

MEMORANDUM

October 5, 2018

TO: County Council

FROM: Amanda Mihill, Legislative Attorney *AMihill*

SUBJECT: Bill 31-18, New Home Warranty and Builder Licensing - Amendments

PURPOSE: Public Hearing – no Council votes required

Bill 31-18, New Home Warranty and Builder Licensing - Amendments, sponsored by Lead Sponsor Councilmember Rice, was introduced on September 18. A Public Safety Committee worksession is tentatively scheduled for October 29, 2018 at 9:30 a.m.

Bill 31-18 would require new home builders and new home sellers to register with the Office of Consumer Protection, require new home builders and new home sellers to provide buyers with a new home warranty, and require the Office of Consumer Protection to administer and enforce County law related to new home builders and new home sellers. The first portion of Bill 31-18 deletes all provisions of Chapter 31. New language added to the Chapter begins on ©16.

Bill 31-18 can generally be summarized as an effort to:

- establish greater uniformity with the State of Maryland's builder registration law (Maryland Code – Business Regulation – Title 4.5 Home Builder Registration).
- ensure that building permits are issued by DPS to registered new home builders, and not issued to homeowners or unregistered builders who falsely represent that they are constructing a new home for their personal occupancy.
- clarify the procedures for reviewing new home builder registration applications, and the procedures and basis for revoking a registration.
- address business model changes in which some new home builders form multiple, single-purpose Limited Liability Corporations to construct or sell new homes.
- delete any outdated references regarding Montgomery County's former 10-year warranty law and 3rd party warranty enrollment mandate.

This packet contains:

Bill 31-18
Legislative Request Report

Circle #

1
33

Bill No. 31-18
Concerning: New Home Warranty and
Builder Licensing - Amendments
Revised: 9/13/2018 Draft No. 7
Introduced: September 18, 2018
Expires: March 18, 2020
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By Lead Sponsor: Councilmember Rice

AN ACT to:

- (1) require new home builders and new home sellers to register with the Office of Consumer Protection;
- (2) require new home builders and new home sellers to provide buyers with a new home warranty;
- (3) require the Office of Consumer Protection to administer and enforce County law related to new home builders and new home sellers; and
- (4) generally amend County law related to new home builders and new home sellers.

By amending

Montgomery County Code
Chapter 2A, Administrative Procedures Act
Section 2A-2

By repealing

Chapter 31C, New Home Warranty and Builder Licensing
Sections 31C-1, 31C-2, 31C-3, 31C-4, 31C-5, 31C-6, 31C-7, 31C-8, 31C-9, 31C-10,
31C-11, 31C-12, 31C-13, and 31C-14

By adding

Chapter 31C, New Home Builder and Seller Registration and Warranty
Sections 31C-1, 31C-2, 31C-3, 31C-4, 31C-5, 31C-6, 31C-7, 31C-8, 31C-9, 31C-10, 31C-11, and 31C-12

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

The County Council for Montgomery County, Maryland approves the following Act:

1 Sec. 1. Chapter 31C (Sections 31C-1, 31C-2, 31C-3, 31C-4, 31C-5, 31C-6, 31C-7,
 2 31C-8, 31C-9, 31C-10, 31C-11, 31C-12, 31C-13, and 31C-14) is repealed and
 3 Chapter 31C (Sections 31C-1, 31C-2, 31C-3, 31C-4, 31C-5, 31C-6, 31C-7, 31C-8,
 4 31C-9, 31C-10, 31C-11, and 31C-12) is added as follows:

5 *[Chapter 31C. New Home Warranty and Builder Licensing.*

6 *31C-1. Definitions.*

7 *In this Chapter, the following words have the meanings indicated:*

- 8 (1) *Board. "Board" means the board of registration.*
- 9 (2) *Builder. "Builder" means any person or business organization:*
- 10 *a. That is engaged in the business of erecting or otherwise creating*
 11 *a new home; or*
- 12 *b. To whom a completed new home is conveyed for resale in the*
 13 *course of the business of the person or business organization.*
- 14 (3) *Director. "Director" means the Director of the Office of Consumer*
 15 *Protection.*
- 16 (4) *Dispute settler. "Dispute settler" means an independent contractor with*
 17 *building construction expertise hired by the Office.*
- 18 (5) *The fund. "The fund" means the new home warranty security fund, which*
 19 *is moneys contributed by participating builders in the warranty program*
 20 *administered by the County.*
- 21 (6) *Load-bearing portions of the home. "Load-bearing portions of the home"*
 22 *means:*
- 23 *a. Foundation system and footings;*
- 24 *b. Beams;*
- 25 *c. Girders;*
- 26 *d. Lintels;*
- 27 *e. Columns;*

