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By: **Delegates D. Davis and Love**  
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Assigned to: Economic Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Business Regulation - Home Builders - Home Builder Guaranty Fund**

3 FOR the purpose of increasing certain home builder registration and renewal fees;  
4 requiring the Consumer Protection Division of the Office of the Attorney  
5 General to establish a Home Builder Guaranty Fund; requiring the Division to  
6 maintain the Guaranty Fund at a certain monetary level, deposit certain money  
7 into the Guaranty Fund, and administer the Guaranty Fund; establishing a  
8 custodian of the Guaranty Fund; requiring that certain administrative costs of  
9 the Guaranty Fund be paid from a certain fund; requiring certain home builders  
10 to pay a certain Guaranty Fund fee with each application for a permit for the  
11 construction of a new home; authorizing a home builder to collect money for the  
12 Guaranty Fund fee from a certain person; requiring certain county departments  
13 to remit Guaranty Fund fees collected to the Division at a certain time;  
14 providing for the suspension of a home builder's registration under certain  
15 circumstances; authorizing a consumer to recover compensation from the  
16 Guaranty Fund under certain circumstances; authorizing the Division to deny a  
17 claim under certain circumstances; limiting the amounts of money and purposes  
18 for which the Division may make awards from the Guaranty Fund; prohibiting  
19 certain persons from making claims against the Guaranty Fund; authorizing a  
20 claimant to bring a claim against the Fund within a certain time period;  
21 specifying procedures for recovering money from the Guaranty Fund; requiring  
22 the Division's mediation unit to perform certain duties; requiring the Division to  
23 process certain claims made against the Guaranty Fund; authorizing a claimant  
24 to make certain appeals; providing that the Division has a right to  
25 reimbursement from a certain registrant for money paid from the Guaranty  
26 Fund; establishing certain penalties; defining certain terms; providing for the  
27 effect of this Act; and generally relating to the Home Builder Guaranty Fund.

28 BY repealing and reenacting, with amendments,  
29 Article - Business Regulation  
30 Section 4.5-101, 4.5-304, 4.5-305, 4.5-601; and 4.5-701 to be under the  
31 amended subtitle "Subtitle 8. Short Title"  
32 Annotated Code of Maryland  
33 (2004 Replacement Volume)

1 BY repealing and reenacting, without amendments,  
2 Article - Business Regulation  
3 Section 4.5-203  
4 Annotated Code of Maryland  
5 (2004 Replacement Volume)

6 BY adding to  
7 Article - Business Regulation  
8 Section 4.5-701 through 4.5-712, inclusive, to be under the new subtitle  
9 "Subtitle 7. Home Builder Guaranty Fund"  
10 Annotated Code of Maryland  
11 (2004 Replacement Volume)

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

14 **Article - Business Regulation**

15 4.5-101.

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

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

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

21 (d) "Division" means the Consumer Protection Division of the Office of the  
22 Attorney General.

23 (e) "Exempt lender" means a lender exempt from the requirements of  
24 registration as provided in § 4.5-501(c) of this title.

25 (F) "GUARANTY FUND" MEANS THE HOME BUILDER GUARANTY FUND.

26 [(f)] (G) (1) "Home builder" means a person that undertakes to erect or  
27 otherwise construct a new home.

28 (2) "Home builder" includes:

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

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

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

- 1                   (3)     "Home builder" does not include:
- 2                           (i)     an employee of a registrant who does not hold himself or herself  
3 out for hire in home building except as an employee of a registrant;
- 4                           (ii)    subcontractors or other vendors hired by the registrant to  
5 perform services or supply materials for the construction of a new home who do not  
6 otherwise meet the requirements of this title;
- 7                           (iii)   the manufacturer of industrialized buildings intended for  
8 residential use or of mobile homes, unless the manufacturer also installs the  
9 industrialized buildings or mobile homes;
- 10                       (iv)    a real estate developer who does not construct homes;
- 11                       (v)     a financial institution that lends funds for the construction or  
12 purchase of residential dwellings in the State; or
- 13                       (vi)    a person who erects or constructs new homes solely in  
14 Montgomery County.
- 15     [(g)]     (H)     "Home builder registration number" means a registration number  
16 issued by the Unit to a registrant under this title.
- 17     [(h)]     (I)     "Industrialized building" has the meaning stated in § 12-301 of the  
18 Public Safety Article.
- 19     [(i)]     (J)     "Install" has the meaning stated in § 12-301 of the Public Safety  
20 Article.
- 21     [(j)]     (K)     "Mobile home" means a manufactured home as defined in § 12-301 of  
22 the Public Safety Article.
- 23     [(k)]     (L)     (1)     "New home" means each newly constructed residential dwelling  
24 unit in the State and the fixtures and structure that are made a part of a newly  
25 constructed private dwelling unit at the time of construction.
- 26                       (2)     "New home" includes:
- 27                           (i)     a custom home as defined in § 10-501(c) of the Real Property  
28 Article;
- 29                           (ii)    a new home to which § 10-301 of the Real Property Article  
30 applies;
- 31                           (iii)   an industrialized building intended for residential use; and
- 32                           (iv)    a mobile home.
- 33     (M)     "NEW HOME CONTRACT" MEANS AN AGREEMENT BETWEEN A HOME  
34 BUILDER AND A CONSUMER FOR THE SALE OR CONSTRUCTION OF A NEW HOME.

