

MARYLAND RESIDENTIAL PROPERTY DISCLOSURE AND DISCLAIMER STATEMENT

Property Address: _____

Legal Description: _____

NOTICE TO SELLER AND PURCHASER

Section 10-702 of the Real Property Article, *Annotated Code of Maryland*, requires the seller of certain residential real property to furnish to the purchaser either (a) a RESIDENTIAL PROPERTY DISCLAIMER STATEMENT stating that the seller is selling the property "as is" and makes no representations or warranties as to the condition of the property or any improvements on the real property, except as otherwise provided in the contract of sale, or in a listing of latent defects; or (b) a RESIDENTIAL PROPERTY DISCLOSURE STATEMENT disclosing defects or other information about the condition of the real property actually known by the seller. Certain transfers of residential property are excluded from this requirement (see the exemptions listed below).

10-702. EXEMPTIONS. The following are specifically excluded from the provisions of §10-702:

1. The initial sale of single family residential real property:
 - A. that has never been occupied; or
 - B. for which a certificate of occupancy has been issued within 1 year before the seller and buyer enter into a contract of sale;
2. A transfer that is exempt from the transfer tax under §13-207 of the Tax-Property Article, except land installment contracts of sales under §13-207(a) (11) of the Tax-Property Article and options to purchase real property under §13-207(a)(12) of the Tax-Property Article;
3. A sale by a lender or an affiliate or subsidiary of a lender that acquired the real property by foreclosure or deed in lieu of foreclosure;
4. A sheriff's sale, tax sale, or sale by foreclosure, partition, or by court appointed trustee;
5. A transfer by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;
6. A transfer of single family residential real property to be converted by the buyer into use other than residential use or to be demolished; or
7. A sale of unimproved real property.

Section 10-702 also requires the seller to disclose information about latent defects in the property that the seller has actual knowledge of. The seller must provide this information even if selling the property "as is." "Latent defects" are defined as: Material defects in real property or an improvement to real property that:

- (1) A purchaser would not reasonably be expected to ascertain or observe by a careful visual inspection of the real property; and
- (2) Would pose a direct threat to the health or safety of:
 - (i) the purchaser; or
 - (ii) an occupant of the real property, including a tenant or invitee of the purchaser.

MARYLAND RESIDENTIAL PROPERTY DISCLOSURE STATEMENT

NOTICE TO SELLERS: Complete and sign this statement only if you elect to disclose defects, including latent defects, or other information about the condition of the property actually known by you; otherwise, sign the Residential Property Disclaimer Statement. You may wish to obtain professional advice or inspections of the property; however, you are not required to undertake or provide any independent investigation or inspection of the property in order to make the disclosure set forth below. The disclosure is based on your personal knowledge of the condition of the property at the time of the signing of this statement.

NOTICE TO PURCHASERS: The information provided is the representation of the Sellers and is based upon the actual knowledge of Sellers as of the date noted. Disclosure by the Sellers is not a substitute for an inspection by an independent home inspection company, and you may wish to obtain such an inspection. The information contained in this statement is not a warranty by the Sellers as to the condition of the property of which the Sellers have no knowledge or other conditions of which the Sellers have no actual knowledge.

How long have you owned the property? _____

Property System: Water, Sewage, Heating & Air Conditioning (Answer all that apply)

Water Supply ☐ Public ☐ Well ☐ Other _____
Sewage Disposal ☐ Public ☐ Septic System approved for _____ (# bedrooms) **Other Type** _____

Garbage Disposal ☐ Yes ☐ No

Dishwasher ☐ Yes ☐ No

Heating ☐ Oil ☐ Natural Gas ☐ Electric ☐ Heat Pump Age _____ ☐ Other _____

Air Conditioning ☐ Oil ☐ Natural Gas ☐ Electric ☐ Heat Pump Age _____ ☐ Other _____

Hot Water ☐ Oil ☐ Natural Gas ☐ Electric Capacity _____ Age _____ ☐ Other _____

Please indicate your actual knowledge with respect to the following:

1. Foundation: Any settlement or other problems?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown
Comments: _____			
2. Basement: Any leaks or evidence of moisture?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown <input type="checkbox"/> Does Not Apply
Comments: _____			
3. Roof: Any leaks or evidence of moisture?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown
Type of Roof: _____ Age _____			
Comments: _____			
Is there any existing fire retardant treated plywood?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown
Comments: _____			
4. Other Structural Systems, including exterior walls and floors:			
Comments: _____			
Any defects (structural or otherwise)?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown
Comments: _____			
5. Plumbing system: Is the system in operating condition?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown
Comments: _____			
6. Heating Systems: Is heat supplied to all finished rooms?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown
Comments: _____			
Is the system in operating condition?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown
Comments: _____			
7. Air Conditioning System: Is cooling supplied to all finished rooms?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown <input type="checkbox"/> Does Not Apply
Comments: _____			
Is the system in operating condition?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown <input type="checkbox"/> Does Not Apply
Comments: _____			
8. Electric Systems: Are there any problems with electrical fuses, circuit breakers, outlets or wiring?			
<input type="checkbox"/> Yes	<input type="checkbox"/> No.	<input type="checkbox"/> Unknown	
Comments: _____			
8A. Will the smoke alarms provide an alarm in the event of a power outage? <input type="radio"/> Yes <input type="radio"/> No			
Are the smoke alarms over 10 years old? <input type="radio"/> Yes <input type="radio"/> No			
If the smoke alarms are battery operated, are they sealed, tamper resistant units incorporating a silence/hush button, which use long-life batteries as required in all Maryland Homes by 2018? <input type="radio"/> Yes <input type="radio"/> No			
Comments: _____			
9. Septic Systems: Is the septic system functioning properly?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown <input type="checkbox"/> Does Not Apply
When was the system last pumped? Date _____ <input type="checkbox"/> Unknown			
Comments: _____			
10. Water Supply: Any problem with water supply?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown
Comments: _____			
Home water treatment system:	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown
Comments: _____			
Fire sprinkler system:	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown <input type="checkbox"/> Does Not Apply
Comments: _____			
Are the systems in operating condition?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown
Comments: _____			
11. Insulation:			
In exterior walls?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown
In ceiling/attic?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown
In any other areas?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Where? _____
Comments: _____			
12. Exterior Drainage: Does water stand on the property for more than 24 hours after a heavy rain?			
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	
Comments: _____			
Are gutters and downspouts in good repair?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown
Comments: _____			

13. Wood-destroying insects: Any infestation and/or prior damage? ☐ Yes ☐ No ☐ Unknown

Comments: _____

Any treatments or repairs? ☐ Yes ☐ No ☐ Unknown

Any warranties? ☐ Yes ☐ No ☐ Unknown

Comments: _____

14. Are there any hazardous or regulated materials (including, but not limited to, licensed landfills, asbestos, radon gas, lead-based paint, underground storage tanks, or other contamination) on the property?

☐ Yes ☐ No ☐ Unknown

If yes, specify below

Comments: _____

15. If the property relies on the combustion of a fossil fuel for heat, ventilation, hot water, or clothes dryer operation, is a carbon monoxide alarm installed in the property?

☐ Yes ☐ No ☐ Unknown

Comments: _____

16. Are there any zoning violations, nonconforming uses, violation of building restrictions or setback requirements or any recorded or unrecorded easement, except for utilities, on or affecting the property?

☐ Yes ☐ No ☐ Unknown

If yes, specify below

Comments: _____

16A. If you or a contractor have made improvements to the property, were the required permits pulled from the county or local permitting office? ☐ Yes ☐ No ☐ Does Not Apply ☐ Unknown

Comments: _____

17. Is the property located in a flood zone, conservation area, wetland area, Chesapeake Bay critical area or Designated Historic District?

☐ Yes ☐ No ☐ Unknown If yes, specify below

Comments: _____

18. Is the property subject to any restriction imposed by a Home Owners Association or any other type of community association?

☐ Yes ☐ No ☐ Unknown If yes, specify below

Comments: _____

19. Are there any other material defects, including latent defects, affecting the physical condition of the property?

☐ Yes ☐ No ☐ Unknown

Comments: _____

NOTE: Seller(s) may wish to disclose the condition of other buildings on the property on a separate RESIDENTIAL PROPERTY DISCLOSURE STATEMENT.

The seller(s) acknowledge having carefully examined this statement, including any comments, and verify that it is complete and accurate as of the date signed. The seller(s) further acknowledge that they have been informed of their rights and obligations under §10-702 of the Maryland Real Property Article.

