

BUILDER WARRANTIES

NEW HOME CONSTRUCTION

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© November 2017 – Rev 0

Purchasing a newly constructed home can be an exciting process – so enjoy the excitement. Choosing the location of the development, the lot that you want, the floor plan, the style of construction, all of the options and upgrades, and colors, etc. - oh my, it's tiring just writing about it – but it can be fun and exciting.

However, it can be easy to get carried away with thinking about all of the cosmetics and forgetting about some very basic important information. All of the fun needs to be tempered with some reality and little common sense.

With all new construction there can be some issues. Many of the builders in business today are very reputable and really make an effort to ensure that their houses are built properly and with care. However, mistakes still do happen and sometimes somebody just does a poor job. And, there are some builders that are not so great and are knowingly taking shortcuts, using inferior and defective materials, and letting poor workmanship continue. Generally speaking, there just seems to be a real shortage of “pride of workmanship” with many of the contractors and sub-contractors employed by the developers. Bottom line is that for whatever reason, defects and poor workmanship in construction do occur. Be aware of it and try to keep it in check.

So before your excitement and that “new smell” overwhelms you, you must first and foremost ensure yourself that the builder/developer that you have chosen is currently licensed by the Maryland Attorney General's office that maintains a website that allows you to check on registered home builders:

<http://www.marylandattorneygeneral.gov/Pages/CPD/Homebuilder/index.aspx>

The following information also comes from their offices:

Home Builder Registration Unit - Consumer Protection Division

www.oag.state.md.us/homebuilder/index.html

Home Builder Registration:

All home builders who build homes in Maryland must be registered with the Home Builder Registration Unit. The Act requires persons to register who build new homes OR who enter into contracts to sell new homes to consumers. A builder can register by mail or online and pay the registration fee of \$600.00.

Who must register as a home builder?

The Act requires persons to register who build new homes or who enter into contracts to sell new homes to consumers. Some builders have a single legal entity that both builds the home and sells it to the consumer.

For such a builder, that single legal entity will have to register as a home builder. Other builders have one legal entity construct the home and a separate legal entity sell it. For such a builder, both legal entities will have to register as a home builder.

There are six important types of legal entities or people who do NOT have to register under the Act. They are:

- 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 registrant to perform services or supply materials for the construction of a new home who do not otherwise meet the requirements of the Act;*
- 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 or sell homes;*

v) a financial institution the 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 Home Builder Sales Representative Registration Effective October 1, 2008, all Sales Representatives for home builders in Maryland must be registered with the Home Builder Registration Unit, including Sales Representatives for home builders who build exclusively in Montgomery County. The registration requirement replaces the requirement that sales agents for home builders be licensed by the Maryland Real Estate Brokerage Services. Information about what constitutes providing Real Estate Brokerage Services may be found on the Real Estate Commission's website,

www.dllr.state.md.us/license/occprof/recomm.html

Who must register as a Home Builder Sales Representative? A "Sales Representative" is defined as "an individual employed by a home builder as the home builder's representative to consumers regarding the purchase of a new home from the home builder." A Sales Representative is an individual who has primary responsibility on behalf of a home builder for interacting with a consumer with respect to the purchase of a new home. This includes the presentation and completion of contractual documents, as well as modification of those documents. It also involves serving as the principal point of contact between the home builder and the consumer from initial visit by the consumer to the home builder's sales office to the closing of the purchase. All Sales Representatives must be registered.

A contractor's license status may change very quickly so you should recheck the status of the contractor you have chosen on the day you enter into a contract. If you contract with a contractor whose license is not current, you will not be eligible to receive funds from the Maryland Home Builder Recovery Fund:

<http://www.marylandattorneygeneral.gov/Pages/CPD/Homebuilder/guarantyfund.aspx>

Only after confirming proper licensing and current good standing should you consider entering into a contract for purchase with any developer or builder. Of course that is no guarantee that you won't have any problems – but it is a step in the right direction and it does offer some legal and monetary protection. Poor workmanship, defective construction, or irresponsible management and operation sometimes go undetected for long periods of time.

Express or Implied?

Home builders may, and often do, offer an “express” warranty on their product. It is called an “express” warranty because it is expressed – either verbally or in writing. Of course, without it being in writing it is going to be very difficult to enforce. So, virtually all express warranties will be written and they will be for specific things for a specific amount of time. Many new home builders will offer a one-year express warranty on all of the home's components – except appliances (which would be covered under separate warranty provided by the appliance manufacturer).

