

**BUSINESS REGULATION**  
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## Subtitle 1. Definitions

### § 4.5-101. Definitions

- (a) In this title the following words have the meanings indicated.
- (b) "Consumer" means an owner or a contract purchaser.
- (c) "Contract purchaser" means a person who has entered into a contract with a home builder to purchase a new home, but who has not yet settled on the purchase of the new home.
- (d) "Division" means the Consumer Protection Division of the Office of the Attorney General.
- (e) "Exempt lender" means a lender exempt from the requirements of registration as provided in § 4.5-501(c) of this title.
- (f) "Guaranty Fund" means the Home Builder Guaranty Fund.
- (g)(1) "Home builder" means a person that undertakes to erect or otherwise construct a new home.
- (2) "Home builder" includes:
- (i) a custom home builder as defined in § 10-501 of the Real Property Article;
  - (ii) a new home builder subject to § 10-301 of the Real Property Article; and
  - (iii) the installer or retailer of a mobile home or an industrialized building intended for residential use.
- (3) "Home builder" does not include:

(i) an employee of a registrant who does not hold himself or herself out for hire in home building except as an employee of a registrant;

(ii) subcontractors or other vendors hired by the registrant to perform services or supply materials for the construction of a new home who do not otherwise meet the requirements of this title;

(iii) the manufacturer of industrialized buildings intended for residential use or of mobile homes, unless the manufacturer also installs the industrialized buildings or mobile homes;

(iv) a real estate developer who does not construct homes;

(v) a financial institution that lends funds for the construction or purchase of residential dwellings in the State; or

(vi) except as otherwise provided in this title, a person who erects or constructs new homes solely in Montgomery County.

(h) "Home builder registration number" means a registration number issued by the Unit to a registrant under this title.

(i)(1) "Home builder sales representative" means an individual employed by a home builder as the home builder's representative to consumers regarding the purchase of a new home from the home builder.

(2) "Home builder sales representative" includes individuals employed by a person who erects or constructs new homes solely in Montgomery County and is not required to register under this title.

(3) "Home builder sales representative" does not include:

(i) an individual employed by an installer or retailer of mobile homes or industrialized buildings intended for residential use; or

(ii) an employee or officer agent for a nonprofit organization, with at least a 2-year record in the State as a developer of affordable housing for persons with low to moderate incomes, in the initial sale of a home if:

1. the home is constructed or rehabilitated by the nonprofit organization; and

2. the purchaser of the home is using federal, State, or local government or other subsidized financing administered by the nonprofit organization for the purpose of assisting individuals with low to moderate incomes to purchase homes.

(j) "Industrialized building" has the meaning stated in § 12-301 of the Public Safety Article.

(k) "Install" has the meaning stated in § 12-301 of the Public Safety Article.

(l) "Mobile home" means a manufactured home as defined in § 12-301 of the Public Safety Article.

(m)(1) "New home" means each newly constructed residential dwelling unit in the State and the fixtures and structure that are made a part of a newly constructed private dwelling unit at the time of construction.

(2) "New home" includes:

(i) a custom home as defined in § 10-501(c) of the Real Property Article;

(ii) a new home to which § 10-301 of the Real Property Article applies;

(iii) an industrialized building intended for residential use; and

(iv) a mobile home.

(n) "New home contract" means an agreement between a home builder and a consumer for the sale or construction of a new home.

(o)(1) "Owner" means a person for whom a new home is built or to whom a new home is sold for occupation by:

(i) that person or the family of that person as a home; or

(ii) the successors of that person in title to the home or a mortgagor in possession.

(2) "Owner" includes a contract purchaser who contracts with a registrant for the construction and purchase of a new home.

(3) "Owner" does not include:

(i) a development company, association, or subsidiary company of a registrant; or

(ii) a person or organization to whom the home may be conveyed by the registrant for a purpose other than residential occupation by that person or organization.

(p) "Principal" means:

(1) a sole proprietor, officer, director, general partner, or limited liability company manager of an applicant or registrant;

(2) a person with at least 10 percent ownership in an applicant or registrant or a subsidiary of an applicant or registrant; and

(3) parents, spouses, and children with a combined 10 percent ownership in an applicant or

registrant or a subsidiary of an applicant or registrant.

(q) "Registered sales representative" means a person registered to be a home builder sales representative under this title.

(r) "Registrant" means a person registered to build new homes.

(s) "Registration certificate" means a certificate issued to a registered sales representative by the Unit.

(t) "Registration Fund" means the Home Builder Registration Fund.

## **Subtitle 2. Home Builder Registration Unit; Home Builder Registration Fund.**

### **§ 4.5-201. Home Builder and Home Builder Sales Representative Unit**

There is a Home Builder and Home Builder Sales Representative Registration Unit in the Division.

### **§ 4.5-202. Powers and duties of the Unit**

(a) The Unit shall maintain a list of all registrants and registered sales representatives.

(b)(1) The Unit shall make available to each applicant for registration as a home builder or home builder sales representative a copy of this title and other applicable laws and regulations.

