

A Survey of
Maryland Laws
Relating to
Extending Credit
and Consumer
Financial Services

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Maryland Bankers Association

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Table of Contents

	<i>Page</i>
I. Introduction to the Maryland Credit Laws	1
II. General Rules: Which Credit Law Applies?	2
A. Election or Details.....	2
B. Licensing	2
1. Consumer Loans-Licensing Provisions.....	2
2. Installment Loans-Licensing Provisions.....	3
3. Sales Finance Companies-Licensing Provisions.....	3
4. Mortgage Lender Law	4
5. Mortgage Originator Law.....	5
C. “Residential Real Property”.....	5
D. Conflicts of Law	5
E. State Law Preemption of Local Law	6
F. Safe Harbor.....	6
III. Transactions Not Subject to Maryland Credit Laws or Subject to Special Rules	6
A. Sale Transactions.....	6
B. Commercial Purpose/Investment Purpose	6
C. Loans to Corporations.....	7
D. Loans to Non-Corporate Business Entities.....	7
E. Loans of \$75,000 or Less to Individuals for Commercial Purposes.....	7
F. Loans of \$15,000 or Less to Individuals for Commercial Purposes.....	7
G. Loans Insured or Guaranteed by Government Agencies.....	7
H. Loans Under the Securities and Exchange Act.....	8
IV. Closed-End Loans	8
A. Introduction	8
B. Interest & Usury.....	8
1. Interest Rates	8
2. Fees and Charges.....	9
3. Repossession.....	9
C. Subtitle 10.....	9
1. Interest Rate.....	9
2. Collateral	9
3. Fees and Charges — Consumer Borrowers.....	9
4. Prepayment — Consumer Borrowers	11
5. Repossession — Consumer Borrowers.....	11
6. Balloon Payments — Consumer Borrowers.....	12
7. Fees and Charges — Nonconsumer Borrower.....	13
8. Prepayment — Nonconsumer Borrower.....	13
D. Payday Lending	13
V. Real Estate Credit	14
A. Introduction	14
B. Ability to Repay	14

C.	Credit Secured by a First Lien on Residential Real Property	14
1.	Escrow Accounts.....	14
2.	Attorney Fees and Title Insurance — Primary Residence Liens.....	15
3.	Inspection Fees.....	15
4.	Financing and Commitment Agreements — Primary Residence Liens.....	16
D.	Reverse Mortgages.....	16
E.	Property and Flood Insurance	17
F.	“Covered Loan Law”	17
G.	Notice Regarding Housing Counseling	17
H.	Credit Secured by Subordinate Liens	18
I.	Real Estate Ownership	18
J.	Real Estate Instruments	18
K.	Ground Rents on Residential Real Property	19
L.	Releases of Mortgages and Deeds of Trust	21
M.	Foreclosure	22
1.	In General.....	22
2.	Residential Real Property Foreclosures.....	23
3.	Foreclosure Mediation	24
4.	Tenant Protections.....	24
5.	Condominiums and Homeowners’ Associations.....	24
N.	Mortgage Fraud.....	25
O.	Transfer of Mortgage Loan Servicing.....	25
P.	Appraisals	25
Q.	Real Estate Filing Fees and Taxes.....	25
R.	Broker Fees	26
VI.	Open-End Credit	27
A.	Introduction	27
B.	Open-End Sale and Loan Plans	27
1.	Retail Credit Accounts Law	27
2.	Subtitle 9.....	27
C.	Credit Card Plans.....	30
D.	Open-End Plans Secured by Real Estate.....	30
VII.	Sale Transactions	31
A.	Retail Installment Sales Act	31
B.	Subtitle 10.....	31
C.	Time Price Doctrine	32
D.	Repossession	32
VIII.	Privacy and Information Security	32
A.	Privacy.....	32
B.	Security Freeze.....	33
C.	Maryland Personal Information Protection Act.....	33
D.	Social Security Numbers	34
E.	Identity Theft Passports	34

IX. Advertising	35
A. Lotteries, Sweepstakes, Contests.....	35
B. Advertising.....	35
C. Telephone Solicitations	35
D. Leased Motor Vehicle	36
X. Other Licensed Services	36
A. Real Estate Appraisal Management Companies and Special Fund for Appraiser and Home Inspector Commission	36
B. Credit Services	36
C. Check Cashing Services	37
D. Vehicle Protection Products Act	37
XI. Debt Adjustment	38
A. Debt Management Services Act	38
B. Debt Settlement Services Act	38
C. Foreclosure Consultants	39
XII. Other Maryland Laws Affecting Financial Service Providers	40
A. Equal Credit Opportunity	40
B. Consumer Protection Act	40
C. Set-Off.....	40
D. Judgment Rate	40
E. Foreign Corporation Qualification	40
F. Debt Collection.....	41
G. Late Fees.....	42
H. Revised Article 9 of the Uniform Commercial Code.....	42
I. Payroll Cards	43
J. Gift Certificates and Gift Cards.....	43

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Financial Services Group

Gordon Feinblatt's Financial Services lawyers advise clients that offer financial, banking and insurance services in Maryland. Our clients include banks, thrifts, credit unions, mortgage bankers and brokers, insurance companies and producers, HMOs, consumer finance companies, check cashers, debt management and debt settlement companies, industry trade associations and businesses that provide data processing and other services to the financial services sector. We regularly handle matters that include the following:

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I. Introduction to the Maryland Credit Laws

A. The laws that apply to credit extensions in Maryland can be confusing.

This survey presents in a basic format a road map through these laws. In this survey, “Maryland Credit Laws” refers to seven different Subtitles of Title 12 of Maryland’s Commercial Law Article (“CL”) that set rates of interest, charges, and fees, as well as impose other restrictions on credit. All credit extended under Maryland law is subject to one (or, perhaps, more than one) of these seven Maryland Credit Laws.

B. The Maryland Credit Laws are:

- Interest and Usury (“I&U”)¹

The I&U law dates back to 1845 when the Maryland legislature enacted a penalty for usury, which is defined as a rate of interest that exceeds legal limits. I&U covers both open-end and closed-end loans.

- Consumer Loans-Credit Provisions (“Consumer Loan Law”)²

The Consumer Loan Law applies to certain loans of \$6,000 or less, except for loans governed by the Secondary Mortgage Loan Law, described below. It is modeled on a traditional small loan law that allows high interest rates, but imposes many restrictions on other terms.

- Secondary Mortgage Loans-Credit Provisions (“SMLL”)³

SMLL governs loans secured in whole or in part by second or more junior liens on 1-to-4 family residential real property. SMLL also governs deferred purchase price financing if the financed purchase price is secured by a second or more junior lien on residential real property. Because this law contains significant ambiguities and does not accommodate recent innovations in mortgage lending, it should be avoided if an alternative is available.⁴

- Retail Credit Accounts (“RCAL”)⁵

RCAL governs the retail sale of goods or services except for those that are financed under RISA. RCAL is intended primarily to cover open-end credit, but also applies to closed-end credit. This law applies only to consumer transactions. Because it does not include recent innovations in open-end financing, it should be avoided if an alternative is available.

- Retail Installment Sales (“RISA”)⁶

RISA governs closed-end financing of the retail sale of consumer goods valued at \$25,000 or less (and partially governs closed-end financing of any value if the goods are motor vehicles) if the seller takes a security interest in the goods or takes other collateral security.

- Credit Grantor Revolving Credit Provisions (“Subtitle 9”)⁷

Enacted in 1983 to modernize Maryland’s Credit Laws, Subtitle 9 covers revolving direct loans and credit sales. Subtitle 9 provides slightly different terms for consumer loans than for loans made for business or investment purposes. Subtitle 9 is the favored credit law for consumer purpose revolving credit.

- Credit Grantor Closed End Credit Provisions (“Subtitle 10”)⁸

Enacted in 1983 to modernize Maryland’s Credit Laws, Subtitle 10 covers

direct loans and credit sales involving closed-end credit. Subtitle 10 provides slightly different terms for consumer loans than for loans made for business or investment purposes. Subtitle 10 is the favored credit law for consumer purpose closed-end credit.

II. General Rules: Which Credit Law Applies?

A. Election or Details

The creditor may elect the Maryland Credit Law that will govern a credit transaction. Subtitles 9 and 10 govern credit only if the creditor has made a written election of Subtitle 9 or 10 in the credit agreement. If either Subtitle 9 or 10 applies, no other Maryland Credit Law applies to that credit.⁹

If the parties do not elect a specific Maryland Credit Law in the credit agreement, Subtitles 9 and 10 will not apply. The details of the credit agreement will establish the credit law or laws that apply. For example, if the credit is a financed sale, then the credit will be governed by RISA, RCAL, or SMLL, or will be an unregulated time-price sale.¹⁰ If the credit is a direct loan, the credit laws that may apply are the Consumer Loan Law, SMLL, and I&U. Neither RISA, RCAL, nor the time-price doctrine will apply to direct loans. I&U governs if, based on details of a loan transaction, no other more specific Maryland Credit Law clearly governs the loan.

B. Licensing

Maryland's creditor licensing statutes generally are found in Title 11 of Maryland's Financial Institutions Article.¹¹ Depending on the type of credit extended, a creditor may need to be licensed under one or more of these licensing provisions. Even creditors who make loans that are not regulated by the Maryland Credit Laws may need a license. All licensing laws are administered by the Maryland Commissioner of Financial Regulation.¹²

1. Consumer Loans-Licensing Provisions

Unless exempt, no person may make a loan under the Maryland Consumer Loan Law-Credit Provisions (Title 12, Subtitle 3 of Commercial Law Article) without a license.¹³ Separate licenses are required for each place of business.¹⁴ Licenses may not be issued to banks, trust companies, savings banks, credit unions, or savings and loan associations.¹⁵

Except for loans made by mail at the borrower's request because of sickness or hours of employment or similar reasons, applications must be received, notes must be signed, and all business must be conducted at a licensed location.¹⁶ Loan applications for home loans may be solicited and accepted at any location requested by the applicant and also by mail, by telephone, or electronically.¹⁷ In addition to closings at the licensed office, home loans may be closed at the office of an attorney or title company and, to accommodate the borrower's sickness and upon that borrower's written request, at any other location.¹⁸

Licenses are issued for 2-year terms on a staggered basis.¹⁹ Licensees are required to keep specified books and records.²⁰ Loans governed by the Consumer Loan Law may not be sold to any person who is not licensed under the Consumer Loans-Licensing Provisions. If a loan is acquired by a person who is not licensed or who is not exempt from licensing, it is not enforceable.²¹

2. Installment Loans-Licensing Provisions

Unless the lender is exempt, an installment loan license is required to extend credit under Subtitles 9 or 10 or I&U §§12-103(a)(3) or (c). Unless licensed, a lender may not engage in the business of making installment loans or make more than 5 installment loans a year.²² Loans between relatives, between an employer and an employee, between a landlord and a tenant, and certain tuition loans are exempt.²³

If organized under Maryland law or otherwise qualified to do business in Maryland, the following lenders are exempt: a Maryland chartered bank, a national bank, a federal savings and loan, a federal or Maryland credit union, a Consumer Loans-Licensing Provisions licensee, a seller of goods or services not engaged in making loans or acting as a credit service business, and a bank chartered under the laws of another state that has a branch in Maryland.²⁴ Banks chartered under the laws of other states that do not have branches in Maryland are not exempt. A person who is licensed in Maryland as a mortgage lender and engages solely in a mortgage lending business is exempt.²⁵ Affiliates of Maryland chartered banks, national banks with their principal offices in Maryland, Maryland or federally chartered credit unions with their principal offices in Maryland, and out-of-state national and state chartered banks and federal thrifts that have deposit taking branches in Maryland also are exempt, provided that the affiliate is subject to audit or examination by a Maryland or federal agency or by an agency of the state where the affiliate maintains its principal office and files identifying information with the Commissioner of Financial Regulation.²⁶

An installment loan license is applied for and issued in accordance with the Maryland Consumer Loans-Licensing Provisions.²⁷ An installment loan licensee is subject to the licensing and investigatory provisions of the Maryland Consumer Loans-Licensing Provisions.²⁸

3. Sales Finance Companies-Licensing Provisions

Persons who engage in the business of acquiring, investing in, or lending money secured by installment sale agreements made between other parties, a retail credit account transaction made between other parties, or a home improvement transaction made between other parties, if collateral security is required and given to the home improvement contractor as a condition to the transaction, must be licensed under the Sales Finance Companies-Licensing Provisions.²⁹ An “installment sale agreement” is defined as a contract for the retail sale of consumer goods, negotiated or entered into in Maryland, under which part or all of the price is payable in one or more payments after the making of the contract and the seller takes collateral

security or keeps a security interest in the goods sold.³⁰ Collateral security includes a guaranty.³¹ “Goods” are tangible personal property with a cash price of \$25,000 or less.³²

Maryland chartered banks, national banks, and banks chartered under the laws of other states that have a branch in Maryland are not required to be licensed.³³ A separate license is required for each location where a person engages in business as a sales finance company.³⁴ Licenses are issued for 2-year terms on a staggered basis.³⁵

4. Mortgage Lender Law

Unless exempt, mortgage lenders, mortgage brokers, and mortgage loan servicers must be licensed under the Mortgage Lender Law.³⁶ A “mortgage lender” makes “mortgage loans.” “Mortgage lender” includes persons who service mortgage loans for others or collect or otherwise receive payments on mortgage loans directly from borrowers for distribution to others.³⁷ “Mortgage lender” also includes a “mortgage broker,” who is a person that, for a fee or other valuable consideration, aids or assists a borrower in obtaining a mortgage loan and is not named as the lender in the note.³⁸

A “mortgage loan” is a loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or residential real estate.³⁹ “Residential real estate” is owner-occupied real property located in Maryland on which a dwelling is constructed or intended to be constructed.⁴⁰ Many lenders are exempt from licensing, including:

- Maryland chartered banks, national banks, federal thrifts, and banks chartered under the laws of other states that have a branch in Maryland.⁴¹
- Affiliates of Maryland chartered banks, national banks, and federal thrifts with their principal offices in Maryland, Maryland or federally chartered credit unions with their principal offices in Maryland and out-of-state national and state chartered banks and federal thrifts that have deposit taking branches in Maryland, provided that the affiliate is subject to audit or examination by a Maryland or federal agency or by an agency of the state where the affiliate maintains its principal office and files identifying information with the Commissioner of Financial Regulation prior to making mortgage loans.⁴²
- Employees of licensed mortgage lenders or exempt lenders acting within the scope of their employment.⁴³
- A person who makes no more than 3 mortgage loans and a person who brokers no more than 1 mortgage loan per calendar year.⁴⁴
- Home improvement contractors licensed under the Maryland Home Improvement Law who assign a mortgage loan without recourse within 30 days after completion of the home improvement contract to a licensed or exempt person.⁴⁵

A separate license is required for each place of business where a person conducts a mortgage loan business.⁴⁶ Licenses are issued for 1-year terms on a calendar year basis.⁴⁷

The Mortgage Lender Law and the Mortgage Originator Law (see Part II.B.5. below) conform to the requirements of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008.⁴⁸ Applicants and licensees must use the Nationwide Mortgage Licensing System and Registry (“NMLS”).

