I. Regulatory Limits on Claims-Handling

A. Timing for Responses and Determinations

An insurer must acknowledge its receipt of notice of a claim within 15 working days of such receipt. Md. Code Regs. 31.15.07.03(B)(10). Failing “to provide promptly on request a reasonable explanation of the basis for a denial of a claim” constitutes an unfair claim settlement practice. Md. Code Ann., Ins. § 27-303(6). Additionally, an insurer must affirm or deny coverage within 15 working days after receiving properly completed claim forms. Md. Code Regs. 31.15.07.03(B)(12). If an insurer has not completed its investigation within 45 days of notification, it must: (1) write to the insured and provide the “actual reason” that additional time is necessary to investigate the claim, and (2) write the insured every 45 days thereafter until the insurer either affirms or denies coverage. Md. Code Regs. 31.15.07.04(B).

B. Standards for Determinations and Settlements

In Maryland, an insurer must adopt and implement reasonable standards for the prompt investigation of claims that arise under insurance policies. Additionally, Maryland law prohibits insurers from the following acts, which constitute unfair claim settlement practices:

1. misrepresentation of pertinent facts or policy provisions that relate to the claim or coverage at issue;
2. refusing to pay a claim for an arbitrary or capricious reason based on all available information;
3. attempting to settle a claim based on an application that is altered without notice to, or the knowledge or consent of, the insured;
4. failing to include with each claim paid to an insured or beneficiary a statement of the coverage under which payment is being made;
5. failing to settle a claim promptly whenever liability is reasonably clear under one part of a policy, in order to influence settlements under other parts of the policy;
(6) failing to provide promptly on request a reasonable explanation of the basis for a denial of a claim;
(7) failing to meet the requirements . . . . for preauthorization for a health care service; . . . .

C. State Privacy Laws, Rules, and Regulations

Maryland insurance regulations require an insurer to provide clear and conspicuous notice to the insured that accurately reflects its privacy policies and practices for non-public financial information. See Md. Code Regs. 31.16.08.05. An insurer must provide this notice at the initial establishment of a customer relationship and annually thereafter. See Md. Code Regs. 31.16.08.05-06. Furthermore, an insurer generally must obtain authorization from the insured before disclosing non-public personal health information pertaining to the insured. See Md. Code Regs. 31.16.08.17.

II. Principles of Contract Interpretation


III. Choice of Law

Maryland follows the rule of lex loci contractus, “which requires that the construction and validity of a contract be determined by the law of the state where the contract was made.” Commercial Union Ins. Co. v. Porter Hayden Co., 97 Md. App. 442, 451, 630 A.2d 261, 266 (1993), vacated on other grounds, 339 Md. 150, 661 A.2d 691 (1995); see also Erie Ins. Exch. v. Heffernan, 399 Md. 598, 618, 925 A.2d 636, 648 (2007); Allstate Ins. Co. v. Hart, 327 Md. 526, 529, 611 A.2d 100, 101 (1992) (stating that “Maryland courts ordinarily should apply the law of the jurisdiction where the contract
was made. This is referred to as the principle of lex loci contractus."). “Typically, ‘[t]he locus contractus of an insurance policy is the state in which the policy is delivered and the premiums are paid.’” Porter Hayden, 97 Md. App. at 451-52, 630 A.2d at 266 (quoting Aetna Cas. & Sur. Co. v. Souras, 78 Md. App. 71, 77, 552 A.2d 908, 911 (1989)); see also Cigna Prop. & Cas. Cos. v. Zeitler, 126 Md. App. 444, 480, 730 A.2d 248, 268 (1999).

With respect to causes of action sounding in tort, Maryland adheres to the lex loci delicti rule in analyzing choice of law problems. B-Line Med., LLC v. Interactive Digital Sols., Inc., 209 Md. App. 22, 49, 57 A.3d 1041, 1057 (2012); Heffernan, 925 A.2d at 648-49; Lab. Corp. of Am. v. Hood, 395 Md. 608, 911 A.2d 841, 844 (2006). Under lex loci delicti, the law of the state where the tort or wrong was committed applies. Hood, 395 Md. at 613, 911 A.2d at 844. Where the events giving rise to a tort action occur in more than one state, the court must apply “the law of the State where the injury - the last event required to constitute the tort - occurred.” Heffernan, 925 A.2d at 649; see also Hood, 911 A.2d at 845. Similarly, Section 377 of the First Restatement of Conflict of Laws states that “[t]he place of the wrong is in the state where the last event necessary to make an actor liable for an alleged tort takes place.” Restatement (First) of Conflict of Laws § 377 (1934).