(2) The Unit shall make available to each registrant and each registered sales representative any amendments to this title or other applicable laws or regulations at least 30 days before the effective date of the amendments.

(c)(1) In consultation with the home building industry, the Unit shall develop a consumer

information pamphlet written in plain English that describes:

(i) the rights and remedies of consumers in the purchase of a new home; and

(ii) any other information that the Division considers reasonably necessary to assist consumers.

(2) The Division shall provide each registered home builder with a sufficient number of copies of the consumer information pamphlets as needed by the home builder.

(3) A home builder shall provide each contract purchaser with the consumer information pamphlet before entering into a contract for the initial sale of a new home.

(4) The contract purchaser shall acknowledge in writing the receipt of the consumer information pamphlet.

(5) The failure of a home builder to provide a copy of the consumer protection pamphlet to a contract purchaser may not be used as a basis for invalidation of the contract for the initial sale of a new home.

(d) The Unit shall collect and maintain information on the resolution of consumer complaints involving new home builders or home builder sales representatives.

#### **§ 4.5-203. Home Builder Registration Fund**

(a)(1) There is a Home Builder Registration Fund.

(2) The Division shall administer the Registration Fund.

(3) The Registration Fund shall be used to cover the actual documented direct and indirect costs incurred for the administration and enforcement of the Maryland Home Builder Registration Act

(4) The Registration Fund is a continuing, nonlapsing fund, and is subject to § 7-302 of the State Finance and Procurement Article.

(5) Unspent assets of the Registration Fund shall remain in the Registration Fund and may not revert or be transferred to the General Fund of the State.

(6) The Registration Fund may not be supported by appropriations of State funds.

(b) The Division shall pay all funds collected under §§ 4.5-303, 4.5-304, and 4.5-305 of this title to the Comptroller, who shall distribute the fees to the Registration Fund.

(c) The Office of Legislative Audits shall audit the accounts and transactions of the Registration Fund under § 2-1220 of the State Government Article.

### **Subtitle 3. Registration**

#### **§ 4.5-301. Registration required**

(a) Except as otherwise provided in this title, a person may not act as a home builder in the State unless the person is registered as a home builder under this title.

(b) A person may not act as a home builder sales representative in the State unless the person is a registered sales representative under this title.

#### **§ 4.5-302. Liability insurance**

(a) Each person that constructs new homes for sale to the public shall maintain general liability insurance for at least \$100,000.

(b) If a home builder's registration has been revoked and the home builder applies for a new

registration, the Unit shall, in its discretion, approve the application on the applicant's fulfillment of specified terms and conditions, including the posting of a bond for the benefit of subcontractors, suppliers, and consumers, and the payment of any judgments or awards due to any subcontractors, suppliers, and consumers, for a period of 4 years from the date of the approval of registration, after which the licensing bond shall expire and shall no longer be required to be maintained by the registered home builder.

#### **§ 4.5-303. Applications**

(a) To apply for registration as a home builder or a home builder sales representative, an applicant shall:

- (1) submit to the Unit under oath an application on the form provided by the Unit; and
- (2) pay the nonrefundable application fee required by this subtitle.

(b) The application for registration as a home builder shall require an applicant to provide:

- (1) the applicant's name;
- (2) the applicant's business address, telephone number, and, if applicable, electronic mail address;
- (3) in the case of an applicant who is an individual, the applicant's Social Security number;
- (4) in the case of an applicant other than an individual:
  - (i) the applicant's federal employer identification number; and
  - (ii) the names and addresses of all principals of the applicant;

(5) the names of all applicants and principals who have previously applied for registration, and the disposition of all previous applications;

(6) the name of any applicant or principal that was a principal in an entity that previously applied for registration;

(7) a list of all states and other jurisdictions in which the applicant holds a similar registration or license;

(8) a list of all states and other jurisdictions in which the applicant has had a similar registration or license suspended or revoked;

(9) a statement whether any pending judgments or tax liens exist against the applicant;

(10)(i) the election made by the applicant regarding deposit moneys under § 10-301 of the Real Property Article; and

(ii) if the applicant elects to hold deposits in an escrow account, the account number and the name of the financial institution that holds the escrow account;

(11) if the applicant participates in a new home warranty security plan, the name and address of the warranty company; and

(12) the name of the insurance carrier and the policy number of the general liability coverage required under § 4.5-302 of this subtitle.

(c) The application for registration as a home builder sales representative shall require an applicant to provide:

(1) the applicant's name;

(2) the applicant's business address, telephone number, and, if applicable, electronic mail

address;

(3) the applicant's Social Security number;

(4) a list of all states and other jurisdictions in which the applicant holds a similar registration or license;

(5) a list of all states and other jurisdictions in which the applicant has had a similar registration or license suspended or revoked;

(6) the applicant's employer's business name, address, telephone number, and registration number or if the employer is exempt from registration under this title, documentation that the employer erects or constructs homes solely in Montgomery County; and

(7) a statement whether any pending judgments or tax liens exist against the applicant.