5. Mortgage Originator Law

Unless exempt, a mortgage loan originator must be licensed under the Mortgage Originator Law.⁴⁹ A “mortgage loan originator” is an individual who, for compensation or gain, either takes a loan application or offers or negotiates terms of a mortgage loan.⁵⁰ Among other exemptions, mortgage loan originator licensing does not apply to employees of banks, savings associations, credit unions, and their subsidiaries that registered through the NMLS as directed by the federal banking agencies. “Subsidiaries” means entities owned and controlled by a financial institution and regulated by a federal banking agency. Employees of mortgage lenders that are affiliates (and not subsidiaries) of a financial institution are subject to Maryland mortgage loan originator licensing.⁵¹

A licensed individual only may act as a mortgage originator when acting within the scope of employment with a mortgage lender.⁵² Licenses for mortgage originators are issued for 1-year terms on a calendar year basis.⁵³

C. “Residential Real Property”

Throughout the Maryland Credit Laws, loans secured by residential real property or a dwelling are given special treatment. For most, but not all, purposes residential real property means owner-occupied real property having a dwelling on it designated principally as a residence with accommodations for not more than 4 families.⁵⁴ “Dwelling” has nearly the same meaning as in the federal Truth-in-Lending Act.⁵⁵

D. Conflicts of Law

To determine whether Maryland law or some other state law applies, Maryland courts use a standard conflicts of law analysis following Restatement (Second) of Conflict of Laws §195 (1971). Where more than one state has an interest in the parties or the transaction, Maryland courts generally follow Restatement (Second) §187(2).⁵⁶ I&U expresses a public policy that loans made to Maryland residents secured by property located in Maryland are governed by Maryland law.⁵⁷ SMLL also expresses a public policy that credit secured by a junior lien on residential real property located in Maryland is governed by Maryland law and RCAL provides that a retail credit account is made in Maryland and subject to RCAL, notwithstanding any situs of contract specified in it, if a seller offers or agrees in Maryland to sell to a Maryland resident or a Maryland resident buyer accepts or makes an offer to buy in Maryland.⁵⁸ However, in *Jackson v. Pasadena Receivables, Inc.*, 398 Md. 611, 921 A.2d 799 (2007),

the Maryland Court of Appeals enforced the choice of South Dakota law in a credit card agreement between a national bank located in South Dakota and a Maryland consumer. The Court found no fundamental public policy in RCAL that required application of Maryland law “in light of the full legislative approach to this issue.”⁵⁹

E. State Law Preemption of Local Law

Only the State of Maryland (and not counties or cities) may enact laws that regulate extensions of credit made by financial institutions. This protects lenders from different local lending standards.⁶⁰

F. Safe Harbor

Subtitles 9 and 10 protect creditors who rely on or act in accordance with guidance (either an opinion or written interpretation) from the Maryland Attorney General or the Commissioner or Deputy Commissioner of Financial Regulation in taking action or using a form.⁶¹ If the creditor’s practice has been found acceptable by the Attorney General or the Commissioner or Deputy Commissioner, but is later found by a court to violate Subtitle 9 or 10, the creditor may have to refund the charges that a court determines to have been collected in violation of the law, but the creditor will not be subject to Subtitle 9 or 10 penalties.⁶² The safe harbor does not limit penalties for a knowing or willful violation of Subtitles 9 or 10.

III. Transactions Not Subject to Maryland Credit Laws or Subject to Special Rules

A. Sale Transactions

Credit sales of consumer goods are governed by RISA if the loan is secured by collateral, or by RCAL if unsecured. RCAL also governs the credit sale of services. Alternatively, the seller of consumer goods and services may elect to have credit governed by Subtitle 9 or 10. Available credit terms are described below.

Although time-price differential is included as interest in I&U,⁶³ Maryland law accepts the time-price sale doctrine.⁶⁴ Credit sales not covered by RCAL, RISA, or Subtitle 9 or 10 may be made as unregulated time-price sales. Installment sales of land are governed by the Land Installment Contracts Law.⁶⁵

B. Commercial Purpose/Investment Purpose

Some credit advanced for commercial or investment purposes that falls within the definition of a “commercial loan” is virtually unregulated by the Maryland Credit Laws. I&U defines a commercial loan as a loan to any business or commercial organization, or a loan to an individual or sole proprietorship for the single purpose of acquiring or carrying on a business or commercial enterprise.⁶⁶ All loans to corporations and non-corporate business entities, such as limited liability companies, partnerships and joint ventures, are commercial loans. If any proceeds of a loan to an individual are used for personal, family, or

household purposes, the loan is not a commercial loan. A loan to an individual to make any investment not related to that individual's normal business or professional activities is not a commercial loan under I&U if the individual is a passive investor.

Subtitles 9 and 10 define a commercial loan as any extension of credit to a business or commercial organization, or any loan to an individual or sole proprietor made solely to acquire an interest in or to carry on a business or commercial enterprise.⁶⁷ All loans to business entities, such as limited liability companies, corporations, partnerships, and joint ventures, are commercial loans under this definition. Loans to individuals and sole proprietors are commercial loans if all of the loan proceeds are used to acquire an interest in or to carry on a business or commercial enterprise. If any proceeds are used for personal, family, or household purposes, the loan is not a commercial loan. Unlike investment-purpose loans made under I&U, investment purpose loans are commercial loans under Subtitles 9 and 10 if the loan proceeds are used to buy an interest in a business or commercial enterprise, even if the borrower is a passive investor.

C. Loans to Corporations

Loans to corporations are subject to I&U, but are virtually unregulated.⁶⁸

D. Loans to Non-Corporate Business Entities

Loans to non-corporate business entities, such as general partnerships, limited partnerships, joint ventures, and limited liability companies, are virtually unregulated by the Maryland Credit Laws if the loans are more than \$15,000, but less than \$75,000, and are not secured by residential real property. All loans of \$15,000 or less to non-corporate business entities are more significantly regulated under the Maryland Credit Laws. Loans to non-corporate business entities of \$75,000 or less that are secured by residential real property also are regulated under the Maryland Credit Laws. Loans to non-corporate business entities of more than \$75,000, even if secured by residential real property, are also virtually unregulated by the Maryland Credit Laws.⁶⁹

E. Loans of \$75,000 or Less to Individuals for Commercial Purposes

Loans of \$75,000 or less to individuals that are secured by residential real property and are made for commercial purposes are regulated under the Maryland Credit Laws.⁷⁰

F. Loans of \$15,000 or Less to Individuals for Commercial Purposes

All loans of \$15,000 or less to individuals for commercial purposes are regulated under the Maryland Credit Laws.⁷¹

G. Loans Insured or Guaranteed by Government Agencies

Under I&U, if a loan is insured or guaranteed by any federal agency or instrumentality, and if it is secured by real property and is made in compliance with federal law, the creditor may charge interest at the rate permitted by federal law.⁷²

H. Loans Under the Securities and Exchange Act

Under I&U, a registered broker or dealer who extends credit on pledged securities may charge interest at any rate if the debit balance is secured by the securities and is payable on demand.⁷³

IV. Closed-End Loans

A. Introduction

Closed-end loans generally are made under I&U or Subtitle 10. The Consumer Loan Law and the SMLL might be applicable, but neither provides flexibility in loan terms. A creditor would choose the Consumer Loan Law or the SMLL to govern a closed-end loan only if either provided a particular benefit (e.g., higher interest rate or absence of additional licensing requirement) to the creditor's unique business plan.

B. Interest & Usury

1. Interest Rates

I&U specifies several maximum interest rates:

General legal rate of interest: 6% per year.⁷⁴

Loans under written agreement: 8% per year if there is a written agreement signed by the borrower that sets forth the stated rate of interest charged by the lender.⁷⁵

Loans secured by certificates of deposits: 2% in excess of the rate of interest payable on the certificate of deposit.⁷⁶

Loans secured by collateral other than real estate or savings accounts: 24% per year.⁷⁷

Loans secured by a first lien on residential real property: no interest limitations.⁷⁸

Commercial loans: no interest limitations except for certain regulated commercial loans.⁷⁹

Variable rate: I&U prohibits variable interest rates on consumer loans (unless secured by real property) and imposes restrictions on variable interest rates for real property secured loans.⁸⁰

Unearned interest rebate calculation upon prepayment: A rebate of unearned interest upon prepayment is required, and when the loan is consumer purpose and secured by the borrower's primary residence, it must be computed by the actuarial method.⁸¹

2. Fees and Charges

I&U generally permits the following fees to be collected from borrowers if paid to third parties:

- Governmental fees
- Attorney fees for the preparation, closing, or disbursement of the loan
- Property expenses including taxes
- Liability, life, and health insurance premiums
- A late charge of the greater of \$2 or 5% of the total amount of any payment that has been late for at least 15 days.⁸²

Other charges not retained by the lender, such as appraisal fees, tax search fees, title search fees, and survey charges, may be collected.⁸³ A fee for recording a release of a mortgage or deed of trust upon full payment may be collected by the noteholder.⁸⁴ Any portion of the release fee not paid to the government that exceeds \$15 must be returned to the borrower.⁸⁵ Costs of collection and attorney fees in the event of default may be imposed if included in the contract.

3. Repossession

I&U contains specific repossession procedures that apply to regulated loans.⁸⁶ The repossession notices required by I&U are different from the notices required by Article 9 of the Uniform Commercial Code. Creditors that provide Article 9 notices will violate I&U.

C. Subtitle 10

1. Interest Rates

Maximum simple interest rate: 24% per year.⁸⁷

Variable rate: The interest rate may vary in accordance with an index or formula that is made readily available to the borrower and is beyond the control of the creditor.⁸⁸

2. Collateral

Loans may be secured by any type of collateral.⁸⁹ The type of collateral affects the permissible payment schedule and permitted fees and charges.

3. Fees and Charges — Consumer Borrowers

Subtitle 10 authorizes different fees and charges for “consumer borrowers” and “non-consumer borrowers.” A “consumer borrower” is “an individual receiving a loan or other extension of credit under this subtitle for personal, household, or family purposes or an individual receiving a commercial loan or other

extension of credit for any commercial purpose not in excess of \$75,000, secured by residential real property.”⁹⁰ All other borrowers are “non-consumer borrowers.”

A creditor may charge loan fees, points, finder’s fees, and any other charges to consumer borrowers in an amount, when combined with any finder’s fee imposed by a mortgage broker, up to 10% of the original extension of credit as long as the charge is authorized in the loan agreement and the loan is secured by residential real property.⁹¹ The 10% restriction does not apply to first lien loans secured by residential real property.

A creditor may charge the following fees in connection with loans to consumer borrowers, provided the fees are authorized in the loan agreement, are actual expenses of the creditor, and are not retained by the creditor:

- Attorney fees for services rendered in connection with preparation, closing, or disbursement of the loan⁹²
- Any expense, tax, or charge paid to a governmental agency⁹³
- Examination of title, appraisal, or other costs necessary or appropriate to the security of the loan⁹⁴
- Premiums for credit life, credit accident and health, credit disability, involuntary unemployment benefit, and similar insurance coverages as long as such coverage is optional with the borrower⁹⁵
- Premiums for property insurance, title insurance, and credit loss insurance as long as the purchase is from an insurer of the borrower’s choice⁹⁶

These fees may be imposed, charged, and collected at any time, including when the loan is prepaid.⁹⁷ If collected when the loan is prepaid, the fees do not become a prohibited prepayment charge.⁹⁸ Creditors also may charge the following fees that are actual expenses and are not retained, if authorized in the loan agreement:

- Attorney fees on default, so long as the attorney is not the creditor’s salaried employee, and court and other collection costs.⁹⁹
- A fee for recording a release of a mortgage or deed of trust upon full payment may be collected by the noteholder.¹⁰⁰ Any portion of the release fee not paid to the government that exceeds \$15 must be returned to the borrower.¹⁰¹

A creditor may charge and retain the following charges:

- A creditor may impose a charge on late payments in any agreed amount. A default interest rate may be charged only on commercial loans.¹⁰²
- A creditor may impose a bad check fee of \$15 if a payment check is dishonored on the second presentment.¹⁰³
- A deferral charge in any agreed amount may be imposed to permit a borrower to defer payment.¹⁰⁴

- A refinancing charge in any agreed amount may be imposed to permit a borrower to refinance a Subtitle 10 credit extension.¹⁰⁵
- Both mechanical repair contracts and debt cancellation agreements may be sold, provided that the cost of each is separately itemized and the mechanical repair contract is sold in connection with credit relating to the sale of a motor vehicle.¹⁰⁶

Additional charges may be retained by the creditor in connection with commercial purpose credit.¹⁰⁷

4. Prepayment — Consumer Borrowers

A consumer borrower has the right to prepay the credit extension in full at any time without penalty.¹⁰⁸ If the credit extension is prepaid in full, a refund of the unearned precomputed interest must be made or the unearned precomputed interest must be credited to the obligation.¹⁰⁹ If the refund or credit is less than \$5.00, no refund need be made.¹¹⁰

The unearned portion of the interest must be calculated in accordance with the actuarial method.¹¹¹ To make the calculation, the creditor may use the originally scheduled or deferred payment schedule or the actual dates payments are made.¹¹²

A creditor also is required to refund unearned insurance premiums to the debtor.¹¹³

5. Repossession — Consumer Borrowers

Special rules govern the repossession of tangible personal property from a consumer borrower.¹¹⁴ Tangible personal property would include anything moveable that is capable of being touched. The Subtitle 10 repossession procedures and notices apply in lieu of the procedures and notices required by the Uniform Commercial Code.¹¹⁵ A creditor who uses standard Uniform Commercial Code repossession notices and follows Uniform Commercial Code repossession procedures will violate Subtitle 10.

Creditors may repossess tangible personal property from a consumer borrower only by legal process or self-help, without the use of force.¹¹⁶ Repossession is only allowed upon a default. Four notices, one discretionary and 3 mandatory, are required:

- A discretionary notice of intent to repossess may be sent at least 10 days before a creditor repossesses the property. The notice must specify the default and when the property will be repossessed. The notice also must state the rights of the debtor if the property is repossessed. The notice may be delivered to the borrower personally or sent to the borrower's last known address by registered or certified mail.¹¹⁷
- A mandatory notice must be given within 5 days after the creditor repossesses the property.¹¹⁸ It must be delivered to the borrower personally or sent to the borrower's last known address by registered or certified mail. This notice must

indicate the right of the borrower to redeem the property and the amount that must be paid; the right of the borrower as to a resale and the liability for a deficiency; and the exact location where the property is stored and the address where any payment is to be made.

- If the property is not redeemed during the 15 day period, the creditor is required to notify the borrower at least 10 days before sale of the property of the date and time of the sale.¹¹⁹

The creditor must retain the property for 15 days after the creditor gives the redemption notice.¹²⁰ During this 15 day period, the borrower may redeem and take possession of the property and resume performance of the agreement. To redeem the property, the borrower is required to pay only the amount due under the agreement at the time of redemption without giving effect to any acceleration clause. The borrower also must tender performance of any other promise for the breach of which the property was repossessed. If the 10-day discretionary notice was given, the borrower also must pay the actual and reasonable expenses of taking and storing the property.

The repossessed property must be sold at a public auction or a private sale.¹²¹ The notice of sale for both a public auction and a private sale must notify the borrower of the time and place of the sale.¹²² This requirement presents challenges for private sales.

After the property is sold, the creditor must send a final accounting to the borrower.¹²³

If the provisions on repossession are not followed, a creditor is not entitled to a deficiency judgment and may be subject to Subtitle 10 penalties.¹²⁴

6. Balloon Payments — Consumer Borrowers

Subtitle 10 does not permit creditors to schedule a balloon payment in connection with a consumer installment loan unless the loan is secured by residential real property or the loan is secured by a motor vehicle and exceeds \$30,000.¹²⁵

The balloon payment prohibition applies only to “consumer installment loans,” which are defined as loans repayable in “scheduled periodic payments of principal and interest.”¹²⁶ The prohibition does not apply to lump sum repayment loans, even if monthly payments of interest are required.

