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By: **Delegate Kach**

Introduced and read first time: February 9, 2001

Assigned to: Economic Matters

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A BILL ENTITLED

1 AN ACT concerning

2                                   **Business Regulation - Maryland Home Builder Registration Act - Repeal of**  
3                                   **Lender Exemption**

4 FOR the purpose of repealing provisions of the Maryland Home Builder Registration  
5 Act that exempt certain lenders from complying with certain requirements of  
6 this Act; and clarifying the applicability of certain performance standards for  
7 mobile homes.

8 BY repealing and reenacting, with amendments,  
9 Article - Business Regulation  
10 Section 4.5-101 and 4.5-501  
11 Annotated Code of Maryland  
12 (1998 Replacement Volume and 2000 Supplement)

13 BY repealing and reenacting, with amendments,  
14 Article - Real Property  
15 Section 14-117(j)  
16 Annotated Code of Maryland  
17 (1996 Replacement Volume and 2000 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
19 MARYLAND, That the Laws of Maryland read as follows:

20                                   **Article - Business Regulation**

21 4.5-101.

22 (a) In this title the following words have the meanings indicated.

23 (b) "Consumer" means an owner or a contract purchaser.

24 (c) "Contract purchaser" means a person who has entered into a contract with  
25 a home builder to purchase a new home, but who has not yet settled on the purchase  
26 of the new home.

1 (d) "Division" means the Consumer Protection Division of the Office of the  
2 Attorney General.

3 (e) ["Exempt lender" means a lender exempt from the requirements of  
4 registration as provided in § 4.5-501(c).

5 (f)] (1) "Home builder" means a person that undertakes to erect or otherwise  
6 construct a new home.

7 (2) "Home builder" includes:

8 (i) a custom home builder as defined in § 10-501 of the Real  
9 Property Article;

10 (ii) a new home builder subject to § 10-301 of the Real Property  
11 Article; and

12 (iii) the installer or retailer of a mobile home or an industrialized  
13 building intended for residential use.

14 (3) "Home builder" does not include:

15 (i) an employee of a registrant who does not hold himself or herself  
16 out for hire in home building except as an employee of a registrant;

17 (ii) subcontractors or other vendors hired by the registrant to  
18 perform services or supply materials for the construction of a new home who do not  
19 otherwise meet the requirements of this title;

20 (iii) the manufacturer of industrialized buildings intended for  
21 residential use or of mobile homes, unless the manufacturer also installs the  
22 industrialized buildings or mobile homes;

23 (iv) a real estate developer who does not construct homes;

24 (v) a financial institution that lends funds for the construction or  
25 purchase of residential dwellings in the State; or

26 (vi) a person who erects or constructs new homes solely in  
27 Montgomery County.

28 [(g)] (F) "Home builder registration number" means a registration number  
29 issued by the Director to a registrant under this title.

30 [(h)] (G) "Industrialized building" has the meaning stated in Article 83B, §  
31 6-202 of the Code.

32 [(i)] (H) "Install" has the meaning stated in Article 83B, § 6-202 of the Code.

33 [(j)] (I) "Mobile home" has the meaning stated in Article 83B, § 6-202 of the  
34 Code.

1 [(k)] (J) (1) "New home" means each newly constructed residential dwelling  
2 unit in the State and the fixtures and structure that are made a part of a newly  
3 constructed private dwelling unit at the time of construction.

4 (2) "New home" includes:

5 (i) a custom home as defined in § 10-501(c) of the Real Property  
6 Article;

7 (ii) a new home to which § 10-301 of the Real Property Article  
8 applies;

9 (iii) an industrialized building intended for residential use; and

10 (iv) a mobile home.

11 [(l)] (K) (1) "Owner" means a person for whom a new home is built or to  
12 whom a new home is sold for occupation by:

13 (i) that person or the family of that person as a home; or

14 (ii) the successors of that person in title to the home or a mortgagor  
15 in possession.

16 (2) "Owner" includes a contract purchaser who contracts with a  
17 registrant for the construction and purchase of a new home.

18 (3) "Owner" does not include:

19 (i) a development company, association, or subsidiary company of a  
20 registrant; or

21 (ii) a person or organization to whom the home may be conveyed by  
22 the registrant for a purpose other than residential occupation by that person or  
23 organization.

