, § 3; 1985, ch. 532; 1996, ch. 185.

NOTES:
CROSS REFERENCES. --For present provisions as to remedies for violation by unit owner, see

§ 11-113 of this title.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-120 (2006)

THIS SECTION HAS MORE THAN ONE DOCUMENT WITH VARYING EFFECTIVE DATES.

§ 11-120. Expanding condominiums [Amendment subject to abrogation]

(a) Developer may reserve right to expand. -- A developer may reserve the right to expand the condominium by subjecting additional sections of property to the condominium regime in a manner so that as each additional section of property is subjected to the condominium regime:

(1) The percentage interests in the common elements of the unit owners in preceding sections shall be reduced and appropriate percentage interests in the common elements of the added sections shall vest in them; and

(2) Appropriate percentage interests in the common elements of the preceding sections shall vest in unit owners in the added sections.

(b) Conditions to which reservation subject. -- The reservation of the right to expand a condominium is subject to the conditions provided in this subsection.

(1) The declaration establishing the condominium shall describe each parcel of property which may be included in each section to be added to the condominium. This description may be made by reference to the condominium plat.

(2) The declaration establishing the condominium shall show:

(i) The maximum number of units which may be added; and

(ii) The percentage interests in the common elements, the percentage interests in the common expenses and common profits, and the number of votes appurtenant to each unit following the addition of each section of property to the condominium, if added. The percentage interests in the common elements and in common expenses and common profits, and the number of votes that each unit owner will have may be shown by reference to a formula or other appropriate method of determining them following each expansion of the condominium.

(3) The condominium plat for the original condominium shall include, in general terms, the outlines of the land, buildings, and common elements of each successive section that may be added to the condominium.

(4) (i) Except as provided in subparagraph (ii) of this paragraph, in the declaration establishing the condominium a right shall be reserved in the developer for a period, not exceeding 10 years from the date of recording of the declaration, to add to the condominium any successive section described in the declaration and in the condominium plat.

(ii) In Calvert County, in an existing or new declaration for the condominium and notwithstanding anything contained in the declaration to the contrary, a right shall be deemed reserved in the developer for a period not exceeding 18 years from the date of recording of the declaration, to add to the condominium any successive section described in the declaration and in the condominium plat.

(c) Recordation of amendments to declaration and plat. --

(1) If there is compliance with the conditions of subsection (b) of this section, successive sections of property may be added to the condominium if the developer (i) records an amendment to the declaration, showing the new percentage interests of the unit owners, and the votes which each unit owner may cast in the condominium as expanded, and (ii) records an amendment to the condominium plat that includes the detail and information concerning the new section as required in the original condominium plat.

(2) On recordation of the amendment of the declaration and plat, each unit owner, by operation of law, has the percentage interests in the common elements, and in the common expenses and common profits, and shall have the number of votes, set forth in the amendment to the declaration. Following any expansion, the interest of any mortgagee shall attach, by operation of law, to the new percentage interests in the common elements appurtenant to the unit on which it is a lien.

HISTORY: 1974, ch. 641; 1981, ch. 246; 1989, ch. 5, § 1; 1997, ch. 14, § 1; 2000, ch. 697; 2004, ch. 220.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 220, Acts 2004, effective July 1, 2004, substituted "18 years" for "15 years" in (b)(4)(ii).

EDITOR'S NOTE. --Section 2, ch. 697, Acts 2000, as amended by ch. 220, Acts 2004, provides that "this Act shall take effect October 1, 2000. It shall remain effective for a period of 8 years and, at the end of September 30, 2008, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect."

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-120 (2006)

THIS SECTION HAS MORE THAN ONE DOCUMENT WITH VARYING EFFECTIVE DATES.

§ 11-120. Expanding condominiums (Abrogation of amendment effective September 30, 2008.)

(a) Developer may reserve right to expand. -- A developer may reserve the right to expand the condominium by subjecting additional sections of property to the condominium regime in a manner so that as each additional section of property is subjected to the condominium regime:

(1) The percentage interests in the common elements of the unit owners in preceding sections shall be reduced and appropriate percentage interests in the common elements of the added sections shall vest in them; and

(2) Appropriate percentage interests in the common elements of the preceding sections shall vest in unit owners in the added sections.

(b) Conditions to which reservation subject. -- The reservation of the right to expand a condominium is subject to the conditions provided in this subsection.

(1) The declaration establishing the condominium shall describe each parcel of property which may be included in each section to be added to the condominium. This description may be made by reference to the condominium plat.

(2) The declaration establishing the condominium shall show:

(i) The maximum number of units which may be added; and

(ii) The percentage interests in the common elements, the percentage interests in the common expenses and common profits, and the number of votes appurtenant to each unit following the addition of each section of property to the condominium, if added. The percentage interests in the common elements and in common expenses and common profits, and the number of votes that each unit owner will have may be shown by reference to a formula or other appropriate method of determining them following each expansion of the condominium.

(3) The condominium plat for the original condominium shall include, in general terms, the outlines of the land, buildings, and common elements of each successive section that may be added to the condominium.

(4) In the declaration establishing the condominium a right shall be reserved in the developer for a period, not exceeding 10 years from the date of recording of the declaration, to add to the condominium any successive section described in the declaration and in the condominium plat.

(c) Recordation of amendments to declaration and plat. --

(1) If there is compliance with the conditions of subsection (b) of this section, successive sections of property may be added to the condominium if the developer (i) records an amendment to the declaration, showing the new percentage interests of the unit owners, and the votes which each unit owner may cast in the condominium as expanded, and (ii) records an amendment to the condominium plat that includes the detail and information concerning

the new section as required in the original condominium plat.

(2) On recordation of the amendment of the declaration and plat, each unit owner, by operation of law, has the percentage interests in the common elements, and in the common expenses and common profits, and shall have the number of votes, set forth in the amendment to the declaration. Following any expansion, the interest of any mortgagee shall attach, by operation of law, to the new percentage interests in the common elements appurtenant to the unit on which it is a lien.

HISTORY: 2000, ch. 697; 2004, ch. 220.

NOTES:
CROSS REFERENCES. --For applicability of section, see § 11-142 (c) of this title.

EDITOR'S NOTE. --Section 2, ch. 697, Acts 2000, as amended by ch. 220, Acts 2004, provides that "this Act shall take effect October 1, 2000. It shall remain effective for a period of 8 years and, at the end of September 30, 2008, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect." This section is set out above as it will appear after September 30, 2008, unless further action is taken by the General Assembly.

ADEQUATE DISCLOSURE REQUIRED. --A condominium may be expanded and the assessment to each unit increased, providing adequate disclosure is made. 64 Op. Att'y Gen. 71 (1979).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-121 (2006)

§ 11-121. Deposits on new condominiums

Any deposits taken in connection with the sale by a developer of units in a condominium intended for residential use shall be deposited or held in an escrow account as provided in § 10-301 of this article, unless a corporate surety bond is obtained and maintained as provided in § 10-301 of this article.

HISTORY: An. Code 1957, art. 21, § 11-127; 1974, ch. 12, § 2; ch. 641; 1981, ch. 246; 1982, ch. 836, § 3.

NOTES:
CROSS REFERENCES. --For present provisions as to termination of condominium, see § 11-123 of this title.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-122 (2006)

§ 11-122. Zoning and building regulations

(a) In general. -- The provisions of all laws, ordinances, and regulations concerning building codes or zoning shall have full force and effect to the extent that they apply to property which is subjected to a condominium regime and shall be construed and applied with reference to the overall nature and use of the property without regard to the form of ownership. A law, ordinance, or regulation concerning building codes or zoning may not establish any requirement or standard governing the use, location, placement or construction of any land and improvements which are submitted to the provisions of this title, unless the requirement or standard is uniformly applicable to all land and improvements of the same kind or character not submitted to the provisions of this title.

(b) Prohibitions. -- Except as otherwise provided in this title, a county, city, or other jurisdiction may not enact any law, ordinance, or regulation which would impose a burden or restriction on a condominium that is not imposed on all other property of similar character not subjected to a condominium regime. Any such law, ordinance, or regulation, is void. Except as otherwise expressly provided in §§ 11-130, 11-138, 11-139, and 11-140 of this title, the provisions of this title are statewide in their effect. Any law, ordinance, or regulation enacted by a county, city, or other jurisdiction is preempted by the subject and material of this title.

HISTORY: An. Code 1957, art. 21, § 11-125; 1974, ch. 12, § 2; ch. 641; 1981, ch. 246.

MARYLAND LAW REVIEW. --For article, "Survey of Developments in Maryland Law, 1986-87," see 47 Md. L. Rev. 739 (1988).

RESTRICTIONS UPON CONDOMINIUMS NOT IMPOSED UPON SIMILAR PROPERTY PROHIBITED. --The General Assembly intended to prohibit counties, municipalities, special taxing districts or other local government agencies from using previously granted authority to impose burdens or restrictions upon condominiums which were not imposed upon similar property. Nordheimer v. Montgomery County, 307 Md. 85, 512 A.2d 379 (1986).

PROVISION NOT APPLIED TO CONDOMINIUM IF ITS REQUIREMENT NOT UNIFORMLY APPLICABLE. --A law governing the use, location, placement or construction of any land and improvements is not to be applied to a condominium, even looking to its overall nature and use, if the requirement or standard is not uniformly applicable to all land and improvements of the same kind or character. Rockville Grosvenor, Inc. v. Montgomery County, 289 Md. 74, 422

A.2d 353 (1980).

SUBSECTION (B) HAS NO APPLICATION TO LAWS ENACTED BY THE GENERAL ASSEMBLY WHICH IMPOSE UNEQUAL BURDENS. Nordheimer v. Montgomery County, 307 Md. 85, 512 A.2d 379 (1986).

CRITERION UNDER SUBSECTION (B) IS COMPARATIVE IMPACT. --The only criterion in subsection (b) of this section for identifying a law proscribed by it is the impact of that law, by way of a burden or restriction on a condominium, as compared to its impact, or lack thereof, on similar property. Rockville Grosvenor, Inc. v. Montgomery County, 289 Md. 74, 422 A.2d 353 (1980).

DISTINCTION BETWEEN GENERAL AND SPECIAL RULES. --The general rule is stated in subsection (b) of this section and the special rule is stated in subsection (a) of this section. Rockville Grosvenor, Inc. v. Montgomery County, 289 Md. 74, 422 A.2d 353 (1980).

BUILDING AND ZONING PROVISIONS PRESERVED AND SUBJECTED TO SPECIAL INTERPRETATION RULE. --To guard against the possible voiding of building and zoning laws on a prima facie basis under the test set forth in subsection (b) of this section, such laws are expressly preserved and subjected to the special rule for interpretation under the test of subsection (a) of this section. Rockville Grosvenor, Inc. v. Montgomery County, 289 Md. 74, 422 A.2d 353 (1980).

AND THOSE WHICH IMPOSE ILLEGAL BURDENS NOT UNIFORMLY APPLICABLE. --A law concerning building or zoning, or one governing use, location, placement or construction, which would impose a burden or restriction on a condominium which is not imposed on all other property of similar character in violation of subsection (b) of this section is a law whose requirement is not uniformly applicable to all land and improvements and would violate subsection (a) of this section. Rockville Grosvenor, Inc. v. Montgomery County, 289 Md. 74, 422 A.2d 353 (1980).

NO INTENT TO COMPLETELY OCCUPY CONDOMINIUM LEGISLATIVE FIELD. --Section 11-141 (a) of this title negates any intent of the General Assembly completely and exclusively to occupy the field of legislation with respect to condominiums. Rockville Grosvenor, Inc. v. Montgomery County, 289 Md. 74, 422 A.2d 353 (1980).

NONDISCRIMINATORY LOCAL PROVISIONS COULD APPLY TO CONDOMINIUMS. --Because only those local laws which adversely affect condominiums differently than other similar property are voided by this section, there are conceivably many nondiscriminatory local laws which could apply to condominiums. It is with reference to such nondiscriminatory local laws that § 11-114 (a) of this title speaks when stating that it is "in addition and supplemental to all other provisions of ... any local enactment in the State." Rockville Grosvenor, Inc. v. Montgomery County, 289 Md. 74, 422 A.2d 353 (1980).

CHARGES ON COMMON OWNERSHIP COMMUNITIES TO FUND PROGRAMS. --A registration fee authorized by local law imposing a charge on common ownership communities to fund certain programs was not violative of the prohibitions found in subsection (b) of this section and § 11B-104 (b) (1) of this article. Dumont Oaks Community Ass'n v. Montgomery County, 333 Md. 202, 634 A.2d 459 (1993).

SECTION DOES NOT INDICATE HOW OWNERS OF CONDOMINIUM PROPERTY ARE TO BE TREATED WHEN THEY PROTEST ZONING CHANGES. 64 Op. Att'y Gen. 334 (1979).

A FEE ASSESSED BY A COUNTY ON A PER UNIT BASIS ON COMMON OWNERSHIP COMMUNITIES IS NOT PREEMPTED BY SUBSECTION (B), § 5-6B-19 (a) (2) of the Corporations and Associations Article or § 11B-104 (b) (1) of this article. 75 Op. Att'y Gen. 103 (June 20, 1990).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-123 (2006)

§ 11-123. Termination of condominium

(a) Votes necessary to terminate. -- Except in the case of a taking of all the units by eminent domain under § 11-112 of this title, a condominium may be terminated only by agreement of unit owners of units to which at least 80 percent of the votes in the council of unit owners are allocated, or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units in the condominium are restricted exclusively to nonresidential uses.

(b) Termination agreement. -- An agreement of unit owners to terminate a condominium must be evidenced by their execution of a termination agreement or ratifications thereof. If, pursuant to a termination agreement, the real estate constituting the condominium is to be sold following termination, the termination agreement must set forth the terms of the sale. A termination agreement and all ratifications thereof must be recorded in every county in which a portion of the condominium is situated, and is effective only upon recordation.

(c) Sale of real estate. -- The council of unit owners, on behalf of the unit owners, may contract for the sale of the condominium, but the contract is not binding on the unit owners until approved pursuant to subsections (a) and (b) of this section. If the real estate constituting the condominium is to be sold following termination, title to that real estate, upon termination, vests in the council of unit owners as trustee for the holders of all interest in the units. Thereafter, the council of unit owners has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the council of unit owners continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to unit owners and lien holders as their interests may appear, in proportion to the respective interests of unit owners as provided in subsection (f) of this section. Unless otherwise specified in the termination agreement, as long as the council of unit owners holds title to the real estate, each unit owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his unit. During the period of that occupancy, each unit owner and his successors in interest remain liable for all assessments and other obligations imposed on unit owners by this title or the declaration.

(d) Title to unsold real estate; occupancy. -- If the real estate constituting the condominium is not to be sold following termination, title to the real estate, upon termination, vests in the unit owners as tenants in common in proportion to their respective interests as provided in subsection (f) of this section, and liens on the units shift accordingly. While the tenancy in

common exists, each unit owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his unit.

(e) Distribution of assets of council of unit owners. -- Following termination of the condominium, and after payment of or provision for the claims of the creditors of the council of unit owners, the assets of the council of unit owners shall be distributed to unit owners in proportion to their respective interests as provided in subsection (f) of this section. The proceeds of sale described in subsection (c) of this section and held by the council of unit owners as trustee are not assets of the council of unit owners.

(f) Respective interests of unit owners. -- The respective interests of unit owners referred to in subsections (c), (d), and (e) of this section are as follows:

(1) Except as provided in paragraph (2) of this subsection, the respective interests of unit owners are the fair market values of their units, limited common elements, and common element interests immediately before the termination, as determined by one or more independent appraisers selected by the council of unit owners. The decision of the independent appraisers shall be distributed to the unit owners and becomes final unless disapproved within 30 days after distribution by unit owners of units to which 25 percent of the votes are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and common element interest by the total fair market values of all the units and common elements.

(2) If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof prior to destruction cannot be made, the interests of all unit owners are their respective common element interests immediately before the termination.

(g) Foreclosure or enforcement of lien or encumbrance. -- Foreclosure or enforcement of a lien or encumbrance against the entire condominium does not of itself terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium does not withdraw that portion from the condominium.

HISTORY: 1981, ch. 246; 1982, ch. 836, § 3; 1989, ch. 5, § 1.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-124 (2006)

§ 11-124. Rules of construction

(a) Certain rules of law not applicable. -- Neither the rule of law known as the Rule Against

Perpetuities nor the rule of law known as the Rule Restricting Unreasonable Restraints on Alienation may be applied to defeat or invalidate any provision of this title or of any declaration, bylaws, or other instrument made pursuant to the provisions of this title.

(b) Substantial conformity by declaration, bylaws and plat sufficient. -- The provisions of any declaration, bylaws, and condominium plat filed pursuant to this title shall be liberally construed to facilitate the creation and operation of the condominium. So long as the declaration, bylaws, and condominium plat substantially conform with the requirements of this title, a variance from the requirements does not affect the condominium status of the property in question nor the title of any unit owner to his unit, his votes, and his percentage interests in the common elements and in common expenses and common profits.

(c) Declaration, bylaws and plat construed together; amendment of required provision. -- The declaration, bylaws, and condominium plat shall be construed together and shall be deemed to incorporate one another to the extent that any requirement of this title as to the content of one shall be deemed satisfied if the deficiency can be cured by reference to any of the others. Any provision required by this title may be amended only in accordance with the requirements for amendment applicable to the instrument in which, absent this subsection, it is required to be contained.

(d) Provisions of declaration, bylaws and plat severable. -- All provisions of the declaration, bylaws, and condominium plat are severable and the invalidity of one provision does not affect the validity of any other provision.

(e) Conflicts in provisions. -- If there is any conflict among the provisions of this title, the declaration, condominium plat, bylaws, or rules adopted pursuant to § 11-111 of this title, the provisions of each shall control in the succession listed hereinbefore commencing with "title".

(f) Effect of execution of certain instruments by mortgagees. -- The execution of any instrument by a mortgagee for the purpose of consenting to the legal operation and effect of a declaration, bylaws, and condominium plat does not, unless the contrary is expressly stated, affect the priority of the mortgage or deed of trust. The execution and recordation of a release of a unit in a condominium by a mortgagee which refers to the condominium constitutes consent by that mortgagee to the legal operation and effect of the recorded declaration, bylaws, and condominium plat of that condominium.

HISTORY: 1974, ch. 641; 1975, ch. 786, § 1; 1976, ch. 348, § 1; 1981, ch. 246; 1984, ch. 584, § 2; 1988, ch. 6, § 1; 1989, ch. 5, § 1.

CONSTRUCTION OF CONDOMINIUM DOCUMENTS. --If a conflict existed, an easement granted in an article of the condominium declaration controlled over the language in an article of the bylaws. Garfink v. Cloisters at Charles, Inc., 392 Md. 374, 897 A.2d 206 (2006).

STATED IN Ridgely Condominium Ass'n v. Smyrnioudis, 343 Md. 357, 681 A.2d 494 (1996).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-125 (2006)

§ 11-125. Easements and encroachments

(a) Presumption as to existing physical boundaries. -- The existing physical boundaries of any unit or common element constructed or reconstructed in substantial conformity with the condominium plat shall be conclusively presumed to be its boundaries, regardless of the shifting, settlement, or lateral movement of any building and regardless of minor variations between the physical boundaries as described in the declaration or shown on the condominium plat and the existing physical boundaries of any such unit or common element. This presumption applies only to encroachments within the condominium.

(b) Encroachment as result of authorized construction or repair. -- If any portion of any common element encroaches on any unit or if any portion of a unit encroaches on any common element or any other unit, as a result of the duly authorized construction or repair of a building, a valid easement for the encroachment and for the maintenance of the encroachment exists so long as the building stands.

(c) Easement for mutual support. -- An easement for mutual support shall exist in the units and common elements.

(d) Easements included in grant of unit. -- The grant or other disposition of a condominium unit shall include and grant, and be subject to, any easement arising under the provisions of this section without specific or particular reference to the easement.

(e) Right of entry to make repairs. -- The council of unit owners or its authorized designee shall have an irrevocable right and an easement to enter units to make repairs when the repairs reasonably appear 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 repair. If damage is inflicted on the common elements or any unit through which access is taken, the council of unit owners is liable for the prompt repair. An entry by the council of unit owners for the purposes specified in this subsection may not be considered a trespass.

(f) Authority of council of unit owners to grant specific easements, etc. --

(1) The declaration or bylaws may give the council of unit owners authority to grant easements, rights-of-way, licenses, leases in excess of 1 year, or similar interests affecting the common elements of the condominium if the grant is approved by the affirmative vote of unit owners having 662/3 percent or more of the votes, and with the express written consent of the mortgagees holding an interest in those units as to which unit owners vote affirmatively. Any easement, right-of-way, license, or similar interest granted by the council of unit owners under this subsection shall state that the grant was approved by unit owners having at least 662/3 percent of the votes, and by the corresponding mortgagees.

(2) The board of directors may, by majority vote, grant easements, rights-of-way, licenses, leases in excess of 1 year, or similar interests for the provision of utility services or communication systems for the exclusive benefit of units within the condominium regime. These actions by the board of directors are subject to the following requirements:

(i) The action shall be taken at a meeting of the board held after at least 30-days' notice to all unit owners and mortgagees of record with the condominium;

(ii) At the meeting, the board may not act until all unit owners and mortgagees shall be afforded a reasonable opportunity to present their views on the proposed easement, right-of-way, license, lease, or similar interest;

(iii) The easement, right-of-way, license, lease, or similar interest shall contain the following provisions:

1. The service or system shall be installed or affixed to the premises at no cost to the individual unit owners or the council of unit owners other than charges normally paid for like services by residents of similar or comparable dwelling units within the same area;

2. The unit owners and council of unit owners shall be indemnified for any damage arising out of the installation of the service or system; and

3. The board of directors shall be provided the right to approve of the design for installation of the service or system in order to insure that the installation conforms to any conditions which are reasonable to protect the safety, functioning, and appearance of the premises.

(3) By majority vote, the board of directors may grant to the State perpetual easements, rights-of-way, licenses, leases in excess of 1 year, or similar interests affecting the common elements of the condominium for bulkhead construction, dune construction or restoration, beach replenishment, or periodic maintenance and replacement construction, on Maryland's ocean beaches, including rights in the State to restrict access to dune areas. These actions by the board of directors are subject to the following requirements:

(i) The action shall be taken at a meeting of the board held after at least 30-days' notice to all unit owners and mortgagees of record with the condominium; and

(ii) At the meeting, the board may not act until all unit owners and mortgagees shall be afforded a reasonable opportunity to present their views on the proposed easement, right-of-way, license, lease, or similar interest.

(4) By majority vote, the board of directors may settle an eminent domain proceeding or grant to the State or any county, municipality, or agency or instrumentality thereof with condemnation authority, perpetual easements, rights-of-way, licenses, leases in excess of 1 year, or similar interests affecting the common elements of the condominium for road, highway, sidewalk, bikeway, storm drain, sewer, water, utility, and similar public purposes. These actions by the board of directors are subject to the following requirements:

(i) The action shall be taken at a meeting of the board held after at least 60 days' notice to all unit owners and all first mortgagees listed with the condominium;

(ii) The notice shall include information provided by the condemnation authority that describes the purpose and the extent of the property being acquired for public use; and

(iii) At the meeting, the board may not act until all unit owners and mortgagees in attendance have been afforded a reasonable opportunity to present their views on the proposed easement, right-of-way, license, lease, or similar interest.

(5) The action of the board of directors granting any easement, right-of-way, license, lease, or similar interest under paragraphs (2), (3), or (4) of this subsection shall not be final until the following have occurred:

(i) Within 15 days after the vote by the board to grant an easement, right-of-way, license, lease, or similar interest, a petition may be filed with the board of directors signed by the unit

owners having at least 15 percent of the votes calling for a special meeting of unit owners to vote on the question of a disapproval of the action of the board of directors granting such easement, right-of-way, license, lease, or similar interest. If no such petition is received within 15 days, the decision of the board shall be final;

(ii) If a qualifying petition is filed, a special meeting shall be held no less than 15 days or more than 30 days from receipt of the petition. At the special meeting, if a quorum is not present, the decision of the board of directors shall be final;

(iii) 1. If a special meeting is held and 50 percent of the unit owners present and voting disapprove the grant, and the unit owners voting to disapprove the grant are more than 33 percent of the total votes in the condominium, then the grant shall be void; or

2. If the vote of the unit owners is not more than 33 percent of the total votes in the condominium, the decision of the board or council to make the grant shall be final;

(iv) Mortgagees shall receive notice of and be entitled to attend and speak at such special meeting; and

(v) Any easement, right-of-way, license, lease, or similar interest granted by the board of directors under the provisions of this subsection shall state that the grant was approved in accordance with the provisions of this subsection.

(6) The provisions of this subsection are applicable to all condominiums, regardless of the date they were established.

HISTORY: An. Code 1957, art. 21, § 11-107; 1974, ch. 12, § 2; ch. 641; 1975, ch. 786, §§ 1, 2; 1981, ch. 246; 1982, ch. 836, § 3; 1983, ch. 8; 1984, ch. 583; 1987, ch. 175; 1997, ch. 14, § 1; 1999, ch. 658.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-126 (2006)

§ 11-126. Disclosure requirements

(a) Required contents of contract of sale. -- A contract for the initial sale of a unit to a member of the public is not enforceable by the vendor unless:

(1) The purchaser is given on or before the time a contract is entered into between the vendor and the purchaser, a current public offering statement as amended and registered with

the Secretary of State containing all of the information set forth in subsection (b) of this section; and

(2) The contract of sale contains, in conspicuous type, a notice of:

(i) The purchaser's right to receive a public offering statement and his rescission rights under this section; and

(ii) The warranties provided by § 11-131 of this subtitle.

(b) Sufficiency of public offering statement. -- The public offering statement required by subsection (a) of this section shall be sufficient for the purposes of this section if it contains at least the following:

(1) A copy of the proposed contract of sale for the unit;

(2) A copy of the proposed declaration, bylaws, and rules and regulations;

(3) A copy of the proposed articles of incorporation of the council of unit owners, if it is to be incorporated;

(4) A copy of any proposed management contract, insurance contract, employment contract, or other contract affecting the use of, maintenance of, or access to all or part of the condominium to which it is anticipated the unit owners or the council of unit owners will be a party, and a statement of the right of the council of unit owners to terminate contracts entered into during the developer control period under § 11-133 of this title;

(5) A copy of the actual annual operating budget for the condominium or, if no actual operating budget exists, a copy of the projected annual operating budget for the condominium including reasonable details concerning:

(i) The estimated monthly payments by the purchaser for assessments;

(ii) Monthly charges for the use, rental, or lease of any facilities not part of the condominium;

(iii) The amount of the reserve fund for repair and replacement and its intended use; and

(iv) Any initial capital contribution or similar fee, other than assessments for common expenses, to be paid by unit owners to the council of unit owners or vendor, and a statement of how the fees will be used;

(6) A plain language statement of the policy and procedures for collecting assessments and handling collection of delinquencies, including reasonable details concerning:

(i) The number and percentage of unit owners who are delinquent or in arrears in an amount equal to or greater than 50% of the annual assessment of the unit owner;

(ii) The number of unsatisfied liens currently recorded against unit owners under the Maryland Contract Lien Act;

(iii) The number of unsatisfied judgments obtained against unit owners for unpaid assessments; and

(iv) The total amount of arrearages among all unit owners;

(7) A copy of any lease to which it is anticipated the unit owners or the council of unit owners will be a party following closing;

(8) A description of any contemplated expansion of the condominium with a general description of each stage of expansion and the maximum number of units that can be added to the condominium;

(9) A copy of the floor plan of the unit or the proposed condominium plats;

(10) A description of any recreational or other facilities which are to be used by the unit owners or maintained by them or by the council of unit owners, and a statement as to whether or not they are to be part of the common elements;

(11) A statement as to whether streets within the condominium are to be dedicated to public use or maintained by the council of unit owners;

(12) A statement of any judgments against the council of unit owners and the existence of any pending suits to which the council of unit owners is a party;

(13) In the case of a condominium containing buildings substantially completed more than 5 years prior to the filing of the application for registration under § 11-127 of this title, a statement of the physical condition and state of repair of the major structural, mechanical, electrical, and plumbing components of the improvements, to the extent reasonably ascertainable, and estimated costs of repairs for which a present need is disclosed in the statement and a statement of repairs which the vendor intends to make. The vendor is entitled to rely on the reports of architects or engineers authorized to practice their profession in this State;

(14) A description of any provision in the declaration or bylaws limiting or providing for the duration of developer control or requiring the phasing-in of unit owner participation, or a statement that there is no such provision;

(15) If the condominium is one which will be created by the conversion of a rental facility, a copy of the notice and materials required by §§ 11-102.1 and 11-137 of this title;

(16) A statement of whether the unit being purchased is subject to an extended lease under § 11-137 of this title, or local law, and a copy of any extended lease; and

(17) Any other information required by regulation duly adopted and issued by the Secretary of State.

(c) Advertising approval by Secretary of State. -- A person may not advertise or represent that the Secretary of State has approved or recommended the condominium, the public offering statement, or any of the documents contained in the application for registration.

(d) Amendment of material required by subsection (a). --

(1) Following execution of a contract of sale by a purchaser, the vendor may not amend any of the material required to be furnished by subsection (a) of this section without the approval of the purchaser if the amendment would affect materially the rights of the purchaser.

(2) Approval is not required if the amendment is required by any governmental authority or public utility, or if the amendment is made as a result of actions beyond the control of the vendor or in the ordinary course of affairs of the council of unit owners.

(3) A copy of any amendments shall be delivered promptly to any purchaser and to the Secretary of State.

(e) Purchaser's right to rescind contract of sale. -- Any purchaser may at any time (1) within 15 days following receipt of all of the information required under subsection (b) of this section or the signing of the contract, whichever is later; and (2) within 5 days following receipt of the information required under subsection (d) of this section, rescind in writing the contract of sale

without stating any reason and without any liability on his part, and he shall be entitled to the return of any deposits made on account of the contract.

(f) Untrue statement or omission of material fact. -- Any vendor who, in disclosing the information required under subsections (a) and (b) of this section, makes any untrue statement of a material fact, or omits to state a material fact necessary in order to make the statements made, in the light of circumstances under which they were made, not misleading, shall be liable to any person purchasing a unit from the vendor for those damages proximately caused by the vendor's untrue statement or omission. However, an action may not be maintained to enforce any liability created under this section unless brought within 1 year after the facts constituting the cause of action are or should have been discovered.

(g) Waiver of purchaser's rights. -- The rights of a purchaser under this section may not be waived in the contract of sale and any attempted waiver is void. However, if any purchaser proceeds to closing, his right under this section to rescind is terminated.

(h) Sale of unit for nonresidential purposes. -- This section does not apply to the sale of any unit which is to be occupied and used for nonresidential purposes.

(i) Location of condominium immaterial. -- This section applies to the sale of any unit offered for sale in the State without regard to the location of the condominium.

(j) Applicability of section. -- The provisions of this section do not apply to a sale of a unit in an action to foreclose a mortgage or deed of trust.

HISTORY: 1974, ch. 641; 1975, ch. 786, § 1; 1976, ch. 348, §§ 2, 3; 1980, ch. 681; 1981, ch. 246; 1982, ch. 836, § 3; 1984, ch. 525; 1985, ch. 551; 1986, ch. 5, § 1; chs. 357, 360; 1989, ch. 5, § 1; ch. 692; 1990, ch. 139; 1991, ch. 131; 1998, ch. 21, § 1; 1999, ch. 66.

MARYLAND LAW REVIEW. --For comment, "Maryland's Consumer Protection Act: A Private Cause of Action for Unfair or Deceptive Trade Practices," see 38 Md. L. Rev. 733 (1979).

QUOTED IN Ridgely Condominium Ass'n v. Smyrnioudis, 105 Md. App. 404, 660 A.2d 942 (1995), aff'd, 343 Md. 357, 68 A.2d 494 (1996).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-127 (2006)

§ 11-127. Registration

(a) Registration with Secretary of State required. -- A contract for the initial sale of a unit to a member of the public may not be entered into until the public offering statement for the proposed condominium regime has been registered with the Secretary of State and until 10 days after all amendments then applicable to the public offering statement have been filed with the Secretary of State under subsection (d) of this section.

(b) Application; notice to local governing body; fee; amendments. --

(1) An application for registration shall consist of the public offering statement described in § 11-126 of this title. A developer shall file the number of copies required by the Secretary of State. The Secretary of State shall notify the governing body of the county and/or municipality in which the condominium is located of the filing of the application. An application shall be accompanied by a fee of not less than $ 100, in an amount equal to $ 5 per unit.

(2) A developer promptly shall file amendments to report any material change in any document or information contained in the application.

(c) Approval or rejection of registration; amended application. --

(1) The Secretary of State shall acknowledge receipt of an application for registration within 5 business days after receiving it. The Secretary shall determine whether the application satisfies the disclosure requirements of § 11-126 of this title within 45 days after receipt.

(2) If the Secretary of State determines that the application complies with § 11-126 of this title, the Secretary shall issue promptly an order registering the condominium. Otherwise, unless the developer has consented in writing to a delay not to exceed 30 days, the Secretary shall issue promptly an order rejecting registration. The order shall include the specific reasons for the rejection. The Secretary's failure to issue any order within 45 days of receipt or within the time period agreed upon shall be deemed an approval of the condominium. Rejection of an application for registration by the Secretary of State may not act as a bar to reapplication for registration. An application amended to comply with the stated reasons for rejection and accompanied by an additional fee as provided in subsection (b) of this section shall be approved by the Secretary of State upon his determination that the amended application satisfies the requirements of this section.

(d) Filing of current public offering information with Secretary of State; filing construction progress statement; termination of registration. --

(1) (i) A developer shall promptly file with the Secretary of State copies of any changes in the documents or information contained in the public offering statement which are necessary to make the documents or information current.

(ii) A public offering statement is current if the information required under § 11-126 (b) (2), (4), (5), (6), and (12) of this subtitle is updated and filed by the developer not less than annually.

(2) (i) A developer shall file a written statement with the council of unit owners describing the progress of construction, repairs, and all other work on the condominium, which the developer has completed or intends to complete in accordance with the public offering statement for the condominium.

(ii) This written statement shall be filed within 30 days after the anniversary date for registration of the public offering statement for the condominium and annually thereafter until the registration of the condominium is terminated.

(3) A developer shall notify the Secretary of State in writing when all of the units in the condominium have been conveyed to unit owners other than the developer, and the developer either cannot add additional units to the condominium or has determined that no additional

units will be added to the condominium.

(4) If the developer notifies the Secretary of State that all of the units in the condominium have been conveyed to unit owners other than the developer, and that the developer either cannot add additional units to the condominium, or has determined that no additional units will be added to the condominium, the Secretary of State shall issue an order terminating the registration of the condominium.

(e) Administration of section. -- The Secretary of State shall be responsible for the administration of this section.

(1) The Secretary may adopt, amend, and repeal regulations necessary to carry out the requirements of the provisions of this section.

(2) The Secretary may prescribe forms and procedures for submitting applications.

(f) Application of section. -- This section does not apply to the sale of any unit which is to be occupied and used for nonresidential purposes.

HISTORY: 1981, ch. 246; 1982, ch. 836, § 3; 1984, chs. 525, 570; 1985, ch. 511; 1986, ch. 360; 1989, ch. 5, § 1; 1997, ch. 5; 1999, ch. 66.

QUOTED IN Nordheimer v. Montgomery County, 307 Md. 85, 512 A.2d 379 (1986).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-128 (2006)

§ 11-128. Duties of Secretary of State

(a) File of local legislation affecting condominiums. -- The Secretary of State shall establish a file of local legislation affecting condominiums as enacted under §§ 11-130, 11-137, 11-138, 11-139, and 11-140 of this title, indexed by county and municipality.

(b) Cooperation with other agencies. -- The Secretary of State may cooperate with agencies performing similar functions in this and other jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards, and uniform administrative practices and may develop information that may be useful in the discharge of the Secretary's duties.

(c) Cooperation with Attorney General's office. -- The Secretary of State shall work in cooperation with the Consumer Protection Division of the Office of the Attorney General in the

enforcement of this title.

HISTORY: 1981, ch. 246; 1982, ch. 836, § 3; 1983, ch. 8; 2002, ch. 19, § 10.

NOTES:
EDITOR'S NOTE. --Section 10, ch. 19, Acts 2002, provides that "the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, a comma has been inserted following "11-139" in (a).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-129 (2006)

§ 11-129. Foreign condominium units sold in State

(a) Application or public offering statement approved by out-of-state agency. -- In the case of a condominium situated wholly outside of this State, being promoted and having a sales office within the State, an application for registration or proposed public offering statement filed with the Secretary of State which has been approved by an agency in the state where the condominium is located and substantially complies with the requirements of this title may not be rejected by the Secretary on the grounds of noncompliance with any different or additional requirements imposed by this title. However, the Secretary may require additional documents or information in particular cases to assure adequate and accurate disclosure to prospective purchasers.

(b) Application in absence of approval by out-of-state agency. -- If there is no out-of-state agency which has approved the application for registration or proposed public offering statement, the application shall consist of the public offering statement described in § 11-126 of this title, and shall be approved in accordance with § 11-127 of this title.

HISTORY: 1981, ch. 246.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.

a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-130 (2006)

§ 11-130. Consumer protection

(a) Purpose of section. -- This section is intended to provide minimum standards for the protection of consumers in the State.

(b) Meaning of "consumer". --

(1) For purposes of this section, "consumer" means an actual or prospective purchaser, lessee, assignee or recipient of a condominium unit.

(2) "Consumer" includes a co-obligor or surety for a consumer.

(c) Enforcement of title. --

(1) To the extent that a violation of any provision of this title affects a consumer, that violation shall be within the scope of the enforcement duties and powers of the Division of Consumer Protection of the Office of the Attorney General, as described in Title 13 of the Commercial Law Article.

(2) The provisions of this title shall otherwise be enforced by each agency of the State within the scope of its authority.

(d) Local provisions. -- A county or incorporated municipality, or an agency of any of those jurisdictions, may adopt laws or ordinances for the protection of a consumer to the extent and in the manner provided for under § 13-103 of the Commercial Law Article.

(e) Copies of local provisions to be forwarded to Secretary of State. -- Within 30 days of the effective date of a law, ordinance, or regulation enacted under this section which is expressly applicable to condominiums, the local jurisdiction shall forward a copy of the law, ordinance or regulation to the Secretary of State.

HISTORY: 1981, ch. 246; 1982, ch. 836, § 3; 1997, ch. 14, § 1.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***

*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-131 (2006)

§ 11-131. Warranties

(a) Exclusion or modification prohibited. -- The implied warranties provided in this section may not be excluded or modified.

(b) Application of §§ 10-202 and 10-203; liability of developer for improvements. --

(1) The warranties provided in §§ 10-202 and 10-203 of this article apply to all sales by developers under this title. For the purposes of this article, a newly constructed dwelling unit means a newly constructed or newly converted condominium unit and its appurtenant undivided fee simple interest in the common areas.

(2) If a developer grants an improvement to an intermediate purchaser to evade any liability to a purchaser imposed by the provisions of this section, or by § 10-202 or § 10-203 of this article, the developer is liable on the subsequent sale of the improvement by the intermediate purchaser as if the subsequent sale had been effectuated by the developer without regard to the intervening grant.

(c) Warranty on unit from developer to owner. -- In addition to the implied warranties set forth in § 10-203 of this article there shall be an implied warranty on an individual unit from a developer to a unit owner. The warranty on an individual unit commences with the transfer of title to that unit and extends for a period of 1 year. The warranty shall provide:

(1) That the developer is responsible for correcting any defects in materials or workmanship in the construction of walls, ceilings, floors, and heating and air conditioning systems in the unit; and

(2) That the heating and any air conditioning systems have been installed in accordance with acceptable industry standards and:

(i) That the heating system is warranted to maintain a 70 degreesF temperature inside with the outdoor temperature and winds at the design conditions established by the Energy Conservation Building Standards Act, Title 7, Subtitle 4 of the Public Utility Companies Article, or those established by the political subdivision as provided in Title 7, Subtitle 4 of the Public Utility Companies Article; and

(ii) That the air conditioning system is warranted to maintain a 78 degreesF temperature inside with the outdoor temperature at the design conditions established by Title 7, Subtitle 4 of the Public Utility Companies Article, or those established by the political subdivision as provided in Title 7, Subtitle 4 of the Public Utility Companies Article.

(d) Warranty on common elements. --

(1) In addition to the implied warranties set forth in § 10-203 of this article there shall be an implied warranty on common elements from a developer to the council of unit owners. The warranty shall apply to: the roof, foundation, external and supporting walls, mechanical, electrical, and plumbing systems, and other structural elements.

(2) The warranty shall provide that the developer is responsible for correcting any defect in materials or workmanship, and that the specified common elements are within acceptable industry standards in effect when the building was constructed.

(3) The warranty on common elements commences with the first transfer of title to a unit owner. The warranty of any common elements not completed at that time shall commence with the completion of that element or with its availability for use by all unit owners, whichever occurs later. The warranty extends for a period of 3 years.

(4) A suit for enforcement of the warranty on general common elements shall be brought only by the council of unit owners. A suit for enforcement of the warranty on limited common elements may be brought by the council of unit owners or any unit owner to whose use it is reserved.

(e) Limitation of actions. -- Notice of defect shall be given within the warranty period and suit for enforcement of the warranty shall be brought within 1 year of the warranty period.

(f) Exceptions. --

(1) Warranties shall not apply to any defects caused through abuse or failure to perform maintenance by a unit owner or the council of unit owners.

(2) The provisions of this section do not apply to a condominium that is occupied and used solely for nonresidential purposes.

HISTORY: 1981, ch. 246; 1982, ch. 836, § 3; 1986, chs. 360, 572; 1993, ch. 5, § 1; 1998, ch. 653; 1999, ch. 34, § 1; ch. 200.

MARYLAND LAW REVIEW. --For comment discussing sovereign immunity from statutes of limitation in Maryland, see 46 Md. L. Rev. 408 (1987).

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "Residential Real Estate Transactions: A Comparison of the Uniform Land Transactions Act and Maryland Law," see 13 U. Balt. L. Rev. 43 (1983).

For comment discussing cases and legislation imposing implied warranties in sales of residential condominiums, see 14 U. Balt. L. Rev. 116 (1984).

WARRANTIES AND LIMITATIONS OF THIS SECTION ARE TRIGGERED BY TRANSFER OF TITLE, NOT TRANSFER OF PERFECT TITLE, and the requirements of § 3-107 of the Corporations and Associations Article do not extend the statutes of limitations. Antigua Condominium Ass'n v. Melba Investors Atl., Inc., 65 Md. App. 726, 501 A.2d 1359, vacated on other grounds, 307 Md. 700, 517 A.2d 75 (1986).

TITLE 11 WARRANTIES ARE ADDITIONAL, NOT EXCLUSIVE, REMEDIES. --Title 11 remedies for breach of warranties are in addition to, not in place of, existing Title 10 warranty remedies. Milton Co. v. Council of Unit Owners, 121 Md. App. 100, 708 A.2d 1047 (1998), aff'd, 354 Md. 264, 729 A.2d 981 (1999).

Warranties contained in §§ 10-202 and 10-203 of this article operate concurrently with the warranties contained in this section, so aggrieved purchasers may proceed under either or both theories of recovery. Milton Co. v. Council of Unit Owners of Bentley Place Condominium, 354 Md. 264, 729 A.2d 981 (1999).

WHEN LIMITATIONS BEGIN TO RUN. --In action for enforcement of implied warranty on common elements of a condominium, limitations began to run on the date of the first transfer of title to a unit owner, notwithstanding the claim that the common elements were incomplete because they did not conform to plans and specifications as warranted. Antigua Condominium Ass'n v. Melba Investors Atl., Inc., 65 Md. App. 726, 501 A.2d 1359, vacated on other grounds, 307 Md. 700, 517 A.2d 75 (1986).

DISCOVERY RULE INAPPLICABLE TO CERTAIN CLAIMS OF CONDOMINIUM OWNERS. -- Discovery rule, that limitations does not begin to run on warranty claims until defects are discovered, inapplicable to express and implied warranty claims by condominium owners. Antigua Condominium Ass'n v. Melba Investors Atl., Inc., 65 Md. App. 726, 501 A.2d 1359, vacated on other grounds, 307 Md. 700, 517 A.2d 75 (1986).

NO CONTRACTUAL LIABILITY. --The performance of repairs by a company does not warrant a finding that the company attempted to avail itself of the agreement between the original two parties to a contract, absent any evidence to the contrary. Residential Warranty Corp. v. Bancroft Homes Greenspring Valley, Inc., 126 Md. App. 294, 728 A.2d 783 (1999), cert. denied, 355 Md. 613, 735 A.2d 1107 (1999).

Trial court erred by setting aside a second foreclosure sale with regard to a condominium unit, because the debtor failed to file an injunction prior to the sale and, upon completion of the sale, the debtor lost his right of redemption. The debtor should have sought to enjoin the sale from proceeding by filing a motion to enjoin under Md. R. 14-209.11-110, as substantial compliance by tendering a payment to satisfy the debt after the sale occurred was insufficient once the decree of foreclosure was entered. Greenbriar Condo. v. Brooks, 387 Md. 683, 878 A.2d 528 (2005).

APPLIED IN Hartford Accident & Indem. Co. v. Scarlett Harbor Assocs., 109 Md. App. 217, 674 A.2d 106 (1996).

QUOTED IN Starfish Condominium Ass'n v. Yorkridge Serv. Corp., 295 Md. 693, 458 A.2d 805 (1983).

CITED IN Council of Co-Owners Atlantis Condominium, Inc. v. Whiting-Turning Contracting Co., 308 Md. 18, 517 A.2d 336 (1986).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-132 (2006)

§ 11-132. Documents to be delivered to council of unit owners by developer

Drawings, architectural plans, or other suitable documents, setting forth the necessary information for location, maintenance, and repair of all condominium facilities, to the extent that they exist, shall be turned over to the council of unit owners upon transfer of control by the developer.

HISTORY: 1981, ch. 246; 1982, ch. 836, § 3.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-133 (2006)

§ 11-133. Termination of leases or management and similar contracts

(a) In general. -- Within three years following the date on which units have been granted by the developer to unit owners having a majority of the votes in the council of unit owners, any lease, and any management contract, employment contract, or other contract to which the council of unit owners is a party entered into between the date the property subjected to the condominium regime was granted to the developer and the date on which units have been granted by the developer to unit owners having a majority of votes in the council of unit owners may be terminated by a majority vote of the council of unit owners without liability for the termination. The termination shall become effective upon 30 days' written notice of the termination from the council of unit owners.

(b) Exceptions. -- The provisions of this section do not apply to:

(1) Any contract or grant between the council of unit owners and any governmental agency or public utility; or

(2) A condominium that is occupied and used solely for nonresidential purposes.

HISTORY: 1974, ch. 641; 1980, ch. 681; 1981, ch. 246; 1986, ch. 572.

NOTES:
CROSS REFERENCES. --For applicability of section, see § 11-142 (e) of this title.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-134 (2006)

§ 11-134. Provisions requiring employment of developer or vendor to effect sale; exception

Any provision of a declaration or other instrument made pursuant to this title which requires the owner of a unit to engage or employ the developer or any subsidiary or affiliate of the developer for the purpose of effecting a sale or lease of any unit is void. Any provision of any contract for the sale of any unit which requires the purchaser to engage or employ the vendor or any subsidiary or affiliate of the vendor for the purpose of effecting a sale or lease of any unit is void. The provisions of this section apply to declarations, instruments and contracts made prior to and after July 1, 1974. The provisions of this section do not apply to a condominium that is occupied and used solely for nonresidential purposes.

HISTORY: 1974, ch. 641; 1981, ch. 246; 1986, ch. 572.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-135 (2006)

§ 11-135. Resale of unit

(a) Documents to be delivered by unit owner to purchaser. -- Except as provided in subsection (b) of this section, a contract for the resale of a unit by a unit owner other than a developer is not enforceable unless the contract of sale contains in conspicuous type a notice in the form specified in subsection (g) (1) of this section, and the unit owner furnishes to the purchaser not later than 15 days prior to closing:

(1) A copy of the declaration (other than the plats);

(2) The bylaws;

(3) The rules or regulations of the condominium;

(4) A certificate containing:

(i) A statement disclosing the effect on the proposed conveyance of any right of first refusal or other restraint on the free alienability of the unit other than any restraint created by the unit owner;

(ii) A statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner;

(iii) A statement of any other fees payable by the unit owners to the council of unit owners;

(iv) A statement of any capital expenditures approved by the council of unit owners planned at the time of the conveyance which are not reflected in the current operating budget disclosed under subparagraph (vi) of this paragraph;

(v) The most recent regularly prepared balance sheet and income expense statement, if any, of the condominium;

(vi) The current operating budget of the condominium including details concerning the reserve fund for repair and replacement and its intended use, or a statement that there is no reserve fund;

(vii) A statement of any judgments against the condominium and the existence of any pending suits to which the council of unit owners is a party;

(viii) A statement generally describing any insurance policies provided for the benefit of unit owners, a notice that copies of the policies are available for inspection, stating the location at which the copies are available, and a notice that the terms of the policy prevail over the description;

(ix) A statement as to whether the council of unit owners has knowledge that any alteration or improvement to the unit or to the limited common elements assigned to the unit violates any provision of the declaration, bylaws, or rules or regulations;

(x) A statement as to whether the council of unit owners has knowledge of any violation of the health or building codes with respect to the unit, the limited common elements assigned to the unit, or any other portion of the condominium;

(xi) A statement of the remaining term of any leasehold estate affecting the condominium and the provisions governing any extension or renewal thereof; and

(xii) A description of any recreational or other facilities which are to be used by the unit owners or maintained by them or the council of unit owners, and a statement as to whether or not they are to be a part of the common elements; and

(5) A statement by the unit owner as to whether the unit owner has knowledge:

(i) That any alteration to the unit or to the limited common elements assigned to the unit violates any provision of the declaration, bylaws, or rules and regulations;

(ii) Of any violation of the health or building codes with respect to the unit or the limited common elements assigned to the unit; and

(iii) That the unit is subject to an extended lease under § 11-137 of this title or under local law, and if so, a copy of the lease must be provided.

(b) Unit in condominium containing less than 7 units. -- A contract for the resale by a unit

owner other than a developer of a unit in a condominium containing less than 7 units is not enforceable unless the contract of sale contains in conspicuous type a notice in the form specified in subsection (g) (2) of this section, and the unit owner furnishes to the purchaser not later than 15 days prior to closing:

(1) A copy of the declaration (other than the plats);

(2) The bylaws;

(3) The rules and regulations of the condominium; and

(4) A statement by the unit owner of the unit owner's expenses during the preceding 12 months relating to the common elements.

(c) Certificate to be furnished by council of unit owners; liability of unit owner to purchaser for damages. --

(1) The council of unit owners, within 20 days after a written request by a unit owner and receipt of a reasonable fee therefor, not to exceed the cost to the council of unit owners, if any, shall furnish a certificate containing the information necessary to enable the unit owner to comply with subsection (a) of this section. A unit owner providing a certificate under subsection (a) of this section is not liable to the purchaser for any erroneous information provided by the council of unit owners and included in the certificate.

(2) With respect to the remaining information that the unit owner is required to disclose under subsection (a) of this section that is not provided by the council of unit owners and included in the certificate, a unit owner:

(i) Except as provided in subparagraph (ii) of this paragraph, is liable to the purchaser under this section for damages proximately caused by:

1. An untrue statement about a material fact; and

2. An omission of a material fact that is necessary to make the statements made not misleading, in light of the circumstances under which the statements were made; and

(ii) Is not liable to the purchaser under this section if the owner had, after reasonable investigation, reasonable grounds to believe, and did believe, at the time the information was provided to the purchaser, that the statements were true and that there was no omission to state a material fact necessary to make the statements made not misleading, in light of the circumstances under which the statements were made.

(d) Failure or delay of council of unit owners to provide certificate. -- A purchaser is not liable for any unpaid assessment or fee greater than the amount set forth in the certificate prepared by the council of unit owners. A unit owner is not liable to a purchaser for the failure or delay of the council of unit owners to provide the certificate in a timely manner.

(e) Waiver of purchaser's rights. -- The rights of a purchaser under this section may not be waived in the contract of sale, and any attempted waiver is void. However, if a purchaser proceeds to closing, his right to rescind the contract under subsection (f) is terminated.

(f) Recision by purchaser. -- Any purchaser may at any time within 7 days following receipt of all of the information required under subsection (a) or (b) of this section, whichever is applicable, rescind in writing the contract of sale without stating any reason and without any liability on his part. The purchaser, upon rescission, is entitled to the return of any deposits made on account of the contract.

(g) Form of notice. --

(1) A notice given as required by subsection (a) of this section shall be sufficient for the purposes of this section if it is in substantially the following form:

"NOTICE

The seller is required by law to furnish to you not later than 15 days prior to closing certain information concerning the condominium which is described in § 11-135 of the Maryland Condominium Act. This information must include at least the following:

(i) A copy of the declaration (other than the plats);

(ii) A copy of the bylaws;

(iii) A copy of the rules and regulations of the condominium;

(iv) A certificate containing:

1. A statement disclosing the effect on the proposed conveyance of any right of first refusal or other restraint on the free alienability of the unit, other than any restraint created by the unit owner;

2. A statement of the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner;

3. A statement of any other fees payable by the unit owners to the council of unit owners;

4. A statement of any capital expenditures approved by the council of unit owners or its authorized designee planned at the time of the conveyance which are not reflected in the current operating budget included in the certificate;

5. The most recently prepared balance sheet and income and expense statement, if any, of the condominium;

6. The current operating budget of the condominium, including details concerning the amount of the reserve fund for repair and replacement and its intended use, or a statement that there is no reserve fund;

7. A statement of any judgments against the condominium and the existence of any pending suits to which the council of unit owners is a party;

8. A statement generally describing any insurance policies provided for the benefit of the unit owners, a notice that the policies are available for inspection stating the location at which they are available, and a notice that the terms of the policy prevail over the general description;

9. A statement as to whether the council of unit owners has knowledge that any alteration or improvement to the unit or to the limited common elements assigned to the unit violates any provision of the declaration, bylaws, or rules or regulations;

10. A statement as to whether the council of unit owners has knowledge of any violation of the health or building codes with respect to the unit, the limited common elements assigned to the unit, or any other portion of the condominium;

11. A statement of the remaining term of any leasehold estate affecting the

condominium and the provisions governing any extension or renewal of it; and

12. A description of any recreational or other facilities which are to be used by the unit owners or maintained by them or the council of unit owners, and a statement as to whether or not they are to be a part of the common elements; and

(v) A statement by the unit owner as to whether the unit owner has knowledge:

1. That any alteration to the unit or to the limited common elements assigned to the unit violates any provision of the declaration, bylaws, or rules and regulations.

2. Of any violation of the health or building codes with respect to the unit or the limited common elements assigned to the unit.

3. That the unit is subject to an extended lease under § 11-137 of this title or under local law, and if so, a copy of the lease must be provided.

You will have the right to cancel this contract without penalty, at any time within 7 days following delivery to you of all of this information. However, once the sale is closed, your right to cancel the contract is terminated."

(2) A notice given as required by subsection (b) of this section shall be sufficient for the purposes of this section if it is in substantially the following form:

"NOTICE

The seller is required by law to furnish to you not later than 15 days prior to closing certain information concerning the condominium which is described in § 11-135 of the Maryland Condominium Act. This information must include at least the following:

(1) A copy of the declaration (other than the plats);

(2) A copy of the bylaws;

(3) A copy of the rules and regulations of the condominium; and

(4) A statement by the seller of his expenses relating to the common elements during the preceding 12 months.

You will have the right to cancel this contract without penalty, at any time within 7 days following delivery to you of all of this information. However, once the sale is closed, your right to cancel the contract is terminated."

(h) Information to be furnished by purchaser to council of unit owners. -- Upon any sale of a condominium unit, the purchaser or his agent shall provide to the council of unit owners to the extent available, the name and forwarding address of the prior unit owner, the name and address of the purchaser, the name and address of any mortgagee, the date of settlement, and the proportionate amounts of any outstanding condominium fees or assessments assumed by each of the parties to the transaction.

(i) Application of section. -- This section does not apply to the sale of any unit which is to be used and occupied for nonresidential purposes.

(j) Applicability of subsections (a) through (g). -- Subsections (a), (b), (c), (d), (e), (f), and (g) of this section do not apply to a sale of a unit in an action to foreclose a mortgage or deed of trust.

HISTORY: 1981, ch. 246; 1982, ch. 836, § 3; 1986, chs. 358, 360; 1989, ch. 5, § 1; ch.

692; 1998, ch. 21, § 1.

RESALE CERTIFICATES. --The information the condominium association supplied in its resale certificate and letters attached thereto complied with the statute and county code and was not false or misleading; it informed petitioner of the existence of relevant litigation, and the condition that led to the assessment violated a housing code, not a building or health code. Swinson v. Lords Landing Village Condo., 360 Md. 462, 758 A.2d 1008 (2000).

REQUIRED DISCLOSURES. --The Homeowners Association Act, § 11B-101 et seq. of this article, and the Condominium Act, § 11-101 et seq. of this title, require different disclosures. However, the two acts may be read together so that, if both apply to the resale of a condominium unit, the seller is required to provide all of the disclosures required by both acts. 73 Op. Att'y Gen. 215 (1988).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-136 (2006)

§ 11-136. Tenant's right to purchase property occupied as his residence

(a) Notice of right to purchase. --

(1) An owner required to give notice under § 11-102.1 of this title shall offer in writing to each tenant entitled to receive that notice the right to purchase that portion of the property occupied by the tenant as his residence. The offer shall be at a price and on terms and conditions at least as favorable as the price, terms, and conditions offered for that portion of the property to any other person during the 180 day period following the giving of the notice required by § 11-102.1 of this title. Settlement cannot be required any earlier than 120 days after the offer is accepted by the tenant.

(2) The offer to each tenant shall be made concurrently with the giving of the notice required by § 11-102.1 of this title, shall be a part of that notice, and shall state at least the following:

(i) That the offer will terminate upon the earlier to occur of termination of the lease by the tenant or 60 days after delivery;

(ii) That acceptance of the offer by a tenant who meets the criteria for an extended lease under § 11-137 (b) of this title is contingent upon the tenant not receiving an extended lease;

(iii) That settlement cannot be required any earlier than 120 days after acceptance by the

tenant; and

(iv) That the household is entitled to reimbursement for moving expenses as provided in subsection (h) of this section. Delivery of a notice in the form specified in § 11-102.1 (f) of this title meets the requirements of this subparagraph.

(b) Alteration or addition to property by owner. --

(1) Notwithstanding the provisions of subsection (a) of this section, an owner may make any alterations or additions to the size, location, configuration, and physical condition of the property. The developer is not required to make the boundaries of any portion of the property occupied by a tenant as the tenant's residence coincide with the boundaries of a unit.

(2) In the event the boundaries of any portion of the property occupied by a tenant as the tenant's residence do not coincide with the boundaries of a unit, then, to the extent reasonable and practicable, the owner shall offer in writing to that tenant the right to purchase a substantially equivalent portion of the property. The offer shall be at a price and on terms and conditions at least as favorable as the price, terms and conditions offered for that portion of the property to any other person and shall contain the statements required by subsection (a) (2) of this section.

(c) Termination of offer. -- Unless written acceptance of an offer made under subsection (a) or (b) of this section is sooner delivered to the owner by the tenant, the offer shall terminate, without further act, upon the earlier to occur of:

(1) Termination of the lease by the tenant; or

(2) 60 days after the offer is delivered to the tenant.

(d) Acceptance contingent upon not receiving extended lease. -- Acceptance of an offer by a tenant who meets the criteria for an extended lease under § 11-137 (b) of this title shall be contingent upon the tenant not receiving an extended lease.

(e) Price of unit after termination of offer. -- If the offer terminates, the owner may not offer to sell that unit at a price or on terms and conditions more favorable to the offeree than the price, terms, and conditions offered to the tenant during the 180 day period following the giving of the notice required by § 11-102.1 of this title.

(f) Developer to provide list of acceptances to county, etc. -- Within 75 days after the giving of the notice required by § 11-102.1 of this title, the developer shall provide to any county, incorporated municipality or housing agency which has a right to purchase units in the rental facility under § 11-139 of this title a list of the names and units of all tenants who have validly accepted offers made under this section within 60 days of the giving of the notice required by § 11-102.1 of this title, except those offers which have terminated because of the granting of an extended lease under § 11-137 of this title.

(g) Affidavit that provisions of section fulfilled. -- If a deed for a unit contains an affidavit by the grantor that the provisions of this section have been fulfilled, then the grantee in that deed takes title to the unit free and clear of all claims and rights of any person arising under this section.

(h) Payment of vacating household's moving expenses. --

(1) If the household does not accept the purchase offer made under this section, the owner shall:

(i) If the household qualifies as to income under § 11-137 (b) (1) of this title, pay the household $ 375 when the household vacates the unit and reimburse the household for moving expenses as defined in § 11-101 of this title in excess of $ 375 up to $ 750 which are

actually and reasonably incurred; or

(ii) If the household does not qualify as to income under § 11-137 (b) (1) of this title, reimburse the household for moving expenses as defined in § 11-101 of this title up to $ 750 which are actually and reasonably incurred.

(2) The household shall make a written request for moving expense reimbursement to the developer, accompanied by reasonable evidence of the costs incurred, within 30 days following moving. The developer shall reimburse the household within 30 days following receipt of the request.

HISTORY: 1982, ch. 836, § 3; 1984, ch. 575; 1985, ch. 550; 1989, ch. 5, § 1; 2002, ch. 19, § 10.

NOTES:
EDITOR'S NOTE. --Section 10, ch. 19, Acts 2002, provides that "the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, "of this section" has been inserted in (b) (1).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-137 (2006)

§ 11-137. Unit leased by designated household

(a) Definitions. --

(1) In this section the following words have the meanings indicated.

(2) "Annual income" means the total income from all sources, of a designated household, for the income tax year immediately preceding the year in which the notice is given under § 11-102.1 of this title, whether or not included in the definition of gross income for federal or State tax purposes. For purposes of this section, the inclusions and exclusions from annual income are the same as those listed in § 9-104(a)(8) of the Tax - Property Article, "gross income" as that term is defined for the property tax credits for homeowners by reason of income and age, but shall not include unreimbursed medical expenses if the tenant provides reasonable evidence of the unreimbursed medical expenses or consents in writing to authorize disclosure

of relevant information regarding medical expense reimbursement at the time of applying for an extended lease.

(3) "Designated household" means any of the following households:

(i) A household which includes a senior citizen who has been a member of the household for a period of at least 12 months preceding the giving of the notice required by § 11-102.1 of this title; or

(ii) A household which includes an individual with a disability who has been a member of the household for a period of at least 12 months preceding the giving of the notice required by § 11-102.1 of this title.

(4) (i) "Disability" means:

1. A physical or mental impairment that substantially limits one or more of an individual's major life activities; or

2. A record of having a physical or mental impairment that substantially limits one or more of an individual's major life activities.

(ii) "Disability" does not include the current illegal use of or addiction to:

1. A controlled dangerous substance as defined in § 5-101 of the Criminal Law Article; or

2. A controlled substance as defined in 21 U.S.C. § 802.

(5) "Household" means only those persons domiciled in the unit at the time the notice required by § 11-102.1 of this title is given.

(6) "Rental facility" means property containing 10 or more dwelling units intended to be leased to persons who occupy the dwellings as their residences.

(7) "Senior citizen" means a person who is at least 62 years old on the date that the notice required by § 11-102.1 of this title is given.

(8) "Unreimbursed medical expenses" means the cost of medical expenses not otherwise paid for by insurance or some other third party, including medical and hospital insurance premiums, co-payments, and deductibles; Medicare A and B premiums; prescription medications; dental care; vision care; and nursing care provided at home or in a nursing home or home for the aged.

(b) Extension of lease. -- A developer may not grant a unit in a rental facility occupied by a designated household entitled to receive the notice required by § 11-102.1 of this title without offering to the tenant of the unit a lease extension for a period of at least 3 years from the giving of the notice required by § 11-102.1 of this title, if the household meets the following criteria:

(1) Had an annual income which did not exceed the income eligibility figure applicable for the county or incorporated municipality in which the rental facility is located, as provided under subsection (n) of this section;

(2) Is current in its rent payment and has not violated any other material term of the lease; or

(3) Has provided the developer within 60 days after the giving of the notice required by § 11-102.1 of this title with an affidavit under penalty of perjury:

(i) Stating that the household is applying for an extended lease under this section;

(ii) Setting forth the household's annual income for the calendar year preceding the giving of the notice required by § 11-102.1 of this title together with reasonable supporting documentation of the household income and, where applicable, of unreimbursed medical expenses or a written authorization for disclosure of relevant information regarding medical expense reimbursement by doctors, hospitals, clinics, insurance companies, or similar persons, entities, or organizations that provide medical treatment coverage to the household;

(iii) Setting forth facts showing that a member of the household is either an individual with a disability or a senior citizen who, in either event, has been a member of the household for at least 12 months preceding the giving of the notice required by § 11-102.1 of this title; and

(iv) Has executed an extended lease and returned it to the developer within 60 days after the giving of the notice required by § 11-102.1 of this title.

(c) Items to be delivered simultaneously with the notice. -- The developer shall deliver to each tenant entitled to receive the notice required by § 11-102.1 of this title, simultaneously with the notice:

(1) An application on which may be included all of the information required by subsection (b)(3) of this section;

(2) A lease containing the terms required by this section and clearly indicating that the lease will be effective only if:

(i) The tenant executes and returns the lease not later than 60 days after the giving of the notice required by § 11-102.1 of this title; and

(ii) The household is allocated 1 of the units required to be made available to qualified households based on its ranking under subsection (k) of this section and the number of tenants executing and returning leases;

(3) A notice, delivered in the form specified in § 11-102.1(f) of this title, setting forth the rights and obligations of the tenant under this section; and

(4) A copy of the public offering statement which is registered with the Secretary of State.

(d) Further notice by developer to household. -- Within 75 days after the giving of the notice required by § 11-102.1 of this title, the developer shall notify each household which submits to the developer the documentation required by subsection (b)(3) of this section:

(1) Whether the household meets the criteria of subsection (b) of this section, and, if not, an explanation of which criteria have not been met; and

(2) Whether the extended lease has become effective.

(e) Information to be provided to county, etc., by developer. -- Within 75 days after the giving of the notice required by § 11-102.1 of this title, the developer shall provide to any county, incorporated municipality, or housing agency which has a right to purchase units in the rental facility under § 11-139 of this title:

(1) A notice indicating the number of units in the rental facility being made available to qualified households under subsection (k)(1) of this section;

(2) A list of all households meeting the criteria of subsection (b) of this section, indicating the ranking of each in relation to that number;

(3) A list of all households returning the affidavit required by subsection (b) of this section which do not meet all the criteria of subsection (b) of this section and copies of the notifications sent to these households under subsection (d) of this section; and

(4) A list of all households as to whom a lease has become effective.

(f) Extended lease. --

(1) The extended lease shall provide for a term commencing on acceptance and terminating not less than 3 years from the giving of the notice required by § 11-102.1 of this title.

(2) Annually, on the commencement date of the extended lease, the rental fee for the unit may be increased. The increase may not exceed an amount determined by multiplying the annual rent for the preceding year by the percentage increase for the rent component of the U.S. Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) (1967 = 100), as published by the U.S. Department of Labor, for the most recent 12-month period.

(3) Except as this section otherwise permits or requires, the extended lease shall contain the same terms and conditions as the lease in effect on the day preceding the giving of the notice required by § 11-102.1 of this title.

(g) Later opportunity to buy. -- A designated household which exercises its rights under this section shall not be denied an opportunity to buy a unit at a later date, if one is available.

(h) Tenant's termination of extended lease. --

(1) A designated household which executes an extended lease under this section which is accepted thereafter may not terminate its extended lease under § 11-102.1 of this title. A designated household may terminate its extended lease at any time, with notice to the developer or any subsequent titleholder as follows:

(i) At least a 1-month notice in writing shall be given when less than 12 months remain on the lease; and

(ii) At least a 3-month notice in writing shall be given when 12 months or more remain on the lease.

(2) Any lease executed under this section shall set forth the provisions for termination contained in this subsection.

(i) Transfer of title to person who is not member of designated household. -- The title to units subject to the provisions of this section may be granted to a person who is not a member of the designated household, provided that:

(1) The provisions of this section continue to apply despite any transfer of title to a unit occupied by a designated household as provided in this section;

(2) The designated household is provided written notice of the change of ownership of title by the new titleholder; and

(3) The vendor of any such unit provides the purchaser written disclosure that the unit is occupied by a designated household subject to the provisions of this section at the time of or prior to the execution of a contract of sale.

(j) Occurrences terminating extended tenancy. -- The extended tenancy provided for in this section shall cease upon the occurrence of any of the following:

(1) 90 days after the death of the last surviving senior citizen or individual with a disability residing in the unit, or 90 days after the last senior citizen or individual with a disability

residing in the unit has moved from the unit;

(2) Eviction for failure to pay rent due in a timely fashion or violation of a material term of the lease; or

(3) Voluntary termination of the lease by the designated household under subsection (h) of this section.

(k) Allocation of units for designated households. --

(1) A developer shall set aside a percentage of the total number of units within a condominium for designated households. A developer is not required to grant extended leases covering more than 20 percent of the units within a condominium to designated households.

(2) (i) If the number of units occupied by designated households which meet the criteria of subsection (b) of this section exceeds 20 percent, then the number of available units for tenancy under the provisions of this section shall be allocated as determined by the local governing body.

(ii) If the local governing body fails to provide for allocation, then units shall be allocated by the developer.

(iii) 1. Except as provided in subsubparagraph 2 of this subparagraph, the developer shall allocate the units based on seniority by continuous length of residence.

2. Among designated households that include individuals with disabilities, priority shall be given to households that include an individual with a physical impairment who requires wheelchair accessible housing.

(l) Relocation of designated households. --

(1) If a conversion to condominium involves substantial rehabilitation or reconstruction of such a nature that the work involved does not permit the continued occupancy of a unit because of danger to the health and safety of the tenants, then any designated household executing an extended lease under the provisions of this section may be required to vacate their unit not earlier than the expiration of the 180-day period and to relocate at the expense of the developer in a comparable unit in the rental facility to permit such work to be performed.

(2) If there is no comparable unit available, then the designated household may be required to vacate the rental facility. When the work is completed, the developer shall notify the household of its completion. The household shall have 30 days from the date of that notice to return to their original or a comparable rental unit. The term of the extended lease of that household shall begin upon their return to the rental unit.

(3) The developer shall give 180 days' notice prior to the date that units must be vacated. The notice shall explain the household's rights under this subsection and subsection (m) of this section.

(m) Payment of moving expenses and compensation to certain designated households. --

(1) The developer shall pay households that qualify as to income under subsection (b)(1) of this section $ 375 when the household vacates the unit and for moving expenses as defined in § 11-101 of this title in excess of $ 375 up to $ 750 which are actually and reasonably incurred. The household shall make a written request for reimbursement accompanied by reasonable evidence of the costs incurred within 30 days of moving. The developer shall reimburse the household within 30 days following receipt of the request.

(2) If a household does not qualify as to income under subsection (b)(1) of this section, the

developer shall reimburse moving expenses as defined in § 11-101 of this title, up to $ 750, actually and reasonably incurred to the designated households eligible under this subsection. The designated household shall make a written request for reimbursement accompanied by reasonable evidence of the costs incurred within 30 days of moving. The developer shall reimburse the designated household within 30 days following receipt of the request.

(3) The developer shall also pay a compensation equivalent to 3 months' rent within 15 days of moving to the designated households eligible under this subsection.

(4) The following designated households which meet the applicable criteria of subsection (b) of this section are eligible under this subsection:

(i) A designated household which does not execute an extended lease;

(ii) A designated household which is precluded from having an extended tenancy by the limitation of subsection (k) of this section; or

(iii) A designated household which is required to vacate their rental unit under subsection (l)(2) of this section.

(5) A developer shall also reimburse moving expenses as defined in § 11-101 of this title, up to $ 750, actually and reasonably incurred, to a designated household who returns to their rental unit under subsection (l)(2) of this section. The designated household shall make a written request for reimbursement accompanied by reasonable evidence of the costs incurred within 30 days following the designated household's return. The developer shall reimburse the designated household within 30 days following receipt of the request.

(n) Income eligibility figure. --

(1) (i) The Secretary of State shall prepare income eligibility figures for each county and standard metropolitan statistical area of the State.

(ii) Except in Baltimore City, the figures shall reasonably approximate:

1. 80 percent of the median household income for each county;

2. 80 percent of the median household income for each metropolitan statistical area; and

3. The uncapped low income limits as adjusted for family size calculated by the U.S. Department of Housing and Urban Development for assisted housing programs.

(iii) In Baltimore City, the figure shall reasonably approximate 100% of the median household income for the Baltimore Metropolitan Statistical Area.

(2) Except in Baltimore City, a county or incorporated municipality may by law, ordinance, or resolution select from the figures prepared by the Secretary of State under paragraph (1)(ii) of this subsection, the applicable income eligibility figure or figures to be used in the county or incorporated municipality.

(3) The figure prepared by the Secretary of State under paragraph (1)(iii) of this subsection shall be the income eligibility figure used in Baltimore City.

(4) Except in Baltimore City, if a county or incorporated municipality does not select an income eligibility figure or figures, 80 percent of the median household income for the county shall be used.

HISTORY: 1981, ch. 246; 1982, ch. 836, § 3; 1983, ch. 8; 1984, chs. 255, 525, 575; 1985, ch. 480, § 1; chs. 510, 550; 1989, ch. 5, § 1; 1996, ch. 10, § 1; 1997, ch. 14, § 1; 1998, ch.

21, § 1; 2005, ch. 25, § 1; 2006, chs. 370, 451.

NOTES:
EFFECT OF AMENDMENTS. --Section 1, ch. 25, Acts 2005, approved April 12, 2005, and effective from the date of enactment, redesignated (a) as (a)(1) and former (a)(1) through (a)(6) as (a)(2) through (a)(7), substituted "indicated." for "indicated:" in (a)(1), and substituted "title" for "subtitle" after "§ 11-102.1 of this" and "§ 9-104(a)(8)" for "9-104(a)(7)" before "of the Tax - Property Article in (a)(2).

Chapter 370, Acts 2006, approved May 2, 2006, and effective from date of enactment, added (a)(8); and rewrote (n).

Chapter 451, Acts 2006, approved May 16, 2006, and effective from date of enactment, substituted "an individual with a disability" for "a handicapped citizen" or variant in (a)(3)(ii), (b)(3)(iii), and twice in (j)(1); rewrote (a)(4); redesignated former (k)(2) as present (k)(2)(i) and (ii); and added (k)(2)(iii).

EDITOR'S NOTE. --Chapters 370 and 451, Acts 2006, each amended (a). Neither of the 2006 amendments referred to the other, and the language has been resolved to give effect to both, as each amended a different portion of (a).

Section 2, ch. 370, Acts 2006, provides that "this Act shall apply to any residential rental facility for which an application for registration has not been filed with the Secretary of State, in accordance with § 11-127 of the Real Property Article, on or before March 15, 2006."

Section 2, ch. 451, Acts 2006, provides that "this Act shall apply to any residential rental facility for which the notice to the tenants required under § 11-102.1 of the Real Property Article has not been given on or before March 16, 2006."

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-138 (2006)

§ 11-138. Local government's right to purchase rental facility

(a) "Rental facility" defined. -- In this section, "rental facility" means property containing 10 or more dwelling units intended to be leased to persons who occupy the dwellings as their residences.

(b) Local law requiring right of purchase; mandatory provisions. --

(1) A county or an incorporated municipality may provide, by local law or ordinance, that a rental facility may not be granted to a purchaser for the purpose of subjecting it to a condominium regime unless the county, incorporated municipality or housing agency has first been offered in writing the right to purchase the rental facility on substantially the same terms

and conditions offered by the owner to the purchaser. The local law or ordinance shall designate the title and mailing address of the person to whom the offer to the county, incorporated municipality or housing agency shall be delivered.

(2) The offer shall contain a contingency entitling the county, incorporated municipality or housing agency, to secure financing within 180 days from the date of the offer.

(3) Unless written acceptance of the offer is sooner delivered to the owner by the county, incorporated municipality or housing agency, the offer shall terminate, without further act, 60 days after it is delivered to the county, incorporated municipality or housing agency. If the offer terminates, the owner may grant the rental facility to any person for any purpose on terms and conditions not more favorable to a buyer than those offered by the owner to the county, incorporated municipality or housing agency.

(4) If the county, incorporated municipality, or housing agency purchases the rental facility, it shall retain or provide for the retention of:

(i) The property as a rental facility for at least 3 years from the date of acquisition; or

(ii) At least 20 percent of the units in the facility as rental units for 15 years from the date of acquisition for households that do not exceed the applicable income eligibility figure under § 11-137(n) of this title for the county or incorporated municipality in which the rental facility is located.

(c) Certain rental facility owner exempt. -- A local law or ordinance adopted under subsection (b) of this section may provide that the owner of a rental facility is exempt from the provisions of this section if the purchaser of the rental facility enters into an agreement with the county, incorporated municipality, or housing agency to retain the property as a rental facility for a period not to exceed 3 years after the date of acquisition of the property.

(d) Transfers to which right of purchase not applicable. -- The provisions of any local law or ordinance adopted under this section shall not apply to any of the following transfers of a rental facility:

(1) Any transfer made pursuant to the terms of a bona fide mortgage or deed of trust agreement;

(2) Any transfer to a mortgagee in lieu of foreclosure or any transfer pursuant to any other proceedings, arrangement or deed in lieu of foreclosure;

(3) Any transfer made pursuant to a judicial sale or other judicial proceeding brought to secure payment of a debt or for the purpose of securing the performance of an obligation;

(4) Any transfer of the interest of one co-tenant to another co-tenant by operation of law or otherwise;

(5) Any transfer made by will or descent or by intestate distribution;

(6) Any transfer made to any municipal, county or State government or to any agencies, instrumentalities or political subdivisions thereof;

(7) Any transfer to a spouse, son or daughter;

(8) Any transfer made pursuant to the liquidation of a partnership or corporation; or

(9) Any transfer into a partnership or corporation wholly owned by the person(s) so contributing.

(e) Waiver of right. -- Any county, incorporated municipality or housing agency, by execution

and delivery by the appropriate official to the grantor of an instrument in recordable form, may waive its right to purchase a particular rental facility under this section.

(f) Copy of local law to be forwarded to Secretary of State. -- Within 30 days of the enactment of a law or ordinance under this section, the county or incorporated municipality shall forward a copy of the law or ordinance to the Secretary of State.

HISTORY: 1981, ch. 246; 1982, ch. 17, § 7; ch. 836, § 3; 1984, ch. 525; 1985, ch. 10, § 3; 2006, ch. 370.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 370, Acts 2006, approved May 2, 2006, and effective from date of enactment, redesignated former (a)(4) as present (a)(4) and (a)(4)(i); added (b)(ii); and made minor, related changes.

EDITOR'S NOTE. --Section 2, ch. 370, Acts 2006, provides that "this Act shall apply to any residential rental facility for which an application for registration has not been filed with the Secretary of State, in accordance with § 11-127 of the Real Property Article, on or before March 15, 2006."

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-139 (2006)

§ 11-139. Local government's right to purchase units

(a) Local law providing right of purchase. --

(1) A county or an incorporated municipality may provide by local law or ordinance, that a unit in a rental facility occupied by a tenant entitled to receive the notice required by § 11-136 of this title may not be granted unless the county, incorporated municipality, or housing agency has first been offered in writing the right to purchase the unit at the same price and on the same terms and conditions initially offered for that unit to any other person. The local law or ordinance shall designate the title and mailing address of the person to whom the offer to the county, incorporated municipality or housing agency is to be delivered and the title of the person who may accept the offer on behalf of the county, incorporated municipality or housing agency.

(2) The local law or ordinance shall provide that the offer to the county, incorporated municipality or housing agency shall be made at the same time an offer is made to a tenant of the unit under § 11-136 of this title. If a tenant accepts an offer of a unit made under § 11-

136 of this title, then the rights of the county, incorporated municipality or housing agency to such unit under an offer made under this section, whether or not accepted, shall terminate.

(3) Unless written acceptance of the offer is sooner delivered to the owner of the rental facility by the county, incorporated municipality or housing agency, the offer shall terminate, without further act, 120 days after it is delivered to the county, incorporated municipality or housing agency.

(b) Aggregate purchase not to exceed 20 percent of units in condominium. -- A county, incorporated municipality or housing agency may not accept an offer made under this section for any unit if that unit together with the aggregate of other units previously accepted or not accepted, subject to an extended lease by a designated family under § 11-136 of this title, exceeds 20 percent of the total number of units in the condominium.

(c) Affidavit that provisions of section fulfilled. -- If a grant for a unit contains an affidavit by the grantor that the provisions of any law or ordinance enacted under this section have been fulfilled, then the grantee in that grant takes title to the unit free and clear of all claims and rights of any county, incorporated municipality or housing agency under a local law or ordinance enacted under this section.

(d) Copy of local law to be forwarded to Secretary of State. -- Within 30 days of the enactment of a law or ordinance under this section, the county or incorporated municipality shall forward a copy of the law or ordinance to the Secretary of State.