#### **§ 4.5-304. Issuance of Home Builder Registration number**

(a) The Unit shall register and issue a home builder registration number to an applicant for a home builder registration that:

(1) meets the requirements of this title; and

(2) pays to the Division an initial nonrefundable 2-year registration fee of \$600.

(b) A home builder registration issued under this title may not be transferred, assigned, or pledged.

(c) A valid home builder registration authorizes the registrant to act as a home builder in the State.

(d)(1) A home builder that holds a license or registration in Montgomery County may act as a home builder in that county only, unless the home builder is also registered under this title.

(2) A home builder that holds a license or registration in Montgomery County and is not registered under this title is subject to Subtitle 7 of this title.

(3)(i) In addition to the county license or registration fee, a home builder that is required to hold a license or registration only in Montgomery County shall pay to the county a Guaranty Fund administrative fee of \$150.

(ii) The county shall remit the Guaranty Fund administrative fee to the Unit to be deposited in the Registration Fund.

#### **§ 4.5-304.1. Issuance of Home Builder Sales Representative registration certificate**

(a) The Unit shall register and issue a registration certificate to an applicant for a home builder sales representative registration certificate that:

(1) meets the requirements of this title; and

(2) pays to the Division an initial nonrefundable 2-year registration fee of \$200.

(b) A Unit shall include on each registration certificate that the Unit issues:

(1) that this is a registration certificate for a registered sales representative;

(2) the full name of the certificate holder;

(3) the certificate holder's employer's registration number or the name of the licensed or registered Montgomery County home builder; and

(4) the certificate holder's registration number.

(c) A registration certificate issued under this title may not be transferred, assigned, or pledged.

(d) A valid registration certificate authorizes the certificate holder to act as a home builder sales representative in the State.

(e) The Unit may issue a registration certificate to replace a lost, destroyed, or mutilated registration certificate if the certificate holder pays the registration certificate replacement fee set by the Unit.

#### **§ 4.5-305. Renewal of registration number or certificate**

(a)(1) Unless renewed under this section, a registration or registration certificate expires on the second anniversary of its effective date.

(2) A registrant or registered sales representative that meets the requirements of subsection (c) of this section may obtain a renewal of a registration or registration certificate before the registration or registration certificate expires for an additional 2-year term.

(3) Once expired, a registration or a registration certificate may not be renewed.

(b) At least 60 days before a registration or registration certificate expires, the Unit shall mail the registrant or registered sales representative, at the last known address of the registrant or registered sales representative:

(1) a renewal application form; and

(2) a notice that states:

(i) the date on which the current registration or registration certificate expires; and

(ii) the date by which the Unit must receive the renewal application for a renewal to be issued and mailed before the registration or registration certificate expires.

(c) The Unit shall renew the registration or registration certificate of each registrant or registered sales representative that:

(1) submits to the Unit a renewal application on the form provided by the Unit;

(2) would qualify for an initial registration or initial registration certificate;

(3)(i) for renewal of a registration, pays to the Division a nonrefundable renewal fee based on the number of building permits for the construction of new homes issued to the registrant in the preceding calendar year as follows:

1. 10 or fewer new homes..... \$300; and

2. 11 or more new homes..... \$600; or

(ii) for renewal of a registration certificate, pays to the Division a nonrefundable renewal fee of \$200; and

(4) is otherwise entitled to be registered.

**§ 4.5-306. Change of information**

(a)(1) A registrant shall send the Unit written notice of any change in the information submitted under § 4.5-303(b) of this subtitle within 10 working days after the change is effective.

(2) A registered sales representative shall send the Unit written notice of any change in the information submitted under § 4.5-303(c) of this subtitle within 10 working days after the change is effective.

(b) A registrant and a registered sales representative shall comply with subsection (a) of this section for 1 year after the registrant ceases to be registered.

#### **§ 4.5-307. Display of registration number or certificate**

(a)(1) Each registrant shall display its home builder registration number conspicuously on all properties at which the registrant is performing work that requires registration under this title.

(2) If a registrant is building multiple homes in one project area or subdivision, the registrant may post its home builder registration number in one central conspicuous location in the project area or subdivision.

(b) Each registered sales representative shall display the registration certificate conspicuously at the property at which the registered sales representative primarily performs work that requires registration under this title.

(c)(1) A home builder shall provide each prospective home buyer with a disclosure that states: "The sales representative works for the home builder, which means that he or she may assist the buyer in purchasing the property, but his or her duty of loyalty is only to the home builder."

(2) The disclosure under paragraph (1) of this subsection shall be in at least 12-point bold type and shall be included with:

(i) any written materials made available to consumers at the property at which a registered sales representative primarily performs work that requires registration under this title; and

(ii) the first agreement signed by the consumer.