Seller(s) _____ Date _____

Seller(s) _____ Date _____

The purchaser(s) acknowledge receipt of a copy of this disclosure statement and further acknowledge that they have been informed of their rights and obligations under §10-702 of the Maryland Real Property Article.

Purchaser _____ Date _____

Purchaser _____ Date _____

MARYLAND RESIDENTIAL PROPERTY DISCLAIMER STATEMENT

NOTICE TO SELLER(S): Sign this statement only if you elect to sell the property without representations and warranties as to its condition, except as otherwise provided in the contract of sale and in the listing of latent defects set forth below; otherwise, complete and sign the RESIDENTIAL PROPERTY DISCLOSURE STATEMENT.

Except for the latent defects listed below, the undersigned seller(s) of the real property make no representations or warranties as to the condition of the real property or any improvements thereon, and the purchaser will be receiving the real property "as is" with all defects, including latent defects, which may exist, except as otherwise provided in the real estate contract of sale. The seller(s) acknowledge having carefully examined this statement and further acknowledge that they have been informed of their rights and obligations under §10-702 of the Maryland Real Property Article.

Section 10-702 also requires the seller to disclose information about latent defects in the property that the seller has actual knowledge of. The seller must provide this information even if selling the property "as is." "Latent defects" are defined as: Material defects in real property or an improvement to real property that:

- (1) A purchaser would not reasonably be expected to ascertain or observe by a careful visual inspection of the real property; and
- (2) Would pose a direct threat to the health or safety of:
 - (i) the purchaser; or
 - (ii) an occupant of the real property, including a tenant or invitee of the purchaser.

Does the seller(s) have actual knowledge of any latent defects? ☐ Yes ☐ No If yes, specify:

Seller _____

Date _____

Seller _____

Date _____

The purchaser(s) acknowledge receipt of a copy of this disclaimer statement and further acknowledge that they have been informed of their rights and obligations under §10-702 of the Maryland Real Property Article.

Purchaser _____

Date _____

Purchaser _____

Date _____

MD Code, Real Property, § 10-702

§ 10-702. Single family homes; mandatory disclosures

Effective: July 1, 2013

Latent defects defined

(a) In this section, “latent defects” means material defects in real property or an improvement to real property that:

(1) A purchaser would not reasonably be expected to ascertain or observe by a careful visual inspection of the real property;
and

(2) Would pose a direct threat to the health or safety of:

(i) The purchaser; or

(ii) An occupant of the real property, including a tenant or invitee of the purchaser.

Application of section

(b)(1) This section applies only to single family residential real property improved by four or fewer single family units.

(2) This section does not apply to:

(i) The initial sale of single family residential real property:

1. That has never been occupied; or

2. For which a certificate of occupancy has been issued within 1 year before the vendor and purchaser enter into a contract of sale;

- (ii) A transfer that is exempt from the transfer tax under § 13-207 of the Tax--Property Article, except land installment contracts of sale under § 13-207(a)(11) of the Tax--Property Article and options to purchase real property under § 13-207(a)(12) of the Tax--Property Article;
- (iii) A sale by a lender or an affiliate or subsidiary of a lender that acquired the real property by foreclosure or deed in lieu of foreclosure;
- (iv) A sheriff's sale, tax sale, or sale by foreclosure, partition, or by court appointed trustee;
- (v) A transfer by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;
- (vi) A transfer of single family residential real property to be converted by the buyer into a use other than residential use or to be demolished; or
- (vii) A sale of unimproved real property.

Disclosure and disclaimer statements delivered to purchaser

(c)(1) A vendor of single family residential real property shall complete and deliver to each purchaser:

- (i) A written residential property condition disclosure statement on a form provided by the State Real Estate Commission; or
- (ii) A written residential property disclaimer statement on a form provided by the State Real Estate Commission.

(2) The State Real Estate Commission shall develop by regulation a single standardized form that includes the residential property condition disclosure and disclaimer statements required by this subsection.

Contents of residential property disclaimer statement

(d) The residential property disclaimer statement shall:

(1) Disclose any latent defects of which the vendor has actual knowledge that a purchaser would not reasonably be expected to ascertain by a careful visual inspection and that would pose a direct threat to the health or safety of the purchaser or an occupant; and

(2) State that:

- (i) Except for latent defects disclosed under item (1) of this subsection, the vendor makes no representations or warranties as to the condition of the real property or any improvements on the real property; and

(ii) The purchaser will be receiving the real property “as is”, with all defects, including latent defects, that may exist, except as otherwise provided in the contract of sale of the real property.

Items required in residential property disclosure statements

(e)(1) The residential property disclosure statement shall disclose those items that, to carry out the provisions of this section, the State Real Estate Commission requires to be disclosed about the physical condition of the property.

(2) The disclosure form shall include a list of defects, including latent defects, or information of which the vendor has actual knowledge in relation to the following:

- (i) Water and sewer systems, including the source of household water, water treatment systems, and sprinkler systems;
 - (ii) Insulation;
 - (iii) Structural systems, including the roof, walls, floors, foundation, and any basement;
 - (iv) Plumbing, electrical, heating, and air conditioning systems;
 - (v) Infestation of wood-destroying insects;
 - (vi) Land use matters;
 - (vii) Hazardous or regulated materials, including asbestos, lead-based paint, radon, underground storage tanks, and licensed landfills;
 - (viii) Any other material defects of which the vendor has actual knowledge;
 - (ix) Whether the smoke alarms:
 - 1. Will provide an alarm in the event of a power outage;
 - 2. Are over 10 years old; and
 - 3. If battery operated, are sealed, tamper resistant units incorporating a silence/hush button and use long-life batteries as required in all Maryland homes by 2018; and
-

(x) If the property relies on the combustion of a fossil fuel for heat, ventilation, hot water, or clothes dryer operation, whether a carbon monoxide alarm is installed on the property.

(3) The disclosure form shall contain:

(i) A notice to prospective purchasers and vendors that the prospective purchaser or vendor may wish to obtain professional advice about or an inspection of the property;

(ii) A notice to prospective purchasers that disclosure by the seller is not a substitute for an inspection by an independent home inspection company, and that the purchaser may wish to obtain such an inspection;

(iii) A notice to purchasers that the information contained in the disclosure statement is the representation of the vendor and is not the representation of the real estate broker or salesperson, if any; and

(iv) A notice to purchasers that the information contained in the disclosure statement is not a warranty by the vendor as to:

1. The condition of the property of which the vendor has no actual knowledge; or

2. Other conditions of which the vendor has no actual knowledge.

(4) The vendor is not required to undertake or provide an independent investigation or inspection of the property in order to make the disclosures required by this section.

Delivery of disclosure or disclaimer statements

(f)(1) Except as provided in paragraphs (2) and (3) of this subsection, the vendor shall deliver the completed disclosure or disclaimer statement required by this section to the purchaser on or before entering into a contract of sale by the vendor and the purchaser.

(2) The disclosure or disclaimer statement shall be delivered to each purchaser before the execution of the contract of sale by the purchaser in the case of a land installment contract, as defined in § 10-101 of this title.

(3) The disclosure or disclaimer statement shall be delivered to each purchaser before the execution by the purchaser of an option to purchase agreement or a lease agreement containing an option to purchase provision.

(4) At the time the disclosure or disclaimer statement is delivered, each purchaser shall date and sign a written acknowledgment of receipt, which shall be included in or attached to the contract of sale.

No right to rescind contract if statements received before entering into contract

(g) A purchaser who receives the disclosure or disclaimer statement on or before entering into the contract of sale does not have the right to rescind the contract of sale based upon the information contained in the statement.

Right to rescind contract if statements received after entering into contract

(h)(1) A purchaser who does not receive the disclosure or disclaimer statement on or before entering into the contract of sale has the unconditional right, upon written notice to the vendor or vendor's agent:

(i) To rescind the contract of sale at any time before the receipt of the disclosure or disclaimer statement or within 5 days following receipt of the disclosure or disclaimer statement; and

(ii) To the immediate return of any deposits made on account of the contract.

(2) A purchaser's right to rescind the contract of sale under this subsection terminates if not exercised:

(i) Before making a written application to a lender for a mortgage loan, if the lender discloses in writing at or before the time application is made that the right to rescind terminates on submission of the application; or

(ii) Within 5 days following receipt of a written disclosure from a lender who has received the purchaser's application for a mortgage loan, if the lender's disclosure states that the purchaser's right to rescind terminates at the end of that 5-day period.

