

**MEMORANDUM**

February 1, 2019

TO: County Council

FROM: Amanda Mihill, Legislative Attorney *A. Mihill*

SUBJECT: Bill 31-18, New Home Warranty and Builder Licensing - Amendments

PURPOSE: Action on Bill – roll call vote required

**Public Safety Committee recommendation (3-0): enact Bill 31-18 with amendments to:**

- **remove language regarding service of process/notice of administrative hearings; and**
- **require that as a condition of being registered, a home seller and a home builder must provide a warranty to the consumer.**

Bill 31-18, New Home Warranty and Builder Licensing - Amendments, sponsored by Lead Sponsor Councilmember Rice, was introduced on September 18. A public hearing was held on October 9 at which the lone speaker Eric Friedman testified in support of the Bill on behalf of then-County Executive Leggett. The Council also received correspondence from the Maryland Building Industry Association in support of Bill 31-18. A Public Safety Committee worksession was held on January 17.

Bill 31-18 would require new home builders and new home sellers to register with the Office of Consumer Protection, require new home builders and new home sellers to provide buyers with a new home warranty, and require the Office of Consumer Protection to administer and enforce County law related to new home builders and new home sellers. The first portion of Bill 31-18 deletes all provisions of Chapter 31. New language added to the Chapter begins on ©16.

**Background**

Bill 31-18 accomplishes several goals:

**1. Address business model changes in the industry.**

This is one of the most important changes in Bill 31-18. As Council staff understands the history of the business practice, when Chapter 31C was first enacted, the business model was that a builder would build and sell a house. Now, however, some new home builders form multiple, single-purpose Limited Liability Corporations (LLC) to construct or sell new homes. Bill 31-18 would

require all new home builders *and new home sellers* to register with the Office of Consumer Protection.

A significant problem that could arise is if there are issues in the new home that should be addressed in the new home warranty that is required of the home builder. The warranty provisions are on ©25-27. Under current law, a builder is required to provide a warranty. However, if a builder sells the home to a single-purpose LLC that then disbands, there is no recourse for the homeowner. To address this, Bill 31-18 would require the seller and the builder to provide the warranty. The content of the warranty is substantially similar to the warranty provided under current law.

## **2. Clarify the procedures for reviewing new home builder registration applications, and the procedures and basis for revoking a registration.**

Current law specifies certain procedures for home builders to be licensed. Bill 31-18 would require “registration” instead of “licensing” and clearly lays out the procedures for registering (©21-23) and renewing a registration (©23-24), including allowing a conditional registration, and provides more guidance to the Office of Consumer Protection regarding denying or revoking a registration. Reasons for denying or revoking a registration are specified on ©28-31 and include if an applicant or registrant:

- made a misstatement of material fact on an application for registration or renewal;
- did not provide the new home warranty;
- diverted funds that were received for the completion of a construction project to another project or operation;
- attempted to (or successfully did) obtain a residential home construction permit by falsely representing that the applicant was seeking a permit to construct a home to be occupied by the applicant;
- engaged in fraud, deception, or omissions of material facts related to new home building contracts; or
- engaged in a pattern of poor workmanship as evidenced by unresolved building code violations or unsatisfied arbitration awards or judgments in favor of a consumer.

Bill 31-18 also clearly lays out the role of the Board of Registration (©20-21, lines 500-524).

## **3. Ensures that building permits are issued by the Department of Permitting Services to registered new home builders**

Under current law, Permitting Services must not issue a building permit to any builder that is not licensed under Chapter 31C. Section 31C-11 also specifies that a license is not required if a person is constructing a building that is to be used as a residence for use of that person or the immediate family of that person. Current law requires a person must sign a statement that the work for which the permit is to be used is for that person or the immediate family of that person.

Bill 31-18 would strengthen this to ensure that permits are not issued to homeowners or unregistered builders who falsely represent that they are constructing a new home for their personal occupancy. Bill 31-18 would require the person seeking to construct a home for their personal use to:

- receive a waiver from the Office of Consumer Protection to apply for and receive a permit from Permitting Services without being registered;
- sign a statement affirming that any permits issued by Permitting Services are issued only for the purpose of that person performing work on that person’s own property; and
- sign a statement that the work for which the permit is issued is for that person (©19-20, lines 474-487).

**4. Provides general updates to the law.**

In addition to the more substantive changes, Bill 31-18 also:

- removes outdated references regarding the County’s former 10-year warranty law;
- removes outdated references regarding the County’s 3rd party warranty enrollment mandate;
- removes references to the New Home Warranty Security Fund which was phased out in 1995; and
- establishes greater uniformity with the State Home Builder Registration law, which was enacted in 2000 (the County law predates the state law).

**Committee recommendation**

The Public Safety Committee discussed Bill 31-18 at a worksession on January 17 and **recommended approval with a staff amendment**. The staff amendment makes several clarifying changes to address issues raised by Executive staff and the Office of the County Attorney. The 2 most significant changes are:

- removing language regarding service of process/notice of administrative hearings. The bill as introduced specified that notice of the hearings must be by certified mail or regular mail. However, the bulk of the bill defers to the County’s Administrative Procedures Act for administrative hearings which requires certified mail or personal service. The amendment would remove that confusion and as a result, the APA will govern administrative hearings.
- removing language regarding the builder and seller being jointly and severally liable to the homeowner for the warranty. The amendment would instead require that as a condition of being registered, both the home seller and the home builder must provide a warranty to the consumer. The warranty would run with the property so even if the buyer sells the house within the warranty period, the new homeowner retains the warranty.

This packet contains:	<u>Circle #</u>
Bill 31-18	1
Legislative Request Report	33
Testimony	
County Executive	34
MBIA	35
Fiscal and Economic Impact Statements	36

Bill No. 31-18  
Concerning: New Home Warranty and  
Builder Licensing - Amendments  
Revised: 1/18/2019 Draft No. 9  
Introduced: September 18, 2018  
Expires: March 18, 2020  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By Lead Sponsor: Councilmember Rice

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**AN ACT** to:

- (1) require new home builders and new home sellers to register with the Office of Consumer Protection;
- (2) require new home builders and new home sellers to provide buyers with a new home warranty;
- (3) require the Office of Consumer Protection to administer and enforce County law related to new home builders and new home sellers; and
- (4) generally amend County law related to new home builders and new home sellers.

By amending

Montgomery County Code  
Chapter 2A, Administrative Procedures Act  
Section 2A-2

By repealing

Chapter 31C, New Home Warranty and Builder Licensing  
Sections 31C-1, 31C-2, 31C-3, 31C-4, 31C-5, 31C-6, 31C-7, 31C-8, 31C-9, 31C-10,  
31C-11, 31C-12, 31C-13, and 31C-14

By adding

Chapter 31C, New Home Builder and Seller Registration and Warranty  
Sections 31C-1, 31C-2, 31C-3, 31C-4, 31C-5, 31C-6, 31C-7, 31C-8, 31C-9, 31C-10, and  
31C-11

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*

1 **Sec. 1. Chapter 31C (Sections 31C-1, 31C-2, 31C-3, 31C-4, 31C-5, 31C-6, 31C-7,**  
 2 **31C-8, 31C-9, 31C-10, 31C-11, 31C-12, 31C-13, and 31C-14) is repealed and**  
 3 **Chapter 31C (Sections 31C-1, 31C-2, 31C-3, 31C-4, 31C-5, 31C-6, 31C-7, 31C-8,**  
 4 **31C-9, 31C-10, and 31C-11) is added as follows:**

5 ***[Chapter 31C. New Home Warranty and Builder Licensing.***

6 ***31C-1. Definitions.***

7 *In this Chapter, the following words have the meanings indicated:*

8 (1) *Board. "Board" means the board of registration.*

9 (2) *Builder. "Builder" means any person or business organization:*

10 a. *That is engaged in the business of erecting or otherwise creating*  
 11 *a new home; or*

12 b. *To whom a completed new home is conveyed for resale in the*  
 13 *course of the business of the person or business organization.*

