

Bill No. 31-18
Concerning: New Home Warranty and
Builder Licensing - Amendments
Revised: 1/18/2019 Draft No. 9
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Ch. 1, Laws of Mont. Co. 2019

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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, and
31C-11

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

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 2 **31C-8, 31C-9, 31C-10, 31C-11, 31C-12, 31C-13, and 31C-14) is repealed and**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, and 31C-11) 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*

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

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

59 **31C-2. Licensing.**

60 (a) *Requirement.*

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

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

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

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

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

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

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

78 b. *The applicant should be licensed.*

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

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

- 83 (6) *If the applicant is denied certification, the Director must:*
 84 a. *In writing notify the applicant of the denial and the reasons*
 85 *for the denial; and*
 86 b. *Mail the denial by certified mail to the address on the*
 87 *application.*

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

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

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

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

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

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

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

106 **31C-3. New home warranty.**

- 107 (a) *Warranty required. A builder must give an owner a written warranty that*
108 *provides the warranty coverage required by this Chapter before entering*
109 *into a contract to sell or build a new home. The Executive may issue*
110 *regulations governing the form and content of the warranty.*
- 111 (b) *Performance standards.*
- 112 (1) *The terms of a new home warranty are established by executive*
113 *regulation.*
- 114 (2) *The warranty must include minimum performance standards for*
115 *the construction and quality of the components of a new home.*
- 116 (3) *When minimum performance standards are not provided, industry*
117 *standards for good building practice determine compliance with*
118 *the new home warranty.*
- 119 (c) *Duration of warranty. The builder must warrant the new home that:*
- 120 (1) *For one year, starting on the warranty date, the new home must be*
121 *free from any defect in materials or workmanship as defined in the*
122 *minimum performance standards.*
- 123 (2) *For 2 years, starting on the warranty date, the new home must be*
124 *free from any defect in the electrical, plumbing, heating, cooling,*
125 *ventilating, and mechanical systems.*
- 126 (3) *For 5 years, starting on the warranty date, the new home must be*
127 *free from any major structural defect.*
- 128 (d) *Exclusions.*
- 129 (1) *The written warranty may exclude:*
- 130 a. *Damage to real property which is not part of the home*
131 *covered by the warranty and which is not included in the*
132 *purchase price of the home;*
- 133 b. *Bodily injury or damage to personal property;*

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

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

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

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

146 (f) Financial security.

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

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

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

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

158 **NOTICE TO BUYER**

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

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

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

166 **31C-4. Board of registration.**

167 (a) *Appointment of board.*

168 (1) *This section creates the board of registration.*

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

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

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

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

178 (d) *Operation of the board.*

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

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

183 (3) *The board must:*

184 a. *Keep minutes of its proceedings and meetings;*

185 b. *Put its decisions in writing; and*

186 c. *Submit an annual report of its proceedings to the director.*

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

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

190 ***31C-5. New home warranty security fund.***

191 (a) *Establishment.*

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

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

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

199 (c) *Amount.*

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

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

204 (3) *The Department of Finance must:*

205 a. *Account for the amounts;*

206 b. *Credit the amounts to the fund;*

207 c. *Hold, manage, and invest the fund; and*

208 d. *Credit earned income to the fund.*

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

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

213 (f) *Phaseout.*

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

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

218 ***31C-6. Private new home warranty security programs.***

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

221 ***31C-7. Warranty claims.***

222 (a) *Notification.*

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

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

229 (b) *Conciliation.*

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

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

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

238 (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*

- 266 *b. Request the office of the County Attorney to initiate legal*
 267 *action against the builder.*
- 268 (5) *If the fund is insufficient to satisfy outstanding awards and*
 269 *anticipated awards for the succeeding year, the Director may:*
- 270 *a. Require participating builders to pay additional amounts to*
 271 *replenish the fund; and*
- 272 *b. Require payment of surcharges by the builders who are*
 273 *responsible for an unreasonable number of awards against*
 274 *the fund.*
- 275 (6) *If the fund is insufficient to satisfy any award, when sufficient*
 276 *money has been deposited in the fund, the Director may satisfy the*
 277 *unpaid awards in the order in which the claims were originally*
 278 *filed.*
- 279 (7) *When the Department of Finance makes a payment from the fund,*
 280 *the builder responsible for the award must fully compensate the*
 281 *fund the full amount paid to the owner plus interest from date of*
 282 *payment. The rate of interest is the amount that the County*
 283 *Executive designates by executive order.*
- 284 (8) *The County is not required to contribute money to the fund. The*
 285 *County does not have any liability to a person who has received*
 286 *an award when the amount in the fund is insufficient to pay the*
 287 *award.*
- 288 (9) *The fund does not limit the availability of other legal or equitable*
 289 *remedies but provides an additional and cumulative remedy for*
 290 *owners.*
- 291 (e) *Private new home warranty program.*