- 28 *f. Walls and partitions;*
- 29 *g. Floor systems; and*
- 30 *h. Roof framing system.*
- 31 (7) *Major structural defect. "Major structural defect:"*
- 32 *a. Means any actual damage to load-bearing portions of the home*
- 33 *that:*
- 34 *(i) Affects its load-bearing function; and*
- 35 *(ii) Vitally affects or is immediately likely to vitally affect use of*
- 36 *the home for residential purposes;*
- 37 *b. Includes damage due to subsidence, expansion, or lateral*
- 38 *movement of the soil; and*
- 39 *c. Does not include damage caused by movement of the soil caused*
- 40 *by flood or earthquake.*
- 41 (8) *New home. "New home" means every newly constructed private dwelling*
- 42 *unit and the fixtures and structure that are made a part of a newly*
- 43 *constructed private dwelling unit at the time of construction.*
- 44 (9) *Office. "Office" means the Office of Consumer Protection.*
- 45 (10) *Owner. "Owner:"*
- 46 *a. Means any person for whom the new home is built or to whom the*
- 47 *home is sold for residential occupation by:*
- 48 *(i) That person or the family of that person as a home; and*
- 49 *(ii) The successors of that person in title to the home or*
- 50 *mortgage in possession;*
- 51 *b. Does not mean:*
- 52 *(i) Any development company, association, or subsidiary*
- 53 *company of the builder; or*

(ii) *Person or organization to whom the home may be conveyed by the builder for any purpose other than residential occupation by that person or organization.*

(11) *Warranty date. "Warranty date" means the first day that the owner occupies or settles on the new home, whichever first occurs.*

31C-2. Licensing.

(a) *Requirement.*

(1) *A builder must not engage in the business of constructing new homes or act in the capacity of a building contractor in the County unless the builder is licensed by the Office.*

(2) *The Office must provide application forms for licensing and prescribe the information to be included.*

(3) *Each application must be accompanied by:*

a. *A reasonable fee sufficient to cover the cost of administration of this Chapter; and*

b. *Additional information as the County Executive requires by executive regulations.*

(4) *Within 60 days after submission of a complete application for a license, unless the time is extended for good cause, the Board must certify to the Director whether:*

a. *The applicant and the organization of the applicant are qualified to comply with the building code and laws of the County and State, and to fully perform building contracts; and*

b. *The applicant should be licensed.*

(5) *The Director must notify the applicant of the certification or denial of certification within 75 days of submission of a completed*

application. If the Director fails to notify the applicant within 75 days of submission, the applicant is deemed certified.

(6) If the applicant is denied certification, the Director must:

a. In writing notify the applicant of the denial and the reasons for the denial; and

b. Mail the denial by certified mail to the address on the application.

(7) An applicant may appeal a denial to the County Board of Appeals.

(b) *Licensing.* Each license is valid for a period of 2 years from the date of issue.

(c) *Amendment.* A builder must amend the license within 30 days of any material change in the information provided in the most recent application or amendment.

(d) *Building permits.* The Department of Permitting Services must not issue building permits for a residence to any builder who does not possess a valid license under this Chapter.

(e) *Denial of license.* The Office must not issue a license to a builder who has or had any legal interest in a previously licensed firm who has or had a license revoked or suspended for any reason listed in Section 31C-8.

(f) *Register of applicants.* The Director must maintain a register for the Board of all applicants and licenses.

(g) *Certificate of inspection.* A builder must provide to a purchaser at the time of occupancy or settlement, whichever first occurs, a statement signed by the builder, that all county-required inspections have been performed.

31C-3. New home warranty.

(a) *Warranty required. A builder must give an owner a written warranty that provides the warranty coverage required by this Chapter before entering into a contract to sell or build a new home. The Executive may issue regulations governing the form and content of the warranty.*

(b) *Performance standards.*

(1) *The terms of a new home warranty are established by executive regulation.*

(2) *The warranty must include minimum performance standards for the construction and quality of the components of a new home.*

(3) *When minimum performance standards are not provided, industry standards for good building practice determine compliance with the new home warranty.*

(c) *Duration of warranty. The builder must warrant the new home that:*

(1) *For one year, starting on the warranty date, the new home must be free from any defect in materials or workmanship as defined in the minimum performance standards.*

(2) *For 2 years, starting on the warranty date, the new home must be free from any defect in the electrical, plumbing, heating, cooling, ventilating, and mechanical systems.*

(3) *For 5 years, starting on the warranty date, the new home must be free from any major structural defect.*

(d) *Exclusions.*

(1) *The written warranty may exclude:*

a. *Damage to real property which is not part of the home covered by the warranty and which is not included in the purchase price of the home;*

b. *Bodily injury or damage to personal property;*

c. Any defect in, or caused by, materials or work supplied by anyone other than the builder, or its employees, agents, or subcontractors; and

d. Any loss or damage which the owner has not taken timely action to minimize.

(2) The Executive may issue regulations permitting additional exclusions.

(e) Statutory warranties. The statutory warranties required by this Chapter are in addition to all other implied or express warranties imposed by law or agreement. Each builder must disclose the information required by, and otherwise comply with, Sections 10-601 through 10-610 of the Real Property Article of the Maryland Code.

(f) Financial security.