Balloon payments are permitted, with conditions, for consumer installment loans secured by a junior lien on residential real property.¹²⁷ A borrower must be permitted to postpone payment of the balloon payment for 6 months on request, as long as the consumer continues to make payments in the regularly scheduled amounts during the postponement period. No fees for the postponement period may be imposed in addition to interest.¹²⁸ The right to postpone is not required to be disclosed to the borrower and only applies if the borrower requests it.

Balloon payments are permitted, without conditions, for non-consumer loans and loans secured by first mortgages on residential real property.

7. Fees and Charges — Nonconsumer Borrower

For a nonconsumer borrower, unlimited points may be imposed plus reasonable fees for services rendered or reimbursement of expenses.¹²⁹ These fees may be retained by the lender and would include:

- Commitment fees
- Official fees and taxes
- Insurance premiums for any insurance which would be permitted to be required under the insurance code and is appropriate to the loan
- Fees for examination of title, inspection, recording or other costs appropriate to the loan security
- Filing fees
- Attorney's fees
- Travel expenses

Late charges are also permitted to be imposed and for a nonconsumer borrower may include both a higher rate of interest on amounts in default and a flat late charge.¹³⁰

Default charges may be imposed on the borrower. These would include attorney's fees and for a nonconsumer borrower, the attorney could be a salaried employee of the lender.¹³¹

Deferral charges are unlimited.¹³²

Prepayment penalties may be imposed and the amount is unlimited.¹³³

8. Prepayment — Nonconsumer Borrower

The terms of prepayment for a nonconsumer borrower are determined by agreement. A prepayment penalty is permitted.¹³⁴ Maryland case law seems to require creditors to rebate unearned interest even to a nonconsumer borrower, at least upon acceleration by the creditor.¹³⁵

D. Payday Lending

The Maryland Attorney General has concluded that “payday loans” or “deferred presentment loans” are subject to the Maryland Credit Laws.¹³⁶ Coupled with the credit services business law (discussed below at Part X.B.) payday loans at interest rates exceeding those authorized under the Maryland Credit Laws are effectively prohibited in Maryland.

V. Real Estate Credit

A. Introduction

Loans and credit sales secured by real estate may be made under I&U, Consumer Loan Law, SMLL, Subtitle 9 (for revolving credit), or Subtitle 10 (for closed-end credit).

B. Ability to Repay

Lenders making mortgage loans must give due regard to the borrower's ability to repay the loan.¹³⁷ "Mortgage loan" is defined in Maryland's Mortgage Lender Law as a loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or residential real estate.¹³⁸

Lenders must take into account the fully indexed rate of the mortgage loan and property taxes and insurance, whether or not an escrow account will be established.¹³⁹ "Due regard" is established by considering the borrower's debt to income ratio and verifying the borrower's gross monthly income and assets by review of third-party written documentation.¹⁴⁰ Third-party written documentation includes W-2's, income tax returns, payroll receipts, bank accounts, other financial institution records, or other third-party documents that provide reasonably reliable evidence of the borrower's income or assets.¹⁴¹ These requirements do not apply to (1) reverse mortgages, (2) loans approved for government guaranty under the Federal Housing Administration, the Veterans Administration, the United States Department of Agriculture, the Maryland Department of Housing and Community Development, or the Community Development Administration, or (3) refinance mortgage loans offered under the federal Homeowner Affordability and Stability Plan and made available by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.¹⁴²

C. Credit Secured by a First Lien on Residential Real Property

Maryland has not preempted any federal law that applies to mortgage lending.¹⁴³

Several requirements apply only to loans secured by first liens on residential real property:

1. Escrow Accounts

A depository institution that makes a closed-end loan to a consumer borrower secured by a first lien on residential real property must pay interest to the consumer borrower on the funds in any escrow account maintained in connection with the loan. The amount of interest must be the greater of 3% per annum simple interest, or the rate of interest paid by the depository institution on regular passbook savings accounts.¹⁴⁴

When a lender or servicer of a first lien residential mortgage loan determines that a borrower must pay an increased amount in escrow, the lender or servicer may not charge interest or fees on the amount of the increase for one year after the determination is made.¹⁴⁵ A lender or servicer may charge a borrower

interest if the lender or servicer is required to advance its own funds to pay taxes, insurance premiums, or other borrower expenses.¹⁴⁶ Before charging interest, the lender or servicer must provide the borrower with notice that an advance was made and that interest will be charged on the advance.¹⁴⁷

2. Attorney Fees and Title Insurance — Primary Residence Liens

In connection with a closed-end loan to a consumer borrower secured by a first lien on the consumer borrower's *primary* residence, a creditor may not require that the borrower employ a particular attorney or title insurance company to perform a title search, examination of title, or closing if the borrower notifies the creditor, within 7 days after application for the loan, of the name and business address of the borrower's choice of attorney or title insurance company, and the creditor does not reject the borrower's choice for good cause within 7 days after the receipt of the notice. Even if the borrower selects his or her own attorney or title company, a creditor may require the borrower to pay for preparation of loan closing documents, title insurance, review of documents prepared by the borrower's attorney, or attendance at settlement by the creditor's attorney.¹⁴⁸

If, in connection with a closed-end loan to a consumer borrower secured by a first lien on the borrower's primary residence, a creditor intends to impose fees for settlement services, or document review services performed by an attorney designated by the creditor, or if the creditor makes the employment of a particular attorney or title insurance company a condition of settlement, the creditor must provide the borrower with a written notice. The notice must state the creditor's requirements concerning selection of an attorney, title insurance company, or other person to perform settlement services relating to the loan, disclose the borrower's ability to choose an attorney or title insurance company (see preceding paragraph), and provide a good faith estimate of the fee or fees to be charged. The notice must be provided at the time of, or within 3 business days after, the application for a loan, or earlier upon request. A copy of the notice, signed by the applicant, must accompany any executed application for a loan.¹⁴⁹

If legal fees in excess of \$100 for the creditor's attorney will be imposed on the borrower, the borrower must be provided with a statement that describes the services to be performed, specifies certain fees, and states that the services are being performed for the creditor but are to be paid for by the borrower. The fees must be reasonable, and must be separately itemized on the settlement sheet and identified as legal fees to the creditor's attorney.¹⁵⁰

3. Inspection Fees

With limited exceptions, a creditor may not impose an inspection fee in connection with a loan made to a borrower that is secured by residential real property. A lender's inspection fee may be imposed on a borrower if the inspection is needed in connection with a construction loan to ascertain completion of construction of a new home, or in connection with repairs, alterations, or other work required by the creditor in connection with any other type of loan.¹⁵¹

4. Financing and Commitment Agreements — Primary Residence Liens

Consumer loans secured by first liens on residential real property occupied by the owner as his or her *primary* residence are subject to additional requirements.¹⁵² Only persons subject to licensing under the Mortgage Lender Law must comply with these requirements.

A licensee who offers to make or procure such a loan must provide one and perhaps another written agreement, depending on the circumstances.

A financing agreement must be signed by the licensee and provided to the loan applicant within 10 days of application. The financing agreement must include: the term of the loan; principal amount of the loan; an explanation of the type of mortgage being offered; the rate of interest that will apply to the loan and, if the rate is subject to change, or is a variable rate, or is subject to final determination at a future date based on some objective standard, a specified statement of those facts; the points, if any, to be paid to the lender by the borrower or the seller, or both; and the term during which the financing agreement is to remain in effect.

If none of the information required in the financing agreement is subject to change or future determination during the term of the financing agreement, that agreement will be a final and binding agreement between the parties (*i.e.*, will be a contractually binding offer to make a loan and acceptance of that loan on the terms stated in that agreement). However, if any provision of the financing agreement is subject to change or future determination, a second written agreement, called a commitment, must be provided by the licensee. The commitment must be signed by the licensee and provided to the borrower at least 72 hours before disbursement of the loan proceeds. The commitment must include: the effective fixed interest rate, or the initial interest rate that will be applied to the loan; and a restatement of all remaining unchanged provisions of the financing agreement. The commitment will be a binding agreement as to the terms of the loan being extended to the borrower.¹⁵³

D. Reverse Mortgages

The Maryland Reverse Mortgage Loans Act¹⁵⁴ applies both to reverse mortgage loans subject to a government program, such as the federal Home Equity Conversion Mortgage (HECM) program, and to reverse mortgage loans not subject to a government program (proprietary loans). Lenders who offer or make reverse mortgage loans and brokers (called “arrangers of financing”) who aid or assist a reverse mortgage loan borrower, are required to comply with the HECM rules, regardless of whether the mortgage is insured under the HECM program. Proprietary reverse mortgage loans are exempt from certain limits on origination fees, maximum claim amounts and other loan limit restrictions and the requirement for government insurance. A lender or arranger of financing may not require the borrower to purchase an annuity, long-term care policy or other financial or insurance product as a condition to obtaining credit. Lenders and arrangers of financing may refer a borrower to a person for such financial or insurance products only after the later of loan closing or expiration of a right of rescission. These restrictions do not prohibit a lender or arranger of

financing from offering to a borrower, or referring a borrower to a person for the purchase of, title insurance, property insurance or other products that are customary for a reverse mortgage loan. Violations of the Act subject the lender and the arranger of financing to penalties and, in some cases, constitute unfair or deceptive trade practices under the Maryland Consumer Protection Act.

E. Property and Flood Insurance

As a condition to receiving or maintaining loans secured by real estate, a lender may not require borrowers to provide or purchase property insurance coverage against risks to any improvements on real property in amounts that exceed the replacement cost of the improvements.¹⁵⁵ “Replacement cost” is defined as the amount needed to repair damage to or rebuild improvements on real property to restore the improvements to their pre-loss condition.¹⁵⁶ It does not include the value of the land.¹⁵⁷ To determine replacement cost, the lender may accept the value placed on the improvements by the insurer or use the value determined by the lender’s appraisal.¹⁵⁸

Flood insurance for first mortgage loans made under I&U is subject to similar rules.¹⁵⁹

A violation of this law entitles the borrower to seek an injunction against the lender and recover reasonable attorney’s fees and damages directly resulting from the violation.¹⁶⁰

F. “Covered Loan Law”

High cost, high rate mortgage loans are subject to unique consumer protections under the “Covered Loan Law.”¹⁶¹ Loans subject to these unique protections, called “Covered Loans,” are loans that meet the criteria for coverage under the federal Home Ownership Equity Protection Act (HOEPA), except that the comparison percentages used to determine coverage under HOEPA are 1 percent less to determine coverage under Maryland’s Covered Loan Law.¹⁶² The consumer protections apply to loans made under I&U, the Consumer Loan Law, SMLL, and Subtitle 10.¹⁶³

If a lender makes a Covered Loan, the lender may not finance single premium credit insurance. The Maryland Commissioner of Financial Regulation has issued regulations to implement the Covered Loan Law.¹⁶⁴

G. Notice Regarding Housing Counseling

Lenders making consumer first mortgage loans that will be secured by owner-occupied residential real property must provide borrowers with a written notice about housing counseling.¹⁶⁵ The notice, in the form specified in Maryland Department of Housing and Community Development regulations,¹⁶⁶ includes a statement recommending that the borrower complete home buyer education or housing counseling and provides information about counseling programs and services provided by certified nonprofit and governmental organizations. The notice must be provided to a borrower within 10 business days after initial loan application. The lender may not close the loan unless this notice is provided. This requirement does not apply to any lender otherwise required by

federal or state law to refer a borrower to housing counseling, such as reverse mortgage lenders, or to construction loans, certain seller take-back financing and certain inter-family loans.

H. Credit Secured By Subordinate Liens

Creditors who extend closed-end second mortgage credit secured by residential real property in Maryland must choose between the SMLL and Subtitle 10. Subtitle 10 will govern the credit transaction only if the creditor makes a written election in the credit agreement.¹⁶⁷ Because of ambiguous, restrictive, and outdated provisions in the SMLL, we strongly recommend that a second mortgage creditor elect to make its loans under Subtitle 10, and not under the SMLL.

Subtitle 10 permits the interest rate, fees, and charges described above at Part IV.C. to be imposed on second mortgage credit. However, under certain circumstances the refinancing fee otherwise permitted under Subtitle 10 is restricted if the credit is secured by a second mortgage.¹⁶⁸ Subtitle 10 requires postponement of a scheduled balloon payment on a second mortgage under certain circumstances.¹⁶⁹

I. Real Estate Ownership

Title to real property may be held by married persons as tenants by the entireties, tenants in common, or joint tenants. Where two persons hold real property as tenants by the entireties or joint tenants, the signature of both individuals must be obtained on a mortgage or deed of trust to grant a lien on the property. Where two (or more) persons hold real property as tenants in common, an individual may grant a valid lien on his or her separate interest in the property upon which the lender may foreclose in the event of default.

Most credit extended to married couples will be secured by real property owned as tenants by the entireties. A tenancy by the entireties may be created by express language in the deed. If the parties are married and the deed conveys a property to both the husband and wife, but does not expressly specify tenancy by the entireties or any type of tenancy, the presumption is that the property is held in tenancy by the entireties. If a deed contains express language creating a joint tenancy or tenancy in common, then the language of the deed will control the nature of the ownership interests. Dower rights have been extinguished in Maryland.

J. Real Estate Instruments

Both deeds of trust and mortgages are acceptable in Maryland and have the same basic legal effect. The trustee under a deed of trust may be an individual or an entity.¹⁷⁰ No residency requirements apply.

A deed of trust is more convenient than a mortgage. At the time of foreclosure the lender may, if the deed of trust so provides, appoint a substitute trustee if the original trustee is unavailable. A mortgage would have to be assigned of record. The assignment of a promissory note secured by a deed of trust automatically carries with it the deed of trust. While permitted, no additional

notice or filing is required to ensure that the new holder of the note has the rights of the beneficiary set forth in the deed of trust. If a mortgage is used, an assignment must be recorded.