14 (3) *Director. "Director" means the Director of the Office of Consumer*  
 15 *Protection.*

16 (4) *Dispute settler. "Dispute settler" means an independent contractor with*  
 17 *building construction expertise hired by the Office.*

18 (5) *The fund. "The fund" means the new home warranty security fund, which*  
 19 *is moneys contributed by participating builders in the warranty program*  
 20 *administered by the County.*

21 (6) *Load-bearing portions of the home. "Load-bearing portions of the home"*  
 22 *means:*

23 a. *Foundation system and footings;*

24 b. *Beams;*

25 c. *Girders;*

26 d. *Lintels;*

27 e. *Columns;*

- 28           *f. Walls and partitions;*
- 29           *g. Floor systems; and*
- 30           *h. Roof framing system.*
- 31       (7) *Major structural defect. "Major structural defect:"*
- 32           *a. Means any actual damage to load-bearing portions of the home*
- 33           *that:*
- 34               (i) *Affects its load-bearing function; and*
- 35               (ii) *Vitally affects or is immediately likely to vitally affect use of*
- 36                       *the home for residential purposes;*
- 37           *b. Includes damage due to subsidence, expansion, or lateral*
- 38           *movement of the soil; and*
- 39           *c. Does not include damage caused by movement of the soil caused*
- 40           *by flood or earthquake.*
- 41       (8) *New home. "New home" means every newly constructed private dwelling*
- 42           *unit and the fixtures and structure that are made a part of a newly*
- 43           *constructed private dwelling unit at the time of construction.*
- 44       (9) *Office. "Office" means the Office of Consumer Protection.*
- 45       (10) *Owner. "Owner:"*
- 46           *a. Means any person for whom the new home is built or to whom the*
- 47           *home is sold for residential occupation by:*
- 48               (i) *That person or the family of that person as a home; and*
- 49               (ii) *The successors of that person in title to the home or*
- 50                       *mortgage in possession;*
- 51           *b. Does not mean:*
- 52               (i) *Any development company, association, or subsidiary*
- 53                       *company of the builder; or*

54 (ii) *Person or organization to whom the home may be conveyed*  
 55 *by the builder for any purpose other than residential*  
 56 *occupation by that person or organization.*

57 (11) *Warranty date. "Warranty date" means the first day that the owner*  
 58 *occupies or settles on the new home, whichever first occurs.*

59 **31C-2. Licensing.**

60 (a) *Requirement.*

61 (1) *A builder must not engage in the business of constructing new*  
 62 *homes or act in the capacity of a building contractor in the County*  
 63 *unless the builder is licensed by the Office.*

64 (2) *The Office must provide application forms for licensing and*  
 65 *prescribe the information to be included.*

66 (3) *Each application must be accompanied by:*

67 a. *A reasonable fee sufficient to cover the cost of*  
 68 *administration of this Chapter; and*

69 b. *Additional information as the County Executive requires by*  
 70 *executive regulations.*

71 (4) *Within 60 days after submission of a complete application for a*  
 72 *license, unless the time is extended for good cause, the Board must*  
 73 *certify to the Director whether:*

74 a. *The applicant and the organization of the applicant are*  
 75 *qualified to comply with the building code and laws of the*  
 76 *County and State, and to fully perform building contracts;*  
 77 *and*

78 b. *The applicant should be licensed.*

79 (5) *The Director must notify the applicant of the certification or denial*  
 80 *of certification within 75 days of submission of a completed*

81                    *application. If the Director fails to notify the applicant within 75*  
82                    *days of submission, the applicant is deemed certified.*

83                    (6) *If the applicant is denied certification, the Director must:*

84                    a.     *In writing notify the applicant of the denial and the reasons*  
85                    *for the denial; and*

86                    b.     *Mail the denial by certified mail to the address on the*  
87                    *application.*

88                    (7) *An applicant may appeal a denial to the County Board of Appeals.*

89                    (b) *Licensing. Each license is valid for a period of 2 years from the date of*  
90                    *issue.*

91                    (c) *Amendment. A builder must amend the license within 30 days of any*  
92                    *material change in the information provided in the most recent*  
93                    *application or amendment.*

94                    (d) *Building permits. The Department of Permitting Services must not issue*  
95                    *building permits for a residence to any builder who does not possess a*  
96                    *valid license under this Chapter.*

97                    (e) *Denial of license. The Office must not issue a license to a builder who has*  
98                    *or had any legal interest in a previously licensed firm who has or had a*  
99                    *license revoked or suspended for any reason listed in Section 31C-8.*

100                    (f) *Register of applicants. The Director must maintain a register for the*  
101                    *Board of all applicants and licenses.*

102                    (g) *Certificate of inspection. A builder must provide to a purchaser at the*  
103                    *time of occupancy or settlement, whichever first occurs, a statement*  
104                    *signed by the builder, that all county-required inspections have been*  
105                    *performed.*

106                    **31C-3. New home warranty.**



- 107           (a)    *Warranty required. A builder must give an owner a written warranty that*  
108                    *provides the warranty coverage required by this Chapter before entering*  
109                    *into a contract to sell or build a new home. The Executive may issue*  
110                    *regulations governing the form and content of the warranty.*
- 111           (b)    *Performance standards.*
- 112                    (1)    *The terms of a new home warranty are established by executive*  
113                    *regulation.*
- 114                    (2)    *The warranty must include minimum performance standards for*  
115                    *the construction and quality of the components of a new home.*
- 116                    (3)    *When minimum performance standards are not provided, industry*  
117                    *standards for good building practice determine compliance with*  
118                    *the new home warranty.*
- 119           (c)    *Duration of warranty. The builder must warrant the new home that:*
- 120                    (1)    *For one year, starting on the warranty date, the new home must be*  
121                    *free from any defect in materials or workmanship as defined in the*  
122                    *minimum performance standards.*
- 123                    (2)    *For 2 years, starting on the warranty date, the new home must be*  
124                    *free from any defect in the electrical, plumbing, heating, cooling,*  
125                    *ventilating, and mechanical systems.*
- 126                    (3)    *For 5 years, starting on the warranty date, the new home must be*  
127                    *free from any major structural defect.*
- 128           (d)    *Exclusions.*
- 129                    (1)    *The written warranty may exclude:*
- 130                            a.    *Damage to real property which is not part of the home*  
131                            *covered by the warranty and which is not included in the*  
132                            *purchase price of the home;*
- 133                            b.    *Bodily injury or damage to personal property;*

134 c. Any defect in, or caused by, materials or work supplied by  
135 anyone other than the builder, or its employees, agents, or  
136 subcontractors; and

137 d. Any loss or damage which the owner has not taken timely  
138 action to minimize.

139 (2) The Executive may issue regulations permitting additional  
140 exclusions.

141 (e) Statutory warranties. The statutory warranties required by this Chapter  
142 are in addition to all other implied or express warranties imposed by law  
143 or agreement. Each builder must disclose the information required by,  
144 and otherwise comply with, Sections 10-601 through 10-610 of the Real  
145 Property Article of the Maryland Code.

146 (f) Financial security.