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

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

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

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

8             (3)     "Owner" does not include:

9                     (i)     a development company, association, or subsidiary company of a  
10 registrant; or

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

14     [(m)]     (O)     "Principal" means:

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

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

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

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

22     [(o)]     (Q)     "Registration Fund" means the Home Builder Registration Fund.

23 4.5-203.

24     (a)     (1)     There is a Home Builder Registration Fund.

25                    (2)     The Division shall administer the Registration Fund.

26                    (3)     The Registration Fund shall be used to cover the actual documented  
27 direct and indirect costs incurred for the administration and enforcement of the  
28 Maryland Home Builder Registration Act.

29                    (4)     The Registration Fund is a continuing, nonlapsing fund, and is  
30 subject to § 7-302 of the State Finance and Procurement Article.

31                    (5)     Unspent assets of the Registration Fund shall remain in the  
32 Registration Fund and may not revert or be transferred to the General Fund of the  
33 State.

1 (6) The Registration Fund may not be supported by appropriations of  
2 State funds.

3 (b) The Division shall pay all funds collected under §§ 4.5-303, 4.5-304, and  
4 4.5-305 of this title to the Comptroller, who shall distribute the fees to the  
5 Registration Fund.

6 (c) The Office of Legislative Audits shall audit the accounts and transactions  
7 of the Registration Fund under § 2-1220 of the State Government Article.

8 4.5-304.

9 (a) The Unit shall register and issue a home builder registration number to an  
10 applicant that:

11 (1) meets the requirements of this title; and

12 (2) pays to the Division an initial 2-year registration fee of [\$300] \$600.

13 (b) A registration issued under this title may not be transferred, assigned, or  
14 pledged.

15 (c) A valid registration authorizes the registrant to act as a home builder in  
16 the State.

17 (d) (1) A home builder that holds a license or registration in Montgomery  
18 County may act as a home builder in that county only, unless the home builder is also  
19 registered under this title.

20 (2) A HOME BUILDER THAT HOLDS A LICENSE OR REGISTRATION IN  
21 MONTGOMERY COUNTY AND IS NOT REGISTERED UNDER THIS TITLE IS SUBJECT TO  
22 SUBTITLE 7 OF THIS TITLE.

23 (3) (I) IN ADDITION TO THE COUNTY LICENSE OR REGISTRATION FEE,  
24 A HOME BUILDER THAT IS REQUIRED TO HOLD A LICENSE OR REGISTRATION ONLY  
25 IN MONTGOMERY COUNTY SHALL PAY TO THE COUNTY A GUARANTY FUND  
26 ADMINISTRATIVE FEE OF \$150.

27 (II) THE COUNTY SHALL REMIT THE GUARANTY FUND  
28 ADMINISTRATIVE FEE TO THE UNIT TO BE DEPOSITED IN THE REGISTRATION FUND.

29 4.5-305.

30 (a) (1) Unless renewed under this section, a registration expires on the  
31 second anniversary of its effective date.

32 (2) A registrant that meets the requirements of subsection (c) of this  
33 section may obtain a renewal of a registration before the registration expires for an  
34 additional 2-year term.

35 (3) Once expired, a registration may not be renewed.

1 (b) At least 60 days before a registration expires, the Unit shall mail the  
2 registrant, at the last known address of the registrant:

3 (1) a renewal application form; and

4 (2) a notice that states:

5 (i) the date on which the current registration expires; and

6 (ii) the date by which the Unit must receive the renewal application  
7 for a renewal to be issued and mailed before the registration expires.

8 (c) The Unit shall renew the registration of each registrant that:

9 (1) submits to the Unit a renewal application on the form provided by the  
10 Unit;

11 (2) would qualify for an initial registration;

12 (3) pays to the Division a renewal fee based on the number of building  
13 permits for the construction of new homes issued to the registrant in the preceding  
14 calendar year as follows:

15 (i) 10 or fewer new homes ..... [\$150] \$300; and

16 (ii) 11 or more new homes ..... [\$300] \$600; and

17 (4) is otherwise entitled to be registered.

18 4.5-601.

19 (a) Except for a building permit for construction to be performed directly by a  
20 landowner solely for the landowner's own use, the building and permits department  
21 of a county may not issue a permit for home building unless:

22 (1) the permit includes the home builder registration number of a  
23 registrant; AND

24 (2) THE REGISTRANT PAYS THE GUARANTY FUND FEE REQUIRED BY §  
25 4.5-704(A) OF THIS SUBTITLE.