(3) The return of any deposits held in trust by a licensed real estate broker to a purchaser under this subsection shall comply with the procedures set forth in [§ 17-505 of the Business Occupations and Professions Article](#).

Disclosure statements not warranties by vendor

(i)(1) A disclosure statement made under this section does not constitute a warranty by the vendor as to:

(i) The condition of the property of which the vendor has no actual knowledge; or

(ii) Other conditions of which the vendor has no actual knowledge.

(2) A vendor is not liable for an error, inaccuracy, or omission in a disclosure statement made under this section if the error, inaccuracy, or omission was based upon information that was:

(i) Not within the actual knowledge of the vendor;

(ii) Provided to the vendor by a unit or instrumentality of the State government or of a political subdivision; or

(iii) Provided to the vendor by a report or opinion prepared by a licensed engineer, land surveyor, geologist, wood-destroying insect control expert, contractor, or other home inspection expert, dealing with matters within the scope of the professional's license or expertise.

Reports or opinions of experts

(j)(1) A report or opinion prepared by an expert shall satisfy the requirement of subsection (i)(2)(iii) of this section if the information is provided to the vendor pursuant to a written or oral request for the information.

(2) In responding to a request for information, the reporting party:

(i) May indicate, in writing, an understanding that the information provided will be used in fulfilling the requirements of this section; and

(ii) If so indicating, shall indicate the required disclosures, or parts of required disclosures, to which the information being provided is applicable.

(3) If the reporting party provides the statement under paragraph (2)(ii) of this subsection, the reporting party is not responsible for any items of information, or parts of items, other than those expressly set forth in the statement.

Waiver of rights of purchaser

(k)(1) The rights of a purchaser under this section may not be waived in the contract of sale and any attempted waiver is void.

(2) Any rights of the purchaser to terminate the contract provided by this section are waived conclusively if not exercised before:

(i) Closing or occupancy by the purchaser, whichever occurs first, in the event of a sale; or

(ii) Occupancy, in the event of a lease with option to purchase.

Notice of purchaser's rights

(l) Each contract of sale shall include a conspicuous notice advising the purchaser of the purchaser's rights as set forth in this section.

Real estate licensee duties

(m)(1) The real estate licensee representing a vendor of residential real property as the listing broker has a duty to inform the vendor of the vendor's rights and obligations under this section.

(2) The real estate licensee representing a purchaser of residential real property, or, if the purchaser is not represented by a licensee, the real estate licensee representing an owner of residential real estate and dealing with the purchaser, has a duty to inform the purchaser of the purchaser's rights and obligations under this section.

(3) If a real estate licensee performs the duties specified in this subsection, the licensee:

(i) Shall have no further duties under this section to the parties to a residential real estate transaction; and

(ii) Is not liable to any party to a residential real estate transaction for a violation of this section.

MD Rules Attorneys, Rule 19-301.4

RULE 19-301.4. COMMUNICATION (1.4)

(a) An attorney shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in [Rule 19-301.0 \(f\)](#) (1.0), is required by these Rules;
- (2) keep the client reasonably informed about the status of the matter;
- (3) promptly comply with reasonable requests for information; and
- (4) consult with the client about any relevant limitation on the attorney's conduct when the attorney knows that the client expects assistance not permitted by the Maryland Attorneys' Rules of Professional Conduct or other law.

(b) An attorney shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

COMMENT

[1] Reasonable communication between the attorney and the client is necessary for the client effectively to participate in the representation.

Communicating with Client--[2] If these Rules require that a particular decision about the representation be made by the client, subsection (a)(1) of this Rule requires that the attorney promptly consult with and secure the client's consent prior to taking action unless prior discussions with the client have resolved what action the client wants the attorney to take. For example, an attorney who receives from an opposing attorney an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the attorney to accept or to reject the offer. See [Rule 19-301.2 \(a\)](#) (1.2).

[3] Under [Rule 19-301.2 \(a\)](#) (1.2), an attorney is required, when appropriate, to consult with the client about the means to be used to accomplish the client's objectives. In some situations--depending on both the importance of the action under consideration and the feasibility of consulting with the client--this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the attorney to

act without prior consultation. In such cases the attorney must nonetheless act reasonably to inform the client of actions the attorney has taken on the client's behalf. Additionally, subsection (a)(2) of this Rule requires that the attorney keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

[4] An attorney's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, subsection (a) (3) of this Rule requires prompt compliance with the request, or if a prompt response is not feasible, that the attorney, or a member of the attorney's staff, acknowledge receipt of the request and advise the client when a response may be expected. Client telephone calls should be promptly returned or acknowledged.

Explaining Matters--[5] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance that is involved. For example, where there is time to explain a proposal made in a negotiation, the attorney should review all important provisions with the client before proceeding to an agreement. In litigation an attorney should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others. On the other hand, an attorney ordinarily will not be expected to describe trial or negotiation strategy in detail. The guiding principle is that the attorney should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation. In certain circumstances, such as when an attorney asks a client to consent to a representation affected by a conflict of interest, the client must give informed consent, as defined in [Rule 19-301.0 \(f\) \(1.0\)](#).

[6] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from diminished capacity. See [Rule 19-301.14 \(1.14\)](#). When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the attorney should address communications to the appropriate officials of the organization. See [Rule 19-301.13 \(1.13\)](#). Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.

Withholding Information--[7] In some circumstances, an attorney may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, an attorney might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. An attorney may not withhold information to serve the attorney's own interest or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to an attorney may not be disclosed to the client. [Rule 19-303.4 \(c\) \(3.4\)](#) directs compliance with such rules or orders.

MD Rules Attorneys, Rule 19-301.7

RULE 19-301.7. CONFLICT OF INTEREST--GENERAL RULE (1.7)

(a) Except as provided in section (b) of this Rule, an attorney shall not represent a client if the representation involves a conflict of interest. A conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the attorney's responsibilities to another client, a former client or a third person or by a personal interest of the attorney.

(b) Notwithstanding the existence of a conflict of interest under section (a) of this Rule, an attorney may represent a client if:

- (1) the attorney reasonably believes that the attorney will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the attorney in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing.

COMMENT

General Principles--[1] Loyalty and independent judgment are essential elements in the attorney's relationship to a client. Conflicts of interest can arise from the attorney's responsibilities to another client, a former client or a third person or from the attorney's own interests. For specific Rules regarding certain conflicts of interest, see [Rule 19-301.8](#) (1.8). For former client conflicts of interest, see [Rule 19-301.9](#) (1.9). For conflicts of interest involving prospective clients, see [Rule 19-301.18](#) (1.18). For definitions of "informed consent" and "confirmed in writing," see [Rule 19-301.0 \(f\) and \(b\)](#) (1.0).

[2] Resolution of a conflict of interest problem under this Rule requires the attorney to: (1) clearly identify the client or clients; (2) determine whether a conflict of interest exists; (3) decide whether the representation may be undertaken despite the existence

of a conflict, i.e., whether the conflict is consentable; and (4) if so, consult with the clients affected under section (a) of this Rule and obtain their informed consent, confirmed in writing. The clients affected under section (a) of this Rule include both of the clients referred to in subsection (a)(1) of this Rule and the one or more clients whose representation might be materially limited under subsection (a)(2) of this Rule.

[3] A conflict of interest may exist before representation is undertaken, in which event the representation must be declined, unless the attorney obtains the informed consent of each client under the conditions of section (b) of this Rule. To determine whether a conflict of interest exists, an attorney should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and non-litigation matters the persons and issues involved. See also Comment to [Rule 19-305.1](#) (5.1). Ignorance caused by a failure to institute such procedures will not excuse an attorney's violation of this Rule. As to whether a client-attorney relationship exists or, having once been established, is continuing, see Comment to [Rule 19-301.3](#) (1.3) and Scope.

[4] If a conflict arises after representation has been undertaken, the attorney ordinarily must withdraw from the representation, unless the attorney has obtained the informed consent of the client under the conditions of section (b) of this Rule. See [Rule 19-301.16](#) (1.16). Where more than one client is involved, whether the attorney may continue to represent any of the clients is determined both by the attorney's ability to comply with duties owed to the former client and by the attorney's ability to represent adequately the remaining client or clients, given the attorney's duties to the former client. See [Rule 19-301.9](#) (1.9). See also Comments [5] and [29].