HISTORY: 1982, ch. 836, § 3; 1989, ch. 5, § 1.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-140 (2006)

§ 11-140. Legislative intent; local legislative finding and declaration of rental housing emergency; local laws and regulations to meet emergency; copies

(a) Legislative intent. -- The intent of the General Assembly of Maryland is to facilitate the orderly development of condominiums in Maryland. The General Assembly recognizes, however, that the conversion of rental dwellings to condominiums can have an adverse impact on the availability of rental units, resulting in the displacement of tenants.

(b) Local legislative finding and declaration of rental housing emergency. -- A county or incorporated municipality may, by legislative finding, recognize and declare that a rental housing emergency exists in all or part of its jurisdiction and has been caused by the

conversion of rental housing to condominiums. The jurisdiction shall consider and make findings as to:

(1) The nature and incidence of condominium conversions;

(2) The resulting hardship to and displacement of tenants; and

(3) The scarcity of rental housing.

(c) Local regulations and laws to meet emergency. -- Upon finding and declaration of a rental housing emergency caused by the conversion of rental housing to condominiums, a county or an incorporated municipality may by the enactment of laws, ordinances, and regulations, take the following actions to meet the emergency:

(1) Grant to a designated family as defined in § 11-137 of this title a right to an extended lease for a period in addition to that period provided for in § 11-137 of this title. The right to an extended lease may not, in any event, result in a requirement that a developer set aside for an extended lease more than 20 percent of the total number of units.

(2) Otherwise extend any of the provisions of § 11-137 of this title except that:

(i) More than 20 percent of the total number of units may not be required to be set aside; and

(ii) The term of an extended lease for any family made a designated family by a county or an incorporated municipality may not exceed 3 years.

(3) Require that the notice required to be given under § 11-102.1 of this title be altered to disclose the effects of any actions taken under this section.

(d) Copies. -- Within 10 days of the enactment of a law, ordinance, or regulation under this section, a county or incorporated municipality shall forward a copy of the law, ordinance or regulation to the Secretary of State.

HISTORY: 1981, ch. 246; 1982, ch. 836, § 3; 1989, ch. 5, § 1; 1997, ch. 14, § 1.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-141 (2006)

§ 11-141. Title additional and supplemental

(a) In general. -- The provisions of this title are in addition and supplemental to all other provisions of the public general laws, the public local laws, and any local enactment in the State.

(b) Descriptive terms. -- If the words "single family residential unit", "property", "blocks", or other designation denoting a unit of land, appear in the Code, the public local laws, or any local enactment, a reference to a condominium unit or regime, whichever is appropriate, is deemed inserted after these descriptive terms where appropriate to implement this title.

(c) Conflict with other enactments. -- If the application of the provisions of this title conflict with the application of other provisions of the public general laws, public local laws, or any local enactment, in the State, the provisions of this title shall prevail.

HISTORY: An. Code 1957, art. 21, § 11-126; 1974, ch. 12, § 2; ch. 641; 1975, ch. 108; 1981, ch. 246; 1988, ch. 6, § 1.

NO INTENT TO COMPLETELY OCCUPY CONDOMINIUM LEGISLATIVE FIELD. --This section negates any intent of the General Assembly completely and exclusively to occupy the field of legislation with respect to condominiums. Rockville Grosvenor, Inc. v. Montgomery County, 289 Md. 74, 422 A.2d 353 (1980).

STATE PROVISIONS PREVAIL OVER CONFLICTING LOCAL PROVISIONS. --In the event of conflict in the application of the provisions of this subtitle with the application of the provisions of local law, this subtitle prevails. Rockville Grosvenor, Inc. v. Montgomery County, 289 Md. 74, 422 A.2d 353 (1980).

NONDISCRIMINATORY LOCAL PROVISIONS COULD APPLY TO CONDOMINIUMS. --Because only those local laws which adversely affect condominiums differently than other similar property are voided by § 11-122 of this title, there are conceivably many nondiscriminatory local laws which could apply to condominiums. It is with reference to such nondiscriminatory local laws that subsection (a) of this section speaks when stating that it is "in addition and supplemental to all other provisions of ... any local enactment in the State." Rockville Grosvenor, Inc. v. Montgomery County, 289 Md. 74, 422 A.2d 353 (1980).

MONTGOMERY COUNTY CODE'S "FIRST RIGHT TO BUY" PROVISION UNCONSTITUTIONAL. -- Application of the Montgomery County Code's first right to buy law to a sale and purchase, with intent to convert, in the interval between the contract and the transfer of title violates Md. Const., Article XI-A, § 3, even though during that period the property is not a "condominium" under the definition in § 11-101 (d) of this title, and even though the contract purchaser is not yet an "owner" of the property as that term is used in § 11-102 (a) of this title. Rockville Grosvenor, Inc. v. Montgomery County, 289 Md. 74, 422 A.2d 353 (1980).

APPLIED IN Milton Co. v. Council of Unit Owners of Bentley Place Condominium, 354 Md. 264, 729 A.2d 981 (1999).

CITED IN Nordheimer v. Montgomery County, 307 Md. 85, 512 A.2d 379 (1986).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***

*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-142 (2006)

§ 11-142. Applicability to existing condominiums

(a) In general. -- Except as otherwise provided in this section, this title is applicable to all condominiums. However, with respect to condominiums established before July 1, 1982, the declaration or master deed, bylaws, or condominium plat need not be amended to comply with the requirements of this title.

(b) Applicability of §§ 11-114 and 11-123. -- Except to the extent that the declaration or master deed, bylaws, or plat provide otherwise, §§ 11-114 and 11-123 of this title are applicable to all condominiums.

(c) Applicability of § 11-120. -- Unless the developer elects to conform to the requirements of § 11-120 of this title, § 11-120 of this title is not applicable to those condominiums created prior to July 1, 1974 under circumstances where the developer reserved the right to expand the condominium.

(d) Compliance with § 11-124. -- As to condominiums created prior to July 1, 1981, compliance with § 11-124 of this title as in effect on June 30, 1981, is deemed compliance with § 11-126 of this title as effective on July 1, 1981.

(e) Applicability of § 11-133. -- Section 11-133 of this title is applicable only to leases or management and similar contracts executed after July 1, 1974.

(f) Applicability of §§ 11-127, 11-131, 11-136, 11-137, 11-138, 11-139, and 11-140. -- Sections 11-127, 11-131, 11-136, 11-137, 11-138, 11-139, and 11-140 of this title do not apply to the conversion of residential rental property for which a notice of intention to create a condominium was issued before July 1, 1981, if:

(1) (i) On or before March 15, 1982, units in the residential rental property have been publicly offered for sale as condominium units; and

(ii) On or before March 15, 1982, 35 percent of the units in the residential rental property are under a contract to be sold pursuant to a bona fide, arm's length transaction;

(2) (i) On or before March 15, 1982, the residential rental property has been subjected to a condominium regime, or, in the case of an expanding condominium, the residential rental property is shown on the condominium plat filed on or before March 15, 1982;

(ii) Units in the condominium have been publicly offered for sale on or before April 15, 1982; and

(iii) On or before May 15, 1982, at least 10 percent of the units in the condominium, or in the case of an expanding condominium, 10 percent of the total number of units to be contained in the condominium as fully expanded, are under a contract to be sold in a bona fide, arm's length transaction; or

(3) A developer or its affiliate entered into a contract to purchase the residential rental

property between January 1, 1980 and December 31, 1980, and the developer or its affiliate does not meet the requirements of paragraph (1) or (2) of this subsection. Such a developer or its affiliate shall comply with §§ 11-136 and 11-137 of this title.

HISTORY: 1974, ch. 641; 1981, ch. 246; 1982, ch. 2; ch. 836, § 3; 1986, ch. 5, § 1; 1989, ch. 5, § 1.

UNIVERSITY OF BALTIMORE LAW REVIEW. --For comment discussing cases and legislation imposing implied warranties in sales of residential condominiums, see 14 U. Balt. L. Rev. 116 (1984).

CITED IN Dulaney Towers Maintenance Corp. v. O'Brey, 46 Md. App. 464, 418 A.2d 1233 (1980); Starfish Condominium Ass'n v. Yorkridge Serv. Corp., 295 Md. 693, 458 A.2d 805 (1983).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-143 (2006)

§ 11-143. Short title

This title may be cited as the Maryland Condominium Act.

HISTORY: 1982, ch. 836, § 3.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-139.1 (2006)

§ 11-139.1. Electronic transmission of notice.

(a) In general. -- Notwithstanding language contained in the governing documents of a council of unit owners, the council of unit owners may provide notice of a meeting or deliver information to a unit owner by electronic transmission if:

(1) The governing body of the council of unit owners gives the council of unit owners the authority to provide notice of a meeting or deliver information by electronic transmission;

(2) The unit owner gives the council of unit owners prior written authorization to provide notice of a meeting or deliver information by electronic transmission; and

(3) An officer or agent of the council of unit owners certifies in writing that the council of unit owners has provided notice of a meeting or delivered material or information as authorized by the unit owner.

(b) Ineffective transmission. -- Notice or delivery by electronic transmission shall be considered ineffective if:

(1) The council of unit owners is unable to deliver two consecutive notices; and

(2) The inability to deliver the electronic transmission becomes known to the person responsible for the sending of the electronic transmission.

(c) Same -- Effect. -- The inadvertent failure to deliver notice by electronic transmission does not invalidate any meeting or other action.

HISTORY: 2004, ch. 286.

NOTES:
EDITOR'S NOTE. --Section 2, ch. 286, Acts 2004, provides that the act shall take effect Oct. 1, 2004.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11. MARYLAND CONDOMINIUM ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11-139.2 (2006)

§ 11-139.2. Electronic transmission of votes or proxies

(a) In general. -- Notwithstanding language contained in the governing documents of the council of unit owners, the board of directors of the council of unit owners may authorize unit owners to submit a vote or proxy by electronic transmission if the electronic transmission contains information that verifies that the vote or proxy is authorized by the unit owner or the unit owner's proxy.

(b) When anonymous voting required. -- If the governing documents of the council of unit owners require voting by secret ballot and the anonymity of voting by electronic transmission cannot be guaranteed, voting by electronic transmission shall be permitted if unit owners have the option of casting anonymous printed ballots.

HISTORY: 2004, ch. 286.

NOTES:
EDITOR'S NOTE. --Section 2, ch. 286, Acts 2004, provides that the act shall take effect Oct. 1, 2004.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11A. MARYLAND REAL ESTATE TIME-SHARING ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11A-101 (2006)

§ 11A-101. Definitions

(a) In general. -- In this title the following terms have the meanings indicated, unless the context requires a different meaning.

(b) Association. -- "Association" means a nonstock corporation consisting only of time-share estate owners formed according to Title 5, Subtitle 2 of the Corporations and Associations Article.

(c) Commission. -- "Commission" means the State Real Estate Commission.

(d) Common elements. -- "Common elements" means all of a time-share project except for the time-share units located in the project.

(e) Common expenses. -- "Common expenses" means the costs of management and operation of the time-share project, maintenance of, and improvements to the common elements, maintenance of the units, and repair and replacement of personalty located in the project owned by the association.

(f) Conversion building. -- "Conversion building" means a building that at any time before the disposition of any time-share was occupied by any person for residential purposes.

(g) Developer. --

(1) "Developer" means any person in the business of creating or disposing of that person's time-shares in time-share projects.

(2) "Developer" does not include an association reselling time-shares acquired by the association:

(i) Through foreclosure of a lien for nonpayment of assessments or other charges by a time-share owner as provided in § 11A-110 of this title; or

(ii) By deed in lieu of foreclosure from a time-share owner who is delinquent in payment of assessments or other charges as provided in § 11A-110 of this title.

(h) Developer control period. -- "Developer control period" is as defined in § 11A-106 of this title.

(i) Exchange company. -- "Exchange company" means any person operating an exchange program.

(j) Exchange program. -- "Exchange program" means any arrangement for the exchange of occupancy rights of time-share owners.

(k) Facility fees. -- "Facility fees" means fees for recreational or other facilities charged on a use basis.

(l) Managing entity. -- "Managing entity" means any person or association, including the developer, designated in or employed pursuant to a time-share instrument or project instrument to manage a time-share project.

(m) Occupancy expenses. -- "Occupancy expenses" means costs occasioned by use of individual time-share units such as housekeeping or cleaning.

(n) Project. -- "Project" means real property all or a portion of which is subject to a project instrument. A project may include units that are not time-share units.

(o) Project instrument. -- "Project instrument" means 1 or more recordable documents, by whatever name denominated, applying to a project and containing restrictions or covenants regulating the use, occupancy, enjoyment, or disposition of units or amenities in or other aspects of a time-share project.

(p) Purchaser. -- "Purchaser" means any person, other than a developer, who by means of a voluntary transfer acquires a legal or equitable interest in a time-share other than as security for an obligation.

(q) Sales contract. -- "Sales contract" means any agreement transferring the rights and obligations of the time-share plan to the purchaser.

(r) Time-share. -- "Time-share" means a time-share estate or time-share license.

(s) Time-share estate. -- "Time-share estate" means the ownership during separated time periods, over a period of at least 5 years, including renewal options, of a time-share unit or any of several time-share units, whether the ownership is a freehold estate, an estate for years, or an undivided interest.

(t) Time-share estate project. -- "Time-share estate project" means that portion of the project set aside for the use and enjoyment by time-share purchasers as described in the time-share plan or time-share instrument, and as acquired by the time-share purchaser in the execution of a sales contract.

(u) Time-share expenses. -- "Time-share expenses" means common expenses and occupancy expenses, but does not include facility fees.

(v) Time-share instrument. -- "Time-share instrument" means a document that describes the time-share as provided in §§ 11A-103 and 11A-107 of this title.

(w) Time-share license. -- "Time-share license" means a right to use or occupy 1 or more units or any of several units during 5 or more separated time periods over a period of at least 5 years, including renewal options, in a time-share project.

(x) Time-share plan. -- "Time-share plan" means any arrangement other than an exchange program, whether by membership, agreement, tenancy in common, sale, lease, license, or right to use agreement or by any other means, whereby a time-share purchaser, in exchange for a consideration, receives a time-share, and attendant rights and obligations.

(y) Time-share project. -- "Time-share project" means that portion of the project set aside for the use and enjoyment by time-share purchasers as described in the time-share plan or time-share instrument, and as acquired by the time-share purchaser in the execution of a sales contract.

(z) Time-share unit. -- "Time-share unit" means a unit subject to a time-share plan.

(aa) Undivided interest. -- "Undivided interest" means ownership of an interest in a project in common with not fewer than 25 other purchasers or prospective purchasers, that entitles each owner to use or occupy 1 or more units or any of several units during 5 or more separated time periods over a period of at least 5 years, including renewal options, whether or not the exercise of the right to use or occupy depends upon the availability of any unit or units.

(bb) Unit. -- "Unit" means real property, or a portion thereof, designated for separate use.

HISTORY: 1984, ch. 579; 1985, ch. 721; 1986, ch. 5, § 1; 1988, ch. 563, § 5; 1989, ch. 89; 1999, ch. 258; 2002, ch. 19, § 10.

NOTES:
EDITOR'S NOTE. --Section 10, ch. 19, Acts 2002, provides that "the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, "of this title" has been added at the end of (h) and (v).

MARYLAND LAW REVIEW. --For article, "Survey of Developments in Maryland Law, 1983-84," see 44 Md. L. Rev. 632 (1985).

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.

a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11A. MARYLAND REAL ESTATE TIME-SHARING ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11A-102 (2006)

§ 11A-102. Time-share estate

(a) In general. -- Except as otherwise provided in this title, the recordation of a time-share instrument creates a time-share estate either as a freehold estate or an estate for years, as specified in the time-share instrument.

(b) Recording. -- A document transferring or encumbering a time-share estate shall be recorded among the land records of the county in which the unit is located and may not be rejected for recordation because of the nature or duration of that estate. A document transferring a time-share license may be recorded.

(c) Separate estate or interest. -- Each time-share estate constitutes, for purposes of title, a separate estate or interest in a unit.

HISTORY: 1984, ch. 579.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11A. MARYLAND REAL ESTATE TIME-SHARING ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11A-103 (2006)

§ 11A-103. Time-share instrument

A time-share instrument shall be recorded among the land records of every county in which any portion of the project is situated and shall contain in addition to other provisions required by this title the following:

(1) The name of the county or counties in which the project is situated;

(2) The legal description sufficient to identify the project with reasonable certainty and may include a street address;

(3) When the project contains more than 1 unit, a time-share plat containing the information required by § 11-105 (b) of this article, the identification and location of each time-share unit and the common elements, and a certificate from a professional land surveyor or property line surveyor that the plat and description in the time-share instrument are correct representations of the time-share project;

(4) Identification of time periods by letter, name, number, or combination thereof;

(5) Where applicable, the method whereby additional time-shares may be created or withdrawn from the time-share plan;

(6) The portion of common expenses and any voting rights assigned to each time-share, if any, and the method for reallocation if time-shares are added to or withdrawn from the time-share plan;

(7) Any restrictions on the use, occupancy, enjoyment, alteration, or alienation of time-shares;

(8) A description of the amenities if any at the project made available for a time-share purchaser's use and the ownership, care, and replacement thereof;

(9) The length of time the time-shares are committed to the time-share plan and the status of title of time-share units at the end of the period of time;

(10) The method of designating the insurance trustee required by § 11A-111 of this title;

(11) A description and authorization of the methods, if any, by which the time-share documents may be enforced, including the collection of time-share expenses;

(12) Specification of the events, including condemnation and damage or destruction, and the procedures by which the time-share plan may be terminated before the expiration of its full term and the consequences of such termination, including the manner in which the time-share project assets will be held and distributed among owners;

(13) Provision for the amendment of the time-share instrument; and

(14) If any of the time-shares are time-share licenses, a statement of what rights a time-share licensee will have if the license is terminated or a statement that such licensee will have no rights.

HISTORY: 1984, ch. 579; 1989, ch. 236, § 2; 2002, ch. 10, § 19.

NOTES:
EDITOR'S NOTE. --Section 10, ch. 19, Acts 2002, provides that "the publisher of the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, "of this title" has been added at the end of (10).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11A. MARYLAND REAL ESTATE TIME-SHARING ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11A-104 (2006)

§ 11A-104. Limitations on time-shares

(a) Project instrument; document signed by unit owners; recorded covenants and restrictions. --

(1) Time-shares may be created in any unit in existence before January 1, 1985 unless prohibited by a project instrument. If time-shares are not prohibited by the project instrument, the owners of at least 34 percent of the units in the project may sign and record a document among the land records of the county where the project is located, stating an intent to limit time-shares in the project, and referring to this section. Thereafter, no person or other entity may become a developer with respect to more than 1 unit in the project, but this limitation will not apply to units of which the developer was owner of record prior to the recording of the aforementioned document.

(2) (i) In this paragraph, "recorded covenants and restrictions" has the meaning stated in § 11B-101 of this article.

(ii) The owners of property in a residential community governed by recorded covenants and restrictions may prohibit time-shares on any property subject to the recorded covenants and restrictions by amending the recorded covenants and restrictions by a vote of the owners in accordance with the majority requirements of the recorded covenants and restrictions.

(iii) The provisions of subparagraph (ii) of this paragraph do not apply to an existing time-share unit in a project.

(b) Removal of limitations. -- The limitations on time-shares created by the recording of a document as provided in subsection (a) of this section may be removed by the recordation among the land records of the county where the project is located of a document removing time-share limitations signed by owners of at least 80 percent of the units in the project.

(c) Representative of time-share owners may sign document. -- For the purposes of signing a document provided for in subsection (a) or subsection (b) of this section, any person designated by the owners of a majority of the time-shares in a unit may sign as the owner of that unit unless the relevant time-share instrument provides otherwise.

(d) Documents to be under oath or affirmed. -- All documents provided for in this section shall be under oath or affirmed under penalty of perjury.

HISTORY: 1984, ch. 579; 1989, ch. 665; 2002, ch. 19, § 10.

NOTES:
EDITOR'S NOTE. --Section 10, ch. 19, Acts 2002, provides that "the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, "of this section" has been inserted in (b) and (c).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11A. MARYLAND REAL ESTATE TIME-SHARING ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11A-105 (2006)

§ 11A-105. Provisions in instrument regarding management and maintenance of projects and units

In addition to the requirements of § 11A-103, with respect to a time-share estate, the time-share instrument shall describe arrangements for the management and operation of the time-share estate project and for the maintenance, repair, and furnishing of time-share units in the project, which shall include provisions for the following:

(1) Creation of an association;

(2) Assessment and collection of time-share expenses;

(3) Employment and termination of the managing entity for the time-share estate project. No agreement between the developer and the managing entity shall be longer than 2 years;

(4) Preparation and dissemination to time-share estate owners of an annual budget, operating statements, and other financial information concerning the time-share project;

(5) Adoption of standards and rules of conduct for the use, enjoyment, and occupancy of units by the time-share estate owners. Unless otherwise provided in a project instrument, a time-share estate owner's right of access to the time-share estate project shall be limited to the time period in his time-share;

(6) Comprehensive general liability insurance for death, bodily injury, and property damage arising out of, or in connection with, the use and enjoyment of units by time-share estate owners, their guests, and other users. The insurance required by this paragraph shall be in addition to the insurance required by § 11A-111 of this title. The developer shall pay the costs

of securing and maintaining the insurance until the developer control period ends, after which time the costs will be paid by the association. Nothing herein shall be construed to obligate the developer to secure insurance on the conduct, personal effects, or property of the time-share estate owners, their guests, and other users;

(7) Compensation or alternate use periods to a time-share estate owner if his contracted-for unit cannot be made available for the period to which the owner is entitled by schedule or by confirmed reservation;

(8) Procedures for imposing a monetary penalty or suspension of a time-share estate owner's rights and privileges in the time-share estate project for failure of such owner to comply with the provisions of the time-share instrument or the rules and regulations of the association. Under these procedures, a time-share estate owner must be given notice and the opportunity to refute the charges against him in person or in writing to the board of directors of the association before a decision to impose discipline is rendered; and

(9) Employment of attorneys, accountants, and other persons as necessary to assist in the management of the time-share estate project.

HISTORY: 1984, ch. 579; 1985, ch. 10, § 3; 2002, ch. 19, § 10.

NOTES:
EDITOR'S NOTE. --Section 10, ch. 19, Acts 2002, provides that "the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, "of this title" has been added at the end of the second sentence in (6).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11A. MARYLAND REAL ESTATE TIME-SHARING ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11A-106 (2006)

§ 11A-106. Developer control period; transfer of title to association

(a) Developer control period. --

(1) The time-share instrument for a time-share estate project shall provide for a period of time, to be called the "developer control period", during which the developer or a managing

entity selected by the developer shall manage and control the time-share project.

(2) The developer shall be responsible for common expenses during the developer control period. Occupancy expenses shall be allocated only to the time-share estate owners. Nothing shall preclude the developer, during the developer control period, from collecting a periodic charge from the time-share estate owners for the payment of occupancy expenses. However, any such funds received and not spent or any other funds received and allocated to the benefit of the association, shall be transferred to the association by the developer immediately upon termination of the developer control period.

(3) Upon termination of the developer control period, the association shall be responsible for time-share expenses except that the developer shall be responsible for common expenses associated with his proportionate share of the time-share project. However, no time-share expense, dues, or assessment levied by the association shall discriminate against the developer.

(b) Provisions to be an instrument. -- The time-share instrument for a time-share estate project shall also include provisions for the following:

(1) Termination of leases and contracts for goods and services entered into during the developer control period. Any such contract shall become voidable at the option of the association no later than 2 years after the developer sells the first time-share estate in the project; and

(2) A regular accounting by the developer to the association of matters that significantly affect the interest of time-share estate owners.

(c) Transfer of title to association. -- Title to the common elements, if any, of the time-share estate project shall be transferred to the association, free of charge, no later than at such time as the developer either transfers to purchasers legal or equitable ownership of at least 75 percent of the time-share estates or completes all of the amenities and facilities comprising the time-share project, whichever shall occur later, but the developer may elect not to convey sooner than 2 years from the date the developer sells the first time-share estate. The developer control period shall terminate on the date of transfer of the common elements to the association.

HISTORY: 1984, ch. 579.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11A. MARYLAND REAL ESTATE TIME-SHARING ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11A-107 (2006)

§ 11A-107. Provisions in license plan instrument for management and maintenance of plan and units

The time-share instrument for a time-share license plan shall prescribe and outline reasonable arrangements for the management and operation of the time-share license plan and for the maintenance, repair, and furnishing of time-share units, which arrangements shall include provisions for the following:

(1) Standards and procedures for housekeeping, repair, and interior furnishing of time-share units;

(2) Adoption of standards and rules of conduct governing the use, enjoyment, and occupancy of time-share units by licensees;

(3) Payment by the developer of time-share expenses;

(4) Selection of a managing entity to act for and on behalf of the developer should the developer elect not to undertake the duties, responsibilities, and obligations of being the managing entity for the time-share license plan;

(5) Procedures for establishing the rights of time-share licensees to occupancy, use, and enjoyment of time-share units by prearrangement or under a first reserved, first served priority system;

(6) Procedures for assessment and collection of time-share expenses from time-share licensees;

(7) Comprehensive general liability insurance for death, bodily injury, and property damage arising out of, or in connection with, the occupancy, use, and enjoyment of time-share units by time-share licensees, their guests, and other users. The insurance required by this subsection shall be in addition to the insurance required by § 11A-111 of this title. The developer shall pay the costs of securing and maintaining the insurance. Nothing herein shall be construed to obligate the developer to secure insurance on the conduct, personal effects, or property of the time-share licensees, their guests, and other users;

(8) Methods of providing an alternate use period or monetary compensation to a time-share licensee if a time-share unit cannot be made available for the period to which the licensee is entitled by schedule or by a confirmed reservation; and

(9) Procedures for imposing a monetary penalty or a suspension of a time-share licensee's rights upon failure to comply with the provisions of the time-share instrument, to obey rules and regulations established by the developer, or to pay time-share expenses charged against the time-share licensee. The licensee shall be given notice and the opportunity to answer in person or in writing to the Commission before a decision to impose a monetary penalty or a suspension of rights is rendered.

HISTORY: 1984, ch. 579; 1985, ch. 10, § 3; 2002, ch. 19, § 10.

NOTES:
EDITOR'S NOTE. --Section 10, ch. 19, Acts 2002, provides that "the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, "of this title" has been added at the end of the second sentence in (7).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11A. MARYLAND REAL ESTATE TIME-SHARING ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11A-108 (2006)

§ 11A-108. Termination of time-shares

(a) In general. -- Time-shares shall terminate at the end of the term of the time-share plan as set forth in the time-share instrument. Prior to the termination date in the time-share instrument, all time-shares in a time-share project may be terminated only by agreement of the time-share owners of at least 80 percent of the time-shares, or such larger percentage as the time-share instrument may specify.

(b) Termination agreement. -- An agreement to terminate all time-shares in a time-share project must be evidenced by a termination agreement executed in the same manner as a deed, by the requisite number of time-share owners. The termination agreement must specify a date after which the agreement will be void unless recorded. An executed termination agreement is effective only when recorded in the land records of every county in which a portion of the time-share project is situated.

(c) Foreclosure or enforcement of lien or encumbrance. -- Foreclosure or enforcement of a lien or encumbrance against all time-shares in a time-share project does not terminate the project unless the lienor elects that the project be terminated and the advertisement of foreclosure or enforcement sale so provides.

(d) Sale upon termination. --

(1) The termination agreement may provide for the sale of time-share units and designate a trustee to effect a sale so long as the proceeds of the sale are distributed to individual time-share owners less a sales commission of 5 percent and reasonable sales expenses to be paid to the trustee. On the termination date, the interests of a time-share owner vests in the trustee for the benefit of owners. Proceeds from a sale shall be distributed in the normal order of priority to creditors, lienholders, and to time-share owners in proportion to their shares as provided in the termination agreement or as provided in paragraph (4) of this subsection if the termination agreement does not establish proportionate shares.

(2) On or after the termination date, any owner of a time-share may maintain an action for partition or for allotment or sale in lieu of partition.

(3) Except as otherwise provided in the termination agreement, a time-share owner's right to occupy a time-share unit continues until the termination sale occurs.

(4) If the termination agreement does not specify the respective time-share owner shares in the time-share project, within 180 days prior to the termination date an appraisal must be made of the fair market value of each time-share as of the date of the termination sale by an appraiser designated in the termination agreement or by the trustee. The appraisal shall be sent to each time-share owner. The appraisal determines the value of each time-share owner's interest unless at least 25 percent of the owners disapprove in writing within 60 days after the appraisals are sent or the final judgment of a court prevents the appraisal from being used to determine a value.

HISTORY: 1984, ch. 579; 1985, ch. 10, § 3; 2002, ch. 19, § 10.

NOTES:
EDITOR'S NOTE. --Section 10, ch. 19, Acts 2002, provides that "the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, "of this subsection" has been inserted in the last sentence in (d) (1).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11A. MARYLAND REAL ESTATE TIME-SHARING ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11A-108.1 (2006)

§ 11A-108.1. Continuation of time-share past termination date

(a) Amendment of time-share instrument. -- An association by a two-thirds majority vote of the members present at any regular or special meeting may amend its time-share instrument to provide that the time-shares in a time-share project will not terminate at the end of the term of the time-share plan as provided in § 11A-108 of this title.

(b) Change in date; continued use of time-share; transfer of rights. -- In determining that the time-shares will not terminate at the end of the term of the time-share plan, an association may:

(1) Establish a later termination date or decide that there will be no termination date; and

(2) Provide that on or after the original termination date as set forth in the time-share instrument, a time-share owner shall continue to:

(i) Have exclusive rights to use, occupy, sell, convey, assign, mortgage, exchange, or pass

by will or inheritance, any time-shares owned by the person;

(ii) Use and enjoy all the common elements of the time-share project; and

(iii) Have the previously existing rights and duties in the association including the right to vote and the duty to pay charges and assessments.

(c) Rights transferrable. -- A person to whom a time-share is transferred by sale, conveyance, assignment, mortgage, devise, bequest, or inheritance shall have the rights and duties of the person from whom the time-share was transferred.

(d) Effect of status as tenant-in-common. -- The provisions of this section apply even if, under the terms of a time-share deed or time-share instrument, the time-share owners have or will become owners as tenants in common of a time-share unit or project.

(e) Notice required. -- An association may not take an action provided for in subsection (a) of this section unless the notice of the meeting sent to the time-share owners expressly states that the action may be considered at the meeting.

HISTORY: 2002, ch. 62.

NOTES:
EDITOR'S NOTE. --Section 2, ch. 62, Acts 2002, provides that the act shall take effect October 1, 2002.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11A. MARYLAND REAL ESTATE TIME-SHARING ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11A-109 (2006)

§ 11A-109. Managing entity; association

(a) Managing entity -- Developer to provide. -- If the number of time-shares in a time-share project is more than 12, the developer, before the first transfer of a time-share, shall provide a managing entity. The managing entity may be the developer during the developer control period or the association. If the time-share project is part of a larger project containing time-share units and other units, the managing entity may be the entity that manages the larger project. If the larger project is a condominium regime, the managing entity may be the condominium council with the consent of all condominium owners. If the number of time-shares in the time-share project is 12 or fewer and there is no managing entity, 3 or more time-share owners may form an association.

(b) Same -- Court can appoint. -- In the absence of a managing entity required by this section, a court upon application of a party in interest, may appoint and prescribe the powers of a managing entity.

(c) Same -- Powers. -- Except as otherwise provided in the time-share instrument, the managing entity has the power to:

(1) Institute, defend, or intervene in litigation or other legal proceedings in its own name on behalf of itself or 2 or more time-share owners on matters affecting time-shares, time-share units, or the time-share project;

(2) Adopt and amend reasonable rules and regulations;

(3) Indemnify its directors and officers and maintain directors' and officers' liability insurance with respect to the time-share project;

(4) Impose charges for late payments of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violation of the time-share instrument, bylaws, and rules and regulations of the time-share project; and

(5) Exercise any other powers necessary and proper for the governance and operation of the time-share project.

(d) Same -- Responsibilities. -- Except to the extent otherwise provided in the time-share instrument, and to the extent of funds available to it for such purposes, the managing entity is responsible for the maintenance and repair of and replacements to the time-share units and any personal property available for use by time-share owners, other than personal property separately owned by a time-share owner. Each time-share owner shall afford access through his time-share unit reasonably necessary for these purposes, but if damage is inflicted on such time-share unit through which access is afforded, then in such event the managing entity shall promptly repair such damage.

(e) Association subject to other law. -- Subject to the limitations of this section, the association shall be subject to Title 5, Subtitle 2 of the Corporations and Associations Article.

(f) Removal of director of association. -- A director of an association may be removed from office in accordance with the articles of incorporation of the association. If the articles of incorporation do not provide for removal, a director may be removed at a meeting called for that purpose, with or without cause, by such vote as would suffice for his election. The costs for reproduction and mailing of the proxies used to remove any director shall be reimbursed to the member incurring such costs if the member requests such reimbursement and the director is in fact removed.

(g) List of association members. --

(1) The association shall maintain and make available on written request to a member in good standing of the association at reasonable cost, a list of the names and addresses of all members.

(2) A list provided to a member under paragraph (1) of this subsection:

(i) Shall be used only for purposes of conducting association business; and

(ii) May not be:

1. Used for commercial gain or other pecuniary benefit for the member, the member's agent, or any other person or entity; or

2. Copied, sold, or otherwise delivered or disseminated.

(h) Special meetings of association. --

(1) (i) If an association has not held a meeting for 3 years, a special meeting shall be called by the directors. Notice of the meeting and sample proxy forms shall be sent to all members at least 30 days prior to the meeting.

(ii) Unless a smaller number is provided for in the articles of incorporation or bylaws, the presence of 25 percent of the members, in person or by proxy, shall constitute a quorum.

(2) (i) If the number of members present at the special meeting is insufficient to constitute a quorum, not more than 6 months thereafter a second special meeting shall be called.

(ii) Notice of the meeting and sample proxy forms shall be sent to all members at least 30 days before the meeting.

(iii) Notice of a second special meeting shall contain a statement that any business may be considered at the meeting, including amendment of the association's articles of incorporation or bylaws.

(iv) At this special meeting, the presence of 5 percent of the members, in person or by proxy shall constitute a quorum.

(3) At any special meeting held under this subsection, any action may be taken by simple majority vote, including amendment of the association's articles of incorporation or bylaws.

HISTORY: 1984, ch. 579; 1990, ch. 85.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11A. MARYLAND REAL ESTATE TIME-SHARING ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11A-110 (2006)

§ 11A-110. Expenses

(a) Assessed in accordance with instrument; interest. -- Time-share expenses must be assessed against all time-shares in accordance with the time-share instrument. Any past due assessment shall bear interest at the rate established by the managing entity or time-share instrument not to exceed 18 percent per year.

(b) Assessment against benefited owner. -- To the extent required by the time-share instrument, any time-share expense benefiting fewer than all of the time-share owners must

be assessed exclusively against the time-share owners benefited.

(c) Judgment against association. -- Assessments to pay a judgment against the association may be made only against the time-share estate owners of record in the time-share estate project at the time the judgment was entered, in proportion to their time-share expense liabilities.

(d) Expense caused by misconduct of owner. -- If any time-share expense is caused by the misconduct of any time-share owner, the association may assess that expense exclusively against that owner.

(e) Liens. --

(1) (i) If the applicable time-share instrument so provides, a person who has a duty to make assessments for time-share expenses has a lien on a time-share for any assessment levied against that time-share or fines imposed against its owner from the time the assessment or fine becomes due, effective upon recording.

(ii) As to a time-share estate, assessments, interest, late charges, costs of collection, and reasonable attorney's fees may be enforced by the imposition of a lien under the Maryland Contract Lien Act. Liens may be enforced and foreclosed in a separate proceeding against an individual time-share estate or enforced and foreclosed in a single proceeding against some or all time-share estates in the same project whose owners are in arrears in payment of assessments. Enforcement and foreclosure of a number of liens under a single proceeding does not alter the individual rights of an owner, including the right to receive any surplus from the sale that the owner would be entitled to receive under a separate proceeding against an individual time-share estate, or the rights of the person enforcing the liens. Suit for any deficiency following foreclosure may be maintained in the same proceeding, and suit for any money judgment for unpaid assessments may also be maintained in the same proceeding without waiving the right to seek a lien under the Maryland Contract Lien Act.

(iii) As to a time-share license, the person who has the duty to make assessments shall have the rights of a secured party under § 9-504 of the Commercial Law Article to sell, lease, or dispose of the time-share license. Unless the time-share instrument otherwise provides, fees, charges, late charges, fines, and interest charged are enforceable as assessments under this section.

(iv) If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment becomes due provided that within 15 days of an owner's failure to pay an installment, that person who has a duty to make assessments notifies the owner that, if the owner fails to pay any installment within 15 days of the notice, full payment of the remaining annual assessment will then be due and shall constitute a lien on the unit as provided in this section.

(2) The lien is perfected upon recordation of a claim of lien, with respect to the time-share estate, among the land records of the county in which the time-share unit is situate, or with respect to the time-share license, among the financing records in the county in which the time-share unit is situated. The claim of lien shall state the description of the time-share unit, the name of the record owner, the amount due, and the period for which the assessment was due. The claim of lien shall also state that notice of intent to perfect the lien, giving the time-share owner an opportunity to dispute the amount of the assessment, was sent to the last known address of the owner not less than 10 days prior to recordation. The claim of lien shall be signed and verified by an officer or agent of the association. On full payment of the assessment and other permitted amounts for which the lien is claimed, the unit owner shall be entitled to a recordable satisfaction of the lien in any form used for the release of mortgages in the county in which the condominium is located. Fees and charges imposed under this section are enforceable as assessments under this section.

(3) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are

instituted within 3 years after the assessments become payable.

(4) An action may not be brought to foreclose a lien except after 10-days' written notice to the time-share owner given by registered mail, return receipt requested, to the last known address of the owner. Notice shall be deemed given even if delivery of the letter is refused by the addressee or any co-owner of the time-share.

(5) A judgment or decree in any action brought under this section may include costs and reasonable attorney's fees for the prevailing party.

(6) A person who has a duty to make assessments for time-share expenses shall furnish a time-share owner upon written request as often as quarter annually a recordable statement setting forth the amount of unpaid assessments currently levied against his time-share. The statement shall be furnished within 10 business days after receipt of the request and is binding in favor of persons reasonably relying thereon.

HISTORY: 1984, ch. 579; 1989, ch. 5, § 1; 1998, ch. 722; 2004, ch. 25.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 25, Acts 2004, approved April 13, 2004, and effective from date of enactment, substituted "co-owner" for "coowner" in (e)(4).

CITED IN United Cable Television of Baltimore Ltd. Partnership v. Burch, 354 Md. 658, 732 A.2d 887 (1999).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11A. MARYLAND REAL ESTATE TIME-SHARING ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11A-111 (2006)

§ 11A-111. Insurance

(a) Managing entity to maintain. --

(1) Prior to the sale of any time-share, and while there exist any time-shares, the managing entity shall maintain for the benefit of the developer, association, and owners property insurance on the time-share project and any personal property available for use by time-share owners, other than personal property separately owned by a time-share owner, insuring against all risks of direct physical loss commonly insured against, in a total amount, after application of any deductibles, of not less than 80 percent of the actual cash value of the insured property, exclusive of land excavations, foundations, and other items normally excluded from property policies.

(2) If such a policy is reasonably obtainable, the policy shall provide that the insurer shall waive its right to subrogation under the policy against any time-share owner or members of his household.

(3) No act or omission by any time-share owner, unless acting within the scope of his authority on behalf of an association, shall void the policy or be a condition to recovery by any other person under the policy.

(4) If, at the time of a loss under the policy, there is other insurance in the name of a time-share owner covering the same risk covered by the policy, the policy maintained pursuant to this section is primary insurance not contributing with the other insurance, and other insurance in the name of a time-share owner applies only to loss in excess of the primary coverage.

(b) Insurance trustee. -- Any loss covered by insurance shall be adjusted with, and the insurance proceeds from that loss shall be payable to, the insurance trustee, who may be a party in interest, designated in accordance with the time-share instrument. If none has been designated or if the designated trustee fails to serve, the managing entity shall be the insurance trustee. The insurance trustee shall hold any insurance proceeds in trust for time-share owners and lienholders. The proceeds must be disbursed for the repair or restoration of the property in accordance with this section, and time-share owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is:

(1) A surplus of proceeds after the property has been repaired or restored; or

(2) The project is terminated.

(c) Certificate or memorandum of insurance. -- An insurer under this section shall issue certificates or memoranda of insurance to the association and, upon written request, to any time-share owner, mortgagee, or beneficiary under a deed of trust. The insurance may not be canceled until 30 days after notice of the proposed cancellation has been mailed to the managing entity and each person to whom a certificate or memorandum of insurance has been issued.

(d) Repair or replacement. --

(1) Except to the extent that a project instrument requires otherwise and to the extent of the proceeds available, any portion of the time-share project damaged or destroyed shall be repaired or replaced promptly by the managing entity unless:

(i) Another person repairs or replaces it;

(ii) There is a termination of the time-share project;

(iii) Repair or replacement would be illegal under any State or local health or safety statute or ordinance;

(iv) 50 percent of the time-share owners, including 80 percent of owners of every time-share in a time-share unit that will not be rebuilt, vote not to rebuild; or

(v) A decision not to rebuild the damaged property is made by another person empowered to make that decision.

(2) The cost of repair or replacement in excess of insurance proceeds and reserves shall be a time-share expense.

(3) If the entire time-share project need not be repaired or replaced, unless the time-share instrument provides otherwise:

(i) The insurance proceeds attributable to the damaged area must be used to restore the damaged area to a condition compatible with the remainder of the project; and

(ii) The insurance proceeds attributable to time-share units that are not rebuilt shall be distributed as if those units constituted a time-share project in which all time-shares are terminated.

HISTORY: 1984, ch. 579; 2002, ch. 19, § 10.

NOTES:
EDITOR'S NOTE. --Section 10, ch. 19, Acts 2002, provides that "the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, a semicolon has been substituted for the comma in (b) (1).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11A. MARYLAND REAL ESTATE TIME-SHARING ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11A-112 (2006)

§ 11A-112. Public offering statement

(a) In general. -- Any developer or the developer's designated project broker shall deliver a public offering statement to the purchaser before transfer of the time-share and no later than the date of the contract.

(b) Filing with and approval by Secretary of State. --

(1) A public offering statement together with a fee equal to $ 1 for each time-share to be offered for sale, not to exceed $ 500, must be filed with, and approved by, the Secretary of State prior to being delivered to any time-share purchaser. The Secretary of State shall determine whether the public offering statement satisfies the requirements of this title, and shall either approve or reject within 45 days of receipt. After approval, the Secretary of State shall promptly issue an order of approval. If the Secretary of State rejects a public offering statement, he shall promptly issue a written order stating the reasons for rejection. The Secretary of State's failure to act within 45 days of receipt shall be deemed an approval of the public offering statement. A developer may consent in writing to an extension of the review period for approval or rejection.

(2) Rejection of a public offering statement shall not act as a bar to reapplication. A reapplication which amends the original statement to comply with the stated reasons for rejection and which is accomplished by an additional fee of $ 100 shall be approved by the Secretary of State upon determination that the amended public offering statement satisfies the requirements of this title.

(c) Filing of changes. --

(1) A developer shall file copies of any changes to the information required by this section. Those changes must be approved by the Secretary of State before the changes are distributed to the public.

(2) The Secretary of State shall either approve or reject the changes within 10 days of receipt. The Secretary of State's failure to act within said 10 days shall be deemed an approval of such changes.

(d) Powers of Secretary of State. --

(1) The Secretary of State may adopt any regulations necessary to implement and enforce this section.

(2) The Secretary of State may prescribe forms and procedures for submitting public offering statements.

(3) The Secretary of State shall require the applicant to identify all persons who prepared any part of the public offering statement.

(e) Liability for false or misleading statements. -- Any person who provides significant information contained in the public offering statement is liable for any false or misleading statement or for any omission of material fact in the statement which he provided or should have provided. In addition to other applicable penalties, any person who knowingly violates this subsection, or who disseminates to the public and had actual knowledge of such statement or omission, or who, in the exercise of reasonable care, should have known of such statement or omission, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $ 10,000, 6 months imprisonment, or both.

(f) Contents of statement. -- A public offering statement shall contain:

(1) A cover page stating only:

(i) The name and location of the time-share project;

(ii) A statement that the project is a time-share project; and

(iii) The following, in conspicuous type:

"This public offering statement contains important matters to be considered in acquiring a time-share. The statements contained herein are only summary in nature. A prospective purchaser should refer to all references, exhibits thereto, contract documents, and sales materials. You should not rely upon oral representations as being correct. Refer to this document and accompanying exhibits for correct representations. The seller is prohibited from making any representations which conflict with those contained in the contract, this public offering statement, and the time-share instrument.";

(2) A summary of all statements required to be in conspicuous type in all exhibits to the offering statement;

(3) A separate index of the contents and exhibits of the public offering statement;

(4) A description of the time-share plan, including:

(i) The name and principal address of the developer and the location of the time-share project;

(ii) A general description of the time-share project and the time-share units, including the number of units in the time-share project and any larger project of which it is a part, and the schedule of commencement and completion dates of all improvements;

(iii) As to all units owned or offered by the developer in the same project:

1. The types and numbers of units;

2. Identification of units that are time-share units;

3. The types and durations of the time-share;

4. The maximum number of units that may become part of the time-share project, if known; and

5. A statement of the maximum number of time-shares that may be created or that there is no maximum;

(iv) Copies and a brief narrative description of the significant features of the time-share instrument and any documents referred to in the instrument other than any plats and plans, copies of any contracts or leases to be signed by the purchaser at closing, and a brief narrative description of any contract or lease that will or may be subject to cancellation by the owner of a time-share under § 11A-114 of this title;

(v) The identity of the managing entity and the manner, if any, whereby the developer may change the managing entity or its control;

(vi) A balance sheet for the time-share estate project, that is prepared by an independent certified public accountant, containing information effective as of the close of the immediately preceding fiscal year, or the fiscal year immediately before the last one if the statement is distributed within 90 days of the end of a fiscal year, and a projected budget for the association, either within or as an exhibit to the public offering statement, for 1 year after the date of the first transfer to a purchaser, a statement of who prepared the budget, and a statement of the budgetary assumptions concerning occupancy and inflation factors. The budget shall include:

1. A statement of the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacements;

2. A statement of any other reserves;

3. The projected time-share expense liability by category of expenditures for the time-share units; and

4. The projected time-share expense liability for each time-share;

(vii) A description of time-share expenses, the current amounts assessed, and the method and formula for changes;

(viii) Any services which the developer provides or expenses he pays and which he expects may become at any subsequent time a time-share expense and the projected time-share expense liability attributable to each of those services or expenses for each time-share;

(ix) Any initial or special fee due from the time-share purchaser at closing, together with a description of the purpose of the fee and the method of its calculation;

(x) A statement of any liens, defects, or encumbrances on or affecting the title to the time-share units;

(xi) A description of any financing offered by the developer;

(xii) The terms and significant limitations of any warranties provided by the developer, including statutory warranties and limitations on enforcement of damages;

(xiii) A statement that:

1. Subject to the provisions of § 11A-114 (a) (3) of this title, within 10 days after receipt of a public offering statement or signing a contract or the time-share unit meets all building requirements and is ready for occupancy, whichever is latest, a purchaser may cancel the contract for purchase of the time-share from the developer; and

2. If a developer fails to provide a public offering statement to the time-share purchaser before transferring the time-share and the purchaser elects to cancel the contract, the purchaser is entitled to recover from the developer 110 percent of the sales price of the time-share actually paid by the purchaser;

(xiv) A description of any unsatisfied judgments against the developer or the managing entity, the status of any pending suits involving the sale or management of real estate to which the developer or an affiliate of the developer or the managing entity is a defending party, and the status of any pending suits, of which the developer has actual knowledge, of significance to the time-share project;

(xv) A statement that a bond or letter of credit is required under § 11A-116 of this title, and that any deposit made in connection with the purchase of a time-share will be held in an escrow account or a trust account until expiration of the rescission period or any later time specified in the contract, and will be returned to the purchaser if the purchaser cancels the contract;

(xvi) Any restraints on transfer of time-shares or portions thereof;

(xvii) A description of the insurance coverage provided for the benefit of time-share owners;

(xviii) Any facility fees;

(xix) The extent to which financial arrangements have been provided for completion of all promised improvements;

(xx) The extent to which a time-share unit may become subject to a tax or other lien arising out of claims against other time-share owners of the same time-share unit or the developer, managing entity, or association; and

(xxi) A description of the rights and remedies provided in the time-share instrument for a time-share owner who is prevented from enjoying exclusive occupancy of a time-share unit, or a statement that none is provided in the instrument; and

(5) If the time-share owners are to be permitted or required to become members of or to participate in any exchange program, a statement containing the information set forth in § 11A-120 of this title.

(g) Amendment of statement. -- A developer shall promptly amend the public offering statement to report any material change in the required information. Insofar as the developer

relies in good faith on information provided by others in making the required disclosures about exchange programs, he is responsible for a misrepresentation only if he has knowledge of its falsity.

(h) Statement filed with Securities and Exchange Commission; offer not security. --

(1) At any time that a time-share project is registered with the Securities and Exchange Commission of the United States, a developer satisfies all requirements relating to the preparation of a public offering statement under this section if he delivers to the time-share purchaser and files with the Secretary of State and the Commission a copy of the public offering statement filed with the Securities and Exchange Commission if that contains substantially the same information as is required in a public offering statement under this title.

(2) The mere offering of a time-share or the offering of an exchange program in conjunction with the offering or sale of a time-share in this State shall not constitute a security under the laws of this State.

(i) Registration of time-shares situated wholly outside this State. --

(1) (i) In the case of a time-share situated wholly outside of this State, an application for registration of a public offering statement with the Secretary of State that has been approved by an agency in the state where the time-share is located and that substantially complies with the requirements of this title may be accepted for registration at the discretion of the Secretary.

(ii) The Secretary of State may require additional information, before accepting a registration under this subsection, to assure adequate disclosure.

(2) If there is no out-of-state agency where the time-share is located that has approved the public offering statement, the application for registration of the out-of-state time-share shall consist of the public offering statement described under this section and the application form prescribed by the Secretary of State.

HISTORY: 1984, ch. 579; 1985, ch. 10, § 3; ch. 720, § 1; ch. 721; 1997, ch. 14, § 1; 2002, ch. 19, § 10.

NOTES:
EDITOR'S NOTE. --Section 10, ch. 19, Acts 2002, provides that "the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, "of this title" has been added at the end of (f) (4) (iv) and (f) (5) and inserted in (f) (4) (xiii) 1. and (f) (4) (xv).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11A. MARYLAND REAL ESTATE TIME-SHARING ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11A-113 (2006)

§ 11A-113. Conversion buildings

(a) Statement to include condition of building. -- If a conversion building is more than 5 years old, and the developer owns or controls time-shares in more than 50 percent of all units in the building, the public offering statement shall contain, in addition to other required information, a statement of the physical condition and state of repair of the major structural, mechanical, electrical, and plumbing systems of the conversion building, to the extent reasonably ascertainable, and estimated costs of repair for which a present need is disclosed in such statement. The developer is entitled to rely on the reports of architects and engineers who examine the conversion building. This requirement applies only to units in which use as a dwelling or for recreational purposes, or both, is permissible.

(b) Notice to tenants. --

(1) The developer of a time-share project which includes all or any part of a conversion building, and any person in the business of selling real estate for his own account who intends to offer time-share in a conversion building, shall give each of the residential tenants and any residential subtenant in possession of each proposed time-share unit notice of the conversion no later than 120 days before such developer will require the tenants and any subtenant in possession to vacate. The notice must set forth generally the rights of tenants and subtenants under this section and be hand delivered to the unit or mailed to the tenant and subtenant at the address of the unit or any other mailing address provided by the tenant or subtenant.

(2) No tenant or subtenant may be required by the developer to vacate upon less than 120 days' notice, except by reason of nonpayment of rent, waste, normal expiration of the term of the lease, or conduct that disturbs other tenants' peaceful enjoyment of the premises, and the terms of the tenancy may not be altered during that period without the consent of the tenant or subtenant. Failure to give notice as required by this subsection is a defense to an action for possession.

HISTORY: 1984, ch. 579.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11A. MARYLAND REAL ESTATE TIME-SHARING ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11A-114 (2006)

§ 11A-114. Right of cancellation

(a) In general. -- A time-share purchaser shall have the right to cancel the sales contract until midnight of the tenth calendar day following whichever occurs latest:

(1) The contract date;

(2) The day on which the time-share purchaser received the last of all documents required to be provided as part of the public offering statement; or

(3) The time-share unit meets all building requirements and is ready for occupancy. However, if the developer obtains a payment and performance bond from a surety to insure completion of the project as represented in the public offering statement and contract of sale, and files the bond with the Commission, this item does not apply.

(b) Right cannot be waived. -- The right of cancellation cannot be waived by the purchaser or by any other person. No closing shall occur until the purchaser's cancellation period has expired. Any false representation made by or on behalf of a developer that a purchaser may not exercise the right of cancellation, or any attempt to obtain a waiver of the purchaser's cancellation rights, or a closing prior to the expiration of the cancellation period, shall be unlawful and such closing shall be voidable at the option of the purchaser for a period of 1 year after the expiration of the cancellation period. Nothing in this section shall preclude the execution of documents in advance of closing for delivery after expiration of the cancellation period.

(c) When notice considered given. -- Any notice of cancellation given by mail or telegraphic communication shall be considered given on the date postmarked, if mailed, or when transmitted from the place of origin, if telegraphed, so long as the notice is actually received by the developer. If notice is given by means of a writing transmitted other than by mail or telegraph, it shall be considered given at the time of receipt at the principal place of business of the developer.

(d) Rights upon cancellation. -- In the event of a timely cancellation, or in the event the time-share plan is one in which time-share licenses are sold and at any time the time-share project is no longer available to such licensees, the developer shall honor the rights of any purchaser to cancel the sales contract. Upon such cancellation, the developer shall refund to the purchaser all payments made which exceed the proportionate amount of benefits made available under the plan, using the number of years of the proposed plan as the base. Such refund shall be made within 20 business days of demand or within 5 days after receipt of funds from the purchaser's cleared check, whichever is later.

HISTORY: 1984, ch. 579; 1987, chs. 379, 569.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11A. MARYLAND REAL ESTATE TIME-SHARING ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11A-115 (2006)

§ 11A-115. Resale of time-share

(a) Definition. -- In this section, "time-share owner" includes an association reselling time-shares acquired by the association:

(1) Through foreclosure of a lien for nonpayment of assessments or other charges by a time-share owner as provided in § 11A-110 of this title; or

(2) By deed in lieu of foreclosure from a time-share owner who is delinquent in payment of assessments or other charges as provided in § 11A-110 of this title.

(b) Certificate. -- In the event of the resale of a time-share by a time-share owner, the selling time-share owner shall furnish to the purchaser before the execution of any sales contract, or, if there is no sales contract, before the transfer of title or use, a copy of the time-share instrument, other than plats and plans, and a certificate containing:

(1) A statement disclosing the effect on the proposed transfer of any right of first refusal or other restraint on transfer of the time-share or any portion thereof;

(2) A statement setting forth the amount of the periodic time-share expense liability and any unpaid time-share expense or other sums currently due and payable from the selling time-share owner in respect of the time-share;

(3) A statement of any other facility fees payable by time-share owners; and

(4) A statement of any judgments or other matters that are or may become liens against the time-share being sold or the time-share unit of which it is a part and the status of any pending suits that may result in those liens.

(c) Managing entity to supply information. -- The managing entity, within 10 days after a written request by the selling time-share owner, shall for a reasonable fee furnish a certificate containing the information necessary to enable the selling time-share owner to comply with this section. A selling time-share owner providing a certificate from the managing entity is not liable to the purchaser for any erroneous information provided by the managing entity, other than for judgment liens against the time-share or the time-share unit of which it is a part, but the managing entity shall be liable therefor.

(d) Purchaser not liable for expenses not in certificate. -- The purchaser is not liable for any unpaid time-share expense or facility fee greater than the amount set forth in a certificate prepared by the managing entity. The selling time-share owner is not liable to the purchaser for the failure or delay of a managing entity to provide the certificate in a timely manner.

(e) Right of cancellation. -- Any purchaser may at any time within 7 days following receipt of all information required by this section, cancel the sales contract without reason and without liability. The purchaser, upon cancellation, is entitled to the return of any deposits made on

account of the contract. The rights of the purchaser under this section may not be waived, and any attempted waiver is void.

HISTORY: 1984, ch. 579; 1999, ch. 258.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11A. MARYLAND REAL ESTATE TIME-SHARING ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11A-116 (2006)

§ 11A-116. Purchase money escrow account; bonds

(a) "Purchase money" defined; escrow account. --

(1) In this section, "purchase money" includes any money, note, security, or other monetary consideration paid by a purchaser for a time-share.

(2) All purchase money received by or on behalf of a developer from a purchaser for the purchase or reservation of a time-share shall be deposited in an escrow account designated solely for that purpose with a financial institution whose accounts are insured by a government agency until the expiration of the time for cancellation or any later time provided in the contract.

(3) After the expiration of the cancellation period or that provided in the contract, if no notice of cancellation is received, such funds or instruments may be released as provided in subsection (b).

(b) When money may be released. -- Any purchase money received by or on behalf of a developer from purchasers of time-shares may be released to the developer, provided he maintains a surety bond for the benefit of each purchaser of a time-share, until the happening of the earlier of:

(1) The conveying of good and merchantable title to the time-share estate or the granting of an unencumbered right to use the time-share project pursuant to a time-share license;

(2) The return of the purchase money to the purchaser; or

(3) The forfeiture of the purchase money by the purchaser, under the terms of the contract.

(c) "Bond" defined. -- As used in this section the word "bond" includes a bond issued by a surety or a letter of credit issued by a financial institution acceptable to the Commission and in a form acceptable to the Commission.

(d) Notice of cancellation of bond. -- The bond may not be canceled by the surety until 30 days after the surety gives notice of cancellation to the Commission.

(e) Penalty of bond. -- The penalty of the bond shall be adjusted from time to time in accordance with the following schedule:

Total Amount of Purchase Money Held	Penalty of Bond
(1) Zero to $ 200,000	$ 100,000
(2) $ 200,001 to $ 500,000	200,000
(3) $ 500,001 to $ 1,000,000	500,000
(4) Over $ 1,000,000	1,000,000

(f) Amount held not to exceed amount for which bonded. --

(1) The amount of purchase money from sales of time-shares held at any one time by the time-share developer shall not exceed the amount for which the developer is bonded in accordance with the schedule set forth in this section.

(2) If a developer is required to be bonded with respect to more than one project that the developer owns or controls, directly or indirectly, the developer shall obtain a separate bond in the appropriate penalty amount for the purchase money held on each project which becomes registered with the Commission on or after July 1, 1987.

(g) Penalty for violation. -- A developer who fails to maintain an escrow account or a surety bond as required by this section shall be guilty of a misdemeanor and, upon conviction, shall be sentenced to pay a fine of not more than $ 1,000 or to undergo imprisonment for a term of not more than 1 year, or both, for each violation.

(h) Out-of-state time-shares. -- The requirements of this section may be waived by the Commission with respect to a time-share project located outside this State provided:

(1) Compliance and enforcement of the specific provisions are impractical or impossible;

(2) The laws of the state or country in which the time-share project is located require escrow or bonding protection for purchases of time-shares, and the developer has complied with such law; or

(3) Any other reason the Commission finds relevant to permitting an alternative arrangement.

(i) Real Estate Guaranty Fund. -- No claim shall be made for reimbursement from the Real Estate Guaranty Fund under Title 17, Subtitle 4 of the Business Occupations and Professions Article if the claim can be successfully maintained against the surety bond. Under no circumstances shall the surety be entitled to reimbursement from the Real Estate Guaranty Fund.

(j) Bond for projects located outside State. -- A developer of a project located outside this State shall secure a bond only for the benefit of purchasers who are residents of this State or whose contract to purchase a time-share was negotiated or executed in whole or in part in this State.

(k) Liability of insurance company or financial institution after cancellation or termination of bond. -- The insurance company or financial institution issuing a bond shall remain liable, after cancellation or termination of the bond, for any purchase money paid prior to the cancellation or termination.

(l) Consent of foreign insurance company or financial institution to be sued. -- By the issuance of a bond, a foreign insurance company or financial institution shall be deemed to have consented to being sued in this State regarding any dispute or claim against the bond.

HISTORY: 1984, ch. 579; 1985, ch. 10, § 3; ch. 721; 1987, chs. 378, 570; 1988, ch. 563, § 5; 1989, ch. 236, § 2; ch. 89; 1990, ch. 6, § 13; 1994, ch. 3, § 13; 1995, ch. 3, § 1; 2002, ch. 19, § 10.

NOTES:
EDITOR'S NOTE. --Section 10, ch. 19, Acts 2002, provides that "the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, a comma has been inserted following "section" in (a) (1), and "one" has been substituted for "1" in (f) (1).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11A. MARYLAND REAL ESTATE TIME-SHARING ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11A-117 (2006)

§ 11A-117. Warranties

(a) In general. -- Sections 10-201, 10-202, and 10-203 of this article apply to all sales by developers under this title. For purposes of this section, a newly constructed unit means a newly constructed or converted unit.

(b) Additional implied warranty on time-share units. -- In addition to the implied warranties set forth in § 10-203 of this article, there is an implied warranty on every time-share unit from the developer to a purchaser that the developer will correct any defects in materials or

workmanship in the construction of walls, ceilings, floors, and heating and air conditioning systems in the unit. The warranty on the unit commences with the transfer of either title or use to the unit and extends to each time-share owner for a period of 1 year. In addition, a developer shall warrant to a purchaser of a time-share that any existing use of the time-share unit that will continue does not violate applicable law or the project instrument.

(c) Additional implied warranty on common elements. --

(1) In addition to the implied warranties set forth in § 10-203 of this article, there is an implied warranty from the developer to the association that the developer will correct any defect in material or workmanship in the common elements, including the roof, foundation, external and bearing walls, mechanical, electrical, and plumbing systems, and other structural elements of the common elements, and that the common elements are within acceptable industry standards in effect when such common elements were constructed.

(2) The warranty of this subsection commences when a given common element is completed or when it is made available to a time-share purchaser, whichever shall later occur, and shall continue for a period of 3 years.

(d) Suit to enforce. --

(1) A suit for enforcement of a warranty may be brought by a time-share owner or by the association. If any warranty is breached, the court may award legal or equitable relief, or both.

(2) Notice of a defect shall be given within the warranty period and suit for enforcement shall be brought within 1 year of the end of the warranty period.

(3) (i) Except as provided in subparagraph (ii), a cause of action for breach of warranty, regardless of the purchaser's lack of knowledge of the breach, accrues, unless extended by agreement:

1. As to a unit, 6 months after the time the unit is first occupied by a purchaser; and

2. As to other improvements, at the time each is completed.

(ii) If a warranty explicitly extends to future performance or duration of any improvement or component of the time-share project, the cause of action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.

(e) Application to developer only. -- Warranties shall not apply to any defects caused through abuse or failure to perform maintenance by a time-share owner, the association, or managing entity, if other than the developer.

HISTORY: 1984, ch. 579.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11A. MARYLAND REAL ESTATE TIME-SHARING ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11A-118 (2006)

§ 11A-118. Sales contract

(a) In general. -- A developer shall furnish each purchaser a copy of the sales contract which contains the following information:

(1) The date the contract is executed by each party;

(2) The name and address of the developer;

(3) The total financial obligation of the purchaser, including the initial purchase price and any additional charges, time-share expenses, or facility fees;

(4) A description of the time-share period being sold, including whether any interest in real property is being conveyed and the number of years constituting the term of the time-share plan;

(5) The estimated date of completion of construction of each unit or common element which is not completed at the time the sales contract is executed; and

(6) Immediately before the space for the signature of the purchaser, in conspicuous type, subject to the provisions of § 11A-114 (a) (3), the following statements are to be inserted:

"You may cancel this contract without any penalty or obligation within 10 days from the date of this contract, or until 10 days after you receive the public offering statement, or the time-share unit meets all building requirements and is ready for occupancy, whichever last occurs.

If you decide to cancel this contract, you must notify the developer in writing, in which case, your notice of cancellation shall be effective on the date sent provided it is actually received by the developer and shall be sent to (name of developer) at (address of developer).

Any attempt to obtain a waiver of your cancellation rights is unlawful. While you may execute all documents in advance, the closing, as evidenced by delivery of the deed or other document, before expiration of your 10 day cancellation period, is prohibited."

(b) Time-share license conveyed. -- If a time-share license is being conveyed, the contract shall also contain, in conspicuous type, the following statement:

"You may also cancel this contract, at any time after the accommodations or facilities at the time-share project are no longer available as provided in this contract and the public offering statement."

(c) Refund. -- A statement that, in the event of cancellation of the contract within the 10-day period, a refund shall be made within 20 business days after receipt of notice of cancellation, or within 5 days after receipt of funds from the purchaser's cleared check, whichever is later.

HISTORY: 1984, ch. 579.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11A. MARYLAND REAL ESTATE TIME-SHARING ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11A-119 (2006)

§ 11A-119. Advertising

(a) Misleading advertising prohibited. -- It is unlawful for any person when selling time-shares in the State, to authorize, use, direct, or aid in the dissemination, publication, distribution, or circulation of any statement, advertisement, radio broadcast, or telecast concerning the time-share project in which the time-shares are offered which contains any statement or sketch which is false or misleading or contains any representation or pictorial representation of proposed improvements or nonexistent scenes without clearly indicating that the improvements are proposed and the scenes do not exist.

(b) Limitations. -- No advertising for the offer or disposition of time-shares shall:

(1) Contain any representation as to the availability of a resale program or rental program offered by or on behalf of the developer unless the resale program or rental program has been made a part of the offering and submitted to the Commission;

(2) Contain an offer or inducement to purchase which purports to be limited as to quantity or restricted as to time unless the numerical quantity or time applicable to the offer or inducement is clearly and conspicuously disclosed;

(3) Contain statements concerning the availability of time-shares at a particular minimum price if the number of time-shares available at that price comprises less than 10 percent of the unsold inventory of the developer, unless the number of time-shares then for sale at the minimum price is set forth in the advertisement;

(4) Contain any statement that the time-shares being offered for sale can be further divided unless a full disclosure of the legal requirements for further division of the time-share is included;

(5) Contain any asterisk or other reference symbol as a means of contradicting or changing the ordinary meaning of any previously made statement in the advertisement;

(6) Misrepresent the size, nature, extent, qualities, or characteristics of the accommodations or facilities which comprise the time-share project;

(7) Misrepresent the nature or extent of any services incident to the time-share project;

(8) Misrepresent or imply that a facility or service is available for the exclusive use of purchasers or owners if a public right of access or of use of the facility or service exists;

(9) Make any misleading or deceptive representation with respect to the contents of the time-share instrument, the sales contract, or this title;

(10) Misrepresent the conditions under which a purchaser or owner may participate in an exchange program;

(11) Describe any proposed or uncompleted private facilities over which the developer has no control unless the estimated date of completion is set forth and evidence has been presented to the Commission that the completion and operation of the facilities are reasonably assured within the time represented in the advertisement; or

(12) Describe or portray any improvement which is not required to be built unless the description or portrayal of the improvement is conspicuously labeled or identified as "need not be built".

(c) Promotional devices; disclosure of intent to solicit. -- It is unlawful for any person to use any promotional device, including sweepstakes, gift awards, lodging certificates or discounts, with the intent to solicit the acquisition of time-shares without disclosing that purpose.

(d) Disclosure of value of promotional device; elements of chance prohibited. -- A person may not utilize a promotional device to solicit the purchase of a time-share or offer merchandise or services to any prospective purchaser without clearly disclosing the retail value of such merchandise or services. No promotional device may involve any elements of chance as to the selection or award of particular merchandise or services to any prospective purchaser.

(e) Failure to award items. -- It is unlawful for any person using a promotional device to solicit the purchase of a time-share to fail to award all items promised in such promotion by the date and year specified in the promotion.

(f) Use of public offering statement. -- A public offering statement may not be used for promotional purpose before the developer is registered and afterwards only if used in its entirety. No person may advertise or represent that the Commission or the Secretary of State has approved or recommended the time-shares or any of the documents contained in the application for registration.

HISTORY: 1984, ch. 579; 1985, ch. 720, § 1.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11A. MARYLAND REAL ESTATE TIME-SHARING ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11A-120 (2006)

§ 11A-120. Exchange of occupancy rights

(a) Public offering statement to disclose certain information. -- If at the time of purchase of a time-share, the purchaser is permitted through any arrangement of the developer to become a member of or to participate in any program for the exchange of occupancy rights with other time-share projects, the public offering statement or a supplement delivered with the public offering statement shall disclose:

(1) The name and address of the exchange company;

(2) The names of all officers, directors, and shareholders holding more than 10 percent of the voting stock of the exchange company;

(3) Whether the exchange company or any of its officers or directors has any legal or beneficial interest in any developer or managing entity for any time-share project participating in the exchange program, and if so, the name and location of the time-share project and the nature of the interest;

(4) Whether the purchaser's participation in the exchange program is dependent upon the time-share project's continued affiliation with the exchange program;

(5) That the purchaser's participation in the exchange program is voluntary;

(6) The terms and conditions of the purchaser's contractual relationship with the exchange program, and the procedure by which changes may be made;

(7) The procedure to qualify for and effectuate exchanges;

(8) All limitations, restrictions, or priorities employed in the operation of the exchange program, including limitations on exchanges based on season, unit size, or levels of occupancy, expressed in bold-faced type; and in the event that such limitations, restrictions, or priorities are not uniformly applied by the exchange program, the manner in which they are applied;

(9) Whether exchanges are arranged on a space available basis, and whether any guarantees of fulfillment of specific requests for exchanges are made by the exchange program;

(10) Whether and under what circumstances a purchaser may, in dealing with the exchange program, lose the use and occupancy of his time-share period in any properly applied for exchange without being provided with substitute accommodations by the exchange program;

(11) The fees for participation by purchasers in the exchange program, whether any such fees may be altered by the exchange company, and the circumstances under which alterations may be made;

(12) The name and address of the site of each accommodation or facility in the time-share projects participating in the exchange program;

(13) The number of time-share units in each participating time-share project which are available for occupancy expressed within the following numerical groupings: 1-5; 6-10; 11-20; 21-50; 51 and over;

(14) The number of currently enrolled purchasers at each time-share project participating in the exchange program, expressed within the following numerical groupings: 1-100; 101-249; 250-499; 500-999; 1,000 and over; and a statement of the criteria used to determine those purchasers who are currently enrolled in the exchange program;

(15) The disposition made by the exchange company of time-share periods deposited with the exchange program by purchasers enrolled in the exchange program and not used by the exchange company in effecting exchanges;

(16) The following information which shall be independently audited by a certified public accountant or accounting firm in accordance with the standards of the Accounting Standards Board of the American Institute of Certified Public Accountants, and reported on an annual basis on or before July 1 of the succeeding year but prepared not more than 18 months before the information is delivered:

(i) The number of purchasers currently enrolled in the exchange program;

(ii) The number of accommodations and facilities that have current affiliation agreements with the exchange program;

(iii) The percentage of confirmed exchanges which shall be based on the number of exchanges properly applied for, together with the criteria used to determine whether an exchange request was properly applied for;

(iv) The number of time-share periods for which the exchange program has an outstanding obligation to provide an exchange to purchasers who relinquished a time-share period during the year in exchange for a time-share period in any future year; and

(v) The number of exchanges confirmed by the exchange program during the year; and

(17) A statement in bold-faced type to the effect that the percentage described in paragraph (16) (iii) of this subsection is a summary of the exchange requests entered with the exchange program in the period reported, and that the percentage does not indicate a purchaser's probabilities of being confirmed to any specific choice or range of choices.

(b) Exchange company to file information. -- Any exchange company offering an exchange program to purchasers in this State shall file with the Commission on an annual basis the information required to be included in the public offering statement. If at any time the Commission determines that any of the information supplied by an exchange company fails to meet the requirements of this section, the Commission may undertake enforcement action against the exchange company in accordance with the provisions of this title. No developer shall have any liability with respect to any violation of this section arising out of the publication by the developer of written information provided by an exchange company. No exchange company shall have any liability with respect to any violation of this title arising out of the use by a developer of information relating to an exchange program other than written information provided to the developer by the exchange company.

HISTORY: 1984, ch. 579.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11A. MARYLAND REAL ESTATE TIME-SHARING ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11A-121 (2006)

§ 11A-121. Certificate of registration

(a) In general. --

(1) A developer may not offer a time-share to the public until the developer has received a certificate of registration as a time-share developer.

(2) Every application for registration shall be on a form prepared by the Commission and shall provide such information as may be reasonably required by the Commission. The developer shall file with the Commission the following documents and information:

(i) Copies of all project instruments and time-share instruments;

(ii) A copy of the proposed public offering statement which shall be supplemented by the public offering statement as finally approved by the Secretary of State;

(iii) Copies of the forms of the deed, sales contract, and all other written materials to be used in the normal course of the sale of the time-shares;

(iv) Evidence that time-share use complies with the zoning laws of the municipality in which the time-share project is located;

(v) If the time-share units are subject to any project instrument, evidence that the project instruments do not prohibit the use of units for time-sharing purposes and, if the project instruments do not expressly authorize time-share use, a copy of a letter to the president of the governing entity of the project stating the developer's intent to use units for time-share purposes, together with evidence of its receipt by the addressee; and

(vi) The name and address of any project broker.

(3) A registration application may not be approved until the applicant has:

(i) Executed an irrevocable appointment of the Commission to receive service of process in any legal proceeding brought against the applicant arising out of the sale of time-share estates in this State provided that a duplicate copy of all papers regarding the applicant filed with the Commission is sent to the applicant at its last known address within 5 days thereafter;

(ii) Paid a registration fee of $ 100;

(iii) Provided the Commission with a list of the time-share estates and licenses to be offered and the name of the licensed broker of record representing the developer; and

(iv) Posted with the Commission a surety bond or letter of credit in an amount of $ 100,000 issued by an issuer and in a form acceptable to the Commission conditioned on the return of all money paid by a purchaser in the event the purchaser becomes entitled to the return of the money.

(4) The Commission shall approve or disapprove the application within the later to occur of

30 days after receipt of all required information or 5 days after approval by the Secretary of State of the public offering statement. Should the application be disapproved, a hearing shall be afforded the applicant in conformance with § 17-324 of the Business Occupations and Professions Article. Approved registrations shall expire on the 30th day of April in each even numbered year or on such other day as the Commission may designate.

(b) Untrue or misleading statements. -- It shall be unlawful for any person to submit any information to the Commission which that person knows to be untrue or misleading or to fail to submit information which that person knows to be material. Any information submitted to the Commission may be disseminated to and relied upon by each purchaser.

(c) Review; notice. -- The Commission may review the materials submitted, except the public offering statement, pursuant to this section to determine compliance by the developer with this title. The Commission shall notify the developer within 30 days after receipt of the application of any deficiency in the materials submitted.

(d) Amendments. -- A developer shall promptly amend and supplement its registration with the Commission to report any material change in the information required by this section.

(e) Revocation. -- The Commission, after notice and hearing, may issue an order revoking a registration upon determination that a developer has:

(1) Failed to comply with a cease and desist order issued by the Commission;

(2) Concealed, diverted, or disposed of any funds or assets of any person in a manner impairing rights of purchasers of those time-shares;

(3) Failed to perform any stipulation or agreement made to induce the Commission to issue an order relating to those time-shares;

(4) Misrepresented or failed to disclose a material fact in the application for registration;

(5) Failed to meet any of the requirements for registration;

(6) Violated any provisions of this title; or

(7) Committed an unfair or deceptive trade practice.

(f) Suspension. --

(1) Subject to the provisions of paragraph (2) of this subsection, the Commission may order summarily the suspension of the registration of a developer if the developer:

(i) Fails to account promptly for any funds held in trust; or

(ii) On demand, fails to display to the Commission all records, books, and accounts of the funds held in trust.

(2) The Commission may order summarily a suspension under this subsection only if it gives the developer:

(i) Written notice of the suspension and the finding on which the suspension is based; and

(ii) After the summary suspension is effective, an opportunity to be heard promptly before the Commission.

(3) A summary suspension ordered by the Commission under this subsection:

(i) May start immediately or at any later date, as set by the order; and

(ii) Shall continue until:

1. The developer complies with the conditions set forth by the Commission in its order; or

2. The Commission orders a different disposition after a hearing held under this section.

(4) (i) Rather than order summarily a suspension of the registration of a developer under this subsection, the Commission may elect not to suspend the registration until after the developer is given an opportunity for a hearing.

(ii) If the Commission elects to give the developer an opportunity for a hearing before suspending the registration for the grounds set forth in this subsection, notice shall be given and the hearing shall be held in the same manner as required in comparable proceedings under the Maryland Real Estate Brokers Act for violation of trust money provisions by a real estate broker.

(g) Maintenance of trust money records. -- A developer shall maintain all records of trust money, as defined in Title 17, Subtitle 5 of the Business Occupations and Professions Article, in a secured area within the office of the developer.

(h) Developer not to transfer following revocation. -- A developer may not transfer, cause to be transferred, or contract for the transfer of a time-share while an order revoking registration is in effect, without the consent of the Commission.

(i) Annual report. --

(1) Each registered developer shall file with the Commission an annual report to update any information contained in the application for registration.

(2) If an annual report reveals that a developer owns or controls time-shares representing less than 25 percent of the total time-shares in the time-share project and that a developer has no power to increase the number of time-shares he owns or controls, the Commission shall issue an order relieving the developer of any further obligation to file annual reports. Thereafter, so long as the developer is offering any time-shares for sale, the Commission has jurisdiction over the developer's activities, but has no other authority to regulate the time-shares.

(j) Out-of-state projects. -- In the case of the time-share project situated wholly outside the State, no application for registration filed with the Commission which has been approved by an agency of the state in which the time-share project is located and substantially complies with the requirements of this title may be rejected by the Commission on the grounds of noncompliance with any different or additional requirements imposed by this title or by the Commission's regulations. However, the Commission may require additional documents or information to assure adequate and accurate disclosure to prospective purchasers.

(k) Penalties for violations. --

(1) The Commission, after notice and hearing, may levy a civil penalty against a developer of not more than $ 1,000 for any violation by the developer of § 11A-112, § 11A-113, § 11A-114, § 11A-116, § 11A-118, § 11A-119, § 11A-120, § 11A-121, or § 11A-124 of this title.

(2) In determining the amount of the penalty, the Commission shall give due consideration to:

(i) The seriousness of the violation;

(ii) The lack of good faith on the part of the developer;

(iii) The adverse impact, if any, on other persons;

(iv) Any efforts made by the developer to remedy or correct the violation; and

(v) The developer's history of prior violations, particularly violations of the same or similar nature.

(3) (i) If any penalty is not paid in full within 30 days after becoming final, the Commission may summarily revoke the developer's registration, and the Commission or the State Central Collection Unit may bring suit in the District Court or other court of competent jurisdiction to enforce payment.

(ii) A judgment shall be entered against the developer upon a showing that:

1. The penalty was assessed against the developer;

2. The penalty has become final;

3. No appeal is pending;

4. The penalty remains unpaid in whole or part; and

5. The developer contested the charge for which the penalty was assessed, or was duly served with a copy of the charge under any applicable rules and regulations of the Commission.

HISTORY: 1984, ch. 579; 1985, ch 720, § 1; ch. 721; 1988, ch. 563, § 3; 1989, ch. 5, § 1; ch. 89; 1990, ch. 86; 1992, ch. 22, § 1; 1994, ch. 3, § 13; 1995, ch. 3, § 1; ch. 4, § 3.

NOTES:
EDITOR'S NOTE. --
Section 4, ch. 4, Acts 1995, provides that "the changes made to Article 2B, § 9-203, Article 88A, § 45 (c) (now see generally §§ 44A through 54), and § 11A-121 (g) of the Real Property Article by Chapter (S.B. 10) of the Acts of the General Assembly of 1995 may not be given effect and the changes made to those provisions by § 3 of this Act shall prevail, regardless of the date of final enactment." Senate Bill 10 was enacted as Chapter 3, Acts 1995.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11A. MARYLAND REAL ESTATE TIME-SHARING ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11A-122 (2006)

§ 11A-122. Powers of Commission

(a) Regulations and orders. -- The Commission may issue regulations and orders consistent with this title.

(b) Enforcement suits. -- The Commission may bring suit in the appropriate court to enforce this title and may intervene in any action involving a registered developer.

(c) Grants; contracts. -- The Commission may accept grants in aid from any governmental source and may contract with agencies charged with similar functions in furtherance of the objectives of this title.

(d) Cooperation. -- The Commission may cooperate with agencies performing similar functions to develop uniform filing procedures and forms, disclosure standards, and administrative practices.

(e) Cease and desist orders. -- If the Commission determines, after notice and hearing, that any person has disseminated or caused to be disseminated any false or misleading promotional materials in connection with a time-share, or that any person has otherwise violated any provision of this title or the Commission's regulations or orders, the Commission may issue an order to cease and desist from that conduct, to comply with the provisions of this title and the Commission's regulations and orders, or to take affirmative action to correct conditions resulting from that conduct or failure to comply.