Here is more of what Maryland law has to say about that:

Real Property

Title 10. Sales of Property

Subtitle 6. New Home Warranties

§ 10-601. Definitions

(a) In this subtitle the following words have the meanings indicated.

(b) "Appliances, fixtures, and items of equipment" means furnaces, boilers, oil tanks and fittings, air purifiers, air handling equipment, ventilating fans, air conditioning equipment, water heaters, pumps, stoves, refrigerators, garbage disposals, compactors, dishwashers, automatic door openers, washers and dryers, bathtubs, sinks, toilets, faucets and fittings, lighting fixtures, circuit breakers, and other similar items.

(c) "Builder" means any person, corporation, partnership or other legal entity:

(1) That is engaged in the business of erecting or otherwise constructing a new home; or

(2) That purchases a completed new home for resale in the course of its business.

(d) "Division" means the Consumer Protection Division of the Office of the Attorney General.

(e) "Electrical systems" means all wiring, electrical boxes, switches, outlets and connections up to the public utility connection.

(f) "Heating, cooling, and ventilating systems" means all duct work, steam, water and refrigerant lines, registers, convectors, radiation elements and dampers.

(g) "Load-bearing portions of the home" means the load-bearing portions of the:

(1) Foundation system and footings;

(2) Beams;

(3) Girders;

(4) Lintels;

(5) Columns;

(6) Walls and partitions;

(7) Floor systems; and

(8) Roof framing system.

(h) "Local jurisdiction" means any county and any municipal corporation in Maryland subject to the provisions of Article XI-E of the Constitution.

(i) (1) "New home" means every newly constructed private 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" does not include:

(i) Outbuildings, including detached garages and detached carports, except outbuildings that contain plumbing, electrical, heating, cooling, or ventilation systems serving the new home;

(ii) Driveways;

(iii) Walkways;

(iv) Patios and decks;

(v) Boundary walls;

(vi) Retaining walls not necessary for the structural stability of the new home;

(vii) Landscaping;

(viii) Fences;

(ix) Off-site improvements;

(x) Appurtenant recreational facilities; and

(xi) Other similar items as determined by the Secretary.

(j) "New home warranty" means a series of written promises made by a builder that meets the requirements of this subtitle.

(k) "New home warranty security plan" means a plan that meets the requirements of § 10-606 of this title.

(l) "Owner" means the purchaser of a new home who uses the home primarily for residential purposes during the warranty period.

(m) "Plumbing systems" means:

(1) Gas supply lines and fittings;

(2) Water supply, waste, and vent pipes and their fittings;

(3) Septic tanks and their drain fields; and

(4) (i) Water, gas, and sewer service piping and their extensions to the tie-in of a public utility connection; or

(ii) On-site wells and sewage disposal systems.

(n) (1) "Structural defect" means any defect in the load-bearing portions of a new home that adversely affects its load-bearing function to the extent that the home becomes or is in serious danger of becoming unsafe, unsanitary, or otherwise uninhabitable.

(2) "Structural defect" includes damage due to subsidence, expansion, or lateral movement of soil that has been located or relocated by the builder.

(3) "Structural defect" does not include damage caused by movement of the soil:

(i) Resulting from a flood or earthquake; or

(ii) For which compensation has been provided.

(o) "Warranty date" means the first day that the owner occupies the new home, settles on the new home, makes the final contract payment on the new home, or obtains an occupancy permit for the new home if the home is built on the owner's property, whichever is earlier.

§ 10-602. Disclosure by builders generally.

(a) Prior to entering into a contract for sale or construction of a new home, the builder shall disclose in writing to the owner whether:

(1) The builder participates in a new home warranty security plan through which:

(i) The builder must provide the owner with a new home warranty; or

(ii) The builder may provide a new home warranty to the owner at the owner's option; or

(2) The builder does not participate in a new home warranty security plan.

(b) The disclosure will be made on a form approved by the Division.

§ 10-603. Homes not covered by warranty; disclosure by builders; acknowledgment; right of rescission by owner.