(1) Before entering into a contract to sell or build a new home, a builder must:

(A) inform the buyer in writing whether any bond, insurance, or other financial security is responsible for or guarantees the builder's performance under the warranty required by this Chapter;

(B) provide proof of any such bond, insurance, or security to any buyer on request; and

(C) include the following notice in the sales contract immediately before the disclosure required by subparagraph (A):

NOTICE TO BUYER

Montgomery County law does not require this builder to furnish any bond, insurance, or other financial security to guarantee the builder's performance of its

warranty obligations. If a builder has promised you any other bond, insurance, or security to guarantee the performance of its warranty obligations, that bond, insurance, or security must be listed here:

- (2) The buyer must acknowledge in writing that the buyer has read and understands the notice required under paragraph (1)(C).

31C-4. Board of registration.

(a) Appointment of board.

(1) This section creates the board of registration.

(2) The board consists of five (5) members that the county executive appoints and the county council confirms.

(3) No more than two (2) members of the board must be active in the residential construction field at the time of their appointment.

(b) Voting. A simple majority vote is required for all board decisions.

(c) Term. The term for each member is 3 years. A vacancy is filled for the remainder of the unexpired term. Unless a member is removed for good cause, each member holds office until the term of the member expires or a successor is appointed and confirmed.

(d) Operation of the board.

(1) The board must elect from its members a chairperson, vice-chairperson, and secretary.

(2) In exercising the powers and duties of the board, three (3) members constitute a quorum.

(3) The board must:

- a. Keep minutes of its proceedings and meetings;
- b. Put its decisions in writing; and
- c. Submit an annual report of its proceedings to the director.

(4) The county attorney serves as counsel to the board.

(5) *Board members do not receive compensation for serving on the board.*

31C-5. New home warranty security fund.

(a) *Establishment.*

(1) *This Section establishes the County new home warranty security fund.*

(2) *The Department of Finance maintains the fund, and the Director administers the fund.*

(b) *Purpose. The purpose of the fund is to provide sufficient funds to pay claims by owners against builders who participate in the fund for any defect in new homes covered by the new home warranty.*

(c) *Amount.*

(1) *The Director must establish the amount payable by participating builders and may change the amount from time to time.*

(2) *Participating builders must pay the amount to the Department of Finance.*

(3) *The Department of Finance must:*

- a. Account for the amounts;*
- b. Credit the amounts to the fund;*
- c. Hold, manage, and invest the fund; and*
- d. Credit earned income to the fund.*

(d) *Termination. If the fund is terminated, all money remaining in the fund must revert to the County general fund.*

(e) *Processing of claims. The Executive must issue regulations for the implementation and processing of claims under the fund.*

(f) *Phaseout.*

(1) *The Director must not enroll any new home in the fund after December 31, 1995.*

(2) *The Director must not enroll a new home in the fund if the buyer signed the contract to build the home on or after April 1, 1995.*

31C-6. Private new home warranty security programs.

The Executive may issue regulations for the operation of private programs for homes enrolled in any program before April 1, 1995

31C-7. Warranty claims.

(a) Notification.

(1) *Before making a claim against the fund for any defect covered by the warranty, an owner must notify the builder of the defect and allow a reasonable time for its repair.*

(2) *If the repair is not made within a reasonable time or does not correct the defect, an owner may file a claim against the fund in the form and manner as the Director prescribes.*

(b) Conciliation.

(1) *The Office must administer a dispute settlement procedure between the owner and the builder.*

(2) *Any claim submitted by an owner to the Office must first be reviewed through a conciliation procedure.*

(3) *If the owner and the builder cannot reach a conciliation agreement, or do not comply with an agreement, the owner or the builder may submit a request for a dispute settler to handle the claim.*

(c) Dispute settler procedure.

- 239 (1) *The dispute settler must investigate each claim that an owner or*
 240 *builder submits to determine the validity of the claim and the extent*
 241 *of builder responsibility.*
- 242 (2) *If the dispute settler determines that repairs are to be made, the*
 243 *dispute settler must notify the builder.*
- 244 (3) *If the builder is unable or refuses to make the necessary repairs*
 245 *within a reasonable time, the dispute settler must determine the*
 246 *exact amount of the award to be paid out of the fund to the owner*
 247 *based on actual bids for completion of the repairs.*
- 248 (4) *The total amount of payments from the fund for any new home must*
 249 *not exceed the purchase price of the home.*
- 250 (5) *After the Director certifies the amount of the award, the Director*
 251 *must notify the Department of Finance. The Department of*
 252 *Finance must make payment to the owner from the fund.*
- 253 (d) *Payment from fund.*
- 254 (1) *A claim may not be brought against the fund after 3 years from the*
 255 *date that the owner occupies or settles on the new home, whichever*
 256 *first occurs.*
- 257 (2) *A claim may not be brought against the fund by a spouse or other*
 258 *immediate relative of a licensed builder if the claim involves a new*
 259 *home constructed by that builder.*
- 260 (3) *A claim may not be for payment of consequential, personal injury,*
 261 *or punitive damages, attorney fees, court costs, or interest.*
- 262 (4) *When the Department of Finance makes a payment from the fund,*
 263 *the Director may:*
- 264 a. *Proceed against the builder under Section 31C-8 of this*
 265 *Chapter; and*

b. Request the office of the County Attorney to initiate legal action against the builder.