(f) Investigations; subpoenas. --

(1) The Commission may initiate investigations to determine whether any representation in any document or information filed with the Commission is false or misleading or whether any person has engaged, is engaging, or is about to engage in any unlawful act or practice.

(2) In the course of any investigation or hearing, the Commission may subpoena witnesses and documents, administer oaths and affirmations, and adduce evidence. If a person fails to comply with a subpoena or to answer questions propounded during the investigation or hearing, the Commission may apply to an appropriate court to secure compliance.

(g) Financial solvency. --

(1) If the applicant or developer fails to demonstrate financial solvency, the Commission may deny an application for a certificate of registration or revoke a certificate of registration already granted.

(2) The Commission may adopt regulations under paragraph (1) of this subsection requiring an applicant or developer to:

(i) Provide information;

(ii) Grant access to records; and

(iii) Otherwise demonstrate financial solvency.

HISTORY: 1984, ch. 579; 1991, ch. 135.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11A. MARYLAND REAL ESTATE TIME-SHARING ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11A-123 (2006)

§ 11A-123. Persons not required to register

Persons engaged in the following transactions involving time-shares are not required to register with the Commission, to prepare a public offering statement, or to deliver documents described in § 11A-115:

(1) A gratuitous disposition;

(2) A disposition pursuant to court order;

(3) A disposition by a government or governmental agency;

(4) A disposition by foreclosure or deed in lieu of foreclosure or by enforcement of a lien or security interest;

(5) A disposition that may be canceled at any time and for any reason by the purchaser without penalty;

(6) A disposition of a time-share in a unit situated wholly outside this State pursuant to a contract executed and negotiated wholly outside this State; or

(7) A disposition of a time-share project or all time-shares therein to one purchaser.

HISTORY: 1984, ch. 579; 1985, ch. 721; 2002, ch. 19, § 10.

NOTES:
EDITOR'S NOTE. --Section 10, ch. 19, Acts 2002, provides that "the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, "one" has been substituted for "1" in (7).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.

a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11A. MARYLAND REAL ESTATE TIME-SHARING ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11A-124 (2006)

§ 11A-124. Project brokers

(a) Developer to designate. -- It is unlawful for any developer to sell or offer to sell a time-share in this State unless the developer has designated a person as the project broker for the time-share project. The time-share project shall be considered a separate real estate office for purposes of the real estate licensing laws of this State.

(b) License required. -- It is unlawful for any person to act as project broker for a time-share project unless such person is a licensed real estate broker.

(c) Unlawful to sell, etc., without license. -- It is unlawful for any person to sell, advertise, or offer for sale any time-share unless such person is a licensed real estate broker, associate real estate broker, or real estate salesperson, or is exempt from licensure under the Maryland Real Estate Brokers Act.

(d) Certain employees partially exempted. -- Notwithstanding subsection (c) of this section, any person who is not a licensed real estate broker, associate real estate broker, or real estate salesperson may be employed by the developer or project broker to contact but not solicit, in person or by telephone, any person to attend any sales presentation concerning a time-share project, provided however, that the person so employed:

(1) Performs only clerical tasks;

(2) Merely arranges appointments induced by others; or

(3) Only prepares or distributes promotional materials.

HISTORY: 1984, ch. 579; 1985, ch. 720, § 1; 1988, ch. 563, § 5; 1989, ch. 5, § 1.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11A. MARYLAND REAL ESTATE TIME-SHARING ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11A-125 (2006)

§ 11A-125. Remedies

(a) In general. -- Remedies provided by this title shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential, special, or punitive damages may not be awarded except as specifically provided in this title or by other rule of law.

(b) Unconscionable contract or clause. -- A court, upon finding as a matter of law that a sales contract or a clause in a contract was unconscionable at the time the contract was made, may refuse to enforce the entire contract or refuse to enforce the remainder of the contract without such unconscionable clause or limit the application of any unconscionable clause in order to avoid an unconscionable result.

(c) Claim for relief; punitive damages; attorney's fees. -- If a developer or any other person fails to comply with any provision of this title or the time-share instrument, any person adversely affected by the failure to comply has a claim for appropriate relief. Punitive damages may be awarded for the willful and wanton failure to comply with this title. The court may also award reasonable attorney's fees to the prevailing party.

(d) Certain transfers void. -- Any purported conveyance, encumbrance, judicial sale, foreclosure sale, or other voluntary or involuntary transfer of a time-share made without the use period which is part of that time-share is void.

(e) Penalties and remedies not exclusive. -- Penalties and remedies provided in this title are in addition to penalties and remedies available under any other law.

(f) Severability. -- If any provision of this title or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect the other provisions or applications of this title which can be given effect without the invalid provisions or application, and to this end the provisions of this title are severable.

HISTORY: 1984, ch. 579.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11A. MARYLAND REAL ESTATE TIME-SHARING ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11A-126 (2006)

§ 11A-126. Statutory conflict

In the event of any conflict between this title and Title 11 of this article, the provisions of this title shall prevail, but this title does not invalidate or otherwise affect rights or obligations vested under Title 11 of this article before January 1, 1985, or prior to the recording of a time-share instrument.

HISTORY: 1984, ch. 579.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11A. MARYLAND REAL ESTATE TIME-SHARING ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11A-127 (2006)

§ 11A-127. Application

(a) Preexisting rights not affected. -- This title applies to all time-share projects in the State except to the extent of any inconsistent right or obligation under a preexisting project instrument, document transferring an interest in real estate, or contract.

(b) Amended instruments. -- The project instrument of any time-share project in existence before January 1, 1985, may be amended in accordance with this title. If an amendment grants to any person any rights, powers, or privileges permitted by this title, all correlative obligations, liabilities, and restrictions shall also apply to that person.

(c) Applicability of certain sections to projects located in State. --

(1) The requirements of §§ 11A-102, 11A-103, 11A-104, 11A-105, 11A-106, 11A-107, 11A-108, 11A-109, 11A-110, 11A-111, 11A-115, and 11A-117 apply only to projects located in this State.

(2) The requirements of §§ 11A-112, 11A-113, 11A-114, 11A-116, 11A-118, 11A-119, 11A-120, 11A-121, 11A-122, 11A-124, and 11A-125 apply to any developer required to register under this title with the Commission, whether or not the project is located in this State.

(d) Sales of time-shares. -- Except for the developer of the project or an employee, officer, agent, or assign of the developer of the project where the time-shares are located, a person engaged in the business of selling time-shares owned by that person is required to comply with §§ 11A-115, 11A-116, 11A-119, 11A-121, 11A-122, 11A-124, and 11A-125 of this subtitle, but is not required to comply with § 11A-112 of this subtitle.

HISTORY: 1984, ch. 579; 1985, ch. 721; 1990, ch. 140.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11A. MARYLAND REAL ESTATE TIME-SHARING ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11A-128 (2006)

§ 11A-128. Books and records; meetings

(a) Required accounting principles. -- The association, or developer during the developer control period, shall keep books and records in accordance with generally accepted accounting principles.

(b) Audit of books and records. --

(1) On the request of the owners of at least 5 percent of the time-shares, the association, or developer during the developer control period, shall cause an audit of the books and records to be made by an independent certified public accountant at common expense.

(2) An audit may not be required more than once in any consecutive 12-month period.

(c) Inspection and copying. -- Every record of the association kept by the association, or by the developer during the developer control period, shall be available at some place designated by the association or developer within the county where the time-share is located for inspection and copying by any time-share owner, the owner's mortgagee, or their duly authorized agents or attorneys, during normal business hours, and after reasonable notice.

(d) Closed meeting. -- A meeting of the board of directors or governing body of the association may be held in closed session only for the following purposes:

(1) Discussion of matters pertaining to employees and personnel;

(2) Protection of the privacy or reputation of individuals in matters not related to the council of unit owners' business;

(3) Consultation with legal counsel;

(4) Consultation with staff personnel, consultants, attorneys, or other persons in connection with pending or potential litigation;

(5) Investigative proceedings concerning possible or actual criminal misconduct;

(6) Complying with a specific constitutional, statutory, or judicially imposed requirement protecting particular proceedings or matters from public disclosure; or

(7) On an individually recorded affirmative vote of two-thirds of the board members present, for some other exceptional reason so compelling as to override the general public policy in favor of open meetings.

(e) Same -- Prohibited actions and discussions; statement included in minutes. -- If a meeting is held in closed session under subsection (d) of this section:

(1) An action may not be taken and a matter may not be discusse
d if it is not permitted by subsection (d) of this section; and

(2) A statement of the time, place, and purpose of any closed meeting, the record of the vote of each board member by which any meeting was closed, and the authority under this section for closing any meeting shall be included in the minutes of the next meeting of the board of directors.

HISTORY: 1985, ch. 720, § 3.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11A. MARYLAND REAL ESTATE TIME-SHARING ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11A-129 (2006)

§ 11A-129. Short title

This title may be cited as the "Maryland Real Estate Time-Sharing Act".

HISTORY: 1984, ch. 579; 1985, ch. 720, § 2.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.

a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11B. MARYLAND HOMEOWNERS ASSOCIATION ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11B-101 (2006)

§ 11B-101. Definitions

(a) In general. -- In this title the following words have the meanings indicated, unless the context requires otherwise.

(b) Common areas. -- "Common areas" means property which is owned or leased by a homeowners association.

(c) Declarant. -- "Declarant" means any person who subjects property to a declaration.

(d) Declaration. --

(1) "Declaration" means an instrument, however denominated, recorded among the land records of the county in which the property of the declarant is located, that creates the authority for a homeowners association to impose on lots, or on the owners or occupants of lots, or on another homeowners association, condominium, or cooperative housing corporation any mandatory fee in connection with the provision of services or otherwise for the benefit of some or all of the lots, the owners or occupants of lots, or the common areas.

(2) "Declaration" includes any amendment or supplement to the instruments described in paragraph (1) of this subsection.

(3) "Declaration" does not include a private right-of-way or similar agreement unless it requires a mandatory fee payable annually or at more frequent intervals.

(e) Depository; homeowners association depository. -- "Depository" or "homeowners association depository" means the document file created by the clerk of the court of each county and the City of Baltimore where a homeowners association may periodically deposit information as required by this title.

(f) Development. --

(1) "Development" means property subject to a declaration.

(2) "Development" includes property comprising a condominium or cooperative housing corporation to the extent that the property is part of a development.

(3) "Development" does not include a cooperative housing corporation or a condominium.

(g) Electronic transmission. -- "Electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that:

(1) May be retained, retrieved, and reviewed by a recipient of the communication; and

(2) May be reproduced directly in paper form by a recipient through an automated process.

(h) Governing body. -- "Governing body" means the homeowners association, board of directors, or other entity established to govern the development.

(i) Homeowners association. --

(1) "Homeowners association" means a person having the authority to enforce the provisions of a declaration.

(2) "Homeowners association" includes an incorporated or unincorporated association.

(j) Lot. --

(1) "Lot" means any plot or parcel of land on which a dwelling is located or will be located within a development.

(2) "Lot" includes a unit within a condominium or cooperative housing corporation if the condominium or cooperative housing corporation is part of a development.

(k) Primary development. -- "Primary development" means a development such that the purchaser of a lot will pay fees directly to its homeowners association.

(l) Recorded covenants and restrictions. -- "Recorded covenants and restrictions" means any instrument of writing which is recorded in the land records of the jurisdiction within which a lot is located, and which instrument governs or otherwise legally restricts the use of such lot.

(m) Related development. -- "Related development" means a development such that the purchaser of a lot will pay fees to the homeowners association of such development through the homeowners association of a primary development or another development.

(n) Unaffiliated declarant. -- "Unaffiliated declarant" means a person who is not affiliated with the vendor of a lot but who has subjected such property to a declaration required to be disclosed by this title.

HISTORY: 1987, ch. 321; 1988, ch. 82; 1989, chs. 491, 492; 1998, chs. 440, 564; 2004, ch. 286.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 286, Acts 2004, effective Oct. 1, 2004, inserted present (g) and redesignated the remaining subsections accordingly.

QUOTED IN Dumont Oaks Community Ass'n v. Montgomery County, 333 Md. 202, 634 A.2d 459 (1993).

STATED IN Oakhampton Ass'n v. Reeve, 99 Md. App. 428, 637 A.2d 879 (1994).

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11B. MARYLAND HOMEOWNERS ASSOCIATION ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11B-102 (2006)

§ 11B-102. Applicability of title and §§ 11B-105 through 11B-108 and 11B-110

(a) Homeowners associations in existence after July 1, 1987. -- Except as expressly provided in this title, the provisions of this title apply to all homeowners associations that exist in the State after July 1, 1987.

(b) Applicability of §§ 11B-105 and 11B-108. -- The provisions of §§ 11B-105 and 11B-108 of this title do not apply to the initial sale of lots within the development to members of the public if on July 1, 1987:

(1) More than 50 percent of the lots included within or to be included within the development have been sold under a bona fide arm's length contract to members of the public who intend to occupy or rent the lots for residential purposes; and

(2) Less than 100 lots included within or to be included within the development have not been sold under a bona fide arm's length contract to members of the public who intend to occupy or rent the lots for residential purposes.

(c) Applicability of § 11B-110. -- The provisions of § 11B-110 of this title do not apply to common area improvements substantially completed before July 1, 1987.

(d) Applicability of § 11B-105. -- The provisions of § 11B-105 of this title do not apply to developments containing 12 or fewer lots or in which 12 or fewer lots remain to be sold as of July 1, 1987.

(e) Property to which title does not apply; exception. -- Except as provided in § 11B-101 (f) of this title, this title does not apply to any property which is:

(1) Part of a condominium regime governed by Title 11 of this article;

(2) Part of a cooperative housing corporation; or

(3) To be occupied and used for nonresidential purposes.

(f) Contracts to which §§ 11B-105, 11B-106, 11B-107, and 11B-108 do not apply. -- For any contract for the sale of a lot that is entered into before July 1, 1987, the provisions of §§ 11B-105, 11B-106, 11B-107, and 11B-108 of this title do not apply.

HISTORY: 1987, ch. 321; 1988, ch. 82.

APPLICABILITY TO CONDOMINIUMS. --The Homeowners Association Act does not apply to condominiums as such. It applies to condominiums only if they are part of a development, as defined in § 11B-101 of this title. If a condominium is part of a development, § 11B-106 of this title applies to the resale of condominium units. However, even if the condominium is part of a development, §§ 11B-111 and 11B-112 of this title do not govern the meeting and

recordkeeping practices of the condominium itself. 73 Op. Att'y Gen. 215 (1988).

The Homeowners Association Act is not meant to apply to most condominiums and cooperatives; it only applies to those few condominiums and cooperatives in which the owners are subject to an obligation to pay fees not only to the condominium or cooperative itself, but also to a separate homeowner's association. 73 Op. Att'y Gen. 215 (1988).

APPLICABILITY TO COOPERATIVES. --The applicability of the Homeowners Association Act to cooperatives is the same as its applicability to condominiums. 73 Op. Att'y Gen. 215 (1988).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11B. MARYLAND HOMEOWNERS ASSOCIATION ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11B-103 (2006)

§ 11B-103. Variance of title's provisions and waiver of rights conferred thereby, and evasion of title's requirements, limitations, or prohibitions prohibited

Except as expressly provided in this title, the provisions of this title may not be varied by agreement, and rights conferred by this title may not be waived. A declarant or vendor may not act under a power of attorney or use any other device to evade the requirements, limitations, or prohibitions of this title.

HISTORY: 1987, ch. 321; 1988, ch. 82.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11B. MARYLAND HOMEOWNERS ASSOCIATION ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11B-104 (2006)

§ 11B-104. Building code or zoning laws, ordinances, and regulations to be given full force and effect; local laws, ordinances, or regulations; alternative dispute resolution

(a) Building code or zoning laws, ordinances, and regulations to be given full force and effect. -- The provisions of all laws, ordinances, and regulations concerning building codes or zoning shall have full force and effect to the extent that they apply to a development and shall be construed and applied with reference to the overall nature and use of the property without regard to whether the property is part of a development.

(b) Local laws, ordinances, or regulations. -- A local government may not enact any law, ordinance, or regulation which would:

(1) Impose a burden or restriction on property which is part of a development because it is part of a development;

(2) Require that additional disclosures relating to the development be made to purchasers of lots within the development, other than the disclosures required by § 11B-105, § 11B-106, or § 11B-107 of this title;

(3) Provide that the disclosures required by § 11B-105, § 11B-106, or § 11B-107 of this title be registered or otherwise subject to the approval of any governmental agency;

(4) Provide that additional cancellation rights be provided to purchasers, other than the cancellation rights under § 11B-108(b) and (c) of this title;

(5) Create additional implied warranties or require additional express warranties on improvements to common areas other than those warranties described in § 11B-110 of this title; or

(6) Expand the open meeting requirements of § 11B-111 of this title or open record requirements of § 11B-112 of this title.

(c) Alternative dispute resolution. -- Subject to the provisions of this title, a code home rule county located in the Southern Maryland class, as identified in Article 25B, § 2 of the Code, may establish a homeowners association commission with the authority to hear and resolve disputes between a homeowners association and a homeowner regarding the enforcement of the recorded covenants or restrictions of the homeowners association by providing alternative dispute resolution services, including binding arbitration.

HISTORY: 1987, ch. 321; 1988, ch. 82; 1989, ch. 5, § 1; 2003, ch. 44.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 44, Acts 2003, effective Oct. 1, 2003, added (c).

COUNTY FEE NOT PREEMPTED. --A fee assessed by a county on a per unit basis on common ownership communities is not preempted by § 11-122 (b) of this article, § 5-6B-19 (a) (2) of the Corporations and Associations Article or subsection (b) (1) of this section. 75 Op. Att'y Gen. 103 (June 20, 1990).

CHARGES ON COMMON OWNERSHIP COMMUNITIES TO FUND PROGRAMS. --A registration fee authorized by local law imposing a charge on common ownership communities to fund certain programs was not violative of the prohibitions found in § 11-122 (b) of this article and paragraph (b) (1) of this section. Dumont Oaks Community Ass'n v. Montgomery County, 333 Md. 202, 634 A.2d 459 (1993).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11B. MARYLAND HOMEOWNERS ASSOCIATION ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11B-105 (2006)

§ 11B-105. Initial sale of lots in developments containing more than 12 lots

(a) Contract. -- A contract for the initial sale of a lot in a development containing more than 12 lots to a member of the public who intends to occupy or rent the lot for residential purposes is not enforceable by the vendor unless:

(1) The purchaser is given, at or before the time a contract is entered into between the vendor and the purchaser, or within 7 calendar days of entering into the contract, the disclosures set forth in subsection (b) of this section;

(2) The purchaser is given notice of any changes in mandatory fees and payments exceeding 10 percent of the amount previously stated to exist or any other substantial and material amendment to the disclosures after the same becomes known to the vendor; and

(3) The contract of sale contains a notice in conspicuous type, which shall include bold and underscored type, in a form substantially the same as the following:

"This sale is subject to the requirements of the Maryland Homeowners Association Act (the "Act"). The Act requires that the seller disclose to you at or before the time the contract is entered into, or within 7 calendar days of entering into the contract, certain information concerning the development in which the lot you are purchasing is located. The content of the information to be disclosed is set forth in § 11B-105 (b) of the Act (the "MHAA information") as follows: (The notice shall include at this point the text of § 11B-105 (b) in its entirety).

If you have not received all of the MHAA information 5 calendar days or more before entering into the contract, you have 5 calendar days to cancel this contract after receiving all of the MHAA information. You must cancel the contract in writing, but you do not have to state a reason. The seller must also provide you with notice of any changes in mandatory fees exceeding 10% of the amount previously stated to exist and copies of any other substantial and material amendment to the information provided to you. You have 3 calendar days to cancel this contract after receiving notice of any changes in mandatory fees, or copies of any other substantial and material amendment to the MHAA information which adversely affects you. If you do cancel the contract you will be entitled to a refund of any deposit you made on account of the contract. However, unless you return the MHAA information to the seller when you cancel the contract, the seller may keep out of your deposit the cost of reproducing the MHAA information, or $ 100, whichever amount is less.

By purchasing a lot within this development, you will automatically be subject to various rights, responsibilities, and obligations, including the obligation to pay certain assessments to the homeowners association within the development. The lot you are purchasing may have restrictions on:

(1) Architectural changes, design, color, landscaping, or appearance;

(2) Occupancy density;

(3) Kind, number, or use of vehicles;

(4) Renting, leasing, mortgaging, or conveying property;

(5) Commercial activity; or

(6) Other matters.

You should review the MHAA information carefully to ascertain your rights, responsibilities, and obligations within the development."

(b) Information to be supplied by vendor. -- The vendor shall provide the purchaser the following information in writing:

(1) (i) The name, principal address, and telephone number of the vendor and of the declarant, if the declarant is not the vendor; or

(ii) If the vendor is a corporation or partnership, the names and addresses of the principal officers of the corporation, or general partners of the partnership;

(2) (i) The name, if any, of the homeowners association; and

(ii) If incorporated, the state in which the homeowners association is incorporated and the name of the Maryland resident agent;

(3) A description of:

(i) The location and size of the development, including the minimum and maximum number of lots currently planned or permitted, if applicable, which may be contained within the development; and

(ii) Any property owned by the declarant or the vendor contiguous to the development which is to be dedicated to public use;

(4) If the development is or will be within or a part of another development, a general description of the other development;

(5) If the declarant has reserved in the declaration the right to annex additional property to the development, a description of the size and location of the additional property and the approximate number of lots currently planned to be contained in the development, as well as any time limits within which the declarant may annex such property;

(6) A copy of:

(i) The articles of incorporation, the declaration, and all recorded covenants and restrictions of the primary development and of other related developments to the extent reasonably available, to which the purchaser shall become obligated on becoming an owner of the lot, including a statement that these obligations are enforceable against an owner and the owner's tenants, if applicable; and

(ii) The bylaws and rules of the primary development and of other related developments to the extent reasonably available, to which the purchaser shall become obligated on becoming an owner of the lot, including a statement that these obligations are enforceable against an owner and the owner's tenants, if applicable;

(7) A description or statement of any property which is currently planned to be owned, leased, or maintained by the homeowners association;

(8) A copy of the estimated proposed or actual annual budget for the homeowners association for the current fiscal year, including a description of the replacement reserves for common area improvements, if any, and a copy of the current projected budget for the homeowners association based upon the development fully expanded in accordance with expansion rights contained in the declaration;

(9) A statement of current or anticipated mandatory fees or assessments to be paid by owners of lots within the development for the use, maintenance, and operation of common areas and for other purposes related to the homeowners association and whether the declarant or vendor will be obligated to pay the fees in whole or in part;

(10) (i) A brief description of zoning and other land use requirements affecting the development; or

(ii) A written disclosure of where the information is available for inspection;

(11) A statement regarding:

(i) When mandatory homeowners association fees or assessments will first be levied against owners of lots;

(ii) The procedure for increasing or decreasing such fees or assessments;

(iii) How fees or assessments and delinquent charges will be collected;

(iv) Whether unpaid fees or assessments are a personal obligation of owners of lots;

(v) Whether unpaid fees or assessments bear interest and if so, the rate of interest;

(vi) Whether unpaid fees or assessments may be enforced by imposing a lien on a lot under the terms of the Maryland Contract Lien Act; and

(vii) Whether lot owners will be assessed late charges or attorneys' fees for collecting unpaid fees or assessments and any other consequences for the nonpayment of the fees or assessments;

(12) If any sums of money are to be collected at settlement for contribution to the homeowners association other than prorated fees or assessments, a statement of the amount to be collected and the intended use of such funds; and

(13) A description of special rights or exemptions reserved by or for the benefit of the declarant or the vendor, including:

(i) The right to conduct construction activities within the development;

(ii) The right to pay a reduced homeowners association fee or assessment; and

(iii) Exemptions from use restrictions or architectural control provisions contained in the declaration or provisions by which the declarant or the vendor intends to maintain control over the homeowners association.

(c) Standard for compliance with subsection (b) -- In general. -- Except as provided in subsection (d) of this section, the requirements of subsection (b) of this section shall be deemed to have been fulfilled if the information required to be disclosed is provided to the purchaser in writing in a clear and concise manner. The disclosure may be summarized or produced in a collection of documents, including plats, the declaration, or the organizational documents of the homeowners association, provided those documents effectively convey the required information to the purchaser.

(d) Same -- Exception. --

(1) (i) Subject to the provisions of subparagraph (ii) of this paragraph, if any of the information required to be disclosed by subsection (b) of this section concerns property that is subjected to a declaration by a person who is not affiliated with the vendor, within 20 calendar days after receipt of a written request from the vendor of such property, and receipt of a reasonable fee therefor not to exceed the cost, if any, of reproduction, an unaffiliated declarant shall notify the vendor in writing of the information that is contained in the depository, and furnish the information necessary to enable the vendor to comply with subsection (b) of this section; and

(ii) An unaffiliated declarant may not be required to furnish information regarding a homeowners association over which the unaffiliated declarant has no control, or with respect to any declaration which the unaffiliated declarant did not file.

(2) A vendor is not liable to the purchaser for any erroneous information provided by an unaffiliated declarant, so long as the vendor provides the purchaser with a certificate stating the name of the person who provided the information along with an address and telephone number for contacting such person.

(e) Same -- Information and disclosures contained in depository. --

(1) In satisfying the requirements of subsection (b) of this section, the vendor shall be entitled to rely upon the disclosures contained in the depository after June 30, 1989.

(2) In satisfying a vendor's request for any information described under subsection (b) of this section, a homeowners association:

(i) Shall be entitled to direct the vendor to obtain such information from the depository for all disclosures contained in the depository after June 30, 1989; and

(ii) May not be required to supply a vendor with any information which is contained in the depository.

(f) Requirements inapplicable to foreclosure sale. -- The provisions of this section do not apply to a sale of a lot in an action to foreclose a mortgage or deed of trust.

HISTORY: 1987, ch. 321; 1988, ch. 6, § 1; ch. 82; 1989, ch. 693; 1997, ch. 14, § 1.

APPLIED IN United Cable Television of Baltimore Ltd. Partnership v. Burch, 354 Md. 658, 732 A.2d 887 (1999).

CITED IN United Cable Television of Baltimore Ltd. Partnership v. Burch, 354 Md. 658, 732 A.2d 887 (1999).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.

a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11B. MARYLAND HOMEOWNERS ASSOCIATION ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11B-106 (2006)

§ 11B-106. Resale of lot; initial sale of lot in development containing 12 or fewer lots

(a) Contract. -- A contract for the resale of a lot within a development, or for the initial sale of a lot within a development containing 12 or fewer lots, to a member of the public who intends to occupy or rent the lot for residential purposes, is not enforceable by the vendor unless:

(1) The purchaser is given, on or before entering into the contract for the sale of such lot, or within 20 calendar days of entering into the contract, the disclosures set forth in subsection (b) of this section;

(2) The purchaser is given any changes in mandatory fees and payments exceeding 10 percent of the amount previously stated to exist and any other substantial and material amendment to the disclosures after they become known to the vendor; and

(3) The contract of sale contains a notice in conspicuous type, which shall include bold and underscored type, in a form substantially the same as the following:

"This sale is subject to the requirements of the Maryland Homeowners Association Act (the "Act"). The Act requires that the seller disclose to you at or before the time the contract is entered into, or within 20 calendar days of entering into the contract, certain information concerning the development in which the lot you are purchasing is located. The content of the information to be disclosed is set forth in § 11B-106 (b) of the Act (the "MHAA information") as follows: (The notice shall include at this point the text of § 11B-106 (b) in its entirety).

If you have not received all of the MHAA information 5 calendar days or more before entering into the contract, you have 5 calendar days to cancel this contract after receiving all of the MHAA information. You must cancel the contract in writing, but you do not have to state a reason. The seller must also provide you with notice of any changes in mandatory fees exceeding 10% of the amount previously stated to exist and copies of any other substantial and material amendment to the information provided to you. You have 3 calendar days to cancel this contract after receiving notice of any changes in mandatory fees, or copies of any other substantial and material amendment to the MHAA information which adversely affects you. If you do cancel the contract you will be entitled to a refund of any deposit you made on account of the contract. However, unless you return the MHAA information to the seller when you cancel the contract, the seller may keep out of your deposit the cost of reproducing the MHAA information, or $ 100, whichever amount is less.

By purchasing a lot within this development, you will automatically be subject to various rights, responsibilities, and obligations, including the obligation to pay certain assessments to the homeowners association within the development. The lot you are purchasing may have restrictions on:

(1) Architectural changes, design, color, landscaping, or appearance;

(2) Occupancy density;

(3) Kind, number, or use of vehicles;

(4) Renting, leasing, mortgaging, or conveying property;

(5) Commercial activity; or

(6) Other matters.

You should review the MHAA information carefully to ascertain your rights, responsibilities, and obligations within the development."

(b) Information to be supplied by vendor. -- The vendor shall provide the purchaser the following information in writing:

(1) A statement as to whether the lot is located within a development;

(2) (i) The current monthly fees or assessments imposed by the homeowners association upon the lot;

(ii) The total amount of fees, assessments, and other charges imposed by the homeowners association upon the lot during the prior fiscal year of the homeowners association; and

(iii) A statement of whether any of the fees, assessments, or other charges against the lot are delinquent;

(3) The name, address, and telephone number of the management agent of the homeowners association, or other officer or agent authorized by the homeowners association to provide to members of the public, information regarding the homeowners association and the development, or a statement that no agent or officer is presently so authorized by the homeowners association;

(4) A statement as to whether the owner has actual knowledge of:

(i) The existence of any unsatisfied judgments or pending lawsuits against the homeowners association; and

(ii) Any pending claims, covenant violations actions, or notices of default against the lot; and

(5) A copy of:

(i) The articles of incorporation, the declaration, and all recorded covenants and restrictions of the primary development, and of other related developments to the extent reasonably available, to which the purchaser shall become obligated on becoming an owner of the lot, including a statement that these obligations are enforceable against an owner's tenants, if applicable; and

(ii) The bylaws and rules of the primary development, and of other related developments to the extent reasonably available, to which the purchaser shall become obligated on becoming an owner of the lot, including a statement that these obligations are enforceable against an owner and the owner's tenants, if applicable.

(c) Notice of resale to homeowners association. --

(1) Within 30 calendar days of any resale transfer of a lot within a development, the transferor shall notify the homeowners association for the primary development of the transfer.

(2) The notification shall include, to the extent reasonably available, the name and address of the transferee, the name and forwarding address of the transferor, the date of transfer, the name and address of any mortgagee, and the proportionate amount of any outstanding homeowners association fee or assessment assumed by each of the parties to the transaction.

(d) Standard for compliance with subsection (b) -- In general. -- The requirements of subsection (b) of this section shall be deemed to have been fulfilled if the information required to be disclosed is provided to the purchaser in writing in a clear and concise manner. The disclosures may be summarized or produced in any collection of documents, including plats, the declaration, or the organizational documents of the homeowners association, provided those documents effectively convey the required information to the purchaser.

(e) Same -- Reliance on disclosures in depository. -- In satisfying the requirements of subsection (b) of this section, the vendor shall be entitled to rely upon the disclosures contained in the depository after June 30, 1989.

(f) Certain provisions inapplicable to foreclosure sale. -- The provisions of subsections (a), (b), (d), and (e) of this section do not apply to the sale of a lot in an action to foreclose a mortgage or deed of trust.

HISTORY: 1987, ch. 321; 1988, ch. 82; 1989, ch. 693; 2002, ch. 19, § 10.

NOTES:
EDITOR'S NOTE. --Section 10, ch. 19, Acts 2002, provides that "the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, the comma following "section" in (f) has been deleted.

APPLICABILITY TO CONDOMINIUMS. --The Homeowners Association Act does not apply to condominiums as such. It applies to condominiums only if they are part of a development, as defined in § 11B-101 of this title. If a condominium is part of a development, § 11B-106 of this title applies to the resale of condominium units. However, even if the condominium is part of a development, §§ 11B-111 and 11B-112 of this title do not govern the meeting and recordkeeping practices of the condominium itself. 73 Op. Att'y Gen. 215 (1988).

REQUIRED DISCLOSURES. --The Homeowners Association Act, § 11B-101 et seq. of this title, and the Condominium Act, § 11-101 et seq. of this article, require different disclosures. However, the two acts may be read together so that, if both apply to the resale of a condominium unit, the seller is required to provide all of the disclosures required by both acts. 73 Op. Att'y Gen. 215 (1988).

SELLER'S DUTY TO COMPLY WITH SUBSECTION (B). --The seller has the duty to obtain and disclose to the buyer, prior to the formation of the contract, all of the information described in subsections (b) (1), (2), (3), and (5). If the seller does not know the information, or does not have a copy of a document that is required to be disclosed, the seller has a duty to obtain the information or the document and provide it to the buyer prior to the consummation of the contract. 72 Op. Att'y Gen. 158 (1987).

INTENT OF REQUIRED DISCLOSURES. --The intent of the requirement that the purchaser be given, "on or before entering into the contract for the sale of [a] lot," the required disclosures, is that a buyer be provided the facts that will allow the buyer to make a rational judgment about whether to contract for the particular house. This objective is satisfied so long as the

buyer receives the required disclosures at a time when the buyer still has an opportunity to decide whether to enter a binding contract. 72 Op. Att'y Gen. 158 (1987).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11B. MARYLAND HOMEOWNERS ASSOCIATION ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11B-107 (2006)

§ 11B-107. Initial sale of lot not intended to be occupied or rented for residential purposes

(a) Contract. -- A contract for the initial sale of a lot in a development of any size to a person who does not intend to occupy or rent the lot for residential purposes is not enforceable by the vendor unless:

(1) The purchaser is given, at or before the time a contract is entered into between the vendor and the purchaser, or within 7 calendar days of entering into the contract, the disclosures set forth in subsection (b) of this section;

(2) The purchaser is given notice of any change in mandatory fees and payments exceeding 10 percent of the amount previously stated to exist or any other substantial and material amendment to the disclosures after the same becomes known to the vendor; and

(3) The purchaser is given at or before the time a contract is entered into between the vendor and the purchaser, a notice in a form substantially the same as the following:

"NOTICE

The seller is required by law to furnish you at or before the time a contract is entered into, or within 7 calendar days of entering into the contract, all of the information listed in § 11B-107 (b) of the Maryland Homeowners Association Act. The information is as follows: (The notice shall include at this point the text of § 11B-107 (b) in its entirety)."

(b) Information to be supplied by vendor. -- The vendor shall provide the purchaser the following information in writing:

(1) The name, principal address, and telephone number of the vendor and of the declarant, if the declarant is not the vendor;

(2) A description of:

(i) The location and size of the development, including the minimum and maximum

number of lots currently planned or permitted, if applicable, which may be contained within the development; and

(ii) Any property owned by the declarant or the vendor contiguous to the development which is to be dedicated to public use; and

(3) A copy of the bylaws and rules of the primary development, and of other related developments to the extent available, to which the purchaser shall become obligated on becoming an owner of the lot, including a statement that these obligations are enforceable against an owner and the owner's tenants, if applicable.

(c) Information contained in depository. -- In satisfying a vendor's request for any information described under subsection (b) of this section, a homeowners association:

(1) Shall be entitled to direct the vendor to obtain the information from the depository for all disclosures contained in the depository after June 30, 1989; and

(2) May not be required to supply a vendor with any information which is contained in the depository.

(d) Provisions inapplicable to foreclosure sale. -- The provisions of this section do not apply to a sale of a lot in an action to foreclose a mortgage or deed of trust.

HISTORY: 1988, ch. 82; 1989, ch. 693.

NOTES:
EDITOR'S NOTE. --Chapter 82, Acts 1988, approved Apr. 12, 1988, and effective from date of enactment, transferred former § 11B-107 of this title to be present § 11B-108 of this title.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11B. MARYLAND HOMEOWNERS ASSOCIATION ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11B-108 (2006)

§ 11B-108. Cancellation of contract

(a) Failure to receive disclosures required by § 11B-105, § 11B-106 or § 11B-107 -- Entry into contract. -- A person who enters into a contract as a purchaser but who has not received all of the disclosures required by § 11B-105, § 11B-106, or § 11B-107 of this title, as applicable, shall, prior to settlement, be entitled to cancel the contract and to the immediate return of deposits made on account of the contract.

(b) Same -- Five calendar days before entry into contract. --

(1) Any purchaser who has not received all of the disclosures required under § 11B-105 or § 11B-106 of this title, as applicable, 5 calendar days or more before the contract was entered into, within 5 calendar days following receipt by the purchaser of the disclosures required by § 11B-105 (a) and (b) or § 11B-106 (a) and (b) of this title, as applicable, may cancel in writing the contract without stating a reason and without liability on the part of the purchaser.

(2) The purchaser shall be entitled to the return of any deposits made on account of the contract, except that the vendor shall be entitled to retain the cost of reproducing the information specified in § 11B-105 (b), § 11B-106 (b), or § 11B-107 (b) of this title, as applicable, or $ 100, whichever amount is less, if the disclosures are not returned to the vendor at the time the contract is cancelled.

(c) Receipt of amendment to disclosure which adversely affects purchaser. -- Any purchaser may within 3 calendar days following receipt by the purchaser of a change in mandatory fees and payments exceeding 10 percent of the amount previously stated to exist or any other substantial and material amendment to the disclosures required by § 11B-105 or § 11B-106 of this title, as applicable, which adversely affects the purchaser, cancel in writing the contract without stating a reason and without liability on the part of the purchaser, and the purchaser shall be entitled to the return of deposits made on account of the contract.

(d) Waiver of termination of purchaser's rights under section. -- The rights of a purchaser under this section may not be waived in the contract and any attempted waiver is void. However, if any purchaser proceeds to settlement, the purchaser's right to cancel under this section is terminated.

(e) Reliance on disclosures contained in depository. -- In satisfying the requirements of subsection (b) of this section, the vendor shall be entitled to rely upon the disclosures contained in the depository after June 30, 1989.

(f) Provisions inapplicable to foreclosure sale. -- The provisions of this section do not apply to a sale of a lot in an action to foreclose a mortgage or deed of trust.

HISTORY: 1987, ch. 321; 1988, ch. 6, § 1; ch. 82; 1989, ch. 693.

NOTES:
EDITOR'S NOTE. --Chapter 82, Acts 1988, approved Apr. 12, 1988, and effective from date of enactment, transferred former § 11B-108 of this title to be present § 11B-109 of this title, and transferred former § 11B-107 of this title to be present § 11B-108 of this title.

INTENT AND APPLICATION OF 3-DAY RESCISSION PERIOD. --The three-day rescission period under former subsection (b) (now subsection (c)) is plainly intended to allow the buyer three days to consider the effect of the amendment on his or her buying decision. Where the amendment is provided to the buyer only a day before settlement, the buyer has an implied right under former subsection (b) (now subsection (c)) to postpone settlement for two days, to allow for the full three-day period within which to rescind. 72 Op. Att'y Gen. 158 (1987).

BUYER'S OPTIONS REGARDING RESCISSION. --While a buyer can choose to ignore an amendment actually delivered to the buyer by the seller, the buyer would no longer have the unlimited right to rescind under subsection (a). Nor would a buyer's refusal to sign an addendum containing the amendment itself invalidate the contract; rather, the buyer would have the more limited right to rescind under former subsection (b) (now subsection (c)). 72 Op. Att'y Gen. 158 (1987).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11B. MARYLAND HOMEOWNERS ASSOCIATION ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11B-109 (2006)

§ 11B-109. Untrue statements or omissions by vendor

(a) Liability for damages; limitations period. -- Any vendor, required under § 11B-105, § 11B-106, or § 11B-107 of this title to disclose information to a purchaser, who makes an untrue statement of a material fact, or who omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, shall be liable for damages proximately caused by the untrue statement or omission to the person purchasing a lot from that vendor. However, an action may not be maintained to enforce a liability created under this section unless brought within one year after the facts constituting the cause of action have or should have been discovered.

(b) Exception to liability. -- A vendor may not be liable under subsection (a) if the vendor had, after reasonable investigation, reasonable grounds to believe, and did believe, at the time the information required to be disclosed under § 11B-105, § 11B-106, or § 11B-107 of this title was provided to the purchaser, that the statements were true and that there was no omission to state a material fact necessary to make the statements not misleading.

(c) Provisions inapplicable to foreclosure sale. -- The provisions of this section do not apply to trustees, mortgagees, assignees of mortgagees or other persons selling a lot in an action to foreclose a mortgage or deed of trust.

HISTORY: 1987, ch. 321; 1988, ch. 82; 1989, ch. 693.

NOTES:
EDITOR'S NOTE. --Chapter 82, Acts 1988, approved Apr. 12, 1988, and effective from date of enactment, transferred former § 11B-109 of this title to be present § 11B-110 of this title and transferred former § 11B-108 of this title to be present § 11B-109 of this title.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11B. MARYLAND HOMEOWNERS ASSOCIATION ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11B-110 (2006)

§ 11B-110. Warranties; notice of defect

(a) Implied and express warranties. --

(1) In addition to the implied warranties on private dwelling units under § 10-203 of this article and the express warranties on private dwelling units under § 10-202 of this article, there shall be an implied warranty to the homeowners association that the improvements to common areas are:

(i) Free from faulty materials;

(ii) Constructed in accordance with sound engineering standards; and

(iii) Constructed in a workmanlike manner.

(2) (i) Subject to the provisions of subparagraph (ii) of this paragraph, if the improvements to the common areas were constructed by the vendor, its agents, servants, employees, contractors, or subcontractors, then the warranty on improvements shall be from the vendor of the lots within the development.

(ii) If the improvements to the common areas were constructed on the common areas prior to its conveyance to the homeowners association, then the warranty on improvements shall be from the grantor of the common areas.

(3) The warranty on improvements to the common areas begins with the first transfer of title to a lot to a member of the public by the vendor of the lot. The warranty on improvements to common areas not completed at that time shall begin with the completion of the improvement or with its availability for use by lot owners, whichever occurs later. The warranty extends for a period of one year.

(4) Suit for enforcement of the warranty on improvements to the common areas may be brought by either the homeowners association or by an individual lot owner.

(b) Notice of defect. -- Notice of a defect shall be given within the warranty period and suit for enforcement of the warranty shall be brought within one year of the expiration of the warranty period.

(c) Applicability of warranties. -- Warranties shall not apply to defects caused through abuse or failure to perform maintenance by a lot owner or the homeowners association.

HISTORY: 1987, ch. 321; 1988, ch. 82.

NOTES:
EDITOR'S NOTE. --Chapter 82, Acts 1988, approved Apr. 12, 1988, and effective from date of enactment, transferred former § 11B-110 of this title to be present § 11B-111 of this title and transferred former § 11B-109 of this title to be present § 11B-110 of this title.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11B. MARYLAND HOMEOWNERS ASSOCIATION ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11B-111 (2006)

§ 11B-111. Meetings of homeowners association or its governing body

Except as provided in this title, and notwithstanding anything contained in any of the documents of the homeowners association:

(1) Subject to the provisions of paragraph (4) of this section, all meetings of the homeowners association, including meetings of the board of directors or other governing body of the homeowners association or a committee of the homeowners association, shall be open to all members of the homeowners association or their agents;

(2) All members of the homeowners association shall be given reasonable notice of all regularly scheduled open meetings of the homeowners association;

(3) (i) This paragraph does not apply to any meeting of a governing body that occurs at any time before the lot owners, other than the developer, have a majority of votes in the homeowners association, as provided in the declaration;

(ii) Subject to subparagraph (iii) of this paragraph and to reasonable rules adopted by a governing body, a governing body shall provide a designated period of time during a meeting to allow lot owners an opportunity to comment on any matter relating to the homeowners association;

(iii) During a meeting at which the agenda is limited to specific topics or at a special meeting, the lot owners' comments may be limited to the topics listed on the meeting agenda; and

(iv) The governing body shall convene at least one meeting each year at which the agenda is open to any matter relating to the homeowners association;

(4) A meeting of the board of directors or other governing body of the homeowners association or a committee of the homeowners association may be held in closed session only for the following purposes:

(i) Discussion of matters pertaining to employees and personnel;

(ii) Protection of the privacy or reputation of individuals in matters not related to the homeowners association's business;

(iii) Consultation with legal counsel;

(iv) Consultation with staff personnel, consultants, attorneys, or other persons in connection with pending or potential litigation;

(v) Investigative proceedings concerning possible or actual criminal misconduct;

(vi) Consideration of the terms or conditions of a business transaction in the negotiation stage if the disclosure could adversely affect the economic interests of the homeowners association;

(vii) Compliance with a specific constitutional, statutory, or judicially imposed requirement protecting particular proceedings or matters from public disclosure; or

(viii) On an individually recorded affirmative vote of two-thirds of the board or committee members present, some other exceptional reason so compelling as to override the general public policy in favor of open meetings; and

(5) If a meeting is held in closed session under paragraph (4) of this section:

(i) An action may not be taken and a matter may not be discussed if it is not permitted by paragraph (4) of this section; and

(ii) A statement of the time, place, and purpose of a closed meeting, the record of the vote of each board or committee member by which the meeting was closed, and the authority under this section for closing a meeting shall be included in the minutes of the next meeting of the board of directors or the committee of the homeowners association.

HISTORY: 1987, ch. 321; 1988, ch. 6, § 1; ch. 82; 1989, ch. 5, § 1; 1998, chs. 440, 564.

NOTES:
EDITOR'S NOTE. --Chapter 82, Acts 1988, approved Apr. 12, 1988, and effective from date of enactment, transferred former § 11B-111 of this title to be present § 11B-112 of this title and transferred former § 11B-110 of this title to be present § 11B-111 of this title.

APPLICABILITY TO CONDOMINIUMS. --The Homeowners Association Act does not apply to condominiums as such. It applies to condominiums only if they are part of a development, as defined in § 11B-101 of this title. If a condominium is part of a development, § 11B-106 of this title applies to the resale of condominium units. However, even if the condominium is part of a development, §§ 11B-111 and 11B-112 of this title do not govern the meeting and recordkeeping practices of the condominium itself. 73 Op. Att'y Gen. 215 (1988).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11B. MARYLAND HOMEOWNERS ASSOCIATION ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11B-111.1 (2006)

§ 11B-111.1. Family day care homes -- No-impact home-based businesses

(a) Definitions. --

(1) In this section, the following words have the meanings indicated.

(2) "Day care provider" means the adult who has primary responsibility for the operation of a family day care home.

(3) "Family day care home" means a unit registered under Title 5, Subtitle 5 of the Family Law Article.

(4) "No-impact home-based business" means a business that:

(i) Is consistent with the residential character of the dwelling unit;

(ii) Is subordinate to the use of the dwelling unit for residential purposes and requires no external modifications that detract from the residential appearance of the dwelling unit;

(iii) Uses no equipment or process that creates noise, vibration, glare, fumes, odors, or electrical or electronic interference detectable by neighbors or that causes an increase of common expenses that can be solely and directly attributable to a no-impact home-based business; and

(iv) Does not involve use, storage, or disposal of any grouping or classification of materials that the United States Secretary of Transportation or the State or any local governing body designates as a hazardous material.

(b) Applicability. --

(1) The provisions of this section relating to family day care homes do not apply to a homeowners association that is limited to housing for older persons, as defined under the federal Fair Housing Act.

(2) The provisions of this section relating to no-impact home-based businesses do not apply to a homeowners association that has adopted, prior to July 1, 1999, procedures in accordance with its covenants, declaration, or bylaws for the prohibition or regulation of no-impact home-based businesses.

(c) Permitted activities. --

(1) Subject to the provisions of subsections (d) and (e)(1) of this section, a recorded covenant or restriction, a provision in a declaration, or a provision of the bylaws or rules of a homeowners association that prohibits or restricts commercial or business activity in general, but does not expressly apply to family day care homes or no-impact home-based businesses, may not be construed to prohibit or restrict:

(i) The establishment and operation of family day care homes or no-impact home-based businesses; or

(ii) Use of the roads, sidewalks, and other common areas of the homeowners association by users of the family day care home.

(2) Subject to the provisions of subsections (d) and (e)(1) of this section, the operation of a family day care home or no-impact home-based business shall be:

(i) Considered a residential activity; and

(ii) A permitted activity.

(d) Express prohibition. --

(1) (i) Except as provided in subparagraph (ii) of this paragraph and subject to the provisions of paragraphs (2) and (3) of this subsection, a homeowners association may include in its declaration, bylaws, or recorded covenants and restrictions a provision expressly prohibiting the use of a residence as a family day care home or no-impact home-based business.

(ii) A homeowners association may not include a provision described under subparagraph (i) of this paragraph expressly prohibiting the use of a residence as a family day care home in its declaration, bylaws, or recorded covenants and restrictions until the lot owners, other than the developer, have 90% of the votes in the homeowners association.

(iii) A provision described under subparagraph (i) of this paragraph expressly prohibiting the use of a residence as a family day care home or no-impact home-based business shall apply to an existing family day care home or no-impact home-based business in the homeowners association.

(2) A provision described under paragraph (1)(i) of this subsection expressly prohibiting the use of a residence as a family day care home or no-impact home-based business may not be enforced unless it is approved by a simple majority of the total eligible voters of the homeowners association, not including the developer, under the voting procedures contained in the declaration or bylaws of the homeowners association.

(3) If a homeowners association includes in its declaration, bylaws, or recorded covenants and restrictions a provision prohibiting the use of a residence as a family day care home or no-impact home-based business, it shall also include a provision stating that the prohibition may be eliminated and family day care homes or no-impact home-based businesses may be approved by a simple majority of the total eligible voters of the homeowners association under the voting procedures contained in the declaration or bylaws of the homeowners association.

(4) If a homeowners association includes in its declaration, bylaws, or recorded covenants and restrictions a provision expressly prohibiting the use of a residence as a family day care home or no-impact home-based business, the prohibition may be eliminated and family day care or no-impact home-based business activities may be permitted by the approval of a simple majority of the total eligible voters of the homeowners association under the voting procedures contained in the declaration or bylaws of the homeowners association.

(e) Regulation of operation. -- A homeowners association may include in its declaration, bylaws, rules, or recorded covenants and restrictions a provision that:

(1) Requires day care providers to pay on a pro rata basis based on the total number of family day care homes operating in the homeowners association any increase in insurance costs of the homeowners association that are solely and directly attributable to the operation of family day care homes in the homeowners association; and

(2) Imposes a fee for use of common areas in a reasonable amount not to exceed $ 50 per year on each family day care home or no-impact home-based business which is registered and operating in the homeowners association.

(f) Notice. --

(1) If the homeowners association regulates the number or percentage of family day care homes under subsection (e)(1) of this section, in order to assure compliance with this

regulation, the homeowners association may require residents to notify the homeowners association before opening a family day care home.

(2) The homeowners association may require residents to notify the homeowners association before opening a no-impact home-based business.

(g) Liability insurance. --

(1) A day care provider in a homeowners association:

(i) Shall obtain the liability insurance described under §§ 19-106 and 19-203 of the Insurance Article in at least the minimum amount described under that statute; and

(ii) May not operate without the liability insurance described under item (i) of this paragraph.

(2) A homeowners association may not require a day care provider to obtain insurance in an amount greater than the minimum amount required under paragraph (1) of this subsection.

(h) Home-based businesses. -- A homeowners association may restrict or prohibit a no-impact home-based business in any common areas.

HISTORY: 1989, chs. 491, 492; 1990, ch. 6, § 2; 1997, ch. 35, § 9; 1998, ch. 341; 1999, ch. 352; 2006, ch. 44, § 5.

NOTES:
EDITOR'S NOTE. --Section 5, ch. 44, Acts 2006, enacted April 7, 2006, pursuant to art. II, § 17(b) of the Maryland Constitution and effective from date of enactment, provides that "any reference in the Annotated Code of Maryland rendered obsolete by an Act of the General Assembly of 2006 shall be corrected by the publisher of the Annotated Code, in consultation with and subject to the approval of the Department of Legislative Services, with no further action required by the General Assembly. The publisher shall adequately describe any such correction in an editor's note following the section affected." Pursuant to § 5 of ch. 44, "19-203" was substituted for "19-202" in (g)(1)(i), to conform with ch. 388, Acts 2006, effective January 1, 2007, which redesignated the subject reference in the Insurance Article.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11B. MARYLAND HOMEOWNERS ASSOCIATION ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11B-111.2 (2006)

§ 11B-111.2. Candidate or proposition sign

(a) In general. -- In this section, "candidate sign" means a sign on behalf of a candidate for public office or a slate of candidates for public office.

(b) Exceptions. -- Except as provided in subsection (c) of this section, a recorded covenant or restriction, a provision in a declaration, or a provision in the bylaws or rules of a homeowners association may not restrict or prohibit the display of:

(1) A candidate sign; or

(2) A sign that advertises the support or defeat of any question submitted to the voters in accordance with the Election Law Article.

(c) Restriction. -- A recorded covenant or restriction, a provision in a declaration, or a provision in the bylaws or rules of a homeowners association may restrict the display of a candidate sign or a sign that advertises the support or defeat of any proposition:

(1) In the common areas;

(2) In accordance with provisions of federal, State, and local law; or

(3) If a limitation to the time period during which signs may be displayed is not specified by a law of the jurisdiction in which the homeowners association is located, to a time period not less than:

(i) 30 days before the primary election, general election, or vote on the proposition; and

(ii) 7 days after the primary election, general election, or vote on the proposition.

HISTORY: 1998, ch. 439; 2002, ch. 303, § 2.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 303, Acts 2002, effective Jan. 1, 2003, substituted "the Election Law Article" for "Article 33 of the Code" in (b) (2).

EDITOR'S NOTE. --Chapters 440 and 564, Acts 1998, identically enacted sections designated as §§ 11B-111.2 and 11B-111.3. However, since a § 11B-111.2 had been previously added by Chapter 439, Acts 1998, the sections added by Chater 440 and 564, Acts 1998, have been redesignated as §§ 11B-111.3 and 11B-111.4.
Section 7, ch. 303, Acts 2002, provides "that §§ 1 and 2 of this Act shall take effect January 1, 2003, contingent on the taking effect of Chapter 291 (S.B. 1) of the Acts of the General Assembly of 2002, and if Chapter 291 does not become effective, this Act shall be null and void without the necessity of further action by the General Assembly." Section 13, ch. 291, Acts 2002, provides that the act shall take effect January 1, 2003.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11B. MARYLAND HOMEOWNERS ASSOCIATION ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11B-111.3 (2006)

§ 11B-111.3. Distribution of written information and materials

(a) Applicability. -- This section does not apply to the distribution of information or materials at any time before the lot owners, other than the developer, have a majority of votes in the homeowners association, as provided in the declaration.

(b) Door-to-door distribution. -- In this section, the door-to-door distribution of any of the following information or materials may not be considered a distribution for purposes of determining the manner in which a governing body distributes information under this section:

(1) Any information or materials reflecting the assessments imposed on lot owners in accordance with a recorded covenant, the declaration, bylaw, or rule of the homeowners association; and

(2) Any meeting notices of the governing body.

(c) Written information or materials. -- Except for reasonable restrictions to the time of distribution, a recorded covenant or restriction, a provision in a declaration, or a provision of the bylaws or rules of a homeowners association may not restrict a lot owner from distributing written information or materials regarding the operation of or matters relating to the operation of the homeowners association in any manner or place that the governing body distributes written information or materials.

HISTORY: 1998, chs. 440, 564.

NOTES:
EDITOR'S NOTE. --Chapters 440 and 564, Acts 1998, identically enacted sections designated as §§ 11B-111.2 and 11B-111.3. However, since a § 11B-111.2 had been previously added by Chapter 439, Acts 1998, the sections added by Chater 440 and 564, Acts 1998, have been redesignated as §§ 11B-111.3 and 11B-111.4.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11B. MARYLAND HOMEOWNERS ASSOCIATION ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11B-111.4 (2006)

§ 11B-111.4. Meetings

(a) Applicability. -- This section does not apply to any meetings of lot owners occurring at any time before the lot owners, other than the developer, have a majority of the votes in the homeowners association, as provided in the declaration.

(b) Meetings. -- Subject to reasonable rules adopted by the governing body, lot owners may meet for the purpose of considering and discussing the operation of and matters relating to the operation of the homeowners association in any common areas or in any building or facility in the common areas that the governing body of the homeowners association uses for scheduled meetings.

HISTORY: 1998, chs. 440, 564.

NOTES:
EDITOR'S NOTE. --Chapters 440 and 564, Acts 1998, identically enacted sections designated as §§ 11B-111.2 and 11B-111.3. However, since a § 11B-111.2 had been previously added by Chapter 439, Acts 1998, the sections added by Chater 440 and 564, Acts 1998, have been redesignated as §§ 11B-111.3 and 11B-111.4.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11B. MARYLAND HOMEOWNERS ASSOCIATION ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11B-112 (2006)

§ 11B-112. Books and records of homeowners association; disclosures to be deposited into depository

(a) Books and records -- Examination; public inspection. --

(1) Subject to the provisions of paragraph (2) of this subsection, all books and records kept by or on behalf of the homeowners association shall be made available for examination and copying by a lot owner, a lot owner's mortgagee, and their respective duly authorized agents or attorneys, during normal business hours, and after reasonable notice.

(2) Books and records kept by or on behalf of a homeowners association may be withheld from public inspection to the extent that they concern:

(i) Personnel records;

(ii) An individual's medical records;

(iii) An individual's financial records;

(iv) Records relating to business transactions that are currently in negotiation;

(v) The written advice of legal counsel; or

(vi) Minutes of a closed meeting of the governing body of the homeowners association.

(b) Same -- Charge for review or copying. -- The homeowners association may impose a reasonable charge upon a person desiring to review or copy the books and records.

(c) Disclosures to be deposited into depository. --

(1) Each homeowners association that was in existence on June 30, 1987 shall deposit in the depository by December 31, 1988, and each homeowners association established subsequent to June 30, 1987 shall deposit in the depository by the later of the date 30 days following its establishment, or December 31, 1988, all disclosures, current to the date of deposit, specified:

(i) By § 11B-105(b) of this title except for those disclosures required by paragraphs (6)(i), (8), (9), and (12);

(ii) By § 11B-106(b) of this title except for those disclosures required by paragraphs (1), (2), (4), and (5)(i); and

(iii) By § 11B-107(b) of this title.

(2) Beginning January 1, 1989, within 30 days of the adoption of or amendment to any of the disclosures required by this title to be deposited in the depository, a homeowners association shall deposit the adopted or amended disclosures in the depository.

(3) If a homeowners association fails to deposit in the depository any of the disclosures required to be deposited by this section, or by § 11B-105(b)(6)(ii) or § 11B-106(b)(5)(ii) of this title, then those disclosures which were not deposited shall be unenforceable until the time they are deposited.

HISTORY: 1987, ch. 321; 1988, ch. 82; 1989, ch. 5, § 1; 1990, ch. 297; 2004, ch. 382.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 382, Acts 2004, effective Oct. 1, 2004, added (a)(2)(vi).

EDITOR'S NOTE. --Chapter 82, Acts 1988, approved Apr. 12, 1988, and effective from date of enactment, transferred former § 11B-112 of this title to be present § 11B-114 of this title and transferred former § 11B-111 of this title to be present § 11B-112 of this title.

APPLICABILITY TO CONDOMINIUMS. --The Homeowners Association Act does not apply to condominiums as such. It applies to condominiums only if they are part of a development, as defined in § 11B-101 of this title. If a condominium is part of a development, § 11B-106 of this title applies to the resale of condominium units. However, even if the condominium is part of a development, §§ 11B-111 and 11B-112 of this title do not govern the meeting and recordkeeping practices of the condominium itself. 73 Op. Att'y Gen. 215 (1988).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11B. MARYLAND HOMEOWNERS ASSOCIATION ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11B-112.1 (2006)

§ 11B-112.1. Late charges

The declaration or bylaws of a homeowners association may provide for a late charge of $ 15 or one-tenth of the total amount of any delinquent assessment or installment, whichever is greater, provided the charge may not be imposed more than once for the same delinquent payment and may be imposed only if the delinquency has continued for at least 15 calendar days.

HISTORY: 2000, ch. 59, § 3; 2001, ch. 288.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 288, Acts 2001, effective Oct. 1, 2001, inserted "declaration or" preceding "bylaws".

EDITOR'S NOTE. --Section 5, ch. 59, Acts 2000, effective June 1, 2000, provides that "this Act shall apply to all late fees provided for in contracts entered into, or in effect, on or after November 5, 1995. This Act does not apply to late fees imposed before November 5, 1995. If a late fee was not imposed on a payment amount that was past due for goods or services provided before June 1, 2000, a late fee may not be imposed on or after June 1, 2000 on that payment amount if that payment amount was paid before June 1, 2000. Further, if a late fee was imposed on a payment amount that was past due for goods or services provided before June 1, 2000, an additional late fee may not be imposed on or after June 1, 2000 on that payment amount if the amount of the late fee previously imposed on that payment amount is lower than the amount of the late fee allowed under this Act."
Section 6, ch. 59, Acts 2000, provides that "this Act shall apply to any case pending or filed on or after June 1, 2000, but may not be applied to any case for which a final judgment has been rendered and for which appeals have been exhausted prior to June 1, 2000."

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***

*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11B. MARYLAND HOMEOWNERS ASSOCIATION ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11B-113 (2006)

§ 11B-113. Homeowners association depository

(a) Location. -- There is a homeowners association depository in the office of the clerk of the court in each county and the City of Baltimore.

(b) Establishment and maintenance. -- Consistent with the duties of a clerk of a court as enumerated in § 2-201 of the Courts and Judicial Proceedings Article, the clerk of the court shall establish and thereafter maintain a depository for the purpose of making available to the public upon request the information to be deposited by homeowners associations.

(c) Document file separate from land records; contents; availability for public view or copying. -- The depository shall:

(1) Be established and maintained in each county and the City of Baltimore as a document file separate from the land records of the county or City;

(2) Contain a record of the names of all homeowners associations for each county and the City of Baltimore;

(3) Contain all disclosures deposited by a homeowners association; and

(4) Be available to the public for viewing and for obtaining copies during the regular business hours of the office of the clerk.

(d) Duties of the clerk and State Court Administrator. --

(1) The clerk of the court is authorized to regulate the form and manner of documents deposited into the depository and to collect fees for a deposit.

(2) The clerk of the court shall permit the deposit of copies of disclosures, however reproduced.

(3) The clerk of the court may adopt regulations as necessary or desirable to implement the depository.

(4) The State Court Administrator shall establish, so as to cover the reasonable and ordinary expenses of maintaining the depository, the amount of the fees that the clerk of the court may charge for deposits in the depository.

(5) (i) The clerk of the court shall maintain a depository index; and

(ii) All disclosures shall be filed under the name of the homeowners association.

(e) Contents not recordation under Title 3. -- Material contained in the depository may not be viewed as recordation under Title 3 of this article.

HISTORY: 1988, ch. 82; 1989, ch. 5, § 1.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11B. MARYLAND HOMEOWNERS ASSOCIATION ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11B-113.1 (2006)

§ 11B-113.1. Electronic transmission of notice

(a) In general. -- Notwithstanding language contained in the governing documents of a homeowners association, the homeowners association may provide notice of a meeting or deliver information to a lot owner by electronic transmission if:

(1) The board of directors or other governing body of the homeowners association gives the homeowners association the authority to provide notice of a meeting or deliver information by electronic transmission;

(2) The lot owner gives the homeowners association prior written authorization to provide notice of a meeting or deliver information by electronic transmission; and

(3) An officer or agent of the homeowners association certifies in writing that the homeowners association has provided notice of a meeting or delivered material or information as authorized by the lot owner.

(b) Ineffective notice. -- Notice or delivery by electronic transmission shall be considered ineffective if:

(1) The homeowners association is unable to deliver two consecutive notices; and

(2) The inability to deliver the electronic transmission becomes known to the person responsible for sending the electronic transmission.

(c) Same -- Effect. -- The inadvertent failure to deliver notice by electronic transmission does not invalidate any meeting or other action.

HISTORY: 2004, ch. 286.

NOTES:
EDITOR'S NOTE. --Section 2, ch. 286, Acts 2004, provides that the act shall take effect Oct. 1, 2004.
Chapters 286, 478, and 507, Acts 2004, all enacted § 11B-113.1. In addition, ch. 286 enacted § 11B-113.2. The section enacted by ch. 478 was redesignated as § 11B-113.3, and

the section enacted by ch. 507 was redesignated as § 11B-113.4.

BILL REVIEW LETTER. --Chapter 507, Acts 2004 (House Bill 566) was approved for constitutionality and legal sufficiency, despite issues concerning the impairment of contracts related to the phase-in increase of annual charges for a homeowner's association as linked to property assessments, rebate or credit provisions, and cap on rate of increase since the purpose statement within the section states that it is for the relief of members of the association. (Letter of the Attorney General dated April 23, 2004.)

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11B. MARYLAND HOMEOWNERS ASSOCIATION ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11B-113.2 (2006)

§ 11B-113.2. Electronic transmission of votes or proxies

(a) In general. -- Notwithstanding language contained in the governing documents of the homeowners association, the board of directors or other governing body of the homeowners association may authorize lot owners to submit a vote or proxy by electronic transmission if the electronic transmission contains information that verifies that the vote or proxy is authorized by the lot owner or the lot owner's proxy.

(b) When anonymous voting required. -- If the governing documents of the homeowners association require voting by secret ballot and the anonymity of voting by electronic transmission cannot be guaranteed, voting by electronic transmission shall be permitted if lot owners have the option of casting anonymous printed ballots.

HISTORY: 2004, ch. 286.

NOTES:
EDITOR'S NOTE. --Section 2, ch. 286, Acts 2004, provides that the act shall take effect Oct. 1, 2004.
Chapters 286, 478, and 507, Acts 2004, all enacted § 11B-113.1. In addition, ch. 286 enacted § 11B-113.2. The section enacted by ch. 478 was redesignated as § 11B-113.3, and the section enacted by ch. 507 was redesignated as § 11B-113.4.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11B. MARYLAND HOMEOWNERS ASSOCIATION ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11B-113.3 (2006)

§ 11B-113.3. Deletion of ownership restrictions based on race, religion, or national origin

(a) Applicability. -- This section applies to any recorded covenant or restriction that restricts ownership based on race, religious belief, or national origin, including a covenant or restriction that is part of a uniform general scheme or plan of development.

(b) Deletion of recorded covenant or restriction. -- Except as provided in subsection (c) of this section, a homeowners association may delete a recorded covenant or restriction that restricts ownership based on race, religious belief, or national origin from the deeds or other declarations of property in the development if at least 85% of the lot owners in the development agree to the deletion of the recorded covenant or restriction from the deeds or other declarations.

(c) Same -- Deeds or declarations providing for amendment. -- If the deeds or other declarations of property in the development expressly provide for a method of amendment or deletion of a recorded covenant or restriction, a recorded covenant or restriction that restricts ownership based on race, religious belief, or national origin may be deleted as provided for in the deeds or declarations or in accordance with subsection (b) of this section.

(d) Recording amendment. -- After the lot owners in the development agree to the deletion of a recorded covenant or restriction that restricts ownership based on race, religious belief, or national origin as provided in subsection (a) of this section, the governing body of the homeowners association shall record with the clerk of the court in the jurisdiction where the development is located an amendment to the deeds or other declarations that include the recorded covenant or restriction, executed by at least 85% of the lot owners in the development, that provides for the deletion of the recorded covenant or restriction from the deeds or declarations of the property in the development.

HISTORY: 2004, ch. 478.

NOTES:
EDITOR'S NOTE. --Section 2, ch. 478, Acts 2004, provides that the act shall take effect Oct. 1, 2004.
Chapters 286, 478, and 507, Acts 2004, all enacted § 11B-113.1. In addition, ch. 286 enacted § 11B-113.2. The section enacted by ch. 478 was redesignated as § 11B-113.3, and the section enacted by ch. 507 was redesignated as § 11B-113.4.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11B. MARYLAND HOMEOWNERS ASSOCIATION ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11B-113.4 (2006)

§ 11B-113.4. Annual charge

(a) Legislative intent. -- It is the intent of the General Assembly to prevent unfair treatment of property owners by a homeowners association when annual charges based on the assessed value of property imposed by the homeowners association increase at such a rate that it creates an unexpected windfall for the homeowners association.

(b) "Annual charge" defined. -- In this section, the term "annual charge" means a charge based on the current assessed value of property for county and state property taxes that is levied by a homeowners association on property in a development.

(c) Applicibility of section. -- This section only applies to a development that:

(1) Contains at least 13,000 acres of land and has a population of at least 80,000; and

(2) Is governed by a homeowners association that levies an annual charge on property within the development.

(d) Calculating the annual charge. --

(1) A homeowners association shall base the annual charge for the revalued properties on the phased in value of property as provided under § 8-103 of the Tax - Property Article.

(2) If the value of an improved property has been reduced by the State or county assessments office after, or by reason of, a protest, appeal, credit, or other adjustment, the homeowners association shall reduce the annual charge on the property based on the reduced value.

(e) Same -- Rebate or credit. -- Until the annual charge for the revalued property is based on the phased in value of property as required under subsection (d) of this section, if the value of the properties revalued as of the most recent date of finality as provided in § 8-104 of the Tax - Property Article exceeds the prior valuation by more than 10%:

(1) The increase shall be considered an unexpected windfall to the homeowners association that should be offset; and

(2) Beginning with the first year following the revaluation of the property for State property tax purposes, the homeowners association shall provide to the owner of the revalued property a rebate or credit in an amount equal to the portion of the annual charge that is attributable to the growth in the value of the revalued property in excess of 10%.

(f) Applicability of subsections (d) and (e). -- Subsections (d) and (e) of this section do not apply if a governing body certifies on or before April 1 in the first year following the revaluation of property values for State property tax purposes that the revenues from the annual charges are insufficient to meet the debt service requirements during the next taxable year on all bonds that the governing body anticipates will be outstanding during that year.

(g) Rate of assessed value of property. -- Notwithstanding any provision of the law to the contrary, when calculating an annual charge, a homeowners association may not consider the rate of assessed value of property to have increased by more than 10% in a taxable year.

HISTORY: 2004, ch. 507; 2005, ch. 55.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 55, Acts 2005, effective June 1, 2005, redesignated (d) as (d)(1) and added (d)(2)

EDITOR'S NOTE. --Section 2, ch. 507, Acts 2004, provides that "notwithstanding the provisions of § 1 of this Act, the valuation of real property for the purposes of any private contract or covenant that was entered into or imposed prior to July 1, 1978, the effective date of Chapter 175 of the Acts of the General Assembly of 1978, for the purpose of providing funds for public facilities or services through the imposition of payments or charges based on valuations made by the State for real estate tax purposes shall be 50% of the phased in value of property as provided under § 8-104 of the Tax - Property Article."

Section 3, ch. 507, Acts 2004, provides that "this Act shall be construed to apply retroactively and shall be applied to and interpreted to affect all annual charges imposed by a homeowners association made on or after January 1, 2003."

Section 5, ch. 507, Acts 2004, provides that the act shall take effect June 1, 2004.

Chapters 286, 478, and 507, Acts 2004, all enacted § 11B-113.1. In addition, ch. 286 enacted § 11B-113.2. The section enacted by ch. 478 was redesignated as § 11B-113.3, and the section enacted by ch. 507 was redesignated as § 11B-113.4.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11B. MARYLAND HOMEOWNERS ASSOCIATION ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11B-113.5 (2006)

§ 11B-113.5. Annexation of land in Howard County.

(a) Scope. -- This section establishes the process for the annexation of parcels of land that are subject to the deed, agreement, and declaration establishing any of the villages or town center in Columbia in Howard County.

(b) In general. -- Notwithstanding any provision of law or contract, a parcel of land located in that area of land in Howard County that is subject to the deed, agreement, and declaration of covenants, easements, charges, and liens dated December 13, 1966, and recorded in the land records of Howard County in Liber W.H.H. 463, Folio 158, et seq. (the Columbia Association Declaration) that is not part of the village or town center in which the land is located may be annexed into the village or town center if:

(1) The owner or developer of the land makes an application for annexation to the village or town center community association; and

(2) The Columbia Association or its successor and the village or town center community association approve the annexation.

(c) Execution and filing of instruments. -- An instrument that consolidates a parcel of land into the village or town center in which the land is located shall be executed and filed for recordation in the land records of Howard County.

(d) Applicability of covenants, restrictions, or contract provisions. --

(1) A parcel of land that is annexed into a village or town center in accordance with this section shall be subject to the recorded covenants and restrictions of the village or town center in which the parcel of land is located.

(2) An annexation completed in accordance with this section may not abrogate or in any other way affect any approval previously granted or condition previously imposed under a recorded covenant or contract regarding improvements constructed on the annexed property.

HISTORY: 2006, ch. 32.

NOTES:
EDITOR'S NOTE. --Section 2, ch. 32, Acts 2006, approved April 6, 2006, provides that the act was effective from date of enactment.

BILL REVIEW LETTER. --Chapter 32, Acts 2006 (Senate Bill 1089) was approved for constitutionality and legal sufficiency. Further, with respect to condominium property, it was determined that the proper interpretation of the word "owner" in SB 1089, which establishes a mechanism for the private annexation of certain property in Columbia, Maryland, does not mean all of the unit owners, but rather a majority of the condominium's board of directors. (Letter of the Attorney General dated March 30, 2006.)

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11B. MARYLAND HOMEOWNERS ASSOCIATION ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11B-114 (2006)

§ 11B-114. Electronic payment fees

(a) "Electronic payment" defined. -- In this section, "electronic payment" means payment by credit card or debit card.

(b) In general. -- A homeowners association may require a person from whom payment is due to pay a reasonable electronic payment fee if the person elects to pay the homeowners association by means of electronic payment.

(c) Amount of fee. -- An electronic payment fee may not exceed the amount of any fee that may be charged to the homeowners association in connection with use of the credit card or debit card.

(d) Notice. -- If a homeowners association elects to charge an electronic payment fee under this section, the homeowners association shall specify on or include notice with each bill and other invoices for which electronic payment is authorized that an electronic payment fee will be charged.

HISTORY: 2005, ch. 529, § 2.

NOTES:
EDITOR'S NOTE. --Section 1, ch. 529, Acts 2005 renumbered former § 11B-114 of this article to be present § 11B-115 of this article, and Section 2 enacted a new § 11B-114 in lieu thereof. Chapter 529, Acts 2005, provides that the act shall take effect October 1, 2005.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 11B. MARYLAND HOMEOWNERS ASSOCIATION ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 11B-115 (2006)

§ 11B-115. Short title

This title may be cited as the Maryland Homeowners Association Act.

HISTORY: 1987, ch. 321; 1988, ch. 82; 2005, ch. 529, § 1.

NOTES:
EDITOR'S NOTE. --Chapter 82, Acts 1988, approved Apr. 12, 1988 and effective from date of

enactment, transferred former § 11B-112 of this title to be present § 11B-114 of this title.
Section 1, ch. 529, Acts 2005, renumbered former § 11B-114 of this article to be present § 11B-115 of this article.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 12. EMINENT DOMAIN
SUBTITLE 1. GENERAL RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 12-101 (2006)

§ 12-101. Application of title

All proceedings for the acquisition of private property for public use by condemnation are governed by the provisions of this title and of Title 12, Chapter 200 of the Maryland Rules. Nothing in this title prevents this State or any of its instrumentalities or political subdivisions, acting under statute or ordinance passed pursuant to Article III of the Maryland Constitution, from taking private property for public use immediately on making the required payment and giving any required security. In addition, this title does not prevent the State Roads Commission from using the procedures set forth in Title 8, Subtitle 3 of the Transportation Article, or prevent Baltimore City from using the procedure set forth in the Charter of Baltimore City and §§ 21-12 through 21-22, inclusive, of the Public Local Laws of Baltimore City.

HISTORY: An. Code 1957, art. 21, § 12-101; 1974, ch. 12, § 2; 1977, ch. 765, § 25; 1995, ch. 4, § 1; 1998, ch. 21, § 1.

MARYLAND LAW REVIEW. --For article discussing Maryland's new condemnation code, see 23 Md. L. Rev. 309 (1963).
For article, "Survey of Developments in Maryland Law, 1984-85," see 45 Md. L. Rev. 836 (1986).

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "State Constitutional Law for Maryland Lawyers: Individual Civil Rights," see 7 U. Balt. L. Rev. 299 (1978).

SOURCE OF EMINENT DOMAIN POWER. --The power of eminent domain adheres to sovereignty and requires no constitutional authority for its existence. Lore v. Board of Pub. Works, 277 Md. 356, 354 A.2d 812 (1976).

CONDEMNATION HAS NO RELEVANCY ON CONTRACT VOLUNTARILY ENTERED INTO between two parties, even though it is obvious that, if the parties had not come to terms voluntarily, the State would have instituted condemnation proceedings. Bartlett v. DOT, 40 Md. App. 47, 388 A.2d 930 (1978).

CONDEMNATION OF PRIVATE PROPERTY FOR PUBLIC HIGHWAY OR ROAD IS PROPER PUBLIC USE, and this is true irrespective of the number of people to be served or the fact that it is a dead end or cul-de-sac. Anne Arundel County v. Burnopp, 300 Md. 343, 478 A.2d 315 (1984).

CONDEMNATION BY WASHINGTON SUBURBAN SANITARY COMMISSION. --The Washington Suburban Sanitary Commission does not have authority to condemn by "quick-take" proceedings in Howard County; and in any Maryland county other than Montgomery or Prince George's, the Commission can condemn only under the standard procedures set forth in this title. 61 Op. Att'y Gen. 424 (1976).

INVERSE CONDEMNATION. --A claim for inverse condemnation is no more than a claim for damages. Millison v. Wilzack, 77 Md. App. 676, 551 A.2d 899, cert. denied, 315 Md. 307, 554 A.2d 393 (1989).

Neither this title nor Subtitle U of Chapter 1100 of the Maryland Rules provides that proceedings may be initiated by a property owner who believes that his property has been taken, either by condemnation or by virtue of proceedings or governmental action short of condemnation. Millison v. Wilzack, 77 Md. App. 676, 551 A.2d 899, cert. denied, 315 Md. 307, 554 A.2d 393 (1989).

The three year general statute of limitations prescribed by § 5-101 of the Courts and Judicial Proceedings Article applies to an action of inverse condemnation. Millison v. Wilzack, 77 Md. App. 676, 551 A.2d 899, cert. denied, 315 Md. 307, 554 A.2d 393 (1989).

CONSTRUCTION WITH OTHER SECTIONS. --The State's efforts to acquire certain property through enforcement of the rights it acquired by contract did not constitute an improper abandonment of the condemnation proceedings; this section and §§ 8-302 and 8-325 of the Transportation Article permit the State to proceed on dual track acquisition efforts simultaneously without violating the abandonment prohibition of § 12-109 of this subtitle. Shallow Run Ltd. Partnership v. State Hwy. Admin., 113 Md. App. 156, 686 A.2d 1113 (1996).

APPLIED IN State Rds. Comm'n v. Pumphrey, 260 Md. 633, 273 A.2d 81 (1971); Acting Dir., Dep't of Forests & Parks v. Walker, 39 Md. App. 298, 385 A.2d 806 (1978), aff'd, 284 Md. 357, 396 A.2d 262 (1979); M.B. Segall & Sons v. Mayor of Baltimore, 41 Md. App. 503, 397 A.2d 294, cert. denied, 285 Md. 732 (1979); Mayor of Baltimore v. Baltimore Football Club, Inc., 624 F. Supp. 278 (D. Md. 1985).

QUOTED IN Kelso Corp. v. Mayor of Baltimore, 45 Md. App. 120, 411 A.2d 691 (1980); Washington Sub. San. Comm'n v. Utilities, Inc., 365 Md. 1, 775 A.2d 1178 (2001).

CITED IN Vallario v. State Rds. Comm'n, 290 Md. 2, 426 A.2d 1384 (1981); Rome v. Lowenthal, 290 Md. 33, 428 A.2d 75 (1981).

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY

TITLE 12. EMINENT DOMAIN
SUBTITLE 1. GENERAL RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 12-102 (2006)

§ 12-102. When property deemed to be taken

In this title, property is deemed to be taken:

(1) If the plaintiff lawfully is authorized to take the property before trial pursuant to Article III of the Constitution of the State, or any amendment to it, and the required payment has been made to the defendant or into court, any required security has been given, and the plaintiff has taken possession of the property and actually and lawfully appropriated it to the public purposes of the plaintiff.

(2) In every other case, if the plaintiff pays the judgment and costs pursuant to Title 12, Chapter 200 of the Maryland Rules.

HISTORY: An. Code 1957, art. 21, § 12-103; 1974, ch. 12, § 2; 1998, ch. 21, § 1.

MARYLAND LAW REVIEW. --
For note, "The Maryland Survey: 2001-2002: Recent Decisions: The Court of Appeals of Maryland: VI. Eminent Domain," see 62 Md. L. Rev. 840 (2003).

UNIVERSITY OF BALTIMORE LAW FORUM. --For discussion of the scope of the doctrines of public use and relation back, see 16, No. 3 U. Balt. Law Forum 27 (1986).