26 (b) Before issuing a permit for home building to a landowner, the building and  
27 permits department of a county shall obtain the signature of the landowner affirming  
28 that the permit is being issued solely for the purpose of the landowner performing  
29 work on the landowner's own property.

30 (c) Nothing in this section shall be construed to relieve a registrant from the  
31 obligation to obtain all other permits, licenses, and other authorizations for the  
32 construction of a new home.

1 SUBTITLE 7. HOME BUILDER GUARANTY FUND.

2 4.5-701.

3 IN THIS SUBTITLE, "ACTUAL LOSS" MEANS THE COSTS OF RESTORATION,  
4 REPAIR, REPLACEMENT, OR COMPLETION THAT ARISE FROM AN UNWORKMANLIKE,  
5 INADEQUATE, OR INCOMPLETE CONSTRUCTION OF A NEW HOME.

6 4.5-702.

7 THIS SUBTITLE DOES NOT:

8 (1) LIMIT THE AUTHORITY OF THE DIVISION TO TAKE DISCIPLINARY  
9 ACTION AGAINST A REGISTRANT UNDER THIS SUBTITLE;

10 (2) LIMIT THE AVAILABILITY OF OTHER REMEDIES TO A CLAIMANT; OR

11 (3) REQUIRE A CLAIMANT TO EXHAUST ADMINISTRATIVE REMEDIES  
12 BEFORE THE DIVISION BEFORE BRINGING AN ACTION IN COURT.

13 4.5-703.

14 (A) THE DIVISION SHALL:

15 (1) ESTABLISH A HOME BUILDER GUARANTY FUND; AND

16 (2) MAINTAIN THE GUARANTY FUND AT A LEVEL OF AT LEAST \$1,000,000.

17 (B) (1) THE DIVISION SHALL DEPOSIT ALL MONEY COLLECTED UNDER §  
18 4.5-704 OF THIS TITLE IN THE GUARANTY FUND.

19 (2) (I) THE STATE TREASURER IS THE CUSTODIAN OF THE GUARANTY  
20 FUND.

21 (II) THE GUARANTY FUND SHALL BE INVESTED AND REINVESTED  
22 IN THE SAME MANNER AS OTHER STATE FUNDS.

23 (III) THE STATE TREASURER SHALL DEPOSIT PAYMENTS RECEIVED  
24 FROM THE DIVISION UNDER THIS SECTION INTO THE GUARANTY FUND.

25 (IV) INVESTMENT EARNINGS SHALL BE CREDITED TO THE  
26 GUARANTY FUND.

27 (C) THE DIVISION SHALL ADMINISTER THE GUARANTY FUND IN ACCORDANCE  
28 WITH THIS SUBTITLE.

29 (D) THE DIRECT AND INDIRECT COSTS INCURRED FOR ADMINISTRATION OF  
30 AND ENFORCEMENT RELATED TO THE GUARANTY FUND SHALL BE PAID FROM THE  
31 REGISTRATION FUND ESTABLISHED UNDER § 4.5-203 OF THIS TITLE.

1 4.5-704.

2 (A) (1) A HOME BUILDER SHALL PAY TO THE BUILDING AND PERMITS  
3 DEPARTMENT OF A COUNTY A GUARANTY FUND FEE OF \$50 WITH EACH  
4 APPLICATION FOR A PERMIT FOR CONSTRUCTION OF A NEW HOME.

5 (2) THE HOME BUILDER MAY COLLECT THE \$50 GUARANTY FUND FEE  
6 FROM THE CONSUMER.

7 (3) EACH MONTH, THE BUILDING AND PERMITS DEPARTMENT OF A  
8 COUNTY SHALL REMIT THE FEES COLLECTED TO THE DIVISION TO BE DEPOSITED IN  
9 THE GUARANTY FUND.

10 (4) THE GUARANTY FUND FEE MAY BE DEPOSITED ONLY IN THE  
11 GUARANTY FUND.

12 (B) IF A REGISTRANT FAILS TO PAY THE GUARANTY FUND FEE, THE  
13 REGISTRANT'S HOME BUILDER REGISTRATION IS SUSPENDED UNTIL THE FEE IS  
14 PAID.

15 4.5-705.

16 (A) SUBJECT TO THIS SUBTITLE, A CONSUMER MAY RECOVER COMPENSATION  
17 FROM THE GUARANTY FUND FOR AN ACTUAL LOSS THAT RESULTS FROM AN ACT OR  
18 OMISSION BY A REGISTRANT AS FOUND BY THE DIVISION OR A COURT OF  
19 COMPETENT JURISDICTION.

20 (B) FOR PURPOSES OF RECOVERY FROM THE GUARANTY FUND, THE ACT OR  
21 OMISSION OF A REGISTRANT INCLUDES THE ACT OR OMISSION OF A  
22 SUBCONTRACTOR, SALESPERSON, OR EMPLOYEE OF THE REGISTRANT, WHETHER OR  
23 NOT AN EXPRESS AGENCY RELATIONSHIP EXISTS.