Deeds of trust and mortgages secured by “residential property” must contain certain information about mortgage originators and lenders.¹⁷¹ “Residential property” for this purpose means real property improved by 4 or fewer single family dwelling units that are designed principally and are intended for human habitation.¹⁷² If a licensed Maryland mortgage loan originator (the employee of a licensed mortgage lender or broker) (see Part II.B.5) originated the loan, then the mortgage or deed of trust must contain that individual’s name and license number.¹⁷³ If the loan was originated by an individual not licensed as a mortgage loan originator, then the instrument must contain an affidavit to that effect.¹⁷⁴ If a licensed Maryland mortgage lender (see Part II.B.4) made the loan, then the instrument must contain that lender’s name and license number.¹⁷⁵ If the loan was made by a lender exempt from licensing under the Maryland Mortgage Lender law, then the instrument must contain an affidavit by the lender to that effect.¹⁷⁶ The Commissioner of Financial Regulation has issued regulations to implement this law.¹⁷⁷

K. Ground Rents on Residential Real Property

Maryland is one of the few states with residential ground rents. The Maryland Court of Appeals has described the ground rent system in Maryland as follows:

“Starting in about 1750, owners of fee simple property commenced to lease building sites to persons who would undertake the construction of improvements on the lots. From the outset, the leases were essentially identical in form and usually were for a term of 99 years, renewable forever at the option of the lessee. The payment of taxes and of other public charges was made the responsibility of the lessee by covenant. The annual rent reserved was small, usually an amount which, if capitalized at a reasonable rate of interest, represented what was conceived to be the value of the land. Since the rent was categorized as a rent service, the remedy of distraint was available to the lessor. *Ehrman v. Mayer*, 57 Md. 612 (1882). The lessor also had a right to re-enter in the event that the rent was six months in arrears. 4 George II, Chapter 28, recodified by Chapter 346, Laws of 1872, Maryland Code (1957, 1965 Repl. Vol.) Art. 75, § 27; *Campbell v. Shipley*, 41 Md. 81 (1874).”¹⁷⁸

The estate of the lessee, though considered personalty, is in practical effect ownership of realty and improvements, subject to payment of annual rent and all taxes.¹⁷⁹

The following consumer protections apply to ground rents on residential real property with 4 or fewer dwelling units:

- No new forever renewing ground rents may be created on or after January 22, 2007.¹⁸⁰
- Irredeemable ground rents (ground rents that have no option for the tenants to purchase fee simple title) may be converted to redeemable ground rents unless the owner of the ground rent filed the appropriate notice in the City

or County land records by December 31, 2010.¹⁸¹ If notice was filed, the irredeemability terminates on January 1, 2021, unless another 10-year notice is filed.¹⁸² Once a notice lapses, the ground rent becomes redeemable.¹⁸³

- For property owned by Baltimore City, a ground rent landlord may recover no more than 3 years' past due ground rent on property that is abandoned or distressed.¹⁸⁴ In actions brought to recover past due ground rents on such properties, the ground rent landlord may not recover expenses associated with the filing of the action.
- To eliminate the possibility that ground rent tenants could lose their homes and all of the equity in the homes due to failure to pay a ground rent, the ground rent landlord may not bring an ejectment action.¹⁸⁵ Instead, the ground rent landlord may establish a lien on the property or obtain a money judgment in the amount of the ground rent due.¹⁸⁶ This lien has priority from the date on which the ground rent was created (which normally is long ago). Notice requirements, including notice to mortgagees, must be met before any enforcement action may be taken.¹⁸⁷ A lien may be enforced and foreclosed in the same manner and subject to the same requirements as the foreclosure of a mortgage or deed of trust not containing a power of sale or an assent to decree.¹⁸⁸ If the property is sold at foreclosure, the ground rent landlord receives from the proceeds the amount of its lien and the statutory redemption amount if the ground rent is redeemable.¹⁸⁹
- In an action seeking to establish a lien for unpaid ground rent, the court may, but is not required to, award the prevailing party its court costs and reasonable expenses and attorney's fees not exceeding \$500.¹⁹⁰
- Within 30 days after the transfer of a redeemable ground rent, the new ground rent landlord must provide notice to the tenant about the right to redeem.¹⁹¹ Settlement agents must notify borrowers of the right to redeem a redeemable ground rent prior to the settlement of loans secured by property subject to a ground rent.
- To enhance communication between ground rent landlords and tenants, the ground rent landlord must mail a bill to the tenant's last known address no later than 60 days before a payment is due.¹⁹² The bill must include information about the property, contact information for the ground rent landlord, the consequences for failing to pay ground rent, the tenant's right to redeem the ground rent, and additional payment information.¹⁹³ A contract for the sale of real property subject to a ground rent must include similar information.¹⁹⁴
- The Maryland State Department of Assessments and Taxation must maintain an online registry of properties that are subject to ground leases.¹⁹⁵ Ground rent landlords must register their properties by September 30, 2010, and timely update the registration information.¹⁹⁶ There is a fee for registration.¹⁹⁷ There are statutory provisions indicating that if a ground rent landlord fails to register within the required time, the landlord's interest in the property is extinguished and the ground rent is no longer payable.¹⁹⁸ In *Muskin v. State Dep't of Assessments & Taxation*,¹⁹⁹ however, the Maryland Court of Appeals held that the "extinguishment and transfer provisions . . . are unconstitutional under

Maryland's Declaration of Rights and Constitution.”²⁰⁰ Ground rent landlords still have to comply with the other registration requirements, but they can disregard the extinguishment and transfer penalties for failing to register on time.²⁰¹

L. Releases of Mortgages and Deeds of Trust

Within a reasonable time after a loan secured by a mortgage or deed of trust is paid in full and there is no further commitment by the holder to make advances, the holder must mark the note “paid” or “canceled” and return it to the borrower, or give the borrower a written statement that the loan has been paid in full and release the mortgage or deed of trust.²⁰² This requirement does not apply to commercial loans, except commercial purpose loans of \$75,000 and less that are secured by the borrower’s principal dwelling. The release must be in writing and prepared at the expense of the holder.²⁰³ The holder must furnish the borrower with a copy of the release.²⁰⁴

Regulations implementing the Mortgage Lender Law²⁰⁵ require licensees to release the mortgage or deed of trust within 30 days from the date the loan is repaid in full.²⁰⁶

If the holder does not record the release or give the release to a “responsible person” (a person who has taken responsibility to record the release, such as a closing agent or lawyer) for recording within 45 days after the loan is paid and there is no commitment to advance funds, the holder must give the borrower the release in a recordable form and 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 agency.²⁰⁷

The holder may collect a fee from the borrower for recording the release and the fee is not interest on the loan.²⁰⁸ Any portion of the fee that is not paid to a governmental agency for recording the release that exceeds \$15.00 must be refunded to the borrower.²⁰⁹ If a fee is not collected by the holder, the holder is not required to record the release.²¹⁰

If a holder does not provide the required release, the holder is liable to the borrower for delivery of the release and for the borrower’s costs in bringing suit, including reasonable attorney’s fees.²¹¹ Persons licensed under Maryland’s Mortgage Lender Law, depository institutions chartered under Maryland or federal law, depository institutions with a branch in Maryland, and most subsidiaries and affiliates of these institutions, are immune from this penalty.²¹²

Certain settlement agents have the power to release a real property mortgage or deed of trust by recording a Statutory Release Affidavit in the land records.²¹³ A Statutory Release Affidavit may be prepared and recorded only by a title producer, title insurer or Maryland lawyer who has paid off or satisfied a mortgage or deed of trust. A Statutory Release Affidavit may be recorded only after the authorized person waits at least 60 days following pay off or satisfaction (to give the lienholder an opportunity to provide a suitable release) and after the authorized person has sent the lienholder a copy of the law, a copy of the proposed completed Statutory Release Affidavit and a notice that unless a suitable release is provided within 30 days, the Statutory Release Affidavit will

be recorded. This procedure is available for both commercial and consumer transactions.

The current practice of clerks is to record releases by making a photocopy, photograph, or digital copy, which are then converted to microfilm for storage at the State Archives. The original release is returned to the person submitting the release for filing and is not stored by the clerk.

M. Foreclosure

1. In General

In Maryland, a nonjudicial action to foreclose a deed of trust is begun under either a *power of sale* or an *assent to a decree*. Under both procedures, the action begins with a filing in the Circuit Court of the county in which the property is located.

In an assent to a decree, the creditor files a Petition to Foreclose, a Statement of Mortgaged Debt (signed by a representative of the creditor) and a proposed Decree for the Sale of the Mortgaged Premises (signed by the Judge appointing the trustee to sell the property). In a power of sale, the trustee (or the trustee's assignee) files the action and proceeds under the power of sale. Either a natural person or an entity may conduct the sale.²¹⁴

Notice of the proposed sale must be given to the owner of the property. Notice also must be sent to any grantor or mortgagor who is not a current property owner and any holder of a subordinate mortgage, deed of trust or other subordinate interest, including a judgment lien, known to the person authorized to sell the property.²¹⁵ The written notices should be sent to any known address both by first class and certified mail, postage prepaid, return receipt requested. The notices must state the time, place, and terms of the sale, and should be sent not earlier than 30 days and at least 10 days before the date of sale. A return receipt, or an affidavit stating that the above terms have been met, should be filed with the court. Assuming appropriate notice was given, failure of the borrower to receive the notice will not invalidate the sale.

Before sale of the property, the person authorized to sell must advertise the time, place, and terms in a newspaper published in the county where the property is located. If there is no such newspaper, notice must be published in a newspaper having substantial circulation in the county where the property is located. Notice must be advertised at least once a week for 3 successive weeks, the first publication to be at least 15 days prior to sale and the last to be not more than 1 week prior to sale. Specific advertising requirements apply. This notice of sale must not be advertised until the action has been instituted.

Before selling the property, the person authorized to sell must file with the court a bond in favor of the State of Maryland to ensure compliance with any court order made in connection with the foreclosure.

A sale under power of sale is made upon terms provided in the deed of trust. If no payment terms are provided, the sale should be made upon terms that are reasonable under the circumstances. A sale of property under a court decree pursuant to an assent to a decree is made upon terms provided in the decree.

As soon as practicable, but no more than 30 days after a sale, the person making the sale must file a report of the sale proceedings with the court. An affidavit of the fairness of the sale and the truth of the report must be attached. In addition, the purchaser must file an affidavit setting forth whether he or she is acting as agent for anyone and, if so, the name of the principal(s), whether others are interested as principal(s) and, if so, their names, and that he or she has not directly or indirectly discouraged anyone from bidding for the property.

The court will issue a final order ratifying the sale if it is satisfied that the sale was fairly and properly made, and if exceptions to the report of sale are not filed, or if exceptions are filed and they are overruled.

Upon final ratification by the court of a report of sale, the papers must be referred to an auditor. An auditor's accounting is mandatory.

A person claiming an interest in the proceeds of the sale must apply to the court. Surplus proceeds will be disbursed after payment of the lender's claims and expenses. The court will order distribution of any surplus equitably among the claimants.

If the court finds that the net sale proceeds (after deducting court costs and expenses) are insufficient to repay the entire deed of trust indebtedness, a motion for a deficiency decree may be filed. The motion for a deficiency decree will not be granted if made more than 3 years from the date of final ratification by the court of the auditor's report.

2. Residential Real Property Foreclosures

For purposes of special residential property foreclosure rules, "residential property" is defined as real property improved by 4 or fewer single family dwelling units designed principally and intended for human habitation.²¹⁶

An action to foreclose a security instrument on residential property may not be commenced until the later of 90 days after a default that allows the secured party to foreclose, or 45 days after the secured party sends a "notice of intent to foreclose" ("NOI").²¹⁷ The NOI must be sent by certified and first class mail to the borrower and to the record owner and a copy must be sent to the Commissioner of Financial Regulation. The notice must be in the form that the Commissioner prescribes by regulation.²¹⁸ Many consumer protections and disclosures apply to foreclosures on residential property.²¹⁹

NOI for property that is not "owner-occupied residential property" does not need to be accompanied by various loss mitigation documents. Instead, the NOI must be accompanied by written notice of determination that property is not owner-occupied residential property and a telephone number the debtor can call to challenge that determination.²⁰⁰ The Commissioner of Financial Regulation has prescribed regulations regarding the notice, forms, and supporting documents that must be filed in court and served on the debtor/property owner.²²¹

An affidavit accompanying an order to docket or a complaint to foreclose a mortgage or deed of trust on residential property must state, if applicable, that the contents of the NOI were accurate at the time that notice was sent.²²²

Often when an original debt instrument is lost, destroyed, or stolen and cannot be found, the attorney for the party filing a foreclosure action makes a motion for acceptance of a lost note affidavit. Specific information must be included in a lost note affidavit in connection with residential property foreclosure. The affidavit must identify the owner of the debt instrument and state from whom and the date on which the owner acquired ownership, state why a copy of the debt instrument cannot be produced, and describe the good faith efforts made to produce a copy of the debt instrument.²²³

3. Foreclosure Mediation

The secured party must complete a loss mitigation analysis no later than 30 days before a foreclosure sale of owner-occupied residential property.²²⁴ Most homeowners are allowed to request foreclosure mediation before a foreclosure sale may occur.²²⁵ Along with an order to docket foreclosure of a residential property, secured parties must file one of two new affidavit forms that states the status of the analysis of potential loan modification or other loss mitigation that may be available to the homeowner.²²⁶ If the analysis has not been completed at the time the secured party files the order to docket, then the secured party may not proceed to a foreclosure sale until 30 days after a final loss mitigation affidavit is filed with the court.²²⁷ The homeowner must be given an opportunity, after a final loss mitigation affidavit has been filed, to request a conference (called “foreclosure mediation”) with the secured party, or its representative, and an Administrative Law Judge.²²⁸ The foreclosure mediation, which is to occur within 65 days of the request by the homeowner, should focus on possible loss mitigation programs applicable to the homeowner’s situation.²²⁹ If the parties do not reach an agreement about loss mitigation at the foreclosure mediation, the foreclosure sale may proceed.²³⁰

4. Tenant Protections

Under some circumstances, a tenant may continue to occupy the foreclosed premises.²³¹ Where the arrangement is month-to-month or otherwise terminable by its terms, in addition to complying with other applicable laws and the terms of any lease, a purchaser who desires to remove tenants must provide tenants with 90 days’ prior written notice to vacate containing specified terms.²³² Where the lease is “bona fide” and not month-to-month or otherwise terminable, the tenants have the right to occupy the property through the end of the lease term.²³³ If the purchaser intends to occupy the property as his or her primary residence, the purchaser may terminate the lease by providing the tenant with 90 days’ prior notice to vacate.²³⁴

5. Condominiums and Homeowners’ Associations

In a foreclosure of a mortgage or deed of trust on a condominium unit or a lot in a homeowners association (HOA) that is recorded before a lien for unpaid assessments, the condominium or HOA lien will have priority in an amount not to exceed 4 months, or the equivalent of 4 months, of unpaid regular assessments, up to a maximum of \$1,200.²³⁵ The priority lien may not include interest, attorney’s fees, or other sums.²³⁶ At the request of a holder of the first mortgage or deed of trust that provides the governing body of the condominium

association or HOA with written contact information, the governing body must provide the holder with written notice of the portion of the lien that has priority.²³⁷ If that information is not provided within 30 days of filing the lien in the county land records where the condominium association or HOA is located, that portion of the lien does not have priority.²³⁸

N. Mortgage Fraud

It is a crime to commit mortgage fraud.²³⁹ Mortgage fraud always requires the intent to defraud.²⁴⁰ It also requires a loan secured by owner-occupied residential property as further defined in Maryland's Mortgage Lender licensing law (primarily consumer purpose loans). Mortgage fraud includes knowingly creating or producing a document for use during the residential mortgage lending process that contains a deliberate misstatement, misrepresentation or omission with the intent that the document be relied on by the lender, borrower or any other party to the loan transaction.²⁴¹ Both the Attorney General and local States' Attorneys may prosecute cases of mortgage fraud.²⁴² Property derived from mortgage fraud may be forfeited to assist victims.²⁴³ Private causes of action for mortgage fraud are available and the court is authorized to award reasonable attorney's fees and treble damages.²⁴⁴

O. Transfer of Mortgage Loan Servicing

Servicers must give borrowers a notice within 7 days after acquisition of mortgage servicing.²⁴⁵ While compliance with the federal Real Estate Settlement Procedures Act will preempt the need to comply with this law, Maryland's mortgage loan servicing law covers all mortgages and deeds of trust on 1-to-4 family residential real estate located in Maryland, regardless of the purpose of the loan or the lien priority of the loan. Accordingly, Maryland's law may apply when the federal Real Estate Settlement Procedures Act does not.