147 (1) Before entering into a contract to sell or build a new home, a  
148 builder must:

149 (A) inform the buyer in writing whether any bond, insurance, or  
150 other financial security is responsible for or guarantees the  
151 builder's performance under the warranty required by this  
152 Chapter;

153 (B) provide proof of any such bond, insurance, or security to  
154 any buyer on request; and

155 (C) include the following notice in the sales contract  
156 immediately before the disclosure required by  
157 subparagraph (A):

158 NOTICE TO BUYER

159 Montgomery County law does not require this builder to furnish any bond,  
160 insurance, or other financial security to guarantee the builder's performance of its

161 *warranty obligations. If a builder has promised you any other bond, insurance, or*  
162 *security to guarantee the performance of its warranty obligations, that bond,*  
163 *insurance, or security must be listed here:*

164 (2) *The buyer must acknowledge in writing that the buyer has read and*  
165 *understands the notice required under paragraph (1)(C).*

166 **31C-4. Board of registration.**

167 (a) *Appointment of board.*

168 (1) *This section creates the board of registration.*

169 (2) *The board consists of five (5) members that the county executive*  
170 *appoints and the county council confirms.*

171 (3) *No more than two (2) members of the board must be active in the*  
172 *residential construction field at the time of their appointment.*

173 (b) *Voting. A simple majority vote is required for all board decisions.*

174 (c) *Term. The term for each member is 3 years. A vacancy is filled for the*  
175 *remainder of the unexpired term. Unless a member is removed for good*  
176 *cause, each member holds office until the term of the member expires or*  
177 *a successor is appointed and confirmed.*

178 (d) *Operation of the board.*

179 (1) *The board must elect from its members a chairperson, vice-*  
180 *chairperson, and secretary.*

181 (2) *In exercising the powers and duties of the board, three (3)*  
182 *members constitute a quorum.*

183 (3) *The board must:*

184 a. *Keep minutes of its proceedings and meetings;*

185 b. *Put its decisions in writing; and*

186 c. *Submit an annual report of its proceedings to the director.*

187 (4) *The county attorney serves as counsel to the board.*

188           (5)    *Board members do not receive compensation for serving on the*  
 189                            *board.*

190    ***31C-5. New home warranty security fund.***

191           (a)    *Establishment.*

192                    (1)    *This Section establishes the County new home warranty security*  
 193                            *fund.*

194                    (2)    *The Department of Finance maintains the fund, and the Director*  
 195                            *administers the fund.*

196           (b)    *Purpose. The purpose of the fund is to provide sufficient funds to pay*  
 197                            *claims by owners against builders who participate in the fund for any*  
 198                            *defect in new homes covered by the new home warranty.*

199           (c)    *Amount.*

200                    (1)    *The Director must establish the amount payable by participating*  
 201                            *builders and may change the amount from time to time.*

202                    (2)    *Participating builders must pay the amount to the Department of*  
 203                            *Finance.*

204                    (3)    *The Department of Finance must:*

205                            a.    *Account for the amounts;*

206                            b.    *Credit the amounts to the fund;*

207                            c.    *Hold, manage, and invest the fund; and*

208                            d.    *Credit earned income to the fund.*

209           (d)    *Termination. If the fund is terminated, all money remaining in the fund*  
 210                            *must revert to the County general fund.*

211           (e)    *Processing of claims. The Executive must issue regulations for the*  
 212                            *implementation and processing of claims under the fund.*

213           (f)    *Phaseout.*

214 (1) *The Director must not enroll any new home in the fund after*  
215 *December 31, 1995.*

216 (2) *The Director must not enroll a new home in the fund if the buyer*  
217 *signed the contract to build the home on or after April 1, 1995.*

218 **31C-6. Private new home warranty security programs.**

219 *The Executive may issue regulations for the operation of private programs for*  
220 *homes enrolled in any program before April 1, 1995.*

221 **31C-7. Warranty claims.**

222 (a) *Notification.*

223 (1) *Before making a claim against the fund for any defect covered by*  
224 *the warranty, an owner must notify the builder of the defect and*  
225 *allow a reasonable time for its repair.*

226 (2) *If the repair is not made within a reasonable time or does not*  
227 *correct the defect, an owner may file a claim against the fund in*  
228 *the form and manner as the Director prescribes.*

229 (b) *Conciliation.*

230 (1) *The Office must administer a dispute settlement procedure*  
231 *between the owner and the builder.*

232 (2) *Any claim submitted by an owner to the Office must first be*  
233 *reviewed through a conciliation procedure.*

234 (3) *If the owner and the builder cannot reach a conciliation*  
235 *agreement, or do not comply with an agreement, the owner or the*  
236 *builder may submit a request for a dispute settler to handle the*  
237 *claim.*

238 (c) *Dispute settler procedure.*

- 239 (1) *The dispute settler must investigate each claim that an owner or*  
240 *builder submits to determine the validity of the claim and the extent*  
241 *of builder responsibility.*
- 242 (2) *If the dispute settler determines that repairs are to be made, the*  
243 *dispute settler must notify the builder.*
- 244 (3) *If the builder is unable or refuses to make the necessary repairs*  
245 *within a reasonable time, the dispute settler must determine the*  
246 *exact amount of the award to be paid out of the fund to the owner*  
247 *based on actual bids for completion of the repairs.*
- 248 (4) *The total amount of payments from the fund for any new home must*  
249 *not exceed the purchase price of the home.*
- 250 (5) *After the Director certifies the amount of the award, the Director*  
251 *must notify the Department of Finance. The Department of*  
252 *Finance must make payment to the owner from the fund.*
- 253 (d) *Payment from fund.*
- 254 (1) *A claim may not be brought against the fund after 3 years from the*  
255 *date that the owner occupies or settles on the new home, whichever*  
256 *first occurs.*
- 257 (2) *A claim may not be brought against the fund by a spouse or other*  
258 *immediate relative of a licensed builder if the claim involves a new*  
259 *home constructed by that builder.*
- 260 (3) *A claim may not be for payment of consequential, personal injury,*  
261 *or punitive damages, attorney fees, court costs, or interest.*
- 262 (4) *When the Department of Finance makes a payment from the fund,*  
263 *the Director may:*
- 264 a. *Proceed against the builder under Section 31C-8 of this*  
265 *Chapter; and*

- 266                   b.     *Request the office of the County Attorney to initiate legal*  
 267                                   *action against the builder.*
- 268           (5)   *If the fund is insufficient to satisfy outstanding awards and*  
 269                   *anticipated awards for the succeeding year, the Director may:*
- 270                   a.     *Require participating builders to pay additional amounts to*  
 271                                   *replenish the fund; and*
- 272                   b.     *Require payment of surcharges by the builders who are*  
 273                                   *responsible for an unreasonable number of awards against*  
 274                                   *the fund.*
- 275           (6)   *If the fund is insufficient to satisfy any award, when sufficient*  
 276                   *money has been deposited in the fund, the Director may satisfy the*  
 277                   *unpaid awards in the order in which the claims were originally*  
 278                   *filed.*
- 279           (7)   *When the Department of Finance makes a payment from the fund,*  
 280                   *the builder responsible for the award must fully compensate the*  
 281                   *fund the full amount paid to the owner plus interest from date of*  
 282                   *payment. The rate of interest is the amount that the County*  
 283                   *Executive designates by executive order.*
- 284           (8)   *The County is not required to contribute money to the fund. The*  
 285                   *County does not have any liability to a person who has received*  
 286                   *an award when the amount in the fund is insufficient to pay the*  
 287                   *award.*
- 288           (9)   *The fund does not limit the availability of other legal or equitable*  
 289                   *remedies but provides an additional and cumulative remedy for*  
 290                   *owners.*
- 291   (e)    *Private new home warranty program.*

- 292 (1) *An owner who has a warranty claim against a builder who is*  
 293 *participating in a private new home warranty program must make*  
 294 *the claim under the procedures established by that program.*
- 295 (2) *The Director may investigate any complaints against a private*  
 296 *program for failing to honor the terms of the warranty.*
- 297 (3) *This subsection does not limit the investigative power of the*  
 298 *Director under any other law.*

299 **31C-8. Investigation and hearings.**

300 (a) *Investigation.*

301 (1) *The Director may conduct an investigation into allegations made*  
 302 *against any builder who is required to be licensed under this*  
 303 *Chapter.*

304 (2) *The Office may:*

- 305 a. *Hold hearings;*
- 306 b. *Subpoena the attendance of witnesses;*
- 307 c. *Administer oaths;*
- 308 d. *Require the production of evidence relating to any matter*  
 309 *under investigation;*
- 310 e. *Inspect relevant books, papers, records, or documents of the*  
 311 *builder at the place of business of the builder during*  
 312 *business hours; and*
- 313 f. *Conduct inspections of new home construction sites and*  
 314 *models.*

315 (b) *Conduct of hearings. After giving a builder the opportunity for a hearing*  
 316 *under subsection (c), the Board may deny, suspend, refuse to renew, or*  
 317 *revoke the license of the builder, if the Board finds that the builder:*