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

299 ***31C-8. Investigation and hearings.***

- 300 (a) *Investigation.*
- 301 (1) *The Director may conduct an investigation into allegations made*
 302 *against any builder who is required to be licensed under this*
 303 *Chapter.*
- 304 (2) *The Office may:*
- 305 a. *Hold hearings;*
- 306 b. *Subpoena the attendance of witnesses;*
- 307 c. *Administer oaths;*
- 308 d. *Require the production of evidence relating to any matter*
 309 *under investigation;*
- 310 e. *Inspect relevant books, papers, records, or documents of the*
 311 *builder at the place of business of the builder during*
 312 *business hours; and*
- 313 f. *Conduct inspections of new home construction sites and*
 314 *models.*
- 315 (b) *Conduct of hearings. After giving a builder the opportunity for a hearing*
 316 *under subsection (c), the Board may deny, suspend, refuse to renew, or*
 317 *revoke the license of the builder, if the Board finds that the builder:*

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

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

346 (c) *Notification.*

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

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

352 ***31C-9. Liability of builder.***

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

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

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

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

361 ***31C-10. Administration.***

362 (a) *The Director administers this Chapter.*

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

365 ***31C-11. Applicability of chapter.***

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

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

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

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

374 (d) *If a builder grants an improvement to an intermediate purchaser to evade*
 375 *liability to an owner under this chapter, the builder is liable on the*
 376 *subsequent sale of the improvement by the intermediate owner as if the*
 377 *builder sold the improvement without regard to the intervening grant.*
 378 *(1986 L.M.C., ch. 49, § 1.)*

379 ***31C-12. Compliance with building code generally.***

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

382 ***31C-13. Violations and penalties.***

383 (a) *A builder is subject to punishment for a class A violation under section*
 384 *1-19 of this Code if that builder violates any provision of this chapter.*

385 (b) *Each day a violation continues to exist is a separate offense.*

386 ***31C-14. Regulations.***

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

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

390 **31C-1. Definitions.**

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

392 Board means the Board for Registration of Building Contractors.

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

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

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

400 Homeowner or owner means:

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

405 Homeowner does not mean:

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

410 Load-bearing portions of the home means:

- 411 (1) foundation system and footings;
- 412 (2) beams;
- 413 (3) girders;
- 414 (4) lintels;
- 415 (5) columns;
- 416 (6) walls and partitions;
- 417 (7) floor systems; and
- 418 (8) roof framing systems.

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

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

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

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

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

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

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

448 New home builder does not include:

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

- 451 a new home if the subcontractor or vendor does not otherwise meet the
 452 requirements of this Chapter;
- 453 (2) the manufacturer of a residential mobile home, unless the manufacturer
 454 also installs the mobile home;
- 455 (3) a real estate developer who does not construct or enter into contracts with
 456 a consumer to sell or construct new homes;
- 457 (4) a financial institution that lends funds for the construction or purchase of
 458 residential dwellings in Montgomery County;
- 459 (5) a buyer’s agent when representing a prospective buyer in the purchase of
 460 a new home; or
- 461 (6) a person who is conducting a foreclosure sale.

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

- 463 (1) has legal title to the property on which the new home is constructed; and
 464 (2) is the person [[or legal entity]] listed on the sales contract with the
 465 contract purchaser to whom the property and new home are being sold
 466 and conveyed.

467 New home seller includes a corporation, limited liability [[corporation]]
 468 company, or trust.

469 Office means the Office of Consumer Protection.

470 Person has the same meaning as in Section 1-302.

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

473 **31C-2. Applicability of Chapter.**

- 474 (a) This Chapter applies only to construction work under the building code
 475 and laws of the County and [[state]] State.
- 476 (b) This Chapter does not apply to a person who constructs a building that is
 477 to be occupied as a personal residence for use of that person, if the person:

- 478 (1) receives a waiver from the Office to apply for and obtain any
 479 permits from the Montgomery County Department of Permitting
 480 Services to construct a new home without being registered as a new
 481 home builder or a new home seller;
- 482 (2) signs a statement affirming that any permits issued by the
 483 Department of Permitting Services are issued solely for the
 484 purpose of that person performing work on that person's own
 485 property; and
- 486 (3) signs a statement that the work for which the permit is issued is for
 487 that person.