#### **§ 4.5-308. Denial, suspensions, and revocation**

(a)(1) The Unit may deny registration or a registration certificate to an applicant, reprimand a registrant or registered sales representative, suspend or revoke a registration or a registration certificate, or impose a civil penalty on a registrant or registered sales representative if the Unit

determines that the applicant , registrant, or registered sales representative:

- (i) fraudulently or deceptively obtained or attempted to obtain a registration or registration certificate;
- (ii) fraudulently or deceptively used a registration or registration certificate;
- (iii) presented or attempted to present the home builder registration number of another registrant as the applicant's or registrant's home builder registration number;
- (iv) used or attempted to use an expired, suspended, or revoked home builder registration number or registration certificate;
- (v) presented or attempted to present the registration certificate of another registered sales representative as the applicant's or registered sales representative's registration certificate;
- (vi) impersonated or falsely represented oneself as a registered home builder or registered sales representative;
- (vii) repeatedly violated this title;
- (viii) engaged in a pattern of unfair or deceptive trade practices under the Consumer Protection Act, [FN1] as determined by a final administrative order or judicial decision;
- (ix) repeatedly violated a local building, development, or zoning permit law or regulations, or a State or federal law or regulation, including an environmental protection law or regulation, that relates to the fitness and qualification or ability of the applicant or registrant to build homes;
- (x) engaged in a pattern of poor workmanship as evidenced by one or more of the following:
  - 1. repeated unresolved building code violations;

2. repeated unsatisfied arbitration awards in favor of consumers against the applicant or registered home builder based on incomplete or substandard work; or

3. an unsatisfied final judgment in favor of a consumer;

(xi) repeatedly engaged in fraud, deception, misrepresentation, or knowing omissions of material facts related to home building contracts;

(xii) had a similar registration, registration certificate, or license denied, suspended, or revoked in another state or jurisdiction;

(xiii) had the renewal of a similar registration, registration certificate, or license denied for any cause other than failure to pay a renewal fee; or

(xiv) in the Chesapeake and Atlantic Coastal Bays Critical Area, as defined under § 8-1802 of the Natural Resources Article, failed to comply with:

1. the terms of a State or local permit, license, or approval; or

2. any State or local law, an approved plan, or other legal requirement.

(2) The Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, as established under Title 8, Subtitle 18 of the Natural Resources Article, shall notify the unit of any applicant or registrant who fails to comply with any requirement under paragraph (1)(xiv) of this subsection.

(b)(1) The Unit may deny a registration to a nonpublicly traded applicant or suspend or revoke a registration of a nonpublicly traded registrant if a principal of the applicant or registrant, other than a financial institution or a nonprofit organization, that owns at least 10 percent of the applicant or registrant, was a principal of a home builder that had a similar registration or license denied, suspended, or revoked by the Unit or in another state or jurisdiction for any cause other than a failure to pay a renewal fee if the Unit determines that the interests of the public cannot be

protected if the applicant or registrant is allowed to act as a home builder in the State.

(2) For the purposes of this subsection, the interests of a principal include interests held by the parents, spouse, or children of the principal.

(c) The Unit shall provide an applicant , registrant, or registered sales representative notice and an opportunity to request a hearing under Title 10, Subtitle 2 of the State Government Article to contest a proposed disciplinary action.

#### **Subtitle 4. Remedies**

##### **§ 4.5-401. Remedies**

(a) The Division shall encourage the owner or buyer to pursue resolution of the dispute pursuant to the existing contract.

(b) The owner's or buyer's remedies under this subtitle shall not supersede any consumer contractual obligations, and are in addition to any remedies the owner or buyer may have under the Consumer Protection Act or any other law.

#### **Subtitle 5. Prohibited Acts; Penalties**

##### **§ 4.5-501. Prohibited acts; penalties; exemptions from title**

(a) Except as otherwise provided in this title, a person may not act as, offer to act as, hold oneself out as, or impersonate a registrant or registered sales representative in the State unless the person is a registrant or registered sales representative.

(b) A person that violates this section is guilty of a misdemeanor and, on first conviction, is subject to a fine not exceeding \$1,000 and on second or subsequent conviction, is subject to a fine not exceeding \$5,000.

(c) The following lenders are exempt from the requirements relating to registration under this title when the lender hires a second registered home builder who would undertake to complete a first home builder's unfinished project pursuant to a default in obligations of the first home builder to the lender:

(1) a mortgage lender as defined in § 11-501(i)(1)(ii) of the Financial Institutions Article that is a licensee under Title 11, Subtitle 5 of the Financial Institutions Article;

(2) a bank, trust company, savings bank, savings and loan association, or credit union incorporated or chartered under the laws of this State or the United States that maintains its principal office in this State;

(3) an out-of-state bank as defined in § 5-1001 of the Financial Institutions Article that has a branch in this State that accepts deposits;

(4) an institution incorporated under federal law as a savings association or savings bank that does not maintain its principal office in this State but has a branch that accepts deposits in this State; and

(5) a subsidiary or affiliate of an institution described in paragraph (2), (3), or (4) of this subsection that is subject to audit or examination by a regulatory body or agency of this State, the United States, or the state where the subsidiary or affiliate maintains its principal office.

(d) An exempt lender is subject only to §§ 4.5-202(c), 4.5-401, 4.5- 503, 4.5-601, 4.5-602, and 4.5-603 of this title.