P. Appraisals

Lenders are required to give copies of any written appraisal to a borrower on the borrower's request if the borrower pays the cost of the appraisal. There are no time limits on the borrower's request.²⁴⁶

Q. Real Estate Filing Fees and Taxes

Maryland imposes fees on the filing of any deed of trust or mortgage in the county land records. Fees include \$10 for a release 9 pages or fewer in length, \$20 for other instruments 9 pages or fewer in length, \$20 for longer instruments (other than a release) involving only a principal residence, and \$75 for all other longer instruments.²⁴⁷ In addition, a surcharge of \$40 applies to recorded instruments executed on or after July 1, 2011, but before July 1, 2015.²⁴⁸ A surcharge of \$20 applies to all other recorded instruments.²⁴⁹

Except as otherwise provided, a recordation tax is imposed on all deeds, deeds of trust, and mortgages recorded in Maryland.²⁵⁰ The recordation tax varies from county to county and is imposed on the consideration payable or the principal amount of debt secured by the recorded instrument. An exemption from the recordation tax may be provided by each county for certain first-time homebuyers.²⁵¹

Special rules apply when the total amount of secured debt has not been incurred at the time the instrument is recorded.²⁵² With respect to consumer borrowers, the lender is required to inform the borrower that the borrower either may pay recordation tax on the entire principal sum secured, without regard to the amount of secured debt actually incurred, or pay the tax as the debt is incurred. If the borrower chooses the latter option, the borrower must, within 7 days after any additional debt is incurred, file a statement under oath of the amount of additional debt and pay the additional tax.

A mortgage or deed of trust is not subject to recordation tax when it secures the refinancing of an amount not greater than the unpaid principal amount secured by an existing mortgage at the time of refinancing by the original mortgagor of real property or by the original mortgagor and his or her spouse of real property used as a principal residence by the original mortgagor.²⁵³ To qualify for this exemption, the “original mortgagor” (or his or her agent) must include a statement in the recitals of the mortgage or in the acknowledgment, or file an affidavit under oath, stating that he or she is the original mortgagor, that the mortgaged property is the principal residence of the original mortgagor, and the amount of unpaid principal of the original mortgage or deed of trust that is being refinanced. A statement made by an agent must state that it is made based on diligent inquiry and is true to the best of the agent’s knowledge, information, and belief. “Original mortgagor” includes the trustee of an *inter vivos* trust if the mortgaged property is used as a principal residence of the settlor and the trustee or the settlor originally assumed or incurred the debt secured by the mortgage or deed of trust.²⁵⁴

In addition, a purchase money mortgage or purchase money deed of trust is not subject to recordation tax.²⁵⁵ The mortgage or deed of trust must state on its face that it is purchase money.

Deeds of trust and mortgages are exempt from the state transfer tax, which applies only to the recordation of the underlying deed. The state transfer tax is reduced for certain first-time homebuyers and, in this case, the tax must be paid entirely by the seller.²⁵⁶ Some Maryland counties impose a local transfer tax. The transfer tax imposed by Prince George’s County applies to a deed of trust or mortgage as well as to a deed.

R. Broker Fees

Residential mortgage brokers are subject to Maryland’s Loans-Finder’s Fees Law.²⁵⁷ The Finder’s Fee Law authorizes a broker to charge a borrower a fee for procuring a mortgage loan not in excess of 8% of the amount of the loan or advance.²⁵⁸ A mortgage broker obtaining a mortgage loan with respect to the same property more than once within a 24-month period may charge a finder’s fee only on so much of the loan as is in excess of the initial loan.²⁵⁹

Broker fees may be paid out of loan proceeds. Fees paid to the broker directly out of loan proceeds will not be deemed interest on the loan as long as the broker fee is within the permitted amount and other requirements of the Finder’s Fee Law have been met.²⁶⁰ If the broker fee is paid out of loan proceeds, the lender must, in addition to complying with all other applicable disclosure

requirements, advise the borrower in writing of the borrower's right to a refund of the broker fee upon a rescission of the loan.²⁶¹

The Finder's Fee Law prohibits a broker from taking a note, mortgage, or other evidence of indebtedness for the payment of a broker fee or any other fees permitted to be collected by the broker.²⁶²

In addition to a finder's fee, a broker may collect from the loan applicant the actual cost of an appraisal, credit report, condominium document, subordination agreement, and any other good or service as specified in regulations issued by the Commissioner of Financial Regulation, but only if those items are obtained by the broker at the written request of the borrower.²⁶³

A person may not receive fees for acting in more than one capacity in a particular loan transaction.²⁶⁴ Thus, a broker fee may not be paid to a licensed real estate broker, insurer, salesman, attorney, or an agent of any of such persons if, in addition to acting as a loan broker, the person also is acting in one of those capacities.

The Finder's Fee Law requires the broker to enter into a written agreement with the borrower if a broker fee is to be imposed.²⁶⁵ The broker agreement must be separate from any other document and must specify the amount of the broker fee.²⁶⁶ It must be signed and dated by both the broker and the borrower and a copy must be delivered to the borrower within 10 business days after the date of the initial loan application.²⁶⁷

VI. Open-End Credit

A. Introduction

Open-end credit is addressed specifically by two credit laws: Subtitle 9, which may govern revolving loan, revolving sale, and revolving loan and sale plans, and RCAL, which applies only to unsecured revolving sale plans. Although not specifically addressed, a revolving loan plan may be offered under I&U, provided the plan is not secured by a junior lien on residential real estate.

B. Open-End Sale and Loan Plans

1. Retail Credit Accounts Law

RCAL was the first Maryland Credit Law to address revolving credit. Before enactment of Subtitle 9 in 1983, RCAL governed all credit card plans and all revolving credit sales. RCAL still applies unless Subtitle 9 is expressly elected. Because RCAL is a less attractive statute than Subtitle 9, it is not discussed at length in this survey.

2. Subtitle 9

Subtitle 9 may govern sale plans or loan plans or combined sale and loan plans.²⁶⁸ Modeled on the Delaware Bank Revolving Credit Law, Subtitle 9 has been modified over the years and now has a distinctly Maryland flavor. While

Subtitle 9 governs “revolving credit plans” or “plans,”²⁶⁹ unlike Regulation Z,²⁷⁰ which implements the federal Truth in Lending Act and requires “open-end credit” to replenish (*i.e.*, the amount of credit during the term of the plan generally will be made available to the extent that any outstanding balance is repaid), Subtitle 9 does not require replenishment. Accordingly, Subtitle 9 governs some types of credit that Regulation Z would characterize as closed-end, provided that the credit grantor permits the borrower to obtain loans from time to time pursuant to a plan.

Subtitle 9 permits the following terms:

Interest: 24% per year.²⁷¹

Variable rate: The interest rate may vary in accordance with an index or formula that is made readily available to the borrower and is beyond the control of the lender, but may be within the control of the borrower. If the formula measures credit risk, the interest rate must be lower for borrowers measured as more credit worthy and if the formula measures delinquency, the interest rate may not be raised unless a borrower is at least two months delinquent.²⁷²

Unsecured Plans: In addition to interest, certain fees and charges may be imposed on a consumer borrower if the plan is unsecured.

Free Ride for Purchases: If a plan charges annual membership fees or transaction charges, then a “free ride” for purchases is required. If the outstanding balance of purchases is paid in full within 25 days after the end of a billing period, finance charges may not be imposed on that balance for that billing period. In addition, if there is no purchase balance at the beginning of a billing period or if the purchase balance is paid within 25 days of the end of the billing period, no finance charge may be imposed on any purchase added to the account during that billing period from the date of purchase to the end of that billing period.²⁷³

Annual Membership Fee: Any amount stated in the agreement.²⁷⁴

Transaction Charge: If no annual fee is charged, a seller may impose a transaction charge in any amount stated in the agreement for each separate purchase.²⁷⁵ Lenders may charge transaction charges in addition to annual fees.²⁷⁶

Minimum Charge: A minimum charge may be imposed for each billing period when an outstanding balance exists.²⁷⁷ Sellers may charge a minimum charge only if no annual or transaction charge is imposed. Lenders may charge a minimum charge in addition to annual and transaction charges.

Secured Plans: In addition to interest, in most cases no fees or charges may be imposed on a consumer borrower under a secured plan except for actual and verifiable costs incurred by the creditor that are not retained by the creditor. Allowable fees are:

- Attorney fees for services rendered

- Any expense, tax, or charge paid to a governmental agency
- Examination of title, appraisal, or other costs necessary or appropriate to the security of the loan
- Premiums for insurance coverage permitted under Subtitle 9.²⁷⁸

These fees may be imposed, charged and collected at any time, including when the loan is prepaid.²⁷⁹ Creditors also may charge the following fees:

- If a plan is secured by a deposit, an application fee not to exceed \$35 and an annual charge not to exceed \$35 may be imposed under certain conditions²⁸⁰
- A fee for recording a release of a mortgage or deed of trust upon full payment may be collected by the noteholder.²⁸¹ Any portion of the release fee not paid to the government that exceeds \$15 must be returned to the borrower.²⁸²

If the plan is secured by residential real property, at the time the plan is entered into, the credit grantor may collect points that, when combined with any finder's fee imposed by a mortgage broker, do not exceed 10% of the maximum credit limit.²⁸³

Secured and Unsecured Plans: Allowed for all plans are:

Late Charges: A late charge in any amount and after any time period set forth in the credit agreement.²⁸⁴

Collection Charges and Attorney Fees: All court and other collection costs incurred by the creditor, and reasonable attorney fees if the creditor turns the borrower's account over for collection to an attorney who is not the creditor's salaried employee.²⁸⁵

Bad Check Charges: A bad check fee of \$15.00 may be imposed, if payment is made with a check that is dishonored on the second presentment.²⁸⁶

Deferral Charge: A deferral charge may be imposed in any agreed amount to permit a borrower to defer a scheduled payment.²⁸⁷

Disclosure Requirements: While Subtitle 9 has few disclosure requirements, it is essential to make those that are required:

- Credit will not be governed by Subtitle 9 unless the creditor expressly elects Subtitle 9 as governing law in the credit agreement;²⁸⁸
- All fees and charges the creditor imposes must be authorized in the credit agreement; and
- The annual rate of simple interest charged must be stated in the credit agreement.²⁸⁹

Credit extended under Subtitle 9 is also subject to the disclosure requirements of the federal Truth in Lending Act and Regulation Z.²⁹⁰

No Balloon Payments: The repayment terms for a consumer borrower may not require the borrower to pay a balloon payment at maturity.²⁹¹ The adjustment of payment amounts due to changes in interest rate or balance do not result in a balloon payment.²⁹² “Balloon payment” is not defined in Subtitle 9, but is defined in Subtitle 10 as any scheduled payment on an “installment loan” that is more than 2 times the average of all other payments scheduled to repay the installment loan.²⁹³

Change in Terms: If an amendment to a credit agreement increases fees and charges, the creditor must notify the borrower at least 25 days before the effective date of the amendment. The change in terms may become effective on the first day of the billing cycle in which the effective date occurs or any later date specified in the notice,²⁹⁴ unless the borrower sends a written notice of refusal in 25 days.²⁹⁵ A borrower who sends notice of refusal may continue to use the plan under its unamended terms for the lesser of three months or the period of time for which a fee is paid.²⁹⁶ Thereafter, the borrower may pay any outstanding balance under the unamended terms of the plan.²⁹⁷ The amendment must contain certain notices and be sent in an envelope that contains a statement on its face that the notice is enclosed.²⁹⁸ Alternatively, the change may become effective by debit activation or written agreement.²⁹⁹

C. Credit Card Plans

Credit card plans may be offered either under RCAL and I&U or under Subtitle 9. The Subtitle 9 terms described above under Part VI.B.2. apply to credit card plans.

Any subpoena served on a credit card issuer for information relating to a Maryland resident’s account must contain a certification that a copy of the subpoena has been served on the person whose records are sought by the party seeking the disclosure or production of the records, or a certification that service has been waived by the court for good cause.³⁰⁰

The Maryland Credit Card Number Protection Act prohibits use or disclosure of any credit card number or other payment device number, with limited exceptions.³⁰¹

D. Open-End Plans Secured by Real Estate

Revolving credit plans secured by real estate are permitted under Subtitle 9. The Subtitle 9 terms described above under Part VI.B.2. may be used for real estate secured plans.

A home equity line lender may collect points that, when combined with any finder’s fee imposed by a mortgage broker, do not exceed 10% of the original maximum line of credit.³⁰²

VII. Sale Transactions

A. Retail Installment Sales Act

RISA governs the secured credit sale of consumer goods with a cash price of \$25,000 or less and sets finance charge limits on sales of automobiles for consumer purposes irrespective of cash price. RISA permits the following terms:

Late Charge. For precomputed interest sales only, if a default continues for at least 10 days a late charge of the lesser of \$10 or 5% of the amount of any payment in default.³⁰³

Disclosures. Detailed disclosures are required.³⁰⁴

Acknowledgment of Delivery. An acknowledgment of delivery of a copy of the contract must be printed in 12-point type or larger, and, if contained in the contract itself, must be printed immediately below the buyer's signature and must be signed by the buyer.³⁰⁵

Mechanical Repair Contract. An optional mechanical repair contract may be sold and financed, provided that its cost is separately itemized.³⁰⁶

"Gap Waivers." Debt cancellation agreements may be sold and financed along with the sale of a motor vehicle.³⁰⁷

Prepayment Refund. The refund of unearned precomputed finance charges must be computed by the actuarial method based on the original schedule of payments.³⁰⁸

Collection Costs. Attorney's fees may be imposed, provided that the contract is turned over for collection to an attorney who is not a salaried employee of the holder of the contract.³⁰⁹

Default Events. An insecurity event of default is prohibited.³¹⁰

Prepayment Rebate After Acceleration. The prepayment rebate after acceleration of the contract must be determined no later than the date of the sale of repossessed collateral.³¹¹

Seller Remuneration. A seller may assign a retail installment agreement to a second party, and receive a portion of the finance charge, only if disclosed in the agreement.³¹² The specific amount of the finance charge need not be disclosed.

Interest Rate. Generally, an annual simple interest rate not exceeding 24% may be imposed.³¹³ Interest may be charged at 27% on sales of used motor vehicles that are more than two years old.³¹⁴

B. Subtitle 10

Subtitle 10 governs the sale of goods, the sale of services, or both. All the terms described above at Part IV.C. for loans also are applicable to sales. Special treatment is required if a mechanical repair contract is sold and financed along with goods being purchased.³¹⁵

C. Time Price Doctrine

If a credit sale is not governed by RISA or RCAL, and the creditor does not elect Subtitle 9 or 10, the sale may be made as an unregulated time-price sale.³¹⁶

D. Repossession

RISA contains specific repossession procedures.³¹⁷ The repossession notices required by RISA are different from the notices required by Article 9 of the Uniform Commercial Code. Creditors that provide Article 9 notices will violate RISA.

VIII. Privacy and Information Security

A. Privacy

Maryland courts have recognized a bank depositor's common law right to have a bank treat as confidential, to the extent permitted by law, all information regarding the depositor's account.³¹⁸ Absent compulsion by law, a bank may not make any disclosures concerning a depositor's account without the depositor's express or implied consent.³¹⁹

Maryland also has enacted statutory protections for financial records. Maryland's Confidential Financial Records Act³²⁰ prohibits "fiduciary institutions" from disclosing financial records relating to their customers, with certain exceptions. "Fiduciary institutions" include national banks, Maryland chartered banks, state chartered banks maintaining branches in Maryland, any business organized under Maryland banking laws and subject to the supervision of the Commissioner of Financial Regulation, and federal or Maryland chartered credit unions and savings and loan associations.³²¹

The Confidential Financial Records Act protects originals or copies of the following:

- A document granting signature authority over a deposit or share account;
- A statement, ledger card, or other record of a deposit or share account showing transactions in or with respect to a deposit or share account;
- A check, clear draft, or money order drawn on a fiduciary institution or issued and payable by or through a fiduciary institution;
- Any item, other than an institutional or periodic charge, made under an agreement between a fiduciary institution and another person, that constitutes a debit or a credit to that person's deposit or share account;
- Any information related to a loan account or an application for a loan.³²²

A protected financial record also includes any evidence of a transaction conducted by means of an electronic terminal. Both consumer and business records are protected.