[5] Unforeseeable developments, such as changes in corporate and other organizational affiliations or the addition or realignment of parties in litigation, might create conflicts in the midst of a representation, as when a company sued by the attorney on behalf of one client is bought by another client represented by the attorney in an unrelated matter. Depending on the circumstances, the attorney may have the option to withdraw from one of the representations in order to avoid the conflict. The attorney must seek court approval where necessary and take steps to minimize harm to the clients. See [Rule 19-301.16](#) (1.16). The attorney must continue to protect the confidences of the client from whose representation the attorney has withdrawn. See [Rule 19-301.9 \(c\)](#) (1.9).

Identifying Conflicts of Interest: Directly Adverse--[6] Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, an attorney may not act as an advocate in one matter against a person the attorney represents in some other matter, even when the matters are wholly unrelated. The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the client-attorney relationship is likely to impair the attorney's ability to represent the client effectively. In addition, the client on whose behalf the adverse representation is undertaken reasonably may fear that the attorney will pursue that client's case less effectively out of deference to the other client, i.e., that the representation may be materially limited by the attorney's interest in retaining the current client. Similarly, a directly adverse conflict may arise when an attorney is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require consent of the respective clients.

[7] Directly adverse conflicts can also arise in transactional matters. For example, if an attorney is asked to represent the seller of a business in negotiations with a buyer represented by the attorney, not in the same transaction but in another, unrelated matter, the attorney could not undertake the representation without the informed consent of each client.

Identifying Conflicts of Interest: Material Limitation--[8] Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk that an attorney's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the attorney's other responsibilities or interests. For example, an attorney asked to represent several individuals seeking to form a joint venture is likely to be materially limited in the attorney's ability

to recommend or advocate all possible positions that each might take because of the attorney's duty of loyalty to the others. The conflict in effect forecloses alternatives that would otherwise be available to the client. The mere possibility of subsequent harm does not itself require disclosure and consent. The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the attorney's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.

Attorney's Responsibilities to Former Clients and Other Third Persons--[9] In addition to conflicts with other current clients, an attorney's duties of loyalty and independence may be materially limited by responsibilities to former clients under [Rule 19-301.9](#) (1.9) or by the attorney's responsibilities to other persons, such as fiduciary duties arising from an attorney's service as a trustee, executor or corporate director.

Personal Interest Conflicts--[10] The attorney's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of an attorney's own conduct in a transaction is in serious question, it may be difficult or impossible for the attorney to give a client detached advice. Similarly, when an attorney has discussions concerning possible employment with an opponent of the attorney's client, or with a law firm representing the opponent, such discussions could materially limit the attorney's representation of the client. In addition, an attorney may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the attorney has an undisclosed financial interest. See [Rule 19-301.8](#) (1.8) for specific Rules pertaining to a number of personal interest conflicts, including business transactions with clients. See also [Rule 19-301.10](#) (1.10) (personal interest conflicts under Rule 19-301.7 (1.7) ordinarily are not imputed to other attorneys in a law firm).

[11] When attorneys representing different clients in the same matter or in substantially related matters are closely related by blood or marriage, there may be a significant risk that client confidences will be revealed and that the attorney's family relationship will interfere with both loyalty and independent professional judgment. As a result, each client is entitled to know of the existence and implications of the relationship between the attorneys before the attorney agrees to undertake the representation. Thus, an attorney related to another attorney, e.g., as parent, child, sibling or spouse, ordinarily may not represent a client in a matter where that attorney is representing another party, unless each client gives informed consent. The disqualification arising from a close family relationship is personal and ordinarily is not imputed to members of firms with whom the attorneys are associated. See [Rule 19-301.10](#) (1.10).

[12] A sexual relationship with a client, whether or not in violation of criminal law, will create an impermissible conflict between the interests of the client and those of the attorney if (1) the representation of the client would be materially limited by the sexual relationship and (2) it is unreasonable for the attorney to believe the attorney can provide competent and diligent representation. Under those circumstances, informed consent by the client is ineffective. See also [Rule 19-308.4](#) (8.4).

Interest of Person Paying for an Attorney's Service--[13] An attorney may be paid from a source other than the client, including a co-client, if the client is informed of that fact and consents and the arrangement does not compromise the attorney's duty of loyalty or independent judgment to the client. See [Rule 19-301.8](#) (f) (1.8). If acceptance of the payment from any other source presents a significant risk that the attorney's representation of the client will be materially limited by the attorney's own interest in accommodating the person paying the attorney's fee or by the attorney's responsibilities to a payer who is also a co-client, then the attorney must comply with the requirements of section (b) of this Rule before accepting the representation, including determining whether the conflict is consentable and, if so, that the client has adequate information about the material risks of the representation.

Prohibited Representations--[14] Ordinarily, clients may consent to representation notwithstanding a conflict. However, as indicated in section (b) of this Rule, some conflicts are nonconsentable, meaning that the attorney involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When the attorney is representing more than one client, the question of consentability must be resolved as to each client.

[15] Consentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest. Thus, under subsection (b)(1) of this Rule, representation is prohibited if in the circumstances the attorney cannot reasonably conclude that the attorney will be able to provide competent and diligent representation. See [Rule 19-301.1 \(1.1\) \(Competence\)](#) and [Rule 19-301.3 \(1.3\) \(Diligence\)](#).

[16] Subsection (b)(2) of this Rule describes conflicts that are nonconsentable because the representation is prohibited by applicable law. For example, in some states substantive law provides that the same attorney may not represent more than one defendant in a capital case, even with the consent of the clients, and under federal criminal statutes certain representations by a former government attorney are prohibited, despite the informed consent of the former client. In addition, decisional law in some states limits the ability of a governmental client, such as a municipality, to consent to a conflict of interest.

[17] Subsection (b)(3) of this Rule describes conflicts that are nonconsentable because of the institutional interest in vigorous development of each client's position when the clients are aligned directly against each other in the same litigation or other proceeding before a tribunal. Whether clients are aligned directly against each other within the meaning of this subsection requires examination of the context of the proceeding. Although this subsection does not preclude an attorney's multiple representation of adverse parties to a mediation (because mediation is not a proceeding before a "tribunal" under [Rule 19-301.0 \(o\) \(1.0\)](#)), such representation may be precluded by subsection (b)(1) of this Rule.

Informed Consent--[18] Informed consent requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client. See [Rule 19-301.0 \(f\) \(1.0\) \(informed consent\)](#). The information required depends on the nature of the conflict and the nature of the risks involved. When representation of multiple clients in a single matter is undertaken, the information must include the implications of the common representation, including possible effects on loyalty, confidentiality and the attorney-client privilege and the advantages and risks involved. See Comments [30] and [31] (effect of common representation on confidentiality).

[19] Under some circumstances it may be impossible to make the disclosure necessary to obtain consent. For example, when the attorney represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the attorney cannot properly ask the latter to consent. In some cases the alternative to common representation can be that each party may have to obtain separate representation with the possibility of incurring additional costs. These costs, along with the benefits of securing separate representation, are factors that may be considered by the affected client in determining whether common representation is in the client's interests.

Consent Confirmed in Writing--[20] Section (b) of this Rule requires the attorney to obtain the informed consent of the client, confirmed in writing. Such a writing may consist of a document executed by the client or one that the attorney promptly records and transmits to the client following an oral consent. See [Rule 19-301.0 \(b\) \(1.0\)](#). See also [Rule 19-301.0 \(p\) \(1.0\) \(writing includes electronic transmission\)](#). If it is not feasible to obtain or transmit the writing at the time the client gives informed consent, then the attorney must obtain or transmit it within a reasonable time thereafter. See [Rule 19-301.0 \(b\) \(1.0\)](#). The requirement of a writing does not supplant the need in most cases for the attorney to talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing.

Revoking Consent--[21] A client who has given consent to a conflict may revoke the consent and, like any other client, may terminate the attorney's representation at any time. Whether revoking consent to the client's own representation precludes the attorney from continuing to represent other clients depends on the circumstances, including the nature of the conflict, whether the client revoked consent because of a material change in circumstances, the reasonable expectations of the other client and whether material detriment to the other clients or the attorney would result.

Consent to Future Conflict--[22] Whether an attorney may properly request a client to waive conflicts that might arise in the future is subject to the test of section (b) of this Rule. The effectiveness of such waivers is generally determined by the extent to which the client reasonably understands the material risks that the waiver entails. The more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding. Thus, if the client agrees to consent to a particular type of conflict with which the client is already familiar, then the consent ordinarily will be effective with regard to that type of conflict. If the consent is general and open-ended, then the consent ordinarily will be ineffective, because it is not reasonably likely that the client will have understood the material risks involved. On the other hand, if the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be effective, particularly if, e.g., the client is independently represented by another attorney in giving consent and the consent is limited to future conflicts unrelated to the subject of the representation. In any case, advance consent cannot be effective if the circumstances that materialize in the future are such as would make the conflict nonconsentable under section (b).