- 318 (1) *Made a misstatement of material fact in the application for license*  
319 *or renewal;*
- 320 (2) *Committed fraud in connection with any building activity*  
321 *conducted under the requirements of this Chapter;*
- 322 (3) *Committed gross negligence in connection with any building*  
323 *activity conducted under the requirements of this Chapter;*
- 324 (4) *Violated the building code or laws of the County or State;*
- 325 (5) *Did not provide the new home warranty required by this Chapter;*
- 326 (6) *Did not correct or settle a claim arising out of a defect that is*  
327 *covered by the warranty required by this Chapter;*
- 328 (7) *Did not file an amendment to a license application within 30 days*  
329 *of any material change in the information provided in the most*  
330 *recent application or amendment;*
- 331 (8) *Incurred an excessive number of awards against the fund;*
- 332 (9) *Aided, abetted, or knowingly combined or conspired with an*  
333 *unlicensed person with the intent to evade this Chapter;*
- 334 (10) *Abandoned or willfully failed to perform, without justification, a*  
335 *contract for construction of a building that is to be used as a*  
336 *residence;*
- 337 (11) *Willfully deviated from or disregarded plans or specifications in*  
338 *any material way without consent of the owner;*
- 339 (12) *Did not comply with this Chapter in any material way;*
- 340 (13) *Diverted funds or property that were received for the completion*  
341 *of a construction project, and used the funds or property for*  
342 *another project, operation, obligation, or purpose, with intent to*  
343 *defraud or deceive creditors or the owners; or*

344           (14) *Served as an officer, Director, or stockholder for a builder whose*  
 345                     *license was revoked or suspended under this Chapter.*

346           (c) *Notification.*

347           (1) *Before revoking or suspending any license, the Board must afford*  
 348                     *the builder an opportunity for a hearing under the Administrative*  
 349                     *Procedures Act.*

350           (2) *The builder may appeal a decision of the Board to the Montgomery*  
 351                     *County Board of Appeals.*

352   ***31C-9. Liability of builder.***

353           (a) *A builder of a new home is liable to the owner during the period when*  
 354                     *the new home warranty is in effect.*

355           (b) *The builder is liable for any defect in the home which is covered by the*  
 356                     *warranty.*

357           (c) *The liability of a builder under the new home warranty is limited to the*  
 358                     *purchase price of the home in the first good faith sale.*

359           (d) *The owner may recover any damages due from a builder under this*  
 360                     *Section by filing a civil action in any court with jurisdiction.*

361   ***31C-10. Administration.***

362           (a) *The Director administers this Chapter.*

363           (b) *Reasonable costs for administration of the fund must be covered through*  
 364                     *both licensing fees and the fund.*

365   ***31C-11. Applicability of chapter.***

366           (a) *This chapter applies only to construction work under the building code*  
 367                     *and laws of the county and state.*

368           (b) *Fees paid may not be refunded for any reason.*

369           (c) *A license is not required by a person who constructs a building that is to*  
 370                     *be used as a residence for use of that person or the immediate family of*

371 *that person. The person must sign a statement that the work for which the*  
 372 *permit is to be used is for that person or the immediate family of that*  
 373 *person.*

374 (d) *If a builder grants an improvement to an intermediate purchaser to evade*  
 375 *liability to an owner under this chapter, the builder is liable on the*  
 376 *subsequent sale of the improvement by the intermediate owner as if the*  
 377 *builder sold the improvement without regard to the intervening grant.*  
 378 *(1986 L.M.C., ch. 49, § 1.)*

379 **31C-12. Compliance with building code generally.**

380 *This chapter does not exempt any construction work in the county from the*  
 381 *requirement that it comply with the building code.*

382 **31C-13. Violations and penalties.**

383 (a) *A builder is subject to punishment for a class A violation under section*  
 384 *1-19 of this Code if that builder violates any provision of this chapter.*

385 (b) *Each day a violation continues to exist is a separate offense.*

386 **31C-14. Regulations.**

387 *The county executive may adopt regulations to implement this chapter under*  
 388 *method (2) of section 2A-15 of this Code.]*

389 **Chapter 31C. New Home Builder and Seller Registration and Warranty.**

390 **31C-1. Definitions.**

391 In this Chapter, the following words have the meanings indicated:

392 Board means the Board for Registration of Building Contractors.

393 Consumer means a consumer as defined in Chapter 11 or a contract purchaser  
 394 of a new home for use as a personal family residence or rental.

395 Contract purchaser means a person [[or legal entity]] who has entered into a  
 396 contract with a new home builder or a new home seller to purchase a new home,  
 397 but who has not yet settled on the purchase of the new home.

398 Director means the Director of the Office of Consumer Protection or the  
 399 Director's designee.

400 Homeowner or owner means:

- 401 (1) any person for whom a new home is built or to whom a new home is sold  
 402 for residential occupation; and  
 403 (2) the successors of that person in title to the home or mortgage in  
 404 possession;

405 Homeowner does not mean:

- 406 (1) any development company, association, or subsidiary company of the  
 407 builder; or  
 408 (2) a person [[or organization]] to whom the home may be conveyed by the  
 409 builder for any purpose other than use by that person [[or organization]].

410 Load-bearing portions of the home means:

- 411 (1) foundation system and footings;  
 412 (2) beams;  
 413 (3) girders;  
 414 (4) lintels;  
 415 (5) columns;  
 416 (6) walls and partitions;  
 417 (7) floor systems; and  
 418 (8) roof framing systems.

419 Major structural defect means any actual damage to load-bearing portions of  
 420 the home that:

- 421 (1) affects its load-bearing function; and  
 422 (2) vitally affects or is immediately likely to vitally affect use of the home  
 423 for residential purposes.

424 Major structural defect includes damage due to subsidence, expansion, or lateral  
 425 movement of the soil. Major structural defect does not include damage caused  
 426 by movement of the soil caused by flood or earthquake.

427 Maryland Home Builder Guaranty Fund means the Home Builder Guaranty  
 428 Fund in Title 4.5 of the Business Regulation Article of the Maryland Code.

429 New home means a newly constructed residential dwelling unit and the fixtures  
 430 and structure that are made a part of a newly constructed private dwelling unit  
 431 at the time of construction. New home includes any detached house, custom  
 432 home as defined in Section 10-501 of the Real Property Article of the Maryland  
 433 Code, townhouse, modular home, condominium unit, or cooperative apartment.

434 New home builder or builder means any person[[, sole proprietor, business  
 435 organization, or legal entity, including but not limited to, a corporation, limited  
 436 liability corporation, or trust]]:

- 437 (1) that is engaged in the business of erecting, constructing, or otherwise  
 438 creating a new home;
- 439 (2) to whom a completed new home is conveyed for resale in the course of  
 440 the business of the person [[or business organization]];
- 441 (3) that undertakes to sell a new home in Montgomery County;
- 442 (4) that applies for a building permit to construct a new home in Montgomery  
 443 County;
- 444 (5) that is engaged as a general contractor in the business of erecting,  
 445 constructing, or otherwise creating a new home; or
- 446 (6) that enters into a contract with a contract purchaser under which the seller  
 447 agrees to provide the contract purchaser with a new home.

448 New home builder does not include:

- 449 (1) a subcontractor or other vendor hired by a new home builder or a  
 450 consumer to perform services or supply materials for the construction of

- 451           a new home if the subcontractor or vendor does not otherwise meet the  
 452           requirements of this Chapter;
- 453           (2) the manufacturer of a residential mobile home, unless the manufacturer  
 454           also installs the mobile home;
- 455           (3) a real estate developer who does not construct or enter into contracts with  
 456           a consumer to sell or construct new homes;
- 457           (4) a financial institution that lends funds for the construction or purchase of  
 458           residential dwellings in Montgomery County;
- 459           (5) a buyer's agent when representing a prospective buyer in the purchase of  
 460           a new home; or
- 461           (6) a person who is conducting a foreclosure sale.