(a) If the builder does not participate in a new home warranty security plan:

(1) The builder must make a disclosure at the time of the purchase or construction contract containing an explanation in 12 point type that:

(i) The owner should be aware that builders of new homes in the State of Maryland are required to be registered with the Consumer Protection Division of the Office of the Attorney

General;

(ii) Without a new home warranty or other express warranties, the owner may be afforded only certain limited implied warranties as are provided by law; and

(iii) 1. Describes any hazardous or regulated materials, including asbestos, lead-based paint, radon, methane, underground storage tanks, licensed landfills, unlicensed landfills, licensed rubble fills, unlicensed rubble fills, or other environmental hazards, present on the site of the new home of which the builder has actual knowledge; or

2. States that the builder is making no representations or warranties as to whether there is any hazardous or regulated material on the site of the new home;

(2) The owner shall acknowledge in writing that the owner understands that the builder does not participate in a new home warranty security plan and that the owner has read and understood the disclosure pursuant to paragraph (1) of this subsection; and

(3) Any purchase or construction contract entered into which does not contain the acknowledgment required by paragraph (2) of this subsection is voidable by the owner.

(b) (1) An owner who has made the acknowledgment described in subsection (a)(2) of this section may rescind the contract within 5 working days from the date of the contract by providing the builder with written notice of the owner's rescission of the contract; and

(2) Upon rescission, the owner shall be entitled to a refund of any money paid to the builder for the new home.

§ 10-604. Homes covered by warranty; terms, etc.

(a) (1) Except for coverage excluded under paragraph (2) of this subsection, a new home warranty provided under a new home warranty security plan shall warrant at a minimum that:

(i) For 1 year, beginning on the warranty date, the new home is free from any defects in materials and workmanship;

(ii) For 2 years, beginning on the warranty date, the new home is free from any defect in the electrical, plumbing, heating, cooling, and ventilating systems, except that in the case of appliances, fixtures and items of equipment, the warranty may not exceed the length and scope of the warranty offered by the manufacturer; and

(iii) For 5 years, beginning on the warranty date, the new home is free from any structural defect.

(2) A new home warranty provided under a new home warranty security plan may exclude the following:

(i) Damage to real property that is not part of the home covered by the warranty or that is not included in the purchase price of the home;

(ii) Bodily injury or damage to personal property;

(iii) Any defect in materials supplied or work performed by anyone other than the builder or the builder's employees, agents, or subcontractors;

(iv) Any damage that the owner has not taken timely action to minimize or for which the owner has failed to provide timely notice to the builder;

(v) Normal wear and tear or normal deterioration;

(vi) Insect damage, except where the builder has failed to use proper materials or construction methods designed to prevent insect infestation;

(vii) Any loss or damage that arises while the home is being used primarily for nonresidential purposes;

(viii) Any damage to the extent it is caused or made worse by negligence, improper maintenance or improper operations by anyone other than the builder or its employees, agents, or subcontractors;

(ix) Any damage to the extent it is caused or made worse by changes of the grading of the ground by anyone other than the builder, its employees, agents, or subcontractors; and

(x) Any loss or damage caused by acts of God.

(b) A builder who has disclosed that the builder participates in a new home warranty security plan shall:

(1) Furnish to the owner at the time of the purchase or construction contract:

(i) The name and phone number of the builder's new home warranty security plan;

(ii) Details of the warranty coverage provided under the plan; and

(iii) In a form to be determined by the Division, evidence that:

1. The builder currently is a participant in good standing with a plan that satisfies the requirements of §10-606(a) of this subtitle; and

2. The new home is eligible for registration or has been registered in the builder's new home warranty security plan;

(2) Disclose to the owner at the time of the purchase or construction contract:

(i) Any actual knowledge that the builder has of any hazardous or regulated materials, including asbestos, lead-based paint, radon, methane, underground storage tanks, licensed landfills, unlicensed landfills, licensed rubble fills, unlicensed rubble fills, or other environmental hazards, present on the site of the new home; or

(ii) That the builder is making no representations or warranties as to whether there is any hazardous or regulated material on the site of the new home; and

(3) Either:

(i) Provide the new home with a new home warranty if the builder belongs to a new home warranty security plan that:

1. Requires the builder to register every new home that the builder builds; or

2. Does not require the builder to register every new home but the builder has decided to sell the new home with a new home warranty; or

(ii) If the builder belongs to a new home warranty security plan that does not require the builder to register every new home and the builder has not decided whether or not to sell the new home with a new home warranty, give the owner the option of:

1. Purchasing the new home with the new home warranty provided by the builder's new home warranty security plan; or

2. Waiving the right to warranty coverage by making the affirmative waiver described in § 10-607 of this subtitle.

(c) (1) If the purchase or construction contract provides that the new home shall be covered by a new home warranty under a new home warranty security plan it shall constitute a material breach of the contract if either:

(i) The builder was not a participant in good standing on the date of the contract with a new home warranty security plan that satisfies the requirements of § 10-606(a) of this subtitle; or

(ii) The new home has not been registered in the plan on or before the warranty date.