#### **§ 4.5-502. Civil administrative action**

(a) Subject to the notice and hearing provisions of Title 10, Subtitle 2 of the State Government Article, the Division may bring a civil administrative action against a person that violates § 4.5-501(a) of this subtitle.

(b) After a hearing, if the Division finds that a person has violated § 4.5- 501(a) of this subtitle, the Division may:

(1) order the person to cease and desist from unlawful practice; and

(2) impose a civil penalty of not more than \$1,000 for each day of unlawful practice.

(c) Any party aggrieved by a decision and order of the Division under this section may file an appeal as provided under §§ 10-222 and 10-223 of the State Government Article.

#### **§ 4.5-503. Advertising without registration number**

A person may not advertise in any way that the person is registered under this title unless the advertisement states the home builder registration number of the person in one of the following forms:

"Maryland Home Builder Registration No. \_\_\_\_"; or

"MHBR No. \_\_\_\_".

#### **§ 4.5-504. Criminal penalty**

(a) This section only applies if there is no greater criminal penalty provided under this title or other applicable law.

(b) A person who engages in repeated violations of this title is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$2,500.

### **Subtitle 6. Miscellaneous Provisions**

#### **§ 4.5-601. Permits**

(a) Except for a building permit for construction to be performed directly by a landowner solely for the landowner's own use, the building and permits department of a county may not issue a permit for home building unless:

(1) the permit includes the home builder registration number of a registrant; and

(2) the person pays the Guaranty Fund fee required under § 4.5-704 of this title.

(b) Before issuing a permit for home building to a landowner, the building and permits department of a county shall obtain the signature of the landowner affirming that the permit is being issued solely for the purpose of the landowner performing work on the landowner's own property.

(c) Nothing in this section shall be construed to relieve a registrant from the obligation to obtain all other permits, licenses, and other authorizations for the construction of a new home.

#### **§ 4.5-602. Building code defined; notice of building code violations**

(a) In this section, "building code" includes a code provision concerning mechanical, electrical, fire, plumbing, energy, heating, ventilation, or air-conditioning matters.

(b) A county or municipal corporation shall notify the Director of each registrant who fails to correct a violation of the applicable local or State building code within a reasonable time after the registrant receives notice of the violation.

#### **§ 4.5-603. Information required for initial new home sale**

A registrant shall include in any contract for the initial sale of a new home the information required under § 14-117(j) of the Real Property Article.

#### **§ 4.5-604. Industrialized buildings**

A home builder who installs an industrialized building intended for residential use or a mobile home is responsible to the owner for correcting any defects in any component incorporated into the new home except for those industrialized buildings or mobile homes that are the responsibility of the manufacturer of the industrialized building and mobile home pursuant to Title 12, Subtitle 3 of the Public Safety Article.

#### **§ 4.5-605. Contracts with unregistered home builders**

A contract for the performance of any act for which a home builder registration number is required is not enforceable unless the home builder was registered at the time that the contract was signed by the owner.

### **Subtitle 7. Home Builder Guaranty Fund**

#### **§ 4.5-701. Actual loss defined**

In this subtitle, "actual loss" means:

(1) the costs of restoration, repair, replacement, or completion that arise from:

(i) the incomplete construction of a new home or the breach of an express or implied warranty, as defined in §§ 10-202 and 10-203 of the Real Property Article; or

(ii) the failure to meet standards or guidelines required in § 14-117 of the Real Property Article; or

(2) deposits or other payments made to a home builder required to be held in an escrow account or protected by a surety bond or irrevocable letter of credit under § 10-301 or § 10-504 of the Real Property Article, that are not returned to a consumer who is entitled to a return of the deposit or other payments.

#### **§ 4.5-702. Authority to take disciplinary action not limited**

This subtitle does not:

- (1) limit the authority of the Division to take disciplinary action against a registrant under this subtitle;
- (2) limit the availability of other remedies to a claimant; or
- (3) require a claimant to exhaust administrative remedies before the Division before bringing an action to court.

**§ 4.5-703. Home Builder Guaranty Fund established**

(a) The Division shall:

- (1) establish a Home Builder Guaranty Fund; and
- (2) maintain the Guaranty Fund at a level of at least \$1,000,000.

(b)(1) The Division shall deposit all money collected under § 4.5-704 of this subtitle in the Guaranty Fund.

(2)(i) The State Treasurer is the custodian of the Guaranty Fund.

(ii) The Guaranty Fund shall be invested and reinvested in the same manner as other State funds.

(iii) The State Treasurer shall deposit payments received from the Division under this section into the Guaranty Fund.

(iv) Investment earnings shall be credited to the Guaranty Fund.

(c) The Division shall administer the Guaranty Fund in accordance with this subtitle.

(d) The direct and indirect costs incurred for the administration of and enforcement related to the Guaranty Fund shall be paid from the Registration Fund established under § 4.5-203 of this title.

(e) The Office of Legislative Audits shall audit the accounts and transactions of the Guaranty Fund under § 2-1220 of the State Government Article.

