

Article - Business Regulation

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§4.5–706.

(a) To begin a proceeding to recover from the Guaranty Fund, a claimant shall submit to the Division's mediation unit a written complaint that states:

- (1) the amount claimed based on the actual loss;
- (2) the facts giving rise to the claim;
- (3) whether there is other evidence that supports the claim, including expert reports, photographs, or videotapes and that the evidence is included with the complaint;
- (4) what documents are related to the claim and that copies of the documents are attached, including the contract of sale; and
- (5) any other information that the Division requires.

(b) The Division's mediation unit shall:

(1) send a copy of the complaint to the registrant alleged to be responsible for the actual loss;

(2) require a written response to the complaint within 30 days that includes:

(i) any evidence the registrant has concerning the claim, including expert reports, photographs, or videotapes; and

(ii) any other information that the Division requires;

(3) attempt to resolve the complaint through mediation, taking into consideration applicable laws, including express and implied warranties and the provisions of § 4.5–401 of this title; and

(4) refer the complaint to the Division as a claim against the Guaranty Fund if:

- (i) 1. the home builder fails to respond as required by this section;
2. the mediation unit concludes that the complaint cannot be resolved through mediation; or
3. in mediation, the parties do not mutually agree to an arbitrator; and

(ii) the claimant executes a claim form prepared by the Division stating under oath that the claimant wishes to seek recovery from the Guaranty Fund.

(c) (1) If a claimant's new home contract includes a written agreement with a registrant to submit a dispute to arbitration and the agreement authorizes:

(i) the registrant to select the arbitrator or the arbitration service, the claimant may elect whether to first seek recovery from the Guaranty Fund or submit the dispute to arbitration; or

(ii) if the claimant's new home contract provides for mutual selection of the arbitration service and the claimant and registrant have mutually agreed on an arbitration service, the claimant must submit the dispute to arbitration prior to seeking recovery from the Guaranty Fund.

(2) If the claimant and the registrant submit the dispute to arbitration under the written agreement in the contract and the arbitrator makes a final judgment or final award in favor of the claimant:

(i) the claimant may make a claim against the Guaranty Fund; but

(ii) if the registrant pays the award amount to the claimant within 90 days of the final award, the Division shall dismiss the claim against the Guaranty Fund.

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