The Court of Appeals, however, has recognized a public policy exception to this general lex loci delicti rule. Lab. Corp. of Am., 911 A.2d at 849 (extending the public policy exception to lex loci delicti to tort causes of action). Under this exception, the law of Maryland will be applied if application of the law of the place of the injury violates a “clear, strong, and important Maryland public policy.” Id. at 849-51 (citing Reed v. Campagnolo, 332 Md. 226, 630 A.2d 1145 (1993)).

IV. Extra Contractual Claims Against Insurers: Elements and Remedies

A. Bad Faith

In 2007, the Maryland General Assembly amended the Unfair Claims Settlement Practices Act and created a new cause of action that an insured may bring against an insurer after exhausting administrative procedures before the Maryland Insurance Administration (“MIA”). Md. Code Ann., Ins. §§ 27-301 et seq.; Md. Code Ann., Cts. & Jud. Proc. § 3-1701. Under this amendment, insurers can receive damages in civil actions arising from first-party insurance claim disputes. The insured must prove that the insurer acted in bad faith in denying the claim. Id. In addition, the amendment makes an insurer’s failure to settle a claim in good faith a violation of the Unfair Claims Settlement Practices Act and allows for enhanced administrative sanctions. Id. However, this statute does not apply to policies of life, health or disability insurance. Id. § 3-1701(b) (stating that the “subtitle applies only to first-party claims under property and casualty insurance policies issued, sold, or delivered in the State.”).

House Bill 990, effective October 1, 2016, states that any first-party claimant can seek recovery of actual damages, expenses, litigation costs, and interest against a disability insurer for failure to act in good faith. H.B. 990, 729 (2016).

B. Fraud

In order to recover damages for fraud under Maryland law, a plaintiff must prove the following elements:
1. The defendant made a false representation to the plaintiff;
2. The defendant knew that the representation was false or made the representation with reckless indifference as to its truth;
3. The misrepresentation was made for the purpose of defrauding the plaintiff;
4. The plaintiff relied on the misrepresentation and had the right to rely on it; and
5. The plaintiff suffered compensable injury resulting from the misrepresentation.


Moreover, the plaintiff must establish these elements by clear and convincing evidence. See VF Corp. and Blue Bell, Inc. v. Wrexham Aviation Corp., 350 Md. 693, 704, 715 A.2d 188, 193 (1998); Gross v. Sussex, 332 Md. 247, 258, 630 A.2d 1156, 1161 (1993).

In Maryland, there is ordinarily no duty imposed on parties to a transaction to disclose material facts. See Sass v. Andrew, 152 Md. App. 406, 430, 832 A.2d 247, 260 (2003). Thus, concealment of a material fact only constitutes fraud where one party had a duty to disclose. See id. The only exception to this rule is in the case of facts which materially qualify representations made to another party. See id.

C. Intentional or Negligent Infliction of Emotional Distress

1. Intentional Infliction of Emotional Distress

In Harris v. Jones, 281 Md. 560, 566, 380 A.2d 611, 614 (1977), the United States Court of Appeals of Maryland recognized the tort of intentional infliction of emotional distress and listed its four elements as follows:

1. The conduct must be reckless;
2. The conduct must be extreme and outrageous;
3. There must be a causal connection between the wrongful conduct and the emotional distress; and
4. The emotional distress must be severe.