#### **§ 4.5-704. Guaranty Fund fee**

(a)(1) Subject to the provisions of subsection (c) of this section, a home builder shall pay to the building and permits department of a county a Guaranty Fund fee as set by the Division under subsection (c) of this section with each application for a permit for construction of a new home.

(2) The home builder may collect the Guaranty Fund fee from the consumer.

(3) Each month, the building and permits department of a county shall remit all the Guaranty Fund fees to the Division to be deposited in the Guaranty Fund.

(4) The Guaranty Fund fee may be deposited only in the Guaranty Fund.

(b) If a registrant fails to pay the Guaranty Fund fee, the registrant's home builder registration is suspended until the fee is paid.

(c) The Division shall set the amount of the Guaranty Fund fee required under subsection (a) of this section so as to not exceed \$50 and to maintain the Guaranty Fund level required under § 4.5-703(a) of this subtitle.

#### **§ 4.5-705. Recovery from Fund for actual loss caused by registrant**

(a) Subject to this subtitle a claimant may recover compensation from the Guaranty Fund for an actual loss that results from an act or omission by a registrant as found by the Division or a court

of competent jurisdiction.

(b) Before submitting a claim to the Guaranty Fund, a consumer shall:

(1) send a registrant a written notice describing the alleged defect or other claim for which the consumer intends to seek recovery; and

(2) permit the registrant access, during regular business hours, to the consumer's property to inspect, determine the cause of, and remedy the alleged defect or other claim within a reasonable period of time.

(c)(1)(i) If a consumer has a new home warranty security plan, the consumer may also seek recovery from the Guaranty Fund if the consumer has first:

1. filed a claim with the new home warranty security plan; and

2. exhausted the plan's claim process.

(ii) A consumer seeking recovery under subparagraph (i) of this paragraph may not receive more than one recovery for the same actual loss.

(2) A claimant who has also filed a claim with a new home warranty security plan shall include with the claim against the Guaranty Fund:

(i) a copy or description of the claim filed with the new home warranty security plan;

(ii) any documents submitted by the claimant in support of the warranty claim, including engineering or inspection reports;

(iii) any documents submitted on behalf of the home builder or warranty plan in connection with the warranty claim, including engineering or inspection reports;

(iv) disclosure of any recoveries received in connection with the warranty claim; and

(v) if all or part of the warranty claim was denied, a copy of the denial.

(d)(1) The Division may deny a claim if the Division finds that the claimant unreasonably rejected good faith efforts by the registrant to resolve the claim.

(2) In determining whether a claim should be denied under paragraph (1) of this subsection, the Division shall consider whether the claimant provided the registrant with notice and a reasonable opportunity to access and inspect and repair the claimed defect as required under subsection (b) of this section.

(e) The Division may not award from the Guaranty Fund:

(1) more than \$50,000 to one claimant for acts or omissions of one registrant;

(2) more than \$300,000 to all claimants for acts or omissions of one registrant unless, after the Division has paid out \$300,000 on account of acts or omissions of the registrant, the registrant reimburses \$300,000 to the Guaranty Fund; or

(3) an amount for attorney's fees, consequential damages, court costs, interest, personal injury damages, or punitive damages.

(f) A claim against the Guaranty Fund based on the act or omission of a particular registrant may not be made by:

(1) a spouse or other immediate relative of the registrant;

(2) an employee or principal of the registrant; or

(3) an immediate relative of an employee or principal of the registrant.

(g)(1) A claimant may bring a claim against the Guaranty Fund within 2 years after the claimant discovered or, should have discovered the loss or damage or within 2 years after the expiration of the warranty under § 10-204 of the Real Property Article, whichever occurs first.

(2) If a claimant has filed a claim with a new home warranty security plan, a claimant may bring a claim against the Guaranty Fund within 4 months after the claims process of the home warranty security plan is exhausted.

#### **§ 4.5-706. Proceedings for recovery**

(a) To begin a proceeding to recover from the Guaranty Fund, a claimant shall submit to the Division's mediation unit a written complaint that states:

(1) the amount claimed based on the actual loss;

(2) the facts giving rise to the claim;

(3) whether there is other evidence that supports the claim, including expert reports, photographs, or videotapes and that the evidence is included with the complaint;

(4) what documents are related to the claim and that copies of the documents are attached, including the contract of sale; and

(5) any other information that the Division requires.

(b) The Division's mediation unit shall:

(1) send a copy of the complaint to the registrant alleged to be responsible for the actual loss;

(2) require a written response to the complaint within 30 days that includes:

(i) any evidence the registrant has concerning the claim, including expert reports, photographs, or videotapes; and

(ii) any other information that the Division requires;

(3) attempt to resolve the complaint through mediation, taking into consideration applicable laws, including express and implied warranties and the provisions of § 4.5-401 of this title; and

(4) refer the complaint to the Division as a claim against the Guaranty Fund if:

(i) 1. the home builder fails to respond as required by this section;

2. the mediation unit concludes that the complaint cannot be resolved through mediation; or

3. in mediation, the parties do not mutually agree to an arbitrator; and

(ii) the claimant executes a claim form prepared by the Division stating under oath that the claimant wishes to seek recovery from the Guaranty Fund.