462           *New home seller or seller* means a person[[, sole proprietor, or legal entity]] that:

- 463           (1) has legal title to the property on which the new home is constructed; and  
 464           (2) is the person [[or legal entity]] listed on the sales contract with the  
 465           contract purchaser to whom the property and new home are being sold  
 466           and conveyed.

467           *New home seller* includes a corporation, limited liability [[corporation]]  
 468           company, or trust.

469           *Office* means the Office of Consumer Protection.

470           *Person* has the same meaning as in Section 1-302.

471           *Warranty date* means the first day that the homeowner occupies or settles on the  
 472           new home, whichever first occurs.

473           **31C-2. Applicability of Chapter.**

- 474           (a) This Chapter applies only to construction work under the building code  
 475           and laws of the County and [[state]] State.
- 476           (b) This Chapter does not apply to a person who constructs a building that is  
 477           to be occupied as a personal residence for use of that person, if the person:

- 478 (1) receives a waiver from the Office to apply for and obtain any  
 479 permits from the Montgomery County Department of Permitting  
 480 Services to construct a new home without being registered as a new  
 481 home builder or a new home seller;
- 482 (2) signs a statement affirming that any permits issued by the  
 483 Department of Permitting Services are issued solely for the  
 484 purpose of that person performing work on that person's own  
 485 property; and
- 486 (3) signs a statement that the work for which the permit is issued is for  
 487 that person.

488 **31C-3. Compliance with building code generally; building permits.**

- 489 (a) Compliance with building code. This Chapter does not exempt any  
 490 construction work in the County from the requirement that it comply with  
 491 the building code.
- 492 (b) Building permits. The Department of Permitting Services must not issue  
 493 any building permit for a residence to any new home builder or new home  
 494 seller who is not registered with the Office under this Chapter.
- 495 (c) Certificate of inspection. A new home builder and new home seller must  
 496 provide to a contract purchaser at the time of occupancy or settlement,  
 497 whichever first occurs, a statement signed by the builder and seller, that  
 498 all County-required inspections have been performed.

499 **31C-4. Board of Registration.**

- 500 (a) Appointment of Board.
- 501 (1) There is a Board of Registration.
- 502 (2) The Board consists of 5 members appointed by the County  
 503 Executive and confirmed by the County Council.

504           (3) No more than 2 members of the Board may be active in the  
505           residential construction field at the time of their appointment.

506           (b) Term. The term for each member is 3 years. A vacancy is filled for the  
507           remainder of the unexpired term. Unless a member is removed for good  
508           cause, each member holds office until the term of the member expires or  
509           a successor is appointed and confirmed.

510           (c) The Director may designate up to 2 Office employees as ex officio,  
511           nonvoting members to promote coordination with the Office's activities.

512           (d) Operation of the Board; powers and duties of the Board.

513           (1) The Board must elect from its members a chairperson,  
514           vice-chairperson, and any other officers it deems necessary.

515           (2) The Board must:

516                   (A) make recommendations to the Director whether a  
517                   registration applicant, including a renewal applicant, should  
518                   be registered with the Office;

519                   (B) put its recommendations in writing; and

520                   (C) by July 1 each year, submit an annual report of its  
521                   proceedings to the Director.

522           (e) The County Attorney or the County Attorney's designee serves as  
523           counsel to the Board.

524           (f) Board members do not receive compensation for serving on the Board.

525   **31C-5. Registration process; fees.**

526           (a) Registration required. A new home builder or a new home seller must  
527           not engage, or offer to engage, in the business of constructing, selling, or  
528           advertising a new home for sale or act in the capacity of a building  
529           contractor in the County unless the builder or seller are first registered by  
530           the Office.



531 (b) Application. Each application for registration must be on a form the  
532 Director requires and:

533 (1) provide information as to character, references, experience,  
534 education, and training in or related to erecting, constructing, or  
535 otherwise creating a new home or selling a new home;

536 (2) ~~[[disclose that the applicant agrees that any service of process from~~  
537 ~~the Office to the applicant will be satisfied by mailing via regular~~  
538 ~~mail and certified mail, to the applicant at the most current address~~  
539 ~~listed on the application form]] require that the applicant agree to~~  
540 ~~provide the warranty required in Section 31C-8; and~~

541 (3) include any additional information required by regulation.

542 (c) Fees.

543 (1) Each application must be accompanied by an application fee.

544 (2) Any application fee paid is not refundable.

545 (d) Board recommendation. Within 60 days after receiving a completed  
546 registration application, the Board must recommend to the Director  
547 whether:

548 (1) the applicant is qualified to comply with the building code and  
549 laws of the County and State, and to fully perform new home  
550 building and new home sales contracts; and

551 (2) the applicant should be registered or receive a conditional  
552 registration that stipulates specific requirements to which the  
553 applicant must comply before the applicant's registration can be  
554 fully recommended to the Director.

555 (e) Director decision.

556 (1) Within 75 days after receiving a completed application, the  
557 Director must notify the applicant of the ~~[[of the]]~~ Board's

558 recommendation and the Director's final action regarding  
 559 registration, conditional registration, or denial of registration. If the  
 560 Director fails to notify the applicant within 75 days of submission,  
 561 the application is deemed approved.

562 (2) If the applicant is denied registration approval, the Director must[[:  
 563 (A) notify]] send the applicant [[in writing]] written notification  
 564 of the denial and the reasons for the denial[[; and  
 565 (B) mail the denial by certified mail to the address on the  
 566 application]].

567 (3) The Director must not approve a registration for a builder or seller  
 568 who has or had any legal interest in a previously licensed firm who  
 569 has or had a license or registration revoked or suspended for any  
 570 reason listed in Section [[31C-10]] 31C-9.

571 (f) Expiration of license. Unless renewed under the procedures in 31C-6, a  
 572 registration expires on the second anniversary of its effective date. Once  
 573 a registration expires, it cannot be renewed. The former registrant must  
 574 submit a new application for registration.

575 (g) Amendment. A new home builder or a new home seller must amend the  
 576 registration within 30 days of any material change in the information  
 577 provided in the most recent application or amendment.

### 578 **31C-6. Registration Renewal.**

579 (a) A registered new home builder or new home seller may apply to renew  
 580 their registration before the current registration expires by:

581 (1) submitting a completed renewal application;

582 (2) paying the required renewal fee; and

583 (3) making a payment to the Maryland Home Builder Guaranty Fund  
 584 as required under State law.

- 585           (b) At least 60 days before a new home builder or new home seller  
586 registration is set to expire, the Office must ~~[[provide notice to the~~  
587 registrant by electronic mail or regular mail sent to the last known address  
588 of]] send written notification to the registrant. This notice must contain:
- 589           (1) a renewal application form or online link to the renewal form;
  - 590           (2) the date on which the current registration expires;
  - 591           (3) the date by which the Office must receive the renewal application;  
592                 and
  - 593           (4) information regarding the required fees associated with the  
594                 renewal.
- 595           (c) A registrant must submit a completed renewal application to the Office  
596 no later than 30 days before the registration is set to expire.
- 597           (d) The Director may request that the Board review any renewal application  
598 to ensure the applicant continues to meet the criteria in Section 31C-5.
- 599           (e) By the date on which a registration is set to expire, the Director must  
600 [[notify]] send the applicant written notification of the of the Board's  
601 recommendation, if any, and the Director's final action regarding renewal  
602 of a registration. If the Director fails to notify the applicant by this date,  
603 the renewal application is deemed approved.
- 604           (f) If the applicant is denied registration approval, the Director must[[:  
605                 (1) notify]] send the applicant [[in writing]] written notification of the  
606                 denial and the reasons for the denial[[; and  
607                 (2) mail the denial by certified mail to the address on the application]].
- 608           (g) A renewal registration is valid for 2 years.

609 **31C-7. Enforceability of contracts.**

610 A contract for the performance of any act for which a home builder registration  
611 is required is ~~[[not enforceable]] void unless the home builder was registered at the~~  
612 time that the contract was signed by the contract purchaser.