(5) If the fund is insufficient to satisfy outstanding awards and anticipated awards for the succeeding year, the Director may:

a. Require participating builders to pay additional amounts to replenish the fund; and

b. Require payment of surcharges by the builders who are responsible for an unreasonable number of awards against the fund.

(6) If the fund is insufficient to satisfy any award, when sufficient money has been deposited in the fund, the Director may satisfy the unpaid awards in the order in which the claims were originally filed.

(7) When the Department of Finance makes a payment from the fund, the builder responsible for the award must fully compensate the fund the full amount paid to the owner plus interest from date of payment. The rate of interest is the amount that the County Executive designates by executive order.

(8) The County is not required to contribute money to the fund. The County does not have any liability to a person who has received an award when the amount in the fund is insufficient to pay the award.

(9) The fund does not limit the availability of other legal or equitable remedies but provides an additional and cumulative remedy for owners.

(e) Private new home warranty program.

- (1) *An owner who has a warranty claim against a builder who is participating in a private new home warranty program must make the claim under the procedures established by that program.*
- (2) *The Director may investigate any complaints against a private program for failing to honor the terms of the warranty.*
- (3) *This subsection does not limit the investigative power of the Director under any other law.*

31C-8. Investigation and hearings.

(a) Investigation.

- (1) *The Director may conduct an investigation into allegations made against any builder who is required to be licensed under this Chapter.*
- (2) *The Office may:*
 - a. *Hold hearings;*
 - b. *Subpoena the attendance of witnesses;*
 - c. *Administer oaths;*
 - d. *Require the production of evidence relating to any matter under investigation;*
 - e. *Inspect relevant books, papers, records, or documents of the builder at the place of business of the builder during business hours; and*
 - f. *Conduct inspections of new home construction sites and models.*

- (b) *Conduct of hearings. After giving a builder the opportunity for a hearing under subsection (c), the Board may deny, suspend, refuse to renew, or revoke the license of the builder, if the Board finds that the builder:*

- (1) *Made a misstatement of material fact in the application for license or renewal;*
- (2) *Committed fraud in connection with any building activity conducted under the requirements of this Chapter;*
- (3) *Committed gross negligence in connection with any building activity conducted under the requirements of this Chapter;*
- (4) *Violated the building code or laws of the County or State;*
- (5) *Did not provide the new home warranty required by this Chapter;*
- (6) *Did not correct or settle a claim arising out of a defect that is covered by the warranty required by this Chapter;*
- (7) *Did not file an amendment to a license application within 30 days of any material change in the information provided in the most recent application or amendment;*
- (8) *Incurred an excessive number of awards against the fund;*
- (9) *Aided, abetted, or knowingly combined or conspired with an unlicensed person with the intent to evade this Chapter;*
- (10) *Abandoned or willfully failed to perform, without justification, a contract for construction of a building that is to be used as a residence;*
- (11) *Willfully deviated from or disregarded plans or specifications in any material way without consent of the owner;*
- (12) *Did not comply with this Chapter in any material way;*
- (13) *Diverted funds or property that were received for the completion of a construction project, and used the funds or property for another project, operation, obligation, or purpose, with intent to defraud or deceive creditors or the owners; or*

(14) *Served as an officer, Director, or stockholder for a builder whose license was revoked or suspended under this Chapter.*

(c) *Notification.*

(1) *Before revoking or suspending any license, the Board must afford the builder an opportunity for a hearing under the Administrative Procedures Act.*

(2) *The builder may appeal a decision of the Board to the Montgomery County Board of Appeals.*

31C-9. Liability of builder.

(a) *A builder of a new home is liable to the owner during the period when the new home warranty is in effect.*

(b) *The builder is liable for any defect in the home which is covered by the warranty.*

(c) *The liability of a builder under the new home warranty is limited to the purchase price of the home in the first good faith sale.*

(d) *The owner may recover any damages due from a builder under this Section by filing a civil action in any court with jurisdiction*

31C-10. Administration.

(a) *The Director administers this Chapter.*

(b) *Reasonable costs for administration of the fund must be covered through both licensing fees and the fund.*

31C-11. Applicability of chapter.

(a) *This chapter applies only to construction work under the building code and laws of the county and state.*

(b) *Fees paid may not be refunded for any reason.*

(c) *A license is not required by a person who constructs a building that is to be used as a residence for use of that person or the immediate family of*

that person. The person must sign a statement that the work for which the permit is to be used is for that person or the immediate family of that person.

- (d) If a builder grants an improvement to an intermediate purchaser to evade liability to an owner under this chapter, the builder is liable on the subsequent sale of the improvement by the intermediate owner as if the builder sold the improvement without regard to the intervening grant.
- (1986 L.M.C., ch. 49, § 1.)