TIME OF TAKING IN "QUICK TAKE" CONDEMNATION. --A taking in a "quick take" condemnation procedure is at that point when the authorized appropriation of land for public use has actually taken place, and such appropriation has placed legal restrictions on the property for a period of time which causes substantial interference with the property which destroys or lessens its value or by which the owner's right to its use or enjoyment is in any substantial degree abridged or destroyed, and possession in some form has occurred. State Rds. Comm'n v. Town of Colmar Manor, 51 Md. App. 240, 442 A.2d 199 (1982).
Where the legislative approval of a condemnation occurred in 1989 and where the condemnation commenced in 2002 when Baltimore City began formal quick-take condemnation proceedings in the trial court pursuant to §§ 12-102, 12-103 of this subtitle and deposited funds in the trial court's registry, the 1988 tax assessment was admissible under § 12-105(c) of this subtitle, as the assessment was greater than Baltimore City's appraisal; the assessment was relevant under Rule 5-402 to show a diminution in value caused by the condemnation approval, as diminution in value was a part of determining the fair market value of the property under § 12-105(b) of this subtitle. Zografos v. Mayor & City Council, 165 Md. App. 80, 884 A.2d 770 (2005).

OWNER MAY NOT CLAIM STATE TAKING WHILE CONTINUING USE OF PROPERTY. --A property owner may not continue in its exclusive, unfettered use and enjoyment of its land including receiving the total proceeds from three leases and then claim that the State "has taken possession of the property and actually and lawfully appropriated it to the public purposes ...." State Rds. Comm'n v. Town of Colmar Manor, 51 Md. App. 240, 442 A.2d 199 (1982).

CONDEMNING AUTHORITY HAS NO RIGHT TO POSSESSION OF CONDEMNED LAND UNTIL CONDEMNATION JUDGMENT PAID IN FULL. --In conventional condemnation cases, no right to possession of the property is obtained by the condemning authority until it pays the full amount of the condemnation judgment, plus costs. King v. State Rds. Comm'n, 298 Md. 80, 467 A.2d 1032 (1983).

CONDEMNEE IS NOT ENTITLED TO ANY COMPENSATION UNTIL TAKING OCCURS, and, by definition, there is no taking until the judgment is paid, a certificate of payment filed, and the inquisition recorded. Dodson v. Anne Arundel County, 294 Md. 490, 451 A.2d 317 (1982).

NO RIGHT OF ENTRY UNTIL PAYMENT MADE. --The State has no right of entry in a conventional eminent domain proceeding until payment has been made. Walker v. Acting Dir., Dep't of Forests & Parks, 284 Md. 357, 396 A.2d 262 (1979).

TAKING OF PROPERTY MAY OCCUR WITHOUT ACTUAL PHYSICAL APPROPRIATION, ENTRY, OR SEIZURE. Hardesty v. State Rds. Comm'n of State Hwy. Admin., 276 Md. 25, 343 A.2d 884 (1975).

TAKING WITHOUT FORMAL DIVESTING OF TITLE. --There can be a taking of property, giving rise to a vested right of compensation, without formally divesting the owner of his title. Hardesty v. State Rds. Comm'n of State Hwy. Admin., 276 Md. 25, 343 A.2d 884 (1975).

FILING OF PETITION GAVE NO RIGHTS IN LAND. --The mere filing of a condemnation petition gave the condemning authority no rights in the land. Washington Sub. San. Comm'n v. Nash, 284 Md. 376, 396 A.2d 538 (1979).

MERE POSTING OF MONEY IN COURT DOES NOT CONSTITUTE TAKING. --In the usual case, under the provisions of this section, the mere posting of money in court does not constitute a taking since the right to abandon a condemnation proceeding ceases only when the authorized appropriation of land for public use actually has taken place. Hardesty v. State Rds. Comm'n of State Hwy. Admin., 276 Md. 25, 343 A.2d 884 (1975).

BREACH OF LEASE AGREEMENT NOT DEEMED TAKING. --Where plaintiff voluntarily entered into a lease with the State, and there was not the slightest indication or suggestion that the State in any way forced itself upon plaintiff, a breach of a lease agreement will not be deemed a "taking" and plaintiff thus cannot avoid the defense of sovereign immunity. Calvert Assocs. v. Department of Emp. & Social Servs., 277 Md. 372, 357 A.2d 839 (1976).

ACTION BY ADMINISTRATION CONSTITUTED TAKING. --Considering the position taken by the State Highway Administration that physical entry upon the property was required before a taking could be mandated, the skimpy evidentiary record, the character of the property interest at stake, the immediate entry procedure employed by the Administration in undertaking to condemn the property, the fact that public enjoyment of scenic beauty of the property was immediate, the length of time involved before the Administration elected to abandon condemnation, and the legal restrictions placed upon the property during the pendency of the condemnation proceedings, the owner was deprived of the full use and enjoyment of his property by the Administration's action to a degree sufficient to constitute a taking within the contemplation of this section. Hardesty v. State Rds. Comm'n of State Hwy. Admin., 276 Md. 25, 343 A.2d 884 (1975).

RECORDATION OF FINALIZED PLAT FREEZES THE VALUE OF THE PROPERTY AS OF THE DATE OF RECORDATION. It is not a taking and does not determine when, or whether, possession of property is taken in a constitutional sense. Hardesty v. State Rds. Comm'n of State Hwy. Admin., 276 Md. 25, 343 A.2d 884 (1975).

NO DISTINCTION BETWEEN AFFIRMATIVE AND NEGATIVE EASEMENTS. --In setting forth criteria governing determination of when property is deemed to have been taken by the condemning authority in "quick-take" cases, this section makes no distinction between affirmative and negative easements. Hardesty v. State Rds. Comm'n of State Hwy. Admin., 276 Md. 25, 343 A.2d 884 (1975).

REMOVAL OF STANDING TIMBER FROM PROPERTY. --Where there was no compliance by the condemning authority with the prescribed means of taking under this section, the authority may not enjoin or restrict the lawful removal of standing timber from the property pending

trial of condemnation action. Washington Sub. San. Comm'n v. Nash, 284 Md. 376, 396 A.2d 538 (1979).

APPLIED IN State Rds. Comm'n v. Adams, 238 Md. 371, 209 A.2d 247 (1965); State Rds. Comm'n v. Pumphrey, 260 Md. 633, 273 A.2d 81 (1971); Lore v. Board of Pub. Works, 277 Md. 356, 354 A.2d 812 (1976); Glenn v. State Rds. Comm'n of State Hwy. Admin., 33 Md. App. 476, 365 A.2d 297 (1976); Acting Dir., Dep't of Forests & Parks v. Walker, 39 Md. App. 298, 385 A.2d 806 (1978), aff'd, 284 Md. 357, 396 A.2d 262 (1979); M.B. Segall & Sons v. Mayor of Baltimore, 41 Md. App. 503, 397 A.2d 294, cert. denied, 285 Md. 732 (1979); Mayor of Baltimore v. Baltimore Football Club, Inc., 624 F. Supp. 278 (D. Md. 1985); Millison v. Wilzack, 77 Md. App. 676, 551 A.2d 899, cert. denied, 315 Md. 307, 554 A.2d 393 (1989).

QUOTED IN Acting Dir., Dep't of Forests & Parks v. Walker, 271 Md. 711, 319 A.2d 806 (1974); Mayor of Baltimore v. Kelso Corp., 281 Md. 514, 380 A.2d 216 (1977); Washington Sub. San. Comm'n v. Utilities, Inc., 365 Md. 1, 775 A.2d 1178 (2001); Bern-Shaw Ltd. P'ship v. Mayor & City Council, 377 Md. 277, 833 A.2d 502 (2003).

CITED IN Liller v. State Hwy. Admin., 25 Md. App. 276, 333 A.2d 644 (1975); Mayor of Baltimore v. Kelso Corp., 294 Md. 267, 449 A.2d 406 (1982).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 12. EMINENT DOMAIN
SUBTITLE 1. GENERAL RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 12-103 (2006)

§ 12-103. Time value determined

Unless an applicable statute specifies a different time as of which the value is to be determined, the value of the property sought to be condemned and of any adjacent property of the defendant claimed to be affected by the taking shall be determined as of the date of the taking, if taking has occurred, or as of the date of trial, if taking has not occurred.

HISTORY: An. Code 1957, art. 21, § 12-104; 1974, ch. 12, § 2.

MARYLAND LAW REVIEW. --For article discussing condemnation in Maryland, see 30 Md. L. Rev. 301 (1970).
For note, "The Maryland Survey: 2001-2002: Recent Decisions: The Court of Appeals of Maryland: VI. Eminent Domain," see 62 Md. L. Rev. 840 (2003).

FORMER ARTICLE 21, § 12-104 WAS IDENTICAL WITH FORMER ARTICLE 33A, § 4. Prince George's County v. Collington Crossroads, Inc., 268 Md. 69, 299 A.2d 792 (1973).

DATE OF VALUATION. --The valuation date determined according to this section is not immutable. Mayor of Baltimore v. Kelso Corp., 281 Md. 514, 380 A.2d 216 (1977).

The date of valuation cannot be used to deprive a property owner of the just compensation he is entitled to receive under Md. Const., Article III, §§ 40 and 40A, and Article XI-B, § 1. Mayor of Baltimore v. Kelso Corp., 281 Md. 514, 380 A.2d 216 (1977).

Where the legislative approval of a condemnation occurred in 1989 and where the condemnation commenced in 2002 when Baltimore City began formal quick-take condemnation proceedings in the trial court pursuant to §§ 12-102, 12-103 of this subtitle and deposited funds in the trial court's registry, the 1988 tax assessment was admissible under § 12-105(c) of this subtitle, as the assessment was greater than Baltimore City's appraisal; the assessment was relevant under Rule 5-402 to show a diminution in value caused by the condemnation approval, as diminution in value was a part of determining the fair market value of the property under § 12-105(b) of this subtitle. Zografos v. Mayor & City Council, 165 Md. App. 80, 884 A.2d 770 (2005).

FAIR MARKET VALUE AT TIME OF TAKING IS PRACTICAL GUIDE AND STANDARD. --Since a monetary award is dependent on the facts of each case, the fair market value of the property, at the time of the taking, serves as a practical guide and standard. Dodson v. Anne Arundel County, 294 Md. 490, 451 A.2d 317 (1982).

QUICK-TAKE CONDEMNATION. --The language of § 8-330 of the Transportation Article makes it clear that if the State elects to use the quick-take procedure established by §§ 8-318 through 8-331 of the Transportation Article it must, within one year after payment is made under § 8-323 of the Transportation Article, either acquire title to the property or file a formal petition for condemnation in order to be entitled to the "time of taking" valuation prescribed by this section. If the State accomplishes neither of these objectives within the one-year period, the property owner is entitled to have the property valued at the time of trial or at the time of payment under § 8-323 of the Transportation Article, whichever is greater. State Rds. Comm'n v. 370 Ltd. Partnership, 325 Md. 96, 599 A.2d 449 (1991).

In a quick-take proceeding, property owner had not received fair market value where trial court admitted evidence of the purchase price paid by the owner 18 years before the taking as a comparable sale; furthermore, the owner was prejudiced by the jury view of the property more than a year after the condemnor had taken possession of the property and left it empty and abandoned, prompting the court to hold that Md. R. 12-207 did not require a jury view in quick-take condemnations. Bern-Shaw Ltd. P'ship v. Mayor & City Council, 377 Md. 277, 833 A.2d 502 (2003).

APPLIED IN State Rds. Comm'n v. Adams, 238 Md. 371, 209 A.2d 247 (1965); Glenn v. State Rds. Comm'n of State Hwy. Admin., 33 Md. App. 476, 365 A.2d 297 (1976); State Rds. Comm'n v. Pumphrey, 260 Md. 633, 273 A.2d 81 (1981); J.L. Matthews, Inc. v. Md.-National Capital Park & Planning Comm'n, 368 Md. 71, 792 A.2d 288 (2002).

QUOTED IN Washington Sub. San. Comm'n v. Utilities, Inc., 365 Md. 1, 775 A.2d 1178 (2001).

CITED IN Mayor of Baltimore v. Kelso Corp., 294 Md. 267, 449 A.2d 406 (1982); Reichs Ford Rd. Joint Venture v. State Rds. Comm'n of the State Highway Admin., 388 Md. 500, 880 A.2d 307 (2005).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***

*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 12. EMINENT DOMAIN
SUBTITLE 1. GENERAL RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 12-104 (2006)

§ 12-104. Damages to be awarded

(a) For taking entire tract. -- The damages to be awarded for the taking of land is its fair market value.

(b) Where part of tract taken. -- The damages to be awarded where land, or any part of it, is taken is the fair market value of the part taken, but not less than the actual value of the part taken plus any severance or resulting damages to the remaining land by reason of the taking and of future use by the plaintiff of the part taken. The severance or resulting damages shall be diminished to the extent of the value of the special (particular) benefits to the remainder arising from the plaintiff's future use of the part taken.

(c) Right of tenant to remove improvement or installation. -- For the purpose of determining the extent of the taking and the valuation of the tenant's interest in a condemnation proceeding, no improvement or installation which otherwise would be deemed part of the land shall be deemed personal property so as to be excluded from the taking solely because of the private right of a tenant, as against the owner of any other interest in the land sought to be condemned, to remove the improvement or installation, unless the tenant exercises his right to remove it prior to the date when his answer is due, or states in his answer his election to exercise this right.

(d) Churches. -- The damages to be awarded for the taking of a structure, such as a church or place of religious worship, held in fee simple, or under a lease renewable forever, by or for the benefit of a religious body and regularly used by the religious body, are the cost of reproducing or replacing the improvements, adjusted for physical and functional depreciation, to which shall be added the fair market value of the land.

(e) Parks. --

(1) The damages to be awarded for the taking of all land owned and designated by a public body as park land, open space, or recreation area is the fair market value as of the valuation date, of other land substantially similar in size and character and of comparable quality for park, open space, or recreational purposes for the community which made use of the land to be taken. No damages may be awarded unless other land is acquired for park, open space, or recreational purposes. No awarded damages may be less than the fair market value of the land to be taken.

(2) The damages to be awarded for the taking of part of the park land, open space, or recreation area is the fair market value of the part taken, but not less than the actual value of the replacement land as defined in paragraph (1) of this subsection plus any severance or resulting damages to the remaining land by reason of the taking and of the future use by the plaintiff of the part taken. The severance or resulting damages are to be diminished to the extent of the value of the special (particular) benefits to the remainder arising from the plaintiff's future use of the land taken.

(3) Where the land, or any part of it, taken pursuant to this subsection contains

improvements, the damages to be awarded, in addition to that provided for in paragraphs (1) and (2) of this subsection, shall include the reasonable cost as of the valuation date of providing new improvements of substantially the same size, comparable character, and for the same purpose as those taken.

(f) Land over which easement granted to Maryland Agricultural Land Preservation Foundation. -- The damages to be awarded for the taking of land or an interest in land over which an easement in gross or other right to restrict its use has been granted pursuant to § 2-504 of the Agriculture Article shall be as provided for in this subsection:

(1) The damages to be awarded for the taking of an entire tract is its fair market value after deducting the lesser of (a) the value of the easement granted, or (b) the excess of the aggregate amount of the property taxes that would have been due on the property if the easement had not been granted above the aggregate amount of property taxes actually paid on the property since the easement was granted.

(2) The damages to be awarded where part of a tract of land is taken is the fair market value of the part taken less the deduction computed as described in paragraph (1) of this subsection, but not less than the actual value of the part taken less the deduction computed as described in paragraph (1) of this subsection, plus any severance or resulting damages to the remaining land by reason of the taking and of future use by the plaintiff of the part taken.

(g) Land over which easement donated to Maryland Historical Trust or Maryland Environmental Trust. -- If any easement in gross or other right to restrict use of land or any interest in land has been donated to the Maryland Historical Trust or the Maryland Environmental Trust, damages shall be awarded in any condemnation proceedings under this title to the fee owner and leasehold owner, as their interests may appear, and shall be the fair market value of the land or interest in it, computed as though the easement or other right did not exist.

HISTORY: An. Code 1957, art. 21, § 12-105; 1974, ch. 12, § 2; ch. 642, § 2; 1978, ch. 352; 1980, ch. 709; 1987, ch. 331; 1988, ch. 6, § 1; 1997, ch. 14, § 1.

MARYLAND LAW REVIEW. --For article discussing condemnation in Maryland, see 30 Md. L. Rev. 301 (1970).

LEGISLATIVE INTENT, as revealed by this section, was to give to church property no benefit greater than that which would be accorded the owner of any other service property, despite the omission of other kinds of service property from subsection (d) of this section. Mayor of Baltimore v. Concord Baptist Church, Inc., 257 Md. 132, 262 A.2d 755 (1970); Davis v. Montgomery County, 267 Md. 456, 298 A.2d 178 (1972).

THIS SECTION IS A RESTATEMENT OF THE LAW AS IT HAS EXISTED FOR MANY YEARS. Duvall v. Potomac Elec. Power Co., 234 Md. 42, 197 A.2d 893 (1964).

This section effectively restated and codified the existing case law. State Rds. Comm'n v. Adams, 238 Md. 371, 209 A.2d 247 (1965).

This section and § 12-105 of this subtitle have been held to be a restatement of the preexisting case law. Stickell v. Mayor of Baltimore, 252 Md. 464, 250 A.2d 541 (1969).

MEASURE OF DAMAGES WHEN WHOLE TRACT TAKEN. --When the whole tract is taken, in assessing the damages, the jury shall consider what would have been its value if employed for the most profitable use for which they may find it could have been employed, whether it has in fact been applied to such use or not. State Rds. Comm'n v. Hance, 242 Md. 137, 218 A.2d 33 (1966).

MEASURE OF DAMAGES WHEN PART OF TRACT TAKEN. --The measure of defendants' damages was the difference between the fair market value of the whole property immediately before the taking and its fair market value immediately after the taking. State Rds. Comm'n v. Adams, 238 Md. 371, 209 A.2d 247 (1965); Board of Educ. v. Hughes, 271 Md. 335, 317 A.2d 485 (1974); Oxon Hill Recreation Club, Inc. v. Prince George's County, 281 Md. 105, 375 A.2d

564 (1977); Colonial Pipeline Co. v. Gimbel, 54 Md. App. 32, 456 A.2d 946, cert. denied, 296 Md. 110 (1983); Perkins v. State Rds. Comm'n, 55 Md. App. 639, 465 A.2d 1175 (1983).

The General Assembly has prescribed by statute the damages to be awarded where part of a tract is taken. Potomac Elec. Power Co. v. Smith, 37 Md. App. 640, 378 A.2d 715, cert. denied, 281 Md. 742 (1977).

The owner is not limited to recovery of the value of only that part of the tract which was physically appropriated. The entire tract is considered as a whole and the effect of the condemnation and the projected use evaluated so that determination can be made of what he had prior to the proceeding and what he had thereafter. State Rds. Comm'n v. Hance, 242 Md. 137, 218 A.2d 33 (1966).

In a case of a partial taking, the value of what is taken is ordinarily to be determined by the difference between the fair market value of the entire tract before the taking and the fair market value of what is left thereafter. Big Pool Holstein Farms, Inc. v. State Rds. Comm'n, 245 Md. 108, 225 A.2d 283 (1967).

However, when the partial taking affects the access to the remaining property, evidence as to the cost of subsequently securing adequate access has a direct bearing on the measure of the damages and is admissible in the condemnation proceedings. Big Pool Holstein Farms, Inc. v. State Rds. Comm'n, 245 Md. 108, 225 A.2d 283 (1967).

Damages for a partial taking may be assessed in two ways: (1) the measure of damages prescribed by subsection (b) of this section, i.e., the actual value of the part taken plus any severance or resulting damages to the remaining land by reason of the taking and of future use by the plaintiff of the part taken; and (2) the difference between the fair market value of the entire tract before the taking and the fair market value of what is left thereafter. However, these methods are not cumulative. Washington Sub. San. Comm'n v. CAE-Link Corp., 330 Md. 115, 622 A.2d 745 (1993), cert. denied, 510 U.S. 907, 114 S. Ct. 288, 126 L. Ed. 2d 238 (1993).

INCLUDES CONSEQUENTIAL DAMAGES TO REMAINDER. --That consequential damages to the remainder of a tract, where there has been a partial taking, are properly considered, seems settled by this section. State Rds. Comm'n v. Adams, 238 Md. 371, 209 A.2d 247 (1965).

Where there has been a partial taking of a tract, consequential damages to the remainder of the tract may be considered in the assessment of the award. State Rds. Comm'n v. Hance, 242 Md. 137, 218 A.2d 33 (1966); Montgomery County v. Old Farm Swim Club, Inc., 270 Md. 708, 313 A.2d 458 (1974).

Ordinarily, the constitutional right to compensation does not extend to the owners of property that has been consequentially damaged as the result of a condemnation but not actually taken. Exceptions have been allowed where there is a partial taking of land and a diminution in the value of the remainder and where the intrusion is tantamount to a deprivation of use and enjoyment of property. Ridings v. State Rds. Comm'n, 249 Md. 395, 240 A.2d 236 (1968).

The fair market value of the owner's remaining land may depreciate due to future public use of the taken portion -- termed "consequential" or "resulting" damage. State Rds. Comm'n v. Brannon, 58 Md. App. 357, 473 A.2d 484 (1984), rev'd on other grounds, 305 Md. 793, 506 A.2d 634 (1986).

TO WHOM CONSEQUENTIAL DAMAGES MAY BE PAID. --Consequential damages may only be paid to an owner who suffers a loss of a part of his property through condemnation, and not to the owner of property which is not taken unless it is rendered useless. Randolph Hills, Inc. v. Shoreham Developers, Inc., 266 Md. 182, 292 A.2d 662 (1972).

COMPENSATION IS DUE FOR CONSEQUENTIAL DAMAGE TO REMAINING LAND WHETHER OR NOT SEPARABLE FROM DAMAGE SUFFERED BY PUBLIC GENERALLY. --Depending on the evidence adduced at trial, the consequential damage caused by the part of the public project on the condemned portion may or may not be separable from detriment suffered by the public generally as a result of the entire project but if separable, the landowner should be compensated for all damages done to his remainder by the part of the public project on the condemned portion and if inseparable, the landowner should be compensated for the specific damage done to his remainder by the entire project. State Rds. Comm'n v. Brannon, 58 Md. App. 357, 473 A.2d 484 (1984), rev'd on other grounds, 305 Md. 793, 506 A.2d 634 (1986).

CONSEQUENTIAL DAMAGES TO REMAINING LAND does not include its diminution of value caused by the acquisition and use of adjoining lands of others for the same undertaking. Perkins v. State Rds. Comm'n, 55 Md. App. 639, 465 A.2d 1175 (1983).

DAMAGES NOT ALLOWABLE FOR CHANGES IN GENERAL ENVIRONMENTAL CHARACTER CAUSED BY PUBLIC PROJECT. --Conditions created by the public project affecting the general public and the community generally for which damages are not allowable in any event include changes in the general environmental atmosphere such as from rural to suburban, from suburban to rural, or from residential to commercial. State Rds. Comm'n v. Brannon, 58 Md. App. 357, 473 A.2d 484 (1984), rev'd on other grounds, 305 Md. 793, 506 A.2d 634 (1986).

SEPARATE APPRAISEMENTS OF ELEMENTS CONSTITUTING LAND AS WHOLE ARE IMPROPER. --The majority rule generally provides that all of the facts and circumstances bearing upon the condition and nature of the land as a whole and its possible use are proper as elements bearing upon value, but separate appraisements of the different elements constituting the whole are improper. Montgomery County v. Old Farm Swim Club, Inc., 270 Md. 708, 313 A.2d 458 (1974).

INTERFERENCE WITH AGRICULTURAL EASEMENT BY GRANTEE'S SUCCESSOR CONSTITUTES COMPENSABLE TAKING. --Since the parties intended to create an agricultural easement which would pass to their successors in interest grantee's successor's use of the property interfering therewith constituted a taking of the agricultural easement for which compensation is owed the grantor. Griffith v. Montgomery County, 57 Md. App. 472, 470 A.2d 840 (1984), cert. denied, 469 U.S. 1191, 105 S. Ct. 965, 83 L. Ed. 2d 970 (1985).

INTERFERENCE WITH RESERVED CROSSING PRIVILEGE DOES NOT REQUIRE GRANTEE OR SUCCESSORS TO PAY FOR ACCESS LANE. --A deed in which grantors reserved to themselves and to their successors the right and privilege to cross the property at their own risk, did not obligate the grantee or its successors to bear any of the cost of constructing a lane or road across the land. Griffith v. Montgomery County, 57 Md. App. 472, 470 A.2d 840 (1984), cert. denied, 469 U.S. 1191, 105 S. Ct. 965, 83 L. Ed. 2d 970 (1985).

INTEREST CONSTITUTIONALLY REQUIRED IN "QUICK-TAKE" CASES. --Interest in "quick-take" cases, unlike interest in conventional condemnation cases, is a constitutionally required element of just compensation and no specific statutory authority is required for its payment. King v. State Rds. Comm'n, 298 Md. 80, 467 A.2d 1032 (1983).

DAMAGES CONSIDERED "SEVERANCE OR RESULTING DAMAGES TO THE REMAINING LAND." --Reasonably foreseeable damages arising from necessary regrading of road accessing condemned property should be considered "severance or resulting damages to the remaining land," but access costs attributable to the taking which cannot be ascertained at the time of taking may later be offset against the landowner's special assessment. Sulzer v. Montgomery County, 60 Md. App. 637, 484 A.2d 285 (1984).

FUTURE CROPS AS MEASURE OF VALUE OF LAND AS OF DATE OF TAKING. --Future crops are not an element of damages, as the value of damages is fixed as of the date of taking; however, the prospect of future crops may be taken into consideration in establishing the value of the land as of the date of taking. State Rds. Comm'n v. Toomey, 302 Md. 94, 485 A.2d 1006 (1985).

LANDOWNER CANNOT USUALLY DIRECTLY RECOVER DAMAGES FOR THE LOSS OF TREES on the condemned property. Montgomery County v. Old Farm Swim Club, Inc., 270 Md. 708, 313 A.2d 458 (1974).

TREES MAY NOT BE VALUED APART FROM VALUE OF LAND. --Consideration of the value of the trees lost by condemnation of property must be limited to the extent to which they enhance the value of the property as such, and they may not be valued apart from the value of the land. Montgomery County v. Old Farm Swim Club, Inc., 270 Md. 708, 313 A.2d 458 (1974);

State Rds. Comm'n v. Toomey, 302 Md. 94, 485 A.2d 1006 (1985).

Where the trees could not be moved and, as a consequence, had no readily ascertainable market value, a theoretical value not including a consideration of the relationship of the trees to the value of the land which an expert proposed to attribute to them had an amorphous quality, not only likely to confuse the jury, but completely obscuring the true test -- the extent to which the trees enhanced the value of the property taken, an element to be taken into account in the experts' opinion of the value of the property condemned. The admission of such testimony was clearly prejudicial. Montgomery County v. Old Farm Swim Club, Inc., 270 Md. 708, 313 A.2d 458 (1974).

The use of the multiplication method in valuing trees would have undue attraction for the jury. They would tend to focus their attention on a pat formula proposed for arriving at just compensation to the exclusion of other important and less speculative evidence of fair market value. Montgomery County v. Old Farm Swim Club, Inc., 270 Md. 708, 313 A.2d 458 (1974).

REPRODUCTION COST APPROACH AS TO CHURCH PROPERTY. --A proper interpretation of this section is that in the condemnation of church property, fair market value of improvements shall be arrived at by using the reproduction cost approach, taking into account the size, character, and condition of the building being condemned, but without giving consideration to comparable sales except as they may affect land value. Mayor of Baltimore v. Concord Baptist Church, Inc., 257 Md. 132, 262 A.2d 755 (1970).

"REPLACEMENT COST -- NEW, PLUS LAND" AS DAMAGES. --The language of this section cannot be interpreted to mean that the condemning authority may pay as damages "replacement cost -- new, plus land." Mayor of Baltimore v. Concord Baptist Church, Inc., 257 Md. 132, 262 A.2d 755 (1970).

"THE DAMAGES TO BE AWARDED ... shall be the reasonable cost as of the valuation date, of erecting a new structure of substantially the same size and of comparable character and quality of construction ...," in former Article 21, § 12-105 (d) meant "the cost of reproducing or replacing the improvements, adjusted for physical and functional depreciation, to which shall be added the fair market value of the land" as provided by subsection (d) of this section. Mayor of Baltimore v. Concord Baptist Church, Inc., 257 Md. 132, 262 A.2d 755 (1970); Davis v. Montgomery County, 267 Md. 456, 298 A.2d 178 (1972).

PAYMENT FOR CHURCH PROPERTY ACQUIRED BY A STATE AGENCY FOR A PUBLIC USE based upon the same formula as required by this section to be used in condemnation cases, would not violate any provisions of the federal or State Constitution in regard to the establishment of religion, equal protection or due process of law. Davis v. Montgomery County, 267 Md. 456, 298 A.2d 178 (1972).

COST OF ALLEVIATING DAMAGE CAUSED BY A TAKING, even though it can be ascertained only after the taking, goes to the measure of damages attributable to the condemnation. Big Pool Holstein Farms, Inc. v. State Rds. Comm'n, 245 Md. 108, 225 A.2d 283 (1967).

WHEN VALUE DETERMINED. --In condemnation proceedings, the value of the property sought to be condemned, and of any adjacent property of the defendant claimed to be affected by the taking, is to be determined as of the date of the taking. Big Pool Holstein Farms, Inc. v. State Rds. Comm'n, 245 Md. 108, 225 A.2d 283 (1967).

CONSEQUENTIAL DAMAGES TO PERSONAL PROPERTY ARE NOT COMPENSABLE. Ridings v. State Rds. Comm'n, 249 Md. 395, 240 A.2d 236 (1968).

FIXTURES in buildings are a part of the realty and as such must be considered and compensated for to the extent they enhance the value of the land taken. But items that are personal property and therefore not actually taken, must be excluded from the compensation award. Ridings v. State Rds. Comm'n, 249 Md. 395, 240 A.2d 236 (1968).

CONDEMNATION OF GROUND RENTS. --See Heritage Realty, Inc. v. Mayor of Baltimore, 252 Md. 1, 248 A.2d 898 (1969).

TESTIMONY DESCRIBING FUTURE USE EXPRESSLY AUTHORIZED. --When part of a tract is taken, testimony describing future use is expressly authorized by this section on the issue of severance or resulting damages. Duvall v. Potomac Elec. Power Co., 234 Md. 42, 197 A.2d 893 (1964).

ADMISSIBILITY OF OWNER'S OPINION AS TO MARKET VALUE. --Testimony of the owner as to the value of the property after taking of a part for a road project was based on familiarity with the property, and her explanation of the reasons for that opinion, to the extent that they affect the market value, was admissible. Brannon v. State Rds. Comm'n, 305 Md. 793, 506 A.2d 634 (1986).

EVIDENCE AS TO THE PURCHASE PRICE OF THE ENTIRE TRACT WAS RELEVANT, since the jury was obliged to determine the difference between the fair market value of the entire tract before the taking and the fair market value of the remaining tract after the taking. Board of Educ. v. Hughes, 271 Md. 335, 317 A.2d 485 (1974).

There was no abuse of discretion on the part of the trial judge in admitting into evidence the testimony of the owner as to the sum he paid for the purchase of the whole tract at a time seven and one-half years prior to the date of trial. Board of Educ. v. Hughes, 271 Md. 335, 317 A.2d 485 (1974).

INTEREST. --One of the elements of damage authorized to be disbursed to property owners is interest on the award, computed from the date of the entry of the judgment nisi to the time the judgment is satisfied. Lore v. Board of Pub. Works, 277 Md. 356, 354 A.2d 812 (1976).

Having recognized that an owner suffers additional damage when payment of a condemnation award is delayed, the General Assembly has authorized compensation for the loss of the use of money to the extent of the payment of interest from the date of the judgment nisi. Acting Dir., Dep't of Forests & Parks v. Walker, 39 Md. App. 298, 385 A.2d 806 (1978), aff'd, 284 Md. 357, 396 A.2d 262 (1979).

While in conventional condemnation proceedings, an owner is entitled to interest from the date of the entry of judgment nisi until the time of payment, damages should not be determined by applying the State's rate of return on its investments during that period to the amount of the payment withheld, but rather by applying the legal rate of interest. Acting Dir., Dep't of Forests & Parks v. Walker, 39 Md. App. 298, 385 A.2d 806 (1978), aff'd, 284 Md. 357, 396 A.2d 262 (1979).

APPLIED IN Zografos v. Mayor & City Council, 165 Md. App. 80, 884 A.2d 770 (2005).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 12. EMINENT DOMAIN
SUBTITLE 1. GENERAL RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 12-105 (2006)

§ 12-105. Fair market value; assessed value

(a) Effective date of authority if continuing powers of condemnation. -- In this section, the phrase "the effective date of legislative authority for the acquisition of the property," means, with respect to a condemnor vested with continuing power of condemnation, the date of specific administrative determination to acquire the property.

(b) Fair market value. -- The fair market value of property in a condemnation proceeding is the price as of the valuation date for the highest and best use of the property which a vendor, willing but not obligated to sell, would accept for the property, and which a purchaser, willing but not obligated to buy, would pay, excluding any increment in value proximately caused by the public project for which the property condemned is needed. In addition, fair market value includes any amount by which the price reflects a diminution in value occurring between the effective date of legislative authority for the acquisition of the property and the date of actual taking if the trier of facts finds that the diminution in value was proximately caused by the public project for which the property condemned is needed, or by announcements or acts of the plaintiff or its officials concerning the public project, and was beyond the reasonable control of the property owner.

(c) Assessed value. -- The defendant property owner may elect to present as evidence in a condemnation proceeding, the assessed value of the property, as determined by the Department of Assessments and Taxation, if the assessed value is greater than the appraised value placed on the property by the condemning authority.

(d) Acquisition of exempt property by eminent domain. -- If property is ever acquired by the exercise of the power of eminent domain, the fair market value of the property is not affected by the property having been qualified for a tax credit under § 9-208 of the Tax-Property Article. However, if the grantee of an easement purchased the easement for monetary consideration other than, or in addition to, the tax credit under § 9-208 of the Tax-Property Article, then the condemnation award shall be reduced by an amount equal to the additional consideration.

HISTORY: An. Code 1957, art. 21, § 12-106; 1974, ch. 12, § 2; 1985, ch. 8, § 4; 1990, ch. 6, § 2.

MARYLAND LAW REVIEW. --For article discussing condemnation in Maryland, see 30 Md. L. Rev. 301 (1970).
For note, "The Maryland Survey: 2001-2002: Recent Decisions: The Court of Appeals of Maryland: VI. Eminent Domain," see 62 Md. L. Rev. 840 (2003).

LEGISLATIVE INTENT. --It was the clear and expressed intention of the General Assembly in connection with the definition of "fair market value," as set forth in this section, to provide that the value, on the date of trial (the taking date) should have added to it, if there has been a diminution in value, the amount, if any, by which such price reflects a diminution in value: (1) occurring between the effective date of the legislative authority for the acquisition of such property and the date of the actual taking (if the trier of facts shall find that such diminution in value was proximately caused by the public project for which the property condemned is needed); or (2) proximately caused by announcements or acts of the plaintiff or its officials concerning such public project. Mayor of Baltimore v. United Five & Ten Cent Stores, 250 Md. 361, 243 A.2d 521 (1968).

PREEXISTING CASE LAW RESTATED. --This section and § 12-104 of this subtitle have been held to be a restatement of the preexisting case law. Stickell v. Mayor of Baltimore, 252 Md. 464, 250 A.2d 541 (1969).

FORMER ARTICLE 21, § 12-106 WAS IDENTICAL WITH FORMER ARTICLE 33A, § 6. Prince George's County v. Collington Crossroads, Inc., 268 Md. 69, 299 A.2d 792 (1973).

PURPOSE OF THIS SECTION is made clear by its legislative history. The Legislative Council recognized that public acts or announcements by the condemnor may have a significant influence on the property concerned. Such acts or announcements might cause property to be vacated or vandalized with a resultant depreciation in value. There may be a lapse of years between the initial project announcement and enactment of specific authority for the taking. Mayor of Baltimore v. United Five & Ten Cent Stores, 250 Md. 361, 243 A.2d 521 (1968).

APPLICATION OF APPRAISAL PRINCIPLES. --Plaintiff's attempts to apply the reasonable probability rule to the identity of a purchaser was inconsistent with appraisal principles underlying subsection (b) of this section. Washington Sub. San. Comm'n v. Utilities, Inc., 365 Md. 1, 775 A.2d 1178 (2001).

INCREASE OR DIMINUTION IN VALUE BECAUSE OF PUBLIC PROJECT NOT TO BE CONSIDERED. --It is the general rule in condemnation proceedings that the jury should not consider either increases or diminution in value because of the public project for which the condemned property is acquired. Big Pool Holstein Farms, Inc. v. State Rds. Comm'n, 245 Md. 108, 225 A.2d 283 (1967).

Fair market value of property condemned does not include or take into account any increment in value proximately caused by the public project for which the property is being taken. King v. Mayor of Rockville, 249 Md. 243, 238 A.2d 898 (1968); State Rds. Comm'n of State Hwy. Admin. v. Parker, 275 Md. 651, 344 A.2d 109 (1975).

The fair market value of property condemned cannot include or take into account any increment in value which may be proximately caused by the public project for which the property is being taken. Baylin v. State Rds. Comm'n, 300 Md. 1, 475 A.2d 1155 (1984).

In the condemnation proceeding where Baltimore City presented evidence as to the amount spent to improve the property after the taking, this evidence was inadmissible under (b); evidence of the cost to improve property in furtherance of a public project after the City had taken the property for public use was inadmissible. Zografos v. Mayor & City Council, 165 Md. App. 80, 884 A.2d 770 (2005).

BUT INCREASE DUE TO ANOTHER PROJECT OR ENLARGEMENT OF ORIGINAL PROJECT MAY BE CONSIDERED. --If the land is expected to be outside the boundaries of a proposed improvement, and is in fact outside, then the increase in value of this land taken for another project or for an enlargement of the original project must be recognized. Baylin v. State Rds. Comm'n, 300 Md. 1, 475 A.2d 1155 (1984).

REASON FOR OPINION AS TO VALUE MAY BE ELICITED. --As a general rule, an expert who has expressed his opinion as to value may state his reasons for the opinion given, and these reasons may be elicited by the party calling the witness or upon cross-examination. Brinsfield v. Mayor of Baltimore, 236 Md. 66, 202 A.2d 335 (1964).

OPINION OF VALUE MAY BE BASED IN PART ON GROSS SALES. --Maryland allows experts to base the opinion of value at least in part on a consideration of gross sales, but does not permit the expert, at least on direct examination, to reveal the amount of the gross sales so considered. Brinsfield v. Mayor of Baltimore, 236 Md. 66, 202 A.2d 335 (1964).

BUT GROSS SALES MAY NOT BE CAPITALIZED. --It is not proper in Maryland for an expert to arrive at fair market value by capitalizing gross sales, since the nature and location of the property may be but a minor factor contributing to the establishment of a successful business. Brinsfield v. Mayor of Baltimore, 236 Md. 66, 202 A.2d 335 (1964).

USE OF COMPARABLE SALES in establishing damages in eminent domain cases has long been established in Maryland. Brinsfield v. Mayor of Baltimore, 236 Md. 66, 202 A.2d 335 (1964).

Maryland adheres to the "Massachusetts" or "majority" view that evidence of sales of similar land is admissible as primary evidence of the value of the property taken, or to support an expert witness's opinion as to such value, or both. State Rds. Comm'n v. Adams, 238 Md. 371, 209 A.2d 247 (1965); Colonial Pipeline Co. v. Gimbel, 54 Md. App. 32, 456 A.2d 946, cert. denied, 296 Md. 110 (1983).

It is well settled that evidence of the price for which similar property has been sold in the vicinity may legitimately be used in support of, and as background for, the opinion of an expert testifying as to the value of the property taken in condemnation proceedings. State Rds. Comm'n v. Adams, 238 Md. 371, 209 A.2d 247 (1965).

But the price paid for comparable property acquired under threat of condemnation is not admissible as evidence of fair market value of other property because a sale under threat of condemnation is not a voluntary one. Perlmutter v. State Rds. Comm'n, 259 Md. 253, 269 A.2d 586 (1970).

AND THE USE OF RENT on a property being condemned is permissible for the purpose of capitalization. Brinsfield v. Mayor of Baltimore, 236 Md. 66, 202 A.2d 335 (1964).

AGE OF COMPARABLE SALE. --In a quick-take proceeding, property owner had not received fair market value where trial court admitted evidence of the purchase price paid by the owner 18 years before the taking as a comparable sale; furthermore, the owner was prejudiced by the jury view of the property more than a year after the condemnor had taken possession of the property and left it empty and abandoned, prompting the court to hold that Md. R. 12-207 did not require a jury view in quick-take condemnations. Bern-Shaw Ltd. P'ship v. Mayor & City Council, 377 Md. 277, 833 A.2d 502 (2003).

DISCRETION OF COURT IN DETERMINING COMPARABLE SALES. --A trial court has considerable latitude in the exercise of discretion in determining comparable sales in condemnation cases. Brinsfield v. Mayor of Baltimore, 236 Md. 66, 202 A.2d 335 (1964); State Rds. Comm'n v. Adams, 238 Md. 371, 209 A.2d 247 (1965).

It is the better policy to admit testimony as to sales where there are any reasonable elements of comparability, and leave the weight of the comparison to the consideration of the jury, together with such contrasting or distinguishing features as may be brought out on cross-examination or otherwise. State Rds. Comm'n v. Adams, 238 Md. 371, 209 A.2d 247 (1965).

The weight of the comparisons and such contrasting or distinguishing features as may have been elicited by cross-examination or otherwise in the valuation of property by use of comparable sales was for the consideration of the jury. State Rds. Comm'n of State Hwy. Admin. v. Parker, 275 Md. 651, 344 A.2d 109 (1975).

TAX ASSESSMENT ADMISSIBLE TO SHOW DIMINUTION OF VALUE. --Where the legislative approval of a condemnation occurred in 1989 and where the condemnation commenced in 2002 when Baltimore City began formal quick-take condemnation proceedings in the trial court pursuant to §§ 12-102, 12-103 of this subtitle and deposited funds in the trial court's registry, the 1988 tax assessment was admissible under § 12-105(c) of this subtitle, as the assessment was greater than Baltimore City's appraisal; the assessment was relevant under Rule 5-402 to show a diminution in value caused by the condemnation approval, as diminution in value was a part of determining the fair market value of the property under § 12-105(b) of this subtitle. Zografos v. Mayor & City Council, 165 Md. App. 80, 884 A.2d 770 (2005).

TAX ASSESSMENT INADMISSIBLE UNDER (C). --Where the condemnation of the property was approved in 1989 and condemnation proceedings were commenced in 2002, the 2003 tax assessment was inadmissible under (c); the tax assessment did not come within the statute because it was conducted after the date of taking and had no bearing on any diminution in value that occurred between the date of legislative enactment authorizing the taking and the actual date of the taking. Zografos v. Mayor & City Council, 165 Md. App. 80, 884 A.2d 770 (2005).

AND COMPARABLE RENTALS. --The trial court should have the same latitude of discretion in determining comparable rentals, as in determining comparable sales in condemnation cases. Brinsfield v. Mayor of Baltimore, 236 Md. 66, 202 A.2d 335 (1964).

LOST RENTS DUE TO PRE-CONDEMNATION CONDUCT RECOVERABLE. --Because the legislative intent of the various eminent domain statutes was to compensate property owners for a wide range of detrimental effects that the exercise, or threatened exercise, of eminent

domain might have, a condmenee was entitled to recover lost rents, carrying costs, and other damages it incurred due to the pre-condemnation conduct of the Maryland State Highway Administration (SHA). The SHA's conduct of first giving notice of its intent to condemn the property in 1988 caused the condmenee to have been unable to renew the lease it had with a tenant, who was using the property for a gas station, due to the looming threat of condemnation, and the SHA waited until 2001 to file the condemnation proceeding (only after the condemnee filed its inverse condemnation action). Reichs Ford Rd. Joint Venture v. State Rds. Comm'n of the State Highway Admin., 388 Md. 500, 880 A.2d 307 (2005).

"RULE OF THUMB" AS TO ADMISSIBILITY OF EVIDENCE OF SALES MADE WITHIN FIVE YEARS AND FIVE MILES of the condemned property is not a rule of law. State Rds. Comm'n v. Adams, 238 Md. 371, 209 A.2d 247 (1965).

COMPARING PRICE OF SUBDIVIDED LAND AND UNSUBDIVIDED LAND. --The vice in comparing subdivided land and unsubdivided land lies in the fact that the comparison is between a wholesale and a retail price, for the price of the platted lots includes the expense of subdividing and the promotional and sales costs of moving the individual lots. State Rds. Comm'n v. Adams, 238 Md. 371, 209 A.2d 247 (1965).

MARKET VALUE OF THE LAND IS TO BE ESTIMATED WITH REFERENCE TO THE USES AND PURPOSES TO WHICH IT IS ADAPTED, and any special features which may enhance its marketability may properly be considered. Board of Educ. v. Hughes, 271 Md. 335, 317 A.2d 485 (1974).

Testimony of appraiser for owner as to incremental value for income derived from present use of subject property as well as value for highest and best use was not a piling of value onto value, but an appropriate consideration of special features which might enhance marketability in determining the fair market value of the property, and was properly admitted into evidence. Board of Educ. v. Hughes, 271 Md. 335, 317 A.2d 485 (1974).

WITNESS MUST COMPREHEND TRUE MEANING OF MARKET VALUE. --The trial court may refuse to allow a witness to testify where the witness does not comprehend the true meaning of market value. Stickell v. Mayor of Baltimore, 252 Md. 464, 250 A.2d 541 (1969).

It is reversible error to allow expert witnesses to testify as to the value of land without a clear showing that they were testifying concerning the "market value" of the land. Stickell v. Mayor of Baltimore, 252 Md. 464, 250 A.2d 541 (1969).

In order for an expert's appraisal to have any relevance, it must be in accordance with the statutory definition of fair market value. Stickell v. Mayor of Baltimore, 252 Md. 464, 250 A.2d 541 (1969).

It is not necessary for an expert to be able to recite the words of this section, but it is basic that he have minimal understanding of the principles implicit in the definition of fair market value. Stickell v. Mayor of Baltimore, 252 Md. 464, 250 A.2d 541 (1969).

OWNER OF PROPERTY IS PRIMA FACIE COMPETENT to express his opinion as to its value without qualification as an expert. Stickell v. Mayor of Baltimore, 252 Md. 464, 250 A.2d 541 (1969).

An individual owner is competent to express his opinion of value although he has not qualified as an expert. Oxon Hill Recreation Club, Inc. v. Prince George's County, 281 Md. 105, 375 A.2d 564 (1977).

An owner of property is presumed to be qualified to testify as to his opinion of the value of property he owns, not because he has title, but on the basis that ordinarily the property owner knows his property intimately and is familiar with its value. Colonial Pipeline Co. v. Gimbel, 54 Md. App. 32, 456 A.2d 946, cert. denied, 296 Md. 110 (1983).

OFFICER OF CORPORATION IS NOT COMPETENT to express his opinion of value unless he can be shown to have some special knowledge as to value. Oxon Hill Recreation Club, Inc. v. Prince George's County, 281 Md. 105, 375 A.2d 564 (1977).

REAL ESTATE BROKER AS EXPERT APPRAISER. --An extremely competent real estate broker is not automatically qualified to testify as an expert appraiser. Stickell v. Mayor of Baltimore, 252

Md. 464, 250 A.2d 541 (1969).

EXPERT MUST PLACE SELF IN POSITION OF BUYER AND SELLER. --In order to form an opinion as to fair market value of a tract of land, an expert must place himself in the position of a buyer and seller. Board of Educ. v. Hughes, 271 Md. 335, 317 A.2d 485 (1974).

OPINIONS OF VALUE BASED ON INQUIRY ARE ADMISSIBLE. --The opinions of experts on real estate values whose knowledge is based partly upon inquiry are generally admissible. Brinsfield v. Mayor of Baltimore, 236 Md. 66, 202 A.2d 335 (1964).

INSTRUCTION ON EXPERT TESTIMONY AS TO VALUE PREJUDICIAL. --An instruction that the expert testimony proffered by one of landowner's witnesses as to value did not meet the criterion of the highest and best use before and after the acquisition was prejudicial since once the testimony was admitted, the jury should have been permitted to consider it, because although imprecise, it was responsive to the testimony of the county's witness, and was relevant to the manner in which the severed parcel could be utilized. Oxon Hill Recreation Club, Inc. v. Prince George's County, 281 Md. 105, 375 A.2d 564 (1977).

JURY IS NOT BOUND TO ACCEPT IN TOTO THE OPINION OF ANY OF THE WITNESSES, either as to the aggregate amount of damages or as to the weight to be given a particular element or factor of damages. State Rds. Comm'n v. Adams, 238 Md. 371, 209 A.2d 247 (1965).

CONSIDERING EFFECT OF PROPOSED USE ON VALUE. --In determining the value of land taken by eminent domain, the trier of fact is not limited to the value of the land for the purposes for which it is actually being used, but may consider all uses to which it is adapted and to which it reasonably might be put in the immediate future or in the reasonably near future. State Rds. Comm'n v. Adams, 238 Md. 371, 209 A.2d 247 (1965).

Where the property is condemned for the purpose of clearing a so-called slum area, the jury should not consider either increase or diminution in the value because of the use to which the property is to be put. Brinsfield v. Mayor of Baltimore, 236 Md. 66, 202 A.2d 335 (1964).

CONSIDERING FUTURE ZONING RECLASSIFICATION. --In determining fair market value, consideration may be given to future zoning reclassifications, permitting an expert to testify as to the probabilities of such reclassification. Burton v. State Rds. Comm'n, 251 Md. 403, 247 A.2d 718 (1968).

It is permissible for an appraiser, when valuing property in a condemnation case, to consider the probability of a tract being rezoned to a higher or lower classification in the reasonably near future. However, it is manifestly improper to allow a real estate appraiser in such a case to value property as if it were in fact already zoned to the higher classification. Burton v. State Rds. Comm'n, 251 Md. 403, 247 A.2d 718 (1968).

Where there is a possibility or probability that the zoning restriction may in the near future be repealed or amended so as to permit the use in question, such likelihood may be considered if the prospect of such repeal or amendment is sufficiently likely as to have an appreciable influence upon present market value. An important caveat to remember in applying the rule is that the property must not be evaluated as though the rezoning were already an accomplished fact. It must be evaluated under the restrictions of the existing zoning and consideration given to the impact upon market value of the likelihood of a change in zoning. Burton v. State Rds. Comm'n, 251 Md. 403, 247 A.2d 718 (1968).

Change in zoning is a risky and uncertain matter and a purchaser in the open market would certainly not pay the same amount for land which has the possibility of being rezoned to a higher (more valuable) classification as he would be willing to pay if the change in zoning had already been accomplished. Burton v. State Rds. Comm'n, 251 Md. 403, 247 A.2d 718 (1968).

Although the jury is permitted to consider the reasonable probability of a change in zoning classification within a reasonable time in valuing property subject to condemnation proceedings, consideration must be given to its present zoning status. Burton v. State Rds. Comm'n, 251 Md. 403, 247 A.2d 718 (1968).

ZONING CANNOT BE USED AS A SUBSTITUTE FOR EMINENT DOMAIN PROCEEDINGS so as to defeat the constitutional requirement for the payment of just compensation in the case of a

taking of private property for public use by depressing values and so reducing the amount of damages to be paid. Carl M. Freeman Assocs. v. State Rds. Comm'n, 252 Md. 319, 250 A.2d 250 (1969).

DEPRESSING PROPERTY VALUES BY ORDINANCE. --Where the direct and sole purpose of an ordinance is to depress property values, the public purpose sought to be advanced must be weighed and the means taken to achieve it, in light of the constitutional right of the property owner to receive just compensation for his property taken by eminent domain. Carl M. Freeman Assocs. v. State Rds. Comm'n, 252 Md. 319, 250 A.2d 250 (1969).

CONDEMNATION OF GROUND RENTS. --See Heritage Realty, Inc. v. Mayor of Baltimore, 252 Md. 1, 248 A.2d 898 (1969).

TESTIMONY BY PERSON HOLDING TITLE TO PROPERTY AS TRUSTEE. --Where the evidence showed that a person holding title to the property as a trustee testified that he was familiar with the property, had visited it, had received offers for purchase or lease of the property, and was generally familiar both physically and financially with the property in the area where it was located, there was no error in permitting that person to testify as to his opinion of the value of the property. Colonial Pipeline Co. v. Gimbel, 54 Md. App. 32, 456 A.2d 946, cert. denied, 296 Md. 110 (1983).

EVIDENCE OF EARLIER SALE OF EASEMENT OVER SAME PROPERTY. --Where there was no evidence offered indicating that the circumstances surrounding an earlier sale of an easement over the same property involved any legal or economic duress resulting in a distorted price being paid, but, rather, the testimony indicated that the pipeline company paid the price it did in the earlier sale because it was easier to deal with one property owner for the sake of convenience and because it had already completed the title search for that route for the pipeline, the earlier sale was admissible into evidence as a voluntary, comparable sale. Colonial Pipeline Co. v. Gimbel, 54 Md. App. 32, 456 A.2d 946, cert. denied, 296 Md. 110 (1983).

REVIEW OF EVIDENCE ON APPEAL. --The Court of Appeals does not undertake to weigh the similarities vel non between allegedly comparable properties as matters of first impression to be decided without reference to the action of the trial judge. State Rds. Comm'n v. Adams, 238 Md. 371, 209 A.2d 247 (1965).

The Court of Appeals decides only whether the standards enunciated as to the comparability of the sales of other property, as applied to the facts of a given case, compel a finding that the trial court abused its discretion. State Rds. Comm'n v. Adams, 238 Md. 371, 209 A.2d 247 (1965).

APPLIED IN Lore v. Board of Pub. Works, 277 Md. 356, 354 A.2d 812 (1976); J.L. Matthews, Inc. v. Md.-National Capital Park & Planning Comm'n, 368 Md. 71, 792 A.2d 288 (2002).

QUOTED IN Potomac Elec. Power Co. v. Smith, 37 Md. App. 640, 378 A.2d 715, cert. denied, 281 Md. 742 (1977); Dodson v. Anne Arundel County, 294 Md. 490, 451 A.2d 317 (1982); Hall v. Lovell Regency Homes Ltd. Partnership, 121 Md. App. 1, 708 A.2d 344 (1998), cert. denied, 350 Md. 487, 713 A.2d 980 (1998); Bern-Shaw Ltd. P'ship v. Mayor & City Council, 377 Md. 277, 833 A.2d 502 (2003).

CITED IN Shell Oil Co. v. Supervisor of Assmts., 278 Md. 659, 366 A.2d 369 (1976); Glenn v. State Rds. Comm'n of State Hwy. Admin., 33 Md. App. 476, 365 A.2d 297 (1976).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.

a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 12. EMINENT DOMAIN
SUBTITLE 1. GENERAL RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 12-106 (2006)

§ 12-106. Costs; interest on award; removal of property from tax rolls

(a) Plaintiff pays costs. -- The plaintiff shall pay all the costs in the trial court.

(b) Costs included on award. -- The costs in a condemnation proceeding include:

(1) The usual per diem to the jurors;

(2) The cost of transporting the trier of fact to view the property;

(3) The cost of meals for the jury if the court so orders;

(4) The cost of recording the inquisition among the land records and of all documentary stamps which may be required in the transfer of the property to the plaintiff; and

(5) An allowance to the defendant, as fixed by the court, for the reasonable legal, appraisal, and engineering fees actually incurred by the defendant because of the condemnation proceeding, if the judgment is for the defendant on the right to condemn.

(c) Interest on award. -- In proceeding under Article III of the Constitution of the State, or any amendment to it, the plaintiff shall pay interest at the rate of 6 percent per annum on any difference between the amount of money initially paid into court for the use of the defendant and the jury award as stated in the inquisition, from the date the money was paid into court to the date of the inquisition or final judgment, whichever date is later.

(d) Removal of property from tax rolls. -- On taking possession, acquiring the right to take possession, or the actual transfer of title to the plaintiff, whichever occurs first, the plaintiff immediately shall file with the supervisor of assessments for the county involved a written notification or record setting forth in sufficient detail the area of the land and a description of any improvement being acquired. If the plaintiff is an agency or instrumentality of the State, the supervisor of assessments, on filing of the notification or record, immediately shall remove the property from the tax rolls.

HISTORY: An. Code 1957, art. 21, § 12-107; 1974, ch. 12, § 2; 1975, ch. 108.

MARYLAND LAW REVIEW. --For article discussing condemnation in Maryland, see 30 Md. L. Rev. 301 (1970).
For article, "Survey of Developments in Maryland Law, 1983-84," see 44 Md. L. Rev. 603 (1985).

THERE IS NO PROVISION IN THIS SECTION AS TO THE PAYMENT OF INTEREST ON THE JUDGMENT, perhaps because it was presumed that the award would be paid promptly.

Hammond v. State Rds. Comm'n, 241 Md. 514, 217 A.2d 258 (1966).

BUT CONSTITUTIONAL PROHIBITIONS MAY REQUIRE PAYMENT OF INTEREST. --The constitutional prohibition against the taking of a private property without just compensation requires the payment of interest on the amount of a condemnation judgment, irrespective of sovereign immunity, where possession has already been taken by the State and the judgment is not paid promptly. Hammond v. State Rds. Comm'n, 241 Md. 514, 217 A.2d 258 (1966).

WHEN PAYMENT IS WITHHELD BEYOND THE TIME THE PROPERTY IS ACTUALLY TAKEN interest on an award of condemnation should be paid. Hammond v. State Rds. Comm'n, 241 Md. 514, 217 A.2d 258 (1966).

DETENTION DAMAGES OR INTEREST FROM THE DATE MONEY IS PAID INTO COURT is not a matter for consideration by the jury in a "quick take" case. Walker v. Acting Dir., Dep't of Forests & Parks, 284 Md. 357, 396 A.2d 262 (1979).

PREJUDGMENT INTEREST ACCRUES AS MATTER OF LAW BY OPERATION OF SUBSECTION (C). --Although a judgment did not include "any and all prejudgment interest," such interest accrues as a matter of law by operation of subsection (c) of this section and becomes a part of the judgment because the General Assembly has determined that prejudgment interest is part of the compensation required to be paid for a taking. Mayor of Baltimore v. Kelso Corp., 294 Md. 267, 449 A.2d 406 (1982).

LOST RENTS DUE TO PRE-CONDEMNATION CONDUCT RECOVERABLE. --Because the legislative intent of the various eminent domain statutes was to compensate property owners for a wide range of detrimental effects that the exercise, or threatened exercise, of eminent domain might have, a condmenee was entitled to recover lost rents, carrying costs, and other damages it incurred due to the pre-condemnation conduct of the Maryland State Highway Administration (SHA). The SHA's conduct of first giving notice of its intent to condemn the property in 1988 caused the condmenee to have been unable to renew the lease it had with a tenant, who was using the property for a gas station, due to the looming threat of condemnation, and the SHA waited until 2001 to file the condemnation proceeding (only after the condemnee filed its inverse condemnation action). Reichs Ford Rd. Joint Venture v. State Rds. Comm'n of the State Highway Admin., 388 Md. 500, 880 A.2d 307 (2005).

INTEREST CONSTITUTIONALLY REQUIRED IN "QUICK-TAKE" CASE. --Interest in "quick-take" cases, unlike interest in conventional condemnation cases, is a constitutionally required element of just compensation and no specific statutory authority is required for its payment. King v. State Rds. Comm'n, 298 Md. 80, 467 A.2d 1032 (1983).

In a "quick-take" case, where the owner does not receive the full fair value of his property until some time after the taking, the payment of prejudgment interest on the difference between what the owner has received and what he is ultimately found to be entitled to is a part of the just compensation required by the Constitution to be paid for the taking; it is designed to pay the condemnee the "time value" of the money he should have received for his property on the day it was taken. State Roads Comm'n v. G.L. Cornell Co., 85 Md. App. 765, 584 A.2d 1331 (1991), cert. denied, 325 Md. 248, 600 A.2d 418 (1992).

INTEREST RATE SPECIFIED IN SUBSECTION (C) IS MERELY MINIMUM ALLOWABLE IN QUICK-TAKE CASE. --The 6 percent prejudgment rate specified in subsection (c) of this section is the minimum rate of interest to which a property owner is entitled in a quick-take case. If the property owner produces evidence that the 6 percent rate is constitutionally insufficient, he should be entitled to a higher rate of return as part of just compensation. King v. State Rds. Comm'n, 298 Md. 80, 467 A.2d 1032 (1983).

AND PROPER RATE IS MATTER FOR FACTUAL DETERMINATION BY TRIER OF FACT. --Where the property owner claims that the 6 percent statutory interest rate for "quick-take" condemnations is inadequate to satisfy the constitutional just compensation standard, the question of the proper rate to be paid is manifestly a matter for factual determination by the trier of fact, and requires evidence of the prevailing market rates. King v. State Rds. Comm'n,

298 Md. 80, 467 A.2d 1032 (1983).

JUDGMENT SHOULD BE SO ENTERED AS TO CARRY INTEREST FROM DATE JUDGMENT NISI ENTERED. King v. State Rds. Comm'n, 294 Md. 236, 449 A.2d 390 (1982).

APPLIED IN Lore v. Board of Pub. Works, 277 Md. 356, 354 A.2d 812 (1976).

QUOTED IN Colonial Carpets, Inc. v. Carpet Fair, Inc., 36 Md. App. 583, 374 A.2d 419 (1977); M.B. Segall & Sons v. Mayor of Baltimore, 41 Md. App. 503, 397 A.2d 294, cert. denied, 285 Md. 732 (1979).

CITED IN Bouton v. Potomac Edison Co., 288 Md. 305, 418 A.2d 1168 (1980); Dodson v. Anne Arundel County, 294 Md. 490, 451 A.2d 317 (1982).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 12. EMINENT DOMAIN
SUBTITLE 1. GENERAL RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 12-107 (2006)

§ 12-107. Appeals

(a) Right to appeal. -- Any party to a condemnation case may appeal from a final judgment or determination in the manner prescribed by the Maryland Rules.

(b) Attorney's fee. -- If the final decision on appeal is that the plaintiff is not entitled to condemn the property, a reasonable counsel fee fixed by the trial court shall be awarded to counsel for the defendant and charged against the plaintiff together with the other costs of the case.

(c) Costs. -- Costs on appeal shall be paid as directed by the appellate court.

(d) Possession of property pending appeal. --

(1) If the plaintiff desires possession pending appeal, it may make payment of the award pursuant to Title 12, Chapter 200 of the Maryland Rules. In addition, the plaintiff shall file with the clerk of the court a bond to the State for the penalty the court prescribes.

(2) The bond shall be conditioned that if the judgment is reversed, the plaintiff shall pay to the defendant appealing, all damages the plaintiff caused the defendant by taking possession and using the property before the final determination of the appeal. The bond shall be executed by the plaintiff together with another surety approved by the court.

(3) On the payment and filing of the bond, the plaintiff immediately may take possession of the property of the defendant appealing.

(4) Except as provided in paragraph (5) of this subsection, if, on appeal, the judgment is affirmed, the bond is discharged. If, on appeal, the judgment is reversed on the right of the plaintiff to condemn, the plaintiff immediately shall surrender possession of the property of the defendant and the surety shall be liable to the defendant for all damages which have been occasioned to the defendant by the plaintiff in taking possession and using the property before final determination of the appeal.

(5) If the plaintiff is the State or any of its subdivisions or instrumentalities, a bond is not required.

HISTORY: An. Code 1957, art. 21, § 12-108; 1974, ch. 12, § 2; 1976, ch. 272; ch. 472, § 31; 1991, ch. 55, § 1; 1998, ch. 21, § 1.

NO APPEAL LIES FROM AN ORDER SUSTAINING A DEMURRER TO A PLEA IN BAR in a condemnation proceeding. Davis v. Board of Educ., 166 Md. 118, 170 A. 590 (1934).

COUNSEL FEE PART OF COSTS. --Whether the counsel fee is fixed by the court as provided in subsection (b) of this section or in § 12-109 (e) of this subtitle, in either instance it becomes a part of the costs to be paid by the plaintiff. Southern Md. Elec. Coop. v. Albrittain, 256 Md. 39, 259 A.2d 311 (1969).

EFFECT OF ACCEPTANCE OF CHECK FOR AMOUNT OF AWARD. --See Shapiro v. Maryland-National Capital Park & Planning Comm'n, 235 Md. 420, 201 A.2d 804 (1964).

PREJUDICE, or the lack of it, is always of significance to an appellate court, and it assumes increased importance in condemnation cases, in view of the myriad of different items of evidence sought to be introduced. State Rds. Comm'n v. Adams, 238 Md. 371, 209 A.2d 247 (1965).

A FINDING OF ABUSE OF DISCRETION DOES NOT COMPEL A REVERSAL, in the absence of express showing that the errors, as to the admission or exclusion of evidence, caused substantial injustice to the complaining party. State Rds. Comm'n v. Adams, 238 Md. 371, 209 A.2d 247 (1965).

JUDGMENTS AWARDING COSTS ARE NOT APPEALABLE UNDER SUBSECTION (A). Washington Sub. San. Comm'n v. Ross, 62 Md. App. 418, 489 A.2d 1135 (1985).

WAIVER OF RIGHT OF APPEAL. --Either the condemnor or condemnee may waive his right of appeal from the final judgment in a condemnation proceeding. Acting Dir., Dep't of Forests & Parks v. Walker, 271 Md. 711, 319 A.2d 806 (1974).

QUOTED IN Colonial Carpets, Inc. v. Carpet Fair, Inc., 36 Md. App. 583, 374 A.2d 419 (1977).

CITED IN Washington Sub. San. Comm'n v. Nash, 284 Md. 376, 396 A.2d 538 (1979); Bouton v. Potomac Edison Co., 288 Md. 305, 418 A.2d 1168 (1980).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 12. EMINENT DOMAIN
SUBTITLE 1. GENERAL RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 12-108 (2006)

§ 12-108. Payment of judgment and costs; title acquired

(a) Payment of judgment and costs. -- On payment of the judgment and costs by the plaintiff pursuant to the provisions of Title 12, Chapter 200 of the Maryland Rules, the plaintiff immediately shall become vested with the title, estate, or interest of the defendant in the condemned property.

(b) Title acquired. -- The title acquired in a condemnation proceeding shall be an absolute or fee-simple title including the right, title, and interest of each of the defendants in the proceeding whose property has been condemned unless a different title is specified in the inquisition.

HISTORY: An. Code 1957, art. 21, § 12-109; 1974, ch. 12, § 2; 1998, ch. 21, § 1.

UNIVERSITY OF BALTIMORE LAW FORUM. --For discussion of the scope of the doctrines of public use and relation back, see 16, No. 3 U. Balt. Law Forum 27 (1986).

TITLE DOES NOT PASS UNTIL JUST COMPENSATION IS PAID OR ASSURED. United States v. Certain Parcels of Land, 61 F. Supp. 164 (D. Md. 1945).

LESS THAN A FEE-SIMPLE TITLE MAY BE TAKEN. --There is nothing in this article which prohibits the City of Baltimore from condemning property subject to a reservation of a right-of-way in place of existing roadway. Brack v. Mayor of Baltimore, 128 Md. 430, 97 A. 548 (1916).

STATE REMAINS LIABLE FOR RENT, AS LESSEE, UNTIL AWARD AND COSTS ARE PAID IN ACTION TO CONDEMN. --Unlike the exercise of an option to purchase by a lessee, the filing of a condemnation action by a lessee gives it no equitable title to the interest of the lessor being condemned; no title passes to the condemnor until payment of the award and the costs of the proceeding by the condemnor. Accordingly, the State, as lessee, remains liable for rent under a lease until it pays the award and costs in the pending action to condemn. State, Dep't of Economic & Community Dev. v. Attman/Glazer P.B. Co., 323 Md. 592, 594 A.2d 138 (1991).

COMPENSATION PAID PURSUANT TO ERRONEOUS COURT AWARD. --When compensation is paid pursuant to an award of court, the condemnor is not liable to an adverse claimant even though the court award may be erroneous. Bugg v. Maryland Transp. Auth., 31 Md. App. 622, 358 A.2d 562, cert. denied, 278 Md. 717 (1976), appeal dismissed, 429 U.S. 1082, 97 S. Ct. 1088, 51 L. Ed. 2d 529 (1977).

THERE IS NO PROVISION FOR PAYMENT OF INTEREST ON JUDGMENT. --The rules of court authorized by this section, particularly former Rule U23 (see now Rule 12-210), and this article are both silent as to the payment of interest on the judgment if it is not paid promptly. Hammond v. State Rds. Comm'n, 241 Md. 514, 217 A.2d 258 (1966).

BUT INTEREST ON AN AWARD OF CONDEMNATION SHOULD BE PAID WHEN PAYMENT IS WITHHELD beyond the time the property is actually taken. Hammond v. State Rds. Comm'n, 241 Md. 514, 217 A.2d 258 (1966).

PROPERTY OWNER ENTITLED TO INTEREST ON JUDGMENT. --See Acting Dir., Dep't of Forests & Parks v. Walker, 271 Md. 711, 319 A.2d 806 (1974).

FAILURE TO DESIGNATE OWNER. --When the condemnation of land is effected by judicial decree, failure to designate in the petition (and to make a party respondent) the owner of any interest in the land taken whose title appears of record or is otherwise ascertainable on reasonable inquiry renders the proceedings ineffectual to transfer such interest to the condemnor. Department of Natural Resources v. Welsh, 308 Md. 54, 521 A.2d 313 (1986).

APPLIED IN Mayor of Baltimore v. Baltimore Football Club, Inc., 624 F. Supp. 278 (D. Md. 1985); Millison v. Wilzack, 77 Md. App. 676, 551 A.2d 899, cert. denied, 315 Md. 307, 554 A.2d 393 (1989).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 12. EMINENT DOMAIN
SUBTITLE 1. GENERAL RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 12-109 (2006)

§ 12-109. Abandonment of condemnation proceeding

(a) Method. -- The exclusive method of abandoning a proceeding for condemnation shall be by the plaintiff's filing, in the proceeding, a written election to abandon. A copy of the election shall be served as provided in the Maryland Rules, on each defendant who has been personally subjected to the jurisdiction of the court. Every other defendant shall be notified of the election by service of a copy or by any other means the court directs.

(b) Effect of filing election to abandon. -- The filing of the election has the effect of:

(1) Reducing any money judgment entered in the proceeding to a judgment for costs only, and the clerk immediately shall make the entry on his docket and judgment record to reflect this; and

(2) Annulling any inquisition returned in the proceeding, and any judgment entered in it, to the extent that the inquisition or judgment affects the title of any defendant to the property which was sought to be condemned.

(c) Recordation of abandonment. -- On filing the election to abandon, the clerk of any court where the inquisition has been recorded among the land records immediately shall make a notation on the recorded copy of the inquisition that the proceeding has been abandoned.

(d) Limitation on abandonment. -- No condemnation proceeding may be abandoned:

(1) After taking has occurred;

(2) More than 120 days after the entry of final judgment, unless an appeal is taken; or

(3) If an appeal is taken from a final judgment, more than 120 days after the receipt by the clerk of the lower court of a mandate of the Court of Appeals or the Court of Special Appeals evidencing the dismissal of the appeal, the affirmance of the judgment, the entry of judgment pursuant to the Maryland Rules, or the modification of the judgment without the award of a new trial. For the purposes of this section, an appeal stricken out pursuant to the Maryland Rules, or voluntarily abandoned, is deemed not to have been taken. However, if the appeal so stricken out or voluntarily abandoned was taken by the defendant, the plaintiff may abandon the proceeding within 120 days after the appeal is abandoned or stricken out, provided taking has not occurred.

(e) Recovery by defendant on account of legal, appraisal, and engineering fees. -- On abandonment of a condemnation proceeding, the defendant is entitled to recover from the plaintiff the reasonable legal, appraisal, and engineering fees actually incurred by the defendant because of the condemnation proceeding. If the parties agree on the proper amount to be recovered by the defendant on account of these fees, they shall file with the clerk of the court a writing evidencing their agreement. If the parties cannot agree on the proper amount to be recovered by the defendant on account of the fees, the court, on motion of either party, shall determine the proper amount. The clerk shall enter the amount agreed on or determined by the court as a part of the costs.

HISTORY: An. Code 1957, art. 21, § 12-110; 1974, ch. 12, § 2; 1976, ch. 472, § 31; 1989, ch. 5, § 1.

MARYLAND LAW REVIEW. --For comment discussing sovereign immunity from statutes of limitation in Maryland, see 46 Md. L. Rev. 408 (1987).

For note, "The Maryland Survey: 2001-2002: Recent Decisions: The Court of Appeals of Maryland: VI. Eminent Domain," see 62 Md. L. Rev. 840 (2003).

PURPOSE OF SECTION. --The purpose of this section's prohibition against an abandonment after a taking has occurred is to forbid the State to abandon the acquisition of the property, not to limit the method of that acquisition. Shallow Run Ltd. Partnership v. State Hwy. Admin., 113 Md. App. 156, 686 A.2d 1113 (1996).

The purpose of the abandonment prohibition is to protect the landowner from loss of use of property that is never subsequently fully acquired by the condemnor, not to afford the landowner the power to require that a specific method of acquisition is used. Shallow Run Ltd. Partnership v. State Hwy. Admin., 113 Md. App. 156, 686 A.2d 1113 (1996).

PURPOSE OF 120-DAY LIMITATION IN SUBSECTION (D) (2) of this section on exercising the right to abandon is twofold. First, it preserves the condemnor's common law right to reconsider the jury's inquisition and elect to abandon the condemnation proceeding prior to payment of the award. Second, the 120-day limitation may relieve property owners of the suspense and hardship which attach to delay in the election to abandon. Dodson v. Anne Arundel County, 294 Md. 490, 451 A.2d 317 (1982).

CONSTRUCTION WITH OTHER SECTIONS. --The State's efforts to acquire certain property through enforcement of the rights it acquired by contract did not constitute an improper abandonment of the condemnation proceedings; section 12-101 of this subtitle and §§ 8-302 and 8-325 of the Transportation Article permit the State to proceed on dual track acquisition efforts simultaneously without violating the abandonment prohibition of this section. Shallow

Run Ltd. Partnership v. State Hwy. Admin., 113 Md. App. 156, 686 A.2d 1113 (1996).

WHERE COMMON LAW RIGHT OF ACTION FOR UNREASONABLE DELAY ALLOWABLE. --Because this section imposes explicit time limitations during which abandonment must occur, ordinarily no common law right of action for unreasonable delay will be countenanced. An exception to this rule would occur in a factual situation where the decision to delay payment amounted to a taking or otherwise violated the property owner's constitutional rights. Dodson v. Anne Arundel County, 294 Md. 490, 451 A.2d 317 (1982).

LANGUAGE OF FORMER MARYLAND RULE U26 D (SEE NOW RULE 12-211 (D)) IS NEARLY IDENTICAL to subsection (e) of this section. Southern Md. Elec. Coop. v. Albrittain, 256 Md. 39, 259 A.2d 311 (1969).

CONTRACT TO PURCHASE PROPERTY. --When a condemnor of property also has a valid contractual right to purchase property at a specific price from the condemnee, that purchaser can enforce the contract; if the transaction is forced onto the condemnation arena, that contract price then becomes the value of the property for condemnation purposes. Shallow Run Ltd. Partnership v. State Hwy. Admin., 113 Md. App. 156, 686 A.2d 1113 (1996).

COUNSEL FEE PART OF COSTS. --Whether the counsel fee is fixed by the court as provided in § 12-107 (b), or in subsection (e) of this section, in either instance it becomes a part of the costs to be paid by the plaintiff. Southern Md. Elec. Coop. v. Albrittain, 256 Md. 39, 259 A.2d 311 (1969).

Upon judgment that the plaintiff is not entitled to condemn property, reasonable counsel fees of defendant shall be assessed against the plaintiff and shall become part of costs to be paid by plaintiff. Southern Md. Elec. Coop. v. Albrittain, 256 Md. 39, 259 A.2d 311 (1969).

EXTRAORDINARY COSTS. --Former Maryland Rule 530 (see now Rule 2-507) is applicable to condemnation cases, but any liability of the condemning authority for extraordinary costs such as are set forth in former Maryland Rule U26 d (see now Rule 12-211 (d)) and in subsection (e) of this section is not automatic and must be supportable for reasons independent of the operation of former Rule 530. 61 Op. Att'y Gen. 105 (1976).

APPEAL. --In the field of eminent domain courts exercise a special statutory jurisdiction and in the absence of an express grant by General Assembly no appeal lies to the Court of Appeals. Southern Md. Elec. Coop. v. Albrittain, 256 Md. 39, 259 A.2d 311 (1969).

Ordinarily judgment or decree awarding costs but making no other adjudication is not appealable. Southern Md. Elec. Coop. v. Albrittain, 256 Md. 39, 259 A.2d 311 (1969); Washington Sub. San. Comm'n v. Ross, 62 Md. App. 418, 489 A.2d 1135 (1985).

APPLIED IN J.L. Matthews, Inc. v. Md.-National Capital Park & Planning Comm'n, 368 Md. 71, 792 A.2d 288 (2002).

QUOTED IN Bern-Shaw Ltd. P'ship v. Mayor & City Council, 377 Md. 277, 833 A.2d 502 (2003).

CITED IN Hardesty v. State Rds. Comm'n of State Hwy. Admin., 276 Md. 25, 343 A.2d 884 (1975); Lore v. Board of Pub. Works, 277 Md. 356, 354 A.2d 812 (1976); Washington Sub. San. Comm'n v. Nash, 284 Md. 376, 396 A.2d 538 (1979); State Rds. Comm'n v. Town of Colmar Manor, 51 Md. App. 240, 442 A.2d 199 (1982); Utilities, Inc. v. Washington Sub. San. Comm'n, 362 Md. 37, 763 A.2d 129 (2000).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.

a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 12. EMINENT DOMAIN
SUBTITLE 1. GENERAL RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 12-110 (2006)

§ 12-110. Payment and adjustment of taxes

(a) Taxes paid by condemnee. -- If the condemnee or his predecessor in title has paid taxes, the condemnee is entitled to receive from the condemnor, in addition to the damages awarded for the premises taken, an amount of money which bears the same ratio to the entire amount of taxes on the premises taken as the part of the taxable year remaining on the date of taking bears to the entire taxable year.

(b) Adjustment of taxes not paid. --

(1) If taxes have not been paid and all the property covered by an assessment is condemned, the condemnor may deduct from the damages awarded to the condemnee an amount of money which bears the same ratio to the entire amount of the taxes on the condemned property as the part of the taxable year which has expired on the date of taking bears to the entire taxable year.

(2) If the taxes have not been paid and a part of the property covered by an assessment is taken, the condemnor may deduct from the damages awarded to the condemnee an amount of money equal to the taxes due and payable on the portion of the property covered by the assessment which is not taken plus an amount of money which bears the same ratio to the amount of the taxes on the property taken as the part of the taxable year which has expired on the date of taking bears to the entire taxable year.

(c) Same -- Determination of amount. -- The amount of the adjustment for taxes under this section shall be as the condemnor and condemnee agree, or if they are unable to agree, the amount shall be determined on petition of either party by a judge of the court in which the condemnation proceeding was filed, or, if no proceeding has been filed, by a judge of a court of law in a county where any part of the land is located.

(d) Responsibility for payment of taxes. -- After taxes have been adjusted as provided in subsection (b), the condemnor shall pay the entire tax bill on the property taken as well as any property remaining to the condemnee, less any allowable readjustments or abatements, within 30 days from the date the adjustment is made. If the condemnor does not pay the taxes within this time, the condemnee may pay them and recover the amount so paid from the condemnor, together with interest from the date of payment, as a common debt.

(e) "Taxes" includes benefit charges assessed by special taxing district. -- In addition to any other meaning of the word in this section, "taxes" also includes all annual benefit charges assessed by the Washington Suburban Sanitary Commission or other special taxing district which are collected as taxes. They shall be apportioned over the entire period of the assessment and paid as set forth above for other taxes.

HISTORY: An. Code 1957, art. 21, § 12-111; 1974, ch. 12, § 2.

CITED IN Conrad v. Department of Natural Resources, 30 Md. App. 479, 352 A.2d 904, cert. denied, 278 Md. 719 (1976).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 12. EMINENT DOMAIN
SUBTITLE 1. GENERAL RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 12-111 (2006)

§ 12-111. Rights and liabilities of civil engineers and surveyors; damaging or removing marker

(a) Right of entry; right to set stakes. -- Civil engineers, land surveyors, real estate appraisers, and their assistants acting on behalf of the State or of any of its instrumentalities or any body politic or corporate having the power of eminent domain after every real and bona fide effort to notify the owner or occupant in writing with respect to the proposed entry may:

(1) Enter on any private land to make surveys, run lines or levels, or obtain information relating to the acquisition or future public use of the property or for any governmental report, undertaking, or improvement;

(2) Set stakes, markers, monuments, or other suitable landmarks or reference points where necessary; and

(3) Enter on any private land and perform any function necessary to appraise the property.

(b) Order to permit entry. -- If any civil engineer, surveyor, real estate appraiser, or any of their assistants is refused permission to enter or remain on any private land for the purposes set out in subsection (a) of this section, the person, the State, its instrumentality, or the body politic or corporate on whose behalf the person is acting may apply to a law court of the county where the property, or any part of it, is located for an order directing that the person be permitted to enter on and remain on the land to the extent necessary to carry out the purposes authorized by this section.

(c) Damage to or destruction of property. -- If a civil engineer, surveyor, real estate appraiser, or any of their assistants enters on any private land under the authority of this section or any court order passed pursuant to it, and damages or destroys any land or personal property on it, the owner of the property has a cause of action for damages against the civil engineer, surveyor, real estate appraiser, or assistant and against the State, its instrumentality, or the body politic or corporate on whose behalf the person inflicting the damage was acting.