613 **31C-8. New home warranty.**

614 (a) Warranty required. ~~[[A]] As a condition to being registered under this~~  
615 Chapter, a new home builder ~~[[or]] and a new home seller must give a~~  
616 consumer a written warranty that provides the warranty coverage  
617 required by this Chapter ~~[[before entering into a contract to sell or build~~  
618 a new home]] no later than the execution of the contract to sell the home.

619 (b) Liability. The new home builder and new home seller ~~[[are jointly and~~  
620 severally liable for honoring]] must honor the terms of the warranty and  
621 cannot discharge this warranty obligation by providing a third-party new  
622 home warranty plan to the homeowner.

623 (c) Performance standards.

624 (1) The warranty must include minimum performance standards for  
625 the construction and quality of the components of a new home.

626 (2) If specific minimum performance standards are not provided,  
627 industry standards for good building practice determine  
628 compliance with the new home warranty.

629 (d) Duration of warranty. The new home builder and the new home seller  
630 ~~[[are jointly and severally liable and]] must warrant to the homeowner,~~  
631 and all subsequent homeowners during the warranty period, ~~[[the new~~  
632 home]] that:

633 (1) For 1 year, starting on the warranty date, the new home must be  
634 free from any defect in materials or workmanship as defined in the  
635 minimum performance standards.

- 636           (2)   For 2 years, starting on the warranty date, the new home must be  
637                   free from any defect in the electrical, plumbing, heating, cooling,  
638                   ventilating, and mechanical systems.
- 639           (3)   For 5 years, starting on the warranty date, the new home must be  
640                   free from any major structural defect.
- 641       (e)   Exclusions. The written warranty may exclude:
- 642           (1)   damage to real property which is not part of the home covered by  
643                   the warranty and which is not included in the purchase price of the  
644                   home;
- 645           (2)   bodily injury or damage to personal property;
- 646           (3)   any defect in, or caused by, materials or work supplied by anyone  
647                   other than the builder, or its employees, agents, or subcontractors;
- 648           (4)   any loss or damage which the homeowner has not taken timely  
649                   action to minimize; and
- 650           (5)   any additional exclusions permitted by Regulation.
- 651       (f)   Statutory warranties. The statutory warranties required by this Chapter  
652                   are in addition to all other implied or express warranties imposed by law  
653                   or agreement. Each new home builder or new home seller must disclose  
654                   the information required by, and otherwise comply with, Sections 10-601  
655                   through 10-610 of the Real Property Article of the Maryland Code.
- 656       (g)   Financial security.
- 657           (1)   Before entering into a contract to sell or build a new home, a new  
658                   home builder or a new home seller must:
- 659                   (A)   inform the consumer in writing whether any bond,  
660                           insurance, or other financial security is responsible for or  
661                           guarantees the builder's performance under the warranty  
662                           required by this Chapter;

663 (B) provide proof of any such bond, insurance, or security to any  
 664 buyer on request; and

665 (C) include the following notice in the sales contract  
 666 immediately before the disclosure required by subparagraph

667 (A):

668 NOTICE TO BUYER

669 Montgomery County law does not require this builder to furnish any bond,  
 670 insurance, or other financial security to guarantee the builder's performance of its  
 671 warranty obligations. If a builder has promised you any other bond, insurance, or  
 672 security to guarantee the performance of its warranty obligations, that bond,

673 insurance, or security must be listed here:

674 (2) The buyer must acknowledge in writing that the buyer has read and  
 675 understands the notice required under paragraph (1)(C).

676 (3) A new home builder or new home seller may be required to post a  
 677 bond if the Director determines that the builder constructed and  
 678 sold a home without being registered.

679 **[[31C-9. Liability of builder and seller.**

680 (a) A new home builder and new home seller are jointly liable to the  
 681 homeowner during the period when the new home warranty is in effect.

682 (b) The builder and seller are jointly liable for any defect in the home which  
 683 is covered by the warranty.

684 (c) The liability of a builder and seller under the new home warranty is  
 685 limited to the purchase price of the home in the first good faith sale.

686 (d) The homeowner may recover any damages due from a builder or seller  
 687 under this Section by filing a civil action in any court with jurisdiction.]]

688 **[[31C-10]] 31C-9. Complaints, investigations, and administrative hearings.**

689 (a) Complaint. A consumer or homeowner may file a written complaint with  
 690 the Director. A complaint should state the name and address of the builder  
 691 or seller alleged to have committed a violation of this Chapter, describe  
 692 the violation, and provide any other information that the Office requires.  
 693 The Director may act on a complaint that is not complete.

694 (b) Investigation. The Office may:

695 (1) investigate any complaint made against any person [[or legal  
 696 entity]] who is operating as a new home builder or new home seller  
 697 and who is or should be [[required to be]] registered under this  
 698 Chapter;

699 (2) investigate any potential violation of and enforce this Chapter  
 700 without receiving a complaint;

701 (3) hold hearings or refer any matter to a hearing officer designated by  
 702 the Chief Administrative Officer for an administrative hearing;

703 (4) subpoena the attendance of witnesses and documents;

704 (5) administer oaths;

705 (6) require the production of evidence relating to any matter under  
 706 investigation;

707 (7) inspect relevant books, papers, records, or documents of the  
 708 builder or seller at the place of business of the builder and seller  
 709 during business hours; and

710 (8) conduct inspections of new home construction sites and models.

711 (c) Hearing.

712 (1) Before denying, suspending, refusing to renew, or revoking any  
 713 registration, the Director must afford the builder or seller an

714 opportunity for a hearing before a hearing officer designated by the  
715 Chief Administrative Officer for an administrative hearing.

716 (2) After giving a builder or seller the opportunity for a hearing, the  
717 Director may deny, suspend, refuse to renew, or revoke the  
718 registration of a new home builder or new home seller if the  
719 Director finds that the builder or seller:

720 (A) made a misstatement of material fact in the application for  
721 registration or renewal;

722 (B) committed fraud or misrepresentation in connection with  
723 any building activity conducted under the requirements of  
724 this Chapter;

725 (C) committed gross negligence in connection with any  
726 building activity conducted under the requirements of this  
727 Chapter;

728 (D) violated the building code or laws of the County or State;

729 (E) did not provide the new home warranty required by this  
730 Chapter;

731 (F) did not correct or settle a claim arising out of a defect that is  
732 covered by the warranty required by this Chapter;

733 (G) did not file an amendment to a registration application  
734 within 30 days of any material change in the information  
735 provided in the most recent application or amendment;

736 (H) aided, abetted, or knowingly combined or conspired with an  
737 unregistered person [[or legal entity]] to evade this Chapter;

738 (I) abandoned or willfully failed to perform, without  
739 justification, a contract for construction of a building that is  
740 to be used as a residence;



- 741           (J) willfully deviated from or disregarded plans or  
742           specifications in any material way without consent of the  
743           consumer or homeowner;
- 744           (K) did not comply with this Chapter in any material way;
- 745           (L) diverted funds or property that were received for the  
746           completion of a construction project, and used the funds or  
747           property for another project, operation, obligation, or  
748           purpose, with intent to defraud or deceive creditors or the  
749           contract purchaser;
- 750           (M) served as an officer, Director, owner, member, principal, or  
751           stockholder for a builder or seller whose registration was  
752           revoked or suspended under this Chapter;
- 753           (N) engaged in a pattern of unfair or deceptive trade practices in  
754           violation of Chapter 11;
- 755           (O) obtained or attempted to obtain a residential home  
756           construction permit by falsely representing that the  
757           applicant was seeking a permit to construct a home to be  
758           occupied by the applicant as a personal residence;
- 759           (P) ~~[[failure]]~~ failed to satisfy final judgments or liens in favor  
760           of a contract purchaser, homeowner, subcontractor, or  
761           government;
- 762           (Q) engaged in fraud, deception, misrepresentation, or knowing  
763           omissions of material facts related to new home building  
764           contracts;
- 765           (R) engaged in a pattern of poor workmanship as evidenced by  
766           unresolved building code violations or unsatisfied  
767           arbitration awards or judgments in favor of a consumer; or

- 768                   (S)    violated a term or condition of a conditional registration.
- 769           (3)    The Director may refer a complaint or a violation to a hearing  
 770                   officer designated by the Chief Administrative Officer for an  
 771                   administrative hearing.
- 772           [[4)    Service of process must be by regular and certified mail to the new  
 773                   home builder, new home seller, or the applicant's most current  
 774                   address provided on their application form.]]
- 775           (d)    Hearings, generally. Any hearing held under this Section must be  
 776                   conducted under the Administrative Procedures Act.
- 777           (e)    Appeals. A person aggrieved by a decision of the hearing examiner or  
 778                   Director to deny, suspend, refuse to renew, or revoke a registration may  
 779                   seek judicial review of the decision in the Circuit Court under the  
 780                   applicable Maryland Rules of Procedure governing judicial review of  
 781                   administrative agency decisions. A party aggrieved by the decision of the  
 782                   Circuit Court may appeal that decision to the Court of Special Appeals.