A fiduciary institution may disclose financial records without a subpoena under limited circumstances, including with customer authorization and certain exchanges of credit information. Otherwise, a fiduciary institution may disclose or produce financial records only in compliance with a subpoena served on the institution. The subpoena must contain a certification that a copy of the subpoena has been served on the person whose records are sought, or a certification that service has been waived by the court for good cause.³²³

Knowing and willful disclosure of records in violation of the Confidential Financial Records Act is a misdemeanor and may result in a fine of up to \$1,000.³²⁴

B. Security Freeze

A Maryland consumer may freeze his or her credit report by making a freeze request to a consumer reporting agency.³²⁵ While a freeze is in place, the credit report may not be released.³²⁶ There are exceptions: the freeze does not apply to a check services or fraud prevention services company that issues reports on incidents of fraud or to a deposit account information services company that issues reports on account closures for fraud, overdraft, ATM abuse and similar information to inquiring banks to review a consumer's request for a deposit account.³²⁷ The freeze doesn't apply to credit reports ordered for account review or collection when there is an existing relationship.³²⁸ The freeze also doesn't apply to prescreening.³²⁹

A consumer may temporarily lift a security freeze or may remove a security freeze.³³⁰ A consumer reporting agency must comply with the consumer's request within 3 business days.³³¹ A consumer reporting agency must comply with a request for a temporary lift within 15 minutes if the request is made by telephone, by electronic mail, or by secure connection on the website of the consumer reporting agency.³³²

C. Maryland Personal Information Protection Act

All businesses that have personal information of Maryland residents, with no exceptions, must comply with the information security, document disposal and data breach protections of the Maryland Personal Information Protection Act.³³³ All businesses must protect an individual's personal information and notify a consumer if the consumer's personal information is acquired as a result of a computer system breach.³³⁴ Businesses also must take reasonable steps to protect against unauthorized access or use of personal information when destroying records.³³⁵ A business that owns or licenses personal information of a Maryland resident must implement and maintain security procedures and practices to protect personal information from unauthorized access, use, modification or disclosure.³³⁶

Service providers must be required by contract to implement and maintain reasonable security procedures and practices that are appropriate to the nature of personal information held and are reasonably designed to help protect the information.³³⁷ Businesses that maintain personal information that they do not own or license must notify the information's owner or licensee of a breach of the

security of a system if it is likely that the breach has resulted or will result in the misuse of personal information of a Maryland resident.³³⁸ Businesses that own or license personal information of Maryland residents must conduct a reasonable and prompt investigation of any breach of the security of a system to determine the likelihood that personal information has been or will be misused as a result of any breach.³³⁹ If such businesses determine that misuse of an individual's personal information has occurred or is reasonably likely to occur as a result of the breach, the businesses must notify the individual about the breach.³⁴⁰

This law applies to all businesses, including financial institutions, and governmental agencies. Financial institutions (and their affiliates) that are subject to and/or comply with the federal Gramm-Leach-Bliley Act privacy provisions, the Fair and Accurate Transactions Act and the federal guidelines and guidance on information security and unauthorized access are deemed to be in compliance with this law.³⁴¹

A violation of this law is an unfair or deceptive trade practice under the Maryland Consumer Protection Act, which authorizes private actions and hefty penalties.³⁴²

D. Social Security Numbers

Employers may not print Social Security numbers on an employee's wage payment check, an attachment to it, a notice of direct deposit or a notice of credit to a debit or credit card account.³⁴³ The Social Security Number Privacy Act prohibits publicly displaying an SSN, printing an SSN on a card required to access products or services, requiring an individual to transmit the individual's SSN over the Internet, initiating the transmission of an SSN over the Internet, or requiring an individual to use his or her SSN to access an Internet website unless a password is required.³⁴⁴ Unless otherwise required by law, an SSN may not be printed on material mailed to an individual or included in material that is transmitted electronically or by facsimile to the individual unless the connection is secure or the SSN is encrypted.³⁴⁵ The prohibitions do not apply to the inclusion of an SSN in a document mailed, faxed, electronically transmitted under specified circumstances, the use of an SSN for internal verification or administrative purposes, or an interactive computer service or telecommunications provider's transmission, routing or temporary storage of an SSN.³⁴⁶

E. Identity Theft Passports

A victim of identity theft who has filed a report with law enforcement may apply for an identity theft passport.³⁴⁷ After completing a background investigation, the Maryland Attorney General may issue the passport to verify the victim's identity.³⁴⁸ The passport may be used to help prevent the arrest or detention of the victim for an offense committed by the identity thief or may be used by a creditor to aid in the investigation of a fraudulent account or charge.³⁴⁹

IX. Advertising

A. Lotteries, Sweepstakes, Contests

Except for the state lottery, lotteries are illegal.³⁵⁰

Retail promotions that include prizes are not permitted if the consumer is required to purchase goods or services, pay any money for the right to participate, or submit to a sales promotion.³⁵¹ When prizes are offered in connection with sales promotions that are not prohibited, certain disclosures must be made.³⁵²

B. Advertising

Maryland's Consumer Protection Act, under which persons may not engage in any unfair or deceptive trade practice in connection with the extension of consumer credit, restricts unfair or deceptive advertising.³⁵³ The Act provides that unfair or deceptive trade practices include any:

- False, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind that has the capacity, tendency, or effect of deceiving or misleading consumers;
- Failure to state a material fact if the failure deceives or tends to deceive.³⁵⁴

A business may not place a telephone directory advertisement (including a telephone listing) that misrepresents the location of the business.³⁵⁵ These prohibitions do not apply to any federal or Maryland bank, trust company, savings bank, savings and loan association, or credit union or any other state bank that maintains a branch in Maryland.³⁵⁶

Licensed mortgage lenders are subject to additional advertising limitations under the Mortgage Lender Regulations.³⁵⁷ Maryland's banking law prohibits use of the term "bank" in the name of any business not authorized to carry on a banking business.³⁵⁸

C. Telephone Solicitations

The Maryland Telephone Solicitations Act³⁵⁹ applies to the telephone solicitation of goods, real property, and services primarily for personal, household, family, or agricultural purposes.³⁶⁰ Financial services and securities sales are not covered, except for solicitations offering "credit services" where a consumer is required to call a telephone number, is charged a separate toll fee for the call, and the person making the solicitation receives any portion of the separate telephone toll fee paid by the consumer.³⁶¹ "Credit services" improve the consumer's credit history, credit record, or credit rating or obtain an extension of credit for the consumer.³⁶² Only attempts to sell consumer goods, services, or realty to a Maryland consumer that are made entirely by telephone and are initiated by the merchant are covered.³⁶³

The Maryland Telephone Solicitations Act contains a number of exemptions, including an exemption for preexisting business relationships.³⁶⁴

If the telephone solicitation is covered, requirements apply to any contract and no charges may be made to a consumer's credit account until the merchant

receives a copy of a contract that complies with the Maryland Telephone Solicitations Act.³⁶⁵

The Maryland Telephone Consumer Protection Act makes it an unfair or deceptive trade practice to violate certain federal laws governing telephone solicitations.³⁶⁶ In addition to other available remedies, a violation of the Maryland Telephone Consumer Protection Act can lead to damages in the amount of \$500 for each violation or actual damages, whichever is greater.

D. Leased Motor Vehicles

A lessor of motor vehicles is prohibited from failing to include a dealer processing or freight charge when determining the adjusted capitalized cost used to calculate the base lease payment shown in an advertisement for a leased vehicle, or advertising to the general public a capitalized cost reduction to a lessee unless the reduction is offered to all potential lessees.³⁶⁷ Violation of this law is deemed an unfair and deceptive trade practice under the Maryland Consumer Protection Act.³⁶⁸

X. Other Licensed Services

A. Real Estate Appraisal Management Companies and Special Fund for Appraiser and Home Inspector Commission

An appraisal management company (“AMC”) is a third party authorized by a creditor of consumer credit to be secured by the borrower’s principal dwelling, or authorized by an underwriter of or other principal in the secondary mortgage markets, that “provides appraisal management services.”³⁶⁹ AMCs must register before offering services in Maryland and must renew that registration annually.³⁷⁰ AMCs may not engage in certain acts and unprofessional conduct.³⁷¹ Among other requirements, AMCs must maintain detailed records of service requests and of each appraiser that performs services for the AMC.³⁷²

B. Credit Services

A credit service business, its employees, and independent contractors who sell or attempt to sell the services of a credit service business must be licensed.³⁷³ A “credit service business” is a business that sells, provides, or performs services, or provides advice or assistance in return for compensation.³⁷⁴ Such services include improving a consumer’s credit record, history, or rating, or establishing a new credit file or record, or obtaining an extension of credit for a consumer.³⁷⁵ Financial institutions and mortgage lenders, among others, are exempt from licensing.³⁷⁶

Credit service businesses must provide consumers a written statement. Any credit service business contract made with a consumer, and all advertisements, are subject to restrictions and disclosure requirements.³⁷⁷ Credit service businesses must obtain a surety bond.³⁷⁸

Credit service businesses are subject to a number of requirements. In an effort to prevent a credit service business from serving as a referral source to out of state

financial institutions charging rates of interest that exceed the interest rates permitted by the Maryland Credit Laws, credit service businesses are prohibited from assisting a consumer to obtain an extension of credit at a rate of interest which, except for federal preemption of Maryland law, would be prohibited under the Credit Laws.³⁷⁹ In addition, a credit services business is prohibited from charging or receiving a fee in connection with helping a borrower obtain a loan that, when combined with interest, exceeds the interest rate permitted by Maryland law.³⁸⁰

In *Gomez v. Jackson Hewitt, Inc.*,³⁸¹ the Court of Special Appeals of Maryland held that a tax preparation business that acted as a facilitator of refund anticipation loans made by a third party, and did not charge the consumer for the credit services, was not a “credit service business.”³⁸²

Facilitators of refund anticipation loans must make certain disclosures and are prohibited from charging any fees to consumers.³⁸³ Banks, savings and loans, credit unions and certain of their affiliates are exempt.³⁸⁴

C. Check Cashing Services

Unless exempt, check cashing services must be licensed.³⁸⁵ A separate license is required for each place of business.³⁸⁶ Many businesses are exempt from licensing, including banks, trust companies, savings banks, savings and loan associations, credit unions, and each of their subsidiaries and affiliates.³⁸⁷

Licenses are issued for a 2-year term and currently expire on December 31 of each odd-numbered year. In the future, licenses may expire on a staggered basis.³⁸⁸ Licensees are required to keep specified books and records.³⁸⁹

Licensees are authorized to charge the greater of: 2% of the face amount of a payment instrument or \$3.00, if the payment instrument is issued by the federal government or a state or local government; 10% of the face amount of a payment instrument or \$5.00, if the payment instrument is a personal check; and 4% of the face amount of the payment instrument or \$5.00, for any other payment instrument.³⁹⁰ In addition, a licensee may charge a one-time membership fee not to exceed \$5.00.³⁹¹ A licensee also is permitted to charge a specified dishonored check charge.

D. Vehicle Protection Products Act

The Vehicle Protection Products Act imposes consumer protection requirements on persons who offer or sell warranties covering vehicle protection products (including sellers of those products when the product carries a warranty), and persons who administer those warranties.³⁹² A vehicle protection product is any protection device, system or service that is sold with a written warranty, is installed or applied to a vehicle and is designed to prevent loss or damage to a vehicle from a specified cause, and includes alarms, steering locks, window etch products, ignition locks, kill switches and tracking devices. A warranty covered by the Vehicle Protection Products Act is sold in connection with the vehicle protection product and provides for payment of certain costs incurred by the warranty holder if that product fails to prevent the covered loss. Insurers who sell insurance policies to warrantors covering warranty losses are not covered.

A warrantor must register with the Maryland Attorney General's Division of Consumer Protection, pay an annual registration fee, make certain disclosures to the warranty holder, keep accurate books and records relating to its warranties and maintain a warranty reimbursement insurance policy or meet net worth requirements.

XI. Debt Adjustment

A. Debt Management Services Act

Providers of "debt management services" must be licensed, unless exempt.³⁹³ "Debt management services" mean receiving funds periodically from a consumer under an agreement with the consumer for the purpose of distributing the funds among the consumer's creditors in full or partial payment of the consumer's debts.³⁹⁴ Lawyers, escrow agents, certified public accountants, banks, credit unions, savings and loan associations, and accelerated mortgage payment services are among the businesses that are exempt.³⁹⁵ Both tax paying and tax exempt organizations may be licensed.³⁹⁶

Licenses are issued for a 2-year term and currently expire on December 31 of each odd-numbered year. In the future, licenses may expire on a staggered basis.³⁹⁷

Debt management services may not be performed unless a consumer education program is provided, the licensee has prepared a financial analysis of an initial budget plan for the consumer's debt obligations, and a debt management services agreement is executed, among other requirements.³⁹⁸ All funds must be maintained in a trust account.³⁹⁹

Licensees may charge a consultation fee not exceeding \$50.00 and a monthly maintenance fee not exceeding \$8.00 for each creditor of a consumer that is listed in the debt management services agreement.⁴⁰⁰ The total monthly fees may not exceed \$40.00 per month.⁴⁰¹ The fee limitations apply to mandatory fees as well as voluntary contributions.⁴⁰²

B. Debt Settlement Services Act

The Maryland Debt Settlement Services Act requires providers of debt settlement services to register, specifies requirements for agreements, and establishes duties for providers.⁴⁰³ The Commissioner of Financial Regulation, in consultation with the Consumer Protection Division of the Office of the Attorney General, will report to the Maryland Senate Finance Committee and the House Economic Matters Committee by December 1, 2014, with recommendations for changes to the law, including whether to transition from registration to licensure and whether debt settlement services fees should be capped.⁴⁰⁴

"Debt settlement services" are any service or program represented, directly or by implication, to renegotiate, settle, reduce, or in any way alter the terms of payment or other terms of a debt between a consumer and one or more unsecured creditors or debt collectors, including a reduction in the balance,

interest rate, or fees owed by a consumer to an unsecured creditor or debt collector.⁴⁰⁵ Debt settlement services do not include debt management services.⁴⁰⁶

Consistent with the FTC's Telemarketing Sales Rule, a registrant may not charge a debt settlement services fee until after an agreement has been signed, the registrant has renegotiated, settled, reduced, or otherwise altered the terms of at least one debt, and the consumer has made at least one payment.⁴⁰⁷ A debt settlement services fee for each individual debt must either have the same proportional relationship to the fee for providing debt settlement services for the total amount of debts as the actual amount of the individual debt has to the total amount of debt or be calculated as a percentage of savings.⁴⁰⁸ Otherwise, the fee is not limited.

