

Department of Legislative Services
 Maryland General Assembly
 2008 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 1008

(Senator Middleton)

Finance

Economic Matters

Home Builders - Sales Representative Registration and Home Builder Guaranty Fund

This bill repeals State Real Estate Commission licensure requirements for sales agents of home builders in favor of registration with the renamed Home Builder and Home Builder Sales Representative Registration Unit. The bill also increases existing fees for registered home builders and extends certain administrative fees to Montgomery County builders who are otherwise exempted from registration requirements. The bill establishes the Home Builder Guaranty Fund to compensate claimants for an actual loss that results from an act or omission by a registrant.

Although the bill takes effect October 1, 2008 it applies prospectively to new home contracts awarded after January 1, 2009.

Fiscal Summary

State Effect: Special fund revenues could increase by \$916,400 in FY 2009 to reflect additional revenues to the Home Builder Registration and Home Builder Sales Representative Unit, offset by a \$6,500 reduction in State Real Estate Commission revenues. Special fund expenditures for the unit increase by \$198,300 to reflect additional registration and regulatory requirements. Additional increases in revenues and expenditures could result from penalty provisions. Future years reflect annualization, inflation, and biennial credentialing activity.

(in dollars)	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
SF Revenue	\$909,900	\$1,140,600	\$1,198,700	\$1,149,800	\$1,208,800
SF Expenditure	198,300	268,000	280,800	294,400	308,600
Net Effect	\$711,600	\$872,600	\$917,900	\$855,400	\$900,200

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Potential minimal increase in local expenditures in issuing building permits to reflect administrative requirements related to collection of Home Builder Guaranty Fund fees. Montgomery County expenditures could additionally increase for collection of the required administrative fee. Potential minimal increase in revenues and expenditures due to penalty provisions.

Small Business Effect: Potential meaningful for home builders and agents that qualify as small businesses.

Analysis

Bill Summary:

Registration of Sales Representatives

The bill expands the purview of the existing Home Builder Registration Unit within the Consumer Protection Division of the Office of the Attorney General to include sales representatives employed by a home builder and renames the unit to reflect the change. A sales representative for a home builder is required to register with the unit before providing services in the State. An employee or officer agent for a nonprofit organization with a two-year record of affordable housing development is not required to be registered in order to make an initial sale of a home constructed or rehabilitated by the organization, provided that the purchaser is using subsidized financing administered by the organization.

To qualify for a registration certificate as a sales representative, an applicant must provide certain identifying information as well as information identifying the applicant's employer. The applicant must list the other states in which he or she is registered and disclose any disciplinary actions taken by another state. The applicant must also file a statement disclosing any pending tax judgments or tax liens. The unit has to issue a registration certificate to an applicant who meets these criteria upon receipt of a nonrefundable \$200 application fee. The registration certificate is valid for two years; the renewal fee for a registration certificate is \$200.

Once registered, a sales representative must display the registration certificate at his or her primary place of business. A home builder must provide a written disclosure regarding the professional relationship between the builder and the sales representative with any materials available at a property serviced by a registered sales representative; the disclosure must also be included with the first agreement signed by the consumer.

Disciplinary Actions and Penalty Provisions Related to Registration Requirements

Penalties are extended to sales representatives of home builders for fraudulently obtaining or using a credential as well as other specified violations. The unit is authorized to take disciplinary action against a certificate holder or impose a civil penalty for a violation under the Home Builder Registration Act. An individual may request a hearing before the board to contest a proposed disciplinary action. In addition to these provisions, a person who violates registration requirements may be subject to civil and criminal penalties.

Home Builder Registration Fees

The bill doubles the initial registration fee for home builders to \$600. The renewal fee is doubled to \$300 for a builder who has been issued building permits for fewer than 11 homes in the preceding year; the fee for a builder who has been issued 11 or more new building permits is likewise doubled to \$600.

Montgomery County home builders, who are currently exempt from State registration requirements, are required to pay a \$150 administrative fee to the county. The county must remit this fee to the Home Builder and Home Builder Sales Representative Registration Unit for deposit in the Registration Fund.

Home Builder Guaranty Fund

The Consumer Protection Division is required to establish a Home Builder Guaranty Fund to compensate claimants for an actual loss that results from an act or omission by a registrant. The division must maintain a minimum balance of \$1 million in the fund. Direct and indirect costs incurred in administering the fund are charged to the Home Builder Registration Fund.