31C-12. Compliance with building code generally.

This chapter does not exempt any construction work in the county from the requirement that it comply with the building code.

31C-13. Violations and penalties.

- (a) A builder is subject to punishment for a class A violation under section 1-19 of this Code if that builder violates any provision of this chapter.
- (b) Each day a violation continues to exist is a separate offense.

31C-14. Regulations.

The county executive may adopt regulations to implement this chapter under method (2) of section 2A-15 of this Code.]

Chapter 31C. New Home Builder and Seller Registration and Warranty.

31C-1. Definitions.

In this Chapter, the following words have the meanings indicated:

Board means the Board for Registration of Building Contractors.

Consumer means a consumer as defined in Chapter 11 or a contract purchaser of a new home for use as a personal family residence or rental.

Contract purchaser means a person or legal entity who has entered into a contract with a new home builder or a new home seller to purchase a new home, but who has not yet settled on the purchase of the new home.

Director means the Director of the Office of Consumer Protection or the Director's designee.

Homeowner or owner means:

- (1) any person for whom a new home is built or to whom a new home is sold for residential occupation; and
- (2) the successors of that person in title to the home or mortgage in possession;

Homeowner does not mean:

- (1) any development company, association, or subsidiary company of the builder; or
- (2) a person or organization to whom the home may be conveyed by the builder for any purpose other than use by that person or organization.

Load-bearing portions of the home means:

- (1) foundation system and footings;
- (2) beams;
- (3) girders;
- (4) lintels;
- (5) columns;
- (6) walls and partitions;
- (7) floor systems; and
- (8) roof framing systems.

Major structural defect means any actual damage to load-bearing portions of the home that:

- (1) affects its load-bearing function; and
- (2) vitaly affects or is immediately likely to vitaly affect use of the home for residential purposes.

Major structural defect includes damage due to subsidence, expansion, or lateral movement of the soil. Major structural defect does not include damage caused by movement of the soil caused by flood or earthquake.

Maryland Home Builder Guaranty Fund means the Home Builder Guaranty Fund in Title 4.5 of the Business Regulation Article of the Maryland Code.

New home means a newly constructed residential dwelling unit and the fixtures and structure that are made a part of a newly constructed private dwelling unit at the time of construction. New home includes any detached house, custom home as defined in Section 10-501 of the Real Property Article of the Maryland Code, townhouse, modular home, condominium unit, or cooperative apartment.

New home builder or builder means any person, sole proprietor, business organization, or legal entity, including but not limited to, a corporation, limited liability corporation, or trust:

- (1) that is engaged in the business of erecting, constructing, or otherwise creating a new home;
- (2) to whom a completed new home is conveyed for resale in the course of the business of the person or business organization;
- (3) that undertakes to sell a new home in Montgomery County;
- (4) that applies for a building permit to construct a new home in Montgomery County;
- (5) that is engaged as a general contractor in the business of erecting, constructing, or otherwise creating a new home; or
- (6) that enters into a contract with a contract purchaser under which the seller agrees to provide the contract purchaser with a new home.

New home builder does not include:

- (1) a subcontractor or other vendor hired by a new home builder or a consumer to perform services or supply materials for the construction of

a new home if the subcontractor or vendor does not otherwise meet the requirements of this Chapter;

(2) the manufacturer of a residential mobile home, unless the manufacturer also installs the mobile home;

(3) a real estate developer who does not construct or enter into contracts with a consumer to sell or construct new homes;

(4) a financial institution that lends funds for the construction or purchase of residential dwellings in Montgomery County;

(5) a buyer's agent when representing a prospective buyer in the purchase of a new home; or

(6) a person who is conducting a foreclosure sale.

New home seller or seller means a person, sole proprietor, or legal entity that:

(1) has legal title to the property on which the new home is constructed; and

(2) is the person or legal entity listed on the sales contract with the contract purchaser to whom the property and new home are being sold and conveyed.

New home seller includes a corporation, limited liability corporation, or trust.

Office means the Office of Consumer Protection.

Warranty date means the first day that the homeowner occupies or settles on the new home, whichever first occurs.

31C-2. Applicability of Chapter.

(a) This Chapter applies only to construction work under the building code and laws of the County and state.

(b) This Chapter does not apply to a person who constructs a building that is to be occupied as a personal residence for use of that person, if the person:

(1) receives a waiver from the Office to apply for and obtain any permits from the Montgomery County Department of Permitting

Services to construct a new home without being registered as a new home builder or a new home seller;

(2) signs a statement affirming that any permits issued by the Department of Permitting Services are issued solely for the purpose of that person performing work on that person's own property; and

(3) signs a statement that the work for which the permit is issued for that person.

31C-3. Compliance with building code generally; building permits.

(a) Compliance with building code. This Chapter does not exempt any construction work in the County from the requirement that it comply with the building code.

