

BY: Conference Committee

AMENDMENTS TO HOUSE BILL NO. 811
(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, strike "Builders Act" and substitute "Builder Registration Act".

AMENDMENT NO. 2

On pages 1 and 2, strike beginning with "prohibiting" in line 3 on page 1 down through "builders." in line 15 on page 2 and substitute "establishing the Home Builder Registration Unit in the Consumer Protection Division of the Office of the Attorney General; providing that certain lenders are exempt from registration provided they hire a registered builder; providing for the powers, rights, and duties of the Director of the Unit; requiring the Division, together with certain persons to create a certain consumer information pamphlet; establishing a Home Builder Registration Fund and describing its qualities; specifying the means and manner of acquisition and disbursement of the assets of the Registration Fund; requiring certain audits of the Registration Fund; prohibiting a person from acting as, offering to act as, holding oneself out to be, or impersonating a home builder in the State without certain registration under certain circumstances; requiring a person to meet certain requirements to be registered under this Act; establishing application and renewal processes and requirements to become or remain registered under this Act; requiring the Unit to register or renew the registration of an applicant or registrant under certain circumstances; providing for certain qualities, powers, and restrictions of a registration under this Act; providing for the expiration, denial, suspension, or revocation of a registration under certain circumstances; requiring the Division to provide a registrant with certain notice and opportunities for hearings under certain circumstances; requiring a registrant to provide certain information to the Unit under certain circumstances; requiring a registrant to display its home builder registration number under certain circumstances; providing that any remedies are in addition to any remedies available under the Consumer Protection Act or any other laws; requiring a county to notify the Unit of certain acts or omissions of a registrant under certain circumstances; requiring certain information to be included in a purchase contract for a new home; providing that certain installers are responsible for certain defects; requiring a registrant to comply with certain construction standards under certain circumstances; providing that a contract

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for the purchase of a new home is not enforceable under certain circumstances; establishing certain criminal and civil penalties for violations of certain provisions of this Act; requiring all contracts for the initial sale of improved, new residential real property to include certain information; providing for the construction and application of certain provisions of this Act; defining certain terms; providing for the application of this Act; requiring that the Division study the feasibility of a new home builder guaranty fund and a certain report of its findings; requiring the Division to submit a certain annual report to the Governor and General Assembly; providing for a delayed effective date; and generally relating to the registration of home builders in the State.”.

On page 2, strike beginning with “BY” in line 16 down through “Supplement)” in line 31 and substitute:

“BY adding to

Article - Business Regulation

Section 4.5-101 through 4.5-701, inclusive, to be under the new title “Title 4.5. Home
Builder Registration”

Annotated Code of Maryland

(1998 Replacement Volume and 1999 Supplement)”.

AMENDMENT NO. 3

On pages 3 through 18, strike in their entirety the lines beginning with line 1 on page 3 through line 22 on page 18, inclusive, and substitute:

“Article - Business Regulation

TITLE 4.5. HOME BUILDER REGISTRATION.

SUBTITLE 1. DEFINITIONS.

4.5-101.

(A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS
INDICATED.

(B) “CONSUMER” MEANS AN OWNER OR A CONTRACT PURCHASER.

(C) “CONTRACT PURCHASER” MEANS A PERSON WHO HAS ENTERED INTO A CONTRACT WITH A HOME BUILDER TO PURCHASE A NEW HOME, BUT WHO HAS NOT YET SETTLED ON THE PURCHASE OF THE NEW HOME.

(D) “DIVISION” MEANS THE CONSUMER PROTECTION DIVISION OF THE OFFICE OF THE ATTORNEY GENERAL.

(E) “EXEMPT LENDER” MEANS A LENDER EXEMPT FROM THE REQUIREMENTS OF REGISTRATION AS PROVIDED IN § 4.5-501(C).

(F) (1) “HOME BUILDER” MEANS A PERSON THAT UNDERTAKES TO ERECT OR OTHERWISE CONSTRUCT A NEW HOME.

(2) “HOME BUILDER” INCLUDES:

(I) A CUSTOM HOME BUILDER AS DEFINED IN § 10-501 OF THE REAL PROPERTY ARTICLE;

(II) A NEW HOME BUILDER SUBJECT TO § 10-301 OF THE REAL PROPERTY ARTICLE; AND

(III) THE INSTALLER OR RETAILER OF A MOBILE HOME OR AN INDUSTRIALIZED BUILDING INTENDED FOR RESIDENTIAL USE.