Conflicts in Litigation--[23] Subsection (b)(3) of this Rule prohibits representation of opposing parties in the same litigation, regardless of the clients' consent. On the other hand, simultaneous representation of parties whose interests in litigation may conflict, such as coplaintiffs or codefendants, is governed by subsection (a)(2) of this Rule. A conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily an attorney should decline to represent more than one codefendant. On the other hand, common representation of persons having similar interests in civil litigation is proper if the requirements of section (b) of this Rule are met.

[24] Ordinarily an attorney may take inconsistent legal positions in different tribunals at different times on behalf of different clients. The mere fact that advocating a legal position on behalf of one client might create precedent adverse to the interests of a client represented by the attorney in an unrelated matter does not create a conflict of interest. A conflict of interest exists, however, if there is a significant risk that an attorney's action on behalf of one client will materially limit the attorney's effectiveness in representing another client in a different case; for example, when a decision favoring one client will create a precedent likely to seriously weaken the position taken on behalf of the other client. Factors relevant in determining whether the clients need to be advised of the risk include: where the cases are pending, whether the issue is substantive or procedural, the temporal relationship between the matters, the significance of the issue to the immediate and long-term interests of the clients involved and the clients' reasonable expectations in retaining the attorney. If there is significant risk of material limitation, then absent informed consent of the affected clients, the attorney must refuse one of the representations or withdraw from one or both matters.

[25] When an attorney represents or seeks to represent a class of plaintiffs or defendants in a class-action lawsuit, unnamed members of the class are ordinarily not considered to be clients of the attorney for purposes of applying subsection (a)(1) of this Rule. Thus, the attorney does not typically need to get the consent of such a person before representing a client suing the person in an unrelated matter. Similarly, an attorney seeking to represent an opponent in a class action does not typically need the consent of an unnamed member of the class whom the attorney represents in an unrelated matter.

Nonlitigation Conflicts--[26] Conflicts of interest under subsections (a)(1) and (a)(2) of this Rule arise in contexts other than litigation. For a discussion of directly adverse conflicts in transactional matters, see Comment [7]. Relevant factors in determining whether there is significant potential for material limitation include the duration and intimacy of the attorney's relationship with the client or clients involved, the functions being performed by the attorney, the likelihood that disagreements will arise and the likely prejudice to the client from the conflict. The question is often one of proximity and degree. See Comment [8].

[27] For example, conflict questions may arise in estate planning and estate administration. An attorney may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may be present. In estate administration the identity of the client may be unclear under the law of a particular jurisdiction. Under one view, the client is the fiduciary; under another view the client is the estate or trust, including its beneficiaries. In order to comply with conflict of interest rules, the attorney should make clear the attorney's relationship to the parties involved.

[28] Whether a conflict is consentable depends on the circumstances. For example, an attorney may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference in interest among them. Thus, an attorney may seek to establish or adjust a relationship between clients on an amicable and mutually advantageous basis; for example, in helping to organize a business in which two or more clients are entrepreneurs, working out the financial reorganization of an enterprise in which two or more clients have an interest or arranging a property distribution in settlement of an estate. The attorney seeks to resolve potentially adverse interests by developing the parties' mutual interests. Otherwise, each party might have to obtain separate representation, with the possibility of incurring additional cost, complication or even litigation. Given these and other relevant factors, the clients may prefer that the attorney act for all of them.

Special Considerations in Common Representation--[29] In considering whether to represent multiple clients in the same matter, an attorney should be mindful that if the common representation fails because the potentially adverse interests cannot be reconciled, the result can be additional cost, embarrassment and recrimination. Ordinarily, the attorney will be forced to withdraw from representing all of the clients if the common representation fails. In some situations, the risk of failure is so great that multiple representation is plainly impossible. For example, an attorney cannot undertake common representation of clients where contentious litigation or negotiations between them are imminent or contemplated. Moreover, because the attorney is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained. Generally, if the relationship between the parties has already assumed antagonism, the possibility that the clients' interests can be adequately served by common representation is not very good. Other relevant factors are whether the attorney subsequently will represent both parties on a continuing basis and whether the situation involves creating or terminating a relationship between the parties.

[29.1] Rule 19-301.7 (1.7) may not apply to an attorney appointed by a court to serve as a Child's Best Interest Attorney in the same way that it applies to other attorneys. For example, because the Child's Best Interest Attorney is not bound to advocate a client's objective, siblings with conflicting views may not pose a conflict of interest for a Child's Best Interest Attorney, provided that the attorney determines the siblings' best interests to be consistent. A Child's Best Interest Attorney should advocate for the children's best interests and ensure that each child's position is made a part of the record, even if that position is different from the position that the attorney advocates. See Md. Rule 9-205.1 and Appendix to the Maryland Rules: Maryland Guidelines for Practice for Court-appointed Attorneys Representing Children in Cases Involving Child Custody or Child Access.

[30] A particularly important factor in determining the appropriateness of common representation is the effect on client-attorney confidentiality and the attorney-client privilege. With regard to the attorney-client privilege, the prevailing rule is that, as between commonly represented clients, the privilege does not attach. Hence, it must be assumed that if litigation eventuates between the clients, the privilege will not protect any such communications, and the clients should be so advised.

[31] As to the duty of confidentiality, continued common representation will almost certainly be inadequate if one client asks the attorney not to disclose to the other client information relevant to the common representation. This is so because the attorney has an equal duty of loyalty to each client, and each client has the right to be informed of anything bearing on the representation that might affect that client's interests and the right to expect that the attorney will use that information to that client's benefit. See [Rule 19-301.4](#) (1.4). The attorney should, at the outset of the common representation and as part of the process of obtaining each client's informed consent, advise each client that information will be shared and that the attorney will have to withdraw if one client decides that some matter material to the representation should be kept from the other. In limited circumstances, it may be appropriate for the attorney to proceed with the representation when the clients have agreed, after being properly informed,

that the attorney will keep certain information confidential. For example, the attorney may reasonably conclude that failure to disclose one client's trade secrets to another client will not adversely affect representation involving a joint venture between the clients and agree to keep that information confidential with the informed consent of both clients.

[32] When seeking to establish or adjust a relationship between clients, the attorney should make clear that the attorney's role is not that of partisanship normally expected in other circumstances and, thus, that the clients may be required to assume greater responsibility for decisions than when each client is separately represented. Any limitations on the scope of the representation made necessary as a result of the common representation should be fully explained to the clients at the outset of the representation. See [Rule 19-301.2 \(c\)](#) (1.2).

[33] Subject to the above limitations, each client in the common representation has the right to loyal and diligent representation and the protection of [Rule 19-301.9](#) (1.9) concerning the obligations to a former client. The client also has the right to discharge the attorney as stated in [Rule 19-301.16](#) (1.16).

Organizational Clients--[34] An attorney who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary. See [Rule 19-301.13 \(a\)](#) (1.13). Thus, the attorney for an organization is not barred from accepting representation adverse to an affiliate in an unrelated matter, unless the circumstances are such that the affiliate should also be considered a client of the attorney, there is an understanding between the attorney and the organizational client that the attorney will avoid representation adverse to the client's affiliates, or the attorney's obligations to either the organizational client or the new client are likely to limit materially the attorney's representation of the other client.

[35] An attorney for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. The attorney may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the attorney's resignation from the board and the possibility of the corporation's obtaining legal advice from another attorney in such situations. If there is material risk that the dual role will compromise the attorney's independence of professional judgment, the attorney should not serve as a director or should cease to act as the corporation's attorney when conflicts of interest arise. The attorney should advise the other members of the board that in some circumstances matters discussed at board meetings while the attorney is present in the capacity of director might not be protected by the attorney-client privilege and that conflict of interest considerations might require the attorney's recusal as a director or might require the attorney and the attorney's firm to decline representation of the corporation in a matter.

MD Rules Attorneys, Rule 19-301.8

RULE 19-301.8. CONFLICT OF INTEREST; CURRENT CLIENTS; SPECIFIC RULES (1.8)

Effective: January 1, 2020

(a) An attorney shall not enter into a business transaction with a client unless:

(1) the transaction and terms on which the attorney acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek independent legal advice on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the attorney's role in the transaction, including whether the attorney is representing the client in the transaction.