(b) Building permits. The Department of Permitting Services must not issue any building permit for a residence to any new home builder or new home seller who is not registered with the Office under this Chapter.

(c) Certificate of inspection. A new home builder and new home seller must provide to a contract purchaser at the time of occupancy or settlement, whichever first occurs, a statement signed by the builder and seller, that all County-required inspections have been performed.

31C-4. Board of Registration.

(a) Appointment of Board.

(1) There is a Board of Registration.

(2) The Board consists of 5 members appointed by the County Executive and confirmed by the County Council.

(3) No more than 2 members of the Board may be active in the residential construction field at the time of their appointment.

(b) Term. The term for each member is 3 years. A vacancy is filled for the remainder of the unexpired term. Unless a member is removed for good cause, each member holds office until the term of the member expires or a successor is appointed and confirmed.

(c) The Director may designate up to 2 Office employees as ex officio, nonvoting members to promote coordination with the Office's activities.

(d) Operation of the Board; powers and duties of the Board.

(1) The Board must elect from its members a chairperson, vice-chairperson, and any other officers it deems necessary.

(2) The Board must:

(A) make recommendations to the Director whether a registration applicant, including a renewal applicant, should be registered with the Office;

(B) put its recommendations in writing; and

(C) by July 1 each year, submit an annual report of its proceedings to the Director.

(e) The County Attorney or the County Attorney's designee serves as counsel to the Board.

(f) Board members do not receive compensation for serving on the Board.

31C-5. Registration process; fees.

(a) Registration required. A new home builder or a new home seller must not engage, or offer to engage, in the business of constructing, selling, or advertising a new home for sale or act in the capacity of a building contractor in the County unless the builder or seller are first registered by the Office.

(b) Application. Each application for registration must be on a form the Director requires and:

- (1) provide information as to character, references, experience, education, and training in or related to erecting, constructing, or otherwise creating a new home or selling a new home;
- (2) disclose that the applicant agrees that any service of process from the Office to the applicant will be satisfied by mailing via regular mail and certified mail, to the applicant at the most current address listed on the application form; and
- (3) include any additional information required by regulation.

(c) Fees.

- (1) Each application must be accompanied by an application fee.
- (2) Any application fee paid is not refundable.

(d) Board recommendation. Within 60 days after receiving a completed registration application, the Board must recommend to the Director whether:

- (1) the applicant is qualified to comply with the building code and laws of the County and State, and to fully perform new home building and new home sales contracts; and
- (2) the applicant should be registered or receive a conditional registration that stipulates specific requirements to which the applicant must comply before the applicant's registration can be fully recommended to the Director.

(e) Director decision.

- (1) Within 75 days after receiving a completed application, the Director must notify the applicant of the of the Board's recommendation and the Director's final action regarding registration, conditional registration, or denial of registration. If the

Director fails to notify the applicant within 75 days of submission, the application is deemed approved.

(2) If the applicant is denied registration approval, the Director must:

(A) notify the applicant in writing of the denial and the reasons for the denial; and

(B) mail the denial by certified mail to the address on the application.

(3) The Director must not approve a registration for a builder or seller who has or had any legal interest in a previously licensed firm who has or had a license or registration revoked or suspended for any reason listed in Section 31C-10.

(f) *Expiration of license.* Unless renewed under the procedures in 31C-6, a registration expires on the second anniversary of its effective date. Once a registration expires, it cannot be renewed. The former registrant must submit a new application for registration.

(g) *Amendment.* A new home builder or a new home seller must amend the registration within 30 days of any material change in the information provided in the most recent application or amendment.

31C-6. Registration Renewal.

(a) A registered new home builder or new home seller may apply to renew their registration before the current registration expires by:

(1) submitting a completed renewal application;

(2) paying the required renewal fee; and

(3) making a payment to the Maryland Home Builder Guaranty Fund as required under State law.

(b) At least 60 days before a new home builder or new home seller registration is set to expire, the Office must provide notice to the

registrant by electronic mail or regular mail sent to the last known address of the registrant. This notice must contain:

- (1) a renewal application form or online link to the renewal form;
- (2) the date on which the current registration expires;
- (3) the date by which the Office must receive the renewal application; and
- (4) information regarding the required fees associated with the renewal.

(c) A registrant must submit a completed renewal application to the Office no later than 30 days before the registration is set to expire.

(d) The Director may request that the Board review any renewal application to ensure the applicant continues to meet the criteria in Section 31C-5.

(e) By the date on which a registration is set to expire, the Director must notify the applicant of the of the Board's recommendation, if any, and the Director's final action regarding renewal of a registration. If the Director fails to notify the applicant by this date, the renewal application is deemed approved.

(f) If the applicant is denied registration approval, the Director must:

- (1) notify the applicant in writing of the denial and the reasons for the denial; and
- (2) mail the denial by certified mail to the address on the application.

(g) A renewal registration is valid for 2 years.

31C-7. Enforceability of contracts.

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

31C-8. New home warranty.

