

# HOUSE BILL 154

C2

5lr0808

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By: ~~Delegate Davis~~ **Delegates Davis and Holmes**

Introduced and read first time: January 28, 2015

Assigned to: Economic Matters

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 24, 2015

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Maryland Home Builder Registration Act – Guaranty Fund – Claims**

3 FOR the purpose of altering the maximum amount of a claim against the Home Builder  
4 Guaranty Fund for which the Consumer Protection Division may issue a certain  
5 proposed order; altering the number of days, following certain notice by the Division,  
6 after which the Division may bring a certain action in court against a registered  
7 home builder who fails to reimburse the Fund in full for payment of a certain claim;  
8 and generally relating to the Maryland Home Builder Registration Act and the Home  
9 Builder Guaranty Fund.

10 BY repealing and reenacting, with amendments,  
11 Article – Business Regulation  
12 Section 4.5–707 and 4.5–711  
13 Annotated Code of Maryland  
14 (2010 Replacement Volume and 2014 Supplement)

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

17 **Article – Business Regulation**

18 4.5–707.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (a) The procedures for notice, hearings, and judicial review that apply to  
2 proceedings under Title 3, Subtitle 2 of the Courts and Judicial Proceedings Article also  
3 apply to proceedings to recover from the Guaranty Fund.

4 (b) On receipt of a claim, the Division shall:

5 (1) send a copy of the claim to the registrant alleged to be responsible for  
6 the actual loss; and

7 (2) require a written response to the claim within 30 days.

8 (c) (1) The Division:

9 (i) shall review the claim and any response to it; and

10 (ii) may refer the claim for investigation.

11 (2) On the basis of its review and any investigation, the Division may:

12 (i) set the matter for a hearing with the Office of Administrative  
13 Hearings;

14 (ii) dismiss the claim, if the claim is frivolous, legally insufficient, or  
15 made in bad faith; or

16 (iii) if the total claim against a particular registrant does not exceed  
17 ~~[\$5,000]~~ **\$7,500**, issue a proposed order to pay all or part of the claim or deny the claim.

18 (d) (1) The Division shall send a proposed order issued under subsection  
19 (c)(2)(iii) of this section to the claimant and the registrant, at the most recent address on  
20 record with the Division, by:

21 (i) personal delivery; or

22 (ii) both regular mail and certified mail, return receipt requested.

23 (2) Within 21 days after service, receipt, or attempted delivery of the  
24 proposed order, the claimant or registrant may submit to the Division:

25 (i) a written request for a hearing before the Division; or

26 (ii) a written exception to the proposed order.

27 (3) If the claimant or registrant submits a timely exception to the proposed  
28 order, the Division may:

29 (i) issue a revised proposed order;

1 (ii) set a hearing on the claim; or

2 (iii) dismiss the claim.

3 (4) Unless the claimant or registrant submits a timely request for a hearing  
4 or timely exception, the proposed order is final.

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

6 (f) A claimant and registrant may participate in a Guaranty Fund proceeding  
7 without representation by counsel.

8 4.5-711.

9 (a) (1) After the Division pays a claim from the Guaranty Fund:

10 (i) the Division is subrogated to all rights of the claimant in the  
11 claim up to the amount paid;

12 (ii) the claimant shall assign to the Division all rights of the claimant  
13 in the claim up to the amount paid; and

14 (iii) the Division has a right to reimbursement of the Guaranty Fund  
15 by the registrant whom the Division finds responsible for the act or omission giving rise to  
16 the claim for:

17 1. the amount paid from the Guaranty Fund; and

18 2. interest on that amount at a rate determined by the  
19 Division so as not to exceed the legal rate of interest on a judgment in place at the time the  
20 claim is approved.

21 (2) All money that the Division recovers on a claim shall be deposited in  
22 the Guaranty Fund.

23 (b) If, within **[30] 60** days after the Division gives notice, a registrant on whose  
24 account a claim was paid does not reimburse the Guaranty Fund in full, the Division may  
25 sue the registrant in a court of competent jurisdiction for the unreimbursed amount.

26 (c) The Division is entitled to a judgment for the unreimbursed amount if the  
27 Division proves that:

28 (1) a claim was paid from the Guaranty Fund on account of the registrant;

29 (2) the registrant has not reimbursed the Guaranty Fund in full;

1 (3) the registrant was given notice and an opportunity to participate in a  
2 hearing on the claim before the Division; and

3 (4) (i) the Division directed payment based on a final judgment of a  
4 court of competent jurisdiction or a final award in arbitration; or

5 (ii) the decision or order of the Division is final in accordance with  
6 Title 10, Subtitle 2 of the State Government Article and there is no pending appeal.

7 (d) The Division may refer to the Central Collection Unit for collection under §§  
8 13–912 through 13–919 of the Tax – General Article a debt owed to the Division by a  
9 registrant on whose account a claim was paid from the Guaranty Fund and who is at least  
10 12 months behind in reimbursement payments to the Guaranty Fund.

11 (e) For the purpose of excepting to a discharge of a registrant under federal  
12 bankruptcy law, the Division is a creditor of the registrant for the amount paid from the  
13 Guaranty Fund.

14 (f) (1) (i) If a person liable for reimbursing the Guaranty Fund under this  
15 section receives a demand for reimbursement and fails to reimburse the Guaranty Fund,  
16 the reimbursement amount and any accrued interest or costs are a lien in favor of the State  
17 on any real property of the person if the lien is recorded and indexed as provided in this  
18 subsection.

19 (ii) Interest shall continue at the rate of interest on a judgment as  
20 provided in § 11–107(a) of the Courts Article until the full amount due the Guaranty Fund  
21 is paid.

22 (2) The lien in favor of the State created by this subsection may not attach  
23 to specific property until the State Central Collection Unit records written notice of the lien  
24 in the office of the clerk of the court for the county in which the property subject to the lien  
25 or any part of the property is located.

26 (3) The lien in favor of the State created by this subsection does not have  
27 priority as to any specific property over any person who is a lienholder of record at the time  
28 the notice required under paragraph (2) of this subsection is recorded.

29 (4) The notice required under paragraph (2) of this subsection shall  
30 contain:

31 (i) the name and address of the person against whose property the  
32 lien exists;

33 (ii) the amount of the lien;

34 (iii) a description of or reference to the property subject to the lien;  
35 and

1 (iv) the date the Guaranty Fund paid the claim giving rise to the lien.

2 (5) On presentation of a release of any lien in favor of the State created by  
3 this subsection, the clerk of the court in which the lien is recorded and indexed shall record  
4 and index the release and shall note in the lien docket the date the release is filed and the  
5 fact that the lien is released.

6 (6) The notice required under paragraph (2) of this subsection and any  
7 release filed under paragraph (5) of this subsection shall be indexed with the judgment lien  
8 records maintained by the office of the clerk of the court where the notice is recorded.

9 (7) The clerk may collect a reasonable fee for recording and indexing each  
10 notice of lien or release of any lien under this subsection.

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July  
12 1, 2015.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.