24 [(m)] (L) "Principal" means:

25 (1) a sole proprietor, officer, director, general partner, or limited liability  
26 company manager of an applicant or registrant;

27 (2) a person with at least 10 percent ownership in an applicant or  
28 registrant or a subsidiary of an applicant or registrant; and

29 (3) parents, spouses, and children with a combined 10 percent ownership  
30 in an applicant or registrant or a subsidiary of an applicant or registrant.

31 [(n)] (M) "Registrant" means a person registered to build new homes.

32 [(o)] (N) "Registration Fund" means the Home Builder Registration Fund.

1 4.5-501.

2 (a) Except as otherwise provided in this title, a person may not act as, offer to  
3 act as, hold oneself out as, or impersonate a registrant in the State unless the person  
4 is a registrant.

5 (b) A person that violates this section is guilty of a misdemeanor and, on first  
6 conviction, is subject to a fine not exceeding \$1,000 and on second or subsequent  
7 conviction, is subject to a fine not exceeding \$5,000.

8 [(c) The following lenders are exempt from the requirements relating to  
9 registration under this title when the lender hires a second registered home builder  
10 who would undertake to complete a first home builder's unfinished project pursuant  
11 to a default in obligations of the first home builder to the lender:

12 (1) a mortgage lender as defined in § 11-501(j)(1)(ii) of the Financial  
13 Institutions Article that is a licensee under Title 11, Subtitle 5 of the Financial  
14 Institutions Article;

15 (2) a bank, trust company, savings bank, savings and loan association, or  
16 credit union incorporated or chartered under the laws of this State or the United  
17 States that maintains its principal office in this State;

18 (3) an out-of-state bank as defined in § 5-1001 of the Financial  
19 Institutions Article that has a branch in this State that accepts deposits;

20 (4) an institution incorporated under federal law as a savings association  
21 or savings bank that does not maintain its principal office in this State but has a  
22 branch that accepts deposits in this State; and

23 (5) a subsidiary or affiliate of an institution described in paragraph (2),  
24 (3), or (4) of this subsection that is subject to audit or examination by a regulatory  
25 body or agency of this State, the United States, or the state where the subsidiary or  
26 affiliate maintains its principal office.

27 (d) An exempt lender is subject only to §§ 4.5-202(c), 4.5-401, 4.5-503,  
28 4.5-601, 4.5-602, and 4.5-603 of this title.]

29

#### **Article - Real Property**

30 14-117.

31 (j) (1) This subsection applies to Baltimore City and all other counties  
32 except Montgomery County.

33 (2) A contract for the initial sale of a new home, as defined in this  
34 subtitle, shall include the following:

35 (i) The builder registration number of the seller of the new home;

1 (ii) A provision stating that the new home shall be constructed in  
2 accordance with all applicable building codes in effect at the time of the construction  
3 of the new home;

4 (iii) A provision referencing all performance standards or guidelines:

5 1. That the seller shall comply with in the construction of the  
6 new home; and

7 2. That shall prevail in the performance of the contract and  
8 any arbitration or adjudication of a claim arising from the contract; and

9 (iv) A provision detailing the purchaser's right to receive a  
10 consumer information pamphlet as provided under the Home Builder Registration  
11 Act.

12 (3) [The] UNLESS PREEMPTED BY THE NATIONAL MANUFACTURED  
13 HOUSING AND SAFETY STANDARDS ACT OF 1974, THE performance standards or  
14 guidelines described in paragraph (2) of this subsection shall be:

15 (i) The performance standards or guidelines adopted at the time of  
16 the contract by the National Association of Home Builders;

17 (ii) Any performance standards or guidelines adopted by the home  
18 builder and incorporated into the contract that are equal to or more stringent than  
19 the performance standards adopted at the time of the contract by the National  
20 Association of Home Builders; or

21 (iii) Any performance standards or guidelines adopted at the time of  
22 the contract by a county or municipal corporation that are equal to or more stringent  
23 than the performance standards or guidelines adopted at the time of the contract by  
24 the National Association of Home Builders.

25 (4) The information required by paragraph (2) of this subsection shall be  
26 printed in conspicuous type.

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
28 October 1, 2001.