



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject New Home Builder and Seller Registration and Warranty	Number 15-23
Originating Department Office of Consumer Protection	Effective Date January 30, 2024

Montgomery County Regulation on:

NEW HOME BUILDER AND SELLER REGISTRATION AND WARRANTY OFFICE OF CONSUMER PROTECTION

Issued By: County Executive

Regulation No.15-23

Authority: Code Section 31C-11

Supersedes: Executive Regulation No. 06-08

Council Review: Method (2) under Code Section 2A-15

Register Vol. 40, No. 9

Effective Date: January 30, 2024

Comment Deadline: September 30, 2023

SUMMARY: This regulation sets forth the procedures for implementation of Chapter 31C of the Montgomery County Code. This regulation supersedes Executive Regulation No. 6-08 and changes the prior builder licensing to a New Home Builder and New Home Seller registration. This regulation creates a new fee for new home sellers in the amount of \$400.00.

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Section 1. Preamble

1.1 Background information: Chapter 31C was amended in 2019 L.M.C., ch. 1 (Bill No. 31-18). Section 31C-11 of the Montgomery County Code allows the County Executive to issue regulations to implement this Chapter. This regulation sets forth the procedures for implementation of this Chapter. This regulation supersedes Executive Regulation 06-08 changes the prior builder licensing to a New Home Builder registration, establishes a New Home Seller registration, and creates a new fee for New Home Sellers in the amount of \$400.00 for new registrations and \$250.00 for renewal registrations.



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Section 2: Definitions

- 2.1 “Board” means the Board of Registration for Building Contractors.
- 2.2 “Consumer” means a consumer as defined in Chapter 11 or a contract purchaser of a new home for use as a personal family residence.
- 2.3 “Contract purchaser” means a person 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.
- 2.4 “Director” means the Director of the Office of Consumer Protection or the Director's designee.
- 2.5 “Homeowner” or “owner” means:
 - (a) any person for whom a new home is built or to whom a new home is sold for residential occupation; and
 - (b) the successors of that person in title to the home or mortgage in possession;
 “Homeowner” does not mean:
 - (a) any development company, association, or subsidiary company of the builder; or
 - (b) a person to whom the home may be conveyed by the builder for any purpose other than use by that person.
- 2.6 “Load-bearing portions of the home” means:
 - (a) foundation system and footings;
 - (b) beams;
 - (c) girders;
 - (d) lintels;
 - (e) columns;
 - (f) walls and partitions;



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- (g) floor systems; and
- (h) roof framing system.

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

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

“Major structural defect” includes damages due to

- (a) subsidence;
- (b) expansion; or
- (c) lateral movement of the soil.

“Major structural defect” does not include damage caused by movement of the soil caused by floor or earthquake.

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

2.9 “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” does not include an attached or detached accessory dwelling unit that is subordinate to the principal dwelling.

2.10 “New home builder” or “builder” means any person:

- (a) that is engaged in the business of erecting, constructing, or otherwise creating a new home;
- (b) to whom a completed new home is conveyed for resale in the course of the business of the



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person;

- (c) that undertakes to sell a new home in Montgomery County;
- (d) that applies for a building permit to construct a new home in Montgomery County;
- (e) that is engaged as a general contractor in the business of erecting, constructing, or otherwise creating a new home; or
- (f) that enters into a contract with a contract purchaser under which the builder agrees to provide the contract purchaser with a new home.

“New home builder” or “builder” does not include:

- (a) 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;
- (b) the manufacturer of a residential mobile home, unless the manufacturer also installs the mobile home;
- (c) a real estate developer who does not construct or enter into contracts with a consumer to sell or construct new homes;
- (d) a financial institution that lends funds for the construction or purchase of residential dwellings in Montgomery County;
- (e) a buyer’s agent when representing a prospective buyer in the purchase of a new home; or
- (f) a person who is conducting a foreclosure sale.

2.11 “New home seller” or “seller” means a person that:

- (a) has legal title to the property on which the new home is constructed; and
- (b) is the person listed on the sales contract with the contract purchaser to whom the property and new home are being sold and conveyed.

2.12 “Office” means the Office of Consumer Protection.

2.13 “Person” means an individual or legal entity.



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2.14 “Personal residence” means any property used exclusively as a private dwelling by an individual. The term includes residential property owned by an individual for the individual’s own personal use and occupancy.

The term also includes residential property in which the property owner permits a member of the property owner’s family to live and occupy rent free. The term does not include any property that is not used exclusively as a private dwelling, including residential property where any part of the property is used and occupied as a short or long-term rental.