783    **[[31C-11]] 31C-10. Violations and penalties.**

784            Any violation of this Chapter is a Class A violation.

785    **[[31C-12]] 31C-11. Administration; regulations.**

- 786           (a)    The Director administers and enforces this Chapter.
- 787           (b)    The Executive must adopt Method (2) regulations to implement this  
 788                   Chapter. The regulations must:
- 789                   (1)    set one or more fees appropriate to cover the cost of  
 790                            administering this Chapter;
- 791                   (2)    provide for the form and content of the warranty required by  
 792                            Section 31C-8;
- 793                   (3)    set forth the terms of the warranty required by Section 31C-8;

- 794 (4) describe other allowable warranty exclusions the Executive
- 795 deems necessary;
- 796 (5) include standards under which a person may receive a waiver
- 797 under Section 31C-2; and
- 798 (6) includes standards by which a person may be deemed qualified to
- 799 comply with County and State law, as required in Section 31C-5.

800 **Sec. 2. Section 2A-2 is amended as follows:**

801 **2A-2. Applicability.**

802 This Chapter governs the following administrative appeals and proceedings and  
803 applies whether a hearing is conducted by a hearing examiner or another designated  
804 official.

805 \* \* \*

806 (g) Complaints and actions filed with or by the Office of Consumer  
807 Protection under Chapter [[31C-10]] 31C-9 when a hearing is required or  
808 provided.

809 (h) Such other hearings as hereinafter provided for by law or executive  
810 regulations which are specifically designated as being governed hereby.  
811 In this regard, the County Executive is hereby authorized to add or delete  
812 additional quasi-judicial authorities from time to time by executive  
813 regulation adopted under method (2) of section 2A-15 of this Code.

814 *Approved:*

815 \_\_\_\_\_  
Nancy Navarro, President, County Council Date

816 *Approved:*

817 \_\_\_\_\_  
Marc Elrich, County Executive Date

## LEGISLATIVE REQUEST REPORT

Bill 31-18

*New Home Warranty and Builder Licensing - Amendments*

<b>DESCRIPTION:</b>	Bill 31-18 would require new home builders and new home sellers to register with the Office of Consumer Protection, require new home builders and new home sellers to provide buyers with a new home warranty, and require the Office of Consumer Protection to administer and enforce County law related to new home builders and new home sellers.
<b>PROBLEM:</b>	Chapter 31A needs updated to address business model changes in the industry and to remove outdated references.
<b>GOALS AND OBJECTIVES:</b>	To establish greater uniformity with state law, ensure that building permits are issued by DPS to registered new home builders, and not issued to homeowners or unregistered builders who falsely represent that they are constructing a new home for their personal occupancy, clarify the procedures for reviewing new home builder registration applications, and the procedures and basis for revoking a registration, address business model changes in which some new home builders form multiple, single-purpose Limited Liability Corporations to construct or sell new homes, and delete any outdated references regarding Montgomery County's former 10-year warranty law and 3rd party warranty enrollment mandate.
<b>COORDINATION:</b>	Office of Consumer Protection; Department of Permitting Services
<b>FISCAL IMPACT:</b>	To be requested
<b>ECONOMIC IMPACT:</b>	To be requested
<b>EVALUATION:</b>	To be requested.
<b>EXPERIENCE ELSEWHERE:</b>	To be researched.
<b>SOURCE OF INFORMATION:</b>	Amanda Mihill, Legislative Attorney 240-777-7815
<b>APPLICATION WITHIN MUNICIPALITIES:</b>	To be researched.
<b>PENALTIES:</b>	Any violation of the Chapter would be a Class A violation.



OFFICE OF CONSUMER PROTECTION

Isiah Leggett  
County Executive

Eric S. Friedman  
Director

**TESTIMONY ON BEHALF OF COUNTY EXECUTIVE LEGGETT ON BILL 31-18,  
NEW HOME WARRANTY AND BUILDER LICENSING -AMENDMENTS**

**October 9, 2018**

Good afternoon. My name is Eric Friedman, Director of the Montgomery County's Office of Consumer Protection. Our office currently licenses new home builders and sellers. I am here today on behalf of County Executive Isiah Leggett to testify in support of Bill 31-18 which would amend Chapter 31C of the Montgomery County Code regarding new home builders and sellers in Montgomery County.

The bill would revise and update Montgomery County's 30-year old law regarding new home builders and sellers. These revisions would serve to address new business models in the home construction industry, ensure that building permits are issued appropriately, enhance uniformity with State laws, clarify the procedures for revoking or denying registrations, and delete outdated references.

The Office of Consumer Protection has become aware of changes in the marketplace in which some new home builders are creating many single-purpose limited liability companies to own the land and sell new homes that are built by a related construction company. By altering the traditional business model in the construction industry, the creation of these single-purpose limited liability companies may result in new homes being sold by unlicensed builders, without warranties, and without State Guaranty Fund coverage. The Office of Consumer Protection also has identified numerous cases in which unlicensed builders and individuals have been able to obtain building permits by providing false information. In addition, The Office of Consumer Protection has gained firsthand experience with deficiencies currently in Chapter 31C regarding the procedures for revoking or denying a registration.

Accordingly, County Executive Isiah Leggett appreciates the initiative taken by the lead sponsor, Councilmember Craig Rice, to introduce this bill. The Office of Consumer Protection looks forward to working with Council to amend the bill, if and as needed.

Thank you for the opportunity to testify on Bill 31-18. We look forward to working with the Council in its deliberations on this legislation.

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100 Maryland Avenue, Suite 330 • Rockville, Maryland 20850 • 240-777-3636 • FAX 240-777-3768  
[www.montgomerycountymd.gov/consumer](http://www.montgomerycountymd.gov/consumer)

**Maryland Building Industry Association Statement in SUPPORT of Bill 31-18 New Home Warranty and  
Builder Licensing - Amendments  
January 17, 2019**

The Montgomery County members of the Maryland Building Industry Association (MBIA) would like to note their support of Bill 31-18, New Home Warranty and Builder Licensing – Amendments. As an Association of members who reflect the highest level of professional ethics, responsiveness and integrity, we favor policies that prevent bad actors from taking advantage of customers. Members are especially supportive of policies that root out bad actors that undermine the industry. It is the Association’s belief that this bill takes significant steps to ensure the community is protected and the industry is well regulated.

The Association would like to commend Councilmember Rice for introducing this important consumer protection bill. MBIA would also like to commend the Office of Consumer Protection (OCP) for having a collaborative and engaging approach toward the Association while modifying Chapter 31. Both the Director and staff at OCP diligently explained the need for this rewrite and dutifully listened to industry concern. Members particularly appreciate OCP’s readiness to learn about, and appropriately regulate, the evolving business structures some members employ to protect their small, local, business. Further, the Association looks forward to working with OCP on the Executive Regulations to accompany this legislation.

Thank you for your consideration.