(b) An attorney shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

(c) An attorney shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the attorney or a person related to the attorney any substantial gift unless the attorney or other recipient of the gift is related to the client. For purposes of this section, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the attorney or the client maintains a close, familial relationship.

(d) Prior to the conclusion of representation of a client, an attorney shall not make or negotiate an agreement giving the attorney literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) An attorney shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) an attorney may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) an attorney representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(f) An attorney shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the attorney's independence of professional judgment or with the client-attorney relationship; and

(3) information relating to representation of a client is protected as required by [Rule 19-301.6](#) (1.6).

(g) An attorney who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client or confirmed on the record before a tribunal. The attorney's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) An attorney shall not:

(1) make an agreement prospectively limiting the attorney's liability to a client for malpractice unless the client is independently represented in making the agreement; or

(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek independent legal advice in connection therewith.

(i) An attorney shall not acquire a proprietary interest in the cause of action or subject matter of litigation the attorney is conducting for a client, except that the attorney may:

(1) acquire a lien authorized by law to secure the attorney's fee or expenses; and

(2) subject to [Rule 19-301.5](#) (1.5), contract with a client for a reasonable contingent fee in a civil case.

(j) While attorneys are associated in a firm, a prohibition in the foregoing sections (a) through (i) of this Rule that applies to any one of them shall apply to all of them.

COMMENT

Business Transactions Between Client and Attorney--[1] An attorney's legal skill and training, together with the relationship of trust and confidence between attorney and client, create the possibility of overreaching when the attorney participates in a business, property or financial transaction with a client, for example, a loan or sales transaction or an attorney investment on behalf of a client. The requirements of section (a) of this Rule must be met even when the transaction is not closely related

to the subject matter of the representation, as when an attorney drafting a will for a client learns that the client needs money for unrelated expenses and offers to make a loan to the client. Section (a) of this Rule also applies to attorneys purchasing property from estates they represent. It does not apply to ordinary fee arrangements between client and attorney, which are governed by [Rule 19-301.5](#) (1.5), although its requirements must be met when the attorney accepts an interest in the client's business or other nonmonetary property as payment of all or part of a fee. In addition, the Rule does not apply to standard commercial transactions between the attorney and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities' services. In such transactions, the attorney has no advantage in dealing with the client, and the restrictions in section (a) of this Rule are unnecessary and impracticable. For restrictions regarding attorneys engaged in the sale of goods or services related to the practice of law, see [Rule 19-305.7](#) (5.7).

[2] Subsection (a)(1) of this Rule requires that the transaction itself be fair to the client and that its essential terms be communicated to the client, in writing, in a manner that can be reasonably understood. Subsection (a)(2) of this Rule requires that the client also be advised, in writing, of the desirability of seeking independent legal advice. It also requires that the client be given a reasonable opportunity to obtain such advice. Subsection (a)(3) of this Rule requires that the attorney obtain the client's informed consent, in a writing signed by the client, both to the essential terms of the transaction and to the attorney's role. When necessary, the attorney should discuss both the material risks of the proposed transaction, including any risk presented by the attorney's involvement, and the existence of reasonably available alternatives and should explain why independent legal advice is desirable. See [Rule 19-301.0](#) (f) (1.0) (definition of informed consent).

[3] The risk to a client is greatest when the client expects the attorney to represent the client in the transaction itself or when the attorney's financial interest otherwise poses a significant risk that the attorney's representation of the client will be materially limited by the attorney's financial interest in the transaction. Here the attorney's role requires that the attorney must comply, not only with the requirements of section (a) of this Rule, but also with the requirements of [Rule 19-301.7](#) (1.7). Under that Rule, the attorney must disclose the risks associated with the attorney's dual role as both legal adviser and participant in the transaction, such as the risk that the attorney will structure the transaction or give legal advice in a way that favors the attorney's interests at the expense of the client. Moreover, the attorney must obtain the client's informed consent. In some cases, the attorney's interest may be such that [Rule 19-301.7](#) (1.7) will preclude the attorney from seeking the client's consent to the transaction.

[4] If the client is independently represented in the transaction, subsection (a)(2) of this Rule is inapplicable, and the subsection (a)(1) of this Rule requirement for full disclosure is satisfied either by a written disclosure by the attorney involved in the transaction or by the client's independent attorney. The fact that the client was independently represented in the transaction is relevant in determining whether the agreement was fair and reasonable to the client as subsection (a)(1) of this Rule further requires.

Use of Information Related to Representation--[5] Use of information relating to the representation to the disadvantage of the client violates the attorney's duty of loyalty. Section (b) of this Rule applies when the information is used to benefit either the attorney or a third person, such as another client or business associate of the attorney. For example, if an attorney learns that a client intends to purchase and develop several parcels of land, the attorney may not use that information to purchase one of the parcels in competition with the client or to recommend that another client make such a purchase. The Rule does not prohibit uses that do not disadvantage the client. For example, an attorney who learns a government agency's interpretation of trade legislation during the representation of one client may properly use that information to benefit other clients. Section (b) of this Rule prohibits disadvantageous use of client information unless the client gives informed consent, except as permitted or required by these Rules. See Rules 19-301.2 (d) (1.2), 19-301.6 (1.6), 19-301.9 (c) (1.9), 19-303.3 (3.3), 19-304.1 (b) (4.1), 19-308.1 (8.1) and 19-308.3 (8.3).

Gifts to Attorneys--[6] An attorney may accept a gift from a client, if the transaction meets general standards of fairness. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If a client offers the attorney a more substantial gift, section (c) of this Rule does not prohibit the attorney from accepting it, although such a gift may be

voidable by the client under the doctrine of undue influence, which treats client gifts as presumptively fraudulent. In any event, due to concerns about overreaching and imposition on clients, an attorney may not suggest that a substantial gift be made to the attorney or for the attorney's benefit, except where the attorney is related to the client as set forth in section (c) of this Rule.

[7] If effectuation of a substantial gift requires preparing a legal instrument such as a will or conveyance, the client should have the detached advice that another attorney can provide. The sole exception to this Rule is where the client is a relative of the donee.

[8] This Rule does not prohibit an attorney from seeking to have the attorney or a partner or associate of the attorney named as executor of the client's estate or to another potentially lucrative fiduciary position. Nevertheless, such appointments will be subject to the general conflict of interest provision in [Rule 19-301.7](#) (1.7) when there is a significant risk that the attorney's interest in obtaining the appointment will materially limit the attorney's independent professional judgment in advising the client concerning the choice of an executor or other fiduciary. In obtaining the client's informed consent to the conflict, the attorney should advise the client concerning the nature and extent of the attorney's financial interest in the appointment, as well as the availability of alternative candidates for the position.

Literary Rights--[9] An agreement by which an attorney acquires literary or media rights concerning the conduct of the representation creates a conflict between the interests of the client and the personal interests of the attorney. Measures suitable in the representation of the client may detract from the publication value of an account of the representation. Section (d) of this Rule does not prohibit an attorney representing a client in a transaction concerning literary property from agreeing that the attorney's fee shall consist of a share in ownership in the property, if the arrangement conforms to [Rule 19-301.5](#) (1.5) and sections (a) and (i) of this Rule.

Financial Assistance--[10] Attorneys may not subsidize lawsuits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because such assistance gives attorneys too great a financial stake in the litigation. These dangers do not warrant a prohibition on an attorney lending a client court costs and litigation expenses, including the expenses of medical examination and the costs of obtaining and presenting evidence, because these advances are virtually indistinguishable from contingent fees and help ensure access to the courts. Similarly, an exception allowing attorneys representing indigent clients to pay court costs and litigation expenses regardless of whether these funds will be repaid is warranted.

Person Paying for an Attorney's Services--[11] Attorneys are frequently asked to represent a client under circumstances in which a third person will compensate the attorney, in whole or in part. The third person might be a relative or friend, an indemnitor (such as a liability insurance company) or a co-client (such as a corporation sued along with one or more of its employees). Because third-party payers frequently have interests that differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing, attorneys are prohibited from accepting or continuing such representations unless the attorney determines that there will be no interference with the attorney's independent professional judgment and there is informed consent from the client. See also [Rule 19-305.4 \(c\)](#) (5.4) (prohibiting interference with a attorney's professional judgment by one who recommends, employs or pays the attorney to render legal services for another).

