

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

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**Sec. 31C-1. Definitions.**

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

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

- f. Walls and partitions;
- g. Floor systems; and
- h. Roof framing system.

(7) *Major structural defect.* "Major structural defect:"

- a. Means any actual damage to load-bearing portions of the home that:
  - (i) Affects its load-bearing function; and
  - (ii) Vitally affects or is immediately likely to vitally affect use of the home for residential purposes;
- b. Includes damage due to subsidence, expansion, or lateral movement of the soil; and
- c. Does not include damage caused by movement of the soil caused by flood or earthquake.

(8) *New home.* "New home" means every newly constructed private dwelling unit and the fixtures and structure that are made a part of a newly constructed private dwelling unit at the time of construction.

(9) *Office.* "Office" means the Office of Consumer Protection.

(10) *Owner.* "Owner:"

- a. Means any person for whom the new home is built or to whom the home is sold for residential occupation by:
  - (i) That person or the family of that person as a home; and
  - (ii) The successors of that person in title to the home or mortgage in possession;

b. Does not mean:

- (i) Any development company, association, or subsidiary 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. (1986 L.M.C., ch. 49, § 1; 1996 L.M.C., ch. 13, § 1; [2005 L.M.C., ch. 26](#), § 1.)

**Editor's note**-The above section is quoted and discussed in *DeReggi Construction Company v. Mate*, 130 Md.App. 648, 747 A.2d 743 (2000).

2005 L.M.C., ch. 26, §§ 2 and 3, state:

Sec. 2. Regulations. A regulation which implements a function transferred to the Office of Consumer Protection by this Act continues in effect until otherwise amended or repealed, but any reference to any predecessor department or office must be treated as referring to the Office of Consumer Protection.

Sec. 3. Transition. This act does not invalidate or affect any action taken by the Department of Housing and Community Affairs before this Act took effect. Any responsibility or right granted by law, regulation, contract, or other document, and which is associated with a function transferred by this Act from the Department of Housing and Community Affairs, is transferred to the Office of Consumer Protection.

## **Sec. 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. (1986 L.M.C., ch. 49, § 1; 1995 L.M.C., ch. 4, § 1; 1996 L.M.C., ch. 13, § 1; 1996 L.M.C., ch. 20, § 1; 1998 L.M.C., ch. 12, § 1; [2001 L.M.C., ch. 14](#), § 1; [2002 L.M.C., ch. 16](#), § 2; [2005 L.M.C., ch. 26](#), § 1.)

**Editor's note**-The above section is quoted and discussed in [DeReggi Construction Company v. Mate](#), 130 Md.App. 648, 747 A.2d 743 (2000). See also [Baltimore Street Builders v. Stewart](#), 186 M. App. 684, 975 A.2d 271 (2009), discussing the [DeReggi](#) decision.

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### **Sec. 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). (1986 L.M.C., ch. 49, § 1; 1995 L.M.C., ch. 4, § 1.)

### **Sec. 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. (1986 L.M.C., ch. 49, § 1; FY 1991 L.M.C., ch. 9, § 1.)

#### **Sec. 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. (1986 L.M.C., ch. 49, § 1; 1995 L.M.C., ch. 4, § 1.)

### **Sec. 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. (1986 L.M.C., ch. 49, § 1; 1995 L.M.C., ch. 4, § 1.)

### **Sec. 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.*

(1) The dispute settler must investigate each claim that an owner or builder submits to determine the validity of the claim and the extent of builder responsibility.

(2) If the dispute settler determines that repairs are to be made, the dispute settler must notify the builder.

(3) If the builder is unable or refuses to make the necessary repairs within a reasonable time, the dispute settler must determine the exact amount of the award to be paid out of the fund to the owner based on actual bids for completion of the repairs.

(4) The total amount of payments from the fund for any new home must not exceed the purchase price of the home.

(5) After the Director certifies the amount of the award, the Director must notify the Department of Finance. The Department of Finance must make payment to the owner from the fund.

#### *(d) Payment from fund.*

(1) A claim may not be brought against the fund after 3 years from the date that the owner occupies or settles on the new home, whichever first occurs.

(2) A claim may not be brought against the fund by a spouse or other immediate relative of a licensed builder if the claim involves a new home constructed by that builder.

(3) A claim may not be for payment of consequential, personal injury, or punitive damages, attorney fees, court costs, or interest.

(4) When the Department of Finance makes a payment from the fund, the Director may:

- a. Proceed against the builder under Section 31C-8 of this 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. (1986 L.M.C., ch. 49, § 1; 1995 L.M.C., ch. 4, § 1; 1996 L.M.C., ch. 13, § 1; [2005 L.M.C., ch. 26](#), § 1.)

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### **Sec. 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. (1986 L.M.C., ch. 49, § 1; 1995 L.M.C., ch. 4, § 1; 1996 L.M.C., ch. 13, § 1; [2005 L.M.C., ch. 26](#), § 1.)

**Sec. 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. (1986 L.M.C., ch. 49, § 1; 1995 L.M.C., ch. 4, § 1.)

**Sec. 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. (1986 L.M.C., ch. 49, § 1; 1996 L.M.C., ch. 13, § 1.)

**Sec. 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.)

### **Sec. 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. (1986 L.M.C., ch. 49, § 1.)

**Cross reference**-Buildings, ch. 8.

### **Sec. 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. (1986 L.M.C., ch. 49, § 1.)

**Editor's note**-The above section is cited in DeReggi Construction Company v. Mate, 130 Md.App. 648, 747 A.2d 743 (2000).

### **Sec. 31C-14. Regulations.**

The county executive may adopt regulations to implement this chapter under method (2) of section 2A-15 of this Code. (1986 L.M.C., ch. 49, § 1.)

Notes

[Note] \***Editor's note**-Chapter 31C is cited in Andrulis v. Levin Constr. Corp., 331 Md. 354, 628 A.2d 197 (1993)

See County Attorney Opinion dated [7/8/02](#) describing the extent to which quasi-judicial officials may engage in political activities.

Former Chapter 31C, Obscene Matter, was derived from 1978 L.M.C., ch. 29, § 1. Pursuant to the terms of 1978 L.M.C., ch. 29, § 3, the Chapter provisions expired on July 1, 1978.