24 (C) (1) A CLAIMANT MAY SEEK RECOVERY FROM THE GUARANTY FUND IN  
25 ADDITION TO FILING A CLAIM WITH A NEW HOME WARRANTY SECURITY PLAN, BUT  
26 MAY NOT RECEIVE MORE THAN ONE RECOVERY FOR THE SAME ACTUAL LOSS.

27 (2) A CLAIMANT WHO HAS ALSO FILED A CLAIM WITH A NEW HOME  
28 WARRANTY SECURITY PLAN SHALL INCLUDE WITH THE CLAIM AGAINST THE  
29 GUARANTY FUND:

30 (I) A COPY OR DESCRIPTION OF THE CLAIM FILED WITH THE NEW  
31 HOME WARRANTY SECURITY PLAN;

32 (II) ANY DOCUMENTS SUBMITTED BY THE CLAIMANT IN SUPPORT  
33 OF THE WARRANTY CLAIM, INCLUDING ENGINEERING OR INSPECTION REPORTS;

34 (III) ANY DOCUMENTS SUBMITTED ON BEHALF OF THE HOME  
35 BUILDER IN CONNECTION WITH THE WARRANTY CLAIM, INCLUDING ENGINEERING  
36 OR INSPECTION REPORTS;



1 (IV) DISCLOSURE OF ANY RECOVERIES RECEIVED IN CONNECTION  
2 WITH THE WARRANTY CLAIM; AND

3 (V) IF ALL OR PART OF THE WARRANTY CLAIM WAS DENIED, A  
4 COPY OF THE DENIAL.

5 (D) THE DIVISION MAY DENY A CLAIM IF THE DIVISION FINDS THAT THE  
6 CLAIMANT UNREASONABLY REJECTED GOOD FAITH EFFORTS BY THE REGISTRANT  
7 TO RESOLVE THE CLAIM.

8 (E) THE DIVISION MAY NOT AWARD FROM THE GUARANTY FUND:

9 (1) MORE THAN \$30,000 TO ONE CLAIMANT FOR ACTS OR OMISSIONS OF  
10 ONE REGISTRANT;

11 (2) MORE THAN \$200,000 TO ALL CLAIMANTS FOR ACTS OR OMISSIONS OF  
12 ONE REGISTRANT UNLESS, AFTER THE DIVISION HAS PAID OUT \$200,000 ON  
13 ACCOUNT OF ACTS OR OMISSIONS OF THE REGISTRANT, THE REGISTRANT  
14 REIMBURSES \$200,000 TO THE GUARANTY FUND; OR

15 (3) AN AMOUNT FOR ATTORNEY'S FEES, CONSEQUENTIAL DAMAGES,  
16 COURT COSTS, INTEREST, PERSONAL INJURY DAMAGES, OR PUNITIVE DAMAGES.

17 (F) A CLAIM AGAINST THE GUARANTY FUND BASED ON THE ACT OR OMISSION  
18 OF A PARTICULAR REGISTRANT MAY NOT BE MADE BY:

19 (1) A SPOUSE OR OTHER IMMEDIATE RELATIVE OF THE REGISTRANT;

20 (2) AN EMPLOYEE OR PRINCIPAL OF THE REGISTRANT; OR

21 (3) AN IMMEDIATE RELATIVE OF AN EMPLOYEE OR PRINCIPAL OF THE  
22 REGISTRANT.

23 (G) A CLAIMANT MAY BRING A CLAIM AGAINST THE GUARANTY FUND WITHIN  
24 3 YEARS AFTER THE CLAIMANT DISCOVERED OR, BY USE OF ORDINARY DILIGENCE,  
25 SHOULD HAVE DISCOVERED THE LOSS OR DAMAGE.

26 4.5-706.

27 (A) TO BEGIN A PROCEEDING TO RECOVER FROM THE GUARANTY FUND, A  
28 CLAIMANT SHALL SUBMIT TO THE DIVISION'S MEDIATION UNIT A WRITTEN  
29 COMPLAINT THAT STATES:

30 (1) THE AMOUNT CLAIMED BASED ON THE ACTUAL LOSS;

31 (2) THE FACTS GIVING RISE TO THE CLAIM;

32 (3) ANY OTHER EVIDENCE THAT SUPPORTS THE CLAIM, INCLUDING  
33 EXPERT REPORTS, PHOTOGRAPHS, OR VIDEOTAPES; AND

34 (4) ANY OTHER INFORMATION THAT THE DIVISION REQUIRES.