[12] Sometimes, it will be sufficient for the attorney to obtain the client's informed consent regarding the fact of the payment and the identity of the third-party payer. If, however, the fee arrangement creates a conflict of interest for the attorney, then the attorney must comply with [Rule 19-301.7](#) (1.7). The attorney must also conform to the requirements of [Rule 19-301.6](#) (1.6) concerning confidentiality. Under [Rule 19-301.7 \(a\)](#) (1.7), a conflict of interest exists if there is significant risk that the attorney's representation of the client will be materially limited by the attorney's own interest in the fee arrangement or by the attorney's responsibilities to the third-party payer (for example, when the third-party payer is a co-client). Under [Rule 19-301.7 \(b\)](#) (1.7), the attorney may accept or continue the representation with the informed consent of each affected client, unless the conflict is nonconsentable under that section. Under [Rule 19-301.7 \(b\)](#) (1.7), the informed consent must be confirmed in writing.

Aggregate Settlements--[13] Differences in willingness to make or accept an offer of settlement are among the risks of common representation of multiple clients by a single attorney. Under [Rule 19-301.7](#) (1.7), this is one of the risks that should be discussed before undertaking the representation, as part of the process of obtaining the clients' informed consent. In addition, [Rule 19-301.2 \(a\)](#) (1.2) protects each client's right to have the final say in deciding whether to accept or reject an offer of settlement and in deciding whether to enter a guilty or nolo contendere plea in a criminal case. The rule stated in this section is a corollary of both these Rules and provides that, before any settlement offer or plea bargain is made or accepted on behalf of multiple clients, the attorney must inform each of them about all the material terms of the settlement, including what the other clients will receive or pay if the settlement or plea offer is accepted. See also [Rule 19-301.0 \(f\)](#) (1.0) (definition of informed consent). Attorneys representing a class of plaintiffs or defendants, or those proceeding derivatively, may not have a full client-attorney relationship with each member of the class; nevertheless, such attorneys must comply with applicable rules regulating notification of class members and other procedural requirements designed to ensure adequate protection of the entire class.

Limiting Liability and Settling Malpractice Claims--[14] Agreements prospectively limiting an attorney's liability for malpractice are prohibited unless the client is independently represented in making the agreement because they are likely to undermine competent and diligent representation. Also, many clients are unable to evaluate the desirability of making such an agreement before a dispute has arisen, particularly if they are then represented by the attorney seeking the agreement. This section does not, however, prohibit an attorney from entering into an agreement with the client to arbitrate existing legal malpractice claims, provided the client is fully informed of the scope and effect of the agreement. Nor does this section limit the ability of attorneys to practice in the form of a limited-liability entity, where permitted by law, provided that each attorney remains personally liable to the client for his or her own conduct and the firm complies with any conditions required by law, such as provisions requiring client notification or maintenance of adequate liability insurance. Nor does it prohibit an agreement in accordance with [Rule 19-301.2](#) (1.2) that defines the scope of the representation, although a definition of scope that makes the obligations of representation illusory will amount to an attempt to limit liability.

[15] Agreements settling a claim or a potential claim for malpractice are not prohibited by this Rule. Nevertheless, in view of the danger that an attorney will take unfair advantage of an unrepresented client or former client, the attorney must first advise such a person in writing of the appropriateness of independent representation in connection with such a settlement. In addition, the attorney must give the client or former client a reasonable opportunity to find and consult independent attorney.

Acquiring Proprietary Interest in Litigation--[16] Section (i) of this Rule states the traditional general rule that attorneys are prohibited from acquiring a proprietary interest in litigation. Like section (e) of this Rule, the general rule has its basis in common law champerty and maintenance and is designed to avoid giving the attorney too great an interest in the representation. In addition, when the attorney acquires an ownership interest in the subject of the representation, it will be more difficult for a client to discharge the attorney if the client so desires. The Rule is subject to specific exceptions developed in decisional law and continued in these Rules. The exception for certain advances of the costs of litigation is set forth in section (e) of this Rule. In addition, section (i) of this Rule sets forth exceptions for liens authorized by law to secure the attorney's fees or expenses and contracts for reasonable contingent fees. The law of each jurisdiction determines which liens are authorized by law. These may include liens granted by statute, liens originating in common law and liens acquired by contract with the client. When an attorney acquires by contract a security interest in property other than that recovered through the attorney's efforts in the litigation, such an acquisition is a business or financial transaction with a client and is governed by the requirements of section (a) of this Rule. Contracts for contingent fees in civil cases are governed by [Rule 19-301.5](#) (1.5).

Imputation of Prohibitions--[17] Under section (i) of this Rule, a prohibition on conduct by an individual attorney in sections (a) through (i) of this Rule also applies to all attorneys associated in a firm with the personally prohibited attorney. For example, one attorney in a firm may not enter into a business transaction with a client of another member of the firm without complying with section (a) of this Rule, even if the first attorney is not personally involved in the representation of the client.

MD Rules Attorneys, Rule 19-305.7

RULE 19-305.7. RESPONSIBILITIES REGARDING LAW-RELATED SERVICES (5.7)

(a) An attorney shall be subject to the Maryland Attorneys' Rules of Professional Conduct with respect to the provision of law-related services, as defined in section (b) of this Rule, if the law-related services are provided:

(1) by the attorney in circumstances that are not distinct from the attorney's provision of legal services to clients; or

(2) in other circumstances by an entity controlled by the attorney individually or with others if the attorney fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services are not legal services and that the protections of the client-attorney relationship do not exist.

(b) The term “law-related services” denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a non-attorney.

COMMENT

[1] When an attorney performs law-related services or controls an organization that does so, there exists the potential for ethical problems. Principal among these is the possibility that the person for whom the law-related services are performed fails to understand that the services may not carry with them the protections normally afforded as part of the client-attorney relationship. The recipient of the law-related services may expect, for example, that the protection of client confidences, prohibitions against representation of persons with conflicting interests, and obligations of an attorney to maintain professional independence apply to the provision of law-related services when that may not be the case.

[2] Rule 19-305.7 (5.7) applies to the provision of law-related services by an attorney even when the attorney does not provide any legal services to the person for whom the law-related services are performed and whether the law-related services are performed through a law firm or a separate entity. The Rule identifies the circumstances in which all of the Maryland Attorneys' Rules of Professional Conduct apply to the provision of law-related services. Even when those circumstances do not exist, however, the conduct of a attorney involved in the provision of law-related services is subject to those Rules that apply generally to attorney conduct, regardless of whether the conduct involves the provision of legal services. See, e.g., [Rule 19-308.4](#) (8.4).

[3] When law-related services are provided by an attorney under circumstances that are not distinct from the attorney's provision of legal services to clients, the attorney in providing the law-related services must adhere to the requirements of the Maryland Attorneys' Rules of Professional Conduct as provided in subsection (a)(1) of this Rule. Even when the law-related and legal services are provided in circumstances that are distinct from each other, for example through separate entities or different support

staff within the law firm, the Maryland Attorneys' Rules of Professional Conduct apply to the attorney as provided in subsection (a)(2) of this Rule unless the attorney takes reasonable measures to assure that the recipient of the law-related services knows that the services are not legal services and that the protections of the client-attorney relationship do not apply.

[4] Law-related services also may be provided through an entity that is distinct from that through which the attorney provides legal services. If the attorney individually or with others has control of such an entity's operations, the Rule requires the attorney to take reasonable measures to assure that each person using the services of the entity knows that the services provided by the entity are not legal services and that the Maryland Attorneys' Rules of Professional Conduct that relate to the client-attorney relationship do not apply. An attorney's control of an entity extends to the ability to direct its operation. Whether an attorney has such control will depend upon the circumstances of the particular case.

[5] An attorney is not required to comply with [Rule 19-301.8 \(a\) \(1.8\)](#) when referring a person to a separate law-related entity owned or controlled by the attorney for the purpose of providing services to the person. If the attorney also is providing legal services to the person, the attorney must exercise independent professional judgment in making the referral. See [Rule 19-302.1 \(2.1\)](#). Moreover, the attorney must explain the matter to the person to the extent necessary for the person to make an informed decision to accept the attorney's recommendation. See [Rule 19-301.4 \(b\) \(1.4\)](#).

[6] In taking the reasonable measures referred to in subsection (a)(2) of this Rule to assure that a person using law-related services understands the practical effect or significance of the inapplicability of the Maryland Attorneys' Rules of Professional Conduct, the attorney should communicate to the person receiving the law-related services, in a manner sufficient to assure that the person understands the significance of the fact, that the relationship of the person to the business entity will not be a client-attorney relationship. The communication should be made before entering into an agreement for provision of or providing law-related services, and preferably should be in writing.