A home builder is required to pay a Guaranty Fund fee of up to \$50, as determined by the Consumer Protection Division, with each application for a new home construction permit. This fee may be passed on to the consumer. The registration of a home builder who does not pay the Guaranty Fund fee is suspended until the fee is paid. Local building and permit departments must monthly remit these fees to the State for deposit into the Guaranty Fund.

Before submitting a claim to the Guaranty Fund, a consumer must provide notice to the builder of the alleged defect and permit the builder to access the property to determine and remedy the cause of the defect. A consumer must exhaust a new home warranty's claim process, if applicable, before seeking recovery from the fund. If a claimant has

filed a claim with a new home warranty security plan, that claimant may bring a claim against the fund within four months after the warranty claims process is exhausted.

The Consumer Protection Division may award up to \$50,000 to one claimant for acts or omissions of one builder; the division may not award more than \$300,000 to all claimants for acts or omissions of a single builder unless the builder reimburses the fund for all or a portion of these claims. The division may not award an amount for attorney's fees, court costs, damages, or interest. In general, a claim against the Guaranty Fund must be filed within two years of discovering any damage or defect.

The bill establishes procedures for making a claim against the fund if a complaint cannot first be resolved through mediation. The division is authorized to set the matter for hearing before the Office of Administrative Hearings; dismiss the claim; or issue a proposed order, if the claim does not exceed \$5,000. The bill establishes procedures for administrative appeal of a proposed order. Final decisions may be appealed as provided in State law.

The division has a right to reimbursement by a builder whose act or omission gave rise to a claim against the fund. If a person liable for reimbursing the Guaranty Fund fails to do so, 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.

Current Law:

Licensure of Sales Agents

Chapter 274 of 2007 requires an individual who sells any real estate as a sales agent for a home builder to be licensed by the State Real Estate Commission. The commission issues licenses to the following categories of professionals: real estate brokers, associate real estate brokers, and real estate salespersons.

In general, applicants for licensure by the State Real Estate Commission must have successfully completed a commission-approved course in real estate, including a course in ethics, and pass an examination given by the commission. An applicant is also required to contribute to the Real Estate Guaranty Fund and pay a fee set by the commission. If not applying for licensure as a real estate broker, an applicant must obtain a commitment to become affiliated with a licensed real estate broker once the commission licenses the applicant.

Home Builder Registration Unit

An individual may not act as a home builder in the State unless registered with the Consumer Protection Division's Home Builder Registration Unit. Registrants must maintain general liability insurance of at least \$100,000, meet all applicable requirements, and pay a nonrefundable two-year registration fee of \$300. A home builder that is credentialed in Montgomery County may act as a home builder in that county only unless the home builder is also registered with the State.

The renewal fee for registration as a builder is determined by the number of building permits issued to the registrant in the preceding year. The fee for a builder issued permits for fewer than 11 homes is \$150, and the fee for a builder issued permits for at least 11 homes is \$300.

The division is authorized to take disciplinary action against a registrant for violations of the Maryland Home Builder Registration Act. After a hearing, the division may issue a cease and desist order and impose a civil penalty of up to \$1,000 for each day of unlawful practice. A person who violates the act may also be subject to misdemeanor penalties of up to \$1,000 for a first conviction and \$5,000 for any subsequent conviction. Repeated violations of the title are a misdemeanor, subject to a fine of up to \$2,500.

Background: Chapter 430 of 2004 transferred \$0.5 million from the Home Builder Registration Fund to the general fund, reducing the balance in the fund to \$1.1 million, which still significantly exceeded the cost of regulation. Chapter 430 also reduced registration fees by half to prevent the fund from accruing excess revenues in future years.

Licensing requirements for sales agents of home builders went into effect October 1, 2007. A number of sales agents who have pursued licensure have found it difficult to comply with the requirement to affiliate with a real estate brokerage. Advice issued by the Office of the Attorney General indicates that sales agents must be compensated as employees or contractors of the brokerage with which they are affiliated. The brokerage may be established for the express purpose of selling new homes as long as the agent is not directly employed by the home builder. The bill transfers oversight of sales agents for home builders to the existing Home Builder Registration Unit, which does not require applicants to meet training, examination, or brokerage requirements.

State Revenues:

Home Builder Registration Fund

The bill doubles registration and renewal fees for home builders registered with the Consumer Protection Division. In fiscal 2007, these fees generated \$377,608 in special fund revenues for the Home Builder Registration Unit. The number of builders registered with the unit grew modestly between fiscal 2006 and 2007, with a total of 3,917 builders registered at the end of fiscal 2007. Given recent growth rates and the changes in the housing market since that time, this estimate assumes 1% annual growth in future years.