(3) “HOME BUILDER” DOES NOT INCLUDE:

(I) AN EMPLOYEE OF A REGISTRANT WHO DOES NOT HOLD HIMSELF OR HERSELF OUT FOR HIRE IN HOME BUILDING EXCEPT AS AN EMPLOYEE OF A REGISTRANT;

(II) SUBCONTRACTORS OR OTHER VENDORS HIRED BY THE

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REGISTRANT TO PERFORM SERVICES OR SUPPLY MATERIALS FOR THE CONSTRUCTION OF A NEW HOME WHO DO NOT OTHERWISE MEET THE REQUIREMENTS OF THIS TITLE;

(III) THE MANUFACTURER OF INDUSTRIALIZED BUILDINGS INTENDED FOR RESIDENTIAL USE OR OF MOBILE HOMES, UNLESS THE MANUFACTURER ALSO INSTALLS THE INDUSTRIALIZED BUILDINGS OR MOBILE HOMES;

(IV) A REAL ESTATE DEVELOPER WHO DOES NOT CONSTRUCT HOMES;

(V) A FINANCIAL INSTITUTION THAT LENDS FUNDS FOR THE CONSTRUCTION OR PURCHASE OF RESIDENTIAL DWELLINGS IN THE STATE; OR

(VI) A PERSON WHO ERECTS OR CONSTRUCTS NEW HOMES SOLELY IN MONTGOMERY COUNTY.

(G) "HOME BUILDER REGISTRATION NUMBER" MEANS A REGISTRATION NUMBER ISSUED BY THE DIRECTOR TO A REGISTRANT UNDER THIS TITLE.

(H) "INDUSTRIALIZED BUILDING" HAS THE MEANING STATED IN ARTICLE 83B, § 6-202 OF THE CODE.

(I) "INSTALL" HAS THE MEANING STATED IN ARTICLE 83B, § 6-202 OF THE CODE.

(J) "MOBILE HOME" HAS THE MEANING STATED IN ARTICLE 83B, § 6-202 OF THE CODE.

(K) (1) "NEW HOME" MEANS EACH NEWLY CONSTRUCTED RESIDENTIAL DWELLING UNIT IN THE STATE AND THE FIXTURES AND STRUCTURE THAT ARE MADE A PART OF A NEWLY CONSTRUCTED PRIVATE DWELLING UNIT AT THE TIME OF CONSTRUCTION.

(2) “NEW HOME” INCLUDES:

(I) A CUSTOM HOME AS DEFINED IN § 10-501(C) OF THE REAL PROPERTY ARTICLE;

(II) A NEW HOME TO WHICH § 10-301 OF THE REAL PROPERTY ARTICLE APPLIES;

(III) AN INDUSTRIALIZED BUILDING INTENDED FOR RESIDENTIAL USE; AND

(IV) A MOBILE HOME.

(L) (1) “OWNER” MEANS A PERSON FOR WHOM A NEW HOME IS BUILT OR TO WHOM A NEW HOME IS SOLD FOR OCCUPATION BY:

(I) THAT PERSON OR THE FAMILY OF THAT PERSON AS A HOME; OR

(II) THE SUCCESSORS OF THAT PERSON IN TITLE TO THE HOME OR A MORTGAGOR IN POSSESSION.

(2) “OWNER” INCLUDES A CONTRACT PURCHASER WHO CONTRACTS WITH A REGISTRANT FOR THE CONSTRUCTION AND PURCHASE OF A NEW HOME.

(3) “OWNER” DOES NOT INCLUDE:

(I) A DEVELOPMENT COMPANY, ASSOCIATION, OR SUBSIDIARY COMPANY OF A REGISTRANT; OR

(II) A PERSON OR ORGANIZATION TO WHOM THE HOME MAY BE CONVEYED BY THE REGISTRANT FOR A PURPOSE OTHER THAN RESIDENTIAL OCCUPATION BY THAT PERSON OR ORGANIZATION.

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(M) “PRINCIPAL” MEANS:

(1) A SOLE PROPRIETOR, OFFICER, DIRECTOR, GENERAL PARTNER, OR LIMITED LIABILITY COMPANY MANAGER OF AN APPLICANT OR REGISTRANT;

(2) A PERSON WITH AT LEAST 10 PERCENT OWNERSHIP IN AN APPLICANT OR REGISTRANT OR A SUBSIDIARY OF AN APPLICANT OR REGISTRANT;
AND

(3) PARENTS, SPOUSES, AND CHILDREN WITH A COMBINED 10 PERCENT OWNERSHIP IN AN APPLICANT OR REGISTRANT OR A SUBSIDIARY OF AN APPLICANT OR REGISTRANT.

(N) “REGISTRANT” MEANS A PERSON REGISTERED TO BUILD NEW HOMES.

(O) “REGISTRATION FUND” MEANS THE HOME BUILDER REGISTRATION FUND.

SUBTITLE 2. HOME BUILDER REGISTRATION UNIT;
HOME BUILDER REGISTRATION FUND.

4.5-201.

THERE IS A HOME BUILDER REGISTRATION UNIT IN THE DIVISION.

4.5-202.

(A) THE UNIT SHALL MAINTAIN A LIST OF ALL REGISTRANTS.

(B) (1) THE UNIT SHALL MAKE AVAILABLE TO EACH APPLICANT FOR REGISTRATION A COPY OF THIS TITLE AND OTHER APPLICABLE LAWS AND REGULATIONS.

(2) THE UNIT SHALL MAKE AVAILABLE TO EACH REGISTRANT ANY

AMENDMENTS TO THIS TITLE OR OTHER APPLICABLE LAWS OR REGULATIONS AT LEAST 30 DAYS BEFORE THE EFFECTIVE DATE OF THE AMENDMENTS.