[7] The burden is upon the attorney to show that the attorney has taken reasonable measures under the circumstances to communicate the desired understanding. For instance, a sophisticated user of law-related services, such as a publicly held corporation, may require a lesser explanation than someone unaccustomed to making distinctions between legal services and law-related services, such as an individual seeking tax advice from a attorney-accountant or investigative services in connection with a lawsuit.

[8] Regardless of the sophistication of potential recipients of law-related services, an attorney should take special care to keep separate the provision of law-related and legal services in order to minimize the risk that the recipient will assume that the law-related services are legal services. The risk of such confusion is especially acute when the attorney renders both types of services with respect to the same matter. Under some circumstances the legal and law-related services may be so closely entwined that they cannot be distinguished from each other, and the requirement of disclosure and consultation imposed by subsection (a) (2) of this Rule of the Rule cannot be met. In such a case an attorney will be responsible for assuring that both the attorney's conduct and, to the extent required by [Rule 19-305.3 \(5.3\)](#), that of non-attorney employees in the distinct entity that the attorney complies in all respects with the Maryland Attorneys' Rules of Professional Conduct.

[9] A broad range of economic and other interests of clients may be served by attorneys' engaging in the delivery of law-related services. Examples of law-related services include providing title insurance, financial planning, accounting, trust services, real estate counseling, legislative lobbying, economic analysis, social work, psychological counseling, tax preparation, and patent, medical or environmental consulting.

[10] When an attorney is obliged to accord the recipients of such services the protections of those Rules that apply to the client-attorney relationship, the attorney must take special care to heed the proscriptions of the Rules addressing conflict of interest (Rules 19-301.7 (1.7) through 19-301.11 (1.11), especially Rules 19-301.7 (a)(2) (1.7) and 19-301.8 (b) and (f) (1.8), and to scrupulously adhere to the requirements of [Rule 19-301.6 \(1.6\)](#) relating to disclosure of confidential information. The promotion of the law-related services must also in all respects comply with Rules 19-307.1 (7.1) through 19-307.3 (7.3), dealing with

advertising and solicitation. In that regard, attorneys should take special care to identify the obligations that may be imposed as a result of a jurisdiction's decisional law.

[11] When the full protections of all of the Maryland Attorneys' Rules of Professional Conduct do not apply to the provision of law-related services, principles of law external to the Rules, for example, the law of principal and agent, govern the legal duties owed to those receiving the services. Those other legal principles may establish a different degree of protection for the recipient with respect to confidentiality of information, conflicts of interest and permissible business relationships with clients. See also [Rule 19-308.4](#) (8.4) (Misconduct).

[12] Regarding an attorney's referrals of clients to non-attorney professionals, see [Rule 19-307.2 \(c\)](#) (7.2) and related Comment.

MD Rules Attorneys, Rule 19-301.10

RULE 19-301.10. IMPUTATION OF CONFLICT OF INTEREST--GENERAL RULE (1.10)

(a) While attorneys are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 19-301.7 (1.7) or 19-301.9 (1.9), unless the prohibition is based on a personal interest of the prohibited attorney and does not present a significant risk of materially limiting the representation of the client by the remaining attorneys in the firm.

(b) When an attorney has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated attorney and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated attorney represented the client; and

(2) any attorney remaining in the firm has information protected by Rules 19-301.6 (1.6) and 19-301.9 (c) (1.9) that is material to the matter.

(c) When an attorney becomes associated with a firm, no attorney associated in the firm shall knowingly represent a person in a matter in which the newly associated attorney is disqualified under [Rule 19-301.9](#) (1.9) unless the personally disqualified attorney is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

(d) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in [Rule 19-301.7](#) (1.7).

(e) The disqualification of attorneys associated in a firm with former or current government attorneys is governed by [Rule 19-301.11](#) (1.11).

COMMENT

Definition of "Firm"--[1] A "firm" is defined in [Rule 19-301.0](#) (d) (1.0). Whether two or more attorneys constitute a firm within this definition can depend on the specific facts. See [Rule 19-301.0](#) (1.0), Comments [2]--[4]. An attorney is deemed associated with a firm if held out to be a partner, principal, associate, of counsel, or similar designation. An attorney ordinarily is not deemed associated with a firm if the attorney no longer practices law and is held out as retired or emeritus. An attorney

employed for short periods as a contract attorney ordinarily is deemed associated with the firm only regarding matters to which the attorney gives substantive attention.

Principles of Imputed Disqualification--[2] The rule of imputed disqualification stated in section (a) gives effect to the principle of loyalty to the client as it applies to attorneys who practice in a law firm. Such situations can be considered from the premise that a firm of attorneys is essentially one attorney for purposes of the rules governing loyalty to the client, or from the premise that each attorney is vicariously bound by the obligation of loyalty owed by each attorney with whom the attorney is associated. Section (a) of this Rule operates only among the attorneys currently associated in a firm. When an attorney moves from one firm to another, the situation is governed by Rules 19-301.9 (b) (1.9), 19-301.10 (b) (1.10) and 19-301.10 (c) (1.10).

[3] The rule in section (a) of this Rule does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented. Where one attorney in a firm could not effectively represent a given client because of strong political beliefs, for example, but that attorney will do no work on the case and the personal beliefs of the attorney will not materially limit the representation by others in the firm, the firm should not be disqualified. On the other hand, if an opposing party in a case were owned by an attorney in the law firm, and others in the firm would be materially limited in pursuing the matter because of loyalty to that attorney, the personal disqualification of the attorney would be imputed to all others in the firm.

[4] The rule in section (a) of this Rule also does not prohibit representation by others in the law firm where the individual prohibited from involvement in a matter is a non-attorney, such as a paralegal or legal secretary. Nor does section (a) of this Rule prohibit representation if the attorney is prohibited from acting because of events before the individual became an attorney, for example, work that the individual did while a law student. Such individuals, however, ordinarily must be screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the non-attorneys and the firm have a legal duty to protect. See Rules 19-301.0 (m) (1.0) and 19-305.3 (5.3).

[5] Rule 19-301.10 (b) (1.10) operates to permit a law firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by an attorney who formerly was associated with the firm. The Rule applies regardless of when the formerly associated attorney represented the client. However, the law firm may not represent a person with interests adverse to those of a present client of the firm, which would violate [Rule 19-301.7 \(1.7\)](#). Moreover, the firm may not represent the person where the matter is the same or substantially related to that in which the formerly associated attorney represented the client and any other attorney currently in the firm has material information protected by Rules 19-301.6 (1.6) and 19-301.9 (c) (1.9).

[6] Where the conditions of section (c) of this Rule are met, imputation is removed, and consent to the new representation is not required. Attorneys should be aware, however, that courts may impose more stringent obligations in ruling upon motions to disqualify an attorney from pending litigation.

[7] Requirements for screening procedures are stated in [Rule 19-301.0 \(m\) \(1.0\)](#). Section (c) of this Rule does not prohibit the screened attorney from receiving a salary or partnership share established by prior independent agreement, but that attorney may not receive compensation directly related to the matter in which the attorney is disqualified.

[8] Rule 19-301.10 (d) (1.10) removes imputation with the informed consent of the affected client or former client under the conditions stated in [Rule 19-301.7 \(1.7\)](#). The conditions stated in [Rule 19-301.7 \(1.7\)](#) require the attorney to determine that the representation is not prohibited by [Rule 19-301.7 \(b\) \(1.7\)](#) and that each affected client or former client has given informed consent to the representation, confirmed in writing. In some cases, the risk may be so severe that the conflict may not be cured by client consent. For a discussion of the effectiveness of client waivers of conflicts that might arise in the future, see [Rule 19-301.7 \(1.7\)](#), Comment [22]. For a definition of informed consent, see [Rule 19-301.0 \(f\) \(1.0\)](#).

[9] Where an attorney has joined a private firm after having represented the government, imputation is governed by [Rule 19-301.11 \(b\) and \(c\) \(1.11\)](#), not this Rule. Under [Rule 19-301.11 \(d\) \(1.11\)](#), where an attorney represents the government

after having served clients in private practice, nongovernmental employment or in another government agency, former-client conflicts are not imputed to government attorneys associated with the individually disqualified attorney.

[10] Where an attorney is prohibited from engaging in certain transactions under [Rule 19-301.8](#) (1.8), section (j) of that Rule, and not this Rule, determines whether that prohibition also applies to other attorneys associated in a firm with the personally prohibited attorney.