2.15 “Waiver Requester” means a person that is the owner of real property and requests a waiver of the new home builder and new home seller registration requirements of Chapter 31C of the Montgomery County Code, in order to build a new home to be used as their personal residence on their property, pursuant to Section 31C-2 of the Montgomery County Code.

2.16 “Warranty date” means the first day that:

- (a) the homeowner occupies or settles on the new home, whichever first occurs; or
- (b) In the case of a home built pursuant to the Maryland Custom Home Act, the warranty date means the date in which the Montgomery County Department of Permitting Services Use and Occupancy permit is finalized and approved.

Section 3. Waiver for Construction of Personal Residence

3.1 The Office will consider a waiver request pursuant to Section 31C-2 of the Montgomery County Code under the following circumstances:

- (a) The Waiver Requester must submit a completed waiver request on the form provided by the Office.
- (b) The form must be signed and affirmed by the Waiver Requester, or if the Waiver Requester is not an individual, by an authorized agent of the Waiver Requester.
- (c) It is the Waiver Requester’s burden to establish the following:
 - (1) the Waiver Requester is qualified to comply with the County building code;
 - (2) the Waiver Requester will be acting as the general contractor for the new home construction; and



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(3) the new home to be constructed will be occupied as the Waiver Requester’s personal residence.

(d) The Office may refer a waiver request to the Board for the Board’s recommendation on whether the Waiver Requester established that the Waiver Requester is qualified to comply with the County building code. In determining whether the Waiver Requester met its burden of proof, the Office will consider all facts and circumstances, including and not limited to, the veracity of the information contained within the waiver request form, the Waiver Requester’s involvement with other building businesses, other real property owned by the Waiver Requester, other permits issued to the Waiver Requester or businesses owned by the Waiver Requester, and previous real property sales or transfers by the Waiver Requester.

3.2 A new home constructed by a Waiver Requester for their personal residence under this section will not be covered by the Montgomery County New Home Warranty as provided in Section 31C-8 of the Montgomery County Code, and these regulations.

3.3 A certificate stating that the new home is not covered by the Montgomery County New Home Warranty must accompany any building permit application and any sale to a consumer made within the five (5) year statutory warranty period.

Section 4: Board of Registration for Building Contractors

4.1 The Board is responsible for certifying to the Director whether the applicant for a builder’s registration is qualified to comply with the building code and laws of the County and State, and to fully perform building contracts. The Board recommends whether an applicant should be registered with the Office.

4.2 The Board meets at least once monthly at a time and place designated by the Director. If circumstances or workload dictates, the Director may request additional meetings.

4.3 The Board and the Director may mutually agree to cancel at most one Board meeting during a calendar year.

Section 5: New Home Builder and New Home Seller Registrations

5.1 For the purpose of these regulations, the term "engaging in the business of constructing a new



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home" includes:

- (a) constructing any new home for sale,
- (b) acting as general contractor to construct any new home for another person, or
- (c) advertising or holding oneself out as constructing or being available to construct a new home or homes,
- (d) the sale or transfer of title to a parcel of land to any person and the subsequent participation in the construction of a new home or any part of a new home by the seller or transferor, or
- (e) a person who contracts with a general contractor or with subcontractors for the construction of a new home for the purpose of selling to a purchaser.

5.2 Every application for registration must be made on the form prescribed by the Office and must be accompanied by a non-refundable registration fee as described in these regulations. The registration application must provide at least the following information:

- (a) The full legal name and address of the applicant’s business:
 - (1) In the case of a corporation, limited liability company, or partnership, the business name entered on the application must be the exact business name registered with the State Department of Assessments and Taxation; and
 - (2) In all cases, the address entered on the application must be the street number, street name, and municipality where the primary office of the applicant's business organization is located. The address cannot be a post office box, temporary or transient location, or the address of an agent. The address must be that of a business office, unless there is none, in which case it may be a residence address.
- (b) If the applicant is a corporation, limited liability company, or partnership, the applicant must appoint an agent for the service of process and must provide the agent's street address (not a post office box or a temporary or transient location). The agent may be any person who resides in the State of Maryland or be a legal entity in the State of Maryland;
- (c) The builder's or seller’s business telephone numbers and the names and addresses and telephone numbers of all persons having a legal interest in the builder or the building entity;
- (d) References from at least three material suppliers and the name of the bank where the builder has a business account. Two of the material supplier references must indicate the



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applicant’s total credit limit with the supplier. At most one reference may be a business credit card statement issued within 30 days from application submission. The business credit card must not be issued to an individual;

- (e) A summary of building experience as well as disclosure of any present or prior relationship with any other licensed builder or seller;
- (f) A statement that the builder or seller will provide the warranty required in Section 31C-8; and
- (g) A sample copy of the written warranty required in Section 31C-8.