1 (B) THE DIVISION'S MEDIATION UNIT SHALL:

2 (1) SEND A COPY OF THE COMPLAINT TO THE REGISTRANT ALLEGED TO  
3 BE RESPONSIBLE FOR THE ACTUAL LOSS;

4 (2) REQUIRE A WRITTEN RESPONSE TO THE COMPLAINT WITHIN 30  
5 DAYS THAT INCLUDES:

6 (I) ANY EVIDENCE THE REGISTRANT HAS CONCERNING THE  
7 CLAIM, INCLUDING EXPERT REPORTS, PHOTOGRAPHS, OR VIDEOTAPES; AND

8 (II) ANY OTHER INFORMATION THAT THE DIVISION REQUIRES;

9 (3) ATTEMPT TO RESOLVE THE COMPLAINT THROUGH MEDIATION; AND

10 (4) REFER THE COMPLAINT TO THE DIVISION AS A CLAIM AGAINST THE  
11 GUARANTY FUND IF:

12 (I) 1. THE HOME BUILDER FAILS TO RESPOND AS REQUIRED BY  
13 THIS SECTION; OR

14 2. THE MEDIATION UNIT CONCLUDES THAT THE COMPLAINT  
15 CANNOT BE RESOLVED THROUGH MEDIATION; AND

16 (II) THE CLAIMANT EXECUTES A CLAIM FORM PREPARED BY THE  
17 DIVISION STATING UNDER OATH THAT THE CLAIMANT WISHES TO SEEK RECOVERY  
18 FROM THE GUARANTY FUND.

19 4.5-707.

20 (A) THE PROCEDURES FOR NOTICE, HEARINGS, AND JUDICIAL REVIEW THAT  
21 APPLY TO PROCEEDINGS UNDER TITLE 13 OF THE COMMERCIAL LAW ARTICLE ALSO  
22 APPLY TO PROCEEDINGS TO RECOVER FROM THE GUARANTY FUND.

23 (B) ON RECEIPT OF A CLAIM, THE DIVISION SHALL:

24 (1) SEND A COPY OF THE CLAIM TO THE REGISTRANT ALLEGED TO BE  
25 RESPONSIBLE FOR THE ACTUAL LOSS; AND

26 (2) REQUIRE A WRITTEN RESPONSE TO THE CLAIM WITHIN 10 DAYS.

27 (C) (1) THE DIVISION:

28 (I) SHALL REVIEW THE CLAIM AND ANY RESPONSE TO IT; AND

29 (II) MAY REFER THE CLAIM FOR INVESTIGATION.

30 (2) ON THE BASIS OF ITS REVIEW AND ANY INVESTIGATION, THE  
31 DIVISION MAY:

32 (I) SET THE MATTER FOR A HEARING;

1 (II) DISMISS THE CLAIM, IF THE CLAIM IS FRIVOLOUS, LEGALLY  
2 INSUFFICIENT, OR MADE IN BAD FAITH; OR

3 (III) IF THE TOTAL CLAIM AGAINST A PARTICULAR REGISTRANT  
4 DOES NOT EXCEED \$2,500, ISSUE A PROPOSED ORDER TO PAY ALL OR PART OF THE  
5 CLAIM OR DENY THE CLAIM.

6 (D) (1) THE DIVISION SHALL SEND A PROPOSED ORDER ISSUED UNDER  
7 SUBSECTION (C)(2)(III) OF THIS SECTION TO THE CLAIMANT AND THE REGISTRANT,  
8 AT THE MOST RECENT ADDRESS ON RECORD WITH THE DIVISION, BY:

9 (I) PERSONAL DELIVERY; OR

10 (II) BOTH REGULAR MAIL AND CERTIFIED MAIL, RETURN RECEIPT  
11 REQUESTED.

12 (2) WITHIN 21 DAYS AFTER SERVICE, RECEIPT, OR ATTEMPTED  
13 DELIVERY OF THE PROPOSED ORDER, THE CLAIMANT OR REGISTRANT MAY SUBMIT  
14 TO THE DIVISION:

15 (I) A WRITTEN REQUEST FOR A HEARING BEFORE THE DIVISION;  
16 OR

17 (II) A WRITTEN EXCEPTION TO THE PROPOSED ORDER.

18 (3) IF THE CLAIMANT OR REGISTRANT SUBMITS A TIMELY EXCEPTION  
19 TO THE PROPOSED ORDER, THE DIVISION MAY:

20 (I) ISSUE A REVISED PROPOSED ORDER;

21 (II) SET A HEARING ON THE CLAIM; OR

22 (III) DISMISS THE CLAIM.

23 (4) UNLESS THE CLAIMANT OR REGISTRANT SUBMITS A TIMELY  
24 REQUEST FOR A HEARING OR TIMELY EXCEPTION, THE PROPOSED ORDER IS FINAL.

25 (E) AT A HEARING ON A CLAIM, THE CLAIMANT HAS THE BURDEN OF PROOF.

26 (F) A CLAIMANT AND REGISTRANT MAY PARTICIPATE IN A GUARANTY FUND  
27 PROCEEDING WITHOUT REPRESENTATION BY COUNSEL.

28 4.5-708.