Since the Harris decision, Maryland courts have limited recovery for intentional infliction of emotional distress to the most extreme and unusual circumstances. See Khalifa v. Shannon, 404 Md. 107, 945 A.2d 1244 (2008); see also Hrehorovich v. Harbor Hosp. Ctr., Inc., 93 Md. App. 772, 799, 614
A.2d 1021, 1034 (1992). Kentucky Fried Chicken Nat’l Management Co. v. Weathersby, 326 Md. 663, 607 A.2d 8 (1992), demonstrates just how difficult it is for a plaintiff to satisfy the stringent standards of this tort. In that case, an employee of the defendant brought an action seeking damages for the intentional infliction of emotional distress after she suffered a nervous breakdown in response to her demotion from store manager to assistant manager. The employee suffered from a personality disorder that made her particularly susceptible to stress, but because the employer did not know of her vulnerability, its actions in demoting her did not reach the level of outrageousness the tort requires, and did not support the employees cause of action. Id. at 680.

2. Negligent Infliction of Emotional Distress

Maryland does not recognize the separate and distinct tort of negligent infliction of emotional distress; in other words, unintended emotional distress negligently inflicted by conduct that is not itself tortuous, is not a recognized tort. Lapides v. Trabbic, 134 Md. App. 51, 758 A.2d 1114 (2000).

D. State Consumer Protection Laws, Rules, Regulations

The Maryland Consumer Protection Act is found in Title 13 of the Commercial Law Article of the Annotated Code of Maryland. The Consumer Protection Act prohibits certain unfair and deceptive trade practices, as defined in Section 13-301 of the Commercial Law Article, in the sale, lease rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the offer for sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; or the collection of consumer debts. Md. Code Ann., Com. Law § 13-303. Title 13 prohibits a person from engaging in any unfair or deceptive trade practice and authorizes a private cause of action for recovery of damages, and possibly attorneys fees at the discretion of the court. See Brooks v. Lewin Realty III, Inc., 378 Md. 70, 835 A.2d 616 (2003); Richwind Joint Venture v. Brunson, 335 Md. 661, 645 A.2d 1147 (1994) overruled in part on other grounds, Brooks.

The Act defines sales to include not only sales, but also offers and attempts to sell. See Md. Code Ann., Com. Law, § 13-101(i). It defines consumer goods as goods which are primarily for personal, household, family, or agricultural purposes. See id. § 13-101(d). Any person may bring an action to recover for injury or loss sustained by him as the result of a practice prohibited by the Act. Id. § 13- 408(a). Attorneys fees may also be awarded under the Act if a claimant is successful. See id. § 13- 408(b). In determining the damages due to the consumer in a private action, the court must look only to his actual loss or injury caused by the unfair or deceptive trade practices. See Marwani v. Catering by Uptown, 416 Md. 312, 316, 6 A.3d 928, 930 (2010) (denying consumers’ claim for damages where they could not prove actual loss); Hallowell v. Citaramanis, 88 Md. App. 160, 594 A.2d 591 (1991), aff’d, 328 Md. 142, 613 A.2d 964 (1992).

Title 27 of the Insurance Article of the Annotated Code of Maryland addresses unfair trade practices and other prohibited practices. The purpose of this title is to regulate trade practices in the business of insurance in accordance with the McCarran-Ferguson Act, 15 U.S.C. §§ 1011 through 1015, by defining, or providing for the determination of, all trade practices in the business of insurance in Maryland that are unfair methods of competition or unfair or deceptive acts or practices and by prohibiting those trade

Title 27 of the Insurance Article of the Annotated Code of Maryland provides administrative remedies only. It does not provide or prohibit a private right or cause of action to, or on behalf of, a claimant or other person in any state, nor does it impair the right of a person to seek redress in law or equity for conduct that otherwise is actionable. See id. § 27-301.

E. State Class Actions

Maryland Rule 2-231 governs class actions in the state of Maryland. The primary purpose of the class action rule is to overcome the impracticalities of overtly cumbersome joinder requirements. See Kirkpatrick v. Gilchrist, 56 Md. App. 242, 249, 467 A.2d 562, 566 (1983). Maryland law does not mandate class actions; it does not require that a plaintiff who could file such an action do so, in lieu of pursuing an individual action or joining with other persons as individual co-plaintiffs. See Gilman v. Wheat, First Sec., Inc., 345 Md. 361, 380, 692 A.2d 454, 464 (1997). By the same token, a court may refuse to certify a class and require the plaintiffs to pursue individual actions. See Cutler v. Wal-Mart Stores, Inc., 175 Md. App. 177, 188, 927 A.2d 1, 7 (2007). The actual identity of parties is not required in class actions. See Weaver v. Prince Georges County, 34 Md. App. 189, 200, 366 A.2d 1048, 1055, aff’d, 281 Md. 349 (1977).