(c)(1) If a claimant's new home contract includes a written agreement with a registrant to submit a dispute to arbitration and the agreement authorizes:

(i) the registrant to select the arbitrator or the arbitration service, the claimant may elect whether to first seek recovery from the Guaranty Fund or submit the dispute to arbitration; or

(ii) if the claimant's new home contract provides for mutual selection of the arbitration service and the claimant and registrant have mutually agreed on an arbitration service, the claimant must submit the dispute to arbitration prior to seeking recovery from the Guaranty Fund.

(2) If the claimant and the registrant submit the dispute to arbitration under the written agreement in the contract and the arbitrator makes a final judgment or final award in favor of

the claimant:

(i) the claimant may make a claim against the Guaranty Fund; but

(ii) if the registrant pays the award amount to the claimant within 90 days of the final award, the Division shall dismiss the claim against the Guaranty Fund.

**§ 4.5-707. Notice, hearings, and review**

(a) The procedures for notice, hearings, and judicial review that apply to proceedings under Title 3, Subtitle 2 of the Courts and Judicial Proceedings Article also apply to proceedings to recover from the Guaranty Fund.

(b) On receipt of a claim, the Division shall:

(1) send a copy of the claim to the registrant alleged to be responsible for the actual loss; and

(2) require a written response to the claim within 30 days.

(c)(1) The Division:

(i) shall review the claim and any response to it; and

(ii) may refer the claim for investigation.

(2) On the basis of its review and any investigation, the Division may:

(i) set the matter for a hearing with the Office of Administrative Hearings;

(ii) dismiss the claim, if the claim is frivolous, legally insufficient, or made in bad faith; or

(iii) if the total claim against a particular registrant does not exceed \$5,000, issue a proposed order to pay all or part of the claim or deny the claim.

(d)(1) The Division shall send a proposed order issued under subsection (c)(2)(iii) of this section to the claimant and the registrant, at the most recent address on record with the Division, by:

(i) personal delivery; or

(ii) both regular mail and certified mail, return receipt requested.

(2) Within 21 days after service, receipt, or attempted delivery of the proposed order, the claimant or registrant may submit to the Division:

(i) a written request for a hearing before the Division; or

(ii) a written exception to the proposed order.

(3) If the claimant or registrant submits a timely exception to the proposed order, the Division may:

(i) issue a revised proposed order;

(ii) set a hearing on the claim; or

(iii) dismiss the claim.

(4) Unless the claimant or registrant submits a timely request for a hearing or timely exception, the proposed order is final.

(e) At a hearing on a claim, the claimant has the burden of proof.

(f) A claimant and registrant may participate in a Guaranty Fund proceeding without representation by counsel.

#### **§ 4.5-708. Joinder of proceedings**

(a)(1) The Division may join a proceeding on a claim against the Guaranty Fund with a disciplinary proceeding against a registrant under this subtitle if the disciplinary hearing is based on the same facts alleged in the claim.

(2) In a consolidated proceeding the claimant is a party, and may participate in the hearing to the extent necessary to establish the claim.

(b)(1) Notwithstanding § 4.5-702(2) of this subtitle, a claimant may not concurrently submit a claim to recover from the Guaranty Fund and bring an action in a court of competent jurisdiction against a registrant based on the same facts alleged in the claim.

(2) If, after filing a claim, the claimant brings an action in a court of competent jurisdiction based on the same facts alleged in the pending claim, the Division shall stay its proceedings on the claim until there is a final judgment and all rights to appeal are exhausted.

(3) To the extent that a final judgment or final award in arbitration is based on the same factual and legal issues alleged in a pending claim, the Division shall:

(i) approve the claim against the Guaranty Fund, if the judgment or award is decided in favor of the claimant and the registrant has failed to pay the judgment or award; or

(ii) dismiss the claim against the Guaranty Fund, if the judgment or award is decided in favor of the registrant.

#### **§ 4.5-709. Appeals**

A party to a proceeding before the Division who is aggrieved by a final decision of the Division in a contested case, as defined in § 10-202 of the State Government Article, may take an appeal as allowed in §§ 10-222 and 10-223 of the State Government Article.

**§ 4.5-710. Payment of claims**

(a) The Division may order payment of a claim against the Guaranty Fund only if:

(1) the decision or order of the Division is final in accordance with Title 10, Subtitle 2 of the State Government Article and all rights of appeal are exhausted; or

(2) the claimant provides the Division with a certified copy of a final judgment of a court of competent jurisdiction or a final award in arbitration, with all rights of appeal exhausted, in which the court or arbitrator:

(i) expressly made findings of fact that support the claimant's right to recover under § 4.5-705(a) of this subtitle; and

(ii) has found the value of the actual loss.

(b)(1) Except as otherwise provided in this subsection, the Division shall pay approved claims in the order submitted.