29 (A) (1) THE DIVISION MAY JOIN A PROCEEDING ON A CLAIM AGAINST THE  
30 GUARANTY FUND WITH A DISCIPLINARY PROCEEDING AGAINST A REGISTRANT  
31 UNDER THIS SUBTITLE IF THE DISCIPLINARY HEARING IS BASED ON THE SAME  
32 FACTS ALLEGED IN THE CLAIM.

33 (2) IN A CONSOLIDATED PROCEEDING:

1 (I) THE CLAIMANT IS A PARTY AND MAY PARTICIPATE IN THE  
2 HEARING TO THE EXTENT NECESSARY TO ESTABLISH THE CLAIM; AND

3 (II) IF THE CLAIMANT'S NEW HOME CONTRACT INCLUDES AN  
4 AGREEMENT WITH A HOME BUILDER TO SUBMIT A DISPUTE TO ARBITRATION, THE  
5 CLAIMANT MAY ELECT WHETHER TO FIRST SEEK RECOVERY FROM THE GUARANTY  
6 FUND OR SUBMIT THE DISPUTE TO ARBITRATION.

7 (B) (1) NOTWITHSTANDING § 4.5-702(2) OF THIS SUBTITLE, A CLAIMANT MAY  
8 NOT CONCURRENTLY SUBMIT A CLAIM TO RECOVER FROM THE GUARANTY FUND  
9 AND BRING AN ACTION IN A COURT OF COMPETENT JURISDICTION AGAINST A  
10 REGISTRANT BASED ON THE SAME FACTS ALLEGED IN THE CLAIM.

11 (2) IF, AFTER FILING A CLAIM, THE CLAIMANT BRINGS AN ACTION IN A  
12 COURT OF COMPETENT JURISDICTION BASED ON THE SAME FACTS ALLEGED IN THE  
13 PENDING CLAIM, THE DIVISION SHALL STAY ITS PROCEEDINGS ON THE CLAIM UNTIL  
14 THERE IS A FINAL JUDGMENT AND ALL RIGHTS TO APPEAL ARE EXHAUSTED.

15 (3) TO THE EXTENT THAT A FINAL JUDGMENT OR FINAL AWARD IN  
16 ARBITRATION IS BASED ON THE SAME FACTUAL AND LEGAL ISSUES ALLEGED IN A  
17 PENDING CLAIM, THE DIVISION SHALL:

18 (I) APPROVE THE CLAIM AGAINST THE GUARANTY FUND, IF THE  
19 JUDGMENT OR AWARD IS DECIDED IN FAVOR OF THE CLAIMANT AND THE  
20 REGISTRANT HAS FAILED TO PAY THE JUDGMENT OR AWARD; OR

21 (II) DISMISS THE CLAIM AGAINST THE GUARANTY FUND, IF THE  
22 JUDGMENT OR AWARD IS DECIDED IN FAVOR OF THE REGISTRANT.

23 4.5-709.

24 A PARTY TO A PROCEEDING BEFORE THE DIVISION WHO IS AGGRIEVED BY A  
25 FINAL DECISION OF THE DIVISION IN A CONTESTED CASE, AS DEFINED IN § 10-202 OF  
26 THE STATE GOVERNMENT ARTICLE, MAY TAKE AN APPEAL AS ALLOWED IN §§ 10-222  
27 AND 10-223 OF THE STATE GOVERNMENT ARTICLE.

28 4.5-710.

29 (A) THE DIVISION MAY ORDER PAYMENT OF A CLAIM AGAINST THE  
30 GUARANTY FUND ONLY IF:

31 (1) THE DECISION OR ORDER OF THE DIVISION IS FINAL IN  
32 ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE AND  
33 ALL RIGHTS OF APPEAL ARE EXHAUSTED; OR

34 (2) THE CLAIMANT PROVIDES THE DIVISION WITH A CERTIFIED COPY OF  
35 A FINAL JUDGMENT OF A COURT OF COMPETENT JURISDICTION OR A FINAL AWARD  
36 IN ARBITRATION, WITH ALL RIGHTS OF APPEAL EXHAUSTED, IN WHICH THE COURT  
37 OR ARBITRATOR:

1 (I) EXPRESSLY MADE FINDINGS OF FACT THAT SUPPORT THE  
2 CLAIMANT'S RIGHT TO RECOVER UNDER § 4.5-705(A) OF THIS SUBTITLE; AND

3 (II) HAS FOUND THE VALUE OF THE ACTUAL LOSS.

4 (B) (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE  
5 DIVISION SHALL PAY APPROVED CLAIMS IN THE ORDER SUBMITTED.

6 (2) IF APPROVED CLAIMS SUBMITTED TO THE DIVISION AGAINST A  
7 REGISTRANT EXCEED \$200,000, LESS THE AMOUNT OF UNREIMBURSED CLAIM  
8 PAYMENTS PREVIOUSLY MADE FOR THE REGISTRANT, THE DIVISION MAY PAY THE  
9 APPROVED CLAIMS PROPORTIONATELY SO THAT EACH CLAIMANT RECEIVES THE  
10 SAME PERCENTAGE PAYMENT OF THE CLAIMS.