(a) Warranty required. A new home builder or a new home seller must give a consumer a written warranty that provides the warranty coverage required by this Chapter before entering into a contract to sell or build a new home.

(b) Liability. The new home builder and new home seller are jointly and severally liable for honoring the terms of the warranty and cannot discharge this warranty obligation by providing a third-party new home warranty plan to the homeowner.

(c) Performance standards.

(1) The warranty must include minimum performance standards for the construction and quality of the components of a new home.

(2) If specific minimum performance standards are not provided, industry standards for good building practice determine compliance with the new home warranty.

(d) Duration of warranty. The new home builder and the new home seller are jointly and severally liable and must warrant to the homeowner, and all subsequent homeowners during the warranty period, the new home that:

(1) For 1 year, starting on the warranty date, the new home must be free from any defect in materials or workmanship as defined in the minimum performance standards.

(2) For 2 years, starting on the warranty date, the new home must be free from any defect in the electrical, plumbing, heating, cooling, ventilating, and mechanical systems.

(3) For 5 years, starting on the warranty date, the new home must be free from any major structural defect.

(e) Exclusions. The written warranty may exclude:

- (1) damage to real property which is not part of the home covered by the warranty and which is not included in the purchase price of the home;
- (2) bodily injury or damage to personal property;
- (3) any defect in, or caused by, materials or work supplied by anyone other than the builder, or its employees, agents, or subcontractors;
- (4) any loss or damage which the homeowner has not taken timely action to minimize; and
- (5) any additional exclusions permitted by Regulation.

(f) Statutory warranties. The statutory warranties required by this Chapter are in addition to all other implied or express warranties imposed by law or agreement. Each new home builder or new home seller must disclose the information required by, and otherwise comply with, Sections 10-601 through 10-610 of the Real Property Article of the Maryland Code.

(g) Financial security.

- (1) Before entering into a contract to sell or build a new home, a new home builder or a new home seller must:
 - (A) inform the consumer in writing whether any bond, insurance, or other financial security is responsible for or guarantees the builder's performance under the warranty required by this Chapter;
 - (B) provide proof of any such bond, insurance, or security to any buyer on request; and
 - (C) include the following notice in the sales contract immediately before the disclosure required by subparagraph (A):

NOTICE TO BUYER

Montgomery County law does not require this builder to furnish any bond, insurance, or other financial security to guarantee the builder's performance of its warranty obligations. If a builder has promised you any other bond, insurance, or security to guarantee the performance of its warranty obligations, that bond, insurance, or security must be listed here:

(2) The buyer must acknowledge in writing that the buyer has read and understands the notice required under paragraph (1)(C).

(3) A new home builder or new home seller may be required to post a bond if the Director determines that the builder constructed and sold a home without being registered.

31C-9. Liability of builder and seller.

(a) A new home builder and new home seller are jointly liable to the homeowner during the period when the new home warranty is in effect.

(b) The builder and seller are jointly liable for any defect in the home which is covered by the warranty.

(c) The liability of a builder and seller under the new home warranty is limited to the purchase price of the home in the first good faith sale.

(d) The homeowner may recover any damages due from a builder or seller under this Section by filing a civil action in any court with jurisdiction.

31C-10. Complaints, investigations, and administrative hearings.

(a) *Complaint.* A consumer or homeowner may file a written complaint with the Director. A complaint should state the name and address of the builder or seller alleged to have committed a violation of this Chapter, describe the violation, and provide any other information that the Office requires. The Director may act on a complaint that is not complete.

(b) *Investigation.* The Office may:

- (1) investigate any complaint made against any person or legal entity who is operating as a new home builder or new home seller and who is or should be required to be registered under this Chapter;
- (2) investigate any potential violation of and enforce this Chapter without receiving a complaint;
- (3) hold hearings or refer any matter to a hearing officer designated by the Chief Administrative Officer for an administrative hearing;
- (4) subpoena the attendance of witnesses and documents;
- (5) administer oaths;
- (6) require the production of evidence relating to any matter under investigation;
- (7) inspect relevant books, papers, records, or documents of the builder or seller at the place of business of the builder and seller during business hours; and
- (8) conduct inspections of new home construction sites and models.

(c) Hearing.

- (1) Before denying, suspending, refusing to renew, or revoking any registration, the Director must afford the builder or seller an opportunity for a hearing before a hearing officer designated by the Chief Administrative Officer for an administrative hearing.
- (2) After giving a builder or seller the opportunity for a hearing, the Director may deny, suspend, refuse to renew, or revoke the registration of a new home builder or new home seller if the Director finds that the builder or seller:
 - (A) made a misstatement of material fact in the application for registration or renewal;