(2) If approved claims submitted to the Division against a registrant exceed \$300,000, less the amount of unreimbursed claim payments previously made for the registrant, the Division may pay the approved claims proportionately so that each claimant receives the same percentage payment of the claims.

(3) After the Guaranty Fund is reimbursed, the Division shall pay unsatisfied approved claims.

(c) If there is not enough money in the Guaranty Fund to pay an approved claim wholly or partially, the Division shall pay the unpaid claim:

(1) when enough money is deposited in the Guaranty Fund; and

(2) in the order that each claim originally was filed with a court of competent jurisdiction or submitted to the Division.

#### **§ 4.5-711. Subrogation**

(a)(1) After the Division pays a claim from the Guaranty Fund:

(i) the Division is subrogated to all rights of the claimant in the claim up to the amount paid;

(ii) the claimant shall assign to the Division all rights of the claimant in the claim up to the amount paid; and

(iii) the Division has a right to reimbursement of the Guaranty Fund by the registrant whom the Division finds responsible for the act or omission giving rise to the claim for:

1. the amount paid from the Guaranty Fund; and

2. interest on that amount at a rate determined by the Division so as not to exceed the legal rate of interest on a judgment in place at the time the claim is approved.

(2) All money that the Division recovers on a claim shall be deposited in the Guaranty Fund.

(b) If, within 30 days after the Division gives notice, a registrant on whose account a claim was paid does not reimburse the Guaranty Fund in full, the Division may sue the registrant in a court of competent jurisdiction for the unreimbursed amount.

(c) The Division is entitled to a judgment for the unreimbursed amount if the Division proves that:

(1) a claim was paid from the Guaranty Fund on account of the registrant;

(2) the registrant has not reimbursed the Guaranty Fund in full;

(3) the registrant was given notice and an opportunity to participate in a hearing on the claim before the Division; and

(4)(i) the Division directed payment based on a final judgment of a court of competent jurisdiction or a final award in arbitration; or

(ii) the decision or order of the Division is final in accordance with Title 10, Subtitle 2 of the State Government Article and there is no pending appeal.

(d) The Division may refer to the Central Collection Unit for collection under §§ 13-912 through 13-919 of the Tax--General Article a debt owed to the Division by a registrant on whose account a claim was paid from the Guaranty Fund and who is at least 12 months behind in reimbursement payments to the Guaranty Fund.

(e) For the purpose of excepting to a discharge of a registrant under federal bankruptcy law, the Division is a creditor of the registrant for the amount paid from the Guaranty Fund.

(f)(1)(i) If a person liable for reimbursing the Guaranty Fund under this section receives a demand for reimbursement and fails to reimburse the Guaranty Fund, the reimbursement amount and any accrued interest or costs are a lien in favor of the State on any real property of the person if the lien is recorded and indexed as provided in this subsection.

(ii) Interest shall continue at the rate of interest on a judgment as provided in § 11-107(a) of the Courts Article until the full amount due the Guaranty Fund is paid.

(2) The lien in favor of the State created by this subsection may not attach to specific property until the State Central Collection Unit records written notice of the lien in the office of the clerk of the court for the county in which the property subject to the lien or any part of the property is located.

(3) The lien in favor of the State created by this subsection does not have priority as to any specific property over any person who is a lienholder of record at the time the notice required under paragraph (2) of this subsection is recorded.

(4) The notice required under paragraph (2) of this subsection shall contain:

(i) the name and address of the person against whose property the lien exists;

(ii) the amount of the lien;

(iii) a description of or reference to the property subject to the lien; and

(iv) the date the Guaranty Fund paid the claim giving rise to the lien.

(5) On presentation of a release of any lien in favor of the State created by this subsection, the clerk of the court in which the lien is recorded and indexed shall record and index the release and shall note in the lien docket the date the release is filed and the fact that the lien is released.

(6) The notice required under paragraph (2) of this subsection and any release filed under paragraph (5) of this subsection shall be indexed with the judgment lien records maintained by the office of the clerk of the court where the notice is recorded.

(7) The clerk may collect a reasonable fee for recording and indexing each notice of lien or release of any lien under this subsection.

#### **§ 4.5-712. Suspension of registration pending reimbursement of Fund**

(a) If the Division pays a claim against the Guaranty Fund based on an act or omission of a registrant, the Division may suspend the home builder registration until the registrant reimburses the Fund in full for:

(1) the amount paid from the Guaranty Fund; and

(2) interest on that amount at a rate determined by the Division so as not to exceed the legal rate of interest on a judgment in place at the time a claim is approved.

(b) Reimbursement of the Guaranty Fund in full by a registrant, by itself, does not nullify or modify the effect of a disciplinary proceeding against a registrant.

(c) If a home builder holds a license or registration in Montgomery County, the county may suspend the license as provided in this section.

### **Subtitle 8. Short Title**

#### **§ 4.5-801. Short title**

This title may be cited as the Maryland Home Builder Registration Act.

Current through all chapters of the 2008 Regular Session of the General Assembly.