(C) (1) IN CONSULTATION WITH THE HOME BUILDING INDUSTRY, THE UNIT SHALL DEVELOP A CONSUMER INFORMATION PAMPHLET WRITTEN IN PLAIN ENGLISH THAT DESCRIBES:

(I) THE RIGHTS AND REMEDIES OF CONSUMERS IN THE PURCHASE OF A NEW HOME; AND

(II) ANY OTHER INFORMATION THAT THE DIVISION CONSIDERS REASONABLY NECESSARY TO ASSIST CONSUMERS.

(2) THE DIVISION SHALL PROVIDE EACH REGISTERED HOME BUILDER WITH A SUFFICIENT NUMBER OF COPIES OF THE CONSUMER INFORMATION PAMPHLETS AS NEEDED BY THE HOME BUILDER.

(3) A HOME BUILDER SHALL PROVIDE EACH CONTRACT PURCHASER WITH THE CONSUMER INFORMATION PAMPHLET BEFORE ENTERING INTO A CONTRACT FOR THE INITIAL SALE OF A NEW HOME.

(4) THE CONTRACT PURCHASER SHALL ACKNOWLEDGE IN WRITING THE RECEIPT OF THE CONSUMER INFORMATION PAMPHLET.

(5) THE FAILURE OF A HOME BUILDER TO PROVIDE A COPY OF THE CONSUMER PROTECTION PAMPHLET TO A CONTRACT PURCHASER MAY NOT BE USED AS A BASIS FOR INVALIDATION OF THE CONTRACT FOR THE INITIAL SALE OF A NEW HOME.

(D) THE UNIT SHALL COLLECT AND MAINTAIN INFORMATION ON THE RESOLUTION OF CONSUMER COMPLAINTS INVOLVING NEW HOME BUILDERS.

4.5-203.

(Over)

- (A) (1) THERE IS A HOME BUILDER REGISTRATION FUND.
- (2) THE DIVISION SHALL ADMINISTER THE REGISTRATION FUND.
- (3) THE REGISTRATION FUND SHALL BE USED TO COVER THE ACTUAL DOCUMENTED DIRECT AND INDIRECT COSTS INCURRED FOR THE ADMINISTRATION AND ENFORCEMENT OF THE MARYLAND HOME BUILDERS REGISTRATION ACT.
- (4) THE REGISTRATION FUND IS A CONTINUING, NONLAPSING FUND, AND IS SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.
- (5) UNSPENT ASSETS OF THE REGISTRATION FUND SHALL REMAIN IN THE REGISTRATION FUND AND MAY NOT REVERT OR BE TRANSFERRED TO THE GENERAL FUND OF THE STATE.
- (6) THE REGISTRATION FUND MAY NOT BE SUPPORTED BY APPROPRIATIONS OF STATE FUNDS.
- (B) (1) BY REGULATION, THE DIVISION SHALL ESTABLISH REASONABLE FEES THAT MAY NOT EXCEED \$600 OVER A 2-YEAR PERIOD, AND A FEE SCHEDULE FOR THE ISSUANCE AND RENEWAL OF REGISTRATIONS.
- (2) THE FEES CHARGED SHALL APPROXIMATE THE DIRECT AND INDIRECT COSTS OF ADMINISTERING AND ENFORCING THE MARYLAND HOME BUILDERS REGISTRATION ACT.
- (C) THE DIVISION SHALL PAY ALL FUNDS COLLECTED UNDER § 4.5-303 OF THIS TITLE TO THE COMPTROLLER, WHO SHALL DISTRIBUTE THE FEES TO THE REGISTRATION FUND.
- (D) THE OFFICE OF LEGISLATIVE AUDITS SHALL AUDIT THE ACCOUNTS AND TRANSACTIONS OF THE REGISTRATION FUND UNDER § 2-1220 OF THE STATE GOVERNMENT ARTICLE.

SUBTITLE 3. REGISTRATION.

4.5-301.

EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, A PERSON MAY NOT ACT AS A HOME BUILDER IN THE STATE UNLESS THE PERSON IS REGISTERED AS A HOME BUILDER UNDER THIS TITLE.

4.5-302.

(A) EACH PERSON THAT CONSTRUCTS NEW HOMES FOR SALE TO THE PUBLIC SHALL MAINTAIN GENERAL LIABILITY INSURANCE FOR AT LEAST \$100,000.

(B) IF A HOME BUILDER'S REGISTRATION HAS BEEN REVOKED AND THE HOME BUILDER APPLIES FOR A NEW REGISTRATION, THE UNIT SHALL, IN ITS DISCRETION, APPROVE THE APPLICATION ON THE APPLICANT'S FULFILLMENT OF SPECIFIED TERMS AND CONDITIONS, INCLUDING THE POSTING OF A BOND FOR THE BENEFIT OF SUBCONTRACTORS, SUPPLIERS, AND CONSUMERS AND THE PAYMENT OF ANY JUDGMENTS OR AWARDS DUE TO ANY SUBCONTRACTORS, SUPPLIERS, AND CONSUMERS FOR A PERIOD OF 4 YEARS FROM THE DATE OF THE APPROVAL OF REGISTRATION, AFTER WHICH THE LICENSING BOND SHALL EXPIRE AND SHALL NO LONGER BE REQUIRED TO BE MAINTAINED BY THE REGISTERED HOME BUILDER.