Erin Bradley  
Vice President of Government Affairs  
Maryland Building Industry Association



ROCKVILLE, MARYLAND

MEMORANDUM

October 19, 2018

TO: Hans Riemer, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget  
Alexandre A. Espinosa, Director, Department of Finance

SUBJECT: FEIS for Bill 31-18, New Home Warranty and Builder Licensing – Amendments

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:cbs

c: Bonnie Kirkland, Assistant Chief Administrative Officer  
Lily Qi, Assistant Chief Administrative Officer  
Lisa Austin, Offices of the County Executive  
Joy Nurmi, Special Assistant to the County Executive  
Patrick Lacefield, Director, Public Information Office  
Eric Friedman, Director, Office of Consumer Protection  
David Platt, Department of Finance  
Dennis Hetman, Department of Finance  
Barbara Suter, Department of Permitting Services  
Crystal Sallee, Office of Management and Budget  
Alison Dollar, Office of Management and Budget  
Helen P. Vallone, Office of Management and Budget

Fiscal Impact Statement  
 Bill 31-18, New Home Warranty and Builder Licensing - Amendments

**1. Legislative Summary**

Bill 31-18 amends Chapter 31C in an effort to address five (5) goals: 1) establish greater uniformity with the State of Maryland's builder registration law, 2) ensure that building permits are issued to registered new home builders by Montgomery County's Department of Permitting Services (DPS), and not issued to unregistered new home builders who falsely represent that they are constructing a new home for their personal occupancy, 3) clarify the procedures for revoking new home builder registration applications and the procedures and basis for revoking a registration, 4) address business model changes in which some new home builders form multiple, single-purpose Limited Liability Companies to construct or sell new homes, and 5) delete any outdated references regarding Montgomery County's former 10-year warranty law and third-party warranty enrollment mandate.

**2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.**

Bill 31-18 is not expected to impact revenues or expenditures. The Office of Consumer Protection (OCP) currently licenses approximately 378 new home builders. The application fee is \$805 for each two-year new or renewal application. The revenues will continue to be monitored and reported by the OCP.

**3. Revenue and expenditure estimates covering at least the next 6 fiscal years.**

The bill is not expected to impact revenues or expenditures. Any increase in revenue would be directly related to an increase in the number of new home builders and sellers who file registration applications. The actual revenues received from FY13 to FY18 reflect a fluctuation in the total number of new home builders' registration from a low of 166 registrations in FY15 to a high of 203 registrations in FY13. For illustrative purposes, based on six-year trends, estimates for the next six fiscal years range between \$879,060 (baseline amount) and \$1,054,872 (20 percent above baseline amount). The six-year revenue projections include assumptions for 5, 10, and 20 percent above baseline registrations as illustrated in the chart below.

FISCAL YEAR	REGISTRATION FEE	ESTIMATED REGISTRATIONS (BASELINE)	BASELINE TOTAL REVENUES	5% INCREASE OVER BASELINE	TOTAL REVENUES (ESTIMATE)	10% INCREASE OVER BASELINE	TOTAL REVENUES (ESTIMATE)	20% INCREASE OVER BASELINE	TOTAL REVENUES (ESTIMATE)
FY19	\$805	203	\$163,415	213	\$171,586	223	\$179,757	244	\$196,098
FY20	\$805	171	\$137,655	180	\$144,538	188	\$151,421	205	\$165,186
FY21	\$805	166	\$133,630	174	\$140,312	183	\$146,993	199	\$160,356
FY22	\$805	185	\$148,925	194	\$156,371	204	\$163,818	222	\$178,710
FY23	\$805	191	\$153,755	201	\$161,443	210	\$169,131	229	\$184,506
FY24	\$805	176	\$141,680	185	\$148,764	194	\$155,848	211	\$170,016
<b>TOTAL 6 YRS</b>		<b>1092</b>	<b>\$879,060</b>	<b>1147</b>	<b>\$923,014</b>	<b>1201</b>	<b>\$966,968</b>	<b>1310</b>	<b>\$1,054,872</b>



- 4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.**

Not applicable.

- 5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.**

The bill is not expected to impact expenditures related to the County's IT or ERP systems. The DPS estimates that implementation of this legislation will create minor changes to its process, primarily a modification to its online application query – this can be accomplished within existing resources. The OCP estimates the enactment of this legislation will require modifications to the Information Technology data systems currently maintained by the DPS and the OCP. This can be coordinated with the Department of Technology Services and implemented at no additional cost to the OCP.

- 6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.**

Bill 31-18 does not authorize future spending.

- 7. An estimate of the staff time needed to implement the bill.**

Implementation of this legislation will not impact existing DPS staff, and any workload impact on OCP staff is expected to be minimal and can be absorbed by existing personnel.

- 8. An explanation of how the addition of new staff responsibilities would affect other duties.**

Not applicable.

- 9. An estimate of costs when an additional appropriation is needed.**

Not applicable.

- 10. A description of any variable that could affect revenue and cost estimates.**

Any fluctuation in the number of new applicants or any change to the fee structure would impact revenues accordingly.

- 11. Ranges of revenue or expenditures that are uncertain or difficult to project.**

Not applicable.

**12. If a bill is likely to have no fiscal impact, why that is the case.**


Revenue is not expected to change as a direct result of the bill. Implementation of this legislation will not have an impact on expenditures because the DPS and OCP can absorb any additional workload impact within existing resources.

**13. Other fiscal impacts or comments.**

None.

**14. The following contributed to and concurred with this analysis:**

Eric Friedman, Office of Consumer Protection  
Marsha Carter, Office of Consumer Protection  
Samuel Buo, Office of Consumer Protection  
Tracy Rezvani, Office of Consumer Protection,  
Barbara Suter, Department of Permitting Services  
Crystal Sallee, Office of Management and Budget  
Alison Dollar, Office of Management and Budget

  
Jennifer A. Hughes, Director  
Office of Management and Budget

10/23/18  
Date

**Economic Impact Statement**  
**Bill 31-18 New Home Warranty and Builder Licensing - Amendments**

**Background:**

Bill 31-18 would require new home builders and new home sellers to register with the Office of Consumer Protection, require new home builders and new home sellers to provide buyers with a new home warranty, and require the Office of Consumer Protection to administer and enforce County law related to new home builders and new home sellers.

**1. The sources of information, assumptions, and methodologies used.**

- New Home Warranty Report, National Commercial Service Contract Association

**2. A description of any variable that could affect the economic impact estimates.**

Variables affecting estimates include the number of new home builders that include warranties in existing sales, the extent of the coverages of those warranties, and how the associated costs of the coverages are passed along to new home buyers. According to the latest new home warranty report from the National Commercial Service Contract Association<sup>1</sup>, when a new home is sold the builder sets aside an amount of money that is sufficient to pay its warranty costs after each closing. For a new home, the industry average is around \$2,500 with this total varying across the spectrum of housing markets and prices. Typically, the policies cover time frames of one year for walls, two years for heat, and ten years for major structural defects. The report notes that over the past fourteen years warranty costs per new home sold have risen however new home prices have increased at an even faster rate. Therefore, warranty costs as a percentage of sales are falling as warranty accruals for home builders rise and fall proportionally with sales.

**3. The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.**

Warranty costs that are passed on to home buyers have the potential to moderately alter property values in the County as they will likely be reflected in the prices paid for new homes. The impact is expected to be minimal as warranty costs comprise a small fraction of the total closing costs associated with purchasing a new home and the value of new homes in the County have the potential to fluctuate on a weekly basis by amounts that are several multiples higher than the average cost of a warranty. While the bill slightly alters the cost calculations involved in the decision making process for both new home buyers and builders, it is not anticipated to discernably effect employment, spending, savings, investment, or incomes in the County.

**4. If a Bill is likely to have no economic impact, why is that the case?**

Please see paragraph 3.

**5. The following contributed to or concurred with this analysis:**

David Platt, Dennis Hetman – Department of Finance.

*Karen L Hawkins for AE*  
Alexandre Espinosa, Director  
Department of Finance

10/4/18  
Date

<sup>1</sup> Warrantyweek.com, 6/8/2017