The factors of numerosity, commonality, typicality and adequacy of representation are all prerequisites to maintaining a class action in Maryland. See Md. R. 2-231(a) (2017). Class actions are maintainable if the prerequisites of section (a) are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class that would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class
predominate over any questions affecting only individual members and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:

(A) the interest of members of the class in individually controlling the prosecution or defense of separate actions,

(B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class,

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum,

(D) the difficulties likely to be encountered in the management of a class action.

Md. R. 2-231(b) (2017).

The Rule also requires the court to certify the action as a class action. See Md. R. 2-231(c). Furthermore, when appropriate, an action may be brought or maintained as a class action with respect to particular issues, or a class may be divided into subclasses and each subclass treated as a class. Md. R. 2-231(d). Also enumerated in the Rule are the issues of notice, see Md. R. 2-231(e); orders in conduct of actions, see Md. R. 2-231(f); discovery, see Md. R. 2-231(g); dismissal or compromise, see Md. R. 2-231(h); and judgment, see Md. R. 2-231(i). Rule 2-231 cannot confer power on the trial court over the subject matter of the action. See Pollokoff v. Maryland Nat’l Bank, 288 Md. 485, 418 A.2d 1201 (1980).

V. Defenses in Actions Against Insurers

A. Misrepresentation/Rescission of Insurance Contract for Misrepresentation

1. Healthcare Policies

Under the Patient Protection and Affordable Care Act ("ACA"), rescission of a healthcare policy is illegal unless the provider can prove there was intent to deceive or an existence of fraud. 45 C.F.R. § 147.128. Additionally, the ACA requires thirty days written notice with sufficient proof that the insured intentionally provided false or incomplete information in their application. Id. These prohibitions on rescissions are effective only for plans beginning after September 23, 2010. Id.

The ACA provides the bare minimum required for state law. Id. This means that while Maryland may create a requirement greater than fraud in order to rescind a healthcare policy, they cannot rescind the policy for anything less. See Id.

2. Policies Generally

Maryland decisions interpreting Md. Code Ann., Ins. § 12-207, and its statutory predecessors, have uniformly held that an insurance policy issued
in reliance upon an incomplete or false statement or an omission as to a matter which is material to the risk of being assumed is avoidable and may be rescinded by the insurer. See First Penn Pacific Life Ins. Co. v. Evans, 2007 WL 1810707 (D. Md. 2007). This right to rescission is available simply by virtue of the material misrepresentation — the insurer is under no duty to investigate the applicant’s medical history or go any further than the four corners of the insurance application. See id.; see also Chawla v. Transamerica Occidental Life Ins. Co., 440 F. 3d 639, 647 (4th Cir. 2006). It is also irrelevant whether the material misrepresentation was made in good faith. See Calomiris v. Woods, 353 Md. 425, 438, 727 A.2d 358, 364 (1999); Fitzgerald v. Franklin Life Ins. Co., 465 F. Supp. 527, 537, aff’d sub nom. Fitzgerald v. Franklin Life Ins. Co., 634 F.2d 622 (4th Cir. 1980). As an alternative to rescission, the insurer may use the applicant’s misrepresentation as a complete defense to an action on the policy. See id.; see also Hofmann v. John Hancock Mut. Life Ins. Co., 400 F. Supp. 827, 829 (D. Md. 1975); Nationwide Ins. Co. v. McBriety, 246 Md. 738, 744-45, 230 A.2d 81 (1967); Globe Reserve Mut. Life Ins. Co. v. Duffy, 76 Md. 293, 301-02, 15 A. 227, 228-29 (1892).

One widely quoted definition of materiality is:

A false representation in an application for insurance is material to the risk if it is such as would reasonably influence the insurers decision as to whether or not it should issue the policy requested.