4.5-303.

(A) TO APPLY FOR REGISTRATION, AN APPLICANT SHALL:

(1) SUBMIT TO THE UNIT UNDER OATH AN APPLICATION ON THE FORM PROVIDED BY THE UNIT; AND

(2) PAY A NONREFUNDABLE APPLICATION FEE ESTABLISHED THROUGH REGULATION.

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- (B) THE APPLICATION SHALL REQUIRE AN APPLICANT TO PROVIDE:
- (1) THE APPLICANT'S NAME;
 - (2) THE APPLICANT'S BUSINESS ADDRESS, TELEPHONE NUMBER, AND, IF APPLICABLE, ELECTRONIC MAIL ADDRESS;
 - (3) IN THE CASE OF AN APPLICANT WHO IS AN INDIVIDUAL, THE APPLICANT'S SOCIAL SECURITY NUMBER;
 - (4) IN THE CASE OF AN APPLICANT OTHER THAN AN INDIVIDUAL:
 - (I) THE APPLICANT'S FEDERAL EMPLOYER IDENTIFICATION NUMBER; AND
 - (II) THE NAMES, ADDRESSES, AND SOCIAL SECURITY NUMBERS OF ALL PRINCIPALS OF THE APPLICANT;
 - (5) THE NAMES OF ALL APPLICANTS AND PRINCIPALS WHO HAVE PREVIOUSLY APPLIED FOR REGISTRATION, AND THE DISPOSITION OF ALL PREVIOUS APPLICATIONS;
 - (6) THE NAMES OF ANY APPLICANT OR PRINCIPAL THAT WAS A PRINCIPAL IN AN ENTITY THAT PREVIOUSLY APPLIED FOR REGISTRATION;
 - (7) A LIST OF ALL STATES AND OTHER JURISDICTIONS IN WHICH THE APPLICANT HOLDS A SIMILAR REGISTRATION OR LICENSE;
 - (8) A LIST OF ALL STATES AND OTHER JURISDICTIONS IN WHICH THE APPLICANT HAS HAD A SIMILAR REGISTRATION OR LICENSE SUSPENDED OR REVOKED;
 - (9) A STATEMENT WHETHER ANY PENDING JUDGMENTS OR TAX LIENS EXIST AGAINST THE APPLICANT;

(10) (I) THE ELECTION MADE BY THE APPLICANT REGARDING DEPOSIT MONEYS UNDER § 10-301 OF THE REAL PROPERTY ARTICLE; AND

(II) IF THE APPLICANT ELECTS TO HOLD DEPOSITS IN AN ESCROW ACCOUNT, THE ACCOUNT NUMBER AND THE NAME OF THE FINANCIAL INSTITUTION THAT HOLDS THE ESCROW ACCOUNT;

(11) IF THE APPLICANT PARTICIPATES IN A NEW HOME WARRANTY SECURITY PLAN, THE NAME AND ADDRESS OF THE WARRANTY COMPANY; AND

(12) THE NAME OF THE INSURANCE CARRIER AND THE POLICY NUMBER OF THE GENERAL LIABILITY COVERAGE REQUIRED UNDER § 4.5-302 OF THIS SUBTITLE.

4.5-304.

(A) THE UNIT SHALL REGISTER AND ISSUE A HOME BUILDER REGISTRATION NUMBER TO AN APPLICANT THAT MEETS THE REQUIREMENTS OF THIS TITLE.

(B) A REGISTRATION ISSUED UNDER THIS TITLE MAY NOT BE TRANSFERRED, ASSIGNED, OR PLEDGED.

(C) A VALID REGISTRATION AUTHORIZES THE REGISTRANT TO ACT AS A HOME BUILDER IN THE STATE.

(D) A HOME BUILDER THAT HOLDS A LICENSE OR REGISTRATION IN MONTGOMERY COUNTY MAY ACT AS A HOME BUILDER IN THAT COUNTY ONLY, UNLESS THE HOME BUILDER IS ALSO REGISTERED UNDER THIS TITLE.

4.5-305.

(A) (1) UNLESS RENEWED UNDER THIS SECTION, A REGISTRATION

EXPIRES ON THE SECOND ANNIVERSARY OF ITS EFFECTIVE DATE.

(2) A REGISTRANT THAT MEETS THE REQUIREMENTS OF SUBSECTION (C) OF THIS SECTION MAY OBTAIN A RENEWAL OF A REGISTRATION BEFORE THE REGISTRATION EXPIRES FOR AN ADDITIONAL 2-YEAR TERM.

(3) ONCE EXPIRED, A REGISTRATION MAY NOT BE RENEWED.

