

## Chapter 31C. NEW HOME BUILDER AND SELLER REGISTRATION AND WARRANTY. [Note]

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

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

*Board* means the Board for Registration of Building Contractors.

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

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

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

*Homeowner* or *owner* means:

(1) any person for whom a new home is built or to whom a new home is sold for residential occupation; and

(2) the successors of that person in title to the home or mortgage in possession;

*Homeowner* does not mean:

(1) any development company, association, or subsidiary company of the builder; or

(2) a person to whom the home may be conveyed by the builder for any purpose other than use by that person.

*Load-bearing portions of the home* means:

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

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

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

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

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

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

*New home builder* or *builder* means any person:

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

*New home builder* does not include:

- (1) a subcontractor or other vendor hired by a new home builder or a consumer to perform services or supply materials for the construction of a new home if the subcontractor or vendor does not otherwise meet the requirements of this Chapter;
- (2) the manufacturer of a residential mobile home, unless the manufacturer also installs the mobile home;

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

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

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

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

*New home seller or seller* means a person that:

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

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

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

*Office* means the Office of Consumer Protection.

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

*Warranty date* means the first day that the homeowner occupies or settles on the new home, whichever first occurs. (2019 L.M.C., ch. 1, § 1.)

### **Sec. 31C-2. Applicability of Chapter.**

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

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

(1) receives a waiver from the Office to apply for and obtain any permits from the Montgomery County Department of Permitting Services to construct a new home without being registered as a new home builder or a new home seller;

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

(3) signs a statement that the work for which the permit is issued is for that person. (2019 L.M.C., ch. 1, § 1.)

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

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

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

(c) *Certificate of inspection.* A new home builder and new home seller must provide to a contract purchaser at the time of occupancy or settlement, whichever first occurs, a statement signed by the builder and seller, that all County-required inspections have been performed. (2019 L.M.C., ch. 1, § 1.)

#### **Sec. 31C-4. Board of registration.**

(a) *Appointment of Board.*

(1) There is a Board of Registration.

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

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

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

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

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

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

(2) The Board must:

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

(B) put its recommendations in writing; and

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

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

(f) Board members do not receive compensation for serving on the Board. (2019 L.M.C., ch. 1, § 1.)

#### **Sec. 31C-5. Registration process; fees.**

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

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

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

(2) require that the applicant agree to provide the warranty required in Section 31C-8; and

(3) include any additional information required by regulation.

(c) *Fees.*

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

(2) Any application fee paid is not refundable.

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

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

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

(e) *Director decision.*

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

(2) If the applicant is denied registration approval, the Director must send the applicant written notification of the denial and the reasons for the denial.

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

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

(g) *Amendment.* A new home builder or a new home seller must amend the registration within 30 days of any material change in the information provided in the most recent application or amendment. (2019 L.M.C., ch. 1, § 1.)

### **Sec. 31C-6. Registration Renewal.**

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

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

(b) At least 60 days before a new home builder or new home seller registration is set to expire, the Office must send written notification to the registrant. This notice must contain:

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

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

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

(e) By the date on which a registration is set to expire, the Director must send the applicant written notification of the of the Board's recommendation, if any, and the Director's final action regarding renewal

of a registration. If the Director fails to notify the applicant by this date, the renewal application is deemed approved.

(f) If the applicant is denied registration approval, the Director must send the applicant written notification of the denial and the reasons for the denial.

(g) A renewal registration is valid for 2 years. (2019 L.M.C., ch. 1, § 1.)

### **Sec. 31C-7. Enforceability of contracts.**

A contract for the performance of any act for which a home builder registration is required is void unless the home builder was registered at the time that the contract was signed by the contract purchaser. (2019 L.M.C., ch. 1, § 1.)

### **Sec. 31C-8. New home warranty.**

(a) *Warranty required.* As a condition to being registered under this Chapter, a new home builder and a new home seller must give a consumer a written warranty that provides the warranty coverage required by this Chapter no later than the execution of the contract to sell the home.

(b) *Liability.* The new home builder and new home seller must honor the terms of the warranty and cannot discharge this warranty obligation by providing a third-party new home warranty plan to the homeowner.