Maryland courts have frequently found that an applicant or beneficiary may not be relieved of an error or omission in an application by contending that the omission was innocent or was the fault of the agent, and Maryland law places upon an insured a heavy burden to examine an application attached to a policy delivered to him or her to verify its accuracy. See Parker v. Prudential Ins. Co. of Am., 900 F.2d 772, 777-78 (4th Cir. 1990); Fitzgerald, 405 F. Supp. at 534-41; Commercial Cas. Ins. Co. v. Schmidt, 166 Md. at 568-71, 171 A. at 728-29; Serdemes v. Aetna Life Ins. Co., 21 Md. App. 453, 459-62, 319 A.2d 858, 862-63 (1974).

In order to sustain a defense to a claim on a policy or rescission on the basis of a material misrepresentation, an insurer is not required to establish any causal connection between the condition misrepresented or omitted from the application and the condition giving rise to the claim on

In order to obtain a decree rescinding a policy, an insurer must prove that it has fully and promptly tendered to the insured the return of all premiums paid plus interest to the date of tender. See Hofmann, 400 F. Supp. at 828; Silberstein, 189 Md. at 187-88, 55 A.2d at 337-38; Steigler v. Eureka Life Ins. Co., 146 Md. 629, 650, 127 A. 397, 405 (1925).

Where an applicant for life insurance receives a conditional receipt of insurance, an insurer may nonetheless refuse to issue a policy when it is determined by the insurer, under objective company standards, that the proposed insured is not satisfactorily insurable. See Peoples Life Ins. Co. v. Medairy, 255 Md. 534, 547-48, 258 A.2d 429, 435-36 (1969); Simpson v. Prudential Ins. Co. of Am., 227 Md. 393, 406, 177 A.2d 417 (1962). The Simpson court explained, "the [conditional receipt] clause means that the applicant must meet an objective standard of insurability, and that this standard is the company’s own standard for the plan, the amount and the benefits applied for, and the rate applied for. Honest satisfaction is the standard usually applied under contracts calling for the satisfaction of a party, in the absence of some clear indication to the contrary." Simpson, 227 Md. at 406. 177 A.2d at 425.

Furthermore, where a plaintiff contests the insurer’s decision not to issue a policy, the burden of proof rests with the plaintiff in showing that the proposed insured is, or was as the case may be, satisfactorily insurable. See Simpson, 227 Md. at 406, 177 A.2d at 425; Medairy, 255 Md. at 547-48, 258 A.2d at 435-36.

B. Pre-existing Illness or Disease Clauses

1. Statutes

Under the Maryland Health Insurance Portability and Accountability Act, Md. Code Ann., Ins. § 15-1401, “preexisting condition” means: (1) a condition existing during a specified period immediately preceding the effective date of coverage, that would have caused an ordinarily prudent person to seek medical advice, diagnosis, care, or treatment; or (2) a condition for which medical advice, diagnosis, care, or treatment was recommended or received during a specified period immediately preceding the effective date of coverage. Id. § 15-1201(p). A “preexisting condition provision” means a provision in a health benefit plan that denies, excludes, or limits benefits for an enrollee for expenses or services related to a preexisting condition. Id. § 15-1401(n).

An insurance carrier may not impose any preexisting condition provisions: (a) on an individual who, as of the last day of the 30-day period beginning with the date of birth, is covered under creditable coverage; (b) on a child who is adopted or placed for adoption before attaining 18 years of age, and as of the last day of the 30-day period beginning on the date of adoption or placement for adoption, is covered under creditable coverage; or (c) related to pregnancy. Id. § 15-508. A carrier may, however, impose a preexisting condition exclusion or limitation on an individual for a condition that was not discovered during the underwriting process for an individual health benefit plan only if the exclusion or limitation:
(1) relates to a condition of the individual, regardless of its cause, for which medical advice, diagnosis, care, or treatment was recommended or received within the 12-month period immediately preceding the effective date of the individual's coverage;

(2) extends for a period of not more than 12 months after the effective date of the individual's coverage; and

(3) is reduced by the aggregate of any applicable periods of creditable coverage.

Id. § 15-508.1.