(B) AT LEAST 60 DAYS BEFORE A REGISTRATION EXPIRES, THE DIRECTOR SHALL MAIL THE REGISTRANT, AT THE LAST KNOWN ADDRESS OF THE REGISTRANT:

(1) A RENEWAL APPLICATION FORM; AND

(2) A NOTICE THAT STATES:

(I) THE DATE ON WHICH THE CURRENT REGISTRATION EXPIRES; AND

(II) THE DATE BY WHICH THE DIRECTOR MUST RECEIVE THE RENEWAL APPLICATION FOR A RENEWAL TO BE ISSUED AND MAILED BEFORE THE REGISTRATION EXPIRES.

(C) THE UNIT SHALL RENEW THE REGISTRATION OF EACH REGISTRANT THAT:

(1) SUBMITS TO THE UNIT A RENEWAL APPLICATION ON THE FORM PROVIDED BY THE UNIT;

(2) WOULD QUALIFY FOR AN INITIAL REGISTRATION;

(3) PAYS THE RENEWAL FEE ESTABLISHED BY REGULATION; AND

(4) IS OTHERWISE ENTITLED TO BE REGISTERED.

4.5-306.

(A) A REGISTRANT SHALL PROVIDE THE UNIT WRITTEN NOTICE OF ANY CHANGE IN THE INFORMATION SUBMITTED UNDER § 4.5-303(B) OF THIS SUBTITLE WITHIN 10 WORKING DAYS AFTER THE CHANGE IS EFFECTIVE.

(B) A REGISTRANT SHALL COMPLY WITH SUBSECTION (A) OF THIS SECTION FOR 1 YEAR AFTER THE REGISTRANT CEASES TO BE REGISTERED.

4.5-307.

(A) EACH REGISTRANT SHALL DISPLAY ITS HOME BUILDER REGISTRATION NUMBER CONSPICUOUSLY ON ALL PROPERTIES AT WHICH THE REGISTRANT IS PERFORMING WORK THAT REQUIRES REGISTRATION UNDER THIS TITLE.

(B) IF A REGISTRANT IS BUILDING MULTIPLE HOMES IN ONE PROJECT AREA OR SUBDIVISION, THE REGISTRANT MAY POST ITS HOME BUILDER REGISTRATION NUMBER IN ONE CENTRAL CONSPICUOUS LOCATION IN THE PROJECT AREA OR SUBDIVISION.

4.5-308.

(A) THE UNIT MAY DENY REGISTRATION TO AN APPLICANT, REPRIMAND A REGISTRANT, SUSPEND OR REVOKE A REGISTRATION, OR IMPOSE A CIVIL PENALTY ON A REGISTRANT IF THE UNIT DETERMINES THAT THE APPLICANT OR REGISTRANT:

(1) FRAUDULENTLY OR DECEPTIVELY OBTAINED OR ATTEMPTED TO OBTAIN A REGISTRATION;

(2) FRAUDULENTLY OR DECEPTIVELY USED A REGISTRATION;

(3) PRESENTED OR ATTEMPTED TO PRESENT THE HOME BUILDER REGISTRATION NUMBER OF ANOTHER REGISTRANT AS THE APPLICANT'S OR

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REGISTRANT'S HOME BUILDER REGISTRATION NUMBER;

(4) USED OR ATTEMPTED TO USE AN EXPIRED, SUSPENDED, OR REVOKED HOME BUILDER REGISTRATION NUMBER;

(5) IMPERSONATED OR FALSELY REPRESENTED ONESELF AS A REGISTERED HOME BUILDER;

(6) REPEATEDLY VIOLATED THIS TITLE;

(7) ENGAGED IN A PATTERN OF UNFAIR OR DECEPTIVE TRADE PRACTICES UNDER THE CONSUMER PROTECTION ACT, AS DETERMINED BY A FINAL ADMINISTRATIVE ORDER OR JUDICIAL DECISION;

(8) REPEATEDLY VIOLATED A STATE OR FEDERAL LAW OR REGULATION THAT RELATES TO THE FITNESS AND QUALIFICATION OR ABILITY OF THE APPLICANT OR REGISTRANT TO BUILD HOMES;

(9) ENGAGED IN A PATTERN OF POOR WORKMANSHIP EVIDENCED BY ONE OR MORE OF THE FOLLOWING:

(I) REPEATED UNRESOLVED BUILDING CODE VIOLATIONS;

(II) REPEATED UNSATISFIED ARBITRATION AWARDS AGAINST THE APPLICANT OR REGISTERED HOME BUILDER BASED ON INCOMPLETE OR SUBSTANDARD WORK THAT RESULTS IN THE CONSUMERS, IN WHOSE NAMES THE ARBITRATION AWARDS ARE ENTERED, FILING COMPLAINTS WITH THE DIVISION UNDER THIS SUBTITLE; OR

(III) AN UNSATISFIED FINAL JUDGMENT THAT RESULTS IN A CONSUMER, IN WHOSE NAME THE JUDGMENT IS ENTERED, FILING A COMPLAINT WITH THE DIVISION UNDER TITLE 13 OF THE COMMERCIAL LAW ARTICLE;

(10) REPEATEDLY ENGAGED IN FRAUD, DECEPTION,

MISREPRESENTATION, OR KNOWING OMISSIONS OF MATERIAL FACTS RELATED TO HOME BUILDING CONTRACTS;

(11) HAD A SIMILAR REGISTRATION OR LICENSE DENIED, SUSPENDED, OR REVOKED IN ANOTHER STATE OR JURISDICTION; OR

(12) HAD THE RENEWAL OF A SIMILAR REGISTRATION OR LICENSE DENIED FOR ANY CAUSE OTHER THAN FAILURE TO PAY A RENEWAL FEE.