(c) *Performance standards.*

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

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

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

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

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

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

(e) *Exclusions.* The written warranty may exclude:

(1) damage to real property which is not part of the home covered by the warranty and which is not included in the purchase price of the home;

(2) bodily injury or damage to personal property;

(3) any defect in, or caused by, materials or work supplied by anyone other than the builder, or its employees, agents, or subcontractors;

(4) any loss or damage which the homeowner has not taken timely action to minimize; and

(5) any additional exclusions permitted by Regulation.

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

(g) *Financial security.*

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

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

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

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

#### NOTICE TO BUYER

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

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

(3) A new home builder or new home seller may be required to post a bond if the Director determines that the builder constructed and sold a home without being registered. (2019 L.M.C., ch. 1, § 1.)

### **Sec. 31C-9. Complaints, investigations, and administrative hearings.**

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

(b) *Investigation.* The Office may:

(1) investigate any complaint made against any person who is operating as a new home builder or new home seller and who is or should be registered under this Chapter;

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

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

(4) subpoena the attendance of witnesses and documents;

(5) administer oaths;

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

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

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

(c) *Hearing.*

(1) Before denying, suspending, refusing to renew, or revoking any registration, the Director must afford the builder or seller an opportunity for a hearing before a hearing officer designated by the Chief Administrative Officer for an administrative hearing.

(2) After giving a builder or seller the opportunity for a hearing, the Director may deny, suspend, refuse to renew, or revoke the registration of a new home builder or new home seller if the Director finds that the builder or seller:

(A) made a misstatement of material fact in the application for registration or renewal;

(B) committed fraud or misrepresentation in connection with any building activity conducted under the requirements of this Chapter;

(C) committed gross negligence in connection with any building activity conducted under the requirements of this Chapter;

(D) violated the building code or laws of the County or State;

(E) did not provide the new home warranty required by this Chapter;

(F) did not correct or settle a claim arising out of a defect that is covered by the warranty required by this Chapter;

(G) did not file an amendment to a registration application within 30 days of any material change in the information provided in the most recent application or amendment;

(H) aided, abetted, or knowingly combined or conspired with an unregistered person to evade this Chapter;

(I) abandoned or willfully failed to perform, without justification, a contract for construction of a building that is to be used as a residence;

(J) willfully deviated from or disregarded plans or specifications in any material way without consent of the consumer or homeowner;

(K) did not comply with this Chapter in any material way;

(L) diverted funds or property that were received for the completion of a construction project, and used the funds or property for another project, operation, obligation, or purpose, with intent to defraud or deceive creditors or the contract purchaser;

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

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

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

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

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

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



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

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

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

(e) *Appeals.* A person aggrieved by a decision of the hearing examiner or Director to deny, suspend, refuse to renew, or revoke a registration may seek judicial review of the decision in the Circuit Court under the applicable Maryland Rules of Procedure governing judicial review of administrative agency decisions. A party aggrieved by the decision of the Circuit Court may appeal that decision to the Court of Special Appeals. (2019 L.M.C., ch. 1, § 1.)

### **Sec. 31C-10. Violations and penalties.**

Any violation of this Chapter is a Class A violation. (2019 L.M.C., ch. 1, § 1.)

### **Sec. 31C-11. Administration; regulations.**

(a) The Director administers and enforces this Chapter.

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

(1) set one or more fees appropriate to cover the cost of administering this Chapter;

(2) provide for the form and content of the warranty required by Section 31C-8;

(3) set forth the terms of the warranty required by Section 31C-8;

(4) describe other allowable warranty exclusions the Executive deems necessary;

(5) include standards under which a person may receive a waiver under Section 31C-2; and

(6) includes standards by which a person may be deemed qualified to comply with County and State law, as required in Section 31C-5. (2019 L.M.C., ch. 1, § 1.)

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### Notes

[Note] \***Editor's note**—[Former] Chapter 31C [New Home Warranty and Builder Licensing] 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.

2019 L.M.C., ch. 1 §1, repealed former Chapter 31C, Sections 31C-1 through 31C-14, New Home Warranty and Builder Licensing, and enacted a new Chapter 31C, Sections 31C-1 through 31C-11. Former Chapter 31C was derived from 1986 L.M.C., ch. 49, § 1; FY 1991 L.M.C., ch. 9, § 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; and 2005 L.M.C., ch. 26, § 1.

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.