(d) Obliterating, damaging, or removal of stake or marker. -- Any landowner or other person who willfully obliterates, damages, or removes any stake, marker, monument, or other landmark set by any civil engineer, surveyor, or real estate appraiser or any of their assistants acting pursuant to this section, except if the stake, marker, monument, or other landmark interferes with the proper use of the property, is guilty of a misdemeanor and on conviction shall be fined not more than $ 500.

(e) Obstructing a person acting under court order. -- Any person who has knowledge of an order issued pursuant to subsection (b) and who obstructs any civil engineer, surveyor, real estate appraiser, or any of their assistants acting under the authority of the order may be punished as for contempt of court.

(f) Entry to make test borings and soil tests in Anne Arundel or Montgomery counties, or Baltimore City. -- In Anne Arundel County, Montgomery County, or Baltimore City, an agent or employee, or one or more assistants of the jurisdiction, after real and bona fide effort to notify the occupant or the owner, if the land is unoccupied or if the occupant is not the owner, may enter on any private land to make test borings and soil tests and obtain information related to such tests for the purpose of determining the possibility of public use of the property. If an agent, employee, or assistant is refused permission to enter or remain on any private land for the purposes set out in this subsection, Anne Arundel County, Montgomery County, or Baltimore City may apply to a law court of the jurisdiction where the property or any part of it is located for an order directing that its agent, employee, or assistant be permitted to enter and remain on the land to the extent necessary to carry out the purposes authorized by this subsection. The court may require that the applying jurisdiction post a bond in an amount sufficient to reimburse any person for damages reasonably estimated to be caused by test borings, soil tests, and related activities. If any person enters on any private land under the authority of this section or of any court order passed pursuant to it and damages or destroys any land or personal property on it, the owner of the property has a cause of action for damages against the jurisdiction that authorized the entrance. Any person who knows of an order issued under this subsection and who obstructs any agent, employee, or assistant acting under the authority of the order may be punished for contempt of court.

(g) Entry by State Highway Administration or Maryland Transit Administration employees to conduct environmental and engineering studies. -- The State Highway Administration, the Maryland Transit Administration, and the agents, employees, and consultants of the State Highway Administration and the Maryland Transit Administration may enter upon private property to conduct environmental and engineering studies, including soil boring and excavation, necessary to determine the suitability of the property for use by the administration entering the property. Entry onto private property for these purposes shall not be undertaken without prior consent of the property owner. If, after real and bona fide effort, the consent of the property owner cannot be secured, the administration seeking entry may apply to a law or equity court where the property or any part of it is located for an order directing that entry be permitted. "Bona fide effort" shall include either 30 days advance notice in writing by certified mail return receipt requested to the last known address of the property owner or posting notice on the property not less than 30 days in advance, and such other requirements as the court may deem appropriate. The administration entering the property, when removing, displacing, boring, or excavating soil under the provisions of this section, shall replace the topsoil in a manner which will approach the level of compaction and contour as when removed. An administration entering private property under the authority of this subsection shall reimburse the landowner or lessee who is farming the property for agricultural products destroyed or damaged by the administration's agents, employees, or consultants and shall be responsible for any other damages that may be incurred as a result of such entry on private property.

HISTORY: An. Code 1957, art. 21, § 12-112; 1974, ch. 12, § 2; 1977, ch. 455; 1978, ch. 469; 1981, ch. 520; 2004, chs. 72, 73; 2005, ch. 120; 2006, ch. 44.

NOTES:
EFFECT OF AMENDMENTS. --Chapters 72 and 73, Acts 2004, both effective Oct. 1, 2004,

made identical changes. Each, in (f), in the first and second sentences, inserted "Montgomery County, or Baltimore City" and substituted "jurisdiction" for "county," substituted "the applying jurisdiction" for "Anne Arundel County" in the third sentence, and substituted "the jurisdiction that authorized the entrance" for "Anne Arundel County" at the end of the fourth sentence.

Chapter 120, Acts 2005, effective October 1, 2005, rewrote (g).

Chapter 44, Acts 2006, enacted April 7, 2006, pursuant to art. II, § 17(b) of the Maryland Constitution and effective from the date of enactment, in (b), substituted "appraiser" for "appraisers" and inserted "of this section"; and in (f), deleted "any" before "assistant" in the last sentence and made minor, related changes.

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "State Constitutional Law for Maryland Lawyers: Judicial Relief for Violations of Rights," see 10 U. Balt. L. Rev. 102 (1980).

AMBIGUITY OF WORDS RELATING TO OBTAINING INFORMATION. --Since the words chosen by the General Assembly do not circumscribe what one may do to "obtain information" their meaning is less than clear. Surely it is neither plain nor unambiguous. Mackie v. Mayor of Elkton, 265 Md. 410, 290 A.2d 500 (1972).

EVEN THOUGH THIS STATUTE IS IN DEROGATION OF THE COMMON LAW AND THEREFORE MUST BE STRICTLY CONSTRUED, that does not mean the plain and obvious language of the General Assembly is to be overlooked particularly where such a construction would lead to an absurd result. State v. Rice, 24 Md. App. 631, 332 A.2d 296, cert. denied, 275 Md. 755 (1975).

PHRASE "OBTAIN INFORMATION, ETC.," NOT CONSTRUED TO COVER TESTS. --The phrase "obtain information relating to the acquisition or future public use of the property or for any governmental report, undertaking, or improvement" is not broad enough to cover the right to make tests entailing extensive core drilling and the digging of large, deep pits. Mackie v. Mayor of Elkton, 265 Md. 410, 290 A.2d 500 (1972).

LEGISLATIVE INTENT AS TO 1963 REVISION OF FORMER ARTICLE 21, § 12-112. --The General Assembly did not intend by the 1963 revision to accomplish anything more than a recognition that the landowner was entitled to be made whole for the incidental destruction or damage associated with the innocuous acts and entries specified in subsection (a) (1) and (2) of former Article 21, § 12-112, thereby dispelling the uncertainty of the 1916 law. Mackie v. Mayor of Elkton, 265 Md. 410, 290 A.2d 500 (1972).

The General Assembly did not intend by the 1963 revision to license operations which would inflict upon private property the trauma of extensive core drilling and backhoe investigation. Mackie v. Mayor of Elkton, 265 Md. 410, 290 A.2d 500 (1972).

RIGHT TO ENTER PROPERTY KEY ELEMENT IN EXERCISE OF POWER OF EMINENT DOMAIN. King v. Mayor of Rockville, 52 Md. App. 113, 447 A.2d 118, cert. denied, 294 Md. 442 (1982), cert. denied, 461 U.S. 914, 103 S. Ct. 1894, 77 L. Ed. 2d 284 (1983).

PERMISSION OF OWNER. --This section on its face authorizes the State's agents to enter but says nothing about the permission of the owner. State v. Rice, 24 Md. App. 631, 332 A.2d 296, cert. denied, 275 Md. 755 (1975).

STATE LIABLE SIMILARLY AS PRIVATE INDIVIDUAL. --There is nothing to indicate that in providing that property owners could bring suit for damages in subsection (c) of this section the General Assembly intended that the State would not be liable in the same manner as a private individual. State v. Rice, 24 Md. App. 631, 332 A.2d 296, cert. denied, 275 Md. 755 (1975).

RULE ON DAMAGES. --The rule is that damages may be measured in cases under subsection (c) of this section at the plaintiff's election, either by the loss of value which results from the harm, or by the cost of restoration, subject to the limitation that if the cost of restoration is disproportionate to diminution in value, then damage will be measured by the difference in value before and after the harm, unless there is a reason personal to the owner for restoring

the original condition, but once a reason personal is found, the measure of damages is the cost of restoration, even though this may be greater than the entire value of the property. State v. Rice, 24 Md. App. 631, 332 A.2d 296, cert. denied, 275 Md. 755 (1975).

INJUNCTION AGAINST CONSTRUCTION OF ROAD AFTER ENTRY FOR SURVEY. --See Murphy v. State Rds. Comm'n, 159 Md. 7, 149 A. 566 (1930).

PURPOSE OF SUBSECTION (B) of this section is to bring a recalcitrant landowner under the contempt power of the court pursuant to subsection (e) of this section. King v. Mayor of Rockville, 52 Md. App. 113, 447 A.2d 118 (1982), cert. denied, 461 U.S. 914, 103 S. Ct. 1894, 77 L. Ed. 2d 284 (1983).

NO DENIAL OF DUE PROCESS WHEN GOVERNMENTAL AGENCIES ENTER PURSUANT TO SUBSECTION (B). --Since the General Assembly could have but did not afford a mechanism for any hearing before entry on the land, there is no denial of due process when governmental agencies enter pursuant to subsection (b) of this section without giving the property owner a means of protesting. King v. Mayor of Rockville, 52 Md. App. 113, 447 A.2d 118, cert. denied, 294 Md. 442 (1982), cert. denied, 461 U.S. 914, 103 S. Ct. 1894, 77 L. Ed. 2d 284 (1983).

PROPERTY OUTSIDE MUNICIPAL BOUNDARIES. --A municipality has express statutory authority to condemn property outside its boundaries, pursuant to § 9-705 (5) of the Environment Article, and to enter onto such property to evaluate it, pursuant to § 9-706 of the Environment Article and this section. 70 Op. Att'y Gen. 146 (1985).

STATED IN Acting Dir., Dep't of Forests & Parks v. Walker, 271 Md. 711, 319 A.2d 806 (1974).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 12. EMINENT DOMAIN
SUBTITLE 1. GENERAL RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 12-112 (2006)

§ 12-112. Allowance for removal of personal property, dead body, grave marker, or monument

(a) Right to receive from condemnor allowance for costs of removal; limitation on time for submitting claim; items not included. -- If land is acquired, in whole or in part, by condemnation or by purchase in lieu of condemnation, any person at whose expense any personal property, dead body, grave marker, or monument must be removed as a reasonably necessary consequence of condemnation, or purchase in lieu of condemnation, is entitled to receive from the condemnor or purchaser a pecuniary allowance for the reasonable costs of removing and placing the item or body in another location within a reasonable distance. In

order to receive the pecuniary allowance the person shall submit his claim to the condemnor or purchaser within six months after the removal of the personal property, dead body, grave marker, or monument with respect to which he claims pecuniary allowance. The allowance does not include any compensation for loss of profit, goodwill, or for the acquisition of another location.

(b) Reduction of allowance in case of removal of personal property from leased premises. -- If personal property is removed from leased premises from which the reversioner could have required its removal on the termination of the lease, the allowance provided for in this section shall be diminished by one fifth for each year by which five years exceeds the number of full years remaining in the term at the time when the premises were acquired. Any option to renew or extend the lease shall be treated as having been exercised, and the term shall be deemed to include the renewal term or extension. The adjustment provided by this subsection may not be used to reduce the allowance provided for in this section below.

(c) Allowance for removal of personal property not to exceed fair market value. -- If personal property is removed, the allowance provided for in this section may not exceed its fair market value. Nothing in this subsection requires a condemnor to obtain an expert or detailed appraisal of any personal property before allowing or paying moving costs.

(d) Removal to another location at unreasonable distance. -- If any personal property, dead body, grave marker, or monument is removed to another location at an unreasonable distance, the allowance provided for in this section is not totally defeated, but no compensation is due for the additional costs resulting from the unreasonable distance of the new location.

(e) Requirements as to use of personal property to be removed. -- No person is entitled to any allowance for the costs of removal and relocation of personal property unless the personal property has been used by him at its original location and is to be used by him at its new location.

(f) Amount of allowance. -- The amount of the allowance for the costs of removal and relocation shall be as the condemnor or purchaser and the person entitled agree. If they are unable to agree, the amount shall be determined, on petition of either party filed after removal and relocation have been effected, by the court in which the condemnation proceedings were filed. If no condemnation proceeding has been filed, a law court of the county where any part of the premises is located shall determine the amount, not to exceed the actual moving costs.

(g) Notice prior to removal; opportunity to inspect. -- No petition may be filed under this section except by the condemnor or purchaser, unless the person entitled to the removal allowance gives written notice to the condemnor or purchaser at least ten days prior to the date of removal, stating the date of intended removal, the identification of the items to be removed, and the place to which they are to be relocated. In addition, he shall give the condemnor or purchaser, on request, a reasonable opportunity to inspect any personal property, grave marker, monument, or burial site that may be involved.

(h) Limitation on time for filing petition to award allowance. -- Every petition shall be filed within one year after the removal of the personal property, dead body, grave marker, or monument with respect to which it claims pecuniary allowance.

(i) Payment or reimbursement out of federal funds. -- Nothing in this section may be construed to place a limit on the amount of compensation that a condemnor may allow for moving costs in cases where, under applicable federal law or rule or regulation, compensation may be paid wholly or partly out of federal funds or will be reimbursed wholly or partly to the condemnor out of federal funds.

(j) Federal laws and rules and regulations authorizing benefits for displacees from public improvement projects in Baltimore City. -- Notwithstanding any provision of this section, in

Baltimore City, where federal laws and rules and regulations authorize benefits for any displacee from public improvement projects wholly or partially funded by federal funds, a condemnor may do any act necessary to comply with the terms, conditions, and provisions of federal law and rule and regulation in order to obtain the full benefit under them for any condemnor and displacee from the projects in Baltimore City. This subsection applies to existing acts of Congress authorizing benefits for or to displacees from public improvement projects receiving federal funds, subsequent acts of Congress of like character, and any existing or subsequently adopted rules and regulations issued in connection with them.

HISTORY: An. Code 1957, art. 21, § 12-113; 1974, ch. 12, § 2.

MARYLAND LAW REVIEW. --For article discussing condemnation in Maryland, see 30 Md. L. Rev. 301 (1970).
For comment discussing sovereign immunity from statutes of limitation in Maryland, see 46 Md. L. Rev. 408 (1987).

NO COMPENSATION FOR DAMAGES TO PERSONAL PROPERTY. --This section does not require compensation for damages to personal property. Ridings v. State Rds. Comm'n, 249 Md. 395, 240 A.2d 236 (1968).
There is in this State no constitutional provision or statute requiring compensation for damages to personal property in a condemnation of realty. Ridings v. State Rds. Comm'n, 249 Md. 395, 240 A.2d 236 (1968).

APPLIED IN Conrad v. Department of Natural Resources, 30 Md. App. 479, 352 A.2d 904, cert. denied, 278 Md. 719 (1976).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 12. EMINENT DOMAIN
SUBTITLE 2. RELOCATION AND ASSISTANCE

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 12-201 (2006)

§ 12-201. Definitions

(a) In general. -- In this subtitle the following words have the meanings indicated unless otherwise apparent from context.

(b) Appraisal. -- "Appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

(c) Business. -- "Business" means any lawful activity, except a farm operation, conducted primarily:

(1) For the purchase, sale, lease, and rental of personal property and of real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(2) For the sale of services to the public; or

(3) By a nonprofit organization.

(d) Comparable replacement dwelling. -- "Comparable replacement dwelling" means any dwelling that is:

(1) Decent, safe, and sanitary;

(2) Adequate in size to accommodate the occupants;

(3) Within the financial means of the displaced person;

(4) Functionally equivalent;

(5) In an area not subject to unreasonable adverse environmental conditions;

(6) In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services, and the displaced person's place of employment; and

(7) Currently available on the private market.

(e) Displaced person. --

(1) "Displaced person" means:

(i) Any person who moves from real property, or moves his personal property from real property:

1. As a direct result of a written notice of intent to acquire or the acquisition of such real property in whole or in part by a displacing agency; or

2. On which that person is a residential tenant or conducts a small business, a farm operation, or a nonprofit organization, in any case in which the head of the displacing agency determines that displacement is permanent, as a direct result of rehabilitation, demolition, or other displacing activity as the lead agency may prescribe, undertaken by a displacing agency; and

(ii) Solely for the purposes of §§ 12-205 (a) and (b) and 12-206 of this subtitle, any person who moves from real property, or moves his personal property from real property:

1. As a direct result of a written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which such person conducts a business or farm operation, by a displacing agency; or

2. As a direct result of rehabilitation, demolition, or other displacing activity as the lead agency may prescribe, of other real property on which such person conducts a business or a farm operation in any case in which the head of the displacing agency determines that displacement is permanent, by a displacing agency.

(2) "Displaced person" does not include:

(i) Except to the extent that this exclusion conflicts with federal financial participation requirements, any person who, on the open market, without threat of condemnation, sells his real property to a displacing agency;

(ii) Unlawful occupants, or anyone occupying such dwelling for the purpose of obtaining assistance under this subtitle; or

(iii) A person who leases from the displacing agency after the displacing agency takes title to the real property, or any person other than a person who was an occupant of such property at the time it was acquired who occupies the property on a rental basis for a short term or period subject to termination when the property is needed for the program or project.

(f) Displacing agency. -- "Displacing agency" means any public or private agency or person carrying out:

(1) A program or project with federal financial assistance;

(2) A public works program or project with State financial assistance; or

(3) Acquisition by eminent domain or by negotiation.

(g) Farm operation. -- "Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber for sale or home use, and customarily producing these products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(h) Federal financial assistance. -- "Federal financial assistance" means a grant, loan, or contribution provided by the United States to the State or any of its political subdivisions, agencies, or any person, except any federal guarantee or insurance, or any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual, or any federal income tax credit or incentive, or any other tax advantage or interest rate advantage in connection with the issuance of bonds, the income on which is exempt from federal income tax.

(i) Lead agency. -- "Lead agency" means the United States Department of Transportation.

(j) Mortgage. -- "Mortgage" means the class of liens commonly given to secure advances on, or the unpaid purchase price of real property together with any credit instrument secured by the real property.

(k) Private agency. -- "Private agency" means any public or private utility company, railroad, person, or other organization having the right to acquire real property for a public purpose with federal financial assistance or through the use of eminent domain or by negotiation.

(l) Public agency. -- "Public agency" means the State, a political subdivision, or any of their agencies, boards, or commissions having the right to acquire real property for public purposes with federal financial assistance or through the use of eminent domain or by negotiation. The term does not include a public agency if acquiring real property for Program Open Space or any political subdivision, other than Baltimore City, Baltimore, Anne Arundel, and Montgomery counties, the Board of Education of Montgomery County, the Board of Trustees of Montgomery College or any board or agency of any of them, or any agency, board, or commission of the subdivision when acquiring real property for a public purpose for which relocation assistance is not required by federal law.

(m) Person. -- "Person" means an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, or association, public or private corporation, a nonprofit organization, or any other entity not defined as a public agency.

(n) Uneconomic remnant. -- "Uneconomic remnant" means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property and which the displacing agency concerned has determined has little or no value or utility to the owner.

HISTORY: An. Code 1957, art. 21, § 12-201; 1974, ch. 12, § 2; 1975, ch. 507; 1980, ch. 163; 1986, ch. 419; 1989, ch. 10; 2002, ch. 19, § 10.

NOTES:
EDITOR'S NOTE. --Section 10, ch. 19, Acts 2002, provides that "the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, (e) and (f) have been transposed to restore alphabetical order, and "counties" has been substituted for "Counties" in (l).

MARYLAND LAW REVIEW. --For article, "Survey of Developments in Maryland Law, 1984-85," see 45 Md. L. Rev. 836 (1986).

DISPLACED PERSON --Manufacturer did not qualify as a "displaced person" pursuant to (e) and was not entitled to compensation for relocation expenses; there was no evidence that termination of the manufacturer's tenancy was the direct result of a written notice by a city of its intent to acquire the property or a determination by the head of a displacing agency that the displacement was permanent as a direct result of rehabilitation, demolition, or other displacing activity. College Bowl, Inc. v. Mayor & City Council, 394 Md. 482, 907 A.2d 153 (2006).

DEPARTMENT OF GENERAL SERVICES IS NOT A PRIVATE AGENCY within the meaning of this subtitle. Conrad v. Department of Natural Resources, 30 Md. App. 479, 352 A.2d 904, cert. denied, 278 Md. 719 (1976).

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 12. EMINENT DOMAIN
SUBTITLE 2. RELOCATION AND ASSISTANCE

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 12-202 (2006)

§ 12-202. Additional compensation to owner-occupant

(a) Additional payment required under certain circumstances. --

(1) In addition to payment otherwise authorized, a displacing agency shall make an additional payment not in excess of $ 22,500 to any displaced person who is displaced from a dwelling actually owned and occupied by the displaced person for not less than 180 days prior to the initiation of negotiations for the acquisition of the real property.

(2) (i) The displacing agency may exceed the monetary limit stated in paragraph (1) of this subsection on a case-by-case basis if it determines that comparable housing cannot otherwise be made available within the limit; or

(ii) The displacing agency may use any other measures necessary to remedy the unavailability of comparable housing.

(b) Elements of additional payment. -- The additional payments shall include the following elements:

(1) Any amount which when added to the acquisition cost of the dwelling acquired by the displacing agency, equals the reasonable cost of a comparable replacement dwelling as defined in § 12-201 (d) of this subtitle.

(2) Any amount which will compensate the displaced person for any increased interest costs and other debt service costs which the person is required to pay for financing the acquisition of any comparable replacement dwelling. The amount shall be paid only if the dwelling acquired by the displacing agency was encumbered by a bona fide mortgage which was a valid lien on the dwelling for not less than 180 days prior to the initiation of negotiations for the acquisition of the dwelling. The method of calculation shall be determined by the lead agency.

(3) Reasonable expenses incurred by the displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

HISTORY: An. Code 1957, art. 21, § 12-202; 1974, ch. 12, § 2; 1988, ch. 489; 1989, ch. 10.

MARYLAND LAW REVIEW. --For article discussing condemnation in Maryland, see 30 Md. L. Rev. 301 (1970).

STATED IN Conrad v. Department of Natural Resources, 30 Md. App. 479, 352 A.2d 904, cert. denied, 278 Md. 719 (1976).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY

TITLE 12. EMINENT DOMAIN
SUBTITLE 2. RELOCATION AND ASSISTANCE

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 12-203 (2006)

§ 12-203. Same -- Limitation on payment

Subject to the provisions of § 8-309 (h) (2) of the Transportation Article, the additional payment authorized by § 12-202 of this subtitle shall be made only to a displaced person who purchases and occupies a replacement dwelling which is decent, safe, and sanitary, not later than the end of the one-year period beginning on:

(1) The date on which he receives from the displacing agency final payment of all costs of the acquired dwelling; or

(2) The date on which the displacing agency's obligation under § 12-206 (b) (3) of this subtitle is met, whichever is later, except that the displacing agency may extend such period for good cause. If such period is extended, the payment under this section shall be based on the costs of relocating the person to a comparable replacement dwelling within 1 year of such date.

HISTORY: An. Code 1957, art. 21, § 12-203; 1974, ch. 12, § 2; 1988, ch. 489; 1989, ch. 5, § 1; ch. 10; 1995, ch. 3, § 22.

QUOTED IN Conrad v. Department of Natural Resources, 30 Md. App. 479, 352 A.2d 904, cert. denied, 278 Md. 719 (1976).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 12. EMINENT DOMAIN
SUBTITLE 2. RELOCATION AND ASSISTANCE

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 12-204 (2006)

§ 12-204. Additional payments to tenants and certain other occupants; other remedies

(a) Additional payment required under certain circumstances. -- In addition to amounts otherwise authorized by this title and Title 8 of the Transportation Article, the displacing agency shall make a payment to or for any displaced person displaced from any dwelling and

not eligible to receive a payment under § 12-202 of this subtitle, if the dwelling actually and lawfully was occupied by the displaced person for not less than 90 days before the initiation of negotiations for acquisition of the dwelling or in any case in which displacement is not a direct result of acquisition, such other activity as the lead agency shall prescribe.

(b) Amount; other remedies. --

(1) (i) The payment shall be the amount necessary to enable the person to lease or rent for a period not to exceed 42 months, a comparable replacement dwelling, but not to exceed $ 5,250.

(ii) At the discretion of the displacing agency, a payment under this subsection may be made in periodic installments.

(iii) Computation of a payment under this subsection to a low income displaced person for a comparable replacement dwelling shall take into account such person's income.

(2) (i) If the displacing agency determines that comparable housing cannot otherwise be made available within this limit, the monetary limit stated in paragraph (1) of this subsection may be exceeded on a case-by-case basis.

(ii) The displacing agency may use any other measures necessary to remedy unavailability of comparable housing as prescribed by the lead agency.

(c) Election to apply payment to purchase; exceptions. --

(1) Any person eligible for a payment under subsection (a) of this section may elect to apply the payment to a down payment on, and other incidental expenses applicable to, the purchase of a decent, safe, and sanitary replacement dwelling.

(2) At the discretion of the displacing agency, that person may be eligible under this subsection for the maximum payment allowed under subsection (a) of this section, except that, in the case of a displaced homeowner who has owned and occupied the displacement dwelling for at least 90 days but not more than 180 days immediately before the initiation of negotiations for the acquisition of the dwelling, the payment may not exceed the payment the person would otherwise have received under § 12-202 of this subtitle had the person owned and occupied the displacement dwelling 180 days immediately before the initiation of the negotiations.

HISTORY: An. Code 1957, art. 21, § 12-204; 1974, ch. 12, § 2; 1977, ch. 765, § 25; 1989, ch. 10.

PAYMENTS UNDER SUBSECTION (A) OF THIS SECTION ARE NOT TO BE AUTOMATICALLY MADE. Conrad v. Department of Natural Resources, 30 Md. App. 479, 352 A.2d 904 (1976).

AND THOSE WHO DESIRE ADDITIONAL PAYMENTS AS DISPLACED PERSONS HAVE THE BURDEN of establishing that they are entitled to them. Conrad v. Department of Natural Resources, 30 Md. App. 479, 352 A.2d 904, cert. denied, 278 Md. 719 (1976).

DEPARTMENT OF GENERAL SERVICES IS NOT A PRIVATE AGENCY within the meaning of this subtitle. Conrad v. Department of Natural Resources, 30 Md. App. 479, 352 A.2d 904, cert. denied, 278 Md. 719 (1976).

WHEN LAND IS ACQUIRED BY THE STATE FOR PROGRAM OPEN SPACE, the provisions of subsection (a) of this section, for additional payments to displaced persons, are not applicable. Conrad v. Department of Natural Resources, 30 Md. App. 479, 352 A.2d 904, cert. denied, 278 Md. 719 (1976).

Even if condemnees had occupied a dwelling for not less than 90 days prior to the initiation of negotiations for its acquisition, this would not, in itself, entitle them to additional payments.

The clear dictate of subsection (a) of this section, considered in the light of subsection (h) of § 12-201 of this subtitle, is that no additional payments shall be made to displaced persons when the land is acquired by the State for Program Open Space. Conrad v. Department of Natural Resources, 30 Md. App. 479, 352 A.2d 904, cert. denied, 278 Md. 719 (1976).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 12. EMINENT DOMAIN
SUBTITLE 2. RELOCATION AND ASSISTANCE

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 12-205 (2006)

§ 12-205. Moving and relocation expenses

(a) In general. -- Whenever a program or project undertaken by a displacing agency will result in the displacement of any person, the displacing agency shall make a payment to the displaced person, on proper application as approved by the displacing agency for:

(1) Actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

(2) Actual direct loss of tangible personal property as a result of moving or discontinuing a business or farm operation, but not exceeding an amount equal to the reasonable expenses that would have been required to relocate the personal property, as determined by the agency;

(3) Actual reasonable expenses in searching for a replacement business or farm; and

(4) Actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site as determined by the displacing agency, but not to exceed $ 10,000.

(b) Election to accept moving expense allowance. -- Any displaced person eligible for payments under subsection (a) of this section, who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) of this section, may receive a moving expense allowance, determined according to a schedule established by the lead agency.

(c) Persons displaced from place of business or from farm operation. --

(1) Any displaced person eligible for payments under subsection (a) of this section who is displaced from the person's place of business or farm operation and who is eligible under criteria established by the lead agency may elect to accept the payment authorized by this

subsection in lieu of the payment authorized by subsection (a) of this section.

(2) Such payment shall consist of a fixed payment in an amount to be determined according to criteria established by the lead agency, except that such payment may not be less than $ 1,000 nor more than $ 20,000 or the amount provided under the federal Uniform Relocation Assistance Act, whichever is greater.

(3) A person whose sole business at the displacement dwelling is the rental of such property to others shall not qualify for a payment under this subsection.

HISTORY: An. Code 1957, art. 21, § 12-205; 1974, ch. 12, § 2; 1986, ch. 419; 1989, ch. 10; 1996, ch. 301.

APPLICATION OF SECTION. --This section applies to reimbursement for actual expenses incurred that are not reflected in payment of fair market value of property acquired by condemnation. Rollins Outdoor Adv., Inc. v. State Rds. Comm'n, 60 Md. App. 195, 481 A.2d 1149 (1984).

INTENT OF SUBSECTION (A) of this section is to provide reimbursement for expenses actually incurred in: (1) moving, (2) direct loss of personal property, and (3) expenses in searching for another location. Rollins Outdoor Adv., Inc. v. State Rds. Comm'n, 60 Md. App. 195, 481 A.2d 1149 (1984).

EXPENSES MAY BE PAYABLE WITHOUT REGARD TO PROCEEDINGS UNDER § 12-208. -- Expenses incurred under this section, if proved, are payable to a displaced person irrespective of the right to receive an award by condemnation under § 12-208 of this subtitle. Rollins Outdoor Adv., Inc. v. State Rds. Comm'n, 60 Md. App. 195, 481 A.2d 1149 (1984).

EFFECT OF § 12-201 (H) OF THIS SUBTITLE. --Under this section, subsection (h) of § 12-201 of this subtitle comes into play just as it does with respect to subsection (a) of § 12-204 of this subtitle. Conrad v. Department of Natural Resources, 30 Md. App. 479, 352 A.2d 904, cert. denied, 278 Md. 719 (1976).

DEPARTMENT OF GENERAL SERVICES IS NOT A PRIVATE AGENCY within the meaning of this subtitle. Conrad v. Department of Natural Resources, 30 Md. App. 479, 352 A.2d 904, cert. denied, 278 Md. 719 (1976).

RECOVERY UNDER THE SECTION IS NOT APPROPRIATE. --A corporation could not seek recovery under this section where it had originally acquiesced in the condition that gave rise to the complaint. Exxon Co. v. State Hwy. Admin. of Md. DOT, 354 Md. 530, 731 A.2d 948 (1999).

Manufacturer did not qualify as a "displaced person" pursuant to § 12-201(e) of this subtitle, and was not entitled to compensation for relocation expenses pursuant to this section; there was no evidence that termination of the manufacturer's tenancy was the direct result of a written notice by a city of its intent to acquire the property or a determination by the head of a displacing agency that the displacement was permanent as a direct result of rehabilitation, demolition, or other displacing activity. College Bowl, Inc. v. Mayor & City Council, 394 Md. 482, 907 A.2d 153 (2006).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***

*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 12. EMINENT DOMAIN
SUBTITLE 2. RELOCATION AND ASSISTANCE

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 12-206 (2006)

§ 12-206. Advisory services

(a) Generally. -- Whenever a program or project undertaken by a displacing agency or person will result in the displacement of any person, the displacing agency shall provide a relocation assistance advisory program for displaced persons which shall offer the services described in subsection (b) of this section. If the displacing agency determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, it may offer that person relocation advisory services under the program.

(b) Description of measures, facilities, or services to be provided. -- Each relocation assistance advisory program required by subsection (a) of this section includes those measures, facilities, or services necessary or appropriate in order to:

(1) Determine any need of displaced persons for relocation assistance;

(2) Provide current and continuing information on the availability, prices, and rentals, of comparable decent, safe, and sanitary sales and rental housing, and of suitable commercial properties and locations for displaced businesses and farm operations;

(3) Assure that a person may not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable replacement dwelling as defined in § 12-201 (d) of this subtitle except in the case of:

(i) A national emergency declared by the President of the United States;

(ii) A major disaster declared by the Governor; or

(iii) Any other emergency which requires permanent displacement from a dwelling because of substantial danger to the health or safety of a person;

(4) Assist a person displaced from a business or farm operation in obtaining and becoming established in a suitable replacement location;

(5) Supply information concerning federal and State housing programs, disaster loan programs, and other federal or State programs offering assistance to displaced persons; and

(6) Provide other advisory services to displaced persons in order to minimize hardships on them in adjusting to relocation.

(c) Planning requirements. -- Programs or projects undertaken with State and federal financial assistance under this subtitle shall be planned in a manner that:

(1) Recognizes, at an early stage in the planning of such programs or projects and before the commencement of any actions which will cause displacements, the problems associated with the displacement of individuals, families, businesses, and farm operations; and

(2) Provides for the resolution of such problems in order to minimize adverse impacts on displaced persons and to expedite program or project advancement and completion.

(d) Coordination of relocation assistance programs. -- The head of the displacing agency shall coordinate the relocation activities performed by that agency with other federal, State, or local governmental actions in the community which could affect the efficient and effective delivery of relocation assistance and related services.

HISTORY: An. Code 1957, art. 21, § 12-206; 1974, ch. 12, § 2; 1989, ch. 10.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 12. EMINENT DOMAIN
SUBTITLE 2. RELOCATION AND ASSISTANCE

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 12-207 (2006)

§ 12-207. Real property acquisition policies

(a) Land acquisition according to guidelines of section. -- If a displacing agency acquires real property, it shall be guided to the greatest extent feasible by the policies set forth in this section.

(b) Negotiation. -- The displacing agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

(c) Appraisal. --

(1) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property.

(2) However, the lead agency may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value.

(d) Establishment of amount to be considered just compensation; offer. --

(1) Before the initiation of negotiations for real property, the displacing agency concerned shall establish an amount which it believes to be just compensation and shall make a prompt offer to acquire the real property for the full amount so established.

(2) This amount may not be less than the displacing agency's approved appraisal of the fair

market value of the real property.

(3) The displacing agency concerned shall provide the owner of the real property to be acquired with a written statement of, and summary of the basis for, the amount it established as just compensation.

(4) If appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be stated separately.

(e) Payment and deposit before surrender of possession. -- No owner may be required to surrender possession of real property before the displacing agency concerned pays the agreed purchase price, or deposits with the court in accordance with applicable law, for the benefit of the owner, an amount not less than the displacing agency's approved appraisal of the fair market value of the real property, or the amount of the award of compensation in the condemnation proceeding for the real property.

(f) Notice prior to requiring owner to move. --

(1) The construction or development of a public improvement shall be so scheduled that, to the greatest extent feasible, no person lawfully occupying real property is required to move from a dwelling, assuming a replacement dwelling as required by §§ 12-202 through 12-204 of this subtitle will be available, or to move his business or farm operation, without at least 90 days' written notice from the displacing agency concerned.

(2) Except under conditions described in § 12-206 (b) (3) (i), (ii), and (iii) of this subtitle, the date by which the move is required may be given in a separate notice.

(g) Occupancy of acquired land on rental basis. -- If the displacing agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the displacing agency on short notice, the amount of rent required may not exceed the fair rental value of the real property to a short-term occupier.

(h) Coercive action to compel agreement on price. -- The displacing agency may not advance the time of condemnation, defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the real property.

(i) Responsibility for institution of a legal proceeding. -- If any interest in real property is to be acquired by exercise of the power of eminent domain, the displacing agency concerned shall institute a formal condemnation proceeding. No displacing agency or person intentionally may make it necessary for an owner to institute a legal proceeding to prove the fact of the taking of his real property.

(j) Acquisition leaving only uneconomic remnant. -- If the acquisition of only part of the real property would leave its owner with an uneconomic remnant, the displacing agency concerned shall offer to acquire the entire real property.

(k) Donation of property. -- After the person has been fully informed of his right to receive just compensation for that property, a person whose real property is being acquired in accordance with this subtitle may donate the property, any part thereof, any interest therein, or any compensation paid therefor to a State agency, as that person shall determine.

HISTORY: An. Code 1957, art. 21, § 12-206.1; 1974, ch. 12, § 2; 1989, ch. 10; 1997, ch. 14, § 1.

RIGHT TO PROCEED AND TO CLOSE IN CONDEMNATION CASES RESTS WITH CONDEMNOR. Harford Bldg. Corp. v. Mayor of Baltimore, 58 Md. App. 85, 472 A.2d 479, cert. denied, 300 Md. 153 (1984).

SECTION IS DIRECTORY ONLY. Kelso Corp. v. Mayor of Baltimore, 45 Md. App. 120, 411 A.2d 691 (1980).

FAILURE TO COMPLY WITH PARTICULAR "POLICY" SET FORTH IN SECTION does not vitiate the entire proceedings, at least where no prejudice resulting from such failure has been shown. Kelso Corp. v. Mayor of Baltimore, 45 Md. App. 120, 411 A.2d 691 (1980).

QUOTED IN Conrad v. Department of Natural Resources, 30 Md. App. 479, 352 A.2d 904, cert. denied, 278 Md. 719 (1976); Zografos v. Mayor & City Council, 165 Md. App. 80, 884 A.2d 770 (2005).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 12. EMINENT DOMAIN
SUBTITLE 2. RELOCATION AND ASSISTANCE

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 12-208 (2006)

§ 12-208. Buildings, structures, and improvements on acquired real property

(a) Interest to be acquired. -- Notwithstanding any other provision of law, if a displacing agency acquires any interest in real property, the displacing agency shall acquire at least an equal interest in all buildings, structures, or other improvements, located on the real property acquired which it requires to be removed from the real property or which it determines will be adversely affected by the use to which the real property will be put.

(b) Buildings which may be removed by tenant. --

(1) For the purpose of determining just compensation to be paid for any building, structure, or other improvement required to be acquired by subsection (a) of this section, the building, structure, or other improvement shall be deemed a part of the real property to be acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove the building, structure, or improvement at the expiration of his term, and the fair market value which the building, structure, or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of the building, structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant.

(2) Payment under this subsection may not result in duplication of any payments otherwise authorized by law. No payment may be made unless the owner of the real property involved disclaims all interest in the improvements of the tenant. In consideration for any payment, the tenant shall assign, transfer, and release to the displacing agency all his right, title, and interest in and to the improvements. Nothing in this subsection may be construed to deprive

the tenant of any rights to reject payment under this subsection and to obtain payment for the property interests in accordance with applicable law, other than this subsection.

HISTORY: An. Code 1957, art. 21, § 12-206.2; 1974, ch. 12, § 2; 1989, ch. 10.

MARYLAND LAW REVIEW. --For article, "Survey of Developments in Maryland Law, 1983-84," see 44 Md. L. Rev. 362 (1985).

NO COMPENSATION DUE LESSEE WHERE ITS INTEREST IN LAND TERMINATED PRIOR TO ACQUISITION BY COUNTY. --Baltimore County acquired an interest in certain property only after the county council approved the sales contract and since the lease allowing appellants to maintain advertising signs on the property had terminated prior to that time, it was due no compensation under this section. Foster & Kleiser v. Baltimore County, 57 Md. App. 531, 470 A.2d 1322 (1984).

THIS SECTION HAS NO BEARING ON RELOCATION AND MOVING EXPENSES. Rollins Outdoor Adv., Inc. v. State Rds. Comm'n, 60 Md. App. 195, 481 A.2d 1149 (1984).

PROSCRIPTION OF DUPLICATION OF PAYMENTS RELATES TO PAYMENTS MADE TO LANDLORD AND TENANT where each has an interest in either the land or the structures or improvements thereon. Rollins Outdoor Adv., Inc. v. State Rds. Comm'n, 60 Md. App. 195, 481 A.2d 1149 (1984).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 12. EMINENT DOMAIN
SUBTITLE 2. RELOCATION AND ASSISTANCE

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 12-209 (2006)

§ 12-209. Expenses incidental to transfer to a public agency

As soon as feasible, after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire land, whichever is earlier, the displacing agency shall reimburse the owner to the extent the displacing agency deems fair and reasonable, for expenses he necessarily incurred for:

(1) Recording fees, transfer taxes, and similar expenses incidental to granting the real property to the displacing agency, as provided in § 12-106 (b) (4) of this title;

(2) Penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and

(3) The pro rata portion of real property taxes allocable to a period subsequent to the date of vesting title in the displacing agency, or the effective date of possession of the real property by the displacing agency, whichever is earlier, in accordance with the provisions of § 12-110 of this title.

HISTORY: An. Code 1957, art. 21, § 12-206.3; 1974, ch. 12, § 2; 1989, ch. 10.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 12. EMINENT DOMAIN
SUBTITLE 2. RELOCATION AND ASSISTANCE

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 12-210 (2006)

§ 12-210. Rules, regulations, and procedures

(a) Consultation by condemning authorities. -- In order to promote uniform and effective administration of relocation assistance and real property acquisition, the displacing agencies, where applicable, shall consult one another and the lead agency on the establishment of rules and regulations and procedures for the implementation of these programs.

(b) Election not to comply. -- Notwithstanding the provisions and limitations of this subtitle:

(1) Except as otherwise determined by the lead agency, any person receiving federal financial assistance may elect not to comply with §§ 12-207, 12-208, and 12-209 of this subtitle;

(2) When not receiving State or federal financial assistance, a displacing agency may elect not to comply with §§ 12-207, 12-208, and 12-209 of this subtitle; or

(3) When not receiving State or federal financial assistance, a displacing agency having the authority to acquire property by eminent domain or to displace persons permanently under State law may elect not to comply with §§ 12-202, 12-203, 12-204, 12-205, and 12-206 of this subtitle.

(c) Authorization to establish -- In general. -- Each displacing agency may establish rules and regulations and procedures as it determines to be necessary to assure:

(1) That the payments and assistance authorized by this subtitle are administered in a manner which is fair and reasonable, and as uniformly as feasible;

(2) That a displaced person who makes proper application for a payment, authorized for the

person by this subtitle, is paid promptly after a move or, in hardship cases, is paid in advance; and

(3) That any person aggrieved by a determination as to eligibility for a payment, authorized by this subtitle, or the amount of a payment, may have his application reviewed by the displacing agency having authority over the applicable program or project.

(d) Same -- Carrying out provisions of subtitle and federal statute. -- Each displacing agency, where applicable, may adopt rules, regulations, and procedures, consistent with the provisions of this subtitle and the federal "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970", Public Law 91-646, the amendments of 1987 Public Law 100-17, and rules and regulations issued in accordance with it, as it deems necessary or appropriate to carry out the provisions of this subtitle and the federal act.

(e) Compliance with other provisions of Code. -- All rules and regulations adopted in accordance with this subtitle, except those adopted in accordance with § 12-205 of this subtitle, shall comply with the State Administrative Procedure Act. This subsection does not apply to rules and regulations adopted by Baltimore City, or any of its agencies or departments.

(f) Authority of Baltimore City to administer federally funded projects. --

(1) Notwithstanding any provision of this title, Baltimore City, or any of its agencies or departments responsible either in whole or in part for the administration of any public project, funded either in whole or in part by federal funds, including urban renewal programs and area code enforcement programs, may do any act necessary, including adoption of rules and regulations, to comply with the terms, conditions, and provisions of any federal law and rule and regulation authorizing benefits, payments, and compensation for displacees from these public projects and for persons owning any right, title to, or interest in real property acquired for these public projects in order to obtain the full benefit under them for the city and for persons and displacees from these projects in Baltimore City.

(2) This subsection applies to existing acts of Congress authorizing benefits, payments and compensation for or to persons and displacees from public improvement projects receiving federal funds, subsequent acts of Congress of like character, and any existing or subsequently adopted rules and regulations issued in connection with them.

HISTORY: An. Code 1957, art. 21, § 12-207; 1974, ch. 12, § 2; 1989, ch. 10; 1991, ch. 55, § 1.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 12. EMINENT DOMAIN
SUBTITLE 2. RELOCATION AND ASSISTANCE

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 12-211 (2006)

§ 12-211. Payments not to be considered as income

Except for any federal or State law providing low income housing assistance, a payment received under this subtitle may not be considered as income for the purposes of Title 10 of the Tax-General Article or for the purposes of determining the eligibility or extent of eligibility of any person for assistance under any other State law.

HISTORY: An. Code 1957, art. 21, § 12-208; 1974, ch. 12, § 2; 1988, ch. 110, § 1; 1989, ch. 10.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 12. EMINENT DOMAIN
SUBTITLE 2. RELOCATION AND ASSISTANCE

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 12-212 (2006)

§ 12-212. No new element of value or damage created

This subtitle may not be construed as creating in any condemnation proceeding brought under the power of eminent domain, any element of value or of damage not in existence prior to January 2, 1971.

HISTORY: An. Code 1957, art. 21, § 12-209; 1974, ch. 12, § 2; 1989, ch. 10.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY

TITLE 13. LAND PATENTS
SUBTITLE 1. DEFINITIONS; GENERAL PROVISIONS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-101 (2006)

§ 13-101. Definitions

(a) In general. -- In this title the following words have the meanings indicated unless otherwise apparent from context.

(b) Abandoned land. -- "Abandoned land" means land that has boundaries that are located within or contiguous to Green Ridge State Forest:

(1) For which no property tax payment has been made within 20 years immediately preceding the date of an application for a certificate of reservation for public use by a unit of State government; and

(2) Which has not been actually possessed by a person, under claim of title or otherwise, for a continuous period of 20 years immediately preceding the date of an application for a certificate of reservation for public use by a unit of State government.

(c) Certificate of reservation. -- "Certificate of reservation" means a certificate issued by the Commissioner at the request of a governmental body upon a determination that vacant land or abandoned land exists and the governmental body wishes to reserve the land for public use.

(d) Commission. -- "Commission" means the Hall of Records Commission.

(e) Commissioner. -- "Commissioner" means the State Archivist who, while performing the duties and exercising the powers provided in this title, is known as the "Commissioner of Land Patents".

(f) Expense. -- "Expense" includes any charge, cost, deposit, fee, or tax incurred in connection with a land patent proceeding.

(g) Governmental body. -- "Governmental body" includes any unit of State government, any county or municipal corporation, or any agency or instrumentality of any county or municipal corporation.

(h) Land. --

(1) "Land" means any area of land in the State, including any two or more areas of land with a common boundary for at least part of their perimeters.

(2) "Land" includes vacant land and abandoned land.

(3) "Land" does not include any area covered by navigable water unless it was included in a patent issued before March 3, 1862.

(i) Mail. -- "Mail" means to deposit in the United States mails, postage prepaid, endorsed "Restricted Delivery -- Return Receipt Requested".

(j) Patent. -- "Patent" means:

(1) Any grant confirmed by Article 5 of the Declaration of Rights of the Maryland

Constitution;

(2) Any valid grant made under prior law by the State of its interests in any vacant, resurveyed, escheat, or confiscated land; or

(3) Any grant made under this title by the State of its interest in any land.

(k) Public use. -- "Public use" means use by or for the benefit of the public.

(l) Survey. -- "Survey", whether used as a noun or as a verb in any form or tense, means:

(1) The act of surveying any vacant land in order to obtain a patent for the land; or

(2) The act of resurveying any land for which a patent previously was issued in order to obtain a new patent for the land.

(m) Surveyor. -- "Surveyor" means any professional land surveyor or property line surveyor licensed under the Maryland Professional Land Surveyors Act.

(n) Vacant land. -- "Vacant land" means land for which a patent never has been issued or for which the applicant believes that a patent never has been issued.

(o) Verify. -- "Verify" means to state in writing, under penalties of perjury, that the matters and facts set forth in the document to which the statement relates are true and complete to the best of the knowledge, information, and belief of the person making the statement.

HISTORY: An. Code 1957, art. 21, § 13-102; 1974, ch. 12, § 2; ch. 409; 1976, ch. 915, § 3; 1977, ch. 763, § 4; 1982, ch. 820, § 3; 1983, ch. 8; 1984, ch. 286, § 5; 1989, ch. 236, § 2; 1993, ch. 290; 2000, ch. 525; 2003, ch. 334; 2004, ch. 25, § 1; 2005, ch. 25, § 1; 2006, ch. 44.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 334, Acts 2003, effective Oct. 1, 2003, inserted "or abandoned land" in (b); added "and abandoned land" at the end of paragraph (g)(2); and inserted (m) and redesignated the remaining subsections accordingly.
Chapter 25, Acts 2004, approved April 13, 2004, and effective from date of enactment, redesignated (b) through (m) to maintain alphabetical order.
Section 1, ch. 25, Acts 2005, approved April 12, 2005, and effective from the date of enactment, deleted "vacant" after "means" in (b).
Chapter 44, Acts 2006, enacted April 7, 2006, pursuant to art. II, § 17(b) of the Maryland Constitution and effective from the date of enactment, substituted "Maryland" for "State" in (j)(1).

EDITOR'S NOTE. --Section 7, ch. 915, Acts 1976, provides that "all forms of warrants not provided for in this act are abolished, including common warrants, special warrants, escheat warrants, and proclamation warrants."

NAVIGABLE WATER AND THE LAND UNDER IT IS HELD BY THE STATE FOR THE BENEFIT OF THE PUBLIC. Department of Natural Resources v. Mayor of Ocean City, 274 Md. 1, 332 A.2d 630 (1975).

LAW OF SUBMERGENCE. --Land inundated by mean high water reverts to State ownership is a correct statement of the law of submergence, and is applicable when, as a result of gradual erosion, fast land becomes submerged. Department of Natural Resources v. Mayor of Ocean City, 274 Md. 1, 332 A.2d 630 (1975).

QUOTED IN Harbor Island Marina, Inc. v. Board of County Comm'rs, 286 Md. 303, 407 A.2d 738 (1979).

CITED IN Ski Roundtop, Inc. v. Wagerman, 79 Md. App. 357, 556 A.2d 1144 (1989).

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 1. DEFINITIONS; GENERAL PROVISIONS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-102 (2006)

§ 13-102. Purpose and intent

(a) Purposes. -- The purposes of land patent proceedings are to:

(1) Avoid uncertainties caused by the existence of vacant land, by promptly ruling on the claim of a patent applicant;

(2) Give governmental bodies priority in reserving vacant land for public use; and

(3) In the absence of public need, benefit the community by expanding the tax base as previously untaxed, vacant land is recognized and made to contribute its rightful share towards financing government.

(b) Intent. -- It is the intention of the General Assembly, therefore, that the State's land patent proceedings provide a simple, convenient, and prompt method for reserving vacant land for the public use of governmental bodies, for promoting private ownership of vacant land and, in certain instances, for clarifying the ownership of land previously patented.

HISTORY: 1976, ch. 915, § 3; 1993, ch. 290.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 1. DEFINITIONS; GENERAL PROVISIONS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-103 (2006)

§ 13-103. Patent proceedings governed by title

All proceedings for the issuance of a patent shall be conducted in accordance with this title.

HISTORY: 1976, ch. 915, § 3.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 1. DEFINITIONS; GENERAL PROVISIONS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-104 (2006)

§ 13-104. Who may obtain patent

In the manner and to the extent provided in this title, any person may:

(1) Obtain a patent for vacant land; and

(2) Obtain a patent for land that was previously patented and is owned in fee simple by the person, notwithstanding the existence of any mortgage, deed of trust, easement, right-of-way, or similar interest.

HISTORY: An. Code 1957, art. 21, § 13-104; 1974, ch. 12, § 2; 1976, ch. 915, § 3.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 1. DEFINITIONS; GENERAL PROVISIONS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-105 (2006)

§ 13-105. False verification or oath subject to penalties of perjury

Any willful and false verification, oath, or affirmation made in any hearing before the Commissioner or in any application, certification, or other document filed in a patent proceeding is subject to the penalties of perjury.

HISTORY: An. Code 1957, art. 21, § 13-103; 1974, ch. 12, § 2; 1976, ch. 915, § 3.

STATED IN State v. Levitt, 48 Md. App. 1, 426 A.2d 383 (1981).

CITED IN Hourie v. State, 53 Md. App. 62, 452 A.2d 440 (1982), aff'd, 298 Md. 50, 467 A.2d 1016 (1983).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 1. DEFINITIONS; GENERAL PROVISIONS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-106 (2006)

§ 13-106. Certificate of reservation for public use

(a) In general. --

(1) A governmental body may reserve vacant land or abandoned land by obtaining from the Commissioner a certificate of reservation for public use.

(2) Except as otherwise provided, the provisions of this title applicable to the granting of

land patents are applicable to the granting of certificates of reservation.

(b) Approval by Board of Public Works required. --

(1) In order to reserve vacant land or abandoned land for public use, a unit of State government must notify and obtain the approval of the Board of Public Works.

(2) If the Board approves the request, the unit shall immediately apply for a certificate of reservation.

(c) Precedence of application. --

(1) (i) The application of a governmental body for a certificate of reservation takes precedence over an application of a person for a patent to all or part of the same land.

(ii) The application of a unit of State government takes precedence over the application of any other governmental body.

(2) As a condition of granting a certificate of reservation, the Commissioner may order a governmental body to pay the reasonable expenses of a person whose application for a patent has been superseded.

(d) When no hearing required. -- If no objection to an application for a reservation of land is filed and the Commissioner determines that a vacancy exists, the Commissioner may decide the matter without holding a hearing.

(e) Certificate remains in effect; transfer of certificate. --

(1) A certificate of reservation remains in effect:

(i) Until the Board of Public Works or, in the case of a governmental body other than a unit of State government, the appropriate local authority determines that the land is no longer needed for public use by the governmental body and notifies the Commissioner of this determination; or

(ii) With respect to abandoned land, until a unit of State government or a court of competent jurisdiction determines that a person who has claimed legal title to the land has established legal title to the land.

(2) (i) Upon application by another governmental body, the Commissioner may transfer the certificate to that body with the approval of the Board of Public Works or the appropriate local authority, as the case may be.

(ii) In the absence of such a transfer, the Commissioner may issue a patent for the land in accordance with the applicable procedures of this title.

HISTORY: 1993, ch. 290; 2003, ch. 334.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 334, Acts 2003, effective Oct. 1, 2003, inserted "or abandoned land" in (a)(1) and (b)(1); and inserted the (e)(1)(i) designation and added (e)(1)(ii).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 1. DEFINITIONS; GENERAL PROVISIONS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-107 (2006)

§ 13-107. Adjudication of claims to abandoned lands

(a) "Claimant" defined. -- In this section, "claimant" means a person who claims legal title to abandoned land for which a certificate of reservation for public use has been issued.

(b) Land patented prior to reservation for public use. -- If abandoned land was patented prior to the issuance of a certificate of reservation for public use by a unit of State government, a claimant may file a written claim for legal title to the land with the unit of State government that reserved the land for public use.

(c) Procedure where claim valid. -- If the unit of State government that reserved the land for public use determines that the claimant has legal title to the land, the unit of State government shall:

(1) Pay the claimant fair market value for the land, as determined by the lower of two independent appraisals of the land; or

(2) Notify the Commissioner that the land is no longer needed for public use.

(d) Approval by Board of Public Works. -- Any action taken by a unit of State government under subsection (c) of this section is subject to approval by the Board of Public Works.

(e) Denial of claim; action to quiet title. --

(1) If a unit of State government that reserved land for public use determines that a claimant does not have legal title to the land, the unit of State government shall issue a written denial of the claimant's claim.

(2) A claimant who is aggrieved by the denial of a claim under this section may file an action in the circuit court of the jurisdiction in which the land is located to quiet title to the land.

(f) Limitation of actions. -- A claim under this section is barred unless the claimant files the claim within 20 years after the date that the unit of State government obtains a certificate of reservation for public use of the land.

HISTORY: 2003, ch. 334.

NOTES:
EDITOR'S NOTE. --Section 2, ch. 334, Acts 2003, provides that the act shall take effect Oct. 1, 2003.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 2. ADMINISTRATION OF TITLE

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-201 (2006)

§ 13-201. Commissioner to administer title

(a) In general. -- The Commissioner of Land Patents shall administer this title and, in the manner provided in it, issue all patents.

(b) Appointment of assistants. -- The Commissioner may appoint any person to assist in the performance of the duties imposed by this title.

HISTORY: 1976, ch. 915, § 3.

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 2. ADMINISTRATION OF TITLE

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-202 (2006)

§ 13-202. General powers of Commissioner

In administering this title:

(1) The Commissioner shall:

(i) Determine whether a patent may be issued under this title; and

(ii) Adopt a seal for land patent proceedings; and

(2) The Commissioner may:

(i) Administer oaths and affirmations in land patent proceedings; and

(ii) Do anything else necessary to carry out the provisions of this title.

HISTORY: 1976, ch. 915, § 3; 1984, ch. 286, § 5.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 2. ADMINISTRATION OF TITLE

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-203 (2006)

§ 13-203. Rules and regulations

(a) Commissioner to adopt. -- After consultation with the Commission and a committee of three clerks, the Commissioner shall adopt regulations to carry out the provisions of this title.

(b) Clerks' committee. --

(1) The committee of clerks shall be selected by the State of Maryland Court Clerks Association. They shall serve until their successors are selected.

(2) The clerks may not receive any additional compensation for serving on the committee, but shall be entitled to reimbursement for their expenses from the fees of their office, in accordance with the regulations governing reimbursement of expenses incurred for attendance at meetings of appointed committees of the Association.

HISTORY: 1976, ch. 915, § 3; 1984, ch. 286, § 5.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 2. ADMINISTRATION OF TITLE

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-204 (2006)

§ 13-204. Records and docket

(a) Commissioner to maintain records. --

(1) The Commissioner has custody of and shall maintain all records relating to the application for and issuance of patents. For this purpose, the Commissioner may require the clerk of any court to produce, at the expense of the Commissioner, true copies of any land records maintained by that clerk.

(2) On request of any person, the Commissioner shall certify a copy of any land patent record he maintains.

(3) The Commissioner shall provide for the preservation, indexing, filming, and publication of the patent records in his custody.

(b) Patent docket. -- The Commissioner shall maintain a patent docket and a separate index for that docket.

(c) Regulations. -- In accordance with § 13-203 of this subtitle, the Commissioner shall adopt regulations to govern the use, preservation, repair, and maintenance of the patent records and patent docket.

HISTORY: An. Code 1957, art. 21, § 13-103; 1974, ch. 12, § 2; 1976, ch. 915, § 3; 1984, ch. 286, § 5.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY

TITLE 13. LAND PATENTS
SUBTITLE 2. ADMINISTRATION OF TITLE

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-205 (2006)

§ 13-205. Schedule of costs

In accordance with the procedures of § 13-203 of this subtitle for adopting regulations, the Commissioner shall adopt a schedule of costs to be charged by the Commissioner.

HISTORY: 1976, ch. 915, § 3; 1984, ch. 286, § 5.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 2. ADMINISTRATION OF TITLE

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-206 (2006)

§ 13-206. Lists of certificates ready for patent

(a) List required to be completed and mailed. -- The Commissioner annually shall complete and mail to the supervisors of assessments a list of any certificates that have become ready for patent.

(b) Contents of list. -- Except as otherwise provided in subsection (c) of this section, the list shall contain:

(1) The description or name of the land;

(2) The quantity of land; and

(3) The person who is entitled to patent.

(c) Vacant land. -- If the list contains certificates adding vacant land to any original tract, in addition to the information required under subsection (b) of this section, the list shall contain:

(1) The description or name of the original tract; and

(2) The quantity of vacancy added.

HISTORY: An. Code, 1951, art. 81, § 36; 1939, art. 81, § 35; 1929, ch. 226, § 37; 1955, ch. 28; 1959, ch. 757, § 1; 1979, ch. 160; 1985, ch. 8, § 7.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 3. APPLICATION AND ISSUANCE OF WARRANT; VALUATION OF LAND

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-301 (2006)

§ 13-301. Application required

A proceeding to obtain a patent is commenced by filing with the Commissioner an application for:

(1) A warrant to survey any vacant land; or

(2) A warrant to resurvey any land owned in fee simple by the applicant, which warrant may include any vacant land adjoining land owned in fee simple by the applicant.

HISTORY: An. Code 1957, art. 21, § 13-105; 1974, ch. 12, § 2; 1976, ch. 915, § 3.

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 3. APPLICATION AND ISSUANCE OF WARRANT; VALUATION OF LAND

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-302 (2006)

§ 13-302. Manner of application

(a) Contents. -- The application shall be in writing and contain:

(1) The name and address of the applicant;

(2) The name and address of each person, other than the applicant, who would obtain a direct or indirect title interest in the land for which the patent is sought if the patent were issued to the applicant;

(3) Each county and election district in which any portion of the land for which the patent is sought is located;

(4) As to the land for which the patent is sought, a description of any vacant land, which description need not be referenced by metes and bounds, and a separate description of any land owned by the applicant, each of which descriptions:

(i) Shall include the estimated area covered by it; and

(ii) Shall be made by specific reference to the names and addresses of the owners of each adjoining tract or parcel of land;

(5) If a warrant to resurvey is requested, an officially certified copy of the instrument by which the applicant acquired fee-simple title and, if the instrument does not contain a metes-and-bounds description of the land, an officially certified copy of the last instrument in the chain of title of the applicant which contains that description;

(6) As to the land described in the application, the name and address of:

(i) Each person or governmental body that, to the best of the knowledge, information, and belief of all persons signing the application, possesses any portion of the land under claim of title;

(ii) Each person who, to the best of the knowledge, information, and belief of all persons signing the application, possesses any portion of the land under claim of ownership in a manner that, either directly or by tacking, is actual, open, notorious, exclusive, and continuous and uninterrupted for the 20 years immediately preceding the date of filing the application; and

(iii) The State or any agency of the State that, to the best of the knowledge, information, and belief of all persons signing the application, uses any portion of the land for public purposes or claims that any portion of the land is required for public purposes;

(7) A statement that, except for those named under item (6) of this subsection, to the best of the knowledge, information, and belief of all persons signing the application:

(i) No person or governmental body possesses any portion of the land under claim of title;

(ii) No person possesses any portion of the land under claim of ownership in a manner that, either directly or by tacking, is actual, open, notorious, exclusive, and continuous and uninterrupted for the 20 years immediately preceding the date of filing the application; and

(iii) Neither the State nor any agency of the State uses any portion of the land for public purposes or claims that any portion of the land is required for public purposes;

(8) The name and address of the surveyor to whom the warrant is to be directed, together with a description of any family, business, or financial relationship between the surveyor and all persons signing the application;

(9) Any name to be given the land to be surveyed;

(10) Any other information the Commissioner requires under a rule or regulation adopted under § 13-203 of this title; and

(11) A request for the issuance of a warrant to survey or a warrant to resurvey and the subsequent issuance of a patent for the land described in the application.

(b) Signature and verification. -- The application shall be signed and verified by the applicant and by each person required to be named under subsection (a) (2) of this section.

HISTORY: An. Code 1957, art. 21, § 13-105; 1974, ch. 12, § 2; 1976, ch. 915, § 3.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 3. APPLICATION AND ISSUANCE OF WARRANT; VALUATION OF LAND

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-303 (2006)

§ 13-303. Substitution of applicant

(a) Successor to request substitution. --

(1) At any stage of a proceeding under this title, if an applicant dies or assigns his rights in the application, warrant, certificate of survey, or land described in the application, the assignee, personal representative, heir, or legatee of the applicant may request that he be substituted for the applicant.

(2) On filing a request for substitution in the proper form, the person making the request shall be substituted as the applicant for all purposes in the proceeding.

(b) Contents of request. -- A request for substitution shall be in writing and contain:

(1) The name and address of the person requesting substitution;

(2) The name and address of each person, other than the person requesting substitution and those persons named in the original application, who would obtain a direct or indirect title interest in the land for which the patent is sought if the patent were issued to the person requesting substitution;

(3) A statement of the manner by which the person requesting substitution succeeded to the rights of the original applicant;

(4) The original or an officially certified copy of each document by which the succession of interest was effected;

(5) A description of all changes in and required corrections of any of the statements and facts contained in the original application;

(6) A statement that, except as described under item (5) of this subsection, the statements and facts contained in the original application are accurate and complete to the best of the knowledge, information, and belief of all persons signing the request; and

(7) Any other information the Commissioner requires under a rule or regulation adopted under § 13-203 of this title.

(c) Signature and verification. -- The request for substitution shall be signed and verified by the person requesting substitution and by each person required to be named under subsection (b) (2) of this section.

HISTORY: An. Code 1957, art. 21, § 13-105; 1974, ch. 12, § 2; 1976, ch. 915, § 3.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 3. APPLICATION AND ISSUANCE OF WARRANT; VALUATION OF LAND

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-304 (2006)

§ 13-304. Appearance of applicant by attorney

Except as provided in §§ 13-302 (b), 13-303 (c), and 13-412 (d) of this title, any papers filed in a proceeding by an applicant may be filed by an attorney for the applicant. Notice to an applicant may be given to the attorney who appears on behalf of the applicant.

HISTORY: An. Code 1957, art. 21, § 13-105; 1974, ch. 12, § 2; 1976, ch. 915, § 3.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 3. APPLICATION AND ISSUANCE OF WARRANT; VALUATION OF LAND

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-305 (2006)

§ 13-305. Entry of application on docket; application bar to subsequent warrant

(a) Commissioner to make entry. -- After receipt of an application in the proper form and payment of all costs required by law, the Commissioner shall enter the application on the patent docket. Each application shall be docketed in the order received by the Commissioner.

(b) Warrant may not be issued on subsequent application. -- After an application is docketed, a warrant to survey or warrant to resurvey any of the land described in the application may not be issued on a subsequent application, unless:

(1) The first application is withdrawn; or

(2) The proceeding on the first application is terminated or abandoned as provided in this title.

HISTORY: An. Code 1957, art. 21, § 13-106; 1974, ch. 12, § 2; 1976, ch. 915, § 3.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 3. APPLICATION AND ISSUANCE OF WARRANT; VALUATION OF LAND

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-306 (2006)

§ 13-306. Survey under warrant; previously performed survey

(a) Commissioner to issue warrant. -- After the application is docketed, the Commissioner promptly shall issue his warrant and mail it to the surveyor named in the application. On return through the post office of the return receipt, the Commissioner shall notify the applicant of the date the surveyor received the warrant.

(b) Previously performed survey. --

(1) In lieu of a survey conducted under a warrant issued by the Commissioner, the applicant may submit with an application a previously performed survey.

(2) The Commissioner may accept the previously performed survey upon finding that the surveyor was a qualified professional land surveyor or property line surveyor, that the survey was conducted in accordance with standards prescribed by the Commissioner, and that adjoining landowners of record were given written notice of the survey.

(3) In determining whether to accept a previously performed survey, the Commissioner may conduct a hearing.

(4) Acceptance of a previously performed survey does not preclude an objector from raising any objection that might otherwise have been raised had the survey been performed pursuant to a warrant issued by the Commissioner.

(c) Submission of legal description of abandoned land. -- With respect to an application for a certificate of reservation for public use of abandoned land, instead of a survey conducted under a warrant issued by the Commissioner, the applicant may submit a legal description of the land, provided that the legal description of the land is shown on a plat on file in the county land records.

HISTORY: An. Code 1957, art. 21, § 13-106; 1974, ch. 12, § 2; 1976, ch. 915, § 3; 1993, ch. 290; 2000, ch. 525; 2003, ch. 334.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 525, Acts 2000, effective Oct. 1, 2000, inserted "or property line surveyor" in (b)(2).
Chapter 334, Acts 2003, effective Oct. 1, 2003, added (c).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 3. APPLICATION AND ISSUANCE OF WARRANT; VALUATION OF LAND

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-307 (2006)

§ 13-307. Contents of warrant

(a) In general. -- The warrant shall recite:

(1) The name and address of the applicant;

(2) The date when the application was docketed;

(3) The nature of the request made in the application; and

(4) A description of the land to be surveyed, as described in the application.

(b) Directions to surveyor. -- The warrant shall direct the surveyor to:

(1) Within 30 days of receipt of the warrant, acknowledge its receipt in writing to the Commissioner;

(2) Specify in the acknowledgement a date, time, and place for making the survey, which date may be no earlier than 10 days and no later than six months after the last publication of notice required by § 13-308 of this subtitle;

(3) Lay out and survey the land as specified in the acknowledgement;

(4) Prepare an accurate plat and metes-and-bounds description of the land to be surveyed;

(5) In a resurvey that discloses an error in any previous survey, correct the error;

(6) Compute the area of any land included within the description and plat; and

(7) Within six months from the date the notice of warrant was last published, return his certificate of survey on these matters, together with all duplicates required by § 13-310 (a) (1) of this subtitle, to the Commissioner.

(c) Signature and seal. -- The Commissioner shall sign the warrant and affix the seal for land patent proceedings to it.

HISTORY: An. Code 1957, art. 21, § 13-106; 1974, ch. 12, § 2; 1976, ch. 915, § 3.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY

TITLE 13. LAND PATENTS
SUBTITLE 3. APPLICATION AND ISSUANCE OF WARRANT; VALUATION OF LAND

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-308 (2006)

§ 13-308. Notice and publication

(a) Commissioner to give notice. --

(1) On receipt of the surveyor's acknowledgement of the warrant, the Commissioner shall mail a notice of the issuance of the warrant to:

(i) The applicant;

(ii) Each adjoining landowner named in the application under § 13-302 (a) (4) of this subtitle;

(iii) Each person, governmental body, or agency named in the application under § 13-302 (a) (6) of this subtitle as having a claim to any portion of the land described in the application;

(iv) The Division of State Documents; and

(v) The Board of Public Works.

(2) The notice shall include:

(i) The information required by § 13-302 (a) (4) of this subtitle; and

(ii) The date, time, and place for making the survey, as specified by the surveyor under § 13-307 (b) (2) of this subtitle.

(b) Publication in Maryland Register. -- Immediately on receipt of the notice, the Administrator of the Division of State Documents shall publish the notice in the next available two consecutive issues of the Maryland Register. The Commissioner shall place in the file of the applicant copies of the notice published in the Maryland Register and the dates of publication.

(c) Publication in newspaper and posting. --

(1) Immediately on receipt of the notice, the applicant shall:

(i) Have the notice published at least once a week for three successive weeks in a newspaper of general circulation in each county in which any portion of the land described in the warrant is located; and

(ii) Request the sheriff of each county in which any portion of the land described in the warrant is located to post the information contained in the notice conspicuously on the land.

(2) The sheriff of each county promptly shall comply with a request made under this subsection.

(3) The applicant promptly shall file with the Commissioner a certificate of publication and a certificate of the sheriff evidencing the date of posting.

HISTORY: An. Code 1957, art. 21, § 13-106; 1974, ch. 12, § 2; 1976, ch. 915, § 3; 1977, ch. 162.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 3. APPLICATION AND ISSUANCE OF WARRANT; VALUATION OF LAND

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-309 (2006)

§ 13-309. Substitute warrant; extension of time

(a) Substitute warrant. --

(1) If the surveyor to whom a warrant is directed is unable or unwilling to perform the duties set out in the warrant, the applicant may request the Commissioner in writing for issuance of a substitute warrant to another surveyor chosen by the applicant. The request shall set forth in detail the reasons for requesting the substitute warrant.

(2) On receipt of the request, the Commissioner may issue a substitute warrant to the successor surveyor. If notice of the original warrant was published under § 13-308 of this subtitle, further publication is not required.

(3) The issuance of a substitute warrant does not extend the time for filing the certificate of survey. However, a request for extension may be filed under subsection (b) of this section.

(b) Extension of time for return. --

(1) If the surveyor to whom an original or substitute warrant is directed is able and willing to perform the duties set out in the warrant but is unable to return his certificate in the time otherwise required by this subtitle, the applicant or the surveyor may request the Commissioner in writing for an extension of that time. The request shall set forth in detail the reasons for requesting the extension.

(2) On receipt of the request, the Commissioner:

(i) May extend the time for the return of the certificate; and

(ii) Shall advise the applicant, the surveyor, and each objector in writing of his decision and the period of any extension granted.

HISTORY: 1976, ch. 915, § 3.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 3. APPLICATION AND ISSUANCE OF WARRANT; VALUATION OF LAND

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-310 (2006)

§ 13-310. Certificate of survey

(a) Surveyor to prepare and return. -- After the surveyor has completed the survey, the surveyor shall:

(1) Prepare a certificate of survey and one additional duplicate certificate for each county in which any vacant land embraced within the survey is located; and

(2) Return the certificate and all of these duplicates to the Commissioner in the time required by this subtitle.

(b) Contents of certificate. -- The certificate of survey shall contain, as to all the land embraced within the survey:

(1) A plat that meets the requirements of § 3-108 (c) of this article and any rules or regulations adopted under this title;

(2) A description of any vacant land and a separate description of any land owned by the applicant, each of which descriptions:

(i) Shall include the area covered by it; and

(ii) Shall be referenced to adjoining tracts in the manner generally accepted in the profession of land surveying;

(3) A statement of the character and condition of any improvements on the land, or a statement that no improvements exist; and

(4) A certification by the surveyor that the surveyor:

(i) Actually has run and measured on the land the distance of each boundary; and

(ii) Has complied with all the requirements of this subsection.

(c) Signature and verification. -- The certificate and all duplicates shall be signed and verified by the surveyor.

(d) Termination of procedure on failure to return. -- If the surveyor fails to return the

certificate and all duplicates in the time required by this subtitle, the Commissioner shall dismiss the application and enter an order of termination in the proceeding.

HISTORY: An. Code 1957, art. 21, §§ 13-107, 13-114; 1974, ch. 12, § 2; 1976, ch. 915, § 3; 1977, ch. 162.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 3. APPLICATION AND ISSUANCE OF WARRANT; VALUATION OF LAND

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-311 (2006)

§ 13-311. Commissioner to return or file certificate; notification

(a) Examination and return. -- The Commissioner shall examine the certificate of survey, each duplicate certificate, and the plat returned by the surveyor. If any certificate, duplicate, or plat is found to be incorrect or incomplete, the Commissioner promptly shall return it to the surveyor for immediate completion or appropriate amendment.

(b) Filing and notification. -- If the certificate, duplicates, and plat appear to comply with the requirements of § 13-310 of this subtitle, the Commissioner shall:

(1) File the certificate and plat in the proceeding; and

(2) Promptly mail a notice of the return of the certificate of survey to:

(i) Each party to the proceeding; and

(ii) Each other person, including any potential objector, who has requested the Commissioner in writing for this notice.

HISTORY: An. Code 1957, art. 21, § 13-109; 1974, ch. 12, § 2; 1976, ch. 915, § 3.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 3. APPLICATION AND ISSUANCE OF WARRANT; VALUATION OF LAND

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-312 (2006)

§ 13-312. Expenses of surveyor

All expenses of the surveyor shall be paid directly to the surveyor by the applicant and are not part of the costs or expenses of the proceeding before the Commissioner.

HISTORY: An. Code 1957, art. 21, § 13-107; 1974, ch. 12, § 2; 1976, ch. 915, § 3.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 3. APPLICATION AND ISSUANCE OF WARRANT; VALUATION OF LAND

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-313 (2006)

§ 13-313. Determination of purchase price for vacant land

(a) Commissioner to forward certificate to supervisor of assessments. -- When a certificate of survey embracing any vacant land is filed, the Commissioner shall forward one of the duplicate certificates returned by the surveyor to the supervisor of assessments for each county in which the land is located.

(b) Duties of supervisor and assessors. -- Except as provided in subsection (d) of this section, within 30 days of receipt of the duplicate certificate, the supervisor shall have two assessors:

(1) Independently of each other, inspect and assess the actual fair market value of the vacant land and any improvements on it;

(2) Endorse the duplicate certificate with their joint determination of the assessed value of the vacant land and improvements;

(3) Prepare a statement of the reasons for the valuation;

(4) Sign and verify the endorsed duplicate certificate and the statement; and

(5) Return the endorsed duplicate certificate and the statement to the Commissioner.

(c) Purchase price is assessed value; adjustments. --

(1) Except as provided in paragraph (2) of this subsection, the purchase price for the vacant land shall be the assessed value of the land in the county or, if located in more than one county, the sum of the assessed values of the land in each county, as determined by the assessors under subsection (b) of this section, less all expenses of the surveyor, reasonable attorney's fees, and costs charged by the Commissioner.

(2) In a hearing before the Commissioner or in any proceeding for declaratory relief under this title, the applicant may present evidence that the assessed value of the vacant land is less than that established under paragraph (1) of this subsection. In this case, the final judgment of the Commissioner or the circuit court, as the case may be, shall set the purchase price for the vacant land at any amount, not exceeding that established under paragraph (1) of this subsection, which the Commissioner or the court, based on the endorsed duplicate certificate and statement of the assessors and any other satisfactory evidence presented in the matter, determines to be the proper assessed value of the land. The determination of the Commissioner or the court is subject to appeal only as provided in § 13-410 (b) of this title.

(d) Assessment not required for certificate of reservation. -- In the case of an application by a governmental body for a certificate of reservation, the supervisor of assessments is not required to assess the value of the land.

HISTORY: An. Code 1957, art. 21, § 13-109; 1974, ch. 12, § 2; 1976, ch. 915, § 3; 1977, ch. 162; 1993, ch. 290.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 4. OBJECTIONS, HEARINGS, AND DETERMINATION

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-401 (2006)

§ 13-401. Objections to grant of patent -- Who may object

The following persons may file an objection to the granting of a patent for all or any portion

of the land described in the application:

(1) Any person or governmental body with prior title to any portion of the land, except that, if the land is land for which a patent never has been issued, the State and its agencies may object only in accordance with item (3) of this section;

(2) Any person who possesses any portion of the land under claim of ownership in a manner that, either directly or by tacking, is actual, open, notorious, exclusive, and continuous and uninterrupted for the 20 years immediately preceding the date of filing the application; and

(3) The State or any agency of the State that requires any portion of the land for public purposes.

HISTORY: An. Code 1957, art. 21, § 13-111; 1974, ch. 12, § 2; 1976, ch. 915, § 3.

MARYLAND LAW REVIEW. --For note, "Adverse Possession -- Municipal Corporations -- Title to Property Held in a Proprietary Capacity Can Be Divested by Adverse Possession," see 35 Md. L. Rev. 337 (1975).

PATENT ISSUED IN 1792. --Adverse possession cannot be asserted as regards area included in a patent issued in 1792. Gray v. Gray, 178 Md. 566, 16 A.2d 166 (1940).

ADVERSE POSSESSION NOT BARRED BY PATENT. --Acquisition of the parcel of land in dispute by adverse possession was not barred simply because the land was a part of a tract acquired by a patent from the State in 1714. Gore v. Hall, 206 Md. 485, 112 A.2d 675 (1955).

REQUISITES OF ADVERSE POSSESSION. --Possession to be adverse must be actual, open, notorious, exclusive, hostile, under claim of title or ownership, and continuous or uninterrupted for the statutory period of 20 years. Bishop v. Stackus, 206 Md. 493, 112 A.2d 472 (1955).

Title by adverse possession presumes a grant, and such a presumption cannot be entertained as against one incapable of granting. Sterling v. Sterling, 211 Md. 493, 128 A.2d 277 (1957).

In order to establish title to land by adverse possession, the claimant must show that such possession was actual, notorious, exclusive, hostile, under claim of title or ownership, and continuous or uninterrupted for the period of 20 years. Gore v. Hall, 206 Md. 485, 112 A.2d 675 (1955).

The proprietary could not be affected by adverse possession before the land had been granted. Steuart v. Mason, 3 H. & J. 507.

EVIDENCE OF HOSTILE OCCUPATION. --Where appellants claimed title to a disputed strip of land by adverse possession the building of a garage and driveway and the planting of trees and shrubbery on the disputed land were evidence from which jury could have found that appellants intended to claim ownership and that their occupation was hostile. Bishop v. Stackus, 206 Md. 493, 112 A.2d 472 (1955).

IMMATERIAL THAT POSSESSION WAS DUE TO INADVERTENCE OR MISTAKE. --Where the visible boundaries have existed for the period set forth in the statute of limitations, the adverse possessor obtains title where there is evidence of unequivocal acts of ownership. It is immaterial that the holder supposed the visible boundary to be correct or, in other words, the fact that the possession was due to inadvertence, ignorance, or mistake is entirely immaterial. Bishop v. Stackus, 206 Md. 493, 112 A.2d 472 (1955).

TACKING SUCCESSIVE POSSESSIONS. --Where entry and occupation were under color of title, the possession of successive owners in privity of title may be tacked to give the required continuity for the necessary period. Spicer v. Gore, 219 Md. 469, 150 A.2d 226 (1959).

CLAIMANT CANNOT GAIN TITLE BY ADVERSE POSSESSION TO LAND UNDER NAVIGABLE WATERS. Sterling v. Sterling, 211 Md. 493, 128 A.2d 277 (1957).

CLAIMANT DID NOT OBTAIN TITLE TO AN ARTIFICIALLY FORMED ISLAND by adverse possession where the evidence showed that the island had not been in existence for 20 years prior to the filing of the suit, and could not have been held adversely for the requisite period of time under this section. Sterling v. Sterling, 211 Md. 493, 128 A.2d 277 (1957).

ONE HOLDING TITLE BY ADVERSE POSSESSION CAN MAINTAIN EJECTMENT. United States v. Gallas, 269 F. Supp. 141 (D. Md. 1967).

SPECIFIC PERFORMANCE. --The mere fact that the vendors' title depends upon adverse possession is no defense to a bill for specific performance. Taussig v. Van Deusen, 183 Md. 436, 37 A.2d 915 (1944).

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 4. OBJECTIONS, HEARINGS, AND DETERMINATION

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-402 (2006)

§ 13-402. Same -- Manner and time of objection

(a) When to be filed. -- Each objection in a proceeding shall be filed with the Commissioner:

(1) After the filing of the application for a warrant; and

(2) Within the later to occur of:

(i) Six months after the issuance of the warrant; or

(ii) 60 days after the surveyor returns the certificate of survey under this title.