(B) (1) THE UNIT MAY DENY A REGISTRATION TO A NONPUBLICLY TRADED APPLICANT OR SUSPEND OR REVOKE A REGISTRATION OF A NONPUBLICLY TRADED REGISTRANT IF A PRINCIPAL OF THE APPLICANT OR REGISTRANT, OTHER THAN A FINANCIAL INSTITUTION OR A NONPROFIT ORGANIZATION, THAT OWNS AT LEAST 10 PERCENT OF THE APPLICANT OR REGISTRANT, WAS A PRINCIPAL OF A HOME BUILDER THAT HAD A SIMILAR REGISTRATION OR LICENSE DENIED, SUSPENDED, OR REVOKED BY THE UNIT OR IN ANOTHER STATE OR JURISDICTION FOR ANY CAUSE OTHER THAN A FAILURE TO PAY A RENEWAL FEE IF THE UNIT DETERMINES THAT THE INTERESTS OF THE PUBLIC CANNOT BE PROTECTED IF THE APPLICANT OR REGISTRANT IS ALLOWED TO ACT AS A HOME BUILDER IN THE STATE.

(2) FOR THE PURPOSES OF THIS SUBSECTION, THE INTERESTS OF A PRINCIPAL INCLUDE INTERESTS HELD BY THE PARENTS, SPOUSE, OR CHILDREN OF THE PRINCIPAL.

(C) THE UNIT SHALL PROVIDE AN APPLICANT OR REGISTRANT NOTICE AND AN OPPORTUNITY TO REQUEST A HEARING UNDER TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE TO CONTEST A PROPOSED DISCIPLINARY ACTION.

SUBTITLE 4. REMEDIES.

4.5-401.

(Over)

(A) THE DIVISION SHALL ENCOURAGE THE OWNER OR BUYER TO PURSUE RESOLUTION OF THE DISPUTE PURSUANT TO THE EXISTING CONTRACT.

(B) THE OWNER'S OR BUYER'S REMEDIES UNDER THIS SUBTITLE SHALL NOT SUPERSEDE ANY CONSUMER CONTRACTUAL OBLIGATIONS, AND ARE IN ADDITION TO ANY REMEDIES THE OWNER OR BUYER MAY HAVE UNDER THE CONSUMER PROTECTION ACT OR ANY OTHER LAW.

SUBTITLE 5. PROHIBITED ACTS; PENALTIES.

4.5-501.

(A) EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, A PERSON MAY NOT ACT AS, OFFER TO ACT AS, HOLD ONESELF OUT AS, OR IMPERSONATE A REGISTRANT IN THE STATE UNLESS THE PERSON IS A REGISTRANT.

(B) A PERSON THAT VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND, ON FIRST CONVICTION, IS SUBJECT TO A FINE NOT EXCEEDING \$1,000 AND ON SECOND OR SUBSEQUENT CONVICTION, IS SUBJECT TO A FINE NOT EXCEEDING \$5,000.

(C) THE FOLLOWING LENDERS ARE EXEMPT FROM THE REQUIREMENTS RELATING TO REGISTRATION UNDER THIS TITLE WHEN THE LENDER HIRES A SECOND REGISTERED HOME BUILDER WHO WOULD UNDERTAKE TO COMPLETE A FIRST HOME BUILDER'S UNFINISHED PROJECT PURSUANT TO A DEFAULT IN OBLIGATIONS OF THE FIRST HOME BUILDER TO THE LENDER:

(1) A MORTGAGE LENDER AS DEFINED IN § 11-501(J)(1)(II) OF THE FINANCIAL INSTITUTIONS ARTICLE THAT IS A LICENSEE UNDER TITLE 11, SUBTITLE 5 OF THE FINANCIAL INSTITUTIONS ARTICLE;

(2) A BANK, TRUST COMPANY, SAVINGS BANK, SAVINGS AND LOAN

ASSOCIATION, OR CREDIT UNION INCORPORATED OR CHARTERED UNDER THE LAWS OF THIS STATE OR THE UNITED STATES THAT MAINTAINS ITS PRINCIPAL OFFICE IN THIS STATE;

(3) AN OUT-OF-STATE BANK AS DEFINED IN § 5-1001 OF THE FINANCIAL INSTITUTIONS ARTICLE THAT HAS A BRANCH IN THIS STATE THAT ACCEPTS DEPOSITS;

(4) AN INSTITUTION INCORPORATED UNDER FEDERAL LAW AS A SAVINGS ASSOCIATION OR SAVINGS BANK THAT DOES NOT MAINTAIN ITS PRINCIPAL OFFICE IN THIS STATE BUT HAS A BRANCH THAT ACCEPTS DEPOSITS IN THIS STATE; AND

(5) A SUBSIDIARY OR AFFILIATE OF AN INSTITUTION DESCRIBED IN PARAGRAPH (2), (3), OR (4) OF THIS SUBSECTION THAT IS SUBJECT TO AUDIT OR EXAMINATION BY A REGULATORY BODY OR AGENCY OF THIS STATE, THE UNITED STATES, OR THE STATE WHERE THE SUBSIDIARY OR AFFILIATE MAINTAINS ITS PRINCIPAL OFFICE.