The Debt Settlement Services Act also regulates advertising and the terms of the debt settlement agreement.⁴⁰⁹

C. Foreclosure Consultants

Under the Protection of Homeowners in Foreclosure Act ("PHIFA"), a "foreclosure consultant" is a person that solicits or contacts a homeowner in any manner and directly or indirectly makes a representation or offer to perform any service purporting to assist the homeowner in almost any manner related to a foreclosure.⁴¹⁰ A "foreclosure consulting service" includes numerous activities related to facilitating the activities of a foreclosure consultant, including, but not limited to, receiving money for the purpose of distributing it to creditors, and contacting creditors on behalf of a homeowner.⁴¹¹ Any foreclosure consultant who provides real estate brokerage services⁴¹² during the course of his or her activities, must be licensed as a real estate broker.⁴¹³ Many businesses are exempt if they are performing regular or normal business activities, including banks, trust companies, savings and loan associations, credit unions, and insurance companies and their subsidiaries, affiliates, and agents, authorized title insurers, licensed title insurance producers, licensed mortgage brokers and lenders, licensed real estate brokers, associate real estate brokers, and real estate salespersons, and Maryland lawyers.⁴¹⁴ Nonprofit organizations that offer counseling advice to homeowners in foreclosure or loan default, persons who hold or are owed an obligation secured by a lien on a residence in foreclosure while providing services in connection with the obligation or lien, and judgment creditors of a homeowner also are exempt.⁴¹⁵

Under PHIFA, homeowners have the right to rescind a foreclosure consulting contract at any time.⁴¹⁶ Also, foreclosure consultants must provide any such contract to the homeowner for review before an agreement is entered into. The contract is subject to various requirements, including specific type and content requirements, and must include specific notice language.⁴¹⁷ The contract also must be accompanied by a separate Notice of Rescission, in a form provided pursuant to PHIFA.⁴¹⁸

Both the Attorney General and the Commissioner of Financial Regulation have oversight authority concerning PHIFA.⁴¹⁹ Violations of PHIFA's requirements are subject to criminal penalties and a private right of action exists under the statute.⁴²⁰

XII. Other Maryland Laws Affecting Financial Service Providers

A. Equal Credit Opportunity

The Maryland Equal Credit Opportunity Act prohibits discrimination based on sex or marital status. Compliance with the Federal Equal Credit Opportunity Act and Regulation B constitutes compliance with Maryland law.⁴²¹ Other provisions of Maryland's consumer protection laws require notices in connection with the denial of credit.⁴²²

B. Consumer Protection Act

Maryland's Consumer Protection Act applies directly to extenders of consumer credit, including banks.⁴²³ In addition to restricting unfair and deceptive trade practices, certain provisions apply specifically to extensions of consumer credit, such as the prohibition of confessed judgment clauses.⁴²⁴

C. Set-Off

Maryland law prohibits financial institutions from offsetting a customer's deposit account for settlement of a delinquent consumer debt unless the offset is authorized in writing by the customer or a court order is obtained to permit the offset.⁴²⁵ A consumer debt is defined as any debt arising from a transaction for consumer goods.

D. Judgment Rate

Except for loans secured by mortgages or deeds of trust, a money judgment carries interest at the rate charged in the contract on any balance remaining unpaid until the date of maturity of the contract as originally scheduled. Thereafter, the legal rate of interest on the judgment is 10% per year.

The judgment rate for mortgages and deeds of trust is 10% on the amount of the judgment. Student loans are not subject to this rule if the contractual rate of interest is less than the prevailing legal rate of interest allowed on the judgment, unless the student loan agreement expressly provides otherwise.⁴²⁶

E. Foreign Corporation Qualification

Unless exempted, foreign corporations that do intrastate business in Maryland are required to qualify with the State.⁴²⁷ Foreign corporations that do only interstate or foreign business in Maryland are required to register with the State.⁴²⁸ Registration is an easier process than qualification and should avoid taxation issues for the registrant. A corporation that is qualified to do business in Maryland is not required to register.

Insurance companies subject to Maryland's insurance code, railroads operating in Maryland, and national banks with their main office located in Maryland are expressly exempted from these qualification and registration requirements.⁴²⁹

The following activities do not constitute doing intrastate, interstate, or foreign business in Maryland:

- Foreclosing mortgages and deeds of trust on property in this State;

- Acquiring title to property in this State by foreclosure, deed in lieu of foreclosure, or otherwise after default;
- Holding, protecting, renting, maintaining, and operating property in this State so acquired;
- Selling or transferring the title to property in this State so acquired to any person, including the Federal Housing Administration or the Veterans Administration.⁴³⁰

A corporation that engages in any one or more of these specific activities, and no other activities, will not need to qualify or register to do business.

A corporation required to qualify or register, which does not do so, is subject to a fine of \$200 and its officers and agents may be convicted of a misdemeanor and subjected to a fine not to exceed \$1,000.⁴³¹ Failure to qualify or register does not affect the validity of any contract to which the foreign corporation is a party.⁴³² A foreign corporation that is doing intrastate, interstate, or foreign business without complying with the Maryland qualification or registration requirements may maintain a suit in Maryland courts only upon a showing that it has paid the \$200 penalty for failure to register or qualify and that it has since complied with the qualification or registration requirements.⁴³³

F. Debt Collection

Two separate laws restrict debt collection. The Maryland Consumer Debt Collection Act imposes civil liability on debt collectors who violate the Act.⁴³⁴ A “collector” is defined as a person collecting an alleged debt arising out of a consumer transaction, or a creditor collecting its own debt.

Debt collectors are prohibited from using or threatening force or violence, threatening criminal prosecution, disclosing or threatening to disclose false information about a consumer’s creditworthiness, contacting the consumer’s employer except as permitted by statute, or otherwise abusing, harassing, or lying to a consumer during debt collection.⁴³⁵

Maryland law also imposes licensing requirements on any person who conducts business as a collection agency.⁴³⁶ Collection agency activities include collecting a consumer claim using a name or artifice that indicates another party is attempting to collect the consumer claim, or giving or selling (or attempting to give or sell) forms or letters that indicate the owner is asserting a consumer claim.⁴³⁷ Maryland law imposes this licensing requirement on collection agency activities that involve Maryland residents who owe money arising out of a family, household, or personal purpose transaction.⁴³⁸ A collection agency includes a person who owns and collects a consumer claim that was in default when it was acquired. Persons who fail to obtain a license may be fined up to \$1,000, and imprisoned for up to six months.⁴³⁹ Brokers, credit unions, mortgage lenders, thrifts, title companies, and trust companies, among others, are exempt from this licensing requirement.⁴⁴⁰ As long as collecting debts does not comprise more than 50% of the total business activity of a person and certain information is filed with the Maryland Collection Agency Licensing Board, persons who collect debts only for affiliates also are exempt.

G. Late Fees

The late fee law generally validates a late fee agreed to by the parties to a contract.⁴⁴¹ A late fee included in a consumer contract (*i.e.*, a contract involving the sale, lease, or provision of goods or services which are for personal, family, or household purposes) is limited to either \$5.00 per month, up to 10% per month of the payment amount that is past due, whichever is greater, for no more than 3 months for any single payment amount that is past due, or 1.5% per month of the payment amount that is past due.⁴⁴² A late fee included in a consumer contract may not be imposed until 15 days after the date the bill was rendered for the goods or services, or if a bill is not rendered, 15 days after the payment amount becomes due.⁴⁴³ The late fee must be disclosed in the consumer contract or by notice in at least 10 point bold type.⁴⁴⁴

The late fee law does not affect a late fee, finance charge, interest, or any other fee or charge otherwise allowed under applicable law.⁴⁴⁵ The Office of Counsel to the General Assembly, Maryland Attorney General, has opined that the late fee law does not affect any late fee imposed under the Maryland Credit Laws.⁴⁴⁶

H. Revised Article 9 of the Uniform Commercial Code

Maryland's version of Revised Article 9 of the Uniform Commercial Code⁴⁴⁷ changes several of the special consumer rules included in the uniform version of Revised Article 9. These changes clarify the Revised Article 9 rules that apply to transactions in consumer goods.

In case of conflict between Revised Article 9 and consumer statutes or regulations, the consumer statute or regulation controls.⁴⁴⁸ Failure to comply with the statute or regulation has the effect prescribed under the statute and no recovery is permitted under Revised Article 9.⁴⁴⁹ The default and enforcement provisions of Revised Article 9 do not impose additional duties, obligations, or responsibilities on secured parties who are subject to the repossession rules of any of the Maryland Credit Laws.⁴⁵⁰

To the extent Subtitle 6 of Revised Article 9 imposes duties, obligations, or responsibilities on a secured party subject to the repossession provisions of the Maryland Credit Laws, secured parties may ignore Revised Article 9. In addition, Revised Article 9-625, the remedy provision, does not apply to a failure of the secured party to comply with the repossession provisions of the Credit Laws.

Maryland's Revised Article 9 also differs in the following respects from the uniform law:

- While the rules for allocation of payments to determine the extent of purchase-money status and rules for cross-collateralization and refinancing of purchase-money advances of Uniform Revised Article 9 do not apply to consumer-goods transactions, Maryland's version applies to consumer-goods transactions as well as to all other transactions.⁴⁵¹

- Maryland makes the 10-day safe harbor for disposition of collateral available in consumer transactions.⁴⁵²
- Uniform Revised Article 9 imposes statutory damages on creditors (if the collateral is consumer goods) in an amount not less than the credit service charge plus 10% of the principal amount of the obligation and imposes a statutory \$500 penalty for failure to comply with certain provisions of Revised Article 9.⁴⁵³ Maryland did not adopt these penalties.
- In Maryland, the “rebuttable presumption” rule concerning the amount of a deficiency or surplus applies to consumer transactions, as well as to other transactions.⁴⁵⁴

I. Payroll Cards

Maryland employers must pay wages in cash or check. Wages may be direct deposited to a bank account only if authorized by the employee.⁴⁵⁵ In addition, employers may credit an employee’s wages to a stored value *payroll card*, which allows employees to access the funds through withdrawal, purchase, or transfer.⁴⁵⁶ The employee must authorize payment to a debit card or card account and any card or account fees must be disclosed to the employee in at least 12 point font.

J. Gift Certificates and Gift Cards

A gift certificate is a device that can be used to purchase goods or services or is issued as a store credit for returned goods.⁴⁵⁷ Certain items are excluded, including prepaid calling cards, coupons for discounts, free gift certificates, and gift cards.⁴⁵⁸ No gift certificate may expire or be subject to any fee within 4 years after it is purchased.⁴⁵⁹ If the gift certificate will expire or be subject to a fee after 4 years, these terms and conditions must be printed in at least 10 point type in a visible place on the gift certificate, on a sticker affixed to the gift certificate, or on an envelope containing the gift certificate.⁴⁶⁰ If a gift certificate is issued in violation of the law, it will not expire or be subject to any fee.⁴⁶¹

Gift cards that are processed through a national credit or debit card service and that may be used to purchase goods or services from multiple unaffiliated merchants are not *gift certificates*.⁴⁶² A gift card may be subject to expiration or post-sale fees, but only if the expiration date and information about the fees are printed on the front or back of the gift card in at least 10 point type.⁴⁶³ If the disclosures are hidden by the gift card’s packaging, a written statement of the disclosures must be given to the purchaser.⁴⁶⁴ Special disclosure requirements apply to gift cards issued by electronic or telephonic means.⁴⁶⁵

No change in a term or condition of a gift certificate or gift card disclosed at the time of issuance or sale may be made, unless the change benefits the consumer.⁴⁶⁶

1. Md. Code Ann., Com. Law §§ 12-101 *et seq.* [hereinafter CL § xx].
2. CL §§ 12-301 *et seq.*
3. CL §§ 12-401 *et seq.*
4. The need for licensing may be the only reason the SMLL cannot be avoided.
5. CL §§ 12-501 *et seq.*
6. CL §§ 12-601 *et seq.*
7. CL §§ 12-901 *et seq.*
8. CL §§ 12-1001 *et seq.*
9. CL §§ 12-913.1, -1013.1.
10. See Part VII.C.
11. Md. Code Ann., Fin. Inst. §§ 11-101 *et seq.* [hereinafter FI § xx].
12. FI §§ 11-203, -303, -403, -503, -603.
13. FI § 11-204.
14. FI § 11-204(b).
15. FI § 11-202(b).
16. FI § 11-204.
17. *Id.*
18. *Id.*
19. FI § 11-209.
20. FI § 11-213.
21. FI § 11-219.
22. FI § 11-302.
23. FI § 11-301(a).
24. FI § 11-301(b).
25. *Id.*
26. *Id.*
27. FI § 11-303.
28. *Id.*
29. FI §§ 11-401(j), -403.
30. FI § 11-401(f).
31. FI § 11-401(d)(2).
32. FI § 11-401(e).
33. FI § 11-402.
34. FI § 11-403(b).
35. FI § 11-409.
36. FI §§ 11-501 *et seq.*
37. FI § 11-501(j).
38. FI § 11-501(i).
39. FI § 11-501(l).
40. FI § 11-501(q).
41. FI § 11-502(b)(1).
42. FI §§ 11-502(b)(11) and (c).
43. FI § 11-502(b)(13). *But see* FI §§ 11-601 *et seq.* for mortgage loan originator licensing.
44. FI § 11-502(b)(4).
45. FI § 11-502(b)(10).
46. FI §§ 11-505(b) and (c).
47. FI § 11-511.
48. Codified at 12 U.S.C. §§ 5101 *et seq.*
49. FI §§ 11-601 *et seq.*
50. FI § 11-601(q)(1).
51. FI §§ 11-601(w), -602(d)(1).
52. FI § 11-603(a).
53. FI § 11-609.
54. See CL §§ 12-901(k), -1001(m).
55. FI § 11-501(c).
56. *Jackson v. Pasa dena Receivables, Inc.*, 398 Md. 611, 921 A.2d 799 (2007).
CL § 12-114(c).
57. See CL §§ 12-401(i), -502(b).
58. *Jackson*, 398 Md. at 627.
59. FI § 1-209.
60. CL §§ 12-918.1, -1018.1.
61. *Id.*
62. CL § 12-101(e).
63. *Rothman v. Silver*, 245 Md. 292, 226 A.2d 308 (1967).
64. Md. Code Ann., Real Prop. §§ 10-101 *et seq.* [hereinafter RP § xx].
65. CL § 12-101(c).
66. CL §§ 12-901(c), -1001(e).
67. CL § 12-103(e)(1)(i).
68. CL §§ 12-103(e)(1)(ii)-(iii).
69. CL § 12-103(e)(1)(iii).
70. CL § 12-103(e)(1)(ii).
71. CL § 12-103(d).
72. CL § 12-103(f).
73. CL § 12-102.
74. CL § 12-103(a)(1).
75. CL § 12-103(a)(2).
76. CL §§ 12-103(a)-(c).
77. CL § 12-103(b).
78. See *supra* Parts III. C. through F.
79. CL § 12-118.
80. *Genn v. CIT Corp.*, 40 Md. App. 516, 392 A.2d 1135 (1978); CL § 12-126.
81. CL § 12-105.
82. *B. F. Saul Co. v. West End Park North, Inc.*, 250 Md. 707, 246 A.2d 591 (1968).
83. RP § 3-105.1(f).
84. *Id.*
85. CL § 12-115. Cf. CL § 12-1021, discussed *infra* at Part IV.C.5.
86. CL § 12-1003.
87. CL § 12-1004.
88. CL § 12-1002(b).
89. CL § 12-1001(f).
90. CL § 12-1005(a).
91. CL § 12-1005(d).
92. *Id.*
93. *Id.*
94. CL §§ 12-1005(d), -1007(b).
95. *Id.*
96. CL § 12-1005(d)(2).
97. CL § 12-1009(e).
98. CL § 12-1011.
99. RP § 3-105.1(f).
100. *Id.*
101. CL § 12-1008.
102. *Id.*
103. CL § 12-1006.
104. CL § 12-1010.
105. CL §§ 12-1012, -1005.
106. CL § 12-1005.
107. CL §§ 12-1009, -1012.
108. CL § 12-1009(b).
109. *Id.*
110. *Id.*
111. *Id.*
112. *Id.*
113. *Id.*
114. CL § 12-1021. Special repossession rules that are not discussed in detail in this book also apply under Subtitle 9 § 12-921, RISA §§ 12-624, -626, and I&U § 12-115.
115. CL §§ 9-201(c)(1) and (3).
116. CL § 12-1021(a)(2).
117. CL § 12-1021(c).