- (B) committed fraud or misrepresentation in connection with any building activity conducted under the requirements of this Chapter;
- (C) committed gross negligence in connection with any building activity conducted under the requirements of this Chapter;
- (D) violated the building code or laws of the County or State;
- (E) did not provide the new home warranty required by this Chapter;
- (F) did not correct or settle a claim arising out of a defect that is covered by the warranty required by this Chapter;
- (G) did not file an amendment to a registration application within 30 days of any material change in the information provided in the most recent application or amendment;
- (H) aided, abetted, or knowingly combined or conspired with an unregistered person or legal entity to evade this Chapter;
- (I) abandoned or willfully failed to perform, without justification, a contract for construction of a building that is to be used as a residence;
- (J) willfully deviated from or disregarded plans or specifications in any material way without consent of the consumer or homeowner;
- (K) did not comply with this Chapter in any material way;
- (L) diverted funds or property that were received for the completion of a construction project, and used the funds or property for another project, operation, obligation, or

purpose, with intent to defraud or deceive creditors or the contract purchaser;

(M) served as an officer, Director, owner, member, principal, or stockholder for a builder or seller whose registration was revoked or suspended under this Chapter;

(N) engaged in a pattern of unfair or deceptive trade practices in violation of Chapter 11;

(O) obtained or attempted to obtain a residential home construction permit by falsely representing that the applicant was seeking a permit to construct a home to be occupied by the applicant as a personal residence;

(P) failure to satisfy final judgments or liens in favor of a contract purchaser, homeowner, subcontractor, or government;

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

(R) engaged in a pattern of poor workmanship as evidenced by unresolved building code violations or unsatisfied arbitration awards or judgments in favor of a consumer; or

(S) violated a term or condition of a conditional registration.

(3) The Director may refer a complaint or a violation to a hearing officer designated by the Chief Administrative Officer for an administrative hearing.

(4) Service of process must be by regular and certified mail to the new home builder, new home seller, or the applicant's most current address provided on their application form.

(d) Hearings, generally. Any hearing held under this Section must be conducted under the Administrative Procedures Act.

(e) Appeals. A person aggrieved by a decision of the hearing examiner or Director to deny, suspend, refuse to renew, or revoke a registration may seek judicial review of the decision in the Circuit Court under the applicable Maryland Rules of Procedure governing judicial review of administrative agency decisions. A party aggrieved by the decision of the Circuit Court may appeal that decision to the Court of Special Appeals.

31C-11. Violations and penalties.

Any violation of this Chapter is a Class A violation.

31C-12. Administration; regulations.

(a) The Director administers and enforces this Chapter.

(b) The Executive must adopt Method (2) regulations to implement this Chapter. The regulations must:

- (1) set one or more fees appropriate to cover the cost of administering this Chapter;
- (2) provide for the form and content of the warranty required by Section 31C-8;
- (3) set forth the terms of the warranty required by Section 31C-8;
- (4) describe other allowable warranty exclusions the Executive deems necessary;
- (5) include standards under which a person may receive a waiver under Section 31C-2; and
- (6) includes standards by which a person may be deemed qualified to comply with County and State law, as required in Section 31C-5.

Sec. 2. Section 2A-2 is amended as follows:

2A-2. Applicability.

797 This Chapter governs the following administrative appeals and proceedings and
 798 applies whether a hearing is conducted by a hearing examiner or another designated
 799 official.

800 * * *

801 (g) Complaints and actions filed with or by the Office of Consumer
 802 Protection under Chapter 31C-10 when a hearing is required or provided.

803 (h) Such other hearings as hereinafter provided for by law or executive
 804 regulations which are specifically designated as being governed hereby.
 805 In this regard, the County Executive is hereby authorized to add or delete
 806 additional quasi-judicial authorities from time to time by executive
 807 regulation adopted under method (2) of section 2A-15 of this Code.

808 *Approved:*

809 _____
 Hans D. Riemer, President, County Council Date

810 *Approved:*

811 _____
 Isiah Leggett, County Executive Date

812 *This is a correct copy of Council action.*

813 _____
 Megan Davey Limarzi, Esq., Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 31-18

New Home Warranty and Builder Licensing - Amendments

DESCRIPTION:	Bill 31-18 would require new home builders and new home sellers to register with the Office of Consumer Protection, require new home builders and new home sellers to provide buyers with a new home warranty, and require the Office of Consumer Protection to administer and enforce County law related to new home builders and new home sellers.
PROBLEM:	Chapter 31A needs updated to address business model changes in the industry and to remove outdated references.
GOALS AND OBJECTIVES:	To establish greater uniformity with state law, ensure that building permits are issued by DPS to registered new home builders, and not issued to homeowners or unregistered builders who falsely represent that they are constructing a new home for their personal occupancy, clarify the procedures for reviewing new home builder registration applications, and the procedures and basis for revoking a registration, address business model changes in which some new home builders form multiple, single-purpose Limited Liability Corporations to construct or sell new homes, and delete any outdated references regarding Montgomery County's former 10-year warranty law and 3rd party warranty enrollment mandate.
COORDINATION:	Office of Consumer Protection; Department of Permitting Services
FISCAL IMPACT:	To be requested
ECONOMIC IMPACT:	To be requested
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Amanda Mihill, Legislative Attorney 240-777-7815
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	Any violation of the Chapter would be a Class A violation.