(D) AN EXEMPT LENDER IS SUBJECT ONLY TO §§ 4.5-202(C), 4.5-401, 4.5-503, 4.5-601, 4.5-602, AND 4.5-603 OF THIS TITLE.

4.5-502.

(A) SUBJECT TO THE NOTICE AND HEARING PROVISIONS OF TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE, THE DIVISION MAY BRING A CIVIL ADMINISTRATIVE ACTION AGAINST A PERSON THAT VIOLATES § 4.5-501(A) OF THIS SUBTITLE.

(B) AFTER A HEARING, IF THE DIRECTOR FINDS THAT THE PERSON HAS VIOLATED § 4.5-501(A) OF THIS SUBTITLE, THE DIRECTOR MAY:

(1) ORDER THE PERSON TO CEASE AND DESIST FROM THE

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UNLAWFUL PRACTICE; AND

(2) IMPOSE A CIVIL PENALTY OF NOT MORE THAN \$1,000 FOR EACH DAY OF UNLAWFUL PRACTICE.

(C) ANY PARTY AGGRIEVED BY A DECISION AND ORDER OF THE DIRECTOR UNDER THIS SECTION MAY MAKE AN APPEAL AS PROVIDED UNDER §§ 10-222 AND 10-223 OF THE STATE GOVERNMENT ARTICLE.

4.5-503.

A PERSON MAY NOT ADVERTISE IN ANY WAY THAT THE PERSON IS REGISTERED UNDER THIS TITLE UNLESS THE ADVERTISEMENT STATES THE HOME BUILDER REGISTRATION NUMBER OF THE PERSON IN ONE OF THE FOLLOWING FORMS:

“MARYLAND HOME BUILDER REGISTRATION NO. _____”; OR

“MHBR NO. _____”.

4.5-504.

(A) THIS SECTION ONLY APPLIES IF THERE IS NO GREATER CRIMINAL PENALTY PROVIDED UNDER THIS TITLE OR OTHER APPLICABLE LAW.

(B) A PERSON WHO ENGAGES IN REPEATED VIOLATIONS OF THIS TITLE IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$2,500.

SUBTITLE 6. MISCELLANEOUS PROVISIONS.

4.5-601.

(A) EXCEPT FOR A BUILDING PERMIT FOR CONSTRUCTION TO BE

PERFORMED DIRECTLY BY A LANDOWNER SOLELY FOR THE LANDOWNER'S OWN USE, THE BUILDING AND PERMITS DEPARTMENT OF A COUNTY MAY NOT ISSUE A PERMIT FOR HOME BUILDING UNLESS THE PERMIT INCLUDES THE HOME BUILDER REGISTRATION NUMBER OF A REGISTRANT.

(B) BEFORE ISSUING A PERMIT FOR HOME BUILDING TO A LANDOWNER, THE BUILDING AND PERMITS DEPARTMENT OF A COUNTY SHALL OBTAIN THE SIGNATURE OF THE LANDOWNER AFFIRMING THAT THE PERMIT IS BEING ISSUED SOLELY FOR THE PURPOSE OF THE LANDOWNER PERFORMING WORK ON THE LANDOWNER'S OWN PROPERTY.

(C) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO RELIEVE A REGISTRANT FROM THE OBLIGATION TO OBTAIN ALL OTHER PERMITS, LICENSES, AND OTHER AUTHORIZATIONS FOR THE CONSTRUCTION OF A NEW HOME.

4.5-602.

(A) IN THIS SECTION, "BUILDING CODE" INCLUDES A CODE PROVISION CONCERNING MECHANICAL, ELECTRICAL, FIRE, PLUMBING, ENERGY, HEATING, VENTILATION, OR AIR-CONDITIONING MATTERS.

(B) A COUNTY OR MUNICIPAL CORPORATION SHALL NOTIFY THE DIRECTOR OF EACH REGISTRANT WHO FAILS TO CORRECT A VIOLATION OF THE APPLICABLE LOCAL OR STATE BUILDING CODE WITHIN A REASONABLE TIME AFTER THE REGISTRANT RECEIVES NOTICE OF THE VIOLATION.

4.5-603.

A REGISTRANT SHALL INCLUDE IN ANY CONTRACT FOR THE INITIAL SALE OF A NEW HOME THE INFORMATION REQUIRED UNDER § 14-117(J) OF THE REAL PROPERTY ARTICLE.

4.5-604.