(2) If there has been a material breach of the contract, the owner shall be entitled to whatever remedies are provided by law including, but not limited to:

(i) Rescission of the contract; and

(ii) Except in the case of a construction contract for a new home built on the owner's property, a refund of any money paid to the builder for the new home.

(d) (1) The builder shall notify the new home warranty security plan of each new home being constructed by the builder on the earlier of the date of the purchase or construction contract or the start of construction of the new home.

(2) Upon receipt of notification by the builder as required in paragraph (1) of this subsection, the new home shall be eligible for registration in the builder's new home warranty security plan.

(e) (1) Upon registration of the new home in the new home warranty security plan, warranty coverage which has not been waived by the owner shall be provided beginning on the warranty date for the new home constructed by the builder, provided that the builder was in good standing with the new home warranty security plan at the time of the contract.

(2) On the warranty date, the builder shall provide the owner with evidence, in a form approved by the Division that the new home is covered by a new home warranty that meets the requirements of this subtitle.

(3) Within 60 days from the warranty date, the builder's new home warranty security plan shall provide the owner with validated new home warranty documents.

(f) A new home warranty shall benefit any successor in title to the owner who occupies the home for residential purposes during the warranty period.

§ 10-605. Notice to purchaser of home covered by warranty.

A builder who sells a new home with a new home warranty pursuant to § 10-604(b) of this title which has not been waived by the owner shall provide the owner with a notice that shall be incorporated in a conspicuous manner in the contract and that shall include the following language in type at least as large as 12 point type:

"Notice to Purchaser"

Your new home will be covered by a new home warranty that meets the minimum requirements established under Title 10, Subtitle 6 of the Real Property Article of the Annotated Code of Maryland. Before you sign this contract, your builder is required to give you a copy of the warranty coverage you will receive.

The name of the new home warranty security plan in which your builder is currently a participant is You are strongly encouraged to call the new home warranty security plan at to verify (i) that your builder is in good standing with this company, and (ii) that your new home will be covered by a warranty from this company.

If the builder is not a participant in good standing with this company on the date of this contract, or if the new home has not been registered in the plan on or before the warranty date, then it is a material breach of the contract and you are entitled to whatever remedies are provided by law, including, but not limited to, rescission or cancellation of this contract and, except in the case of a construction contract for a new home built on your own property, a refund of any money paid to the builder for your new home.

On the day that you first occupy the new home, settle on the new home, make the final payment to the builder on your new home, or obtain an occupancy permit for a new home if the new home is built on your own property, whichever is earlier, you will be provided with evidence that a new home warranty exists for your new home and that coverage begins on that

date. You will be provided with a signed new home warranty within 60 days from the date the coverage begins.

The terms used in this notice shall have the same meanings as provided in Title 10, Subtitle 6 of the Real Property Article of the Annotated Code of Maryland."

§ 10-606. Duties of plan; revocation or suspension of approval.

(a) A new home warranty security plan shall:

(1) Provide for the payment of claims against a builder for defects warranted under this

subtitle;

(2) Be operated by a corporation, partnership, or other legal entity authorized to do business in Maryland;

(3) Demonstrate to the Division that the plan will maintain financial security to cover the total number of claims that the plan reasonably anticipates will be filed against participating builders;

(4) File with the Division a surety bond or an irrevocable letter of credit from a federally insured financial institution in an amount set by the Division, but not less than \$100,000, for the benefit of owners injured by the failure of the new home warranty security plan to pay claims as required under this subtitle;

(5) Provide within the new home warranty documents the performance standards that describe the builder's obligations for defects warranted under this subtitle;

(6) Provide for the mediation of disputes between an owner and a builder before a claim will be paid by the builder's new home warranty security plan; and

(7) Meet any other requirements determined by the Division and be approved by the Division.

(b) (1) The Division may revoke or suspend approval for a new home warranty security plan if the Division determines that the plan:

(i) Is unable to meet its obligations under a new home warranty; or

(ii) Is administered in a manner that denies owners the warranty coverage required under this subtitle.

(2) Except for new homes that were registered in the new home warranty security plan prior to the revocation or suspension and for which a purchase or construction contract has been executed, during the time period that approval for a new home warranty security plan is revoked or suspended by the Division, the new home warranty security plan may not provide warranty coverage for any new homes built in Maryland.

(c) (1) Unless the Division determines that a shorter notice period is needed to protect the interests of the builders and owners, the Division shall give a new home warranty security plan at least 90 days' notice that the Division's approval of the plan is being revoked or suspended; and

(2) A new home warranty security plan shall give to its participating builders at least 60 days' notice of the plan's revocation or suspension, or such shorter time as specified by the Division if the plan receives less than 90 days' notice.