(b) Contents. -- Each objection shall be in writing and contain:

(1) The name and address of the objector;

(2) A description of that portion of the land to which the objection applies, referenced to the description contained in the certificate of survey and accompanying plat;

(3) The reasons for the objection;

(4) All available documentary and factual information necessary to support the claim of the objector;

(5) If the objection is made by a person claiming ownership under § 13-401 (2) of this subtitle:

(i) The name and current address of each person that has possessed the land under claim of ownership in the manner described in § 13-401 (2) of this subtitle;

(ii) The term of each possession; and

(iii) Any physical signs that accompanied each possession; and

(6) If the objection is made by the State or any agency of the State claiming public use under § 13-401 (3) of this subtitle:

(i) A statement of the particular public purpose for which the land is required;

(ii) A description of a clear and compelling need for the land;

(iii) The anticipated date when the land will be used for the specified public purpose; and

(iv) A statement of whether the land adjoins any land already held by the objector.

(c) Signature and verification; copies. -- Each objection shall be signed and verified by the objector and contain a certification that a copy of the objection was forwarded, at the address on record with the Commissioner, to:

(1) The applicant;

(2) Each other party in the proceeding; and

(3) Each other person entitled to notice under § 13-404 (b) of this subtitle.

(d) Amendments. -- If any information required by this section is unavailable when the objection is filed, it may be included in an amendment to the objection, if the amendment is filed in advance of any hearing before the Commissioner or any proceeding for declaratory relief.

HISTORY: An. Code 1957, art. 21, § 13-111; 1974, ch. 12, § 2; 1976, ch. 915, § 3; 1977, ch. 162; 2002, ch. 19, § 10.

NOTES:
EDITOR'S NOTE. --Section 10, ch. 19, Acts 2002, provides that "the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, "subtitle" has been substituted for "title" in (c) (3).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.

a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 4. OBJECTIONS, HEARINGS, AND DETERMINATION

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-403 (2006)

§ 13-403. Same -- Objector waives matters not raised

Any information, matter, or claim required by § 13-402 of this subtitle to be in an objection is waived if not raised in the objection or in an amendment to it in advance of any hearing before the Commissioner or any proceeding for declaratory relief.

HISTORY: An. Code 1957, art. 21, § 13-111; 1974, ch. 12, § 2; 1976, ch. 915, § 3.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 4. OBJECTIONS, HEARINGS, AND DETERMINATION

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-404 (2006)

§ 13-404. Notices

(a) Objector is party to proceeding and entitled to notice. -- Any person, governmental body, or agency that files an objection under this subtitle becomes a party to the proceeding as of the date the objection is filed. After that date, the Commissioner and each party to the proceeding shall give the objector notice of any action taken by them in connection with the proceeding.

(b) Adjoining landowner may request notice. -- Any owner of land adjoining the land described in the application, without filing an objection, may request the Commissioner in writing for notice of actions taken in connection with the proceeding. After receipt of the request, the

Commissioner and each party to the proceeding shall give the adjoining landowner notice of any action taken by them in connection with the proceeding.

(c) Commissioner to supply names and addresses. -- As soon as they are known to the Commissioner, the Commissioner shall provide each party to the proceeding with the name and address of each other party and of each adjoining landowner requesting notice.

HISTORY: An. Code 1957, art. 21, § 13-111; 1974, ch. 12, § 2; 1976, ch. 915, § 3.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 4. OBJECTIONS, HEARINGS, AND DETERMINATION

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-405 (2006)

§ 13-405. Determination of forum

(a) In general. -- Except as otherwise provided in this section, the Commissioner shall hold a hearing under § 13-406 of this subtitle to determine whether to issue a patent to the applicant.

(b) Request for declaratory relief. --

(1) Within 30 days after the expiration of the period for filing objections, any party to the proceeding may request the Commissioner in writing for referral of the proceeding to the circuit court for declaratory relief under § 13-407 of this subtitle. The request shall set forth in detail the reasons for requesting the referral.

(2) Each request shall be signed and verified by the person making the request and contain a certification that a copy of the request was forwarded, at the address on record with the Commissioner, to:

(i) Each other party to the proceeding; and

(ii) Each other person entitled to notice under this title.

(c) Order by Commissioner. --

(1) The Commissioner shall consider any request for referral filed under this section. Promptly after the expiration of the period for filing requests, the Commissioner may:

(i) Notwithstanding any request for referral, order that the proceeding be set for a hearing

before the Commissioner under § 13-406 of this subtitle; or

(ii) On request for referral or on the Commissioner's own initiative, order that the proceeding be referred to the circuit court for declaratory relief under § 13-407 of this subtitle.

(2) The order of the Commissioner shall set forth the reasons for it and shall be mailed to:

(i) Each party to the proceeding; and

(ii) Each other person entitled to notice under this title.

HISTORY: 1976, ch. 915, § 3; 1984, ch. 286, § 5.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 4. OBJECTIONS, HEARINGS, AND DETERMINATION

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-406 (2006)

§ 13-406. Hearing before Commissioner

(a) Manner and time of hearing. -- If, under § 13-405 of this subtitle, the proceeding is set for a hearing before the Commissioner, the Commissioner shall hold the hearing in accordance with the Administrative Procedure Act as soon as practicable within 30 days of the order of the Commissioner under § 13-405 (c) of this subtitle.

(b) Hearing of objections. -- Objections filed in the proceeding may be consolidated at any time for hearing or heard separately, as the Commissioner determines.

(c) Summonses. --

(1) The Commissioner may issue subpoenas and orders for the attendance and testimony of witnesses and the production of papers, books, and documents at any hearing authorized by this section.

(2) A subpoena or order issued under this subsection shall be directed and served, in the same manner and with the same effect as any other civil process, under the Maryland Rules and applicable statutes. The subpoena or order shall be returnable to the Commissioner.

(3) If a person fails to comply with any subpoena or order issued under this subsection, the Commissioner may invoke the aid of the circuit court of the county in which declaratory relief

might have been sought under § 13-407 of this subtitle. The circuit court may order that person to obey the subpoena or order and may charge the costs of the proceedings before it to that person.

(d) Nature of proceeding. -- If a hearing is held under this section, the proceeding before the Commissioner for the issuance of a patent and all papers, dockets, orders, and decisions resulting from the proceeding:

(1) Have the same force and effect as the proceedings of a court of record; and

(2) Shall be proved in the same manner as proceedings in a court of record.

(e) Decision of Commissioner. -- Within 30 days of the conclusion of a hearing held under this section, the Commissioner shall render a final judgment under § 13-408 of this subtitle.

HISTORY: An. Code 1957, art. 21, § 13-112; 1974, ch. 12, § 2; 1976, ch. 915, § 3; 1984, ch. 286, § 5; 1998, ch. 21, § 1.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 4. OBJECTIONS, HEARINGS, AND DETERMINATION

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-407 (2006)

§ 13-407. Declaratory relief

(a) Applicant to file bill of complaint. -- If, under § 13-405 of this subtitle, the proceeding is to be referred to the circuit court for declaratory relief, then, within 30 days of the order of the Commissioner under § 13-405 (c) of this subtitle, the applicant shall file a bill of complaint in equity in the circuit court for the county in which the largest portion of the land described in the warrant is located. The bill of complaint shall seek declaratory relief under Title 3, Subtitle 4 of the Courts Article, the Maryland Uniform Declaratory Judgments Act.

(b) Service on Commissioner. -- Immediately after suit is filed, the applicant also shall serve the Commissioner by mail with a copy of the complaint.

(c) Participation of Commissioner. --

(1) After service is made on the Commissioner, the Commissioner shall forward to the court a certified copy of any endorsed duplicate certificates and statements of valuation returned to the Commissioner under § 13-313 of this title.

(2) In the court action, the Commissioner is entitled to:

(i) Be heard;

(ii) Request consolidation of any of the objections filed in the proceeding;

(iii) Submit a written statement within a time deemed reasonable by the court; and

(iv) Seek intervention under the Maryland Rules.

(d) Judgment. -- The court shall render its judgment as provided in § 3-408.1 of the Courts and Judicial Proceedings Article. A copy of the judgment and any supporting opinion shall be sent to:

(1) The Commissioner, for administrative implementation according to the court's declaration; and

(2) The clerk of the circuit court for each other county in which any portion of the land is located.

HISTORY: 1976, ch. 915, § 3; 1984, ch. 286, § 5.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 4. OBJECTIONS, HEARINGS, AND DETERMINATION

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-408 (2006)

§ 13-408. Determination on application and objections

(a) In general. --

(1) If the Commissioner or the circuit court, as the case may be, determines that the applicant has failed to comply with the requirements of this title, the final judgment of the Commissioner or the court shall dismiss the application and terminate the proceedings on it.

(2) If an objection is filed under this subtitle and the Commissioner or the circuit court, as the case may be, determines that the objector meets the applicable requirements of § 13-401 of this subtitle, the final judgment of the Commissioner or the court shall:

(i) Sustain the objection; and

(ii) As to that portion of the land to which the objection applies, dismiss the application and terminate the proceedings on it.

(3) If the Commissioner or the circuit court, as the case may be, determines that an applicant has complied with the requirements of this title, then, as to any land for which an objection is not filed under this subtitle or, if filed, not sustained under paragraph (2) of this subsection, the final judgment of the Commissioner or the court shall:

(i) In accordance with § 13-313 (c) of this title, set the purchase price for any of the land that is vacant land; and

(ii) Order a patent to be issued to the applicant for the land, on payment of the purchase price and any expenses owed.

(b) If judgment includes only portion of land. -- If the final judgment of the Commissioner or the circuit court establishes that a patent should be issued for less than all of the land embraced within the certificate of survey, the Commissioner shall issue an amended warrant to the surveyor, directing him to amend the certificate of survey in accordance with the judgment within 90 days.

(c) If judgment includes additional land. -- If the final judgment of the Commissioner or the circuit court includes any land not embraced within the certificate of survey, the applicant shall initiate new proceedings for the entire tract.

(d) Reimbursement of expenses. -- If an objection by the State or one of its agencies claiming public use under § 13-401 (3) of this subtitle is sustained, the final judgment of the Commissioner or the circuit court shall direct the objector to reimburse the applicant for all reasonable expenses and reasonable attorney's and surveyor's fees incurred by the applicant in the proceeding in connection with that portion of the land to which the objection is sustained. If there is a dispute as to the amount, the applicant may recover in a court of law all further expenses incurred by the applicant in connection with the dispute.

(e) Opinion of Land Commissioner to be published. -- The opinion of the Commissioner in a land patent case or a proceeding to reserve land by a governmental body shall be published in the Maryland Register.

HISTORY: An. Code 1957, art. 21, § 13-112; 1974, ch. 12, § 2; 1976, ch. 915, § 3; 1993, ch. 290.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 4. OBJECTIONS, HEARINGS, AND DETERMINATION

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-409 (2006)

§ 13-409. Notice of determination to issue patent and amounts owed

(a) In general. -- If the Commissioner determines that a patent should be issued, he shall certify his final judgment to the applicant and the parties to the proceeding. In addition, if either the Commissioner or the circuit court determines that a patent should be issued, the Commissioner shall mail to the applicant a notice:

(1) Of the purchase price for any vacant land;

(2) Of any expenses outstanding at the time the patent is to be issued; and

(3) That the proceeding will be abandoned if the applicant fails to pay the purchase price and all outstanding expenses:

(i) Within 45 days of receipt of the notice; or

(ii) If an appeal is filed under § 13-410 of this subtitle, within 45 days of the rendering on appeal of a final decision to issue a patent.

(b) Governmental body exempted. -- A governmental body requesting a certificate of reservation is not required to pay the purchase price of the land.

HISTORY: An. Code 1957, art. 21, § 13-113; 1974, ch. 12, § 2; 1976, ch. 915, § 3; 1993, ch. 290.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 4. OBJECTIONS, HEARINGS, AND DETERMINATION

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-410 (2006)

§ 13-410. Judicial review

(a) In general. --

(1) If the proceeding is heard by the Commissioner under § 13-406 of this subtitle, the final judgment of the Commissioner may be appealed as provided by the Administrative Procedure Act.

(2) If the proceeding is referred to the circuit court for declaratory relief under § 13-407 of this subtitle, the final judgment of the court may be appealed as provided in § 3-408.1 of the Courts Article.

(b) Exception as to purchase price. --

(1) On appeal, the purchase price for any vacant land may be contested only:

(i) By the applicant; or

(ii) If the Commissioner or the court, as the case may be, establishes a purchase price under § 13-313 (c) (2) of this title at an amount less than that established by the assessors under § 13-313 (c) (1) of this title, by the State.

(2) If the purchase price for vacant land is contested on appeal, the court hearing the appeal may set the purchase price at any amount, not exceeding that established by the assessors under § 13-313 (c) (1) of this title, that the court, based on the record before it, determines to be the proper assessed value of the land.

HISTORY: An. Code 1957, art. 21, § 13-112; 1974, ch. 12, § 2; 1976, ch. 915, § 3; 2002, ch. 19, § 10.

NOTES:
EDITOR'S NOTE. --Section 10, ch. 19, Acts 2002, provides that "the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, "title" has been substituted for "subtitle" in (b) (2).

CITED IN Marquardt v. Papenfuse, 92 Md. App. 683, 610 A.2d 325 (1992), cert. denied, 328 Md. 93, 612 A.2d 1316 (1992).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 4. OBJECTIONS, HEARINGS, AND DETERMINATION

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-411 (2006)

§ 13-411. Abandonment of proceedings

The Commissioner shall enter an order of abandonment if:

(1) A bill of complaint required by § 13-407 of this subtitle is not filed in the time required by that section; or

(2) The applicant fails to pay to the State the purchase price for any vacant land and all outstanding expenses within the time specified by the Commissioner in the notice mailed to the applicant under § 13-409 of this subtitle.

HISTORY: An. Code 1957, art. 21, § 13-114; 1974, ch. 12, § 2; 1976, ch. 915, § 3.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 4. OBJECTIONS, HEARINGS, AND DETERMINATION

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-412 (2006)

§ 13-412. Subsequent application for patent on prior certificate

(a) Application by certain objectors. --

(1) If an objection by a person claiming ownership under § 13-401 (2) of this subtitle is sustained under § 13-408 (a) (2) of this subtitle, then, within 60 days after entry of the final judgment sustaining the objection, the objector may apply under the previously returned certificate of survey for a patent for any of the vacant land which is described in the certificate of survey and to which the objection was sustained.

(2) On filing an application in the proper form, the objector shall be substituted in the proceeding for the prior applicant, and further notice or proof is not required.

(b) Application on abandonment. --

(1) If an order of abandonment is entered under § 13-411 of this subtitle, then, within six months after entry of the order, any person may apply under the previously returned certificate of survey for a patent for any of the vacant land which is described in the certificate of survey.

(2) The Commissioner shall docket the applications for a patent under this subsection in the order received. In granting a request for the patent, any prior applicant for a warrant for the same land, other than the prior applicant whose proceeding was abandoned, shall be preferred in the order of original receipt of the applications for a warrant.

(3) If a request for a patent is granted under this subsection, the new applicant shall be substituted in the proceeding for the prior applicant, and further notice or proof is not required.

(c) Contents of application. -- An application for a patent under subsection (a) or (b) of this section shall be in writing and contain:

(1) The name and address of the applicant;

(2) The name and address of each person, other than the applicant, who would obtain a direct or indirect title interest in the land for which the patent is sought if the patent were issued to the applicant;

(3) A description of the land to which the application applies, referenced to the description contained in the certificate of survey and accompanying plat;

(4) A description of any family, business, or financial relationship between the surveyor and all persons signing the application;

(5) The name to be given the land to be patented;

(6) A certification that the applicant has reimbursed the prior applicant for all reasonable expenses and surveyor's fees incurred by the prior applicant in the proceeding in connection with the land to which the application applies;

(7) Any other information the Commissioner requests under a rule or regulation adopted under § 13-203 of this title; and

(8) A request for the issuance of a patent for the land described in the application.

(d) Signature and verification; deposit. -- The application shall be:

(1) Signed and verified by the applicant and each person required to be named under subsection (c) (2) of this section; and

(2) Accompanied by a deposit on the purchase price for the land and any outstanding expenses owed to the State by the prior applicant.

HISTORY: An. Code 1957, art. 21, § 13-114; 1974, ch. 12, § 2; 1976, ch. 915, § 3.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 4. OBJECTIONS, HEARINGS, AND DETERMINATION

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-413 (2006)

§ 13-413. Expenses are debt to State; bad faith fees and costs

(a) In general. -- Any expenses owed under this title constitute a debt to the State, owed by:

(1) The applicant for a warrant under Subtitle 3 of this title; or

(2) If a subsequent application for a patent is filed under § 13-412 of this subtitle, the new applicant.

(b) Notice of expenses to county. --

(1) If a proceeding terminates other than with the issuance of a patent, the Commissioner shall file for record a certified list of any unpaid expenses in the law or equity judgment records for:

(i) The county of this State in which is located the address of the applicant owing these expenses, as that address appears in his application; or

(ii) If that address is not within this State, the county of this State in which is located the largest portion of the land for which the application was made.

(2) When filed, the debt represented by the list has the force and effect of a judgment lien and may be enforced and renewed accordingly.

(c) Bad faith fees and costs. -- If the Commissioner finds that an applicant for a land patent acted in bad faith and without substantial justification, the Commissioner may require the applicant to pay the reasonable expenses of the objectors, including their attorneys' fees and expert witness fees, and the reasonable expenses of the Commissioner, including administrative, research, and hearing expenses.

HISTORY: An. Code 1957, art. 21, § 13-114; 1974, ch. 12, § 2; 1976, ch. 915, § 3; 1977, ch. 162; 1993, ch. 290.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 5. ISSUANCE OF PATENT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-501 (2006)

§ 13-501. Preparation; contents

(a) Preparation. -- The Commissioner shall prepare a patent within 30 days after:

(1) The Commissioner or a circuit court, as the case may be, finds that a patent should issue;

(2) That finding has become final by:

(i) Failure to file an appeal before expiration of the period within which an appeal may be taken; or

(ii) The rendering on appeal of a final decision; and

(3) The purchase price for any vacant land and all outstanding expenses are paid.

(b) Contents. -- The patent shall contain:

(1) The name of the person to whom it is issued;

(2) The name given to the land;

(3) The name of the original applicant;

(4) The date of issuance of the warrant;

(5) The name of any person substituted as applicant and the date of the substitution;

(6) The date of filing the certificate or amended certificate of survey on which the patent is based;

(7) A description of the land, as contained in the certificate of survey; and

(8) The Commissioner's certificate that the patent is proper to be issued.

HISTORY: An. Code 1957, art. 21, § 13-113; 1974, ch. 12, § 2; 1976, ch. 915, § 3; 1977, ch. 162.

STATE'S AUTHORITY TO PATENT LANDS DERIVES FROM ITS SOVEREIGN HERITAGE. Maryland Coal & Realty Co. v. Eckhart, 25 Md. App. 605, 337 A.2d 150, cert. denied, 275 Md. 753 (1975).

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.

a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 5. ISSUANCE OF PATENT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-502 (2006)

§ 13-502. Manner of issuance; rejection of Commissioner's certificate; inapplicability of Title 10 of State Finance and Procurement Article

(a) Manner of issuance when Commissioner's certificate based on judgment rendered under § 13-407. -- After a patent is prepared by the Commissioner, if the Commissioner's certificate that the patent is proper to be issued is based on a final judgment for declaratory relief that was rendered in a proceeding referred to a circuit court under § 13-407 of this title or, except for an appeal that was taken under § 13-410 (a) (1) of this title and in which the only contested issue was the purchase price established by the Commissioner in his final judgment, if the certificate is based on a final decision of court that was rendered in an appeal taken under § 13-410 of this title:

(1) The Commissioner immediately shall send the patent to the Governor for his signature;

(2) The Governor promptly shall sign the patent and cause it to be sealed with the Great Seal of the State of Maryland; and

(3) The patent shall be recorded:

(i) In the patent records of the Commissioner; and

(ii) In the land records for each county in which is located any portion of the land for which the patent was issued.

(b) Rejection by Board of Public Works of certificate based on Commissioner's judgment rendered under § 13-406. --

(1) After a patent is prepared by the Commissioner, if the Commissioner's certificate is based on a final judgment that was rendered by the Commissioner in a proceeding heard by him under § 13-406 of this title, from which final judgment no appeal was taken, or if the Commissioner's certificate is based on a final decision of court that was rendered in an appeal taken under § 13-410 (a) (1) of this title and in which the only contested issue was the purchase price established by the Commissioner in his final judgment:

(i) The Commissioner immediately shall send the patent to the Board of Public Works for its review; and

(ii) Unless the Board of Public Works, within 45 days after its receipt of the patent, rejects for cause the Commissioner's certificate that the patent is proper to be issued, the patent shall be signed, sealed, and recorded as provided for in subsection (a) of this section.

(2) If the Board of Public Works rejects for cause the Commissioner's certificate within the

period specified in paragraph (1) of this subsection, the patent may not be issued and the applicant is entitled to reimbursement from the State of all reasonable expenses and reasonable attorney's and surveyor's fees incurred by the applicant in the application proceedings. The Board shall provide for payment of the reimbursement from funds available to it and make the reimbursement as soon as is practicable.

(c) Inapplicability of Title 10 of State Finance and Procurement Article. -- The issuance of a patent under this title is not subject to the provisions of Title 10 of the State Finance and Procurement Article governing the sale or disposition of State property.

HISTORY: An. Code 1957, art. 21, § 13-113; 1974, ch. 12, § 2; 1976, ch. 915, § 3; 1977, ch. 162; 1985, ch. 717, § 1.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 5. ISSUANCE OF PATENT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-503 (2006)

§ 13-503. Effect of patent

(a) Quitclaim of State's interest. -- The issuance of a patent operates as a quitclaim of the interest of the State in the land.

(b) State's interest unaffected until issued. -- The interest of the State does not pass and is not affected until a patent is issued.

(c) Effect on encumbrance. -- A patent issued on a warrant to resurvey land previously patented does not affect or impair any mortgage, deed of trust, easement, right-of-way, or similar interest in the land.

HISTORY: An. Code 1957, art. 21, § 13-104; 1974, ch. 12, § 2; 1976, ch. 915, § 3; 1977, ch. 162.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 13. LAND PATENTS
SUBTITLE 5. ISSUANCE OF PATENT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 13-504 (2006)

§ 13-504. Return of purchase price for invalid patent

(a) In general. -- Subject to subsection (b) of this section, if, after the exhaustion of all available defenses and appeals, a court of competent jurisdiction determines that the patent is invalid as to any portion of the vacant land for which it was issued, the person to whom the patent was issued is entitled to reimbursement from the State of that portion of the entire purchase price paid that is equitably attributable to the vacant land held to have been invalidly patented, based on a pro rata apportionment of the entire purchase price or any other factor which the Board of Public Works determines to be relevant.

(b) Application for return. -- Any person claiming a right to reimbursement under this section shall apply to the Board of Public Works for reimbursement within six months of the final court decision on which the claim is based. The application shall set forth in detail the basis of the claim. It shall be signed and verified by the person making the claim and contain a certification that a copy of the application was mailed to the Commissioner.

(c) Determination by Board of Public Works. -- If the Board of Public Works determines that the applicant is entitled to reimbursement under this section, it shall establish the amount of the reimbursement, provide for payment of the reimbursement from funds available to it, and make the reimbursement as soon as is practicable.

HISTORY: 1976, ch. 915, § 3; 1977, ch. 162.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 1. MISCELLANEOUS RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-101 (2006)

§ 14-101. Aliens

Any alien who is not an enemy, may own, sell, devise, dispose of, or otherwise deal with property in the same manner as if he had been a citizen of the State by birth.

HISTORY: An. Code 1957, art. 21, § 14-101; 1974, ch. 12, § 2.

MARYLAND LAW REVIEW. --For article, "Survey of Developments in Maryland Law, 1984-85," see 45 Md. L. Rev. 836 (1986).

ESCHEAT. --An alien could not inherit real estate in Maryland in 1807, and his survival would not have prevented an escheat. United States Fid. & Guar. Co. v. Dempster, 150 Md. 235, 133 A. 723 (1926).

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 1. MISCELLANEOUS RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-102 (2006)

§ 14-102. Waste

(a) Damages. -- Any mortgagor, including a grantor under a deed of trust given as security for the payment of a debt or the performance of an obligation, any other person in possession of land, any life tenant, tenant for years, tenant at will, periodic tenant, tenant in common or joint tenant, who, without express or implied authorization, commits or permits waste is liable for the actual damages suffered by the property. An action may be maintained against the person even though he later may grant or assign his interest or estate in the land.

(b) Waste after injunction. -- If waste is committed after an injunction to stay waste, the court shall ascertain the damage done by the waste, by affidavit or other proof as the court determines necessary, and may fine the defendant to the extent of double the damage ascertained. If the final judgment is in favor of the injured party the court may determine the amount to be paid to him and the remainder shall be applied as a fine. The court may imprison a person who does not comply with the order to pay and may issue execution in the name of the State for its collection.

HISTORY: An. Code 1957, art. 21, § 14-102; 1974, ch. 12, § 2.

STATED IN Beesley v. Hanish, 70 Md. App. 482, 521 A.2d 1235 (1987).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 1. MISCELLANEOUS RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-103 (2006)

§ 14-103. Court-ordered sales

(a) Purchasers at execution, judicial, and foreclosure sales. -- If a legal or equitable interest in land is sold under an execution sale, judicial sale, or foreclosure sale except a sale under Title 14, Chapter 200 of the Maryland Rules, and a deed is executed and delivered to the purchaser by the sheriff, trustee, agent, or other officer making the sale, the grantee in the deed, when recorded, is entitled to the same protection against the legal or equitable interests of persons not of record as is provided in this article for the benefit of grantees in deeds voluntarily executed, delivered, and recorded.

(b) Sale of reversion when rent is in arrears. -- If there is a decree for the sale of any reversion in lands to which rent is incident, the court may order any rent in arrears to be sold with the estate and the purchaser may recover the rent by distress, entry, or action, as if he was owner of the estate when the rent accrued.

(c) Bond when sale is on credit. -- If a sale is made on credit, the court, on application of the mortgagee or creditor, may direct any bond taken in consequence of the sale to be assigned to the mortgagee or creditor and the assignee may sue on the bond in his own name.

(d) Sale of equitable title. -- The court may decree a sale of an equitable title in any case where a decree for the sale of the legal title could be passed. The purchaser of the equitable title has the same remedy for obtaining the legal title as the person whose equitable interest he purchased would have had if no sale had been made.

(e) Payment of costs. -- If property is sold pursuant to a judicial decree, all costs of the proceedings accruing up to and including the final ratification of the sale shall be paid prior to the final ratification of the first auditor's account after the sale. The costs shall include the fees for recording all papers which are proper to be recorded by law. After payment of the costs, the clerk of the court shall record all the proper required papers.

(f) Recordation requirements in Baltimore City. --

(1) In Baltimore City, if a foreclosure sale under a mortgage or a deed of trust of an interest in land is ratified, the person making the sale shall cause to be recorded in the land records a copy of the final order of ratification within 90 days of the date of the final order of ratification if:

(i) The vendor and the purchaser are the same; and

(ii) A deed is not recorded.

(2) The copy of the final order of ratification shall include the name and address of the purchaser.

(3) This subsection does not apply to a foreclosure that is subject to a stay issued by a court in a bankruptcy proceeding.

HISTORY: An. Code 1957, art. 21, § 14-103; 1974, ch. 12, § 2; 1998, ch. 21, § 1; 2003, ch. 465.

NOTES:
CROSS REFERENCES. --As to application of this section, see § 15-102 of this article.

EFFECT OF AMENDMENTS. --Chapter 465, Acts 2003, effective Oct. 1, 2003, added (f).

MARYLAND LAW REVIEW. --For article, "Robin Hood Was Right, Or, Never Trust A Sheriff: The Relationship Between Sheriffs' Sales And The Maryland Recording Act," see 38 Md. L. Rev. 633 (1979).

CITED IN Lewis v. Rippons, 282 Md. 155, 383 A.2d 676 (1978).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 1. MISCELLANEOUS RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-104 (2006)

§ 14-104. Division of cost of recordation tax; exceptions

(a) Definition. -- In this section, "first-time Maryland home buyer" means an individual who has never owned in the State residential real property that has been the individual's principal residence.

(b) Presumption; mortgages and deeds of trust excepted. -- Except as provided in subsection

(c) of this section, in every written or oral agreement for the sale or other disposition of property, it is presumed in the absence of a contrary provision in the agreement or the law, that the parties to the agreement intended that the cost of any recordation tax or any State or local transfer tax shall be shared equally between the grantor and grantee. This section does not apply to mortgages or deeds of trust.

(c) First-time Maryland home buyers. --

(1) The entire amount of recordation tax and local transfer tax shall be paid by the seller of improved, residential real property that is sold to a first-time Maryland home buyer who will occupy the property as a principal residence, unless there is an express agreement between the parties to the agreement that the recordation tax and local transfer tax will not be paid entirely by the seller.

(2) The entire amount of State transfer tax shall be paid by the seller of improved, residential real property that is sold to a first-time Maryland home buyer who will occupy the property as a principal residence.

(3) This subsection does not apply to tax sales of property under Title 14, Subtitle 8 of the Tax-Property Article.

(4) If there are two or more grantees, this subsection does not apply unless each grantee is a first-time Maryland home buyer or a co-maker or guarantor of a purchase money mortgage or purchase money deed of trust as defined in § 12-108 (i) of the Tax-Property Article for the property and the co-maker or guarantor will not occupy the residence as the co-maker's or guarantor's principal residence.

(5) Paragraphs (1) and (2) of this subsection apply only if each grantee or an agent of the grantee provides a statement that is signed under oath by the grantee or agent of the grantee stating that:

(i) 1. The grantee is a first-time Maryland home buyer as defined under subsection (a) of this section; and

2. The residence will be occupied by the grantee as the grantee's principal residence; or

(ii) 1. The grantee is a co-maker or guarantor of a purchase money mortgage or purchase money deed of trust as defined in § 12-108 (i) of the Tax-Property Article for the property; and

2. The grantee will not occupy the residence as the co-maker's or guarantor's principal residence.

(6) A statement under paragraph (5) of this subsection by an agent of a grantee shall state that the statement:

(i) Is based on a diligent inquiry made by the agent with respect to the facts set forth in the statement; and

(ii) Is true to the best of the knowledge, information, and belief of the agent.

HISTORY: An. Code 1957, art. 21, § 14-104; 1974, ch. 12, § 2; 1985, ch. 480, § 1; 1995, ch. 123, § 2; 1996, ch. 10, § 1; 2001, ch. 287.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 287, Acts 2001, effective July 1, 2001, in the introductory language of (c) (5), inserted "or an agent of the grantee" and inserted "or agent of the grantee"; and added (c) (6).

FAILURE TO PROVIDE FOR PAYMENT OF REVENUE STAMPS, ETC., NOT MATERIAL OMISSION. --Since provision for payment of revenue stamps and transfer taxes is set forth in this section, failure of an agreement for the sale of land to provide for such payment was not a material omission, and did not bar specific performance. Nusbaum v. Saffell, 271 Md. 31, 313 A.2d 837 (1974).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 1. MISCELLANEOUS RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-104.1 (2006)

§ 14-104.1. Borrower's right to copy of appraisal made for lender

If a bank, mortgage banker, savings and loan association, or any other lender has an appraisal made on residential real property to establish a market value for lending purposes, the lender shall give a copy of any written appraisal to the borrower on his request if the borrower pays the cost of the appraisal. The appraisal may be submitted to another lender if the original lender has rejected the borrower's loan application.

HISTORY: 1980, ch. 580.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 1. MISCELLANEOUS RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-105 (2006)

§ 14-105. When real estate broker entitled to commission

In the absence of special agreement to the contrary, if a real estate broker employed to sell, buy, lease, or otherwise negotiate an estate, or a mortgage or loan secured by the property, procures in good faith a purchaser, vendor, lessor, lessee, mortgagor, mortgagee, borrower, or lender, as the case may be, and the person procured is accepted by the employer and enters into a valid, binding, and enforceable written contract, in terms acceptable to the employer, of a sale, purchase, lease, mortgage, loan, or other contract, as the case may be, and the contract is accepted by the employer and signed by him, the broker is deemed to have earned the customary or agreed commission. He has earned the commission regardless of whether or not the contract entered into is performed, unless the performance of the contract is prevented, hindered, or delayed by any act of the broker.

HISTORY: An. Code 1957, art. 21, § 14-105; 1974, ch. 12, § 2.

NOTES:
CROSS REFERENCES. --As to definition, licensing, etc., of real estate brokers, see Title 17 of the Business Occupations and Professions Article.

MARYLAND LAW REVIEW. --For survey of Court of Appeals decisions on brokers' commissions for the years 1974-1975, see 36 Md. L. Rev. 372 (1976).
For article, "Survey of Developments in Maryland Law, 1983-84," see 44 Md. L. Rev. 373 (1985).
For note, "Recent Decisions, The Maryland Court of Appeals," see 54 Md. L. Rev. 670 (1995).

PURPOSE OF SECTION. --This section was passed to settle the question as to when, in the absence of a special agreement, a broker is entitled to commissions. Brown v. Hogan, 138 Md. 257, 113 A. 756 (1921); Sanders v. Devereux, 231 Md. 224, 189 A.2d 604 (1963); Snider Bros. v. Heft, 271 Md. 409, 317 A.2d 848 (1974); Berman v. Hall, 275 Md. 434, 340 A.2d 251 (1975).
This statute was designed to settle the question when, in the absence of special agreement, a real estate broker is entitled to commissions. Ricker v. Abrams, 263 Md. 509, 283 A.2d 583 (1971); Wyand v. Patterson Agency, Inc., 271 Md. 617, 319 A.2d 308 (1974).
This section is only a legislatively mandated rule of construction to be used in construing commission agreements in "certain situations." Davis v. Phase I, Ltd., 30 Md. App. 691, 354 A.2d 473, cert. denied, 278 Md. 720 (1976).

APPLICATION OF SECTION. --This section, by its clear terms, applies only when the broker claiming the commission is the procuring cause of the sale, and if some other broker finds a buyer, this section has no application. Wyand v. Patterson Agency, Inc., 271 Md. 617, 319 A.2d 308 (1974).

APPLICABILITY IN BANKRUPTCY PROCEEDING. --The fact that a bankruptcy court had not yet approved the employment of a real estate agent did not prevent the court from doing so in the future, nor did it enable the bankruptcy trustee to deny her liability for a commission to the agent if the trustee has accepted a contract from a purchaser that the agent allegedly procured. Binswanger Cos. v. Merry-Go-Round Enters., Inc., 218 Bankr. 361 (Bankr. D. Md. 1998).

CONSTRUCTION OF SECTION. --The Court of Appeals has consistently refused to extend this section beyond its literal terms. Childs v. Ragonese, 296 Md. 130, 460 A.2d 1031 (1983).

CONSTRUCTION WITH OTHER LAWS. --A holder of a State real estate broker license may not recover a commission pursuant to this section where his agents, in procuring the sale of real property, violated § 17-301 of the Business Occupations and Professions Article. The Binswanger Cos. v. Merry-Go-Round Enterprises, Inc., 231 Bankr. 241 (Bankr. D. Md. 1999),

aff'd, 258 Bankr. 608 (D. Md. 2001).

"ENFORCEABLE" DEFINED. --The use of the term "enforceable" in this section means that commissions are due on the purchase price that could be enforceable at any respective time in an action for specific performance; to the extent that a sum certain purchase price is enforceable, commissions are due. Loyola Fed. Sav. Bank v. Hill, 114 Md. App. 289, 689 A.2d 1268 (1997).

Although the language of this section has not changed, the meaning of the word "enforceable" in this section has changed. Loyola Fed. Sav. Bank v. Hill, 114 Md. App. 289, 689 A.2d 1268 (1997).

PREJUDGMENT INTEREST HOLD NOT ENFORCEABLE. --Prejudgment interest on a commission, awarded from the time of filing suit rather than from the time the contract was signed because the purchase price was not a sum certain, was therefore not "enforceable" as required by this section. Loyola Fed. Sav. Bank v. Hill, 114 Md. App. 289, 689 A.2d 1268 (1997).

THIS SECTION DEALS ONLY WITH COMMISSIONS ON THE SALE OF REAL ESTATE and hence its application, if any, to a sale of acid phosphate is remote. Wood v. Standard Whsle. Phosphate Co., 140 Md. 654, 118 A. 179 (1922).

This section does not apply in cases of sale of real estate and personal property with nothing to show what was paid for either when considered separately. Mullineaux v. Voltz, 150 Md. 114, 132 A. 594 (1926).

Where personalty was the subject of the sale, this section is of remote applicability. Ricker v. Abrams, 263 Md. 509, 283 A.2d 583 (1971).

BUT ITS CRITERIA MAY BE APPLIED IN SALE OF PERSONALTY. --The criteria by which the entitlement of real estate brokers to commissions is determined may be applied in determining whether a broker is the procuring cause of a sale of personal property. Ricker v. Abrams, 263 Md. 509, 283 A.2d 583 (1971).

AND TO MORTGAGE BROKERS. --The criteria by which the entitlement of real estate brokers to commissions is determined may be applied to mortgage brokers who are not covered by this section. Bregel v. Cooper, 161 Md. 416, 157 A. 719 (1931); Freishtat v. Callow, 256 Md. 564, 261 A.2d 458 (1970); Rhoderick v. Roy Hansen Mtg. Co., 260 Md. 129, 271 A.2d 647 (1970); Ricker v. Abrams, 263 Md. 509, 283 A.2d 583 (1971).

FIDUCIARY RELATIONSHIP. --A broker employed to sell real estate occupies a quasi-fiduciary relation to his employer. Coppage v. Howard, 127 Md. 512, 96 A. 642 (1916).

BROKER'S NEGOTIATIONS MUST BE THE ULTIMATE CAUSE OF THE SALE in order for him to be entitled to commissions. Coppage v. Howard, 127 Md. 512, 96 A. 642 (1916).

WRITTEN CONTRACT IS NOT ESSENTIAL TO THE RIGHT OF THE BROKER TO RECEIVE COMMISSIONS. Glaser v. Shostack, 213 Md. 383, 131 A.2d 724 (1957).

EMPLOYMENT MAY BE IMPLIED FROM CONDUCT, and need not be supported by evidence of a written, or even explicit oral, agreement. Leimbach v. Nicholson, 219 Md. 440, 149 A.2d 411 (1959); Hogan v. Q. T. Corp., 230 Md. 69, 185 A.2d 491 (1962); Sanders v. Devereux, 231 Md. 224, 189 A.2d 604 (1963); Weinberg v. Desser, 243 Md. 347, 221 A.2d 66 (1966).

Employment may be implied when the owner permits a broker to show the property. Heslop v. Dieudonne, 209 Md. 201, 120 A.2d 669 (1956); Ricker v. Abrams, 263 Md. 509, 283 A.2d 583 (1971).

STATUTE NOT APPLICABLE WHERE PARTIES ENTER AGREEMENT AS TO BROKERAGE COMMISSIONS. --See Snider Bros. v. Heft, 271 Md. 409, 317 A.2d 848 (1974); W.C. Pinkard & Co. v. Castlewood Realty Co., 271 Md. 598, 319 A.2d 123 (1974).

As the language of this section makes clear, where the parties enter into an agreement specifying a different time when the right to a brokerage commission accrues, the agreement and not this section is controlling. Berman v. Hall, 275 Md. 434, 340 A.2d 251 (1975); Davis

v. Phase I, Ltd., 30 Md. App. 691, 354 A.2d 473, cert. denied, 278 Md. 720 (1976).

When brokers voluntarily take themselves outside the statute by signing a contract which has been construed to provide for payment of commissions from the proceeds of sale at settlement, they must abide by the terms of that agreement. DeFranceaux Realty Group, Inc. v. Leeth, 283 Md. 611, 391 A.2d 1209 (1978).

"SPECIAL AGREEMENT TO THE CONTRARY" was obviously intended to mean an agreement specifying when, in the sale process, the right to a commission accrues. Wyand v. Patterson Agency, Inc., 271 Md. 617, 319 A.2d 308 (1974).

SPECIAL AGREEMENT MAKING SECTION NOT APPLICABLE. --Where a real estate contract specifically provided that the sellers "agree to pay commission as agreed upon ..., same to be due and payable upon the signing of this contract," this section had no bearing on whether broker was still entitled to her unpaid commission, the contract having been signed but not performed. Goss v. Hill, 219 Md. 304, 149 A.2d 10 (1959).

Where a contract contained substitutional provisions affecting the time of payment, source, and amount of the broker's compensation, there was "a special agreement to the contrary" within the meaning of this section, the provisions of which, therefore, did not control. Chasanow v. Willcox, 220 Md. 171, 151 A.2d 748 (1959).

Where contract for sale of incorporated country club, which broker signed, made the consummation of the sale a condition precedent to the earning of the broker's commissions and stipulated that the fee was to be paid at the time of settlement from the sales proceeds, a "special agreement to the contrary" was in effect, defeating broker's claim for fee when contract of sale was not ratified by the two-thirds vote of the club's stockholders required by § 3-105 (d) [now (e)] of the Corporations and Associations Article. Prince George's Country Club, Inc. v. Edward R. Carr, Inc., 235 Md. 591, 202 A.2d 354 (1964).

Where a provision of the contract of sale manifests the clear intention of the parties that the broker is not to be paid a commission by the buyer until and unless there was a "settlement," such language is a "special agreement to the contrary" within the meaning of this section, and this section is therefore not applicable in determining the rights of the parties to the controversy. Davis v. Phase I, Ltd., 30 Md. App. 691, 354 A.2d 473, cert. denied, 278 Md. 720 (1976).

Under this section, the broker is entitled to his commission upon the signing of the sales contract unless there is a special agreement to the contrary and a provision in the contract tying the broker's commissions to settlement under that contract is a special agreement, the terms of which prevail over the general rule. Storch v. Ricker, 57 Md. App. 683, 471 A.2d 1079, cert. denied, 300 Md. 154, 476 A.2d 722 (1984), overruled on other grounds, Lake Shore Investors v. Rite Aid Corp., 67 Md. App. 743, 509 A.2d 727 (1986).

AGREEMENT NOT "SPECIAL AGREEMENT TO THE CONTRARY." --An agreement to pay a commission "if the property is sold" does not constitute a "special agreement to the contrary" within the meaning of this section. Wyand v. Patterson Agency, Inc., 271 Md. 617, 319 A.2d 308 (1974).

"SALE" REFERS TO COMPLETED SETTLEMENT. --When the contract contains a provision agreeing to pay the brokers their commission by deducting it "from the proceeds of the sale," the term "sale" refers to a completed settlement. DeFranceaux Realty Group, Inc. v. Leeth, 283 Md. 611, 391 A.2d 1209 (1978).

PURPOSE OF BROKER'S EMPLOYMENT. --A real estate broker is employed not to expend time and effort but to accomplish a particular result. Steward Village Shopping Ctr., Ltd. Partnership v. Melbourne, 274 Md. 44, 332 A.2d 626 (1975).

CONTRACT SUFFICIENTLY DEFINITE TO BE ENFORCEABLE. --In suit by a real estate broker to recover commissions on the sale of real estate, the contention of the defendants that the contract of sale was not sufficiently definite to be an enforceable contract within the meaning of this section was found to be without merit. Born v. Hammond, 218 Md. 184, 146 A.2d 44 (1958).

WHERE CONTRACT OF SALE WAS NOT ENFORCEABLE because it was too uncertain and too indefinite, the broker could not be deemed to have earned the customary or agreed commissions. Manning-Shaw Realty Co. v. McConnell, 244 Md. 579, 224 A.2d 445 (1966).

CONTRACT MUST BE ACCEPTED AND SIGNED BY THE EMPLOYER. Crosse v. Callis, 263 Md. 65, 282 A.2d 86 (1971).

The contract of sale must be signed by the broker's employer. Nily Realty, Inc. v. Wood, 272 Md. 589, 325 A.2d 730 (1974).

BAD FAITH NOT PROVEN WHEN INDEPENDENT, SUFFICIENT REASONS FOR TERMINATION OF SALES CONTRACT EXIST. --Given the existence of independent, sufficient reasons for termination of the sales contract, the fact that the seller may indeed have also wanted to avoid paying commissions does not mean that she acted in bad faith. Storch v. Ricker, 57 Md. App. 683, 471 A.2d 1079, cert. denied, 300 Md. 154, 476 A.2d 722 (1984), overruled on other grounds, Lake Shore Investors v. Rite Aid Corp., 67 Md. App. 743, 509 A.2d 727 (1986).

THIS SECTION HAS NO APPLICATION TO AUCTIONEER. Childs v. Ragonese, 296 Md. 130, 460 A.2d 1031 (1983).

BROKER MUST PROVE THAT HE WAS PROCURING CAUSE OF SALE. --It has long been established in this State that in order for the broker to recover he must not only prove that he was employed but that he was the procuring cause of the sale. Steele v. Seth, 211 Md. 323, 127 A.2d 388 (1956); Ricker v. Abrams, 263 Md. 509, 283 A.2d 583 (1971).

Whether a broker was the procuring cause of a sale, purchase or lease within the meaning of this section is a necessary element for the recovery of a commission. Weinberg v. Desser, 243 Md. 347, 221 A.2d 66 (1966).

The broker must establish that he is the primary, proximate and procuring cause, and it is not enough that he may have planted the seed from which the harvest was reaped. Leimbach v. Nicholson, 219 Md. 440, 149 A.2d 411 (1959).

The tests established by this section are whether the broker was employed by the owner and whether he was the procuring cause of the sale. Sanders v. Devereux, 231 Md. 224, 189 A.2d 604 (1963).

The question of whether a broker's efforts are the procuring cause of a sale is not to be determined by whether his services are slight or extensive, but rather on the basis of whether the efforts he did make were in fact the proximate cause of interesting the purchaser, and his ultimate agreement to buy. Weinberg v. Desser, 243 Md. 347, 221 A.2d 66 (1966); Steward Village Shopping Ctr., Ltd. Partnership v. Melbourne, 274 Md. 44, 332 A.2d 626 (1975).

In order for a broker to establish that he is the procuring cause of a sale of real estate, in the absence of a specific contract, the evidence must show or permit the inference that the sale was accomplished as the result of his action in discovering the purchaser, acquainting him with the property, and referring him to the seller for further negotiations. Sanders v. Devereux, 231 Md. 224, 189 A.2d 604 (1963); Weinberg v. Desser, 243 Md. 347, 221 A.2d 66 (1966).

AND THAT HE WAS EMPLOYED OR HIS ACTS SUBSEQUENTLY RATIFIED. --The general rule is that the right of a broker to recover compensation for services rendered depends on a showing (in addition to establishing he was the procuring cause of the lease or sale) that he was either employed by the owner, or, if he acted without prior authority, that his acts were subsequently ratified. Hogan v. Q.T. Corp., 230 Md. 69, 185 A.2d 491 (1962).

Where the contract of sale did not create, expressly or by implication, an employment relationship between the broker and buyer, this section cannot be invoked to supplement or explain the contract's terms. Davis v. Phase I, Ltd., 30 Md. App. 691, 354 A.2d 473, cert. denied, 278 Md. 720 (1976).

BUT DETERMINATION OF EMPLOYMENT RELATION IS FOR JURY. --Although the broker has the burden of proving that he was employed, the determination of employment relationship is ordinarily a question of fact for the jury to decide. Weinberg v. Desser, 243 Md. 347, 221 A.2d 66 (1966).

IT IS NOT SUFFICIENT THAT THE BROKER HAS MERELY PLANTED THE SEED from which the harvest was reaped. Sanders v. Devereux, 231 Md. 224, 189 A.2d 604 (1963).

BUT SALE MAY HAVE BEEN ACTUALLY EFFECTED BY ANOTHER. --The consummation of a sale through subsequent and independent efforts of the owners, or another broker, does not deprive a broker of his right to commissions, if his efforts were the proximate and procuring cause of the sale. The same rule applies where the vendor effects the sale himself, if the broker's efforts may fairly be regarded as the procuring cause of that result. Steele v. Seth, 211 Md. 323, 127 A.2d 388 (1956).

If the agent introduces or discloses the name of the purchaser, and such introduction or disclosure is the foundation upon which negotiations are begun and the sale effected, he will be entitled to commissions, and this too although in point of fact the sale may have been made by the owner. In other words, he cannot avail himself of the services, and by making a sale through information derived from the agent, deprive the latter of his commission. Steele v. Seth, 211 Md. 323, 127 A.2d 388 (1956); Sanders v. Devereux, 231 Md. 224, 189 A.2d 604 (1963).

A principal cannot, after the broker has produced the purchaser, deprive him of his commission by concluding the sale either in person or through another broker. Sanders v. Devereux, 231 Md. 224, 189 A.2d 604 (1963).

The fact that a sale is consummated by the owners without the participation of the broker is not decisive. Leimbach v. Nicholson, 219 Md. 440, 149 A.2d 411 (1959); Ricker v. Abrams, 263 Md. 509, 283 A.2d 583 (1971).

A broker is entitled to a commission when he produces a purchaser to whom a sale is made by the owner at a lower price. Leimbach v. Nicholson, 219 Md. 440, 149 A.2d 411 (1959); Ricker v. Abrams, 263 Md. 509, 283 A.2d 583 (1971).

WHERE THE BROKER HAS SECURED A PURCHASER ABLE, READY AND WILLING TO BUY the property upon the vendor's terms, the broker is held to be entitled to his commission. Neuland v. Millison, 188 Md. 594, 53 A.2d 568 (1947).

If plaintiff, pursuant to his employment, procured a purchaser who was able, willing and ready to buy upon defendants' terms, plaintiff would be entitled to his commission, notwithstanding defendants refused to sell and plaintiff could not bind them or the purchaser compel them to sell. Neuland v. Millison, 188 Md. 594, 53 A.2d 568 (1947).

A broker is not entitled to commissions where no sale is made unless the purchaser is able, ready and willing to take the property upon the terms specified. If no contract of sale is executed between the owner and the purchaser, the broker must show not only that he procured a person who was ready, willing and able to purchase upon the terms authorized, but also that the owner was advised of that fact and given an opportunity to complete the sale, but did not do so because of his own default. Coppage v. Howard, 127 Md. 512, 96 A. 642 (1916).

A real estate broker, employed by a landowner to sell property, is not ordinarily entitled to his commission, absent a special agreement to the contrary, until the broker procures a purchaser ready, willing and able to buy upon the owner's terms, with the arrangement culminating in the purchaser and owner entering into a valid, binding and enforceable contract for the sale of the property. Nily Realty, Inc. v. Wood, 272 Md. 589, 325 A.2d 730 (1974).

NECESSITY FOR CONTRACT SIGNED BY SELLER WHERE BROKER REPRESENTS BUYER. --If an agent is commissioned to sell real estate and produces a buyer ready, willing and able to buy, he may be entitled to his commissions on the sale, notwithstanding the fact that the property owner failed to enter into a contract with that potential buyer. Where, however, he is representing a buyer, he could not earn his commissions until there was a contract actually signed by the seller, binding the seller to sell, because the seller would have the right up until the contract was executed to decide not to sell. Crosse v. Callis, 263 Md. 65, 282 A.2d 86 (1971).

IF WRITTEN CONTRACT FOR SALE OF PROPERTY COULD HAVE BEEN SPECIFICALLY ENFORCED by property owner, broker was entitled to his commission. Neuland v. Millison, 188 Md. 594, 53 A.2d 568 (1947).

BROKER NEED NOT HAVE BEEN PRESENT AT FINAL CONSUMMATION OF SALE. --In determining whether the broker has been the procuring cause of the sale it is not requisite, where the plaintiff's evidence is otherwise sufficient, that the broker should have been present at the final consummation of the sale, or have been directly and immediately the final negotiator therefor. Arthur H. Richland Co. v. Morse, 169 F. Supp. 544 (D. Md.), aff'd, 272 F.2d 183 (4th Cir. 1959).

IF BROKER PROCURED A PURCHASER WHO MADE AN UNENFORCEABLE AGREEMENT TO BUY but was able and willing to perform the agreement, broker would be entitled to his commission. Neuland v. Millison, 188 Md. 594, 53 A.2d 568 (1947); Glaser v. Shostack, 213 Md. 383, 131 A.2d 724 (1957).

BROKER HELD ENTITLED TO COMMISSIONS ON AMOUNT RECEIVED AS A CREDIT on the contract price of property. Althouse v. Watson, 143 Md. 650, 123 A. 47 (1923).

IF THE BROKER HAS NOT MET THE CONDITION OF HIS EMPLOYMENT, THE OWNER IS NOT PRECLUDED FROM SEEKING OTHER ASSISTANCE by means of which a sale is ultimately effected on terms more favorable to him, even though to the same prospect introduced by the first broker. Leimbach v. Nicholson, 219 Md. 440, 149 A.2d 411 (1959).

DIRECT AGREEMENT OF VENDOR AND VENDEE does not disentitle broker to commissions if evidence shows he procured purchasers. Buchholz v. Gorsuch, 144 Md. 62, 124 A. 389 (1923).

Property owners may not employ a broker to sell their property, and after obtaining potential purchasers through the broker, deal privately with the purchasers so as to cut off the broker's commission by consummating a sale at a price lower than that at which they have authorized the broker to sell. In such a case the broker is entitled to the full customary commission. Heslop v. Dieudonne, 209 Md. 201, 120 A.2d 669 (1956); Leimbach v. Nicholson, 219 Md. 440, 149 A.2d 411 (1959).

In such case an inference may be drawn that the broker was in fact the procuring cause and that the owner's refusal to accept the offer submitted was a subterfuge to avoid payment of commissions which the broker had fairly earned. Leimbach v. Nicholson, 219 Md. 440, 149 A.2d 411 (1959).

Where the broker has introduced to the seller a prospective interested buyer and negotiations have progressed to a point where success seems imminent, the broker cannot be deprived of his commissions because the seller bypasses the broker by direct negotiations with the buyer, in effect freezing the broker out of the case. Arthur H. Richland Co. v. Morse, 169 F. Supp. 544 (D. Md.), aff'd, 272 F.2d 183 (4th Cir. 1959).

The owner cannot take advantage of a broker's services and make the sale himself, or through another broker, so as to deprive the broker of his commission when he has introduced a prospective buyer to the seller and negotiations have progressed to a point where success seems imminent. Sanders v. Devereux, 231 Md. 224, 189 A.2d 604 (1963).

CONTRACT FOR LOAN EFFECTIVE ON ENFORCING CONTRACT FOR SALE OF PROPERTY took agreement out of class of "binding and enforcible contracts" under this section. De Crette v. Mohler, 144 Md. 145, 124 A. 880 (1923).

WHERE CONSUMMATION OF A SALE IS DEPENDENT UPON A CONDITION the principal's agreement to pay a commission to the broker is defendant upon the stipulated contingency; and if the broker acquiesces in the arrangement, and reasonable and bona fide efforts are made by the principal to perform the condition, but the efforts are unsuccessful, the broker is not entitled to a commission. Borowski v. Meyers, 195 Md. 226, 72 A.2d 701 (1950).

Where broker negotiates contract for sale of realty, upon condition that purchaser may rescind contract if gross receipts do not aggregate a certain amount, he is not entitled to commission where purchaser rescinds contract because receipts were not as represented. Borowski v. Meyers, 195 Md. 226, 72 A.2d 701 (1950).

Company's dissatisfaction with a proposed lease discharged its obligations under a brokerage agreement with the broker; in addition, the broker's inequitable practices gave it unclean hands, prohibiting it from obtaining a commission from the company. Fischer Org., Inc. v. Landry's Seafood Rests., Inc., 143 Md. App. 65, 792 A.2d 349 (2002).

RIGHT TO COMMISSION REQUIRES LICENSURE. --Defendant was not entitled to a commission under this section on a sale of real estate formerly owned by a Chapter 7 debtor, because Maryland law roundly prohibits collection "in a court of the State" by a person who is not licensed in Maryland as a real-estate broker, for activities for which Maryland requires a real-estate broker's license. Binswanger Cos. v. Merry-Go-Round Enters., Inc., 258 Bankr. 608 (D. Md. 2001).

FACT THAT CUSTOMER PROCURED BY BROKER BECAME ASSOCIATED WITH OTHERS who joined with such customer in purchase of property does not affect broker's right to a commission. Zetlin v. Scher, 241 Md. 590, 217 A.2d 266 (1966).

QUESTION WHETHER OR NOT A BROKER WAS THE PROCURING CAUSE OF A SALE IS ORDINARILY LEFT TO THE JURY for decision, and it should not be withdrawn from their consideration unless the evidence admits of no reasonable inference that the agreement of sale was the result of the broker's service. Sanders v. Devereux, 231 Md. 224, 189 A.2d 604 (1963).

As with the question of whether the broker was employed within the meaning of this section, so also the question of whether the broker was the procuring cause of the lease is ordinarily a question of fact for the jury and not the court. Weinberg v. Desser, 243 Md. 347, 221 A.2d 66 (1966).

WHEN REVOCATION OF AGENCY WILL DEFEAT BROKER'S RIGHT. --In order that revocation of the agency may defeat the broker's right to commissions the revocation must be free of bad faith. Steele v. Seth, 211 Md. 323, 127 A.2d 388 (1956); Leimbach v. Nicholson, 219 Md. 440, 149 A.2d 411 (1959).

The term "bad faith," in this connection, imports a termination for the purpose of defrauding the broker, after his efforts have put the owner in a position to close the sale on substantially the terms stated. Leimbach v. Nicholson, 219 Md. 440, 149 A.2d 411 (1959).

And an owner may terminate a unilateral contract of employment at will, and without assigning any cause, good or bad, prior to the production of a purchaser ready and willing to buy on terms satisfactory to the owner. Leimbach v. Nicholson, 219 Md. 440, 149 A.2d 411 (1959).

COMMISSION ON SALE WHERE HOUSE SHOWN WITHOUT WRITTEN OR EXPLICIT ORAL AGREEMENT. --A relationship of principal and agent was created when the sellers agreed to allow a broker to show their house, with a view to effecting a sale, even though there was no written or explicit oral agreement to that effect and the sellers were obligated to pay the customary commission upon sale. Heslop v. Dieudonne, 209 Md. 201, 120 A.2d 669 (1956).

INACTION BY BROKER. --Where a broker is authorized by a property owner to sell property, inaction by the broker for a period of time may constitute an abandonment of the employment contract. MacWilliams v. Bright, 273 Md. 632, 331 A.2d 303 (1975).

BROKER'S RECOVERABLE DAMAGES FOR A WRONGFUL REVOCATION OF THE BROKERAGE AGREEMENT may be different from his earned commissions under the terms of the agreement. Nily Realty, Inc. v. Wood, 272 Md. 589, 325 A.2d 730 (1974).

BROKER CHARGEABLE WITH KNOWLEDGE OF § 3-105 OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE. --Broker was chargeable with knowledge that two thirds of stockholders of country club must approve sale of club as required by § 3-105 of the Corporations and Associations Article, if the sale were to go through, and so when broker signed contract of sale he agreed that he would get no commission unless stockholders approved the sale as effectively as if that proviso had been written in the contract in so many words. Prince George's Country Club, Inc. v. Edward R. Carr, Inc., 235 Md. 591, 202 A.2d 354 (1964).

IMPLIED EMPLOYMENT. --Where the undisputed facts established that the debtor in possession (DIP) had an implied contract to employ the plaintiff as an agent for the purpose of selling

property to a particular buyer, and that the plaintiff introduced the buyer to the subject property, showing the property with the permission of the DIP, the facts were sufficient to establish the plaintiff's implied employment relationship with the DIP. The Binswanger Cos. v. Merry-Go-Round Enterprises, Inc., 231 Bankr. 241 (Bankr. D. Md. 1999), aff'd, 258 Bankr. 608 (D. Md. 2001).

AMOUNT OF COMMISSIONS IN ABSENCE OF AGREEMENT AS TO COMPENSATION. --Where the jury found that brokerage commissions had been earned, the brokers, in the absence of an agreement as to compensation, were entitled to customary commissions or reasonable remuneration. Weinberg v. Desser, 243 Md. 347, 221 A.2d 66 (1966).

If there is an established custom in the locality with respect to the amount of compensation to which a broker is entitled, the law implies a promise on the part of the employer to pay the usual or customary commissions and if no such usage or custom can be shown, a broker is entitled to the reasonable value of his services. Weinberg v. Desser, 243 Md. 347, 221 A.2d 66 (1966).

For a broker to recover a commission on renewal of a lease which was originally procured by the broker on property subsequently sold, it will be necessary for him to establish to the satisfaction of the trier of fact that the customary commission due from a landowner to a broker for procurement of a lease in Baltimore City includes a commission upon a subsequent renewal of the lease under an option to renew contained in the lease, notwithstanding the fact that the renewal was in nowise procured by or induced by the broker. He must further establish that the parties had knowledge of this custom or that it was so uniform and notorious that they must be supposed to have contracted with reference to it. The broker's burden includes the further obligation to establish the amount of commissions due under any such custom, if there is in fact such a custom. Eastern Assocs. v. Sarubin, 274 Md. 378, 336 A.2d 765 (1975).

BURDEN OF PROOF. --The burden of proof is, of course, on the plaintiff broker to show that he was the procuring cause of the sale. Arthur H. Richland Co. v. Morse, 169 F. Supp. 544 (D. Md.), aff'd, 272 F.2d 183 (4th Cir. 1959).

Where a broker seeks to collect a commission under this statute, he is required to prove that he was employed by the owner and that he was the procuring cause of the sale. The Binswanger Cos. v. Merry-Go-Round Enterprises, Inc., 231 Bankr. 241 (Bankr. D. Md. 1999), aff'd, 258 Bankr. 608 (D. Md. 2001).

EXISTENCE OF PRINCIPAL-AGENT RELATIONSHIP IS ORDINARILY A QUESTION OF FACT. Hogan v. Q.T. Corp., 230 Md. 69, 185 A.2d 491 (1962).

EVIDENCE AS TO CUSTOMARY COMMISSIONS AND FAIR VALUE OF SERVICES RENDERED. --Brokers should have been permitted to introduce evidence to show, if they could, that the schedule of commissions adopted by the local real estate board was the customary charge for the services they had performed for the defendants, and, if there was any proof to that effect, the jury should have been instructed accordingly. As a precaution, however, the brokers (in addition to showing what they contended were the customary commissions) should also have produced evidence of the fair value of the services rendered. Weinberg v. Desser, 243 Md. 347, 221 A.2d 66 (1966).

In a suit by brokers for commissions on a quantum meruit basis, testimony as to customary commission of brokers was not objectionable on the ground that there was an agreement upon a net price, where the jury found that no such agreement existed. Mayne v. Eig, 215 Md. 270, 137 A.2d 557 (1958).

INSTRUCTIONS TO JURY. --An instruction to the jury, in an action by real estate brokers for commissions, to the effect that once the sale has been consummated and the contract of sale signed, there was no limitation upon the right of the brokers thereafter to represent any party that they wished, so long as they did not hinder, delay or interfere with the sale which had already been consummated was held to be proper. Mayne v. Eig, 215 Md. 270, 137 A.2d 557 (1958).

Where the trial judge, in charging the jury on the question of damages in suit by real estate brokers for commissions, referred to the statutory provision with regard to the customary or

agreed commission, and pointed out that the only testimony on the amount of the commission was that of the brokers that the customary commission was five percent, or $10,000, the court found no error in the instruction as given. Mayne v. Eig

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 1. MISCELLANEOUS RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-106 (2006)

§ 14-106. Accountability to cotenant for rent received from third party

A tenant in common or a joint tenant who receives rent from a third party for the use and enjoyment of the property is accountable to any cotenant for that portion of the rent over and above his proportionate share.

HISTORY: An. Code 1957, art. 21, § 14-106; 1974, ch. 12, § 2; 1997, ch. 14, § 1.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 1. MISCELLANEOUS RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-107 (2006)

§ 14-107. Partition

(a) Decree of partition. -- A circuit court may decree a partition of any property, either legal or equitable, on the bill or petition of any joint tenant, tenant in common, parcener, or concurrent owner, whether claiming by descent or purchase. If it appears that the property cannot be divided without loss or injury to the parties interested, the court may decree its sale and divide the money resulting from the sale among the parties according to their respective rights. The right to a partition or sale includes the right to a partition or sale of any separate lot or tract of property, and the bill or petition need not pray for a partition of all the lots or tracts.

(b) Minors, disabled, and nonresidents. -- This section applies regardless of whether any party, plaintiff, or defendant is a minor, disabled, or a nonresident.

(c) Deed. -- A sale and deed made pursuant to an order of the court in the exercise of the power provided in this section is good and sufficient at law to transfer property of the person. A deed executed in exercise of the above power provided in this section shall be executed by the person the court appoints for the purpose.

(d) Encumbrance on property. -- If any bill or petition is filed under the provisions of this section for the sale of property, any person holding a mortgage, other encumbrance on the property, or an undivided interest in the property may be made a party to the bill, and the property shall be sold free and clear of the mortgage or other encumbrance. However, the rights of a lienor shall be protected in the distribution of the proceeds of the sale.

HISTORY: An. Code 1957, art. 21, § 14-107; 1974, ch. 12, § 2.

I. General Consideration.

II. Jurisdiction of Court of Equity.

III. What May Be Partitioned.

IV. Who May Compel Partition.

V. Parties.

VI. Pleading and Proof.

VII. Sale or Partition in Kind.

VIII. Effect of Decree; Title of Purchaser.

I. GENERAL CONSIDERATION.

MARYLAND LAW REVIEW. --
For note concerning power of equity to bind unborn persons to a sale for partition, see 18 Md. L. Rev. 254 (1958).
For article, "The Law/Equity Dichotomy in Maryland," see 39 Md. L. Rev. 427 (1980).

UNIVERSITY OF BALTIMORE LAW REVIEW. --For discussion, "Property Disposition upon Divorce in Maryland: An Analysis of the New Statute," see 8 U. Balt. L. Rev. 377 (1979).

PURPOSE. --The purpose of this section is to minimize loss or injury to the parties. Kline v. Kline, 93 Md. App. 696, 614 A.2d 984 (1992).

PARTITION DEFINED. --Partition has been defined as "[the] dividing of lands held by joint tenants, coparceners or tenants in common, into distinct portions, so that they may hold them in severalty." Boyd v. Boyd, 32 Md. App. 411, 361 A.2d 146 (1976).

RIGHT TO PARTITION IN KIND EXISTED INDEPENDENT OF STATUTE. --The right of a cotenant to a partition in kind of real estate, if feasible, existed and continues to exist, independent of any statute. Hardy v. Leager, 212 Md. 565, 130 A.2d 737 (1957); Baltimore Gas & Elec. Co. v. Bowers, 221 Md. 337, 157 A.2d 610 (1960).

The writ of partition was recognized at common law. Dampman v. Litzau, 261 Md. 196, 274 A.2d 347 (1971).

THIS SECTION ADDED ANOTHER MEANS OF ATTAINING SEPARATE ENJOYMENT. --This section did not impair the previously existing right of partition, but added another means of attaining separate enjoyment -- that is, by sale where the interest of all the parties requires that mode of partition. Hardy v. Leager, 212 Md. 565, 130 A.2d 737 (1957).

At common law, the only mode of partition of land was partition in kind. The rigors of this rule have been relieved by this section. Boyd v. Boyd, 32 Md. App. 411, 361 A.2d 146 (1976).

AND EMPOWERED COURT TO ORDER SALE AND DISTRIBUTE PROCEEDS. --Prior to the adoption of this section conferring such power, a court of equity could not order a sale and distribute the proceeds, and it was to remedy this situation that this section was passed. Hardy v. Leager, 212 Md. 565, 130 A.2d 737 (1957).

By express provision of this section, any tenant in common has the right to secure separate enjoyment of his interest either by partition or by sale and division of the proceeds. McCally v. McCally, 250 Md. 541, 243 A.2d 538 (1968).

The court itself, having acquired jurisdiction over the parties and the subject matter, has authority to decree a sale and an equitable division of the proceeds without further action on the part of any of the parties. Bowers v. Baltimore Gas & Elec. Co., 228 Md. 624, 180 A.2d 878 (1962).

Partition is an undeniable right if feasible, and where partition is found to be impossible, the right to a sale under the statute as the only means of effecting partition, becomes equally undeniable. Bowers v. Baltimore Gas & Elec. Co., 228 Md. 624, 180 A.2d 878 (1962).

SECTION DISTINGUISHED FROM OTHER ANALOGOUS SECTIONS. --For a note dealing with this section, and distinguishing it from other analogous sections, see Tomlinson v. McKaig, 5 Gill 256 (1847).

SUBTITLE BJ OF THE MARYLAND RULES OF PROCEDURE IMPLEMENTS THIS SECTION. Boyd v. Boyd, 32 Md. App. 411, 361 A.2d 146 (1976).

TRANSFEREE RECEIVES SAME PROPORTIONATE PART OF PROCEEDS OF SALE. --A transferee of a grantor's entire undivided interest in a parcel of land will receive, in a sale in lieu of partition, a proportionate part of the net proceeds of the sale of the entire tract equal to the ratio that the grantor's undivided interest in the parcel described in the metes and bounds deed bears to the total of the undivided interests in the entire tract. Johnson v. MacIntyre, 356 Md. 471, 740 A.2d 599 (1999).

PROTECTION OF EQUITABLE RIGHTS OF PARTIES. --While every tenant in common is entitled to the separate enjoyment of his interest either by partition or sale in lieu thereof, equity will adapt its methods to the exigencies of justice to protect equitable rights. Where one tenant in common pays a charge or encumbrance upon the common property, he is entitled to contribution from his cotenant, and as against his cotenant, to an equitable lien for the amount due him. Myers v. East End Loan & Sav. Ass'n, 139 Md. 607, 116 A. 453 (1922).

RECEIVERS ARE SOMETIMES APPOINTED TO COLLECT RENTS pending partition proceedings. Baker v. Baker, 108 Md. 269, 70 A. 418 (1908).

AS TO RIGHTS OF TENANTS of property sought to be partitioned, see Thruston v. Minke, 32 Md. 571 (1870).

AGREEMENT FOR PARTITION; SET OFF JUDGMENT IN PARTITION PROCEEDINGS. --For a case involving an agreement between tenants in common for a partition, and the right of set off of

a judgment in a partition proceeding, see Norwood v. Norwood, 4 H. & J. 112 (1811).

PARTITION OR SALE OF LANDS OF INFANT. --See Dalrymple v. Taneyhill, 4 Md. Ch. 171 (1853); Lawes v. Lumpkin, 18 Md. 334 (1862); Earle v. Turton, 26 Md. 23 (1866); Benson v. Benson, 70 Md. 253, 16 A. 657 (1889); Koontz v. Koontz, 79 Md. 357, 32 A. 1054 (1894).

In order that a sale might be decreed it must have been proved that all parties interested would be benefited by the sale. The fact that infants were complainants did not dispense with the necessity of such proof, nor did the answer of an infant, nor the answer of adult defendants, admitting such facts. Watson v. Godwin, 4 Md. Ch. 25 (1851).

Where lands of an infant are sold under this section, the proceeds go to the guardian. Bolgiano v. Cooke, 19 Md. 375 (1863); Benson v. Benson, 70 Md. 253, 16 A. 657 (1889).

CONTRACT FOR SALE OF PROPERTY OF INCOMPETENT is only a proposal until it is found to be for the interest and advantage of incompetent and is confirmed by court. Contract is not to the interest and advantage if it is now against incompetent's interest but might have been for his interest some months before bill was filed and contract submitted. Walker v. Wyse, 188 Md. 461, 52 A.2d 918 (1947).

DISMISSAL OF CLAIMS FOR ALLOWANCES FROM PROCEEDS OF ANTICIPATED SALE. --During a partition suit, dismissal of claims for allowances from the proceeds of an anticipated sale is without prejudice with regard to subsequent presentation to an auditor since a dismissal with prejudice would operate as an adjudication on the merits. Wooddy v. Wooddy, 270 Md. 23, 309 A.2d 754 (1973).

APPLIED IN Pyles v. Goller, 109 Md. App. 71, 674 A.2d 35 (1996).

II. JURISDICTION OF COURT OF EQUITY.

COURT FOUNDS ITSELF ON ITS GENERAL EQUITABLE JURISDICTION. --The court, in decreeing a partition, does not act ministerially and in obedience to the call of those parties who have right to partition, but founds itself upon its general equitable jurisdiction, and will adjust the equitable rights of all the parties interested in the estate. Bowers v. Baltimore Gas & Elec. Co., 228 Md. 624, 180 A.2d 878 (1962).

In matters of partition, a court founds itself upon its general jurisdiction as a court of equity, and administers its relief, ex aequo et bono according to its own notions of general justice and equity between the parties. Boyd v. Boyd, 32 Md. App. 411, 361 A.2d 146 (1976).

PARTITION ACTION IS EQUITABLE IN NATURE so that the chancellor is accorded broad discretionary authority. Maas v. Lucas, 29 Md. App. 521, 349 A.2d 655 (1975).

COURT OF EQUITY HAS AUTHORITY TO DECREE SALE OF REAL ESTATE OWNED BY TENANTS IN COMMON and to pass upon the issues raised by defendant. Defendant cannot, on appeal, object to jurisdiction of the court to pass upon questions which they prayed the court to decide. Cook v. Boehl, 188 Md. 581, 53 A.2d 555 (1947).

PROPERTY IN CUSTODIA LEGIS. --The decree for sale virtually takes possession of the property and vests it in the court; and the court may thenceforward exercise over it such control and authority as may be necessary for its beneficial preservation. The property is in custodia legis. Dampman v. Litzau, 261 Md. 196, 274 A.2d 347 (1971).

TEST OF THE COURT'S JURISDICTION IS WHETHER A DEMURRER WILL LIE to the bill; the court is not divested of its jurisdiction merely because the answer and proof deny the plaintiff's legitimacy. Barron v. Zimmerman, 117 Md. 296, 83 A. 258 (1912).

VESTED JURISDICTION NOT OUSTED BY SUBSEQUENT SUIT. --The subsequent filing of an amended bill to foreclose the equity of redemption in the property in a tax foreclosure proceeding should not oust the jurisdiction with which the court in the partition sale had already become vested. Dampman v. Litzau, 261 Md. 196, 274 A.2d 347 (1971).

When a court acquires jurisdiction of goods, chattels, or money in one case, the orderly process of the court requires that it shall be permitted to determine the rights of the parties in that case without the interference or interruption of a conflicting jurisdiction or of a separate and distinct action or proceeding. Dampman v. Litzau, 261 Md. 196, 274 A.2d 347 (1971).

AND COURT'S CONTROL OVER PROPERTY NOT DISTURBED WITHOUT ITS CONSENT. --The subject property having become in custodia legis by virtue of the appointment of the trustee to make the sale of the property in the partition suit, the court's control over the property should not be disturbed by a subsequent foreclosure suit without its consent. Dampman v. Litzau, 261 Md. 196, 274 A.2d 347 (1971).

EVEN THOUGH IT BE ATTEMPTED UNDER PARAMOUNT CLAIM OF RIGHT. --The possession and control of the court will not be allowed to be disturbed without the consent of the court even though it be attempted under a paramount claim of right. Dampman v. Litzau, 261 Md. 196, 274 A.2d 347 (1971).

Where, after the appointment of a trustee by a court of equity to sell certain property in lieu of partition, the purchasers of the same property at a previous tax sale continued their efforts to foreclose the right of redemption in the property, asserting a paramount claim of right over the parties to the partition suit, it was held that upon the filing of the decree of sale and appointment of a trustee in the partition suit, the property became in custodia legis and that the purchaser at the tax sale could not disturb the possession and control of the property in the court while it retained that status. Dampman v. Litzau, 261 Md. 196, 274 A.2d 347 (1971).

DISPOSITION OF SUBSEQUENT TAX FORECLOSURE CASE INVOLVING SAME PROPERTY. --Where property was subject to a partition suit, the sustaining of a demurrer to a bill of complaint without leave to amend in a tax foreclosure case involving the same property was improper since the latter suit would not be rendered moot until the consummation of the partition sale and subsequent distribution of proceeds. Dampman v. Litzau, 261 Md. 196, 274 A.2d 347 (1971).

It is proper and fair to grant leave to amend the bill of complaint in the tax foreclosure case to include as a party defendant the trustee appointed to make the sale in the partition suit involving the same property, so that the tax foreclosure case which was brought within the two-year period would still be viable. This is of importance because it is conceivable that the partition suit could be withdrawn or abandoned, and in such an event the purchasers at the tax sale would have lost their right to foreclose the right of redemption in the property. Dampman v. Litzau, 261 Md. 196, 274 A.2d 347 (1971).

Granting the plaintiffs in a tax foreclosure case leave to amend their bill of complaint, and suspending further proceedings in the tax foreclosure case until the conclusion of a partition suit involving the same property is not inconsistent with the in custodia legis theory. Dampman v. Litzau, 261 Md. 196, 274 A.2d 347 (1971).

COURT HAS NO JURISDICTION TO TRY TITLE TO PROPERTY as between the parties in a bill for partition. Cambridge Disct. Corp. v. Board of Educ., 181 Md. 455, 30 A.2d 753 (1943).

A bill for the sale of realty for the purpose of partition is not designed to try titles or to determine who are the owners of the estate as between adverse claimants. The object of such a suit is to make a sale for the benefit of the owners of the property. Cook v. Boehl, 188 Md. 581, 53 A.2d 555 (1947).

QUESTIONS OF TITLE, AND OF ADVERSE RIGHTS, CANNOT BE RAISED OR PASSED ON in partition proceedings. Jurisdiction under this section depends upon community of interest. Savary v. DaCamara, 60 Md. 139 (1883).

If the complainants have no interest in the estate, or if the defendants made by the bill have a paramount and exclusive right to the property, there is wanting that community of interest upon which the jurisdiction of a court of equity is predicated to decree partition, or the sale to facilitate it. A bill for partition cannot be made to serve as an action of ejectment, and is not designed to settle adverse rights. Savary v. DaCamara, 60 Md. 139 (1883); Cambridge Disct. Corp. v. Board of Educ., 181 Md. 455, 30 A.2d 753 (1943).

PROCEDURE WHERE VALIDITY OF OUTSTANDING LEASE IS QUESTIONED. --Where the answer to a bill for the partition of a ground rent shows that the validity of an outstanding lease is questioned, the court should hold the bill for a reasonable time so that such validity may be tested. Brendel v. Klopp, 69 Md. 1, 13 A. 589 (1888).

III. WHAT MAY BE PARTITIONED.

PERSONAL PROPERTY. --See Hewitt's Case, 3 Bland 184 (1831); Crapster v. Griffith, 2 Bland 5 (1831).

MARITAL PROPERTY. --Court was without authority to grant either party the option to purchase the marital business or home in lieu of partition. Kline v. Kline, 93 Md. App. 696, 614 A.2d 984 (1992).

LANDS LOCATED IN ANOTHER STATE. --A Maryland court of equity will not decree partition of lands located in another state. White v. White, 7 G. & J. 208 (1835).

PARTITION WILL NOT BE DENIED BECAUSE OF THE DIFFICULTY OR INCONVENIENCE ATTENDING IT. Campbell v. Lowe, 9 Md. 500 (1856).

OR BECAUSE EXPENSES OF PROCEEDING WILL EXCEED VALUE OF PROPERTY. --Partition or sale will be decreed, although the expenses of the proceeding more than consume the value of the property. Brendel v. Klopp, 69 Md. 1, 13 A. 589 (1888).

THERE MAY NOT BE A PARTIAL PARTITION IN KIND WITHOUT THE CONSENT OF THE PARTIES CONCERNED. Baltimore Gas & Elec. Co. v. Bowers, 221 Md. 337, 157 A.2d 610 (1960).

WHEN PARTIAL PARTITION CANNOT BE MADE. --Where certain parties own a one-fourth undivided interest in property, neither a partition among them nor a sale, under this section, can be had; partial partition cannot be made. Dugan v. Mayor of Baltimore, 70 Md. 1, 16 A. 501 (1888).

JURISDICTION DOES NOT EXIST WHERE PARTIES HOLD SEPARATE CONSECUTIVE INTERESTS. --The jurisdiction under this section does not exist where parties hold separate, consecutive interests -- such as a life estate and a reversion -- but is confined to cases where the interests are concurrent. Gill v. Wells, 59 Md. 492 (1883); Roche v. Waters, 72 Md. 264, 19 A. 535 (1890); Forbes v. Littell, 138 Md. 211, 114 A. 55 (1921).

THUS THERE MAY BE NO PARTITION BETWEEN LIFE TENANT AND REMAINDERMAN. --There may be no partition between a life tenant and a remainderman since this section does not apply to such a case. Tolson v. Bryan, 130 Md. 338, 100 A. 366 (1917).

BUT PARTITION MAY BE HAD WHERE ONE-HALF INTEREST IS HELD FOR LIFE WITH REMAINDER OVER. --There may be partition where a one-half interest is owned by the plaintiff and the other one-half interest is owned by one person for life with remainder over. Tolson v. Bryan, 130 Md. 338, 100 A. 366 (1917).

As to disposition of fund in such cases, see Tolson v. Bryan, 130 Md. 338, 100 A. 366 (1917).