5.3 Registration Fees

(a) New Home Builders Fees

(1) Initial Registration: \$805 made payable to Montgomery County, MD

(2) Renewal Registration: \$805 made payable to Montgomery County, MD

(3) Initial and Renewal Registrations shall also pay the Administrative Fee required by the State’s Home Builder’s Registration Unit made payable to “Office of the Attorney General.”

(b) New Home Sellers Fees

(1) Initial Registration: \$400 made payable to Montgomery County MD

(2) Renewal Registration: \$250 made payable to Montgomery County, MD

(3) Initial and Renewal Registrations shall also pay the Administrative Fee required by the State’s Home Builder’s Registration Unit made payable to “Office of the Attorney General.”

(c) There is no fee for submitting a waiver request to build a person’s personal residence.

5.4 If a new home construction and sale involves multiple legal entities (one to construct the home, one to own the real property, and one to be listed as the seller, or some combination thereof), then the legal entity that performs the new home construction activities must register as a new home builder using the New Home Builder Registration Application, and each separate property-



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owning entity must register as a new home seller using the New Home Seller Registration Application.

- 5.5 The Office may not issue a registration to a builder or seller who held any legal interest in a previously registered or licensed business that has or had a registration or license revoked or suspended for any reason listed in Section 31C-9 of the Montgomery County Code. Legal interest means an ownership interest in the builder or seller, or responsibility, in whole or in part, for the activities of the builder or seller.
- 5.6 A builder or seller must certify in writing to a consumer at the time of occupancy or settlement, whichever first occurs, that the new home passed the following County inspections as required by law:
 - (a) footing;
 - (b) foundation and pargeting;
 - (c) building location plat;
 - (d) electrical close-in;
 - (e) building framing;
 - (f) chimney and flue;
 - (g) final electrical;
 - (h) final plumbing;
 - (i) septic system – certificate of completion;
 - (j) well system – certificate of potability; and
 - (k) final building.
- 5.7 The new home builder and new home seller, in order to certify that this provision regarding final building inspection has been satisfied, must make a request to the Department of Permitting Services at least five (5) days prior to occupancy or settlement for a final building inspection to be performed.

If the final building inspection has not been performed by the time of occupancy or settlement, the



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builder or seller must supply the consumer with a statement that the new home passed all inspections, except for the final building inspection, and provide the upon which final building inspection will occur. The builder or seller must remediate any violations noted in the final building inspection.

5.8 Initial Registration Process.

- (a) For the purposes of these regulations, the terms “completed registration application” and “completed renewal application” mean a registration or renewal application submitted to the Office with:
 - (1) The required non-refundable application fees made payable to the appropriate parties in the correct amounts;
 - (2) All sections of the application filled out completely and accurately; and
 - (3) All required supplemental documents filled out completely and accurately.
- (b) The Office will review each registration application for completeness. If an applicant does not correct an incomplete registration application within 30 calendar days after being notified by the Office that the submitted registration application was not completed, the incomplete registration application will be considered withdrawn by the applicant and will be discarded. Any submitted registration fees will not be refunded
- (c) Applicants must appear before the Board regarding their completed registration applications. The Office will notify applicants of the time and location of the Board meeting. The date that the applicant appears before the Board regarding their completed registration application is the date that the Board is deemed to have received the applicant’s completed registration application.
- (d) If an applicant fails to appear for a scheduled Board meeting, the Board may defer the application for consideration at the next scheduled Board meeting. If the applicant fails to appear for good cause shown at the next scheduled Board meeting, the registration application is deemed withdrawn and no further action is required of the Board and the Director. Any submitted registration fees will not be refunded.
- (e) Within 60 days after receiving a completed registration application, the Board must recommend to the Director whether:



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- (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 which stipulates specific requirements the applicant must complete.
- (f) The date of the Board's recommendation is the date that the Director is deemed to have received the applicant's completed registration application.
 - (g) Within 75 days after receiving a completed registration application, the Director must notify the applicant of the Board's recommendation and the Director's final action regarding the registration, conditional registration, or denial of registration. The Director is deemed to have received a completed registration application on the date that the Board submits its recommendation to the Director. If the Director fails to notify the applicant within 75 days of receiving the completed application, the registration application is deemed approved.
 - (h) If the applicant is denied registration approval, the Director must send the applicant written notification of the denial and the reasons for denial.
 - (i) Unless renewed under the procedures in 31C-6, an approved registration expires on the second anniversary of its effective date. Once a registration expires it cannot be renewed and the former registrant must submit a new application for registration. The Director may temporarily stay the expiration of a current registration for a period not to exceed 90 days from the date of expiration of the current registration under the criteria in 5.9(d) of these regulations.
 - (j) A new home builder or new home seller must amend a registration within 30 days of any material change in the information provided in the most recent registration application.

5.9 Registration Renewal Process.

- (a) A registered new home builder or new home seller must renew their registration before the current registration expires by submitting a completed renewal application, received by the Office no later than 30 days before the current registration expires.
- (b) At least 60 days before a current registration expires, the Office will send written notification to the registrant which contains:



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- (1) A renewal application form or online link to the renewal application form;
 - (2) The date on which the current registration expires;
 - (3) The date by which the Office must receive the completed renewal application; and
 - (4) Information regarding the required fees associated with the renewal.
- (c) The Office will review each renewal application for completeness and will only forward completed renewal applications to the Director.
- (d) The Director may request that the Board review any completed renewal application to ensure the applicant continues to meet the criteria in Section 31C-5. The Board will follow the same procedures and timelines as provided in Sections 5.8(c) – (e) of these regulations.
- (1) If requested by the Director, an applicant must appear before the Board regarding its completed renewal application at the next scheduled Board meeting. The Office will notify the applicant of the time and location of the Board meeting. The date that the applicant appears before the Board regarding their completed renewal application is the date that the Board first receives that application.
 - (2) The Director may temporarily stay the expiration of a current registration until the Board meets with the applicant and submits its recommendation to the Director. This stay of expiration is for a period not to exceed 90 days from the date of expiration of the current registration.
- (e) If the applicant is denied registration approval, the Director must send the applicant written notification of the denial and the reasons for the denial.
- (f) A renewal registration is valid for two years.

Section 6: New Home Warranty Coverage and Standards

- 6.1 A new home builder and a new home seller must give a consumer a written warranty that provides the warranty coverage required by Chapter 31C, no later than the execution of the contract to sell a new home.
- 6.2 The new home builder and new home seller must honor the terms of the warranty and cannot discharge the warranty obligation by providing a third-party new home warranty plan to the



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homeowner. Any remaining coverage under the warrant is transferable to any subsequent owner of the home, so long as that owner uses the home for residential occupancy.

- 6.3 The warranty specified in this section must be provided by all new home builders and new home sellers for new homes. In addition, the warranty provided for in these regulations will not extend to those items listed as “extras” or “upgrades” as contained in contract addenda if these items are not installed.
- 6.4 A builder who sells a model home must provide the consumer of the model home with the same warranty prescribed in these regulations.
- 6.5 Nothing contained in this section is intended to limit the right of any builder or seller to offer a warranty that exceeds the specified minimum either in scope, applicability or standards.
- 6.6 The statutory warranties provided in Chapter 31C and these regulations are in addition to all other implied or express warranties imposed by law or agreement.
- 6.7 For purposes of these regulations, the performance standards, or guidelines applicable to all new homes subject to Chapter 31C are the performance standards or guidelines adopted at the time of the contract by the National Association of Home Builders.
- 6.8 (a) One-year warranty: The new home must be free from any defect in materials or workmanship for one year after the warranty date. The warranty on the following list of items may not exceed the length and scope of the warranty offered by the manufacturer:
 - (1) Smoke detector
 - (2) Fire alarms
 - (3) Fire extinguisher
 - (4) Garage door opener
 - (5) Intercom
 - (6) Security systems
 - (7) Garbage disposal



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- (8) Water softener
- (9) Refrigerator
- (10) Freezer
- (11) Trash compactor
- (12) Dishwasher
- (13) Clothes washer
- (14) Clothes dryer
- (15) Ice maker
- (16) Stoves/ranges

(b) Two-year warranty: the new home must be free from any defect in the electrical, plumbing, heating, cooling, ventilation, and mechanical systems for two years after the warranty date. The warranty on the following list of items extends for two years from the warranty date:

- (1) Electrical System. Includes but is not necessarily limited to all wiring, electrical boxes, circuit boards, switches, outlets, overload protector devices, and connections up to the public utility connections.
- (2) Plumbing System. Includes but is not necessarily limited to: gas supply lines and fittings, water supply, waste and vent pipes and their fittings, septic tanks and their drain fields, water, gas and sewer service piping and their extension to the property line which tie into a public utility connection or on-site well and/or sewage disposal system, valves, faucets, fixtures and trim fittings, pumps, water heater and sprinkler systems.
- (3) Heating, Ventilating, Cooling and Mechanical Systems: includes but is not



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necessarily limited to the following: duct work, steam, water, and refrigerant lines, registers, convectors, radiation elements, dampers, boiler, heat pump, thermostat, furnace, air conditioning equipment, exhaust fans, oil tanks and fittings, air handling equipment and air purifiers.

(c) Five-year warranty: the new home must be free from any major structural defect for five years after the warranty date.

6.9 Each builder and/or seller will be responsible for the correction of any defect that appears during any of the warranty periods specified in this section.

6.10 The builder's responsibility in the case of a defect covered by this warranty will include removal of the defects by repair or replacement or payment of the reasonable cost of repair or replacement. The builder will choose between repair, replacement or payment. The builder's responsibility will include actual reasonable shelter expenses incurred during repairs.

When a defect covered by this warranty is removed by repair, replacement or payment of the reasonable cost of repair or replacement, a release with respect to that specific defect will be signed by the owner and delivered to the builder and the County.

6.11 If an owner discovers a defect covered by this warranty, the owner must provide the builder written notice of the defect no later than 30 calendar days after the date on which the warranty on that item expires.

6.12 Exclusions from Warranty Coverage: The following defects and damages are excluded from the one-year, two-year, and five-year warranties required by the Code and these regulations:

(a) Defects in outbuildings, including detached garages and detached carports, except outbuildings which contain the plumbing, electrical, heating, cooling or ventilation systems serving the home; swimming pools and other recreational facilities; driveways; walkways; boundary walls; retaining walls; bulkheads; fences; landscaping, including sodding, seeding, shrubs, trees, and plantings; off-site improvement or any other improvements not a part of the home itself;

(b) 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;



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- (c) Any damage to the extent it is caused or made worse by:
 - (1) negligence, improper maintenance or improper operations by anyone other than the Builder or its employees, agents, or subcontractors;
 - (2) failure by the owner to give notice to the builder of any defects within the times required under these regulations;
 - (3) changes, alterations, or additions made to the home by anyone before or after initial occupancy, except those performed by the builder, or its employees, agents, or subcontractors acting in their capacity as employees, agents, or subcontractors of the builder; or
 - (4) changes of the grading of the ground by anyone other than the builder, its employees, agents, or subcontractors;
- (d) A defect in materials or work not caused the builder, or its employees, agents, or subcontractors;
- (e) Normal wear and tear or normal deterioration;
- (f) Accidental loss or damage from acts of nature such as, but not limited to, fire, explosion, smoke, water escape, falling objects, aircraft, vehicles, Acts of God, lightning, windstorm, hail, flood, mudslide, earthquake, and changes in the level of the underground water table which are not reasonably foreseeable except to the extent that such accidental loss or damage was caused by or aggravated by defects in construction or materials;
- (g) Any damage caused by soil movement for which compensation is provided by legislation or which is covered by other insurance;
- (h) Insect damage. This exclusion does not apply to insect damage situations where the builder has failed to use proper materials or construction methods designed to prevent insect infestation;

Any loss or damage that arises while the home is being used primarily for nonresidential purposes;
- (i) Bodily injury;
- (j) Any loss or damage which the owner, wherever feasible, has not taken timely action to



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minimize or provide timely notice to the builder;

- (k) Loss or damage due to abnormal loading of floors by owner which exceeds code requirements;
- (l) Consequential damages to personal property are excluded. However, consequential damages to real property as a result of a defect or repair of a defect are covered; and
- (m) Any condition that does not result in actual physical damage to the home.

Section 7: Severability

7.1 The provisions of these regulations are severable. If a court holds that a provision is invalid or inapplicable, the remainder of the regulation remains in effect.

(Administrative History: Reg. No. 24-19 (Method 2); Orig. Dept.: Office of Consumer Protection; supersedes Reg. No. 6-08, which superseded Reg. No. 17-02, which superseded Reg. No. 23-01)

Approved



 Marc Elrich
 County Executive

Date: 10/25/2023

Approved as to Form and Legality
Office of the County Attorney

By: 

Date: 8/15/23