The bill also requires home builders registered in Montgomery County to pay a \$150 administrative fee to the existing Home Builder Registration Fund every two years. The county advises that 530 home builders are currently registered, generating \$79,500 per two-year registration cycle. Growth in this category is also assumed at 1% per year.

Sales agents for home buyers are additionally included in registration requirements. Based on the experience of the State Real Estate Commission, up to 500 sales agents for home builders could be expected to register with the unit at a fee of \$200 per two-year cycle. This estimate assumes that 80% of these agents register in fiscal 2009, with the remainder registering in fiscal 2010. Growth is estimated at 1% per year.

The total effect of these fees on the Home Builder Registration Fund is detailed in **Exhibit 1**. Fiscal 2009 revenue estimates reflect the bill's October 1 effective date. To the extent the number of sales agents required to register exceeds the number already licensed, revenues would increase correspondingly.

Exhibit 1
Estimated Increases in Revenues to the Home Builder Registration Fund
Fiscal 2009-2013

	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>	<u>FY 2013</u>
Home Builders	\$288,899	\$389,050	\$392,940	\$396,870	\$400,839
Montgomery Co. Builders	22,500	49,500	30,603	50,495	31,218
Sales Agents	80,000	20,000	81,608	20,402	83,248
Total	\$391,399	\$458,550	\$505,151	\$467,767	\$515,305

Home Builder Guaranty Fund

A home builder is required to pay a Guaranty Fund fee of up to \$50 with each application for a new home construction permit. Approximately 14,000 building permits were issued in fiscal 2007. Given this rate of building activity and the bill's October 1 effective date, revenues are estimated at \$525,000 in fiscal 2009, with the potential to increase to \$700,000 on an annual basis. At this rate of activity, the Guaranty Fund will not meet the required minimum balance until fiscal 2010.

State Real Estate Commission

An individual who sells any real estate as a sales agent for a home builder is currently required to be licensed by the State Real Estate Commission. The Department of Labor, Licensing, and Regulation estimates that as many as 500 of these sales agents are currently licensed by the commission. Licensing fees are \$65 for an original license and \$45 for renewal; the loss of revenue to the commission is estimated at a minimum of \$24,500 per two-year licensing cycle.

Applicants for licensure by the State Real Estate Commission are currently required to pay \$20 to the Real Estate Guaranty Fund. The bill would have a negligible effect on these Guaranty Fund revenues.

State Expenditures: The bill provides that any direct or indirect costs associated with administration and enforcement of the Home Builder Guaranty Fund are paid from the Home Builder Registration Fund. Expenditures from the fund could increase by an estimated \$198,267 in fiscal 2009, which accounts for the bill's October 1, 2008 effective date. This estimate reflects the cost of hiring one assistant Attorney General, one administrator, one investigator, and one secretary to register sales agents and administer the Home Builder Guaranty Fund. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	4
Salaries and Fringe Benefits	\$182,162
Operating Expenses	<u>16,105</u>
Total FY 2009 State Expenditures	\$198,267

Future year expenditures reflect • full salaries with 4.4% annual increases and 3% employee turnover; and • 2% annual increases in ongoing operating expenses.

Additional special fund expenditures resulting from the claims on the Home Builder Guaranty Fund cannot be reliably estimated at this time.

Any reductions in expenditures for the State Real Estate Commission are expected to be negligible; it is assumed that any staff that handled licensure of sales agents as part of their regular work activities would assume other responsibilities.

Small Business Effect: Home builders who qualify as small businesses could incur additional costs due to the increase in registration and renewal fees as well as the additional Guaranty Fund fee. Sales agents not already qualified for licensure could benefit from the relaxed credentialing requirements; however, those already licensed by the State Real Estate Commission may have already incurred additional expense in qualifying for licensure under current requirements.

Additional Comments: Continued weakness in the housing market has the potential to reduce revenue estimates. The data included here reflect current figures and recent trends but do not attempt to project any significant changes to housing starts or employment by home builders.

Additional Information

Prior Introductions: Bills establishing a Home Builder Guaranty Fund were introduced during the 2005 session. HB 752 received an unfavorable report from the House Economic Matters Committee, and SB 671 received an unfavorable report from the Senate Finance Committee.

Cross File: HB 1557 (Delegate Vaughn, *et al.*) – Economic Matters.

Information Source(s): Department of Labor, Licensing, and Regulation; Office of the Attorney General (Consumer Protection Division); Department of Legislative Services (Office of Legislative Audits)

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