OR WHERE FEE-SIMPLE OWNER OF ONE-THIRD INTEREST ALSO OWNS LIVE ESTATE IN OTHER TWO THIRDS. --Partition may be had under this section on bill filed by a fee-simple owner of undivided one-third interest against remaindermen in fee in other two thirds, although complainant also owns life estate in latter. Bosley v. Burk, 154 Md. 27, 139 A. 543 (1927).

AND SUIT WILL LIE FOR SALE OF JOINTLY OWNED REMAINDER DURING LIFE OF LIFE TENANT. --A bill may be filed under this section for the sale of a remainder, owned jointly,

during the life of the life tenant. Billingslea v. Baldwin, 23 Md. 85 (1865); Downin v. Sprecher, 35 Md. 474 (1872).

PLAINTIFFS HELD TO HAVE TAKEN A CONCURRENT INTEREST IN PROPERTY UNDER A WILL and to be entitled to file a bill under this section. Booth v. Eberly, 124 Md. 22, 91 A. 767 (1914); Lewis v. Carver, 140 Md. 121, 117 A. 108 (1922).

PARTITION MAY BE DECREED ALTHOUGH CERTAIN INFANT DEFENDANTS ARE ENTITLED TO EXECUTORY DEVISES in the land sought to be sold. Harris v. Harris, 6 G. & J. 111 (1834); Tolson v. Bryan, 130 Md. 338, 100 A. 366 (1917).

EFFECT OF POWER IN EXECUTOR TO SELL AND CONVEY INTEREST IN PROPERTY. --The right given to some of the owners of a one-seventh interest in certain property to file a bill under this section was not affected by the fact that a will conferred upon an executor a naked power to sell and convey the other six-sevenths interest. Booth v. Eberly, 124 Md. 22, 91 A. 767 (1914); Lewis v. Carver, 140 Md. 121, 117 A. 108 (1922).

SUIT NOT AUTHORIZED AFTER COMMENCEMENT OF PROCEEDINGS FOR SALE OF LAND BY MORTGAGEE. --This section does not authorize suit by cotenant mortgagors for sale of mortgaged land after proceedings have been taken by mortgagee for sale of same for default in payment. Hughes v. Federal Land Bank, 172 Md. 304, 191 A. 428 (1937).

IV. WHO MAY COMPEL PARTITION.

RIGHT TO PARTITION OR SALE DOES NOT DEPEND ON EXTENT OF INTEREST. --The right of a joint owner of property to have it partitioned or sold in lieu of partition, does not depend upon the extent of his interest. A sale of the common property may be decreed upon the bill of any concurrent owner where it appears that same cannot be divided among the parties entitled without loss or injury. Lewis v. Carver, 140 Md. 121, 117 A. 108 (1922).

ANY TENANT IN COMMON HAS RIGHT TO SECURE SEPARATE ENJOYMENT OF HIS INTEREST. --The general rule is also recognized that by express provision of our chancery statute, any tenant in common has the right to secure separate enjoyment of his interest either by partition or by sale and division of the proceeds. Gunter v. Gunter, 187 Md. 228, 49 A.2d 454 (1946); Baltimore Gas & Elec. Co. v. Bowers, 221 Md. 337, 157 A.2d 610 (1960).

Under this section and Subtitle BJ of the Maryland Rules of Procedure, a tenant in common has a right not only to compel partition in kind, but also, under some circumstances, to compel a sale in lieu of partition. Balderston v. Balderston, 40 Md. App. 239, 388 A.2d 183, cert. denied, 283 Md. 729 (1978).

TENANT IN COMMON HAS COMMON LAW RIGHT TO COMPEL PARTITION in kind. Balderston v. Balderston, 40 Md. App. 239, 388 A.2d 183, cert. denied, 283 Md. 729 (1978).

Where each co-tenant held an undivided interest in the property which could be separately transferred by a tenant-in-common, each co-tenant held the right to seek a partition and sale of the entire property. In re Scipio, 203 Bankr. 237 (Bankr. D. Md. 1996).

BUT STATUTORY RIGHT IS QUALIFIED. --The statutory right of a tenant in common to compel a sale in lieu of partition is qualified by § 1-104 of this article. Balderston v. Balderston, 40 Md. App. 239, 388 A.2d 183, cert. denied, 283 Md. 729 (1978).

MORTGAGEE OF UNDIVIDED INTEREST CANNOT FILE BILL FOR PARTITION under this section. Mitchell v. Farrish, 69 Md. 235, 14 A. 712 (1888).

TRUSTEE FOR BENEFIT OF CREDITORS to whom has been assigned a one-half interest in property, was not authorized to file a bill for partition. Ritchie v. Munder, 49 Md. 10 (1878).

TRUSTEES HOLDING PROPERTY AFTER DEATH OF LIFE TENANT AND EXERCISE OF POWER OF

APPOINTMENT. --Where a testator gives property to trustees to hold for the benefit of his daughter for life, and then (in case of her death without issue), for the benefit of such of his children and descendants, as said daughter might by will appoint, she being moreover given the power to dispose absolutely by will of certain money held by the trustees, and the daughter by her will executes the power by giving certain real property to one niece, pecuniary legacies to others and the sum of money which she was authorized to dispose of absolutely, to a third party, held that the trustees upon the death of the life tenant had no such interest in the property as entitled them to ask for a sale for partition. If the trustees have no money with which to pay the pecuniary legacies, they have an implied power of sale for that purpose, in the absence of an agreement obviating same. Harrison v. Denny, 113 Md. 509, 77 A. 837 (1910).

GRANTEE OF EASEMENT FROM LESS THAN ALL COTENANTS has a right in equity to require the grantor or his heirs to seek partition in order that the grantee may enjoy the full benefits of the conveyance. Baltimore Gas & Elec. Co. v. Bowers, 221 Md. 337, 157 A.2d 610 (1960).

MERE OBJECTION BY DISSENTIENT PARTIES WITHOUT MORE IS NOT GOOD REASON FOR DENYING PARTITION. Baltimore Gas & Elec. Co. v. Bowers, 221 Md. 337, 157 A.2d 610 (1960).

OWNER OF UNDIVIDED ONE-HALF INTEREST IN FEE IN FOUR TRACTS OF LAND had a right to a partition by sale under this section. Hardy v. Leager, 212 Md. 565, 130 A.2d 737 (1957).

PARTY TO VOID MARRIAGE. --Parties had married in good faith, the bride believing she was a widow. During 11 years of living together, they had acquired a farm. On discovery that her husband was alive, the purported marriage was annulled and it was held that the property was held as tenants in common and that trustees should be appointed to sell the property and divide the net proceeds. Donnelly v. Donnelly, 198 Md. 341, 84 A.2d 89 (1951).

CLEAN HANDS MAXIM DID NOT APPLY to prevent complainant from obtaining decree for sale of jointly held property where husband remarried after wife had been absent and unheard of for more than seven years. Townsend v. Morgan, 192 Md. 168, 63 A.2d 743 (1949).

WHERE PROPERTY WAS ACQUIRED AS INCIDENT TO ILLICIT RELATIONSHIP. --Where a man and woman living together without benefit of clergy had purchased property and taken title as tenants by the entireties, the fact that the property was acquired as an incident to an illicit relationship would not, under the circumstances, defeat the right of one of the co-owners to require a sale. Withers v. Douglas, 206 Md. 141, 110 A.2d 513 (1955).

ACCEPTANCE OF DIVORCE AND AWARD OF PERMANENT ALIMONY does not preclude husband from bringing suit for partition by sale of realty. Gunter v. Gunter, 187 Md. 228, 49 A.2d 454 (1946).

SEPARATION AGREEMENT RELINQUISHING RIGHT TO PARTITION PROPERTY OR COMPEL SALE held in tenancy in common is valid and enforceable, and the husband may not obtain a court-ordered sale of the property. Balderston v. Balderston, 40 Md. App. 239, 388 A.2d 183, cert. denied, 283 Md. 729 (1978).

V. PARTIES.

ALL COTENANTS MUST BE PARTIES. --A partition will not be decreed unless all cotenants are parties. Dugan v. Mayor of Baltimore, 70 Md. 1, 16 A. 501 (1888).

WIDOW OF COTENANT AS NECESSARY PARTY. --See Mitchell v. Farrish, 69 Md. 235, 14 A. 712 (1888).

ONE WHO CLAIMS EXCLUSIVE OWNERSHIP OF PROPERTY IS NOT PROPER PARTY TO

PROCEEDINGS to sell the property for partition purposes. Cambridge Disct. Corp. v. Board of Educ., 181 Md. 455, 30 A.2d 753 (1943).

OWNER OF THE LEASEHOLD INTEREST NEED NOT BE MADE A PARTY to a bill for the partition or sale of a ground rent. Brendel v. Klopp, 69 Md. 1, 13 A. 589 (1888).

As to tenants of the property being made parties, see Thruston v. Minke, 32 Md. 571 (1870).

MORTGAGES AND JUDGMENT CREDITORS. --Prior to Acts 1904, ch. 535, an incumbrancer, such as a mortgagee or judgment creditor, was not a proper party to partition proceedings; contra since said act. And a judgment creditor who is not made a party is not affected by partition proceedings. Thruston v. Minke, 32 Md. 571 (1870); McCormick v. McCormick, 104 Md. 325, 65 A. 54 (1906); Adams v. Peninsula Produce Exch., 138 Md. 656, 115 A. 106 (1921).

Except for this section, judgment creditor would not, as a rule, be proper party to partition case in which debtor was interested. Lee v. Keech, 151 Md. 34, 133 A. 835 (1926).

This section does not require that a holder of a mortgage or other encumbrance must in all cases be made a party to a partition proceeding for the sale of land. Bowers v. Baltimore Gas & Elec. Co., 228 Md. 624, 180 A.2d 878 (1962).

PARTIES TO PARTITION OF INFANT'S LAND. --See Bolgiano v. Cooke, 19 Md. 375 (1863); Downes v. Friel, 57 Md. 531 (1882); Benson v. Benson, 70 Md. 253, 16 A. 657 (1889); Simpson v. Bailey, 80 Md. 421, 30 A. 622 (1895).

VI. PLEADING AND PROOF.

NECESSARY ALLEGATIONS UNDER SECTION. --See Fox v. Reynolds, 50 Md. 564 (1879), holding a bill of complaint not to be in conformity with this section.

DESCRIPTION OF PROPERTY IN BILL HELD SUFFICIENT. --See Thruston v. Minke, 32 Md. 571 (1870).

MULTIFARIOUSNESS. --A bill for partition, and also seeking the enforcement and foreclosure of a mortgage on the same land, is multifarious. Belt v. Bowie, 65 Md. 350, 4 A. 295 (1886).

A bill filed under this section held not to be multifarious. Littell v. Littell, 137 Md. 690, 114 A. 926 (1920).

NECESSITY FOR ALLEGATION THAT LANDS "CANNOT BE DIVIDED WITHOUT LOSS OR INJURY." --Jurisdiction of equity to order a sale in lieu of partition was upheld, although there was no allegation in the bill that a division in kind could not be made without loss or injury. Jurisdiction having been assumed, other suitable relief may be afforded. Young v. Diedel, 141 Md. 670, 119 A. 448 (1922).

For cases involving the question of whether there is a sufficient allegation that the property "cannot be divided without loss or injury," see Thruston v. Minke, 32 Md. 571 (1870); Wilson v. Green, 63 Md. 547 (1885); Ballantyne v. Rusk, 84 Md. 649, 36 A. 361 (1897).

BILL HELD TO BE IN STRICT CONFORMITY WITH SECTION. --See Barron v. Zimmerman, 117 Md. 296, 83 A. 258 (1912).

MATTERS NECESSARY TO BE PROVED. --As to proof of the title of the co-owners, and other matters necessary to be proved under this section, see Warfield v. Gambrill, 1 G. & J. 503 (1829); Calwell v. Boyer, 8 G. & J. 136 (1836).

VII. SALE OR PARTITION IN KIND.

PURPOSE OF COURT'S ORDERING SALE IS TO MINIMIZE LOSS OR INJURY TO PARTIES and therefore a public sale, without reservation of the right to withdraw the property from the sale, either before, during, or after the sale, but before ratification, defeats the purpose of this section. Lentz v. Dypsky, 49 Md. App. 97, 430 A.2d 109 (1981).

PARTITION SALE IS NOT SAME AS FORECLOSURE OR SHERIFF'S SALE. Lentz v. Dypsky, 49 Md. App. 97, 430 A.2d 109 (1981).

SALE CANNOT BE DECREED EXCEPT UNDER SUCH CIRCUMSTANCES AS JUSTIFY A PARTITION. Dugan v. Mayor of Baltimore, 70 Md. 1, 16 A. 501 (1888).

SECTION AUTHORIZED SALE OF LANDS WHETHER ACQUIRED BY DESCENT OR BY PURCHASE. --This section authorizes the sale of lands where they are held jointly, whether by descent or by purchase. Billingslea v. Baldwin, 23 Md. 85 (1865).

COURT DETERMINES WHETHER PROPERTY PARTITIONED OR SOLD. --The determination of whether property shall be partitioned in kind or sold in lieu of partition is for the court to determine. Boyd v. Boyd, 32 Md. App. 411, 361 A.2d 146 (1976).

AND THE ULTIMATE ISSUE IN DETERMINING WHETHER TO SELL OR PARTITION IS WHETHER OR NOT LOSS OR INJURY WILL OCCUR to the parties interested if the property is divided in kind. Boyd v. Boyd, 32 Md. App. 411, 361 A.2d 146 (1976).

The criterion in determining whether to sell or partition is not whether there was a "possibility" that the tract could be partitioned in kind without loss or injury, but whether upon the basis of a preponderance of the evidence it appears that the property could not be divided without loss or injury to the parties interested. Boyd v. Boyd, 32 Md. App. 411, 361 A.2d 146 (1976).

BURDEN OF PROOF ON THE QUESTION OF LOSS OR INJURY is upon the complainant seeking a sale in lieu of partition. Boyd v. Boyd, 32 Md. App. 411, 361 A.2d 146 (1976).

SALE MAY BE HAD THOUGH PARTITION IS MATTER OF RIGHT. --Under this section -- even though partition is still a matter of right -- when partition in kind cannot be made without loss or injury to the parties, the court may decree a sale of the property. Baltimore Gas & Elec. Co. v. Bowers, 221 Md. 337, 157 A.2d 610 (1960).

ALLEGATION TO ENTITLE TO SALE UNDER THIS SECTION SHOULD BE DIRECT AND SPECIFIC, and especially when proceedings for sale are made after mortgage proceedings have been instituted and bond of attorney named in mortgage has been filed. Tucker v. Hudson, 158 Md. 13, 148 A. 116 (1929).

SALE MAY BE HAD ON BILL PRAYING FOR PARTITION AND GENERAL RELIEF. --On a bill praying for partition and general relief, if the commissioners appointed to divide the land report that it is not susceptible of partition, and such report is ratified, the property may be sold and the proceeds distributed without amendment of the bill. Johnson v. Hoover, 75 Md. 486, 23 A. 903 (1892).

AND PARTITION MAY BE HAD WHERE PRAYER IS FOR SALE AND FOR GENERAL RELIEF. --A partition may be had without amendment of the bill where the prayer is for a sale and for general relief. Rowe v. Gillelan, 112 Md. 108, 76 A. 500 (1910).

On a bill praying for a sale and general relief, partition may be had. Campbell v. Lowe, 9 Md. 500 (1856).

BUT SALE MAY BE HAD ONLY WHERE PROPERTY CANNOT BE DIVIDED IN KIND. --It is only where property cannot be divided in kind without loss or injury that a sale may be had. Rowe v. Gillelan, 112 Md. 108, 76 A. 500 (1910).

TRUSTEES ARE OFFICERS OF COURT. --Owners of property may not reserve the right to control the sale of their property through mechanization of the trustees because trustees are

not mere puppets of the owners; rather, they are officers of the court, and as such are under a duty to the court and to the owner to obtain the best possible price, under the circumstances, and, if necessary, to withdraw the property from the sale. Lentz v. Dypsky, 49 Md. App. 97, 430 A.2d 109 (1981).

AND POWERS CONFERRED UPON TRUSTEES TO SELL ARE NOT WITHOUT BOUNDS. Lentz v. Dypsky, 49 Md. App. 97, 430 A.2d 109 (1981).

TRUSTEE'S SALE IS NOT NORMALLY SET ASIDE BECAUSE OF INADEQUACY OF SALES PRICE; an exception to that rule occurs when the price is so grossly insufficient as to shock the conscience of the court. Lentz v. Dypsky, 49 Md. App. 97, 430 A.2d 109 (1981).

MISCONDUCT, FRAUD, OR UNFAIRNESS ON PART OF TRUSTEES MAY RESULT IN SALE'S BEING INVALIDATED. Lentz v. Dypsky, 49 Md. App. 97, 430 A.2d 109 (1981).

Where trustees did not offer the property in such a manner as to bring its fair market value, and did not exercise the same judgment and prudence that a careful owner would exercise in the sale of his own property, the sale may be nullified. Lentz v. Dypsky, 49 Md. App. 97, 430 A.2d 109 (1981).

FACTS HELD SUFFICIENT TO NULLIFY SALE. --An erroneous belief by trustees that property could not be offered at an auction sale subject to the reservation of rights, when coupled with bids at sale of approximately 50 percent of value of properties, constitutes sufficient cause for the chancellor to nullify the sale. Lentz v. Dypsky, 49 Md. App. 97, 430 A.2d 109 (1981).

NOTHING IN THIS SECTION RESTRICTS SALE TO A MINIMUM OR UPSET PRICE. Kemp v. Waters, 165 Md. 521, 170 A. 178 (1934).

COURT'S JUDGMENT NOT TO BE SUBSTITUTED FOR THAT OF COMMISSIONERS. --In the absence of "clear and satisfactory evidence of error" a court cannot substitute its judgment for that of the commissioners and set aside a partition, and there is no reason for a different rule in a case where the commissioners, having expressed the reasons therefor, reach the conclusion that partition in kind is not feasible. Bowers v. Baltimore Gas & Elec. Co., 228 Md. 624, 180 A.2d 878 (1962).

TENANT'S IN COMMON. --No tenant-in-common owes to the other tenant-in-common a duty to purchase from the co-tenant the co-tenancy interest; as a result, a co-tenant has no rights under state law to offer his or her interest in the property to the remaining co-tenant and demand payment. In re Scipio, 203 Bankr. 237 (Bankr. D. Md. 1996).

WHERE HUSBAND AND WIFE ACQUIRE PROPERTY AS TENANTS BY THE ENTIRETIES AND THE WIFE CONTRIBUTES A MAJOR PORTION OF THE PURCHASE PRICE, for purposes of partition, in legal effect and in the absence of proof that her donation was not her voluntary act, the transaction on its face amounts to an absolute gift, and the wife is not entitled to a larger share. DiTommasi v. DiTommasi, 27 Md. App. 241, 340 A.2d 341 (1975).

WHERE A LIFE TENANT AND A REMAINDERMAN TOGETHER HOLD SAME PROPERTY INTEREST AS APPELLANT, WHO HAS A FEE SIMPLE INTEREST, then, the appellees have a property interest which is "concurrent" with that of the appellant, and therefore, they were proper parties to bring a bill or petition for sale in lieu of partition. Petrlik v. Petrlik, 43 Md. App. 222, 403 A.2d 850 (1979).

EXTENT OF A COTENANT'S RIGHT IN A PARTITION ACTION TO COMPENSATION FOR IMPROVEMENTS is the extent to which his improvements enhance the value of the property at the time of sale. Thus, compensation based upon the original cost of the improvement or even the replacement cost is not allowed because it might result in the other owners being improved out of their property by an extravagant or unbusinesslike cotenant, and the improvement may have depreciated at the time of the sale. Maas v. Lucas, 29 Md. App. 521, 349 A.2d 655 (1975).

SCOPE OF REVIEW. --Because the determination of the propriety of partition is exclusively in the province of the chancellor, an appellate court can reverse his determination only if it were clearly erroneous. Boyd v. Boyd, 32 Md. App. 411, 361 A.2d 146 (1976).

DECREE FOR SALE OF PROPERTY UPHELD. --Specific performance of an alleged contract denied, and a decree for the sale of the property under this section upheld. Rickard v. Neff, 130 Md. 89, 99 A. 940 (1917).

WHEN MUTATION FROM REALTY TO PERSONALTY TAKES PLACE. --Where land is sold under this section, the mutation from realty to personalty does not take place until the sale has been ratified and the purchaser has complied with its terms. Betts v. Wirt, 3 Md. Ch. 113 (1851).

VIII. EFFECT OF DECREE; TITLE OF PURCHASER.

PARTIES ACQUIRE NO RIGHTS BY A DECREE FOR SALE BY WAY OF PARTITION THAT THEY HAD NOT BEFORE, as the sale is merely a process to enable them to enjoy more effectually the rights they previously held. Savary v. DaCamara, 60 Md. 139 (1883); Cambridge Disct. Corp. v. Board of Educ., 181 Md. 455, 30 A.2d 753 (1943).

PARTITION DECREE IS SUBJECT TO LEASE. --When property is partitioned after a lease has been executed by one cotenant, and the lessee is not a party to the proceeding, the partition decree is subject to the lease so far as the interest of that cotenant is concerned. Cook v. Boehl, 188 Md. 581, 53 A.2d 555 (1947).

AND LESSEE CANNOT BE FORCIBLY EVICTED. --When a lease has been made either before or after the filing of a bill for partition of real estate, the lessee cannot be forcibly evicted by a purchaser deriving title through the partition sale, unless the decree of the court of equity in the partition suit adjudicates the rights of the lessee and orders him to surrender possession. Cook v. Boehl, 188 Md. 581, 53 A.2d 555 (1947).

SALE OF LAND SUBJECT TO EASEMENT. --While this section provides that a person holding a mortgage or other encumbrance on the land or an undivided interest therein may be made a party to a partition proceeding to the end that the land or interests therein shall be sold free and clear of such liens and encumbrances and the rights of such lienors protected in the distribution of the proceeds, there is nothing in the section precluding a sale of land subject to an easement. Bowers v. Baltimore Gas & Elec. Co., 228 Md. 624, 180 A.2d 878 (1962).

ERRONEOUS ACTION OF COURT ON MATTERS NOT JURISDICTIONAL CANNOT BE RAISED COLLATERALLY, and does not affect the title of a purchaser under this section. Bolgiano v. Cooke, 19 Md. 375 (1863); Downes v. Friel, 57 Md. 531 (1882); Slingluff v. Stanley, 66 Md. 220, 7 A. 261 (1886); Dugan v. Mayor of Baltimore, 70 Md. 1, 16 A. 501 (1888); Benson v. Benson, 70 Md. 253, 16 A. 657 (1889).

PURCHASER'S TITLE NOT VITIATED BY FACT THAT NO TESTIMONY WAS TAKEN. --Where all parties are of legal age and the defendants admit the allegations of the bill, the fact that no testimony is taken in support of such allegations does not vitiate purchaser's title, and is not a ground of exceptions thereto. Bolgiano v. Cooke, 19 Md. 375 (1863); Slingluff v. Stanley, 66 Md. 220, 7 A. 261 (1886); Scarlett v. Robinson, 112 Md. 202, 76 A. 181 (1910).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 1. MISCELLANEOUS RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-108 (2006)

§ 14-108. Quieting title

(a) Conditions. -- Any person in actual peaceable possession of property, or, if the property is vacant and unoccupied, in constructive and peaceable possession of it, either under color of title or claim of right by reason of his or his predecessor's adverse possession for the statutory period, when his title to the property is denied or disputed, or when any other person claims, of record or otherwise to own the property, or any part of it, or to hold any lien encumbrance on it, regardless of whether or not the hostile outstanding claim is being actively asserted, and if an action at law or proceeding in equity is not pending to enforce or test the validity of the title, lien, encumbrance, or other adverse claim, the person may maintain a suit in equity in the county where the property lies to quiet or remove any cloud from the title, or determine any adverse claim.

(b) Proceeding. -- The proceeding shall be deemed in rem or quasi in rem so long as the only relief sought is a decree that the plaintiff has absolute ownership and the right of disposition of the property, and an injunction against the assertion by the person named as the party defendant, of his claim by any action at law or otherwise. Any person who appears of record, or claims to have a hostile outstanding right, shall be made a defendant in the proceedings.

HISTORY: An. Code 1957, art. 21, § 14-108; 1974, ch. 12, § 2.

MARYLAND LAW REVIEW. --For article, "The Law/Equity Dichotomy in Maryland," see 39 Md. L. Rev. 427 (1980).

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "Merger of Law and Equity Under the Revised Maryland Rules: Does It Threaten Trial by Jury?" see 14 U. Balt. L. Rev. 1 (1984).

THIS SECTION APPEARS TO BE FOR THE MOST PART MERELY DECLARATORY OF THE LAW AS IT EXISTED PRIOR TO JUNE 1, 1955. Cherry v. Siegert, 215 Md. 81, 136 A.2d 754 (1957).

AND DOES NOT CONFLICT WITH ESTABLISHED EQUITY JURISDICTION. --A demurrer to a bill to quiet title, brought by a plaintiff in possession of real property against tax sale purchasers, which challenged equitable jurisdiction and asserted that the suit should somehow be at law, was not sustainable. Equity jurisdiction over such suits has been recognized in this State for many years, and nothing in this section in any way conflicts with this firmly established jurisdiction. Thomas v. Hardisty, 217 Md. 523, 143 A.2d 618 (1958).

The right of a plaintiff who is himself in possession of land to invoke the aid of equity in an action to quiet title has been recognized in this State for many years and there is nothing in this section which derogates or conflicts with the firmly established jurisdiction of equity in such a case. Romney v. Steinem, 228 Md. 605, 180 A.2d 873 (1962).

POSSESSION BY THE PUTATIVE OWNER CONTINUES TO BE A DISTINGUISHING FEATURE OF AN ACTION TO QUIET TITLE. Porter v. Schaffer, 126 Md. App. 237, 728 A.2d 755 (1999), cert. denied, 355 Md. 613, 735 A.2d 1107 (1999).

SCOPE OF RELIEF AT COMMON LAW, under a bill quia timet to quiet title or remove a cloud, has probably been somewhat enlarged by this section. Barnes v. Webster, 220 Md. 473, 154 A.2d 918 (1959); Romney v. Steinem, 228 Md. 605, 180 A.2d 873 (1962).

EQUITY LACKS JURISDICTION WHERE THERE IS AN ADEQUATE REMEDY AT LAW TO OUST THE POSSESSOR. Barnes v. Webster, 220 Md. 473, 154 A.2d 918 (1959).

The ground of equity jurisdiction is that, being in possession, the owner is denied a remedy at law. Barnes v. Webster, 220 Md. 473, 154 A.2d 918 (1959).

BILL TO QUIET TITLE WILL LIE WHERE OWNER IS IN POSSESSION. Barnes v. Webster, 220 Md. 473, 154 A.2d 918 (1959).

OBJECT OF BILL TO QUIET TITLE is to protect the owner of legal title from being disturbed in his possession and from being harassed by suits in regard to his title by persons setting up unjust and illegal pretensions. Wathen v. Brown, 48 Md. App. 655, 429 A.2d 292 (1981).

RES JUDICATA --Adverse possession claimant was not precluded from seeking to quiet title by an earlier judgment against the claimant, because at the time of the earlier judgment, the claimant had not yet received title by virtue of after-acquired good title conveyed to the claimant by virtue of a parent's adverse possession. Hughes v. Insley, -- Md. App. --, -- A.2d -- (May 28, 2003).

CLAIM PRECLUSION --Title acquired by a decedent through adverse possession passed to personal representative, who thereafter conveyed the property to herself, and after that, to the claimant against the record titleholder; since the claimant did not have good title until those events occurred, the claimant was not precluded by an earlier unsuccessful quiet title action from raising it as a counterclaim in a later quiet title action, and declaratory judgment was entered quieting title in the claimant. Hughes v. Insley, 155 Md. App. 608, 845 A.2d 1 (2003), cert. denied, 381 Md. 675, 851 A.2d 594 (2004).

BURDEN OF PROOF. --Once a person in possession of land establishes a direct chain of title to a State patent that purported to convey the land at issue, the burden of proof shifts to the opposing party to demonstrate a superior record title. Porter v. Schaffer, 126 Md. App. 237, 728 A.2d 755 (1999), cert. denied, 355 Md. 613, 735 A.2d 1107 (1999).

BEFORE THIS SECTION, TITLE AND POSSESSION IN PLAINTIFFS WERE NECESSARY IN ORDER TO MAINTAIN SUITS TO QUIET TITLE. Shapiro v. Board of County Comm'rs, 219 Md. 298, 149 A.2d 396 (1959).

AND THIS SECTION HAS NOT DISPENSED ENTIRELY WITH THE NECESSITY OF SHOWING POSSESSION, ACTUAL OR CONSTRUCTIVE. Barnes v. Webster, 220 Md. 473, 154 A.2d 918 (1959).

HENCE, A COMPLAINT MUST ALLEGE POSSESSION. Barnes v. Webster, 220 Md. 473, 154 A.2d 918 (1959); Wathen v. Brown, 48 Md. App. 655, 429 A.2d 292 (1981).

OR THAT LANDS ARE VACANT AND UNOCCUPIED. --Where a bill does not allege that lands are vacant and unoccupied, nor does it allege any other facts tending to show that there is not an adequate remedy at law, which is sole ground of equity jurisdiction, the bill is clearly open to demurrer. Barnes v. Webster, 220 Md. 473, 154 A.2d 918 (1959); Wathen v. Brown, 48 Md. App. 655, 429 A.2d 292 (1981).

SUIT BY PARTIES IN ACTUAL PEACEABLE POSSESSION UNDER COLOR OF TITLE claimed by virtue of prior order in original ejectment suit is properly brought under this section. Cuffley v. Hammond, 228 Md. 162, 178 A.2d 901 (1962).

WHERE THERE WAS PENDING A BILL UNDER FORMER ARTICLE 81, § 97 ET SEQ. (SEE NOW § 14-832 ET SEQ. OF THE TAX-PROPERTY ARTICLE), TO FORECLOSE RIGHTS OF REDEMPTION

in property which had been sold at a tax sale, this first proceeding to enforce or test the validity of the lien on, or encumbrance of, the lots involved required that a second proceeding via a bill in equity to quiet title under this section be dismissed or stricken. Keefauver v. Richardson, 233 Md. 545, 197 A.2d 438 (1964).

INFERENCE OF VACANCY IS NOT AVAILABLE FROM PROOF OF BARE PAPER TITLE any more than actual possession by the plaintiff would be inferable in the face of a claim that the defendant was claiming possession adversely. Wathen v. Brown, 48 Md. App. 655, 429 A.2d 292 (1981).

ACTION TO QUIET TITLE MAY PROPERLY BE BROUGHT AGAINST PUBLIC OFFICIALS OR A STATE AGENCY where it is alleged that a State agency or its officials have taken private property without just compensation. Department of Natural Resources v. Welsh, 308 Md. 54, 521 A.2d 313 (1986).

NOTICE OF COUNTER-CLAIM FOR ADVERSE POSSESSION. --Parties in action to quiet title were not required to notify surrounding landowners of their counter-claim for adverse possession. Ski Roundtop, Inc. v. Wagerman, 79 Md. App. 357, 556 A.2d 1144 (1989).

CONSOLIDATION OF QUIET TITLE AND ADVERSE POSSESSION ACTIONS --Trial court abused its discretion in failing to consolidate quiet title actions brought by municipality and by claimant by adverse possession, since there was a possibility that adverse possession would lie against property used as a community bike path; the municipality was entitled to intervene post-judgment to relief from default judgment to allow determination of unresolved factual issues regarding whether the municipality had a property interest that mandated that it be named as a defendant in the claimant's quiet title action and be personally served. Jenkins v. City of College Park, 379 Md. 142, 840 A.2d 139 (2003).

APPLIED IN Department of Natural Resources v. Welsh, 308 Md. 54, 521 A.2d 313 (1986); Crosby v. Crosby, 769 F. Supp. 197 (D. Md. 1991), aff'd, 986 F.2d 79 (4th Cir. 1993); Flatow v. Islamic Republic of Iran, 67 F. Supp. 2d 535 (D. Md. 1999).

QUOTED IN Kasdon v. G.W. Zierden Landscaping, Inc., 541 F. Supp. 991 (D. Md. 1982), aff'd sub nom. Kasdon v. United States, 707 F.2d 820 (4th Cir. 1983); Collins v. Morris, 122 Md. App. 764, 716 A.2d 384 (1998).

CITED IN Lewis v. Rippons, 282 Md. 155, 383 A.2d 676 (1978).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 1. MISCELLANEOUS RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-108.1 (2006)

§ 14-108.1. Action for possession

(a) Application of section. -- This section does not apply to:

(1) A grantee action under § 14-109 of this subtitle; or

(2) A landlord-tenant action that is within the exclusive original jurisdiction of the District Court.

(b) Right to bring action. --

(1) A person who is not in possession of property and claims title and right to possession may bring an action for possession against the person in possession of the property.

(2) Encumbrance of property by a mortgage or deed of trust to secure a debt does not prevent an action under this section by the owner of the property.

(c) Default judgment. -- When personal jurisdiction is not obtained over the defendant, the plaintiff may obtain a default judgment under the Maryland Rules only on proof of title and right to possession. The judgment shall be in rem for possession of the property. Entry and enforcement of the judgment does not bar further pursuit, in the same or another action, of the plaintiff's claim for mesne profits and damages.

HISTORY: 1987, ch. 633.

CITED IN Duke St. Ltd. Partnership v. Board of County Comm'rs, 112 Md. App. 37, 684 A.2d 40 (1996), cert. denied, 344 Md. 566, 688 A.2d 445 (1997); Hughes v. Insley, 155 Md. App. 608, 845 A.2d 1 (2003), cert. denied, 381 Md. 675, 851 A.2d 594 (2004).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 1. MISCELLANEOUS RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-109 (2006)

§ 14-109. Ejectment when grantor remains in possession after delivery of deed and in violation of agreement

(a) In general. -- The District Court has jurisdiction in any case in which it appears that the grantor has remained in possession of the property, in violation of a written agreement to

deliver possession at a time stated in the agreement, after delivery of a deed for the property. If the grantor fails or refuses to surrender the premises in accordance with the agreement, the grantee may complain in writing to the District Court in the county where the premises are located. The court immediately shall issue a summons to the grantor commanding him to appear on the day named to show cause why possession of the premises in dispute should not be granted to the grantee. Notwithstanding any contrary provision of law or local law, if the court finds that the facts set forth in the complaint are true, it shall give judgment for immediate possession, and the court shall issue its warrant to the sheriff commanding him to deliver possession of the premises to the grantee.

(b) Appeal by person aggrieved. -- Any person who feels aggrieved by a judgment under the provisions of this section, may appeal on giving notice within ten days after the judgment is given. If the appellant is the grantor, the notice of appeal shall be accompanied by an affidavit, that an appeal is not taken for delay, and by a bond. The bond shall be conditioned that he will prosecute the appeal with effect, and will pay all costs in the case before the District Court and appellate court if judgment is in favor of the grantee, and all loss or damage which the grantee suffers by reason of the grantor's remaining in possession. The bond also shall provide that the grantor may retain possession of the premises until the determination of the appeal.

HISTORY: An. Code 1957, art. 21, § 14-109; 1974, ch. 12, § 2.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 1. MISCELLANEOUS RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-110 (2006)

§ 14-110. Sale, lease, or mortgage of property subject to remainder or vested or contingent interest; virtual representation

(a) Court to decree sale, lease or mortgage. -- If any person is entitled to an estate for life or years or to an estate tail, fee simple, conditional, base or qualified fee, or any other particular, limited, or conditional estate in property, and any other person is entitled to a vested or contingent remainder, executory devise, or any other vested or contingent interest in the same property, on application of any of the parties in interest and if all parties in being are parties to the proceeding, a court of equity may decree a sale, lease, or mortgage if it appears to be advantageous to the parties concerned. The court shall direct the investment of the proceeds of the sale, mortgage, or limitations of the reversion and rent as the case may be, so these inure to the use of the same parties who would be entitled to it if the property is sold, leased, or mortgaged.

(b) Virtual representation. -- If every person who would be entitled to the property if the contingency happened at the date of the decree is a party, the decree binds every person whether he is in being or not, who claims or may claim any interest in the property under any party to the decree, under any person from whom any party to the decree claims, or under the original deed or will by which the particular, limited, or conditional estate, with remainders or executory devises, is created. Any mortgage executed pursuant to the decree binds the property so mortgaged of every person, whether in being or not.

HISTORY: An. Code 1957, art. 21, § 14-110; 1974, ch. 12, § 2; 1976, ch. 572.

MARYLAND LAW REVIEW. --For article, "The Law/Equity Dichotomy in Maryland," see 39 Md. L. Rev. 427 (1980).

OBJECT OF SECTION. --See Downes v. Long, 79 Md. 382, 29 A. 827 (1894); Kingan Packing Ass'n v. Lloyd, 110 Md. 619, 73 A. 887 (1909).

CONSTITUTIONALITY. --The constitutionality of this section has never been called into question. Kingan Packing Ass'n v. Lloyd, 110 Md. 619, 73 A. 887 (1909).

TEST OF JURISDICTION. --See Powell v. Bailey, 138 Md. 169, 113 A. 714 (1921).

THIS SECTION CONFERS UPON EQUITY JURISDICTION WHICH IT DID NOT THERETOFORE HAVE. Kingan Packing Ass'n v. Lloyd, 110 Md. 619, 73 A. 887 (1909).

Apart from this section, equity has no authority to decree a sale of title of unborn remaindermen. Denson v. Denson, 125 Md. 357, 93 A. 981 (1915).

Prior to the passage of this section, courts of equity in this State had no jurisdiction to give to a decree the effect of binding the interests of parties not then in being, there being no such authority under the general powers of chancery courts nor by statute. Hardy v. Leager, 212 Md. 565, 130 A.2d 737 (1957).

For cases involving the law on the subject of this section prior to its adoption, see Downin v. Sprecher, 35 Md. 474 (1872); Long v. Long, 62 Md. 33 (1884); Ball v. Safe Deposit & Trust Co., 92 Md. 503, 48 A. 155 (1901).

IT EXTENDS DOCTRINE OF REPRESENTATION. --This section extends the doctrine of representation to the cases therein mentioned by providing that the parties in being shall represent unborn parties. Kingan Packing Ass'n v. Lloyd, 110 Md. 619, 73 A. 887 (1909).

PARTIES IN BEING REPRESENT PERSONS UNBORN. --The whole theory of this section is that parties in being represent persons unborn. An infant party to a suit is not more bound than those unborn, by representation. Beggs v. Erb, 138 Md. 345, 113 A. 881 (1921).

UNBORN CHILDREN AND GRANDCHILDREN ARE BOUND, along with parties in being. Dunnington v. Evans, 79 Md. 83, 28 A. 1097 (1894).

NECESSARY PARTIES; SALE MUST APPEAR TO BE ADVANTAGEOUS. --All parties in interest and in being who would be entitled, if the contingency had happened at the date of the decree, must be parties, and a sale must appear (either by proof or admissions of parties competent to bind themselves) to be advantageous, otherwise the court has no jurisdiction. These conditions must be complied with at the date of the decree. Devecmon v. Shaw, 70 Md. 219, 16 A. 645 (1889); Snook v. Munday, 90 Md. 701, 45 A. 1004 (1900); Ball v. Safe Deposit & Trust Co., 92 Md. 503, 48 A. 155 (1901); Forbes v. Littell, 138 Md. 211, 114 A. 55 (1921); Hardy v. Leager, 212 Md. 565, 130 A.2d 737 (1957).

All parties in interest and in being who would be entitled if the contingency had happened at date of decree must be parties to proceedings, and sale must appear to be advantageous to all parties concerned. However, bill need not allege in words that sale is advantageous. Peper v. Traeger, 152 Md. 174, 136 A. 537 (1927).

Under this section, it must appear that the sale was advantageous to the parties at the time of the decree. Preston v. Safe Deposit & Trust Co., 116 Md. 211, 81 A. 523 (1911).

In a proceeding under this section for a sale of real estate for reinvestment, generally there

should be an allegation and proof of benefit to all parties concerned, including those not in being. Hardy v. Leager, 212 Md. 565, 130 A.2d 737 (1957).

Sales are upheld where there is either an allegation of benefit, as in Scarlett v. Robinson, 112 Md. 202, 76 A. 181 (1910), or proof thereof, as in Beggs v. Erb, 138 Md. 345, 113 A. 881 (1921).

All persons having an interest in the property should be made parties before the bill should be considered. McMahon v. Consistory of St. Paul's Reformed Church, 194 Md. 262, 71 A.2d 17 (1950).

COURT MAY DECREE SALE OF ANY KIND OF ESTATE. --Under this section, a court of equity, with all interested parties before it, may decree the sale of any kind of an estate. This section is applicable, if facts justify it, to property held as tenants by entireties whether the property has been injured by fire. Masterman v. Masterman, 129 Md. 167, 98 A. 537 (1916).

The benefit of this law embraces almost every conceivable estate in which unborn children may be interested. Hardy v. Leager, 212 Md. 565, 130 A.2d 737 (1957).

LAND MAY BE SOLD NOTWITHSTANDING CHARGE UPON IT FOR SUPPORT. --Under this section a farm devised to the wife and children of L., upon which a charge is made for the support of L. and his family, during life, may be sold. The fact that the will shows an intention that the life tenant shall hold a farm for the benefit of himself and family, does not defeat the application of this section. Downes v. Long, 79 Md. 382, 29 A. 827 (1894).

THIS SECTION AFFORDS THE ONLY MEANS FOR A SALE OF GROUND RENTS DEVISED FOR LIFE, with remainders over. Murphy v. Coale, 107 Md. 198, 68 A. 615 (1908).

SECTION DOES NOT AUTHORIZE SALE OF PROPERTY FREE FROM INCHOATE DOWER. --Equity has no jurisdiction to direct sale of property free from wife's inchoate dower, as that is right which cannot be extinguished except by release. This section is not applicable to such a case. Roth v. Roth, 144 Md. 553, 125 A. 400 (1924).

INTEREST OF PLAINTIFF IN PROPERTY. --For cases holding that the plaintiff had no such interest in the property as enabled him to ask for a sale under this section, see Newbold v. Schlens, 66 Md. 585, 9 A. 849 (1887); Bannon v. Comegys, 69 Md. 411, 16 A. 129 (1888).

COURT HAS RIGHT TO DECREE SALE AT INSTANCE OF LIFE TENANT. Krone v. Linville, 31 Md. 138 (1869).

For a bill filed by a life tenant against trustees and remaindermen praying a sale under this section, see Poultney v. Emerson, 117 Md. 655, 84 A. 53 (1912).

SECTION DOES NOT APPLY TO SALE BY SOLE OWNER OF FEE-SIMPLE PROPERTY. --This section has no application to a sale by a sole owner of his own fee-simple property. Thus where a limitation over after a fee simple defeasible was held void as in violation of the rule against perpetuities, and the will was held to vest fee-simple title in the first taker, there was no need or occasion for a decree for sale under this section. However, in view of the prayer for general relief in the bill praying a sale under this section, the bill could be regarded as, or amended so as to become, a bill quia timet. McMahon v. Consistory of St. Paul's Reformed Church, 196 Md. 125, 75 A.2d 122 (1950).

HOW BILL ON BEHALF OF INFANT SHOULD BE FILED. --A bill under this section on behalf of an infant should be filed in infant's name, but its being filed in the name of the guardian is an irregularity which, as long as it stands unreversed, does not affect the binding nature of the decree. Newbold v. Schlens, 66 Md. 585, 9 A. 849 (1887).

EFFECT OF IMPLIED POWER OF SALE IN TRUSTEE UNDER WILL. --When a trustee has an implied power of sale under a will, the validity of a sale by him is not affected by the fact that he applies for a decree under this section instead of acting under the will. Preston v. Safe Deposit & Trust Co., 116 Md. 211, 81 A. 523 (1911).

PROVISION AS TO INVESTMENT OF PROCEEDS IS SECONDARY. --Where the parties to the bill

are all the interested parties in being and the bill alleges that a sale would be advantageous to the parties concerned, the court has jurisdiction, notwithstanding a further statement in the bill that the object of the sale is to prevent a sale of the life estate for taxes, and that the proceeds of the sale are to be used for that purpose and not to be reinvested. The provision in this section as to the investment of the proceeds is secondary to the provision authorizing the decree of sale, though the intention is that the proceeds of sale shall be invested. Powell v. Bailey, 138 Md. 169, 113 A. 714 (1921).

SALE MAY BE DECREED IN ORDER TO USE PROCEEDS TO COMPROMISE LITIGATION. --In a proper case, equity will decree a sale under this section for the purpose of using the proceeds to compromise litigation. Caldwell v. Brown, 66 Md. 293, 7 A. 264 (1886).

SECTION DOES NOT PERMIT PRESENT MONEY PAYMENT IN LIEU OF LIFE INTEREST. --A portion of the proceeds of the sale may not be reserved from the reinvestment prescribed by this section for distribution at once to life tenant. This section does not admit of a present money payment in lieu of a life interest. Denson v. Denson, 125 Md. 357, 93 A. 981 (1915).

OR DECREE AUTHORIZING SALES FROM TIME TO TIME UPON APPLICATION TO COURT. --A decree authorizing sales to be made from time to time upon application to be thereafter made to the court does not conform to this section. Preston v. Safe Deposit & Trust Co., 116 Md. 211, 81 A. 523 (1911).

RESTRICTIONS ON PART OF LAND NOT SOLD HELD BINDING ON REMAINDERMEN. --Where trustee appointed to make sale of land limited in remainder, in selling part of the land imposed certain restrictions on part not sold, such restrictions were binding on remaindermen. Gittings v. Morris, 156 Md. 565, 144 A. 836, 144 A. 927 (1929).

MERE IRREGULARITIES IN PROCEEDINGS OR PROOF WILL NOT SUSTAIN EXCEPTIONS TO SALE. --If the court has jurisdiction, mere irregularities in proceedings or proof will not sustain exceptions to the sale by the purchaser. Newbold v. Schlens, 66 Md. 585, 9 A. 849 (1887); Benson v. Yellott, 76 Md. 159, 24 A. 451 (1892); Rieman v. Von Kapff, 76 Md. 417, 25 A. 387 (1892).

JUDICIAL SALE WILL BE UPHELD COLLATERALLY IF JURISDICTIONAL FACTS ARE PROVEN, although a jurisdictional allegation in the bill is lacking. Beggs v. Erb, 138 Md. 345, 113 A. 881 (1921).

WHERE PURCHASER APPEALS FROM ORDER RATIFYING SALE, DECREE DIRECTING SALE IS NOT OPEN FOR REVIEW. --Where the court has jurisdiction the question of the proof that the sale was advantageous will not be inquired into upon purchaser's appeal. Newbold v. Schlens, 66 Md. 585, 9 A. 849 (1887).

EXCEPTIONS TO TITLE TO PROPERTY SOLD UNDER SECTION OVERRULED. --See Stewart v. Kreuzer, 127 Md. 1, 95 A. 1052 (1915).

BILL HELD SUFFICIENT TO GIVE COURT JURISDICTION; PARTIES; TITLE UPHELD. --See Trustees of Samuel Ready School v. Safe Deposit & Trust Co., 121 Md. 515, 88 A. 261 (1913).

DISPOSITION OF PROCEEDS OF SALE. --See Downes v. Long, 79 Md. 382, 29 A. 827 (1894).

PURCHASER NOT CONCERNED WITH APPLICATION OF PURCHASE MONEY. --Generally a purchaser at a judicial sale who has paid the purchase money need not concern himself with its subsequent application. Powell v. Bailey, 138 Md. 169, 113 A. 714 (1921).

REMAND TO PERMIT AMENDMENT OF BILL AND PRODUCTION OF EVIDENCE. --Where a bill for sale of real estate was framed with the partition statute in view, and thus contained no allegation that a sale would be of benefit to all parties concerned, including those not in being, and the Court of Appeals, reversing the chancellor, held the evidence to be insufficient proof of benefit, the Court of Appeals remanded the case to permit an amendment of the bill and the

production of evidence of advantage to all parties concerned so as to bring the case clearly within this section while preserving the rights of all reported purchasers. Hardy v. Leager, 212 Md. 565, 130 A.2d 737 (1957).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 1. MISCELLANEOUS RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-111 (2006)

§ 14-111. Survey markers

(a) Type required. -- Each individual licensed to practice land surveying or property line surveying under the Maryland Professional Land Surveyors Act shall use the type of stake, marker, monument, or other landmark designated by the State Board for Professional Land Surveyors.

(b) Penalty for damage or removal of marker. -- Any person who willfully obliterates, damages, or removes any stake, marker, monument, or other landmark set in the property of another person by any civil engineer, surveyor, or real estate appraiser or any of their assistants, except if the stake, marker, monument, or other landmark interferes with the proper use of the property, is guilty of a misdemeanor and on conviction shall be fined not more than $ 500.

(c) Boundary lines. -- If there is a dispute over any boundary line or if the bounds mentioned in a document are lost, on petition of any party in interest, the circuit court of the county where the property lies may establish the boundary lines or the location of the missing bounds. The court may appoint engineers, surveyors, or other experts to assist the court in its determination, and the fees of the experts are costs in the proceeding.

HISTORY: An. Code 1957, art. 21, § 14-111; 1974, ch. 12, § 2; 1982, ch. 877; 1983, ch. 7; 1989, ch. 236, § 2.

NOTES:
CROSS REFERENCES. --As to application of this section, see § 15-102 of this article.

PARTIES COULD NOT COMPLAIN THAT TRIAL COURT WAS WITHOUT AUTHORITY TO INVOKE REMEDY IN SUBSECTION (C), though neither party filed petition requesting relief under this section, where parties not only failed to object to court's announcement of its intention to proceed under statute, but also assisted in and accepted court's remedy decision. Tidler v. City of New Carrollton, 59 Md. App. 23, 474 A.2d 534, cert. denied, 300 Md. 154 (1984).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 1. MISCELLANEOUS RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-112 (2006)

§ 14-112. Power of person taking title to property in representative or fiduciary capacity

(a) "Trustee" defined. -- In this section, "trustee" includes any escrowee, agent, attorney, representative, or fiduciary.

(b) In general. -- If any person holds or takes title to property in the capacity of trustee and the beneficiary is not designated in the instrument by which the trustee takes title or in another instrument signed by the grantor and previously recorded, then the trustee and his personal representative have the power to grant, encumber, or otherwise dispose of the property, except to the extent the power is limited by the term of the grant to the trustee or in another instrument signed by his grantor and previously recorded, unless an instrument signed by the trustee which designates the beneficiary is recorded prior to disposition by the trustee.

HISTORY: An. Code 1957, art. 21, § 14-112; 1974, ch. 12, § 2; 1994, ch. 3, § 1; 2002, ch. 19, § 10.

NOTES:
EDITOR'S NOTE. --Section 10, ch. 19, Acts 2002, provides that "the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, a comma has been inserted following "section" in (a).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***

*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 1. MISCELLANEOUS RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-113 (2006)

§ 14-113. Validity of certain deeds of Maryland corporations

Any deed by a Maryland corporation containing a certification by the person executing the deed on behalf of the corporation to the effect that the grant is not part of a transaction in which there is a sale, lease, exchange, or other transfer of all or substantially all of the property and assets of the corporation, shall be considered valid and effective whether or not there has been compliance with the procedures of Title 3, Subtitle 1 of the Corporations and Associations Article despite the fact the grant is in fact part of such a transaction. Any deed by a Maryland corporation, executed and recorded before January 1, 1979 is not invalid solely because of noncompliance with those procedures unless proceedings to set the deed aside were commenced on or before July 1, 1979.

HISTORY: An. Code 1957, art. 21, § 14-113; 1974, ch. 12, § 2; 1975, ch. 374, § 16; 1979, ch. 286; 1984, ch. 235; 2002, ch. 19, § 10.

NOTES:
EDITOR'S NOTE. --Section 10, ch. 19, Acts 2002, provides that "the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, "of the Code" has been deleted following "Article."

MARYLAND LAW REVIEW. --For article, "Survey of Developments in Maryland Law, 1983-84," see 44 Md. L. Rev. 644 (1985).

PURPOSE OF SECTION. --This section was promulgated to promote the marketability of property by protecting transferees where transferor corporations had either made transfers beyond the scope of former Article 23, § 66 (see now Title 3, Subtitle 1 of the Corporations and Associations Article), or had made transfers to which former Article 23, § 66 was applicable but had failed to comply with the requirements it imposed. Clerk of Circuit Court v. Chesapeake Bay Shores, Inc., 271 Md. 627, 319 A.2d 811 (1974).

SECOND SENTENCE OF THIS SECTION IS DIRECTED to instances where there is a failure to comply with former Article 23, § 66 (see now Title 3, Subtitle 1 of the Corporations and Associations Article). Clerk of Circuit Court v. Chesapeake Bay Shores, Inc., 271 Md. 627, 319 A.2d 811 (1974).

APPLIED IN Antigua Condominium Ass'n v. Melba Investors Atl., Inc., 307 Md. 700, 517 A.2d 75 (1986).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 1. MISCELLANEOUS RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-114 (2006)

§ 14-114. Penalty for reentry after eviction by writ of possession

If a party evicted by a writ of possession reenters on the property without the consent of the purchaser, he is guilty of a misdemeanor. On conviction, he is subject to a fine not exceeding $ 100, or imprisonment not exceeding 60 days, or both.

HISTORY: An. Code 1957, art. 75, § 42; 1974, ch. 12, § 2.

MARYLAND LAW REVIEW. --For symposium, expanding pro bono legal assistance in civil cases to Maryland's poor, see 49 Md. L. Rev. 1 (1990).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 1. MISCELLANEOUS RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-115 (2006)

§ 14-115. British statutes

Except to the extent that any of the British statutes in force in the State on July 4, 1776 which have been enacted by the General Assembly of Maryland are contained elsewhere in the Code, the following British statutes are no longer in force in the State:

9 Henry III, Ch. 7

9 Henry III, Ch. 8

9 Henry III, Ch. 18

20 Henry III, Ch. 1

20 Henry III, Ch. 2

20 Henry III, Ch. 9

51 Henry III, Stat. 4

52 Henry III, Ch. 4

52 Henry III, Ch. 15

52 Henry III, Ch. 23

3 Edward I, Ch. 16

3 Edward I, Ch. 17

3 Edward I, Ch. 49

4 Edward I, Stat. 3, Ch. 6

6 Edward I, Ch. 5

6 Edward I, Ch. 7

13 Edward I, Stat. 1, Ch. 2

13 Edward I, Stat. 1, Ch. 3

13 Edward I, Stat. 1, Ch. 4

13 Edward I, Stat. 1, Ch. 7

13 Edward I, Stat. 1, Ch. 14

13 Edward I, Stat. 1, Ch. 15

13 Edward I, Stat. 1, Ch. 22

13 Edward I, Stat. 1, Ch. 24

13 Edward I, Stat. 1, Ch. 31

13 Edward I, Stat. 1, Ch. 37

33 Edward I, Stat. 6

17 Edward II, Stat. 1, Ch. 9

17 Edward II, Stat. 1, Ch. 10

25 Edward III, Stat. 5, Ch. 17

9 Richard II, Ch. 3

11 Henry VI, Ch. 5

1 Richard III, Ch. 1

3 Henry VII, Ch. 4

11 Henry VII, Ch. 20

19 Henry VII, Ch. 9

7 Henry VIII, Ch. 4

21 Henry VIII, Ch. 4

21 Henry VIII, Ch. 5

21 Henry VIII, Ch. 19

23 Henry VIII, Ch. 14

27 Henry VIII, Ch. 10

31 Henry VIII, Ch. 1

32 Henry VIII, Ch. 9

32 Henry VIII, Ch. 28

32 Henry VIII, Ch. 32

32 Henry VIII, Ch. 33

32 Henry VIII, Ch. 34

32 Henry VIII, Ch. 37

1 & 2 Phillip and Mary, Ch. 12

13 Elizabeth, Ch. 5

27 Elizabeth, Ch. 4

43 Elizabeth, Ch. 8

21 James I, Ch. 15

21 James I, Ch. 16

12 Charles II, Ch. 24

17 Charles II, Ch. 7

19 Charles II, Ch. 6

29 Charles II, Ch. 3

30 Charles II, Ch. 7

2 William and Mary, Ch. 5

3 & 4 William and Mary, Ch. 14

4 & 5 William and Mary, Ch. 16

4 & 5 William and Mary, Ch. 20

4 & 5 William and Mary, Ch. 24

8 & 9 William III, Ch. 31

10 and 11 William III, Ch. 16

4 Anne, Ch. 16, Secs. 9, 10 and 27

6 Anne, Ch. 18

7 Anne, Ch. 19

8 Anne, Ch. 14

4 George II, Ch. 10

4 George II, Ch. 28

5 George II, Ch. 7

6 George II, Ch. 14

7 George II, Ch. 20

11 George II, Ch. 19

25 George II, Ch. 6

29 George II, Ch. 31

11 George III, Ch. 20

HISTORY: An. Code 1957, art. 21, § 14-114; 1974, ch. 12, § 2.

MARYLAND LAW REVIEW. --For article, "The History of a Maryland Title: A Conveyancer's Romance Renewed," see 42 Md. L. Rev. 496 (1983).

THIS SECTION MAY HAVE RESURRECTED THE STATUTE OF FRAUDS, 29 Charles II, ch. 3, § 16, which was repealed by ch. 649, Acts 1971, codified as former Article 21, § 150. Illi, Inc. v. Margolis, 267 Md. 30, 296 A.2d 412 (1972).

ENGLISH STATUTES NOT REPEALED BY GENERAL ASSEMBLY. --The English statutes 15 Richard II, chapter 2 (1391) and 8 Henry VI, chapter 9 (1429), which were intended to prevent outbreaks of violence which breached the peace in cases of eviction, and to reduce the possibility of violent disputes over the possession of property, have not been repealed by the General Assembly. Moxley v. Acker, 294 Md. 47, 447 A.2d 857 (1982).

QUOTED IN Lentz v. Dypsky, 49 Md. App. 97, 430 A.2d 109 (1981).

CITED IN Frederick Contractors v. Bel Pre Medical Ctr., Inc., 274 Md. 307, 334 A.2d 526 (1975).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 1. MISCELLANEOUS RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-116 (2006)

§ 14-116. Notice of transfer of improvements on property subject to ground rent

Within 30 days of any transfer of improvements located on property subject to a ground rent, the transferor shall notify the holder of the reversionary interest of the transfer. The notification shall include the name and address of the transferee, and date of transfer. Notice shall be given by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, to the last known address of the holder of the reversionary interest.

HISTORY: 1977, ch. 317; 1983, ch. 563.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 1. MISCELLANEOUS RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-117 (2006)

§ 14-117. Contracts for sale of property

(a) Disclosure -- Property subject to ground rent. -- A contract for the sale of real property subject to a ground rent shall contain the following:

(1) Notice of the existence of the ground rent; and

(2) Notice that if the ground rent is not timely paid the effect may be:

(i) That the reversionary owner of the ground rent may bring an action for possession against the ground rent tenant under § 8-402.2 of this article; and

(ii) As a result of the action for possession, the reversionary owner of the ground rent may own the property in fee, discharged from the lease.

(b) Same -- Estimated deferred water and sewer charges. --

(1) In this subsection, "water and sewer authority" includes a person to which the duties and responsibilities of the Washington Suburban Sanitary Commission have been delegated by a written agreement or in accordance with a local ordinance.

(2) A contract for the initial sale of improved, residential real property to a member of the public who intends to occupy or rent the property for residential purposes shall disclose the estimated cost, as established by the appropriate water and sewer authority, of any deferred water and sewer charges for which the purchaser may become liable. If the appropriate water and sewer authority has not established a schedule of charges for the water and sewer project that benefits the property or if a local jurisdiction has adopted a plan to benefit the property in the future, the contract of sale shall disclose that fact.

(c) Violation of subsection (b). -- Violation of subsection (b) of this section entitles the initial purchaser to recover from the seller:

(1) Two times the amount of deferred charges the purchaser would be obligated to pay during the 5 years of payments following the sale;

(2) No amount greater than actually paid thereafter; and

(3) Any deposit moneys actually paid by the purchaser that were lost as a result of violation of subsection (b) of this section.

(d) Notice of costs of recordation or transfer taxes. --

(1) A contract for use in the sale of residential property used as a dwelling place for one or two single-family units shall contain, in the manner provided under paragraph (2) of this subsection, the following statement:

"Section 14-104 of the Real Property Article of the Annotated Code of Maryland provides that, unless otherwise negotiated in the contract or provided by State or local law, the cost of any recordation tax or any State or local transfer tax shall be shared equally between the buyer and seller."

(2) The statement required under paragraph (1) of this subsection shall be printed in conspicuous type or handwritten in the contract or an addendum to the contract.

(e) "Critical area" notice required. -- A contract or an addendum to the contract for the sale of real property shall contain in conspicuous type the following statement:

"Notice to buyer concerning the Chesapeake and Atlantic Coastal Bays Critical Area

Buyer is advised that all or a portion of the property may be located in the "critical area" of the Chesapeake and Atlantic Coastal Bays, and that additional zoning, land use, and resource

protection regulations apply in this area. The "critical area" generally consists of all land and water areas within 1,000 feet beyond the landward boundaries of State or private wetlands, the Chesapeake Bay, the Atlantic Coastal Bays, and all of their tidal tributaries. The "critical area" also includes the waters of and lands under the Chesapeake Bay, the Atlantic Coastal Bays, and all of their tidal tributaries to the head of tide. For information as to whether the property is located within the critical area, buyer may contact the local department of planning and zoning, which maintains maps showing the extent of the critical area in the jurisdiction. Allegany, Carroll, Frederick, Garrett, Howard, Montgomery, and Washington counties do not include land located in the critical area.".

(f) Additional requirements. -- A contract of sale shall also comply with the following provisions, if applicable:

(1) Section 17-405 of the Business Occupations and Professions Article (notice of purchaser's protection by the Real Estate Guaranty Fund in an amount not to exceed $ 25,000);

(2) Section 17-504 of the Business Occupations and Professions Article (notice by real estate broker pertaining to deposit in noninterest bearing account);

(3) Section 17-523 of the Business Occupations and Professions Article (notice by real estate broker about recordation and transfer taxes);

(4) Section 17-524 of the Business Occupations and Professions Article (notice of purchaser's right to select title company, settlement company, escrow company, mortgage lender, or financial institution);

(5) Section 8A-605 of this article (notice of park rules to be given to buyer pertaining to sales of mobile homes);

(6) Section 10-103 of this article (notices and disclosures pertaining to land installment contracts);

(7) Sections 10-301 and 10-306 of this article (requirements and disclosures pertaining to deposits on new homes);

(8) Sections 10-505 and 10-506 of this article (requirements and disclosures pertaining to contracts between custom home builders and buyers);

(9) Sections 10-602, 10-603, 10-604(b), and 10-605 of this article (notices, disclosures, and requirements pertaining to new home warranties);

(10) Section 10-701 of this article (notice pertaining to sale of real property in Prince George's County creating subdivision);

(11) Section 10-702 of this article (disclosure or disclaimer statements pertaining to single-family residential real property);

(12) Section 10-703 of this article (notice pertaining to land use in county land-use plans in Anne Arundel County);

(13) Section 11-126 of this article (notice pertaining to initial sale of condominium unit);

(14) Section 11-135 of this article (notice pertaining to resale of condominium unit);

(15) Sections 11A-112, 11A-115, and 11A-118 of this article (statements and requirements pertaining to time-shares);

(16) Section 11B-105 of this article (notice pertaining to initial sale of lot in development

containing more than 12 lots);

(17) Section 11B-106 of this article (notice pertaining to resale of any lot or initial sale of lot in development containing 12 or fewer lots);

(18) Section 11B-107 of this article (notice pertaining to initial sale of lot not intended to be occupied or rented for residential purposes);

(19) Section 5-6B-02 of the Corporations and Associations Article (notice pertaining to initial sale of cooperative interests);

(20) Section 13-308 of the Tax - Property Article (notice of liability for agricultural land transfer tax);

(21) Section 13-504 of the Tax - Property Article (notice of liability for agricultural land transfer tax in Washington County); and

(22) Section 6-824 of the Environment Article (disclosure pertaining to obligations to perform risk reduction).

(g) Validity of contract. -- Unless otherwise specifically provided, a contract of sale is not rendered invalid by the omission of any statement referred to in this section.

(h) Development impact fees. --

(1) This subsection applies to Prince George's County.

(2) A contract for the sale of real property on which a development impact fee has been imposed shall contain a notice to the purchaser stating:

(i) That a development impact fee has been imposed on the property;

(ii) The total amount of the impact fee that has been imposed on the property; and

(iii) The amount of the impact fee, if any, that is unpaid on the date of the contract for the sale of the property.

(3) Violation of paragraph (2) of this subsection entitles the initial purchaser to recover from the seller:

(i) Two times the amount of development impact fees the purchaser would be obligated to pay following the sale;

(ii) No amount greater than actually paid thereafter; and

(iii) Any deposit moneys actually paid by the purchaser that were lost as a result of violation of paragraph (2) of this subsection.

(i) Agriculturally assessed property; applicability. --

(1) This subsection applies to St. Mary's and Charles counties.

(2) A contract for the sale of agriculturally assessed real property shall include the following information:

"Notice: under § 9-241 of the Environment Article of the Annotated Code of Maryland, the Department of the Environment is required to maintain permanent records regarding every permit issued for the utilization of sewage sludge, including the application of sewage sludge on farm land. A prospective buyer has the right to ascertain all such information regarding the

property being sold under this transaction."

(3) Omission of the notice required under paragraph (2) of this subsection may not be a basis for invalidation of the contract for sale.

(j) Contract for initial sale of new home. --

(1) This subsection applies to Baltimore City and all other counties except Montgomery County.

(2) A contract for the initial sale of a new home, as defined in the Maryland Home Builder Registration Act, shall include the following:

(i) The builder registration number of the seller of the new home;

(ii) A provision stating that the new home shall be constructed in accordance with all applicable building codes in effect at the time of the construction of the new home;

(iii) A provision referencing all performance standards or guidelines:

1. That the seller shall comply with in the construction of the new home; and

2. That shall prevail in the performance of the contract and any arbitration or adjudication of a claim arising from the contract; and

(iv) A provision detailing the purchaser's right to receive a consumer information pamphlet as provided under the Home Builder Registration Act.

(3) The performance standards or guidelines described in paragraph (2) of this subsection shall be:

(i) The performance standards or guidelines adopted at the time of the contract:

1. By the National Association of Home Builders; or

2. Under the federal National Manufactured Housing and Safety Standards Act, to the extent applicable;

(ii) Any performance standards or guidelines adopted by the home builder and incorporated into the contract that are equal to or more stringent than the performance standards or guidelines adopted at the time of the contract:

1. By the National Association of Home Builders; or

2. Under the federal National Manufactured Housing and Safety Standards Act, to the extent applicable; or

(iii) Any performance standards or guidelines adopted at the time of the contract by a county or municipal corporation that are equal to or more stringent than the performance standards or guidelines adopted at the time of the contract:

1. By the National Association of Home Builders; or

2. Under the federal National Manufactured Housing and Safety Standards Act, to the extent applicable.

(4) The information required by paragraph (2) of this subsection shall be printed in conspicuous type.

(k) Notice of potential high noise levels from proximity to military installation. --

(1) This subsection does not apply in Allegany, Carroll, Frederick, Garrett, Howard, Montgomery, and Washington counties.

(2) A contract for the sale of residential real property shall contain the following statement:

"Buyer is advised that the property may be located near a military installation that conducts flight operations, munitions testing, or military operations that may result in high noise levels. "

(3) All local laws requiring a statement or notice substantially similar to the statement required under paragraph (2) of this subsection prevail over the requirements of this subsection.

HISTORY: 1980, ch. 288; 1987, ch. 633; 1989, ch. 236, § 4; ch. 756, § 1; 1990, ch. 6, § 13; ch. 596; 1991, ch. 55, § 1; 1993, ch. 324; 1994, ch. 3, § 13; 1995, ch. 3, § 1; 1997, ch. 729; 1998, ch. 21, § 1; 1999, ch. 654; 2000, ch. 522; 2001, ch. 560; 2002, ch. 60, §§ 1, 2; 2003, ch. 21, § 1; 2004, ch. 396; 2006, ch. 568.

NOTES:
CROSS REFERENCES. --As to notice pertaining to land use in contract of sale of single family residence in Anne Arundel County, see § 10-703 of this article.

EFFECT OF AMENDMENTS. --Chapter 560, Acts 2001, effective Oct. 1, 2001, substituted "the Maryland Home Builder Registration Act" for "this subtitle" in (j)(2); rewrote (j)(3)(i); divided former (j)(3)(ii) into (j)(3)(ii) and (j)(3)(ii)1. and added (j)(3)(ii)2.; inserted "or guidelines" in the introductory language of (j)(3)(ii); and divided former (j)(3)(iii) into (j)(3)(iii) and (j)(3)(iii)1. and added (j)(3)(iii)2.
Section 1, ch. 60, Acts 2002, effective Oct. 1, 2002, redesignated former (f)(12) through (f)(21) as present (f)(13) through (f)(22). Section 2 of ch. 60 inserted present (f)(12).
Chapter 21, Acts 2003, approved April 8, 2003, and effective from date of enactment, inserted "the" preceding "Real Estate" in (f)(1).
Chapter 396, Acts 2004, effective Oct. 1, 2004, substituted "paragraph (2) of this subsection" for "subsection (d) of this section" in (d)(1); redesignated former (e) as (d)(2) and substituted "paragraph (1) of this subsection" for "subsection (d) of this section" in (d)(2); and inserted (e).
Chapter 568, Acts 2006, effective October 1, 2006, added (k).

EDITOR'S NOTE. --Section 2, ch. 654, Acts 1999, provides that "this Act may not be construed to affect the application of § 14-117(b) and (c) of the Real Property Article to a person to whom a water and sewer authority other than the Washington Suburban Sanitary Commission has delegated any duty or responsibility."
Section 2, ch. 522, Acts 2000, provides that "this Act shall be construed only prospectively and may not be applied or interpreted to have any effect on or application to any act or omission of a home builder arising before the effective date of this Act; that it shall apply only to contracts entered into on or after January 1, 2001; and that home builders shall be registered beginning on or after January 1, 2001."
Section 3, ch. 522, Acts 2000, provides that "the Consumer Protection Division of the Office of the Attorney General shall study the feasibility of a new home builder guaranty fund. The Consumer Protection Division shall report its findings and recommendations to the Senate Finance Committee and the House Economic Matters Committee, in accordance with § 2-1246 of the State Government Article, on or before October 1, 2003."
Section 3, ch. 60, Acts 2002, provides that "this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any contract of sale entered into before October 1, 2002."

APPLICABILITY. --The General Assembly never intended the definition of property provided by § 10-101(d) to apply to the disclosure requirements of a contract not involving installment

sales. Harrison v. John F. Pilli & Sons, 321 Md. 336, 582 A.2d 1231 (1990).

A deferred water or sewer facilities charge represents the cost of installation of a water or sewer system, or a part thereof, that is fairly allocated to a particular piece of property served by the system, the payment of which is deferred in favor of annual payments over a stated number of years. Harrison v. John F. Pilli & Sons, 321 Md. 336, 582 A.2d 1231 (1990).

DEFERRED WATER OR SEWER CHARGE. --Purchasers were not required to lodge any protest with respect to deferred water or sewer charges at settlement, and their failure to do so did not constitute a waiver of their rights under this section. Harrison v. John F. Pilli & Sons, 321 Md. 336, 582 A.2d 1231 (1990) (decided prior to 1988 amendment).

IMPROVED RESIDENTIAL REAL PROPERTY. --Where purchaser agreed to buy and seller agreed to sell a piece of property with a single-family residential dwelling on it, and the purchase price was for the lot improved by the home, the subject matter of each contract of sale was "improved, residential real property," and it was of no consequence that the lots were unimproved at the time the contracts were signed, since the contracts required the seller to make the improvements in order to convey that which it had agreed to sell. Harrison v. John F. Pilli & Sons, 321 Md. 336, 582 A.2d 1231 (1990).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 1. MISCELLANEOUS RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-118 (2006)

§ 14-118. Immunity from liability for officers and directors of homeowners associations, condominiums, and cooperative housing corporations

(a) "Governing body" defined. --

(1) In this section, "governing body" means a person who has the authority to enforce:

(i) The provisions of a declaration, as defined under § 11-103 of the Maryland Condominium Act;

(ii) Articles of incorporation of a council of unit owners, of a cooperative housing corporation as defined under the Maryland Cooperative Housing Corporation Act, or of a homeowners association, as defined under the Maryland Homeowners Association Act; or

(iii) The provisions of bylaws, rules, and regulations of a condominium, as defined under the Maryland Condominium Act, of a cooperative housing corporation as defined under the Maryland Cooperative Housing Corporation Act, or of a homeowners association, as defined

under the Maryland Homeowners Association Act.

(2) Governing body includes:

(i) A homeowners association, as defined under the Maryland Homeowners Association Act;

(ii) A council of unit owners of a condominium, as described in the Maryland Condominium Act; or

(iii) A cooperative housing corporation.

(b) Actions against governing body for actual damages. -- A person sustaining an injury as a result of the tortious act of an officer or director of a governing body while the officer or director is acting within the scope of the officer's or director's duties may recover only in an action brought against the governing body for the damages described under § 5-422 (b) of the Courts and Judicial Proceedings Article.

(c) Immunity of directors, officers. -- In a proceeding against a governing body, a director or officer of a governing body shall have the immunity from liability described under § 5-422 (c) of the Courts and Judicial Proceedings Article.

HISTORY: 1986, ch. 563; 1987, ch. 11, § 1; 1988, ch. 6, § 1; 1989, ch. 5, § 1; ch. 756, § 2; 1990, ch. 546, § 3; 1997, ch. 14, § 20; 2002, ch. 19, § 10.

NOTES:
EDITOR'S NOTE. --Section 1, ch. 756, Acts 1989, effective July 1, 1989, repealed former § 14-118 of this subtitle.
Section 2, ch. 756, Acts 1989, transferred former § 14-119 of this subtitle to be § 14-118 of this subtitle.
Section 10, ch. 19, Acts 2002, provides that "the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, a comma has been inserted following "section" in the introductory language of (a) (1).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 1. MISCELLANEOUS RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-119 (2006)

§ 14-119. Cemeteries located in Carroll County

(a) Definition. -- In this section:

(1) "Cemetery" means the land or structures in Carroll County identified by the Carroll County Genealogical Society that are used for the interment of human remains; and

(2) "Cemetery" includes a grave, burial ground, monument, or gravestone.

(b) Exemptions. -- This section does not apply to a permanent cemetery that is owned by:

(1) A cemetery company regulated under Title 5 of the Business Regulation Article;

(2) A nonprofit organization; or

(3) A governmental unit within the State.

(c) Requirements. -- A person who owns land in Carroll County on which all or a part of a cemetery is located shall:

(1) Record the location of the cemetery without using a survey in the Office of the Clerk of the Circuit Court for Carroll County; and

(2) Give written notice of the location of the cemetery without using a survey to any prospective buyer of the land.

(d) Removal of human remains, monument, or gravestone. -- A person who removes any human remains, monument, or gravestone from a cemetery located on land in Carroll County shall:

(1) Comply with § 10-402 or § 10-404 of the Criminal Law Article;

(2) Place the human remains, monument, or gravestone in a permanent cemetery in Carroll County; and

(3) Record the new location of the human remains, monument, or gravestone in the Office of the Clerk of the Circuit Court for Carroll County.

(e) Recordation. -- The Clerk of the Circuit Court for Carroll County shall index and file documents received under this section in the land records under the grantor index.

HISTORY: 1991, ch. 623; 1994, ch. 3, § 1; 2002, ch. 213, § 6.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 213, Acts 2002, effective Oct. 1, 2002, substituted "§ 10-402 or § 10-404 of the Criminal Law Article" for "Article 27, § 265 or § 267 of the Code" in (d) (1).

EDITOR'S NOTE. --Section 2, ch. 756, Acts 1989, effective July 1, 1989, transferred former § 14-119 of this subtitle to be § 14-118 of this subtitle.
Section 2, ch. 623, Acts 1991, provides that "the Carroll County Genealogical Society shall notify each person or other entity that owns real property in Carroll County on which a cemetery, which is subject to the provisions of § 1 of this Act, is located of the requirements of § 1 of this Act."

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 1. MISCELLANEOUS RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-119 (2006)

§ 14-119. Cemeteries located in Carroll County

(a) Definition. -- In this section:

(1) "Cemetery" means the land or structures in Carroll County identified by the Carroll County Genealogical Society that are used for the interment of human remains; and

(2) "Cemetery" includes a grave, burial ground, monument, or gravestone.

(b) Exemptions. -- This section does not apply to a permanent cemetery that is owned by:

(1) A cemetery company regulated under Title 5 of the Business Regulation Article;

(2) A nonprofit organization; or

(3) A governmental unit within the State.

(c) Requirements. -- A person who owns land in Carroll County on which all or a part of a cemetery is located shall:

(1) Record the location of the cemetery without using a survey in the Office of the Clerk of the Circuit Court for Carroll County; and

(2) Give written notice of the location of the cemetery without using a survey to any prospective buyer of the land.

(d) Removal of human remains, monument, or gravestone. -- A person who removes any human remains, monument, or gravestone from a cemetery located on land in Carroll County shall:

(1) Comply with § 10-402 or § 10-404 of the Criminal Law Article;

(2) Place the human remains, monument, or gravestone in a permanent cemetery in Carroll County; and

(3) Record the new location of the human remains, monument, or gravestone in the Office of the Clerk of the Circuit Court for Carroll County.

(e) Recordation. -- The Clerk of the Circuit Court for Carroll County shall index and file documents received under this section in the land records under the grantor index.

HISTORY: 1991, ch. 623; 1994, ch. 3, § 1; 2002, ch. 213, § 6.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 213, Acts 2002, effective Oct. 1, 2002, substituted "§ 10-402 or § 10-404 of the Criminal Law Article" for "Article 27, § 265 or § 267 of the Code" in (d) (1).

EDITOR'S NOTE. --Section 2, ch. 756, Acts 1989, effective July 1, 1989, transferred former § 14-119 of this subtitle to be § 14-118 of this subtitle.
Section 2, ch. 623, Acts 1991, provides that "the Carroll County Genealogical Society shall notify each person or other entity that owns real property in Carroll County on which a cemetery, which is subject to the provisions of § 1 of this Act, is located of the requirements of § 1 of this Act."

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 1. MISCELLANEOUS RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-120 (2006)

§ 14-120. Abatement of nuisance actions where property used for controlled dangerous substance offenses

(a) Definitions. --

(1) In this section the following words have the meanings indicated.

(2) "Commercial property" does not include residential rental property.

(3) "Community association" means:

(i) A nonprofit association, corporation, or other organization that is:

1. Comprised of residents of a community within which a nuisance is located;

2. Operated exclusively for the promotion of social welfare and general neighborhood improvement and enhancement; and

3. Exempt from taxation under § 501(c)(3) or (4) of the Internal Revenue Code; or

(ii) A nonprofit association, corporation, or other organization that is:

1. Comprised of residents of a contiguous community that is defined by specific geographic boundaries, within which a nuisance is located; and

2. Operated for the promotion of the welfare, improvement and enhancement of that community.

(4) "Controlled dangerous substance" means a substance listed in Schedule I or Schedule II under § 5-402 or § 5-403 of the Criminal Law Article.

(5) "Nuisance" means a property that is used:

(i) By persons who assemble for the specific purpose of illegally administering a controlled dangerous substance;

(ii) For the illegal manufacture, or distribution of:

1. A controlled dangerous substance; or

2. Controlled paraphernalia, as defined in § 5-101 of the Criminal Law Article; or

(iii) For the illegal storage or concealment of a controlled dangerous substance in sufficient quantity to reasonably indicate under all the circumstances an intent to manufacture, distribute, or dispense:

1. A controlled dangerous substance; or

2. Controlled paraphernalia, as defined in § 5-101 of the Criminal Law Article.

(6) (i) "Operator" means a person that exercises control over property.

(ii) "Operator" includes a property manager or any other person that is authorized to evict a tenant.

(7) "Owner" includes an owner-occupant.

(8) "Owner-occupant" includes an owner of commercial property that conducts business in any part of the property.

(9) "Property" includes a mobile home.

(10) (i) "Tenant" means the lessee or a person occupying property, whether or not a party to a lease.

(ii) "Tenant" includes a lessee or a person occupying a mobile home, whether or not a party to a lease.

(iii) "Tenant" does not include:

1. The owner of the property; or

2. A mobile home owner who leases or rents a site for residential use and resides in a mobile home park.

(b) Plaintiffs. -- An action under § 4-401 of the Courts Article to abate a nuisance may be brought by:

(1) The State's Attorney of the county in which the nuisance is located;

(2) The county attorney or solicitor of the county in which the nuisance is located;

(3) A community association within whose boundaries the nuisance is located; or

(4) A municipal corporation within whose boundaries the nuisance is located.

(c) Defendants. -- An action under § 4-401 of the Courts Article to abate a nuisance may be brought against:

(1) A tenant of the property where the nuisance is located;

(2) An owner of the property where the nuisance is located; or

(3) An operator of the property where the nuisance is located.

(d) Notice of existence of nuisance; timeliness of action. --

(1) An action may not be brought under this section concerning a commercial property until 45 days after the tenant, if any, and owner of record receive notice from a person entitled to bring an action under this section that a nuisance exists.

