

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

House Bill 154

(Delegates Davis and Holmes)

Economic Matters

Finance

Maryland Home Builder Registration Act - Guaranty Fund - Claims

This bill increases the maximum claim amount against the Home Builder Guaranty Fund – from \$5,000 to \$7,500 – for which the Office of the Attorney General’s Consumer Protection Division, after review and/or investigation, may issue a proposed order to pay all or part of a claim or deny a claim. The bill also increases the length of time – from 30 days to 60 days – that a person registered to build new homes has to reimburse the fund for claims paid by the fund on the registrant’s behalf before the division may sue the registrant in court for the unreimbursed amount.

The bill takes effect July 1, 2015.

Fiscal Summary

State Effect: Potential acceleration of nonbudgeted expenditures from and revenues to the Home Builder Guaranty Fund beginning in FY 2016; however, the amounts are anticipated to be minimal. The division is aware of three cases to which the bill may have applied since the fund’s inception in 2008. Special fund expenditures for the division to refer cases to the Office of Administrative Hearings (OAH) decrease minimally beginning in FY 2016. Extending the reimbursement period from 30 days to 60 days is not anticipated to materially affect revenues to the fund.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law: New home builders must register with the Home Builder and Home Builder Sales Representative Registration Unit within the Consumer Protection Division of the Office of the Attorney General.

Chapters 480 and 481 of 2008 required the division to establish a Home Builder Guaranty Fund to compensate claimants for an actual loss that results from an act or omission by a registered home builder. 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. The maximum claim amount against the Home Builder Guaranty Fund for which the division can issue a proposed order is \$5,000.

A home builder must pay to a county or municipality a Guaranty Fund fee of up to \$50, as determined by the division, with each application for a permit for construction of a new home or multiple-unit development. This fee may be passed on to home buyers. The registration of a home builder who does not pay the Guaranty Fund fee is suspended until the fee is paid. Local governments must remit these fees monthly to the State for deposit into the Guaranty Fund, but they are authorized to retain up to 2% of the revenue to cover reasonable administrative costs.

Generally, a claimant may recover compensation from the fund for an actual loss that results from an act or omission by a registered home builder as found by the division or a court of competent jurisdiction. The division may not award:

- more than \$50,000 for a single claimant for the acts or omissions of a single registered home builder;
- more than \$300,000 to all claimants for acts or omissions of a single registered home builder, unless that registrant reimburses the fund for all of the payouts; or
- an amount for attorney's fees, consequential damages, court costs, interest, personal injury damage, or punitive damages.

On receipt of a claim against the fund, the division must review the claim and any response to it and may then refer the claim for investigation. On the basis of the review and investigation, the division may (1) set the matter for hearing before OAH; (2) dismiss the claim; or (3) if the total claim does not exceed \$5,000, issue a proposed order to pay all or part of the claim or deny the claim. There are procedures for administrative appeal of a proposed order, and final decisions may be appealed as provided for in State law.

The division has a right to reimbursement by a registered home builder whose act or omission gave rise to a claim against the fund. If a person liable for reimbursing the fund

fails to do so within specified timeframes, 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. If a registrant fails to reimburse the Guaranty Fund within 30 days for a claim paid on the registrant's account, the division may sue the registrant in a court of competent jurisdiction.

Background: Chapter 211 of 2014 increased the maximum claim amount against the Home Improvement Guaranty Fund – from \$5,000 to \$7,500 – for which the Maryland Home Improvement Commission may issue a proposed order. The Act also increased the length of time – from 30 days to 60 days – that a contractor has to reimburse the fund for claims paid by the fund on the contractor's behalf.

State Fiscal Effect: To the extent that the division is able to issue additional proposed orders for claims against the Home Builder Guaranty Fund, nonbudgeted expenditures may accelerate beginning in fiscal 2016. Nonbudgeted revenues to the fund may also accelerate as the fund is reimbursed by new home builders responsible for Guaranty Fund claims, even under the bill's extended pay-back period. The amounts are anticipated to be minimal. The division is aware of three cases to which the bill may have applied since the fund's inception in 2008. The balance of the Home Builder Guaranty Fund as of December 2014 was \$2.0 million.

As the bill likely allows the division to issue a proposed order for a minimal number of additional cases annually, special fund expenditures for the division to refer cases to OAH decrease minimally beginning in fiscal 2016.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division), Judiciary (Administrative Office of the Courts), Department of Legislative Services

Fiscal Note History: First Reader - February 6, 2015
md/mcr Revised - Clarification - March 30, 2015

Analysis by: Stephen M. Ross

Direct Inquiries to:
(410) 946-5510
(301) 970-5510