§ 10-607. Waiver by owner.

(a) If in accordance with § 10-604(b)(3) of this subtitle an owner does not wish to require that the new home be covered by a new home warranty, the owner shall make an affirmative waiver of the coverage at the time of the purchase or construction contract.

(b) Before an owner makes a waiver under this section, the owner must be informed in writing by the builder of the cost, nature, and extent of warranty coverage that would be provided under the builder's new home warranty security plan if not waived by the owner.

(c) An owner who has made an affirmative waiver under this section may rescind the waiver and request a new home warranty in accordance with the provisions of this subtitle within 3 working days from the date of the contract by providing the builder with written notice of the owner's rescission of the waiver.

(d) The waiver under this section shall be made on a form determined by the Division and shall contain a section in which an owner who has made a waiver may rescind the waiver pursuant to subsection (c) of this section.

(e) The form shall clearly and concisely explain in 12 point boldface type on a separate piece of paper:

(1) The cost, nature, and extent of warranty coverage that would be provided under the builder's new home warranty security plan if not waived by the owner;

(2) That the failure of the owner to make a waiver requires the builder to provide a new home warranty;

(3) That a builder may not refuse to build a new home for the owner because the owner refuses to waive warranty coverage;

(4) That the owner should be aware that builders of new homes in the State of Maryland are required to be registered with the Consumer Protection Division of the Office of the Attorney General;

(5) Without a new home warranty or other express warranties, the owner may be afforded only certain limited implied warranties as are provided by law; and

(6) That an owner who has made an affirmative waiver of the warranty coverage still may rescind the waiver and request a new home warranty in accordance with the provisions of Title 10, Subtitle 6 of the Real Property Article, within 3 working days from the date of the contract by providing the builder with written notice of the owner's rescission of the waiver.

§ 10-608. Warranties supplemental; noncompliance as unfair trade practice.

(a) Any warranties provided in accordance with the requirements of this subtitle are in addition to all other implied or express warranties provided by law or agreement.

(b) In addition to any other penalty imposed by law, the failure to comply with the provisions of this subtitle or the knowing misrepresentation that a new home warranty exists is an unfair and deceptive trade practice, as defined in § 13-301 of the Commercial Law Article.

§ 10-609. Violation.

Any person that knowingly violates the provisions of this subtitle or knowingly misrepresents the existence of a new home warranty shall be subject to a fine not exceeding \$50,000 or imprisonment for not more than 2 years or both in addition to any other penalties provided for in this subtitle.

§ 10-610. Applicability.

This subtitle does not apply to new homes built, new home warranties offered, or new home warranty security plans operating in Montgomery County, except that it shall apply:

(1) To any municipality in Montgomery County that has exempted itself from the application of Chapter 31C, New Home Warranty and Builder Licensing, of the Montgomery County Code; or

(2) If Chapter 31C, New Home Warranty and Builder Licensing, of the Montgomery County Code is no longer in effect or is amended in such a manner that it becomes less stringent than the requirements of this subtitle.

Final Walkthrough Inspection vs. Professional Home Inspection

It is hard to understand how one might read this article and not give every possible consideration to hiring a professional home inspector to conduct their final walkthrough inspection with them. For a fee normally ranging from \$300 to \$500, the peace of mind and additional assurance that things are as they should be, is money well spent.

Anticipate possible resistance from the builder when you bring in the “outsider”, but stand your ground. You have every right to have a professional home inspector go through the property with you. In fact, it may be prudent to identify that intention prior to signing the contract and put it in writing.

DISCLAIMER

John P. Hale is a licensed real estate agent in Maryland and Pennsylvania. He is affiliated with Coldwell Banker Residential Brokerage in Westminster, Maryland. John has been licensed since 2000 and also practiced in Tucson, Arizona for many years. Mr. Hale holds the following designations and certifications awarded by the National Association of REALTORS® (NAR) and other authorized institutions: ABR-Accredited Buyers Representative, AHWD-At Home With Diversity, CNE-Certified Negotiation Expert, CRMS-Certified Risk Management Specialist, CRS-Certified Residential Specialist, CTA-Certified Tourism Ambassador, e-PRO-Online Real Estate Practice, GRI-Graduate of Realtor Institute, MRE-Master of Real Estate, MREP-Mortgage Real Estate Professional, and MRP-Military Relocation Professional.

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