2. Case Law

Maryland courts have ruled pre-existing condition clauses must be strictly construed and that a pre-existing condition will ordinarily be deemed to have arisen when it was first manifest or active or could be diagnosed by a person with medical knowledge. See Lawrence v. Nat'l Life Ins. Co., 716 F. Supp. 883, 885 (D. Md. 1989); Mutual of Omaha v. Goldfinger, 254 Md. 272, 278-79, 254 A.2d 683, 686-87 (1969). The Court, however, has ruled that a policy's incontestability clause applies to bar use of a pre-existing condition exclusion when such condition was first manifest prior to the issuance of the policy. See Mutual Life Ins. Co. of N.Y. v. Insurance Comm'r, 352 Md. 561, 573-74, 723 A.2d 891, 897-98 (1999).

A divided Fourth Circuit Court of Appeals has issued a per curiam decision reinstating a decision by the Chief Judge of the United States District Court for the District of Maryland holding where an insured received treatment for fibrocystic breast disease during the pre-existing period was not a pre-existing condition under a group health insurance plan, which would bar coverage for the expenses of removing the tumor, because the record reflected that the carcinoma was merely present but had not yet been diagnosed or treated, it was luckily coincident with the large fibrocystic mass so it could be treated, but there was no causal or associative relationship between the fibrocystic tissue and the carcinoma. See Hardester v. Lincoln Nat'l Life Ins. Co., 52 F.3d 70 (4th Cir. 1995) (per curiam), cert. denied, 516 U.S. 864 (1995).

Consequently, at least in the Fourth Circuit, a successful use of the defense of a pre-existing condition clause may be limited to situations in which it can be shown that an insured received care, consultation or treatment for the same condition as that which gives rise to a present claim. See id.

3. Statutes of Limitations

Under Maryland law, each policy of health insurance must contain the following provision:

Legal actions: No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of three (3) years after
the written proof of loss is required to be furnished.

Md. Code Ann., Ins. § 15-217. A life insurance or health insurance policy, or an annuity contract, may not be delivered or issued for delivery in Maryland if the policy or contract provides a period shorter than three years within which an action may be brought on the policy or contract. Id. § 12-209(3). A provision in an insurance contract or surety contract that sets a shorter time to bring an action under or on the insurance contract or surety contract than required by the law of the state when the insurance contract or surety contract is issued or delivered is against state public policy, illegal, and void. Id. § 12-104. For an insurance policy to comply with the required comparison to the statute, its contractual limitations provision must recognize that the period of limitations may not begin to run earlier than the date of traditional accrual. See St. Paul Travelers v. Millstone, 412 Md. 424, 987 A.2d 116 (2010).

VI. Beneficiary Issues

A. Changing the Beneficiary

The name of the beneficiary must be designated on the policy, or in the application, or another form, so long as it is attached to the policy. Md. Code Ann., Ins. § 16-212(a)(1). The policy must contain a reservation of the right to designate or change the beneficiary after the policy is issued, unless the beneficiary is irrevocably designated. Id.

The right of an insured to change the beneficiary under an insurance policy is dependent on the terms of the policy; in the absence of a reservation in a life insurance policy authorizing a change in beneficiary, no such change can be made without the assent of the beneficiary. Borotka v. Boulay, 268 Md. 244, 299 A.2d 803 (1973). If the right to change beneficiaries is reserved in a life insurance policy, the terms of its exercise are fixed by the contract between the insured and the insurance company.

Where the policy reserves the right to make the change of beneficiary, it may be made at the insured's insistence without the consent of the original beneficiary or notice to him or her. Durst v. Durst, 232 Md. 311, 193 A.2d 26 (1963). The right to change the beneficiary, however, may not be exercised where the insured has waived or divested himself or herself of the right, as by making a gift of the policy to the beneficiary or where the insured makes an agreement which constitutes a waiver of the right to change the beneficiary. Sheeler v. Sheeler, 207 Md. 264, 114 A.2d 62 (1955); Ratsch v. Rengel, 180 Md. 196, 23 A.2d 680 (1942).

B. When the Change of Beneficiary Is Effective

An insurer may include in the policy a provision that a designation or change of beneficiary is not binding until endorsed on the policy or otherwise accepted by the insurer. Md. Code Ann., Ins. § 16-212(a)(2).

