

CHAPTER 272

(House Bill 409)

AN ACT concerning

Maryland Home Improvement Commission – Home Improvement Guaranty Fund – Claims

FOR the purpose of altering the maximum amount of money that the Maryland Home Improvement Commission may award from the Home Improvement Guaranty Fund to certain claimants for certain acts or omissions; altering the maximum amount of a certain claim for which the Commission may issue certain orders under certain circumstances; providing for the construction of this Act; and generally relating to the Home Improvement Guaranty Fund.

BY repealing and reenacting, with amendments,
Article – Business Regulation
Section 8–405 and 8–407
Annotated Code of Maryland
(2004 Replacement Volume and 2007 Supplement)

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

Article – Business Regulation

8–405.

(a) Subject to this subtitle, an owner may recover compensation from the Fund for an actual loss that results from an act or omission by a licensed contractor or a violation of § 8–607(4) of this title as found by the Commission or a court of competent jurisdiction.

(b) For purposes of recovery from the Fund, the act or omission of a licensed contractor includes the act or omission of a subcontractor, salesperson, or employee of the licensed contractor, whether or not an express agency relationship exists.

(c) A claimant shall comply with a written agreement to submit a dispute to arbitration before seeking recovery from the Fund.

(d) The Commission may deny a claim if the Commission finds that the claimant unreasonably rejected good faith efforts by the contractor to resolve the claim.

- (e) The Commission may not award from the Fund:
- (1) more than [~~\$15,000~~] **\$20,000** to 1 claimant for acts or omissions of 1 contractor;
 - (2) more than \$100,000 to all claimants for acts or omissions of 1 contractor unless, after the Commission has paid out \$100,000 on account of acts or omissions of the contractor, the contractor reimburses \$100,000 to the Fund;
 - (3) an amount for attorney fees, consequential damages, court costs, interest, personal injury damages, or punitive damages; or
 - (4) an amount as a result of a default judgment in court.
- (f) (1) A claim against the Fund based on the act or omission of a particular contractor may not be made by:
- (i) a spouse or other immediate relative of the contractor;
 - (ii) an employee, officer, or partner of the contractor; or
 - (iii) an immediate relative of an employee, officer, or partner of the contractor.
- (2) An owner may make a claim against the Fund only if the owner:
- (i) resides in the home as to which the claim is made; or
 - (ii) does not own more than 3 residences or dwelling places.
- (g) A claim shall be brought against the Fund within 3 years after the claimant discovered or, by use of ordinary diligence, should have discovered the loss or damage.

8-407.

(a) The procedures for notice, hearings, and judicial review that apply to proceedings under Subtitle 3 of this title also apply to proceedings to recover from the Fund.

- (b) On receipt of a claim, the Commission shall:
- (1) send a copy of the claim to the contractor alleged to be responsible for the actual loss; and
 - (2) require a written response to the claim within 10 days.

- (c) (1) The Commission:
 - (i) shall review the claim and any response to it; and
 - (ii) may investigate the claim.
- (2) On the basis of its review and any investigation, the Commission may:
 - (i) set the matter for a hearing;
 - (ii) dismiss the claim, if the claim is frivolous, legally insufficient, or made in bad faith; or
 - (iii) issue a proposed order to pay all or part of the claim or deny the claim if the total claim against a particular contractor does not exceed **[\$2,500] \$5,000**.
- (d) (1) The Commission shall send the proposed order to the claimant and the contractor, at the most recent address on record with the Commission, by:
 - (i) personal delivery; or
 - (ii) both regular mail and certified mail, return receipt requested.
- (2) Within 21 days after service, receipt, or attempted delivery of the proposed order, the claimant or contractor may submit to the Commission:
 - (i) a written request for a hearing before the Commission; or
 - (ii) a written exception to the proposed order.
- (3) If the claimant or contractor submits a timely exception to the proposed order, the Commission may:
 - (i) issue a revised proposed order;
 - (ii) set a hearing on the claim; or
 - (iii) dismiss the claim.
- (4) Unless the claimant or contractor submits a timely request for a hearing or a timely exception, the proposed order is final.

(e) (1) At a hearing on a claim, the claimant has the burden of proof.

(2) If a subcontractor or salesperson is necessary to adjudicate a claim fairly, the Commission shall issue a subpoena for that person to appear at the hearing.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply to any claim pending before the Maryland Home Improvement Commission for which the Commission has not issued a final decision prior to the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2008.

Approved by the Governor, April 24, 2008.