(2) The notice shall specify:

(i) The date and time of day the nuisance was first discovered; and

(ii) The location on the property where the nuisance is allegedly occurring.

(3) The notice shall be:

(i) Hand delivered to the tenant, if any, and the owner of record; or

(ii) Sent by certified mail to the tenant, if any, and the owner of record.

(e) Posted notices. --

(1) In addition to any service of process required by the Maryland Rules, the plaintiff shall cause to be posted in a conspicuous place on the property no later than 48 hours before the hearing the notice required under paragraph (2) of this subsection.

(2) The notice shall indicate:

(i) The nature of the proceedings;

(ii) The time and place of the hearing; and

(iii) The name and telephone number of the person to contact for additional information.

(f) Jurisdiction. -- A plaintiff is entitled to relief under this section whether or not an adequate remedy exists at law.

(g) Remedies. --

(1) If, after a hearing, the court determines that a nuisance exists, the court may order any appropriate injunctive or other equitable relief.

(2) Notwithstanding any other provision of law, and in addition to or as a component of any remedy ordered under paragraph (1) of this subsection, the court may order:

(i) A tenant who knew or should have known of the existence of the nuisance to vacate the property within 72 hours; or

(ii) An owner or operator of the property to submit for court approval a plan of correction to ensure, to the extent reasonably possible, that the property will not again be used for a nuisance if:

1. The owner or operator is a party to the action; and

2. The owner or operator knew or should have known of the existence of the nuisance.

(h) Restitution of possession. --

(1) (i) If a tenant fails to comply with an order under subsection (g) of this section and the owner or operator, and tenant, are parties to the action, the court, after a hearing, may order restitution of the possession of the property to the owner or operator.

(ii) If the court orders restitution of the possession of the property under subparagraph (i) of this paragraph, the court shall immediately issue its warrant to the sheriff or constable commanding execution of the warrant within 5 days after issuance of the warrant.

(2) If an owner, including an owner-occupant, fails to comply with an order under subsection (g) of this section, after a hearing the court may, in addition to issuing a contempt order or an order for any other relief, order that:

(i) The property be sold, at the owner's expense, in accordance with the Maryland Rules governing judicial sales; or

(ii) The property be demolished if the property is unfit for habitation and the estimated cost of rehabilitation significantly exceeds the estimated market value of the property after rehabilitation.

(3) If an owner-occupant fails to comply with an order under subsection (g) of this section regarding a nuisance in the owner-occupied unit of the property, after a hearing the court may, in addition to issuing a contempt order or an order for any other relief, order that:

(i) The owner-occupied unit be vacated within 72 hours; and

(ii) The owner-occupied unit remain unoccupied for a period not to exceed 1 year or until the property is sold in an arm's length transaction.

(i) Knowledge of defendant. -- Except as provided in paragraph (g)(2) of this section, the court may order appropriate relief under subsection (g) of this section without proof that a defendant knew of the existence of the nuisance.

(j) Reputation of property -- Admissible evidence. -- In any action brought under this section:

(1) Evidence of the general reputation of the property is admissible to corroborate testimony based on personal knowledge or observation, or evidence seized during the execution of a search and seizure warrant, but shall not, in and of itself, be sufficient to establish the existence of a nuisance under this section; and

(2) Evidence that the nuisance had been discontinued at the time of the filing of the complaint or at the time of the hearing does not bar the imposition of appropriate relief by the court under subsection (g) of this section.

(k) Payment of costs and attorney's fees. -- The court may award court costs and reasonable attorney's fees to a community association that is the prevailing plaintiff in an action brought under this section.

(l) Action to be heard. -- An action under this section shall be heard within 14 days after service of process on the parties.

(m) Other rights or remedies. -- This section does not abrogate any equitable or legal right or remedy under existing law to abate a nuisance.

(n) Appeal; requests for oral arguments. --

(1) An appeal from a judgment or order under this section shall be filed within 10 days after the date of the order or judgment.

(2) If either party files a request for oral argument, the court shall hear the oral argument within 7 days after the request is filed.

(3) (i) If the appellant files a request for oral argument, the request shall be filed at the time of the filing of the appeal.

(ii) If the appellee files a request for oral argument, the request shall be filed within 2 days of receiving notice of the appeal.

(o) Applicability of landlord and tenant provisions. -- Provisions of the Real Property Article or public local laws applicable to actions between a landlord and tenant are not applicable to actions brought against a landlord or a tenant under this section.

(p) Nature of proceedings. -- All proceedings under this section are equitable in nature.

(q) Disclosure of contents. --

(1) Except as provided in paragraph (2) of this subsection, when necessary to accomplish the purposes of this section, a law enforcement officer, an attorney in a municipal or county attorney's office, or an attorney in an office of the State's Attorney may disclose the contents of an executed search warrant and papers filed in connection with the search warrant to:

(i) An officer or director of the community association in which the nuisance is located, or the attorney representing the community association;

(ii) An owner, tenant, or operator of the searched property or an agent of the owner, tenant, or operator of the searched property; or

(iii) An attorney in a municipal or county attorney's office.

(2) An affidavit may not be disclosed under this subsection while under seal in accordance with § 1-203 of the Criminal Procedure Article.

HISTORY: 1991, ch. 505; 1992, ch. 22, § 1; 1994, ch. 700; 2000, chs. 301, 528; 2002, ch. 213, § 6; 2005, ch. 501.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 213, Acts 2002, effective Oct. 1, 2002, substituted "'Controlled dangerous substance' means a substance listed in Schedule I or Schedule II under § 5-402 or § 5-403 of the Criminal Law Article" for "'Controlled dangerous substances' has the meaning stated in Article 27, § 279 (a) and (b) of the Code" in (a) (3); and substituted "§ 5-101 of the Criminal Law Article" for "Article 27, § 287 (d) of the Code" in (a) (4) (ii) 2 and (a) (4) (iii) 2.
Chapter 501, Acts 2005, effective June 1, 2005, added (a)(2); redesignated remaining subdivisions accordingly; added (a)(6) and (a)(8); added (c); rewrote (f), (g) and (h); substituted "paragraph (g)(2)" for "subsection (f)(1) and (4)" near the beginning of (i) and substituted "subsection (g)" for "subsections (e) and (f)" following "relief under" in (i);

substituted "subsection (g)" for "subsections (e) and (f)" near the end of (j)(2); and added (p) and (q).

EDITOR'S NOTE. --Former § 14-120 was repealed by Acts 1989, ch. 765, § 1, effective July 1, 1989, and was derived from Acts 1988, ch. 505, § 3.

BILL REVIEW LETTER. --Chapter 501, Acts 2005 (Senate Bill 674) was approved for constitutionality and legal sufficiency, notwithstanding an interpretive issue raised by the bill, in that the use of the term "entitled" in subsection (f) could be read to indicate that the General Assembly intends that relief be granted in any case that a nuisance is found; however, the intention of subsection (f) is to permit equitable relief even where there is an adequate remedy at law but not to otherwise affect the discretion of the court. (Letter of the Attorney General dated May 4, 2005.)

RESTITUTION COMPARED TO ACTION AGAINST HOLDOVER TENANT. --Under this section, restitution suffices to terminate a tenancy and, in both form and effect, is no different than an action under § 8-402 of this article against a tenant holding over, the latter form of relief being subject to trial by jury. Martin v. Howard County, 107 Md. App. 331, 667 A.2d 992 (1995).

DISCLOSURE OF ADDRESS AND DATE OF EXECUTION OF A SEARCH WARRANT RELATED TO A DRUG VIOLATION. --The State's Attorney's Office may not make available to a community organization the address and date of execution of a search warrant related to a drug violation unless a court order permits the disclosure or the information has otherwise been publicly disclosed, for example, as a result of a criminal prosecution; however, disclosure of that information for purposes of a nuisance abatement action could be an appropriate basis for a court order. 87 Op. Att'y Gen. -- (May 20, 2002).

OUSTER ORDER COMPARED TO DOMESTIC VIOLENCE CONTEXT. --An order directing a tenant to vacate, by itself, does not terminate a tenancy; in this regard, an ouster order under this section, by itself, is not significantly different from an ouster order that may be entered by a district court under the domestic violence law, the latter type of order being equitable in return. Martin v. Howard County, 107 Md. App. 331, 667 A.2d 992 (1995).

ORDER TO VACATE IS INJUNCTIVE. --An order directing a tenant to vacate certain property is clearly injunctive in nature; it commands specific conduct on the part of the defendant and presumably could be enforced through contempt proceedings. Martin v. Howard County, 107 Md. App. 331, 667 A.2d 992 (1995).

THE DISTRICT COURT'S AUTHORITY DOES NOT EXTEND TO THE DESTRUCTION OF A BUILDING WHICH IS USED FOR UNLAWFUL ACTIVITY, because the unlawful activity at which the nuisance abatement statue at this section is aimed does not inhere in a building itself, instead, it is entirely in the use of the building and adjacent land, and a court's authority to order the destruction of property does not extend to this situation. Becker v. State, 363 Md. 77, 767 A.2d 816 (2001).

NATURE OF RELIEF SOUGHT UNDER SECTION. --Where issues before the court with respect to relief sought under this section are whether certain property constituted a nuisance under the statutory definition and whether the tenant had knowledge of the existence of the nuisance, the relief is exclusively equitable in nature and those issues are triable by the court. Martin v. Howard County, 107 Md. App. 331, 667 A.2d 992 (1995).

RIGHT TO JURY TRIAL. --An action to oust a tenant who has breached a covenant under this section is clearly in the nature of an ejectment action and, as such, carries with it a right to a jury trial. Martin v. Howard County, 349 Md. 469, 709 A.2d 125 (1998).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 1. MISCELLANEOUS RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-121 (2006)

§ 14-121. Burial sites -- Access

(a) Definitions. --

(1) In this section the following words have the meanings indicated.

(2) (i) "Burial site" means any natural or prepared physical location, whether originally located below, on, or above the surface of the earth into which human remains or associated funerary objects are deposited as a part of a death rite or ceremony of any culture, religion, or group.

(ii) "Burial site" includes the human remains and associated funerary objects that result from a shipwreck or accident and are intentionally left to remain at the site.

(3) "Cultural affiliation" means a relationship of shared group identity that can be reasonably traced historically between a present-day group, tribe, band, or clan and an identifiable earlier group.

(4) "Person in interest" means a person who:

(i) Is related by blood or marriage to the person interred in a burial site;

(ii) Has a cultural affiliation with the person interred in a burial site; or

(iii) Has an interest in a burial site that the Office of the State's Attorney for the county where the burial site is located recognizes is in the public interest after consultation with a local burial sites advisory board or, if such a board does not exist, the Maryland Historical Trust.

(b) Request for access -- Restoration, maintenance or viewing. -- Any person in interest may request the owner of a burial site or of the land encompassing a burial site that has been documented or recognized as a burial site by the public or any person in interest to grant reasonable access to the burial site for the purpose of restoring, maintaining, or viewing the burial site.

(c) Same -- Agreements. --

(1) A person requesting access to a burial site under subsection (b) or (d) of this section may execute an agreement with the owner of the burial site or of the land encompassing the burial site using a form similar to the form below:

"Permission to Enter

I hereby grant the person named below permission to enter my property, subject to the terms of the agreement, on the following dates:

Signed .....

(Landowner)

Agreement

In return for the privilege of entering on the private property for the purpose of restoring, maintaining, or viewing the burial site or transporting human remains to the burial site, I agree to adhere to every law, observe every safety precaution and practice, take every precaution against fire, and assume all responsibility and liability for my person and my property, while on the landowner's property.

Signed"

(2) The owner of the burial site or of the land encompassing the burial site may grant access to the burial site in accordance with the terms of the agreement signed under paragraph (1) of this subsection.

(d) Same -- Interments. -- In addition to the provisions of subsection (b) of this section, if burials are still taking place at a burial site, any person who is related by blood or marriage, heir, appointed representative, or any other person in interest may request the owner of the land encompassing the burial site to grant reasonable access to the burial site for the purpose of transporting human remains to the burial site to inter the remains of a person for whose

burial the site is dedicated, if access has not been provided in a covenant or deed of record describing the metes and bounds of the burial site.

(e) Liability of owner. -- Except for willful or malicious acts or omissions, the owner of a burial site or of the land encompassing a burial site who allows persons to enter or go on the land for the purposes provided in subsections (b) and (d) of this section is not liable for damages in a civil action to a person who enters on the land for injury to person or property.

(f) Reporting location to Supervisor of Assessments; notation on tax maps. --

(1) An owner of a burial site, a person who is related by blood or marriage to the person interred in a burial site, heir, appointed representative, or any other person in interest, or any other person may report the location of a burial site to the supervisor of assessments for a county, together with supporting documentation concerning the location and nature of the burial site.

(2) The supervisor of assessments for a county may note the presence of a burial site on a parcel on the county tax maps maintained under § 2-213 of the Tax-Property Article.

(g) Scope of section. -- Nothing in this section may be construed to interfere with the normal operation and maintenance of a public or private cemetery being operated in accordance with State law.

HISTORY: 1994, ch. 203.

NOTES:
EDITOR'S NOTE. --Section 2, ch. 203, Acts 1994, effective Oct. 1, 1994, provides that "this Act is not intended to limit the authority of a legislative body of a county or municipal corporation, including Baltimore City, to provide for or encourage the protection of cemeteries or burial sites in accordance with State law. Such incentives to encourage the protection of cemeteries or burial sites may include increased development density on the portion of a development outside the cemetery or burial site boundaries and reduction in the amount of land required to be protected as open space or to be set aside for other purposes under local law as a condition of development."

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 1. MISCELLANEOUS RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-122 (2006)

§ 14-122. Same -- County or municipal maintenance; funding

(a) Definition. -- In this section, "burial site" means any natural or prepared physical location, whether originally below, on, or above the surface of the earth into which human remains are deposited as a part of a death rite or ceremony of any culture, religion, or group.

(b) County or municipal maintenance. -- Any county or municipal corporation that has within its jurisdiction a burial site in need of repair or maintenance may, upon the request of the owner or with permission of the owner of the burial site in need of repair or maintenance, maintain and preserve the burial site for the owner.

(c) Funding. -- In order to maintain and preserve a burial site or to repair or restore fences, tombs, monuments, or other structures located in a burial site, a county or municipal corporation may:

(1) Appropriate money and solicit donations from individuals or public or private corporations;

(2) Provide incentives for charitable organizations or community groups to donate their services; and

(3) Develop a community service program through which individuals required to perform community service hours under a sentence of a court or students may satisfy community service requirements or volunteer their services.

HISTORY: 1994, ch. 203.

NOTES:
EDITOR'S NOTE. --Section 2, ch. 203, Acts 1994, effective Oct. 1, 1994, provides that "this Act is not intended to limit the authority of a legislative body of a county or municipal corporation, including Baltimore City, to provide for or encourage the protection of cemeteries or burial sites in accordance with State law. Such incentives to encourage the protection of cemeteries or burial sites may include increased development density on the portion of a development outside the cemetery or burial site boundaries and reduction in the amount of land required to be protected as open space or to be set aside for other purposes under local law as a condition of development."

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 1. MISCELLANEOUS RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-123 (2006)

§ 14-123. Nuisance actions within Baltimore City

(a) Definitions. --

(1) In this section the following words have the meanings indicated.

(2) "Community association" means a Maryland nonprofit association, corporation, or other organization that:

(i) Is comprised of at least 25 households or 25% of the households, whichever is less, of a local neighborhood consisting of 40 or more individual households as defined by specific geographic boundaries in the bylaws or charter of the association;

(ii) Requires, as a condition of membership, the voluntary payment of monetary dues at least annually;

(iii) Is operated primarily for the promotion of social welfare and general neighborhood improvement and enhancement;

(iv) Has been in existence for at least 2 years when it files suit under this section;

(v) 1. Is exempt from taxation under § 501 (c) (3) or (4) of the Internal Revenue Code; or

2. Has been included for a period of at least 2 years prior to bringing an action under this section in Baltimore City's Community Association Directory published by the Baltimore City Department of Planning; and

(vi) In the case of a Maryland corporation, is in good standing.

(3) "Local code violation" means a violation under the following provisions of the Baltimore City Code as amended from time to time or under any applicable code relating to the following provisions incorporated by Baltimore City by reference:

(i) The Fire Prevention Code under Article 9;

(ii) Animal control, nuisance and disease prevention, and noise control subheadings of Article 11 (Health);

(iii) The Housing Code under Article 13;

(iv) Public nuisance provisions under Article 19;

(v) Article 23;

(vi) The Building Code of Baltimore City, Article 32; and

(vii) The zoning ordinance of Baltimore City, Article 30.

(4) "Nuisance" means, within the boundaries of the community represented by the community association, an act or condition knowingly created, performed, or maintained on private property that constitutes a local code violation and that:

(i) Significantly affects other residents of the neighborhood;

(ii) Diminishes the value of neighboring property; and

(iii) 1. Is injurious to public health, safety, or welfare of neighboring residents; or

2. Obstructs the reasonable use of other property in the neighborhood.

(b) Applicability of section. -- This section only applies to a nuisance located within the boundaries of Baltimore City.

(c) Action; notice; limitations; bond. --

(1) A community association may seek injunctive and other equitable relief in the circuit court for abatement of a nuisance upon showing:

(i) The notice requirements of this subsection have been satisfied; and

(ii) The nuisance has not been abated.

(2) (i) An action may not be brought under this section until 60 days after the community association sends notice of the violation and of the community association's intent to bring an action under this section by certified mail, return receipt requested, to the appropriate code enforcement agency.

(ii) An action under this section may not be brought if the appropriate code enforcement agency has filed an action for equitable relief from the nuisance.

(3) (i) An action may not be brought under this section until 60 days after the community association sends notice to the tenant, if any, and the owner of record that a nuisance exists and that legal action may be taken if the nuisance is not abated.

(ii) The notice shall specify:

1. The nature of the alleged nuisance;

2. The date and time of day the nuisance was first discovered;

3. The location on the property where the nuisance is allegedly occurring; and

4. The relief sought in the action.

(iii) 1. The notice shall be provided to the tenant, if any, and the owner of record in the same manner as service of process in a civil in personam action under the Maryland Rules.

2. Adequate and sufficient notice may be given to the tenant, if any, and the owner of record by sending a copy of the notice by regular mail and posting a copy of the notice on the property where the nuisance is allegedly occurring, if notice sent by certified mail is:

A. Returned unclaimed or refused;

B. Designated by the post office to be undeliverable for any other reason; or

C. Signed for by a person other than the addressee.

(iv) In filing a suit under this section, an officer of the community association shall certify to the court:

1. What steps the community association has taken to satisfy the notice requirements under this subsection; and

2. That each condition precedent to the filing of an action under this section has been met.

(4) Relief may not be provided under this section unless the community association files with the court a bond in an amount determined by the court and with a surety approved by the court, conditioned to answer to the adverse party for any costs the party may sustain as a

result of the suit, including reasonable attorney fees, if the court finds that the action was filed in bad faith or without substantial justification.

(5) (i) An action may not be brought against an owner of residential rental property unless, prior to the giving of notice under subsection (c) (3) (i) of this section, a notice of violation relating to the nuisance has first been issued by an appropriate code enforcement agency.

(ii) In the case of a nuisance based on a housing or building code violation, other than a recurrent sanitation violation, relief may not be granted under this section unless a violation notice relating to the nuisance has been issued by the Department of Housing and Community Development and remains outstanding after a period of 75 days.

(6) (i) If a violation notice is an essential element of the action, a copy of the notice signed by an official of the appropriate code enforcement agency shall be prima facie evidence of the facts contained in the notice.

(ii) A notice of abatement issued by the appropriate code enforcement agency in regard to the violation notice shall be prima facie evidence that the plaintiff is not entitled to the relief requested.

(7) A proceeding under this section shall:

(i) Take precedence on the docket;

(ii) Be heard at the earliest practicable date; and

(iii) Be expedited in every way.

(d) Immunity of State. -- A political subdivision of the State or any agency of a political subdivision may not be subject to any action brought under this section or an action resulting from an action brought under this section against a private property owner.

(e) Construction of section. --

(1) Subject to paragraph (2) of this subsection, this section may not be construed as to abrogate any equitable or legal right or remedy otherwise available under the law to abate a nuisance.

(2) This section may not be construed as to grant standing for an action:

(i) Challenging any zoning application or approval;

(ii) In which the alleged nuisance consists of:

1. A condition relating to lead paint;

2. An interior physical defect of a property; or

3. A vacant dwelling that is maintained in a boarded condition, free from trash and debris, and secure against trespassers and weather entry;

(iii) Involving any violation of alcoholic beverages laws under Article 2B of the Code; or

(iv) Involving any matter in which a certificate, license, permit, or registration is required or allowed under the Environment Article.

HISTORY: 1996, ch. 455; 1999, chs. 364, 365; 2000, ch. 61, § 1.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 1. MISCELLANEOUS RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-124 (2006)

§ 14-124. Nuisance actions within Prince George's County

(a) Definitions. --

(1) In this section the following words have the meanings indicated.

(2) "Community association" means a Maryland nonprofit association, corporation, or other organization that is located exclusively in an area of the county that is outside of a municipal corporation and:

(i) Is comprised of at least 25% of adult residents of a local community consisting of 40 or more individual, contiguous households as defined by specific geographic boundaries in the bylaws or charter of the association;

(ii) Requires, as a condition of membership, the voluntary payment of monetary dues at least annually;

(iii) Is operated primarily for the promotion of social welfare and general neighborhood improvement and enhancement;

(iv) Has been in existence for at least 2 years when it files suit under this section;

(v) Is exempt from taxation under § 501 (c) (3) or (4) of the Internal Revenue Code; and

(vi) In the case of a Maryland corporation, is in good standing.

(3) "Local code violation" means a violation under the following provisions of the Prince George's County Code as amended from time to time or under any applicable code relating to the following provisions incorporated into the Prince George's County Code by reference:

(i) Animal control regulations (§ 3-131 et seq.) and other rules, regulations, and standards (§ 3-175 et seq.) under Subtitle 3;

(ii) Building Code under Subtitle 4, Division 1;

(iii) Fire Prevention Code under Subtitle 11, Division 4;

(iv) Pest control provisions under Subtitle 12, Division 5;

(v) Housing Code, property standards and maintenance, and antilitter and weed ordinance, under Subtitle 13, Divisions 1, 7, and 9, respectively;

(vi) Sewage disposal nuisances under Subtitle 22, Division 3, Subdivision 3; and

(vii) Abandoned vehicles under Subtitle 26, Division 14.

(4) "Nuisance" means, within the boundaries of the community represented by the community association, an act or condition knowingly created, performed, or maintained on private property that constitutes a local code violation and that:

(i) Significantly affects other residents of the neighborhood;

(ii) Negatively impacts the value of neighboring property; and

(iii) 1. Is injurious to public health, safety, or welfare of neighboring residents; or

2. Obstructs the reasonable use of other property in the neighborhood.

(b) Applicability. -- This section only applies to a nuisance located within the boundaries of Prince George's County.

(c) Injunctive relief; notice. --

(1) A community association may seek injunctive and other equitable relief in the circuit court for abatement of a nuisance upon showing:

(i) The notice requirements under paragraphs (2) and (3) of this subsection have been satisfied; and

(ii) The nuisance has not been abated.

(2) (i) An action may not be brought under this section based on a nuisance until 60 days after the community association gives notice of the violation and of the community association's intent to bring an action under this section by certified mail, return receipt requested, to the applicable local enforcement agency.

(ii) An action under this section may not be brought if the applicable code enforcement agency has filed an action for equitable relief from the nuisance.

(3) (i) An action may not be brought under this section until 60 days after the tenant, if any, and owner of record receive notice from the community association that a nuisance exists and that legal action may be taken if the nuisance is not abated.

(ii) The notice shall specify:

1. The nature of the alleged nuisance;

2. The date and time of day the nuisance was first discovered;

3. The location on the property where the nuisance is allegedly occurring; and

4. The relief sought.

(iii) The notice shall be provided to the tenant, if any, and the owner of record in the same manner as service of process in a civil in personam action under the Maryland Rules.

(iv) In filing a suit under this section, an officer of the community association shall certify to the court:

1. What steps the community association has taken to satisfy the notice requirements under this subsection; and

2. That each condition precedent to the filing of an action under this section has been met.

(4) A proceeding under this section shall:

(i) Take precedence on the docket;

(ii) Be heard at the earliest practicable date; and

(iii) Be expedited in every way.

(d) Political subdivisions exempt. -- A political subdivision of the State or any agency of a political subdivision may not be subject to any action brought under this section or an action resulting from an action brought under this section against a private property owner.

(e) Other legal rights and remedies. --

(1) Subject to paragraph (2) of this subsection, this section may not be construed to abrogate any equitable or legal right or remedy otherwise available under the law to abate a nuisance.

(2) This section may not be construed as granting standing for an action:

(i) Challenging any zoning application or approval;

(ii) In which the alleged nuisance consists of:

1. A condition relating to lead paint; or

2. An interior physical defect of a property;

(iii) Involving any violation of alcoholic beverages laws under Article 2B of the Code; or

(iv) Involving any matter in which a certificate, license, permit, or registration is required or allowed under the Environment Article.

HISTORY: 1997, ch. 454; 2002, ch. 19, § 10.

NOTES:
EDITOR'S NOTE. --Section 10, ch. 19, Acts 2002, provides that "the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, "county" has been substituted for "County" in the introductory language of (a) (2).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.

a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 1. MISCELLANEOUS RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-125 (2006)

§ 14-125. Nuisance actions within Baltimore County

(a) Definitions. --

(1) In this section the following words have the meanings indicated.

(2) "Community association" means a Maryland nonprofit corporation that:

(i) Is comprised of at least 20% of the total number of households as members, with a minimum membership of 25 households, of a local community that consists of 40 or more individual households as defined by specific geographic boundaries in the bylaws or charter of the community association;

(ii) Requires, as a condition of membership, the payment of monetary dues at least annually;

(iii) Is operated primarily for the promotion of social welfare and general neighborhood improvement and enhancement;

(iv) Has been in existence for at least 1 year when it files suit under this section;

(v) 1. Is exempt from taxation under § 501 (c) (3) or (4) of the Internal Revenue Code; or

2. Has been included for a period of at least 1 year prior to bringing an action under this section in the "Directory of Organizations in Baltimore County" that is published by the Baltimore County Public Library; and

(vi) Is in good standing.

(3) "Local code violation" means a violation under Title 22. "Nuisances" of the Baltimore County Code 1988.

(4) "Nuisance" means, within the boundaries of the community represented by the community association, an act or condition created, performed, or maintained on private property that constitutes a local code violation and that:

(i) Negatively impacts the well-being of other residents of the neighborhood; and

(ii) 1. Is injurious to public health, safety, or welfare of neighboring residents; or

2. Obstructs the reasonable use of other property in the neighborhood.

(b) Applicability. -- This section only applies to a nuisance located within the boundaries of Baltimore County.

(c) Injunctive relief; notice. --

(1) A community association may seek injunctive and other equitable relief in the Circuit Court for Baltimore County for abatement of a nuisance upon showing that:

(i) The notice requirements under paragraphs (2) and (3) of this subsection have been satisfied; and

(ii) The nuisance has not been abated.

(2) (i) An action may not be brought under this section based on a nuisance until 60 days after the community association gives notice of the violation and of the community association's intent to bring an action under this section by certified mail, return receipt requested, to the County Code enforcement agency.

(ii) An action under this section may not be brought if the County Code enforcement agency has filed an action for equitable relief from the nuisance.

(3) (i) An action may not be brought under this section until 60 days after the tenant, if any, and owner of record receive notice by certified mail, return receipt requested, from the community association that a nuisance exists and that legal action may be taken if the nuisance is not abated.

(ii) The notice shall specify:

1. The nature of the alleged nuisance;

2. The date and time of day the nuisance was first documented;

3. The location on the property where the nuisance is allegedly occurring; and

4. The relief sought.

(iii) In filing a suit under this section, an officer of the community association shall certify to the court:

1. What steps the community association has taken to satisfy the notice requirements under this subsection; and

2. That each condition precedent to the filing of an action under this section has been met.

(4) The court shall determine in what amount and under what conditions, if any, a bond shall be filed by a community association in an action for relief under this section.

(d) Political subdivisions exempt. -- A political subdivision of the State or any agency of a political subdivision is not subject to any action brought under this section or an action resulting from an action brought under this section against a private property owner.

(e) Other legal rights and remedies. --

(1) Subject to paragraph (2) of this subsection, this section may not be construed to abrogate any equitable or legal right or remedy otherwise available under the law to abate a nuisance.

(2) This section may not be construed as granting standing for an action:

(i) Challenging any zoning, development, special exception, or variance application or approval;

(ii) In which the alleged nuisance consists of:

1. A condition relating to lead paint;

2. An interior physical defect of a property, except in situations that present a threat to neighboring properties; or

3. A vacant dwelling that is maintained in a boarded condition, free from trash and debris, and secure against trespassers and weather entry;

(iii) Involving any violation of alcoholic beverages laws under Article 2B of the Code; or

(iv) Involving any matter in which a certificate, license, permit, or registration is required or allowed under the Environment Article.

HISTORY: 1997, ch. 482; 2002, ch. 19, § 10.

NOTES:
EDITOR'S NOTE. --As enacted by ch. 482, Acts 1997, this section was designated as § 14-124, but since a § 14-124 had previously been added by ch. 454, Acts 1997, the section added by ch. 482 has been redesignated as § 14-125.
Section 10, ch. 19, Acts 2002, provides that "the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, "court" has been substituted for "Court" in the introductory language of (c) (3) (iii).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 1. MISCELLANEOUS RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-125.1 (2006)

§ 14-125.1. Nuisance actions within Anne Arundel County

(a) Definitions. --

(1) In this section the following words have the meanings indicated.

(2) "Community association" means a Maryland nonprofit association, corporation, or other organization that:

(i) Is comprised of at least 20% of the total number of households as members of a local community that consists of 40 or more individual households as defined by specific geographic boundaries in the bylaws or charter of the community association;

(ii) Requires, as a condition of membership, the payment of monetary dues at least annually;

(iii) Is operated primarily for the promotion of social welfare and general neighborhood improvement and enhancement;

(iv) Has been in existence for at least 1 year when it files suit under this section;

(v) Is exempt from taxation under § 501 (c) (3) or (4) of the Internal Revenue Code; and

(vi) Is in good standing.

(3) "Local code violation" means a violation under the following provisions of the Anne Arundel County Code or under any applicable code relating to the following provisions incorporated in the Anne Arundel County Code by reference:

(i) Article 11 -- Crimes and Punishments;

(ii) Article 12 -- Animal Control;

(iii) Article 14 -- Environmental Health;

(iv) Article 16 -- Licenses and Permits; and

(v) Article 22 -- Housing Maintenance and Occupancy Code.

(4) "Nuisance" means:

(i) An act or condition knowingly created, performed, or maintained on private property that constitutes a local code violation and that:

1. Significantly affects other residents of the neighborhood;

2. Diminishes the value of neighboring property; and

3. A. Is injurious to public health, safety, or welfare of neighboring residents; or

B. Obstructs the reasonable use of other property in the neighborhood;

(ii) A property where the tenant, owner, or other occupant has been convicted of violations of § 10-201 or § 10-202 of the Criminal Law Article for conduct occurring on, in, or in relation to the property; or

(iii) A property to which police or other law enforcement agencies have responded to complaints or calls for service 10 or more times within any 30 day period.

(b) Applicability. -- This section only applies to a nuisance located within the boundaries of Anne Arundel County.

(c) Who may bring action. -- An action to abate a nuisance may be brought under this section and § 4-401 of the Courts Article by:

(1) The State's Attorney for Anne Arundel County;

(2) The County Attorney for Anne Arundel County;

(3) A community association within whose boundaries the nuisance is located; or

(4) The City Attorney for the City of Annapolis.

(d) Injunctive relief; notice. --

(1) A person specified in subsection (c) of this section may seek injunctive and other equitable relief in the District Court for abatement of a nuisance upon showing:

(i) The notice requirements under paragraphs (2) and (3) of this subsection have been satisfied; and

(ii) The nuisance has not been abated.

(2) (i) An action may not be brought under this section based on a nuisance until 60 days after the plaintiff gives notice of the violation and of the plaintiff's intent to bring an action under this section by certified mail, return receipt requested, to the applicable local enforcement agency.

(ii) An action may not be brought under this section if the applicable code enforcement agency has filed an action for equitable relief from the nuisance.

(3) (i) An action may not be brought under this section until 60 days after the tenant, if any, and owner of record receive notice from the plaintiff that a nuisance exists and that legal action may be taken if the nuisance is not abated.

(ii) The notice shall specify:

1. The nature of the alleged nuisance;

2. The date and time of day the nuisance was first discovered;

3. The location on the property where the nuisance is allegedly occurring; and

4. The relief sought.

(iii) The notice shall be provided to the tenant, if any, and the owner of record in the same manner as service of process in a civil in personam action under the Maryland Rules.

(iv) 1. In addition to any service of process required by the Maryland Rules, the plaintiff shall cause to be posted in a conspicuous place on the property no later than 48 hours before the hearing the notice required under sub-subparagraph 2 of this subparagraph.

2. The notice shall indicate:

A. The nature of the proceedings;

B. The time and place of the hearing; and

C. The name and telephone number of the person to contact for additional information.

(4) In filing a suit under this section, the plaintiff shall certify to the court:

1. What steps the plaintiff has taken to satisfy the notice requirements under this subsection; and

2. That each condition precedent to the filing of an action under this section has been met.

(e) Political subdivisions exempt. -- A political subdivision of the State or any agency of a political subdivision may not be subject to any action brought under this section or an action resulting from an action brought under this section against a private property owner.

(f) Additional remedies. --

(1) Notwithstanding any other provision of law, and in addition to or as a component of any remedy ordered under subsection (d) of this section, the court, after a hearing, may order a tenant who knew or should have known of the existence of the nuisance to vacate the property within 72 hours.

(2) The court, after a hearing, may grant a judgment of restitution or the possession of rental property to the owner if:

(i) The owner and tenant are parties to the action; and

(ii) A tenant has failed to obey an order under subsection (d) of this section or paragraph (1) of this subsection.

(3) If the court orders restitution of the possession of the property under paragraph (2) of this subsection, the court shall immediately issue its warrant to the sheriff or constable commanding execution of the warrant within 5 days after issuance of the warrant.

(4) In addition to or as a part of any injunction, restraining order, or other relief ordered, the court may order the owner of the property to submit for court approval a plan of correction to ensure, to the extent reasonably possible, that the property will not again be used for a nuisance if:

(i) The owner is a party to the action; and

(ii) The owner knew or should have known of the existence of the nuisance.

(5) If an owner fails to comply with an order to abate a nuisance, after a hearing the court may, in addition to any other relief granted, order that the property be demolished if the property is unfit for habitation and the estimated cost of rehabilitation significantly exceeds the estimated market value of the property after rehabilitation.

(g) Other legal rights and remedies. --

(1) Subject to paragraph (2) of this subsection, this section may not be construed to abrogate any equitable or legal right or remedy otherwise available under the law to abate a nuisance.

(2) This section may not be construed as granting standing for an action:

(i) Challenging any zoning application or approval;

(ii) In which the alleged nuisance consists of:

1. A condition relating to lead paint; or

2. An interior physical defect of a property;

(iii) Involving any violation of alcoholic beverages laws under Article 2B of the Code; or

(iv) Involving any matter in which a certificate, license, permit, or registration is required or allowed under the Environment Article.

(h) Other provisions or laws. -- Provisions of the Real Property Article or public local laws applicable to actions between a landlord and a tenant are not applicable to actions brought against a landlord or a tenant under this section.

HISTORY: 2001, ch. 553; 2002, ch. 213, § 6.

NOTES:
EFFECT OF AMENDMENTS. --Chapter 213, Acts 2002, effective Oct. 1, 2002, substituted "§ 10-201 or § 10-202 of the Criminal Law Article" for "Article 27, § 121 or § 122 of the Code" in (a) (4) (ii).

EDITOR'S NOTE. --Section 2, ch. 553, Acts 2001, provides that the act shall take effect July 1, 2001.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 1. MISCELLANEOUS RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-126 (2006)

§ 14-126. Notice and disclosure requirements for foreclosure sales

(a) Notice to county or municipal corporation. -- In addition to any other foreclosure requirements under the law, after the commencement of an action to foreclose a lien on real property and before making a sale of the property subject to the lien, the person authorized to make the sale shall notify the county or municipal corporation where the property subject to the lien is located, not less than 15 days prior to sale, of:

(1) The name, address, and telephone number of the person authorized to make the sale; and

(2) The time, place, and terms of sale.

(b) Notice of outstanding liens, charges, taxes, or assessments. -- A county or municipal corporation that receives the notice described under subsection (a) of this section shall notify the person authorized to make the sale of any outstanding liens, charges, taxes, or assessments that the county or municipal corporation has against the property not more than

10 days after receiving the notice of sale.

HISTORY: 2000, ch. 659.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 1. MISCELLANEOUS RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-127 (2006)

§ 14-127. Real estate settlements

(a) Definitions. --

(1) In this section the following words have the meanings indicated.

(2) "Certificate of qualification" has the meaning stated in § 10-101 of this article.

(3) "Consideration" includes:

(i) A fee;

(ii) Compensation;

(iii) A gift, except promotional or advertising materials for general distribution;

(iv) A thing of value;

(v) A rebate;

(vi) A loan; or

(vii) An advancement of a commission or deposit money.

(b) Scope of section. -- This section does not prohibit:

(1) The payment of a commission to an agent who has a certificate of qualification; or

(2) The referral of a real estate settlement business or a professional fee arrangement between attorneys, if the referral or professional fee arrangement does not violate § 17-605 of the Business Occupations and Professions Article.

(c) Payment or receipt of consideration prohibited. -- A person who has a connection with the

settlement of real estate transactions involving land in the State may not pay to or receive from another any consideration to solicit, obtain, retain, or arrange real estate settlement business.

(d) Penalty. -- A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 6 months or a fine not exceeding $ 1,000 or both.

(e) Separate violation. -- Each violation of this section is a separate violation.

HISTORY: An. Code 1957, art. 27, § 465A; 2002, ch. 26, § 4.

NOTES:
REVISOR'S NOTE
Chapter 26, Acts of 2002, which enacted the Criminal Law Article, also enacted subsections (a) (3) and (b) through (e) of this section, which are new language derived without substantive change from former Art. 27, § 465A.
Subsection (a) (1) and (2) of this section is new language added for consistency within this article. Correspondingly, in subsection (b) of this section, the reference to "an agent who has a certificate of qualification" is substituted for the former reference to "agents who have been duly licensed as such by the State Insurance Department" for consistency with IN Title 10, Subtitle 1.
In subsections (c) and (d) of this section, the former references to a "firm" and "corporation" are deleted in light of the definition of "person" in § 1-101 of this article.
In subsection (c) of this section, the former reference to land "situated and lying" in the State is deleted as included in the comprehensive reference to "land in the State".
In subsection (e) of this section, the reference to a separate "violation" is substituted for the former reference to a separate "offense" for consistency with the Criminal Law Article. *See* General Revisor's Note to the Criminal Law Article.
Also in subsection (e) of this section, the former reference to a separate violation being "punishable as such" is deleted as surplusage.

DEFINED TERMS:

"Agent"	§ 1-101
"Person"	§ 1-101

UNIVERSITY OF BALTIMORE LAW REVIEW. --For note discussing the Real Estate Settlement Procedures Act of 1974, as amended in 1975, see 5 U. Balt. L. Rev. 383 (1976).

FEDERAL LAW. --This section is not preempted by federal law. 78 Op. Att'y Gen. 86 (January 27, 1993).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 1. MISCELLANEOUS RULES

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-128 (2006)

§ 14-128. Display of United States flag by homeowner or tenant

(a) Application of section. -- The provisions of this section shall apply to any residential property, including property that is subject to the provisions of:

(1) Title 8, Title 8A, Title 11, Title 11A, or Title 11B of this article; or

(2) Title 5, Subtitle 6B of the Corporations and Associations Article.

(b) Homeowner or tenant may not be prohibited from displaying flag. -- Regardless of the terms of any contract, deed, covenant, restriction, instrument, declaration, rule, bylaw, lease agreement, rental agreement, or any other document concerning the display of flags or decorations by a homeowner or tenant on residential property, a homeowner or tenant may not be prohibited from displaying on the premises of the property in which the homeowner or tenant is entitled to reside one portable, removable flag of the United States in a respectful manner, consistent with 4 U.S.C. §§ 4 through 10, as amended, and subject to reasonable rules and regulations adopted pursuant to subsection (d) of this section.

(c) Terms of contract may not prohibit display of flag. -- The terms of any contract, deed, covenant, restriction, instrument, declaration, rule, bylaw, lease agreement, rental agreement, or any other document concerning the display of flags or decorations by a homeowner or tenant on residential property may not prohibit or unduly restrict the right of a homeowner or tenant to display on the premises of the property in which the homeowner or tenant is entitled to reside one portable, removable flag of the United States in a respectful manner, consistent with 4 U.S.C. §§ 4 through 10, as amended, and subject to reasonable rules and regulations adopted under subsection (d) of this section.

(d) Rules and regulations. --

(1) Subject to paragraph (2) of this subsection, the board of directors of a condominium, homeowners association, or housing cooperative, or a landlord may adopt reasonable rules and regulations regarding the placement and manner of display of the flag of the United States and a flagpole used to display the flag of the United States on the premises of the property in which the homeowner or tenant is entitled to reside.

(2) Before adopting any rules or regulations under paragraph (1) of this subsection, the board of directors of the condominium, homeowners association, or housing cooperative, or the landlord shall:

(i) Hold an open meeting on the proposed rules and regulations for the purpose of providing affected homeowners and tenants an opportunity to be heard; and

(ii) Provide advance notice of the time and place of the open meeting by publishing the notice in a community newsletter, on a community bulletin board, by means provided in the documents governing the condominium, homeowners association, or housing cooperative, or in the lease, or by other means reasonably calculated to inform the affected homeowners and tenants.

HISTORY: 2004, ch. 529; 2005, ch. 25, § 1.

NOTES:
EFFECT OF AMENDMENTS. --Section 1, ch. 25, Acts 2005, approved April 12, 2005, and

effective from the date of enactment, inserted "Title" before "8A", "11", "11A", and "11B" in (a)(1).

EDITOR'S NOTE. --Section 2, ch. 529, Acts 2004, provides that the act shall take effect Oct. 1, 2004.

BILL REVIEW LETTER. --Chapter 529, Acts 2004 (House Bill 1017) was approved for constitutionality and legal sufficiency as a good faith argument can be made that the government has a compelling interest in allowing individuals to freely express their symbolic commitment to national unity and that the law was narrowly tailored to eliminate a private barrier to voluntary individual expression. (Letter of the Attorney General dated May 18, 2004.)

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 2. MARYLAND CONTRACT LIEN ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-201 (2006)

§ 14-201. Definitions

(a) In general. -- In this subtitle the following words have the meanings indicated unless the context requires otherwise.

(b) Contract. --

(1) "Contract" means a real covenant running with the land or a contract recorded among the land records of a county or Baltimore City.

(2) "Contract" includes a declaration or bylaws recorded under the provisions of the Maryland Condominium Act or the Maryland Real Estate Time-Sharing Act.

(c) Damages. --

(1) "Damages" means unpaid sums due under a contract, plus interest accruing on the unpaid sums due under a contract or as provided by law, including fines levied under the Maryland Condominium Act or the Maryland Real Estate Time-Sharing Act.

(2) "Damages" does not include consequential or punitive damages.

(d) Lien. -- "Lien" means a lien created under this subtitle.

(e) Party. -- "Party" means any person who:

(1) Is a signatory to a contract;

(2) Is described in a contract as having the benefit of any provision of the contract; or

(3) Owns property subject to the provisions of a contract.

(f) Statement of lien. -- "Statement of lien" means the statement described under § 14-203 (j) of this subtitle.

HISTORY: 1985, ch. 736; 1998, ch. 722.

MARYLAND LAW REVIEW. --For article, "Survey of Developments in Maryland Law, 1988-89," see 49 Md. L. Rev. 509 (1990).

CONTRACT. --Where original deed had attached thereto a "Declaration" which contained a covenant by the current purchaser's predecessors in title to pay the annual assessments and charges of a homeowners' association, the purchaser was bound by the terms of the declaration. Bright v. Lake Linganore Ass'n, 104 Md. App. 394, 656 A.2d 377 (1995).

AN ARRANGEMENT FOR COLLECTING THE COST OF DEMOLITION DID NOT AMOUNT TO A "CONTRACT" AS THAT TERM IS DEFINED IN THE MARYLAND CONTRACT LIEN ACT. McBriety v. Commissioners of Cambridge, 127 Md. App. 59, 732 A.2d 296 (1999).

QUOTED IN Chesapeake Ranch Club, Inc. v. Garczynski, 71 Md. App. 224, 524 A.2d 805 (1987); Golden Sands Club Condominium, Inc. v. Waller, 313 Md. 484, 545 A.2d 1332 (1988); Greenbriar Condo. v. Brooks, 387 Md. 683, 878 A.2d 528 (2005).

CITED IN Montgomery County v. May Dep't Stores Co., 352 Md. 183, 721 A.2d 249 (1998).

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 2. MARYLAND CONTRACT LIEN ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-202 (2006)

§ 14-202. Creation of lien by contract

(a) In general. -- A lien on property may be created by a contract and enforced under this subtitle if:

(1) The contract expressly provides for the creation of a lien; and

(2) The contract expressly describes:

(i) The party entitled to establish and enforce the lien; and

(ii) The property against which the lien may be imposed.

(b) Lien as security. -- A lien may only secure the payment of:

(1) Damages;

(2) Costs of collection;

(3) Late charges permitted by law; and

(4) Attorney's fees provided for in a contract or awarded by a court for breach of a contract.

HISTORY: 1985, ch. 736; 1986, ch. 5, § 1.

APPLIED IN United Cable Television of Baltimore Ltd. Partnership v. Burch, 354 Md. 658, 732 A.2d 887 (1999).

QUOTED IN Bright v. Lake Linganore Ass'n, 104 Md. App. 394, 656 A.2d 377 (1995).

CITED IN United Cable Television of Baltimore Ltd. Partnership v. Burch, 354 Md. 658, 732 A.2d 887 (1999).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 2. MARYLAND CONTRACT LIEN ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-203 (2006)

§ 14-203. Creation of lien as result of breach of contract

(a) Notice. --

(1) A party seeking to create a lien as the result of a breach of contract shall, within 2 years of a breach of contract, give written notice to the party against whose property the lien is intended to be imposed.

(2) Except as provided in paragraph (3) of this subsection, notice under this subsection shall be served by:

(i) Certified or registered mail, return receipt requested, addressed to the owner of the property against which the lien is sought to be imposed at the owner's last known address; or

(ii) Personal delivery to the owner by the party seeking a lien or the party's agent.

(3) If a party seeking to create a lien is unable to serve an owner under paragraph (2) of this subsection, notice under this subsection shall be served by:

(i) The mailing of a notice to the owner's last known address; and

(ii) Posting notice in a conspicuous manner on the property by the party seeking to create a lien or the party's agent in the presence of a competent witness. In the instance of a contractual lien on a building, the notice shall be posted in a conspicuous manner on the door or other front part of the building.

(b) Notice requirements. -- A notice under subsection (a) of this section shall include:

(1) The name and address of the party seeking to create the lien;

(2) A statement of intent to create a lien;

(3) An identification of the contract;

(4) The nature of the alleged breach;

(5) The amount of alleged damages;

(6) A description of the property against which the lien is intended to be imposed sufficient to identify the property, and stating the county or counties in which the property is located; and

(7) A statement that the party against whose property the lien is intended to be imposed has the right to a hearing under subsection (c) of this section.

(c) Filing of complaint by party against whom lien is to be imposed. --

(1) A party to whom notice is given under subsection (a) of this section may, within 30 days after the notice is served on the party, file a complaint in the circuit court for the county in which any part of the property is located to determine whether probable cause exists for the establishment of a lien.

(2) A complaint filed under this subsection shall include:

(i) The name of the complainant and the name of the party seeking to establish the lien;

(ii) A copy of the notice served under subsection (a) of this section; and

(iii) An affidavit containing a statement of facts that would preclude establishment of the lien for the damages alleged in the notice.

(3) A party filing a complaint under this subsection may request a hearing at which any party may appear to present evidence.

(d) Burden of proof. -- If a complaint is filed, the party seeking to establish the lien has the burden of proof.

(e) Docketing and process. -- The clerk of the circuit court shall docket the proceedings under this section, and all process shall issue out of and all pleadings shall be filed in a single action.

(f) Supplemental affidavit. -- Before any hearing held under subsection (c) of this section, the party seeking to establish a lien may supplement, by means of an affidavit, any information contained in the notice given under subsection (a) of this section.

(g) Action on complaint by circuit court. --

(1) If a complaint is filed under subsection (c) of this section, the court shall review any pleadings filed, including any supplementary affidavit filed under subsection (f) of this section, and shall conduct a hearing if requested under subsection (c) (3) of this section.

(2) If the court determines that probable cause exists to establish a lien, it shall order the lien imposed.

(3) The order to impose a lien shall state that the owner of the property against which the lien is imposed may file a bond of a specified amount to have the lien against the property removed.

(h) Recording lien; removal of lien upon filing bond. --

(1) If the court orders a lien to be imposed under subsection (g) of this section, or if the owner of the property against which a lien is intended to be imposed fails to file a complaint under subsection (c) of this section the party seeking to create the lien may file a statement of lien among the land records of each county in which any portion of the property is located.

(2) The party seeking to create the lien may file the lien statement in the county land records:

(i) If a complaint was filed under subsection (c) of this section, 30 days after the date of the court order allowing the creation of the lien; or

(ii) If a complaint was not filed under subsection (c) of this section, 30 days after the owner was served under subsection (a) (2) or (3) of this section.

(3) Unless the party seeking to create the lien and the owner agree otherwise, if the party seeking to create the lien fails to file the lien statement within 90 days after the expiration of the applicable time period described in paragraph (2) of this subsection, the party seeking to create the lien may:

(i) Not file the lien statement in the county land records; and

(ii) File for a new lien by complying with the requirements of subsections (a) through (h) of this section.

(4) A lien imposed under this subtitle has priority from the date the statement of lien is filed.

(5) Until an order imposing a lien is entered by the court, the owner of the property against which the lien is imposed may have the lien removed at any time by filing with the clerk of the circuit court a bond in the amount specified by the court under subsection (g) (3) of this section.

(i) Trial; costs. --

(1) Until an order is entered by the court either establishing or denying a lien, the action shall proceed to trial on any matter at issue.

(2) The court may award costs and reasonable attorney's fees to any party under this

subtitle.

(j) Statement of lien. -- A statement of lien is sufficient for purposes of this subtitle if it is in substantially the following form:

STATEMENT OF LIEN

This is to certify that the property described as ..... is subject to a lien under Title 14, Subtitle 2 of the Real Property Article, Maryland Annotated Code, in the amount of $ ..... The property is owned by .....

I hereby affirm under the penalty of perjury that notice was given under § 14-203 (a) of the Real Property Article, and that the information contained in the foregoing statement of lien is true and correct to the best of my knowledge, information, and belief.

.....
(name of party claiming lien)

(k) Releasing lien. -- If an order is entered under subsection (i) of this section denying a lien, or if a bond is filed under subsection (h) of this section, the clerk of the circuit court shall enter a notation in the land records releasing the lien.

HISTORY: 1985, ch. 736; 1989, ch. 383; 1990, ch. 6, § 2; 1991, ch. 293.

MARYLAND LAW REVIEW. --For article, "Survey of Developments in Maryland Law, 1988-89," see 49 Md. L. Rev. 509 (1990).

APPLICABILITY. --This subtitle applies to property other than and in addition to condominium units. Chesapeake Ranch Club, Inc. v. Garczynski, 71 Md. App. 224, 524 A.2d 805 (1987).

NOTICE AND HEARING PROVISIONS. --The procedures for establishing and enforcing a lien against a condominium unit when certain assessments and other costs chargeable against the unit have not been paid, so far as they relate to requirements of notice to the unit owner and that owner's entitlement to a hearing, afford the due process of law demanded by the United States and Maryland constitutions. Golden Sands Club Condominium, Inc. v. Waller, 313 Md. 484, 545 A.2d 1332 (1988).

Lower court judge who struck down legislatively established hearing provisions in Contract Lien Law by using measuring device which was Mechanics' Lien Law as it was rewritten following Barry Properties v. Fick Bros., 277 Md. 15, 353 A.2d 222 (1976), applied a standard of due process higher than that constitutionally required. Golden Sands Club Condominium, Inc. v. Waller, 313 Md. 484, 545 A.2d 1332 (1988).

FILING OF COMPLAINT. --Due process is not violated by the requirement of this section that the property owner file suit to resist the lien. Golden Sands Club Condominium, Inc. v. Waller,

313 Md. 484, 545 A.2d 1332 (1988).

RECEIPT OF NOTICE. --In dealing with the notice requirements of procedural due process, actual receipt of notice is not the test. Golden Sands Club Condominium, Inc. v. Waller, 313 Md. 484, 545 A.2d 1332 (1988).

QUOTED IN Bright v. Lake Linganore Ass'n, 104 Md. App. 394, 656 A.2d 377 (1995).

CITED IN F. Scott Jay & Co. v. Vargo, 112 Md. App. 354, 685 A.2d 799 (1996).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 2. MARYLAND CONTRACT LIEN ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-204 (2006)

§ 14-204. Enforcement and foreclosure of lien

(a) Manner of enforcement and foreclosure. -- A lien may be enforced and foreclosed by the party who obtained the lien in the same manner, and subject to the same requirements, as the foreclosure of mortgages or deeds of trust on property in this State containing a power of sale or an assent to a decree.

(b) Suits for deficiency and unpaid damages. -- If the owner of property subject to a lien is personally liable for alleged damages, suit for any deficiency following foreclosure may be maintained in the same proceeding, and suit for a monetary judgment for unpaid damages may be maintained without waiving any lien securing the same.

(c) Time limit. -- Any action to foreclose a lien shall be brought within 3 years following recordation of the statement of lien.

HISTORY: 1985, ch. 736.

MARYLAND LAW REVIEW. --For article, "Survey of Developments in Maryland Law, 1988-89," see 49 Md. L. Rev. 509 (1990).

DEBTOR'S RIGHTS. --Debtor may seek to enjoin a foreclosure sale from proceeding by filing a motion to enjoin prior to the sale, as provided for in Rule 14-209 but, if the debtor fails to do so and the sale occurs, the debtor's later filing of exceptions can only challenge any procedural irregularities regarding the sale, or the debtor can challenge the statement of indebtedness by filing exceptions to the auditor's statement of account. Ultimately, the foreclosure sale extinguishes a debtor's right of redemption, and substantial compliance by tendering a payment to satisfy the outstanding debt is insufficient once the decree of foreclosure has been

declared. Greenbriar Condo. v. Brooks, 387 Md. 683, 878 A.2d 528 (2005).

SETTING ASIDE FORECLOSURE SALE HELD IN ERROR. --Trial court erred by setting aside a second foreclosure sale with regard to a condominium unit, because the debtor failed to file an injunction prior to the sale and, upon completion of the sale, the debtor lost his right of redemption. The debtor should have sought to enjoin the sale from proceeding by filing a motion to enjoin under Md. R. 14-209.11-110, as substantial compliance by tendering a payment to satisfy the debt after the sale occurred was insufficient once the decree of foreclosure was entered. Greenbriar Condo. v. Brooks, 387 Md. 683, 878 A.2d 528 (2005).

QUOTED IN Bright v. Lake Linganore Ass'n, 104 Md. App. 394, 656 A.2d 377 (1995).

CITED IN Golden Sands Club Condominium, Inc. v. Waller, 313 Md. 484, 545 A.2d 1332 (1988).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 2. MARYLAND CONTRACT LIEN ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-205 (2006)

§ 14-205. Exemptions

The provisions of this subtitle do not apply to land installment contracts or to deeds of trust or mortgages on property in this State.

HISTORY: 1985, ch. 736.

QUOTED IN Chesapeake Ranch Club, Inc. v. Garczynski, 71 Md. App. 224, 524 A.2d 805 (1987).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***

*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 2. MARYLAND CONTRACT LIEN ACT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-206 (2006)

§ 14-206. Short title

This subtitle may be cited as the Maryland Contract Lien Act.

HISTORY: 1985, ch. 736.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 3. COMMERCIAL REAL ESTATE BROKER'S LIEN

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-301 (2006)

§ 14-301. Definitions

(a) In general. -- In this subtitle the following words have the meanings indicated unless the context requires otherwise.

(b) Broker. -- "Broker" means:

(1) An individual licensed as, or otherwise authorized to act as, a real estate broker under Title 17 of the Business Occupations and Professions Article; or

(2) A corporation or partnership authorized to provide real estate brokerage services under Title 17 of the Business Occupations and Professions Article.

(c) Broker's lien. -- "Broker's lien" means a lien established in accordance with this subtitle.

(d) Claimant. -- "Claimant" means a broker claiming a broker's lien under this subtitle.

(e) Commercial lease. -- "Commercial lease" means a lease of building floor space intended to be used by the tenant for a nonresidential use whether or not the lease expressly sets forth a use.

(f) Commercial leasing brokerage agreement; brokerage agreement. --

(1) "Commercial leasing brokerage agreement" or "brokerage agreement" means a written agreement between a broker and the owner of commercial property that provides for the payment of a commercial leasing commission by the owner to the broker for services in obtaining a commercial tenant regardless as to whether the broker acted as the agent for the owner or the commercial tenant.

(2) "Commercial leasing brokerage agreement" or "brokerage agreement" includes a written unilateral offer from an owner of commercial property to one or more brokers, including the broker claiming a lien under this subtitle.

(g) Commercial leasing commission; commission. -- "Commercial leasing commission" or "commission" means the compensation payable by the owner of commercial property to a broker for obtaining a commercial tenant under a commercial leasing brokerage agreement.

(h) Commercial property. -- "Commercial property" means land, and any improvements on the land, used or intended to be used for a nonresidential purpose.

(i) Commercial tenant. -- "Commercial tenant" means a tenant under a commercial lease.

(j) Lien property. -- "Lien property" means the commercial property against which a broker's lien is claimed or against which a broker's lien has attached under this subtitle.

(k) Owner. -- "Owner" means the owner of the commercial property.

HISTORY: 1994, ch. 3, § 13; ch. 516; 2002, ch. 10, § 19.

NOTES:
EDITOR'S NOTE. --Section 10, ch. 19, Acts 2002, provides that "the publisher of the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, former (h), (i) and (j) have been transposed to preserve alphabetical order.

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY

TITLE 14. MISCELLANEOUS RULES
SUBTITLE 3. COMMERCIAL REAL ESTATE BROKER'S LIEN

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-302 (2006)

§ 14-302. Right to lien; priority; exemptions; notice of lien

(a) Right to unpaid commission. -- If a broker is not paid a commission according to the terms of a commercial leasing brokerage agreement, the broker shall be entitled to a lien under this subtitle for the unpaid portion of the commission.

(b) Priority; exemptions; notice of lien. --

(1) A broker's lien established under this subtitle shall:

(i) Subject to subparagraph (ii) of this paragraph, have priority over all liens of every kind perfected against the lien property after the issuance of an interlocutory order or the final order of the court under § 14-305 of this subtitle;

(ii) Be subordinate to a mechanics' lien established under Title 9 of this article, and perfected subsequent to the broker's lien if the mechanics' lien relates back to a date when work was performed or materials were furnished and that date is prior to the issuance of an interlocutory order or the final order of the court under § 14-305 of this subtitle;

(iii) Be subordinate to all liens perfected prior to the issuance of an interlocutory order or the final order of the court under § 14-305 of this subtitle, notwithstanding that the holder of a prior perfected lien had knowledge of the broker's unfiled commission claim at the time of perfection; and

(iv) Be subordinate to all other liens which are otherwise paramount to the broker's lien by operation of law.

(2) (i) A commercial property may not be subjected to a broker's lien under this subtitle if, prior to the establishment of the broker's lien, legal title has been granted to a bona fide purchaser for value.

(ii) The filing of a petition under § 14-304 of this subtitle shall constitute notice to a purchaser of the possibility of a broker's lien perfected under this subtitle.

HISTORY: 1994, ch. 516.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY

TITLE 14. MISCELLANEOUS RULES
SUBTITLE 3. COMMERCIAL REAL ESTATE BROKER'S LIEN

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-303 (2006)

§ 14-303. Scope of lien

A lien established in accordance with this subtitle shall extend to the land covered by the building and to as much other land, immediately adjacent and belonging in like manner to the owner of the building, as may be necessary for the ordinary and useful purposes of the building.

HISTORY: 1994, ch. 516.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 3. COMMERCIAL REAL ESTATE BROKER'S LIEN

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-304 (2006)

§ 14-304. Establishment of broker's lien

(a) Commencement of proceedings. -- To establish a broker's lien under this subtitle, a broker shall commence proceedings in the circuit court where the commercial property is located within 180 days after the commercial leasing commission became due and payable by filing with the clerk of the court:

(1) A petition to establish a broker's lien, which shall contain the following:

(i) The name and address of the petitioner;

(ii) The name and address of the owner;

(iii) A copy of the brokerage agreement;

(iv) A description of the lien property, including a statement whether part of the lien property is located in another county, by:

1. Reasonably specific geographic location;

2. Street address; or

3. Legal description from the deed as recorded among the land records; and

(v) The amount of the commission and the unpaid portion of the commission;

(2) An affidavit by the broker or by an individual on behalf of the broker stating the facts which the broker is claiming a broker's lien against the lien property in the amount specified; and

(3) Either original or sworn, certified or photostatic copies of all material papers or parts of any material papers, if any, which constitute the basis of the broker's claim for a lien, unless the absence of any material papers or parts of any material papers is explained in the affidavit.

(b) Docketing; process; pleadings. -- The clerk shall docket the proceedings as an action in equity, and all process shall issue out of and all pleadings shall be filed in the one action.

HISTORY: 1994, ch. 516.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 3. COMMERCIAL REAL ESTATE BROKER'S LIEN

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-305 (2006)

§ 14-305. Court proceedings

(a) Pleadings; show cause orders; affidavits; admissions; hearing. --

(1) When a petition to establish a broker's lien is filed, the court shall review the pleadings and documents on file and may require the petitioner to supplement or explain any matters set forth in the petition, pleadings, or documents.

(2) If the court determines that the lien should attach, it shall pass an order that:

(i) Directs the owner to show cause within 15 days from the date of service on the owner of a copy of the order, together with copies of the pleadings and documents on file, why a broker's lien on the lien property and for the amount described in the petition should not attach; and

(ii) Informs the owner that:

1. The owner may appear at the time stated in the order and present evidence on the owner's behalf or may file a counter-affidavit at or before that time; and

2. If the owner fails to appear and present evidence or file a counter-affidavit, the facts in the affidavit supporting the petitioner's claim shall be deemed admitted and a broker's lien may attach to the lien property as described in the petition.

(3) (i) If the owner desires to controvert any statement of fact contained in the affidavit supporting the petitioner's claim, the owner shall file an affidavit in support of the owner's answer showing cause.

(ii) The failure of the owner to file an opposing affidavit shall constitute an admission for the purposes of the proceedings of all statements of facts in the affidavit supporting the petitioner's claim, but shall not constitute an admission that a broker's petition or affidavit in support of the broker's petition is legally sufficient.

(4) After the filing of an answer showing cause why a broker's lien should not be established in the amount claimed, the court shall schedule a hearing at the earliest possible time.

(b) Disposition. --

(1) (i) If the pleadings, affidavits, and admissions on file and the evidence, if any, show that there is no genuine dispute as to any material fact and that the lien should attach as a matter of law, then the court shall issue a final order establishing the lien for want of any cause shown to the contrary.

(ii) If it appears that there is no genuine dispute as to any portion of the broker's lien claim, then the validity of that portion shall be established and the action shall proceed only on the disputed amount of the broker's lien claim.

(2) If the pleadings, affidavits, and admissions on file and the evidence, if any, show that there is no genuine dispute as to any material fact and that the petitioner failed to establish the broker's right to a broker's lien as a matter of law, then the court shall issue a final order denying the lien for cause shown.

(3) If the court determines from the pleadings, affidavits, and admissions on file and the evidence, if any, that the broker's lien should not attach, or should not attach in the amount claimed, as a matter of law, by any final order, but that there is probable cause to believe that the petitioner is entitled to a broker's lien, the court shall enter an interlocutory order which:

(i) Establishes the broker's lien;

(ii) Describes the lien property to which the broker's lien attaches;

(iii) States the amount of the claim for which probable cause is found;

(iv) Specifies the amount of the bond that the owner may file to have the lien property released from the broker's lien;

(v) May require the claimant to file a bond in an amount that the court believes sufficient for damages, including reasonable attorney's fees; and

(vi) Assigns a date for the trial of all matters at issue in the action, which shall be within a period of 6 months.

(4) The owner or any other person interested in the lien property may move to have the broker's lien established by the interlocutory order modified or dissolved at any time.

(c) Surety bond. --

(1) The amount of and the surety on any bond shall be determined and approved in accordance with the Maryland Rules except as stated in this subtitle.

(2) (i) If the petitioner, or any other person interested in the lien property, is not satisfied with the sufficiency of a surety or with the amount of any bond given, the petitioner, or any other person interested in the lien property may, at any time before entry of a final decree, apply to the court for an order requiring an additional bond.

(ii) After notice to the other parties involved, the court may order the giving of an additional bond as it may deem proper.

(3) Instead of filing a bond, any party may deposit money in an amount equal to the amount of the bond which would otherwise be required, in accordance with the Maryland Rules.

(d) Trial. -- Until a final order is entered either establishing or denying the broker's lien, the action shall proceed to trial on all matters at issue, as in the case of any other proceedings in equity.

HISTORY: 1994, ch. 516.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 3. COMMERCIAL REAL ESTATE BROKER'S LIEN

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-306 (2006)

§ 14-306. Property located in other county

(a) Filing of docket entries, order and bond. -- If any part of the lien property is located within another county and the petitioner desires that the broker's lien attach to the lien property in that county, the petitioner shall file a certified copy of the docket entries, the court order, and any required bond with the clerk of the circuit court for that county.

(b) Attachment. -- A broker's lien attaches to the lien property in a county at the time the documents required to be filed under subsection (a) of this section are filed with the clerk of the circuit court of that county.

HISTORY: 1994, ch. 516.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 3. COMMERCIAL REAL ESTATE BROKER'S LIEN

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-307 (2006)

§ 14-307. Judicial sales

(a) Priority. -- Subject to subsection (b) of this section, if all or any part of the lien property against which a broker's lien has been established under this subtitle is to be sold under a foreclosure or a judgment, execution or any other court order, all liens and encumbrances on the lien property that are subordinate to the lien with respect to which the property is sold shall be satisfied in accordance with their priority.

(b) Insufficient proceeds; disbursement. --

(1) If the proceeds of the sale are insufficient to satisfy all broker's liens established under this subtitle, then all proceeds available to satisfy each broker's lien shall be stated by the court auditor as one fund.

(2) The amount to be disbursed to satisfy each broker's lien established under this subtitle shall bear the same proportion to that fund as the amount of each broker's lien bears to the total amount secured by all broker's liens, without regard to priority among the broker's liens.

HISTORY: 1994, ch. 516.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 3. COMMERCIAL REAL ESTATE BROKER'S LIEN

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-308 (2006)

§ 14-308. Enforcement

(a) Remedies. -- A broker's lien established under this subtitle may be enforced to the same extent as a judgment under the Maryland Rules, including a judicial sale of the lien property to satisfy the amount of the broker's lien.

(b) Limitations period; enforcement proceeding; effect of petition. --

(1) The right to enforce any broker's lien under this subtitle expires at the end of 1 year from the day on which the petition to establish the broker's lien was first filed.

(2) During the 1-year period the claimant may file a petition in the broker's lien proceedings to enforce the lien or to execute on any bond given to obtain a release of the lien property from the broker's lien.

(3) If a petition to enforce the lien is filed within the 1-year period, the right to a broker's lien or the broker's lien, or any bond given to obtain a release of the broker's lien, shall remain in full force and effect until the conclusion of the enforcement proceedings and after the conclusion of the enforcement proceedings in accordance with the decree entered in the case.

HISTORY: 1994, ch. 516.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 3. COMMERCIAL REAL ESTATE BROKER'S LIEN

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-309 (2006)

§ 14-309. Other rights not abridged

Nothing in this subtitle affects the right of any broker, to whom a commercial leasing commission is due and payable under a commercial leasing brokerage agreement, to maintain any personal action against the owner of commercial property or any other person for the commission due and payable.

HISTORY: 1994, ch. 516.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 3. COMMERCIAL REAL ESTATE BROKER'S LIEN

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-310 (2006)

§ 14-310. Construction of subtitle; amendments to proceedings

(a) Construction of subtitle. -- This law is remedial and shall be so construed to give effect to its purpose.

(b) Amendments to proceedings. --

(1) Any amendment shall be made in the proceedings, commencing with the claim or broker's lien to be filed and extending to all subsequent proceedings, as may be necessary or proper.

(2) The amount of the claim or broker's lien filed may not be enlarged by amendment.

HISTORY: 1994, ch. 516.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 3. COMMERCIAL REAL ESTATE BROKER'S LIEN

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-311 (2006)

§ 14-311. Waivers

(a) Prohibitions. -- A commercial leasing brokerage agreement between a broker and an owner may not waive or require the broker to waive the right to claim or establish a broker's lien.

(b) Void provisions. -- Any waiver provision made in a commercial leasing brokerage agreement or any other contract, express or implied, between a broker and an owner made in violation of this section is void as a matter of public policy.

HISTORY: 1994, ch. 516.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 3. COMMERCIAL REAL ESTATE BROKER'S LIEN

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-312 (2006)

§ 14-312. Releases

(a) In general. -- At the time of any settlement or payment in full between a broker and an owner, the broker shall give to the owner a signed release of the broker's lien established under this subtitle.

(b) Scope of releases. -- An owner is not subject to a lien and is not otherwise liable for any commission included in the release under subsection (a) of this section.

HISTORY: 1994, ch. 516.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 3. COMMERCIAL REAL ESTATE BROKER'S LIEN

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-313 (2006)

§ 14-313. Applicability of Maryland Rules provisions

Subject to the provisions of this subtitle, an action to establish and enforce a broker's lien under this subtitle, and all proceedings held under this subtitle, shall be in accordance with the Maryland Rules applicable to the establishment and enforcement of a mechanics' lien under Title 9 of this article.

HISTORY: 1994, ch. 516; 1998, ch. 21, § 1.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 4. MARYLAND COORDINATE SYSTEM

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-401 (2006)

§ 14-401. "Maryland Coordinate System" defined

In this subtitle, "Maryland Coordinate System" means the system of plane rectangular coordinates that has been established and adopted by the National Geodetic Survey for defining and stating the positions or locations of points on the surface of the earth within the State.

HISTORY: An. Code 1957, art. 91, § 19; 1997, ch. 31, § 1.

NOTES:
REVISOR'S NOTE
This section is new language derived without substantive change from the first clause of former Art. 91, § 19.
The phrase "of Maryland", which formerly modified "State", is deleted as unnecessary and to conform to usage throughout this article.

EDITOR'S NOTE. --Section 8, ch. 31, Acts 1997, provides that "except in the repeal of

provisions of law believed by the General Assembly to be obsolete, this Act may not be interpreted to render any substantive change to the Laws of Maryland."

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 4. MARYLAND COORDINATE SYSTEM

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-402 (2006)

§ 14-402. Scope of subtitle

This subtitle:

(1) Does not apply to Baltimore City; and

(2) Does not refer to and is not connected with the coordinate system used by the Bureau of Plans and Surveys of Baltimore City.

HISTORY: An. Code 1957, art. 91, § 25; 1997, ch. 31, § 1.

NOTES:
REVISOR'S NOTE
This section is new language derived without substantive change from former Art. 91, § 25.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 4. MARYLAND COORDINATE SYSTEM

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-403 (2006)

§ 14-403. Designation that survey based on Maryland Coordinate System

(a) When required. -- If a land description uses the Maryland Coordinate System, it shall be designated on the land description.

(b) When prohibited. -- A survey of lands may not have endorsed on the survey any legend or other statement indicating that the survey is based on the Maryland Coordinate System unless the survey actually is based on the Maryland Coordinate System.

HISTORY: An. Code 1957, art. 91, §§ 19, 23; 1997, ch. 31, § 1.

NOTES:
REVISOR'S NOTE
This section is new language derived without substantive change from former Art. 91, § 23 and the second clause of § 19.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 4. MARYLAND COORDINATE SYSTEM

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-404 (2006)

§ 14-404. Plane rectangular coordinates

(a) Coordinates consist of two distances. -- The plane rectangular coordinates of a point on the earth's surface, to be used in expressing the position or location of the point on the Maryland Coordinate System, consist of two distances, expressed in meters and decimals of meters.

(b) "Eastings" and "northings". --

(1) One of the distances, known as the "eastings", shall give the position in an east-west direction.

(2) The other distance, known as the "northings", shall give the position in a north-south direction.

(c) Conformance with National Geodetic Survey. -- The plane rectangular coordinates under this section shall be made to depend on and conform to the plane rectangular coordinates of the triangulation and traverse stations of the National Geodetic Survey within the State, as those coordinates have been determined by the National Geodetic Survey.

HISTORY: An. Code 1957, art. 91, § 20; 1997, ch. 31, § 1.

NOTES:
REVISOR'S NOTE
This section is new language derived without substantive change from former Art. 91, § 20.
In subsection (c) of this section, the phrase "of Maryland", which formerly modified "State", is deleted as unnecessary and to conform to usage throughout this article.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 4. MARYLAND COORDINATE SYSTEM

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-405 (2006)

§ 14-405. Standards of Maryland Coordinate System

(a) Adoption of standards of National Geodetic Survey. -- For the purpose of more precisely defining the Maryland Coordinate System, the standards of the National Geodetic Survey set out in this section are adopted.

(b) Lambert conic conformal projection of Geodetic Reference System of 1980. --

(1) The Maryland Coordinate System is a Lambert conic conformal projection of the Geodetic Reference System of 1980, having standard parallels at north latitudes 38 degrees 18' and 39 degrees 27', along which parallels the scale shall be exact.

(2) The origin of coordinates is at the intersection of the meridian 77 degrees 00' west longitude and the parallel 37 degrees 40' north latitude.

(3) This origin is given the coordinates: Easting = 400,000 meters and northing = 0 meters.

(c) Conversion of feet to meters. -- For the Maryland Coordinate System, the unit used to convert feet to meters is the United States survey foot, which is 39.37/12 feet for each meter.

(d) Position of Maryland Coordinate System. -- The position of the Maryland Coordinate System shall be as marked on the ground by triangulation or traverse stations established in

conformity with the standards adopted by the National Geodetic Survey for first-order and second-order work, whose:

(1) Geodetic positions have been rigidly adjusted on the North American Datum of 1983; and

(2) Plane coordinates have been computed in accordance with this section.

HISTORY: An. Code 1957, art. 91, § 21; 1997, ch. 31, § 1.

NOTES:
REVISOR'S NOTE
This section is new language derived without substantive change from former Art. 91, § 21.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 4. MARYLAND COORDINATE SYSTEM

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-406 (2006)

§ 14-406. Triangulation stations

A triangulation or traverse station may be used in establishing a survey connection with the Maryland Coordinate System if:

(1) The triangulation or traverse station is established:

(i) In accordance with § 14-405 of this subtitle; or

(ii) By or in accordance with the requirements of the State department authorized to administer this subtitle; and

(2) The connection is made in accordance with the regulations adopted by the State department authorized to administer this subtitle.

HISTORY: An. Code 1957, art. 91, § 22; 1997, ch. 31, § 1.

NOTES:
REVISOR'S NOTE
This section is new language derived without substantive change from former Art. 91, § 22.
In item (2) of this section, the former term "rules" is deleted as included in the term "regulations". See 10-101(e) of the State Government Article.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 14. MISCELLANEOUS RULES
SUBTITLE 4. MARYLAND COORDINATE SYSTEM

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 14-407 (2006)

§ 14-407. Maryland Coordinate System not exclusive

This subtitle does not require any purchaser or mortgagee to rely wholly on a description based on the Maryland Coordinate System.

HISTORY: An. Code 1957, art. 91, § 24; 1997, ch. 31, § 1.

NOTES:
REVISOR'S NOTE
This section is new language derived without substantive change from former Art. 91, § 24.

EDITOR'S NOTE. --See Editor's note under § 14-401 of this subtitle.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 15. EFFECTIVE DATE AND APPLICABILITY

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 15-101 (2006)

§ 15-101. General effective date

The effective date of this article is 12:01 A.M. on July 1, 1974, and this article is applicable at that time except as provided in § 15-102 of this title.

HISTORY: An. Code 1957, art. 21, § 15-101; 1974, ch. 12, § 2; 2002, ch. 19, § 10.

NOTES:
EDITOR'S NOTE. --Section 10, ch. 19, Acts 2002, provides that "the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a replacement volume of the Annotated Code, shall make nonsubstantive corrections to style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 10 of ch. 19, "of this title" has been added at the end of the section.

APPLIED IN Layton v. Petrick, 277 Md. 421, 355 A.2d 466 (1976).

CITED IN Conrad v. Department of Natural Resources, 30 Md. App. 479, 352 A.2d 904 (1976).

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Many of the cases appearing in the notes to this article were decided under the former statutes. These earlier cases have been retained under pertinent sections of this article where it is thought that such cases will be of value in interpreting the present statutes.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 15. EFFECTIVE DATE AND APPLICABILITY

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 15-102 (2006)

§ 15-102. Special effective dates

Unless otherwise specifically provided in this article, the provisions of this article are applicable on the effective date. In addition,

(1) Section 3-101 (a) applies to all deeds whether executed before or after the effective date.

(2) Section 3-102 applies to all instruments whether recorded before or after the effective date.

(3) Section 3-104 (f) (1) applies only to documents executed on or after May 31, 1966.

(4) Section 3-104 (f) (2) applies only to all deeds recorded after June 1, 1967.

(5) Section 3-104 (f) (6) applies only to all deeds recorded after June 1, 1965.

(6) Sections 4-101 and 4-103 apply only to all deeds executed on or after the effective date.

(7) Section 4-106 (e) applies only to all mortgages and deeds of trust executed on or after the effective date.

(8) Section 2-113 applies only to all deeds executed after April 7, 1886.

(9) Section 2-114 applies to all inter vivos instruments executed on or after the effective date and to all testamentary instruments where the testator died after the effective date.

(10) Section 7-101 applies only to mortgages and mortgage assignments executed on or after the effective date.

(11) Section 7-102 applies only to mortgages and deeds of trust executed on or after the effective date.

(12) Section 7-103 (b) applies only to payments made on or after the effective date.

(13) Section 7-105 (d) applies to all mortgages or deeds of trust whether executed before or after the effective date.

(14) Section 7-106 (a) applies only to deeds of trust executed on or after the effective date.

(15) Section 7-106 (c) applies to all proceedings instituted on or after the effective date, whether the mortgage or deed of trust was executed before or after the effective date.

(16) Section 8-203 (b) applies only to those leases entered into, renegotiated, or renewed after July 1, 1972.

(17) Section 8-203 (d) applies to all security deposits held by a landlord before July 1, 1972, with interest accruing from July 1, 1972, and to all security deposits received by the landlord on or after July 1, 1972, with interest accruing from the date of receipt.

(18) Section 8-402 (a) applies to all leases whose terms expire on or after the effective date, whether or not the lease term commenced before the effective date.

(19) Section 10-401 applies to all contracts whether recorded before or after the effective date.

(20) Section 10-402 applies to all options whether recorded before or after the effective date.

(21) Section 14-103 applies to all sales mentioned in that section which occur on or after the effective date.

(22) Section 14-111 applies to all proceedings commenced on or after the effective date.

HISTORY: An. Code 1957, art. 21, §§ 8-213, 15-102; 1974, ch. 12, § 2; 1974, ch. 409; 1976, chs. 272, 572; 1997, ch. 14, § 1; 1999, ch. 34, § 7.

PURPOSE OF PARAGRAPH (1) OF THIS SECTION was to make all provisions regarding unrecorded "deeds" of § 3-101 of this article retrospective. Layton v. Petrick, 277 Md. 421, 355 A.2d 466 (1976).

QUOTED IN Conrad v. Department of Natural Resources, 30 Md. App. 479, 352 A.2d 904, cert. denied, 278 Md. 719 (1976).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland
Copyright 2006 by Matthew Bender and Company, Inc.
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH THE 2006 REGULAR AND SPECIAL SESSIONS ***
*** WITH UPDATES OF MATERIAL IN EFFECT JANUARY 1, 2007 ***
*** ANNOTATIONS ARE CURRENT THROUGH NOVEMBER 20, 2006 ***

REAL PROPERTY
TITLE 15. EFFECTIVE DATE AND APPLICABILITY

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. REAL PROPERTY Code Ann. § 15-103 (2006)

§ 15-103. Applicability

Except as expressly provided to the contrary in this article, transactions validly entered into before the effective date and the rights, duties, and interests flowing from them remain valid thereafter and may be terminated, completed, consummated, or enforced as required or permitted by any statute amended or repealed by this article as though such repeal or amendment had not occurred.

HISTORY: An. Code 1957, art. 21, § 15-102; 1974, ch. 12, § 2.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.