

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 114
Economic Matters

(Delegate Stukes, *et al.*)

Task Force to Study Recovery Efforts Following Residential Fires

This bill establishes the Task Force to Study Recovery Efforts Following Residential Fires. The bill specifies the membership of the task force and requires the Governor to appoint seven members to the task force. The chairperson is elected by the task force from among its members. The Maryland Insurance Administration (MIA) must provide staff support for the task force. A report with findings and recommendations is due by October 1, 2013, to the Governor and the General Assembly.

The bill takes effect June 1, 2013, and terminates May 31, 2014.

Fiscal Summary

State Effect: Any expense reimbursements for task force members and staffing costs for MIA are assumed to be minimal and absorbable within existing budgeted resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The task force must:

- study and report on the current process in Maryland for rebuilding a home affected by fire;

- study the processes by which an insurance company values a fire-damaged home and the goods inside the home and recommends vendors and contractors to a policyholder for restoration of a fire-damaged home;
- study the processes by which the Department of Housing and Community Development decides whether a policyholder is eligible for relief housing and recommends temporary housing options to affected policyholders;
- consider whether existing State laws and policies adequately assist Maryland residents affected by fire damage to their homes;
- review successful recovery models from other jurisdictions and gather research relating to residential fire recovery methods; and
- make recommendations on how to improve communication between all parties, temporary housing options for affected policyholders, the amount of time to fully restore a fire-damaged home, and any other relevant issue or consideration identified by the task force.

Task force members may not receive compensation but are entitled to reimbursement for expenses under the standard State travel regulations, as provided in the State budget.

Current Law:

Delays by Home Improvement Contractors: Section 8-501 of the Business Regulation Article provides the only statutory guidance on time disclosures that must be part of a home improvement contract. Under § 8-501(c), a home improvement contract must contain approximate dates for when the contractor will begin and substantially complete repairs. The provision further authorizes the contracting parties to agree to a specific timeframe for the contractor’s performance. The so-called savings clause, § 8-501(a), and supporting case law indicate that a contract is not invalid solely based on noncompliance with the disclosure requirements.

When delays to repair jobs extend a homeowner’s displacement, a contractor may be subject to litigation, arbitration, regulatory charges from the Maryland Home Improvement Commission (MHIC), or reimbursement of a claim from the Home Improvement Guaranty Fund. Under Title 8, Subtitle 6, a contractor’s delayed start on a repair job or delayed completion of a repair job could constitute a “prohibited act,” giving rise to liability. Potentially relevant “prohibited acts” include abandonment or failure to perform a contract, misrepresentation, fraud, and deceptive advertising.

Delays by Insurance Companies: Once an insured contacts an insurer to report a claim, several MIA regulations relate to the timing of each step of the process to pay a claimant. Insurers must provide an appropriate response within 15 working days of any written correspondence from an insured which suggests a response is expected.

Once insurers receive notification of a claim, it is an unfair claim settlement practice to fail to acknowledge that notification within 15 working days. It is also an unfair claim settlement practice to fail to adopt and implement reasonable standards for the prompt investigation of claims arising under policies. If an investigation has begun, insurers must notify the first-party claimant in writing if the insurer has not completed its investigation within 45 days of the notification. This notice must include the actual reason for the extension and be sent every 45 days for which the investigation continues.

Finally, it is an unfair claim settlement practice if the insurer refuses or unreasonably delays a payment to claimants when coverage, liability, and amount of damages are reasonably clear. MIA regulations define an “unreasonable delay” as “the failure to make payment to claimants of amounts properly due them within 15 working days after receipt of a properly completed claim form or other proof of loss... when there is no significant dispute as to coverage, liability, and amount of damages.” However, a longer period of time is permissible if provided for in the insurance contract or by law.

Background:

Maryland Home Improvement Commission: As required by Chapter 333 of 2011 (HB 362), MHIC has posted general information on its website to help consumers understand the contents of their contracts and avoid being victimized by unlicensed contractors. To date, MHIC’s website does not contain consumer information specific to fires.

MHIC receives various types of complaints from homeowners, but it has not previously identified a high volume of complaints for delays to fire repairs. Two related, common types of complaints, however, involve the abandonment of a project and poor workmanship. The commission advises that many of the complaints it receives arise because homeowners and contractors fail to agree to detailed expectations and timeframes for projects. Homeowners often file complaints claiming poor workmanship when they believe their expectations have not been met. Complaints may arise from or be aggravated by a homeowner’s high personal expectations, which may not coincide with minimum industry standards. Although the work performed by a contractor is in fact inadequate in many cases, in other cases it is unclear whether the homeowner’s expectations are too high or the contractor failed to sufficiently complete the project. MHIC investigators report that contractors often present homeowners with overly simplified contracts that do not properly manage contractor or homeowner expectations.

Once MHIC receives a complaint, a commission investigator must intervene and attempt to resolve the issue either as an intermediary or through more formal channels, such as a commission hearing or within the judicial system.

According to MHIC, when a contractor has failed to start work on a project in a timely manner, the delay may constitute an abandonment or failure to perform for both regulatory and Guaranty Fund purposes, depending upon the facts and circumstances of the particular case. Sometimes factors beyond a contractor's control may justify the delay of a project, such as weather, availability of materials, or illness, in which case the contractor would not have constructively abandoned the project. In other cases, a delay may be unreasonably long and without any justification, so the contractor may be deemed to have constructively abandoned the project. MHIC further advises that it would generally be very difficult – although not necessarily impossible – to sustain a regulatory charge of misrepresentation, fraud, or deceptive advertising based on a delay in starting work on a project, since these charges would require additional elements of proof regarding intent that are not required for an abandonment or failure to perform charge. A determination of whether such charges could be sustained would depend on the facts, but it would generally be very difficult to prove.

MHIC advises that a regulatory charge or Guaranty Fund claim for abandonment or failure to perform would not apply in situations where a contractor begins performance in a timely manner but delays completion. Whether delayed, but ultimately performed, work could give rise to a misrepresentation, fraud, or deceptive advertising charge would depend on the facts of the particular case. In order to sustain a charge or claim on these bases, a contractor would need to have intentionally deceived a homeowner regarding the timeframe. Proof of such intent would be difficult to establish. The mere fact that a contractor failed to meet a promised date for completion of a project is not proof, in and of itself, that the contractor intentionally deceived the homeowner.

Maryland Insurance Administration: From 2009 through 2012, MIA received 54 homeowner's insurance complaints involving delays in the settlement of a fire loss. During that same period, MIA received one complaint involving the delay in the settlement of a fire/allied lines policy fire loss. In 2012, these complaints represented 0.33% of the total amount of complaints received by MIA.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Insurance Administration, Maryland Home Improvement Commission, Department of Legislative Services

Fiscal Note History: First Reader - January 29, 2013
ncs/ljm

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