11 (3) AFTER THE GUARANTY FUND IS REIMBURSED, THE DIVISION SHALL  
12 PAY UNSATISFIED APPROVED CLAIMS.

13 (C) IF THERE IS NOT ENOUGH MONEY IN THE GUARANTY FUND TO PAY AN  
14 APPROVED CLAIM WHOLLY OR PARTIALLY, THE DIVISION SHALL PAY THE UNPAID  
15 CLAIM:

16 (1) WHEN ENOUGH MONEY IS DEPOSITED IN THE GUARANTY FUND; AND

17 (2) IN THE ORDER THAT EACH CLAIM ORIGINALLY WAS FILED WITH A  
18 COURT OF COMPETENT JURISDICTION OR SUBMITTED TO THE DIVISION.

19 4.5-711.

20 (A) (1) AFTER THE DIVISION PAYS A CLAIM FROM THE GUARANTY FUND:

21 (I) THE DIVISION IS SUBROGATED TO ALL RIGHTS OF THE  
22 CLAIMANT IN THE CLAIM UP TO THE AMOUNT PAID;

23 (II) THE CLAIMANT SHALL ASSIGN TO THE DIVISION ALL RIGHTS  
24 OF THE CLAIMANT IN THE CLAIM UP TO THE AMOUNT PAID; AND

25 (III) THE DIVISION HAS A RIGHT TO REIMBURSEMENT OF THE  
26 GUARANTY FUND BY THE REGISTRANT WHOM THE DIVISION FINDS RESPONSIBLE  
27 FOR THE ACT OR OMISSION GIVING RISE TO THE CLAIM FOR:

28 1. THE AMOUNT PAID FROM THE GUARANTY FUND; AND

29 2. INTEREST ON THAT AMOUNT AT AN ANNUAL RATE OF AT  
30 LEAST 10 PERCENT, AS SET BY THE DIVISION.

31 (2) ALL MONEY THAT THE DIVISION RECOVERS ON A CLAIM SHALL BE  
32 DEPOSITED IN THE GUARANTY FUND.

33 (B) IF, WITHIN 30 DAYS AFTER THE DIVISION GIVES NOTICE, A REGISTRANT  
34 ON WHOSE ACCOUNT A CLAIM WAS PAID DOES NOT REIMBURSE THE GUARANTY

1 FUND IN FULL, THE DIVISION MAY SUE THE REGISTRANT IN A COURT OF  
2 COMPETENT JURISDICTION FOR THE UNREIMBURSED AMOUNT.

3 (C) THE DIVISION IS ENTITLED TO A JUDGMENT FOR THE UNREIMBURSED  
4 AMOUNT IF THE DIVISION PROVES THAT:

5 (1) A CLAIM WAS PAID FROM THE GUARANTY FUND ON ACCOUNT OF  
6 THE REGISTRANT;

7 (2) THE REGISTRANT HAS NOT REIMBURSED THE GUARANTY FUND IN  
8 FULL;

9 (3) THE REGISTRANT WAS GIVEN NOTICE AND AN OPPORTUNITY TO  
10 PARTICIPATE IN A HEARING ON THE CLAIM BEFORE THE DIVISION; AND

11 (4) (I) THE DIVISION DIRECTED PAYMENT BASED ON A FINAL  
12 JUDGMENT OF A COURT OF COMPETENT JURISDICTION OR A FINAL AWARD IN  
13 ARBITRATION; OR

14 (II) THE DECISION OR ORDER OF THE DIVISION IS FINAL IN  
15 ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE AND  
16 THERE IS NO PENDING APPEAL.

17 (D) THE DIVISION MAY REFER TO THE CENTRAL COLLECTION UNIT FOR  
18 COLLECTION UNDER §§ 13-912 THROUGH 13-919 OF THE TAX - GENERAL ARTICLE A  
19 DEBT OWED TO THE DIVISION BY A REGISTRANT ON WHOSE ACCOUNT A CLAIM WAS  
20 PAID FROM THE GUARANTY FUND AND WHO IS AT LEAST 3 MONTHS BEHIND IN  
21 REIMBURSEMENT PAYMENTS TO THE GUARANTY FUND.

22 (E) FOR THE PURPOSE OF EXCEPTING TO A DISCHARGE OF A REGISTRANT  
23 UNDER FEDERAL BANKRUPTCY LAW, THE DIVISION IS A CREDITOR OF THE  
24 REGISTRANT FOR THE AMOUNT PAID FROM THE GUARANTY FUND.