488 **31C-3. Compliance with building code generally; building permits.**

- 489 (a) Compliance with building code. This Chapter does not exempt any
 490 construction work in the County from the requirement that it comply with
 491 the building code.
- 492 (b) Building permits. The Department of Permitting Services must not issue
 493 any building permit for a residence to any new home builder or new home
 494 seller who is not registered with the Office under this Chapter.
- 495 (c) Certificate of inspection. A new home builder and new home seller must
 496 provide to a contract purchaser at the time of occupancy or settlement,
 497 whichever first occurs, a statement signed by the builder and seller, that
 498 all County-required inspections have been performed.

499 **31C-4. Board of Registration.**

- 500 (a) Appointment of Board.
- 501 (1) There is a Board of Registration.
- 502 (2) The Board consists of 5 members appointed by the County
 503 Executive and confirmed by the County Council.

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

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

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

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

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

515 (2) The Board must:

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

519 (B) put its recommendations in writing; and

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

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

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

525 **31C-5. Registration process; fees.**

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

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

533 (1) provide information as to character, references, experience,
 534 education, and training in or related to erecting, constructing, or
 535 otherwise creating a new home or selling a new home;

536 (2) [[disclose that the applicant agrees that any service of process from
 537 the Office to the applicant will be satisfied by mailing via regular
 538 mail and certified mail, to the applicant at the most current address
 539 listed on the application form]] require that the applicant agree to
 540 provide the warranty required in Section 31C-8; and

541 (3) include any additional information required by regulation.

542 (c) Fees.

543 (1) Each application must be accompanied by an application fee.

544 (2) Any application fee paid is not refundable.

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

548 (1) the applicant is qualified to comply with the building code and
 549 laws of the County and State, and to fully perform new home
 550 building and new home sales contracts; and

551 (2) the applicant should be registered or receive a conditional
 552 registration that stipulates specific requirements to which the
 553 applicant must comply before the applicant's registration can be
 554 fully recommended to the Director.

555 (e) Director decision.

556 (1) Within 75 days after receiving a completed application, the
 557 Director must notify the applicant of the [[of the]] Board's

558 recommendation and the Director's final action regarding
 559 registration, conditional registration, or denial of registration. If the
 560 Director fails to notify the applicant within 75 days of submission,
 561 the application is deemed approved.

562 (2) If the applicant is denied registration approval, the Director must[[:
 563 (A) notify]] send the applicant [[in writing]] written notification
 564 of the denial and the reasons for the denial[[; and
 565 (B) mail the denial by certified mail to the address on the
 566 application]].

567 (3) The Director must not approve a registration for a builder or seller
 568 who has or had any legal interest in a previously licensed firm who
 569 has or had a license or registration revoked or suspended for any
 570 reason listed in Section [[31C-10]] 31C-9.

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

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

578 **31C-6. Registration Renewal.**

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

- 581 (1) submitting a completed renewal application;
 582 (2) paying the required renewal fee; and
 583 (3) making a payment to the Maryland Home Builder Guaranty Fund
 584 as required under State law.

- 585 (b) At least 60 days before a new home builder or new home seller
 586 registration is set to expire, the Office must ~~[[provide notice to the~~
 587 registrant by electronic mail or regular mail sent to the last known address
 588 of]] send written notification to the registrant. This notice must contain:
- 589 (1) a renewal application form or online link to the renewal form;
 - 590 (2) the date on which the current registration expires;
 - 591 (3) the date by which the Office must receive the renewal application;
 - 592 and
 - 593 (4) information regarding the required fees associated with the
 594 renewal.
- 595 (c) A registrant must submit a completed renewal application to the Office
 596 no later than 30 days before the registration is set to expire.
- 597 (d) The Director may request that the Board review any renewal application
 598 to ensure the applicant continues to meet the criteria in Section 31C-5.
- 599 (e) By the date on which a registration is set to expire, the Director must
 600 ~~[[notify]]~~ send the applicant written notification of the of the Board's
 601 recommendation, if any, and the Director's final action regarding renewal
 602 of a registration. If the Director fails to notify the applicant by this date,
 603 the renewal application is deemed approved.
- 604 (f) If the applicant is denied registration approval, the Director must ~~[[:~~
 605 (1) notify]] send the applicant ~~[[in writing]]~~ written notification of the
 606 denial and the reasons for the denial ~~[[; and~~
 607 (2) mail the denial by certified mail to the address on the application ~~]].~~
- 608 (g) A renewal registration is valid for 2 years.