118. CL § 12-1021(e).
119. CL § 12-1021(j)(ii).
120. CL § 12-1021(f).
121. CL § 12-1021(j).
122. CL § 12-1021(j)(2)(ii).
123. CL §§ 12-1021(j)(2), -1021(k)(3).
124. CL §§ 12-1021(k)(4), -1018.
125. CL § 12-1003(c).
126. CL § 12-1001(i).
127. CL § 12-1003(c)(1)(ii).
128. *Id.*
129. CL § 12-1005(b).
130. CL §§ 12-1008(a), -1012(b)(4).
131. CL §§ 12-1011(a), -1012(b)(4).
132. CL §§ 12-1012(b)(1) and (3).
133. CL §§ 12-1012(b)(2)-(3).
134. *Id.*
135. *Genn v. CIT Corp.*, 392 A.2d 1135 (1978).
136. Letter from Attorney General of Maryland, Office of Counsel to the General Assembly, November 24, 1999.
137. CL §§ 12-127, 12-311, 12-925, and 12-1029. See also § 12-409.1 (regarding “Secondary Mortgage Loans”).
138. FI § 11-501(l). See *supra* Part II.B.4.
139. CL § 12-127(b).
140. CL § 12-127(c)(1).
141. CL § 12-127(c)(2).
142. CL §§ 12-127(a)(3)(ii), -127(c)(3).
143. See 73 Opin. Att’y Gen. 144 (Maryland 1988) (April 5, 1988) (state law restricting advance payment of interest on first mortgage loans is preempted by federal law).
144. CL §§ 12-109, -1026.
145. CL §§ 12-109.1(e), 12-1026(c)(4).
146. *Id.*
147. *Id.*
148. CL §§ 12-120, -1028.
149. CL §§ 12-119, -1028.
150. CL §§ 12-120, -1028.
151. CL §§ 12-121, -1027.
152. CL §§ 12-125, -922, -1022.
153. *Id.*
154. CL §§ 12-1201 *et seq.*
155. CL §§ 12-124(a), -312(e), -410(f), -909(e), -1007(f).
156. CL § 12-124(a)(v)(1).
157. CL § 12-124(a)(v)(2).
158. CL § 12-124(a)(4).
159. CL § 12-124.
160. *Id.*
161. CL §§ 12-124.1, -127, -311, -312, -410, -1007, -1029.
162. CL §§ 12-124.1, -127, -311, -312, -409.1, -410, -1007, -1029.
163. *Id.*
164. COMAR 09.03.06.18.
165. CL §§ 12-1301 *et seq.*
166. COMAR 05.19.01.
167. CL § 12-1013.1.
168. CL § 12-1010.
169. CL § 12-1003(c)(1)(ii).
170. RP § 1-101(j), RP § 7-101(a).
171. RP § 3-104.1(b).
172. RP § 3-104.1(a).
173. RP § 3-104.1(b)(1)(i).
174. RP § 3-104.1(b)(1)(ii).
175. RP § 3-104.1(b)(2)(i).
176. RP § 3-104.1(b)(2)(ii).
177. COMAR 09.03.11.
178. *Heritage Realty v. City of Baltimore*, 252 Md. 1, 3-4, 248 A.2d 898, 899-90 (1969).
179. *Moran v. Hammersla*, 188 Md. 378, 52 A.2d 727 (1947).
180. RP § 8-111.2(b).
181. RP §§ 8-110.1(c), -110.1(d), -110.1(f)(1)-(2).
182. RP §§ 8-110.1(f)(3)-(4).
183. RP § 8-110.1(f)(4).
184. RP § 8-111.1(c).
185. RP § 8-402.3(c).
186. *Id.*
187. RP § 8-402.3(e).
188. RP § 8-402.3(n)(1).
189. RP § 8-402.3(n)(3).
190. RP § 8-402.3(j)(3).
191. RP §§ 14-116.2(c), -116.2(d)(2).
192. RP § 14-116.1(c).
193. RP § 14-116.1(d).
194. RP § 14-117(a)(3).
195. RP § 8-703(a).
196. RP §§ 8-706, -707.
197. RP §§ 8-704(a) and (c).
198. RP § 8-708.
199. 2011 Md. LEXIS 644, at *9 (2011).
200. *Muskin v. State Dep’t of Assessments & Taxation*, 2011 Md. LEXIS 644, at *9 (2011).
201. *Id.*
202. RP § 3-105.1(c).
203. RP § 3-105.1(d).
204. RP § 3-105.1(e)(2).
205. See note 36 *supra*.
206. COMAR 09.03.06.13.
207. RP § 3-105.1(e)(1).
208. RP § 3-105.1(f)(3).
209. RP § 3-105.1(f)(2).
210. RP § 3-105.1(f)(4).
211. RP § 3-105.1(g)(2).
212. RP § 3-105.1(g)(1).
213. RP § 3-105(a).
214. See *supra* Part V.J.
215. Md. Rule 14-210(b).
216. RP § 7-105.1(a)(9). See also COMAR 09.03.12.01B(13).
217. RP § 7-105.1(b).
218. RP § 7-105.1(c).
219. RP § 7-105.1.
220. RP § 7-105.1(c)(6).
221. COMAR 09.03.12.
222. RP § 7-105.1(d)(1)(ii)(2)(B).
223. RP § 7-105.1(d-1).
224. RP §§ 7-105.1(a)(2)(ii), -105.1(g)(1).
225. RP § 7-105.1(h).
226. RP § 7-105.1(d)(2)(viii).
227. RP § 7-105.1(g)(1).
228. RP § 7-105.1(a)(3).
229. RP §§ 7-105.1(i), -105.1(j)(2).
230. RP § 7-105.1(k)(1).
231. RP § 7-105.1(b)(2)(ii)(1).
232. RP §§ 7-105.6(b)(2)(i), -105.6(b)(3), -105.6(b)(5).

233. RP § 7-105.1(b)(2)(ii)(1).
234. RP §§ 7-105.6(b)(2)(i), -105.6(b)(3).
235. RP §§ 11-110(f)(2)-(3).
236. RP § 11-110(f)(3)(ii).
237. RP §§ 11-110(f)(4)(i)-(ii).
238. RP § 11-110(f)(4)(iii).
239. RP § 7-402.
240. RP § 7-401(d).
241. RP § 7-401(d)(2).
242. RP § 7-405(a).
243. RP § 7-408.
244. RP § 7-406.
245. CL § 13-316.
246. RP § 14-104.1.
247. RP § 3-601(a).
248. Md. Code Ann., Cts. & Jud. Proc. § 13-604(a).
249. *Id.*
250. Md. Code Ann., Tax-Prop. § 12-102 [hereinafter TP § xx].
251. TP § 12-103(b).
252. TP § 12-105(f).
253. TP § 12-108(g).
254. TP § 12-108(g).
255. TP § 12-108(i).
256. TP § 13-203(b).
257. CL §§ 12-801 *et seq.*
258. CL § 12-804(a).
259. CL § 12-804(c).
260. CL § 12-805(b).
261. CL § 12-805(c).
262. CL § 12-805(a).
263. CL § 12-804(b).
264. CL § 12-804(e).
265. CL § 12-805(d)(1).
266. CL §§ 12-805(d)(1), -805(d)(2)(ii).
267. CL § 12-805(d)(3).
268. CL § 12-906.
269. CL § 12-901(1).
270. 12 C.FR. Part 226.
271. CL § 12-903(a)(1).
272. CL § 12-904.
273. CL § 12-903(d)(1).
274. CL §§ 12-905(a)(1)(i), -905(a)(2)(i).
275. CL § 12-905(a)(1)(ii).
276. CL § 12-905(a)(2)(ii).
277. CL §§ 12-905(a)(1)(iii), -905(a)(2)(iii).
278. CL § 12-905(b)(1).
279. CL § 12-905(b)(2).
280. CL § 12-905(f).
281. RP § 3-105.1(f).
282. *Id.*
283. CL § 12-903(a)(3).
284. CL § 12-910(a)(2).
285. CL § 12-911.
286. CL § 12-910(a)(2)(ii).
287. CL § 12-908.
288. CL § 12-913.1.
289. CL § 12-903(a)(1).
290. CL § 12-914(b).
291. CL § 12-903(a)(2).
292. *Id.*
293. CL § 12-1001(b)(1).
294. CL § 12-912(c)(1).
295. CL §§ 12-912(c)(2) and (3).
296. CL § 12-912(c)(4).
297. CL § 12-912(c)(5).
298. CL § 12-912(c)(7).
299. CL § 12-912(d)(1)(i).
300. CL § 13-312.
301. Md. Code Ann., Crim. Law §§ 8-213 *et seq* [hereinafter Crim. Law § xx].
302. CL § 12-903(a)(3).
303. CL § 12-623(a).
304. CL § 12-606.
305. CL § 12-605(d).
306. CL § 12-609(b)(2).
307. CL § 12-609(b)(4).
308. CL §§ 12-612, -620.
309. CL § 12-623(b).
310. CL § 12-607(a)(4).
311. *Union Trust Co. v. Tyndall*, 290 Md. 102, 428 A.2d 428 (1981).
312. CL § 12-609(g).
313. CL §§ 12-609(f), -610(3).
314. CL § 12-609(a)(3).
315. CL § 12-1012(a).
316. *Rothman v. Silver*, 245 Md. 292, 226 A.2d 308 (1967).
317. CL §§ 12-624, -626.
318. *Suburban Trust Co. v. Waller*, 44 Md. App. 335, 408 A.2d 758 (1979).
319. *Id.*
320. FI §§ 1-301 *et seq.*
321. FI § 1-301(b).
322. FI § 1-301(c).
323. FI § 1-304.
324. FI § 1-305.
325. CL § 14-1212.1.
326. CL § 14-1212.1(d)(1).
327. CL §§ 14-1212.1(b)(2)(i)-(ii).
328. CL § 14-1212.1(b)(1)(i).
329. CL § 14-1212.1(b)(1)(vii).
330. CL §§ 14-1212.1(e) and (h).
331. CL §§ 14-1212.1(e)(2)(i), -1212.1(h)(3).
332. CL § 14-1212.1(e)(2)(ii)(1).
333. CL §§ 14-3501 *et seq.*
334. CL §§ 14-3503, -3504(b), -3504(c).
335. CL § 14-3502(b).
336. CL § 14-3503(a).
337. CL § 14-3503(b).
338. CL § 14-3504(c)(1).
339. CL § 14-3504(b)(1).
340. CL § 14-3504(b)(2).
341. CL §§ 14-3507(c).
342. CL § 14-3508, CL §§ 13-408(a), -410, -411 .
343. Md. Code Ann., Lab. & Empl. § 3-502 [hereinafter Lab. & Empl. § xx].
344. CL §§ 14-3402(a)(1)-(5).
345. CL § 14-3402(a)(6).
346. CL § 14-3402(b).
347. Crim. Law § 8-305(b).
348. Crim. Law § 8-305(d).
349. Crim. Law § 8-305(e).
350. Crim. Law §§ 12-201 *et seq.*
351. CL § 13-305.
352. *Id.*
353. CL §§ 13-301 *et seq.*
354. CL § 13-301.
355. CL § 11-704.1(c)(1).
356. CL § 11-704.1(b)(2).

357. COMAR 09.03.06.05.
358. FI § 5-806.
359. CL §§ 14-2201 *et seq.*
360. CL § 14-2201(c)(1).
361. CL § 14-2201(c)(2).
362. CL § 14-2201(d).
363. CL § 14-2201(f).
364. CL § 14-2202(a).
365. CL § 14-2203.
366. CL §§ 14-3201, - 3202.
367. CL §§ 14-2003(a)(4)-(5).
368. CL § 13-301(14)(x).
369. Md. Code Ann., Bus. Occ. & Prof. § 16-5B-01(b) [hereinafter BO&P § xx].
370. BO&P §§ 16-5B-03(a)(2), -5B-04(b).
371. BO&P §§ 16-5B-10, -5B-13.
372. BO&P § 16-5B-09(a).
373. CL § 14-1903.
374. CL § 14-1901(e)(1).
375. *Id.*
376. CL § 14-1901(e)(3).
377. CL §§ 14-1903.1, -1906.
378. CL § 14-1908.
379. CL § 14-1902(9).
380. CL § 14-1902(7).
381. 198 Md. App. 87, 67 A.3d 261 (2011).
382. *Id.* at 93.
383. CL §§ 14-3804, -3805, -3806(a)(2).
384. CL §§ 14-3801(d)(2)(i)-(ii).
385. FI § 12-105(a).
386. FI § 12-105(b).
387. FI §§ 12-103(a)-(b).
388. FI § 12-111.
389. FI § 12-114.
390. FI § 12-120(a).
391. FI § 12-120(b).
392. CL §§ 14-4A-01 *et seq.*
393. FI § 12-906.
394. FI § 12-901(g).
395. FI § 12-902.
396. FI § 12-907(a)(1).
397. FI § 12-912.
398. FI § 12-916.
399. FI § 12-917.
400. FI § 12-918.
401. *Id.*
402. FI § 12-918(f)(2).
403. FI §§ 12-1001 *et seq.*
404. Section 3, Chapters 280 and 281 of the 2011 Laws of Maryland. Codified at FI § 12-1001.
405. FI § 12-1001(d)(1).
406. FI § 12-1001(d)(2).
407. FI § 12-1010(c).
408. FI § 12-1010(e).
409. FI §§ 12-1012, -1013.
410. RP § 7-301(c).
411. RP § 7-301(e).
412. As defined in BO&P § 17-101(l).
413. RP § 7-308(b).
414. RP § 7-302(a).
415. *Id.*
416. RP § 7-305(a).
417. RP §§ 7-306(a)-(b).
418. RP § 7-306(c).
419. RP §§ 7-319, -319.1.
420. RP §§ 7-320, -321.
421. CL §§ 12-701 *et seq.*
422. CL §§ 14-1701 *et seq.*
423. CL § 13-101(g).
424. CL § 13-301.
425. CL § 15-702.
426. Md. Code Ann., Cts. & Jud. Proc. § 11-106.
427. Md. Code Ann., Corps. & Ass'ns § 7-203 [hereinafter C&A § xx].
428. C&A § 7-202.
429. C&A § 7-201.
430. C&A § 7-104.
431. C&A § 7-302.
432. C&A § 7-305.
433. C&A § 7-301.
434. CL § 14-203.
435. CL § 14-202.
436. Md. Code Ann., Bus. Reg. § 7-301(a) [hereinafter BR § xx].
437. BR § 7-101(c).
438. BR § 7-101(e).
439. BR § 7-401.
440. BR § 7-102.
441. CL § 14-1315(b).
442. CL § 14-1315(f)(1).
443. CL § 14-1315(f)(3).
444. CL § 14-1315(f)(2).
445. CL § 14-1315(e).
446. Letter to D. Robert Enten from Kathryn M. Rowe, Attorney General of Maryland Office of Counsel to the General Assembly, August 14, 2003.
447. CL §§ 9-101 *et seq.*
448. CL § 9-201(c)(1).
449. CL § 9-201(c)(2).
450. CL § 9-201(c)(3).
451. CL §§ 9-103(e) and (f).
452. CL § 9-612.
453. See Uniform Article 9 § 9-625(c).
454. CL § 9-626.
455. Lab. & Empl. § 3-502(f)(1).
456. Lab. & Empl. § 3-502(f)(2).
457. CL § 14-1319(a)(1).
458. CL § 14-1319(a)(2).
459. CL § 14-1319(b).
460. CL § 14-1319(c).
461. CL § 14-1319(e).
462. CL §§ 14-1319(a)(2)(vi), -1320(a).
463. CL § 14-1320(b).
464. CL § 14-1320(c).
465. CL § 14-1320(d).
466. CL §§ 14-1319(d), -1320(e).

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