

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 164
Finance

(Senator Kelley)

Economic Matters

Home Builder Guaranty Fund - Award Limitations - Revisions

This bill increases, from \$300,000 to \$500,000, the maximum amount the Consumer Protection Division (CPD) of the Office of the Attorney General may award from the Home Builder Guaranty Fund to all claimants for acts or omissions of one registered home builder before the registered builder reimburses the fund.

Fiscal Summary

State Effect: No effect on State budgeted funds. Potential acceleration of nonbudgeted expenditures from and revenues to the Home Builder Guaranty Fund beginning in FY 2021, as discussed below.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law: The Home Builder Guaranty Fund, administered by CPD, allows consumers to seek compensation for actual losses resulting from an act or omission by a registered builder who constructs a new home for a consumer. The fund is supported by fees collected by local governments from home builders upon application for a construction permit. Builders are permitted to pass this cost on to the consumer. The fee is currently \$50, and local governments may retain up to 2% of the fees collected for administrative costs. CPD must maintain the fund at a level of at least \$1 million.

Recovery from the Fund

With specified exceptions, a consumer who entered into a contract with a registered builder to construct a new home in the State on or after January 1, 2009, may file a claim against the fund. Generally, “actual loss” means the costs of restoration, repair, replacement, or completion that results from the incomplete construction of a new home, a breach of an express or implied warranty, or a failure of the builder to meet specified construction standards or guidelines. The fund may award up to \$50,000 to any one claimant for acts of any one registered builder and up to \$300,000 for all claims against any one registered builder, unless the builder first reimburses the fund.

Payment of Claims

CPD generally must pay approved claims in the order submitted. If approved claims submitted to CPD against a registered builder exceed \$300,000, less the amount of unreimbursed claim payments previously made for the registrant, CPD may pay the approved claims proportionately so that each claimant receives the same percentage payment of the claims. After the fund is reimbursed, the division must pay unsatisfied approved claims. If there is not enough money in the fund to pay an approved claim wholly or partially, CPD must pay the unpaid claim when enough money is deposited in the fund and in the order that each claim was submitted, as specified.

Reimbursement of the Fund

The division has a right to reimbursement by a registered home builder whose act or omission gave rise to a claim. If a registrant fails to reimburse the Guaranty Fund within 60 days for a claim paid on the registrant’s account, the division may sue the registrant in a court of competent jurisdiction. If a person liable for reimbursing the fund fails to do so within 12 months, the division may refer the matter to the Central Collection Unit and place a lien on the person’s real property. The division may also suspend the builder’s registration until claims against the fund are reimbursed in full.

State Fiscal Effect: To the extent that CPD awards amounts that exceed \$300,000 to multiple claimants for acts or omissions of a single registered home builder, nonbudgeted expenditures may accelerate beginning as early as fiscal 2021. Nonbudgeted revenues to the fund may also accelerate as the fund is reimbursed by home builders responsible for guaranty fund claims. However, the bill is not anticipated to meaningfully affect the fund balance. As of January 2020, the fund had a balance of \$2.7 million. CPD reports that in fiscal 2019, a total of \$388,000 was paid to claimants from the fund.

CPD is aware of two recent cases in which total claims exceeded \$300,000 and two pending cases for which claims will likely exceed \$300,000. However, CPD advises that,

historically, there have been a minimal number of cases for which claims exceeded \$300,000. Given the fund large balance and the rarity of claims exceeding \$300,000, the bill is not expected to have a meaningful effect on the guaranty fund or CPD.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 116 (Delegate D.E. Davis) - Economic Matters.

Information Source(s): Office of the Attorney General (Consumer Protection Division);
Department of Legislative Services

Fiscal Note History: First Reader - February 3, 2020
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