609 **31C-7. Enforceability of contracts.**

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

613 **31C-8. New home warranty.**

614 (a) Warranty required. [[A]] As a condition to being registered under this
 615 Chapter, a new home builder [[or]] and a new home seller must give a
 616 consumer a written warranty that provides the warranty coverage
 617 required by this Chapter [[before entering into a contract to sell or build
 618 a new home]] no later than the execution of the contract to sell the home.

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

623 (c) Performance standards.

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

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

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

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

- 636 (2) For 2 years, starting on the warranty date, the new home must be
637 free from any defect in the electrical, plumbing, heating, cooling,
638 ventilating, and mechanical systems.
- 639 (3) For 5 years, starting on the warranty date, the new home must be
640 free from any major structural defect.
- 641 (e) Exclusions. The written warranty may exclude:
- 642 (1) damage to real property which is not part of the home covered by
643 the warranty and which is not included in the purchase price of the
644 home;
- 645 (2) bodily injury or damage to personal property;
- 646 (3) any defect in, or caused by, materials or work supplied by anyone
647 other than the builder, or its employees, agents, or subcontractors;
- 648 (4) any loss or damage which the homeowner has not taken timely
649 action to minimize; and
- 650 (5) any additional exclusions permitted by Regulation.
- 651 (f) Statutory warranties. The statutory warranties required by this Chapter
652 are in addition to all other implied or express warranties imposed by law
653 or agreement. Each new home builder or new home seller must disclose
654 the information required by, and otherwise comply with, Sections 10-601
655 through 10-610 of the Real Property Article of the Maryland Code.
- 656 (g) Financial security.
- 657 (1) Before entering into a contract to sell or build a new home, a new
658 home builder or a new home seller must:
- 659 (A) inform the consumer in writing whether any bond,
660 insurance, or other financial security is responsible for or
661 guarantees the builder's performance under the warranty
662 required by this Chapter;

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

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

667 (A):

668 NOTICE TO BUYER

669 Montgomery County law does not require this builder to furnish any bond,
 670 insurance, or other financial security to guarantee the builder's performance of its
 671 warranty obligations. If a builder has promised you any other bond, insurance, or
 672 security to guarantee the performance of its warranty obligations, that bond,

673 insurance, or security must be listed here:

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

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

679 **[[31C-9. Liability of builder and seller.**

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

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

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

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

688 **[[31C-10]] 31C-9. Complaints, investigations, and administrative hearings.**

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

694 (b) Investigation. The Office may:

695 (1) investigate any complaint made against any person [[or legal
 696 entity]] who is operating as a new home builder or new home seller
 697 and who is or should be [[required to be]] registered under this
 698 Chapter;

699 (2) investigate any potential violation of and enforce this Chapter
 700 without receiving a complaint;

701 (3) hold hearings or refer any matter to a hearing officer designated by
 702 the Chief Administrative Officer for an administrative hearing;

703 (4) subpoena the attendance of witnesses and documents;

704 (5) administer oaths;

705 (6) require the production of evidence relating to any matter under
 706 investigation;

707 (7) inspect relevant books, papers, records, or documents of the
 708 builder or seller at the place of business of the builder and seller
 709 during business hours; and

710 (8) conduct inspections of new home construction sites and models.

711 (c) Hearing.

712 (1) Before denying, suspending, refusing to renew, or revoking any
 713 registration, the Director must afford the builder or seller an

- 714 opportunity for a hearing before a hearing officer designated by the
715 Chief Administrative Officer for an administrative hearing.
- 716 (2) After giving a builder or seller the opportunity for a hearing, the
717 Director may deny, suspend, refuse to renew, or revoke the
718 registration of a new home builder or new home seller if the
719 Director finds that the builder or seller:
- 720 (A) made a misstatement of material fact in the application for
721 registration or renewal;
- 722 (B) committed fraud or misrepresentation in connection with
723 any building activity conducted under the requirements of
724 this Chapter;
- 725 (C) committed gross negligence in connection with any
726 building activity conducted under the requirements of this
727 Chapter;
- 728 (D) violated the building code or laws of the County or State;
- 729 (E) did not provide the new home warranty required by this
730 Chapter;
- 731 (F) did not correct or settle a claim arising out of a defect that is
732 covered by the warranty required by this Chapter;
- 733 (G) did not file an amendment to a registration application
734 within 30 days of any material change in the information
735 provided in the most recent application or amendment;
- 736 (H) aided, abetted, or knowingly combined or conspired with an
737 unregistered person [[or legal entity]] to evade this Chapter;
- 738 (I) abandoned or willfully failed to perform, without
739 justification, a contract for construction of a building that is
740 to be used as a residence;