(Over)

A HOME BUILDER WHO INSTALLS AN INDUSTRIALIZED BUILDING INTENDED FOR RESIDENTIAL USE OR A MOBILE HOME IS RESPONSIBLE TO THE OWNER FOR CORRECTING ANY DEFECTS IN ANY COMPONENT INCORPORATED INTO THE NEW HOME EXCEPT FOR THOSE INDUSTRIALIZED BUILDINGS OR MOBILE HOMES THAT ARE THE RESPONSIBILITY OF THE MANUFACTURER OF THE INDUSTRIALIZED BUILDING AND MOBILE HOME PURSUANT TO ARTICLE 83B, TITLE 6, SUBTITLE 2 OF THE CODE.

4.5-605.

A CONTRACT FOR THE PERFORMANCE OF ANY ACT FOR WHICH A HOME BUILDER REGISTRATION NUMBER IS REQUIRED IS NOT ENFORCEABLE UNLESS THE HOME BUILDER WAS REGISTERED AT THE TIME THAT THE CONTRACT WAS SIGNED BY THE OWNER.

SUBTITLE 7. SHORT TITLE.

4.5-701.

THIS TITLE MAY BE CITED AS THE MARYLAND HOME BUILDER REGISTRATION ACT.

Article - Real Property

14-117.

(J) (1) THIS SUBSECTION APPLIES TO BALTIMORE CITY AND ALL OTHER COUNTIES EXCEPT MONTGOMERY COUNTY.

(2) A CONTRACT FOR THE INITIAL SALE OF A NEW HOME, AS DEFINED IN THIS SUBTITLE, SHALL INCLUDE THE FOLLOWING:

(I) THE BUILDER REGISTRATION NUMBER OF THE SELLER OF

THE NEW HOME;

(II) A PROVISION STATING THAT THE NEW HOME SHALL BE CONSTRUCTED IN ACCORDANCE WITH ALL APPLICABLE BUILDING CODES IN EFFECT AT THE TIME OF THE CONSTRUCTION OF THE NEW HOME;

(III) A PROVISION REFERENCING ALL PERFORMANCE STANDARDS OR GUIDELINES:

1. THAT THE SELLER SHALL COMPLY WITH IN THE CONSTRUCTION OF THE NEW HOME; AND

2. THAT SHALL PREVAIL IN THE PERFORMANCE OF THE CONTRACT AND ANY ARBITRATION OR ADJUDICATION OF A CLAIM ARISING FROM THE CONTRACT; AND

(IV) A PROVISION DETAILING THE PURCHASER'S RIGHT TO RECEIVE A CONSUMER INFORMATION PAMPHLET AS PROVIDED UNDER THE HOME BUILDER REGISTRATION ACT.

(3) THE PERFORMANCE STANDARDS OR GUIDELINES DESCRIBED IN PARAGRAPH (2) OF THIS SUBSECTION SHALL BE:

(I) THE PERFORMANCE STANDARDS OR GUIDELINES ADOPTED AT THE TIME OF THE CONTRACT BY THE NATIONAL ASSOCIATION OF HOME BUILDERS;

(II) ANY PERFORMANCE STANDARDS OR GUIDELINES ADOPTED BY THE HOME BUILDER AND INCORPORATED INTO THE CONTRACT THAT ARE EQUAL TO OR MORE STRINGENT THAN THE PERFORMANCE STANDARDS ADOPTED AT THE TIME OF THE CONTRACT BY THE NATIONAL ASSOCIATION OF HOME BUILDERS; OR

(III) ANY PERFORMANCE STANDARDS OR GUIDELINES

(Over)

ADOPTED AT THE TIME OF THE CONTRACT BY A COUNTY OR MUNICIPAL CORPORATION THAT ARE EQUAL TO OR MORE STRINGENT THAN THE PERFORMANCE STANDARDS OR GUIDELINES ADOPTED AT THE TIME OF THE CONTRACT BY THE NATIONAL ASSOCIATION OF HOME BUILDERS.

(4) THE INFORMATION REQUIRED BY PARAGRAPH (2) OF THIS SUBSECTION SHALL BE PRINTED IN CONSPICUOUS TYPE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed only prospectively and may not be applied or interpreted to have any effect on or application to any act or omission of a home builder arising before the effective date of this Act; that it shall apply only to contracts entered into on or after January 1, 2001; and that home builders shall be registered beginning on or after January 1, 2001.

SECTION 3. AND BE IT FURTHER ENACTED, That the Consumer Protection Division of the Office of the Attorney General shall study the feasibility of a new home builder guaranty fund. The Consumer Protection Division shall report its findings and recommendations to the Senate Finance Committee and the House Economic Matters Committee, in accordance with § 2-1246 of the State Government Article, on or before October 1, 2003.

SECTION 4. AND BE IT FURTHER ENACTED, That on or before November 1, 2001 and annually thereafter, the Consumer Protection Division of the Office of the Attorney General shall submit an annual report of its activities regarding home builders and provide copies of the report to the Governor, and, subject to § 2-1246 of the State Government Article, the General Assembly.

SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect January 1, 2001."