

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 256
Finance

(Senators Middleton and Kelley)

Economic Matters

Business Regulation - Definition of Home Builder

This bill clarifies the definition of a “home builder” as it pertains to the Maryland Home Builder Registration Act.

Fiscal Summary

State Effect: Minimal increase in special fund revenues to the Home Builder Registration Fund due to the expanded definition of a home builder. Expenditures are not affected.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill specifies that the definition of a “home builder” includes a person that enters into a contract with a consumer under which the person agrees to provide the consumer with a new home. The bill further clarifies that a home builder does not include (1) a real estate developer who does not undertake home construction or enter into contracts with consumers to construct homes; or (2) a buyer’s agent, as defined in statute, when representing a prospective buyer in the purchase of a new home.

Current Law: The Home Builder Registration Act, which is enforced by the Consumer Protection Division of the Office of the Attorney General, requires a person to register and obtain a home builder’s registration number in order to act as a home builder. The Act defines a home builder as a person that undertakes to construct a new home; statute

specifies that a home builder does not include (1) a real estate developer who does not construct homes; (2) an employee of a registrant; (3) subcontractors or other vendors hired by the registrant to perform services or supply materials; (4) the manufacturer of industrialized buildings intended for residential use or of mobile homes, unless the manufacturer also installs these structures; (5) a financial institution that lends funds for the construction or purchase of residential dwellings; or (6) except as outlined in statute, a person who erects or constructs new homes solely in Montgomery County. (Montgomery County has separate registration requirements for home builders.)

In order to register as a home builder, a person must pay an initial registration fee of \$600. Registration must be renewed every two years. A registration renewal fee is \$300 for a builder who has been issued building permits for fewer than 11 homes in the preceding calendar year; the fee for a builder who has been issued 11 or more new permits is \$600.

Chapters 480 and 481 of 2008 expanded the purview of the Act to include sales representatives employed by a home builder. A sales representative for a home builder must register with the unit before providing services in the State. 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 registration certificate is valid for two years; the initial and renewal fee for a registration certificate is \$200.

Background: In a November 2010 decision, the Maryland Court of Appeals held that a real estate developer who entered into a contract with a buyer to provide a new home was not required to be registered as a home builder because the contract specified that a third party – a registered home builder – was responsible for constructing the home. *Bayly Crossing, LLC, et al. v. Consumer Protection Division, Office of the Attorney General*, 417, Md. 28 (2010). Under the bill, a real estate developer or any other person who enters into such a contract with a consumer must be registered as a home builder.

State Fiscal Effect: Legislative Services advises that special fund revenues to the Home Builder Registration Fund may increase as more individuals qualify under the statutory definition of a home builder. The number of potential new registrants as a result of the bill cannot be reliably estimated; however, any resulting increase in special fund revenues is expected to be minimal.

Additional Information

Prior Introductions: None.

Cross File: HB 1041 (Delegate Vaughn, *et al.*) – Economic Matters.

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

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