C. Undue Influence

A change of beneficiary, to be given effect, must appear to have been made understandingly; if it is shown that there was either lack of mental capacity or fraud or undue influence, the attempted change will be held
inoperative. New York Life Ins. Co. v. Clemetson, No. 08:09-CV-3031-AW, 2011 WL 53080, at *1, *6 (D. Md. Jan. 6, 2011); Lynn v. Magness, 191 Md. 674, 62 A.2d 604 (1948). The degree of mental capacity necessary to change the beneficiary in a policy is the same as that necessary to execute a will, a deed, or a contract. Lynn, 191 Md. 680-81. Where an insured lawfully exercises his or her retained power to change the beneficiary, the original beneficiary is deprived of the beneficiary’s interest in the policy, and at the death of the insured the substituted beneficiary is entitled to the proceeds of the policy. Chapman v. Prudential Ins. Co., 215 Md. 87, 90, 136 A.2d 752, 753 (1957).

D. Spouses/Divorce

Maryland has no statute that operates to automatically revoke a beneficiary designation in favor of a spouse upon divorce. See E. v. PaineWebber, Inc., 131 Md. App. 302, 311 (2000), aff'd, 363 Md. 408, 768 A.2d 1029 (2001). A former spouse may continue to be entitled to the asset if the insured fails to give notice of a change of beneficiary to the insurer due to divorce. The only exception is if the Divorce Decree specifically revokes the right to inherit life insurance.

In addition, a provision in a separation agreement, incorporated into a divorce decree, that binds a party to maintain in force life policies naming a specific party as primary beneficiary is a type of contract that a court of equity could grant specific performance, entitling the named party to proceeds of the policy; thus, making subsequent changes in the beneficiary ineffective. Bandy v. Paulin, CIV.A. AW-08-3055, 2010 WL 672940, *3-*4 (D. Md. Feb. 19, 2010). (citing Equitable Life Assur. Soc. of the U.S. v. Jones, 679 F.2d 356, 358-359 (4th Cir. 1982)); see also Borotka v. Boulay, 268 Md. 244, 299 A.2d 803 (Md. 1973).

E. Slayer’s Rule

Under the “slayer’s rule,” a person who kills another and persons claiming through or under that person may not collect proceeds as beneficiaries under the decedent’s life policy when the homicide was felonious and intentional, but may share in the distribution and collect proceeds when the homicide was unintentional, even if it was the result of gross negligence. Cook v. Grierson, 380 Md. 502, 505, 845 A.2d 1231, 1233 (2004); Ford v. Ford, 307 Md. 105, 512 A.2d 389 (1986).

F. Facility of Payment Clauses

Maryland allows for insurer’s to include facility of payment clauses in their policies. See Md. Code Ann., Ins. § 16-212(b). The policy may allow the insurer to make a payment under the policy to: 1) the insured’s estate; 2) any relative of the insured by blood, legal adoption, or marriage; 3) a person appearing to the insurer to be equitably entitled to the benefits because the person is a named beneficiary or has incurred expenses for the maintenance, medical attention, or burial of the insured. Id. The insured may make a payment under a facility of payment clause only IF: 1) the named beneficiary does not claim within the period stated in the policy (which may not be less than 30 days after death of the insured) or does not surrender the policy with proof of death; 2) the beneficiary is the insured’s estate; 3) the beneficiary is a minor; 4) the beneficiary dies before the insured; or, 5) the beneficiary is not legally competent to give a valid release. Id.
VII. Interpleader Actions

A. Availability of Fee Recovery

Rules 2-221 (Circuit Court) and 3-221 (District Court) of the Maryland Rules of Civil Procedure provide that an order of interpleader may “award the original plaintiff costs and reasonable attorney’s fees from the property if that plaintiff brought the action in good faith as an impartial stakeholder.” Md. Rule 2-221(b)(6), 3-221 (b)(6) (2015). An award of attorney’s fees is within the sound discretion of the trial court, and is not to be disturbed unless its discretion is exercised arbitrarily or its judgment is clearly wrong. Sody v. Sody, 32 Md. App. 644, 660, 363 A.2d 568, 578 (1975).

B. Differences in State vs. Federal Circuit

While the Maryland interpleader rule is substantially similar to the federal counterpart, compare Md. Rules 2-221 and 3-221 with Fed. R. Civ. P. 22, the federal rule does not provide a provision expressly addressing the issue of the availability of a fee recovery. Moreover, a major difference between the state and federal interpleader rules involve the jurisdictional requirements.