25 (F) (1) (I) IF A PERSON LIABLE FOR REIMBURSING THE GUARANTY FUND  
26 UNDER THIS SECTION RECEIVES A DEMAND FOR REIMBURSEMENT AND FAILS TO  
27 REIMBURSE THE GUARANTY FUND, THE REIMBURSEMENT AMOUNT AND ANY  
28 ACCRUED INTEREST OR COSTS ARE A LIEN IN FAVOR OF THE STATE ON ANY REAL  
29 PROPERTY OF THE PERSON IF THE LIEN IS RECORDED AND INDEXED AS PROVIDED  
30 IN THIS SUBSECTION.

31 (II) INTEREST SHALL CONTINUE AT THE RATE OF INTEREST ON A  
32 JUDGMENT AS PROVIDED IN § 11-107(A) OF THE COURTS AND JUDICIAL  
33 PROCEEDINGS ARTICLE UNTIL THE FULL AMOUNT DUE THE GUARANTY FUND IS  
34 PAID.

35 (2) THE LIEN IN FAVOR OF THE STATE CREATED BY THIS SUBSECTION  
36 MAY NOT ATTACH TO SPECIFIC PROPERTY UNTIL THE STATE CENTRAL COLLECTION  
37 UNIT RECORDS WRITTEN NOTICE OF THE LIEN IN THE OFFICE OF THE CLERK OF THE  
38 COURT FOR THE COUNTY IN WHICH THE PROPERTY SUBJECT TO THE LIEN OR ANY  
39 PART OF THE PROPERTY IS LOCATED.

1 (3) THE LIEN IN FAVOR OF THE STATE CREATED BY THIS SUBSECTION  
2 DOES NOT HAVE PRIORITY AS TO ANY SPECIFIC PROPERTY OVER ANY PERSON WHO  
3 IS A LIENHOLDER OF RECORD AT THE TIME THE NOTICE REQUIRED UNDER  
4 PARAGRAPH (2) OF THIS SUBSECTION IS RECORDED.

5 (4) THE NOTICE REQUIRED UNDER PARAGRAPH (2) OF THIS SUBSECTION  
6 SHALL CONTAIN:

7 (I) THE NAME AND ADDRESS OF THE PERSON AGAINST WHOSE  
8 PROPERTY THE LIEN EXISTS;

9 (II) THE AMOUNT OF THE LIEN;

10 (III) A DESCRIPTION OF OR REFERENCE TO THE PROPERTY SUBJECT  
11 TO THE LIEN; AND

12 (IV) THE DATE THE GUARANTY FUND PAID THE CLAIM GIVING RISE  
13 TO THE LIEN.

14 (5) ON PRESENTATION OF A RELEASE OF ANY LIEN IN FAVOR OF THE  
15 STATE CREATED BY THIS SUBSECTION, THE CLERK OF THE COURT IN WHICH THE  
16 LIEN IS RECORDED AND INDEXED SHALL RECORD AND INDEX THE RELEASE AND  
17 SHALL NOTE IN THE LIEN DOCKET THE DATE THE RELEASE IS FILED AND THE FACT  
18 THAT THE LIEN IS RELEASED.

19 (6) THE NOTICE REQUIRED UNDER PARAGRAPH (2) OF THIS SUBSECTION  
20 AND ANY RELEASE FILED UNDER PARAGRAPH (5) OF THIS SUBSECTION SHALL BE  
21 INDEXED WITH THE JUDGMENT LIEN RECORDS MAINTAINED BY THE OFFICE OF THE  
22 CLERK OF THE COURT WHERE THE NOTICE IS RECORDED.

23 (7) THE CLERK MAY COLLECT A REASONABLE FEE FOR RECORDING AND  
24 INDEXING EACH NOTICE OF LIEN OR RELEASE OF ANY LIEN UNDER THIS  
25 SUBSECTION.

26 4.5-712.

27 (A) IF THE DIVISION PAYS A CLAIM AGAINST THE GUARANTY FUND BASED ON  
28 AN ACT OR OMISSION OF A REGISTRANT, THE DIVISION MAY SUSPEND THE HOME  
29 BUILDER REGISTRATION UNTIL THE REGISTRANT REIMBURSES THE FUND IN FULL  
30 FOR:

31 (1) THE AMOUNT PAID FROM THE GUARANTY FUND; AND

32 (2) INTEREST ON THAT AMOUNT AT AN ANNUAL RATE OF AT LEAST 10  
33 PERCENT, AS SET BY THE DIVISION.

34 (B) REIMBURSEMENT OF THE GUARANTY FUND IN FULL BY A REGISTRANT,  
35 BY ITSELF, DOES NOT NULLIFY OR MODIFY THE EFFECT OF A DISCIPLINARY  
36 PROCEEDING AGAINST A REGISTRANT.

1 (C) IF A HOME BUILDER HOLDS A LICENSE OR REGISTRATION IN  
2 MONTGOMERY COUNTY, THE COUNTY MAY SUSPEND THE LICENSE AS PROVIDED IN  
3 THIS SECTION.

4 Subtitle [7.] 8. Short Title.

5 [4.5-701.] 4.5-801.

6 This title may be cited as the Maryland Home Builder Registration Act.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
8 October 1, 2005.