- 741 (J) willfully deviated from or disregarded plans or
742 specifications in any material way without consent of the
743 consumer or homeowner;
- 744 (K) did not comply with this Chapter in any material way;
- 745 (L) diverted funds or property that were received for the
746 completion of a construction project, and used the funds or
747 property for another project, operation, obligation, or
748 purpose, with intent to defraud or deceive creditors or the
749 contract purchaser;
- 750 (M) served as an officer, Director, owner, member, principal, or
751 stockholder for a builder or seller whose registration was
752 revoked or suspended under this Chapter;
- 753 (N) engaged in a pattern of unfair or deceptive trade practices in
754 violation of Chapter 11;
- 755 (O) obtained or attempted to obtain a residential home
756 construction permit by falsely representing that the
757 applicant was seeking a permit to construct a home to be
758 occupied by the applicant as a personal residence;
- 759 (P) [[failure]] failed to satisfy final judgments or liens in favor
760 of a contract purchaser, homeowner, subcontractor, or
761 government;
- 762 (Q) engaged in fraud, deception, misrepresentation, or knowing
763 omissions of material facts related to new home building
764 contracts;
- 765 (R) engaged in a pattern of poor workmanship as evidenced by
766 unresolved building code violations or unsatisfied
767 arbitration awards or judgments in favor of a consumer; or

- 768 (S) violated a term or condition of a conditional registration.
- 769 (3) The Director may refer a complaint or a violation to a hearing
 770 officer designated by the Chief Administrative Officer for an
 771 administrative hearing.
- 772 [[(4) Service of process must be by regular and certified mail to the new
 773 home builder, new home seller, or the applicant's most current
 774 address provided on their application form.]]
- 775 (d) Hearings, generally. Any hearing held under this Section must be
 776 conducted under the Administrative Procedures Act.
- 777 (e) Appeals. A person aggrieved by a decision of the hearing examiner or
 778 Director to deny, suspend, refuse to renew, or revoke a registration may
 779 seek judicial review of the decision in the Circuit Court under the
 780 applicable Maryland Rules of Procedure governing judicial review of
 781 administrative agency decisions. A party aggrieved by the decision of the
 782 Circuit Court may appeal that decision to the Court of Special Appeals.

783 **[[31C-11]] 31C-10. Violations and penalties.**

784 Any violation of this Chapter is a Class A violation.

785 **[[31C-12]] 31C-11. Administration; regulations.**

- 786 (a) The Director administers and enforces this Chapter.
- 787 (b) The Executive must adopt Method (2) regulations to implement this
 788 Chapter. The regulations must:
- 789 (1) set one or more fees appropriate to cover the cost of
 790 administering this Chapter;
- 791 (2) provide for the form and content of the warranty required by
 792 Section 31C-8;
- 793 (3) set forth the terms of the warranty required by Section 31C-8;

- 794 (4) describe other allowable warranty exclusions the Executive
- 795 deems necessary;
- 796 (5) include standards under which a person may receive a waiver
- 797 under Section 31C-2; and
- 798 (6) includes standards by which a person may be deemed qualified to
- 799 comply with County and State law, as required in Section 31C-5.

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

801 **2A-2. Applicability.**

802 This Chapter governs the following administrative appeals and proceedings and
803 applies whether a hearing is conducted by a hearing examiner or another designated
804 official.

805 * * *

806 (g) Complaints and actions filed with or by the Office of Consumer
807 Protection under Chapter ~~[[31C-10]]~~ 31C-9 when a hearing is required or
808 provided.

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

Approved:



Nancy Navarro, President, County Council

2/7/19

Date

Approved:



Marc Elrich, County Executive

2/14/19

Date

This is a correct copy of Council action.



Megan Davey Limarzi, Esq., Clerk of the Council

2/21/19

Date