

BUYING A NEW HOME

Consumer Rights and Remedies
Under Maryland Law



STATE OF MARYLAND
Office of the Attorney General
Consumer Protection Division
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Maryland Attorney General's Office Consumer Protection Division

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Marylanders purchase more than 10,000 new homes each year. The purchase of a new home is protected by Maryland law. Understanding your rights and responsibilities as a new home buyer protects your investment and can make the process of buying a new home go more smoothly. This brochure explains the most important things you should know about your new home contract, your deposit and other payments, and the standards and codes governing quality of construction. It also explains steps you can take to resolve any problems that occur.

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Choosing a Builder

Your builder's reputation should be one of your primary considerations.

Ask friends who have bought new homes for recommendations. You should interview builders who are likely candidates to build your house. Communication between you and your builder is essential from the beginning, as you will work closely together throughout the construction of your home. Ask builders for references from previous customers and see what those buyers have to say. Ask to review an example of completed work as well as a project underway.

Make sure your builder is registered. As of January 1, 2001, all home builders operating in Maryland, except those building exclusively in Montgomery County, are required to be registered with the Home Builder Registration Unit. This Unit is part of the Consumer Protection Division in the Office of the Attorney General. Home builders include installers or retailers of mobile homes and modular homes, but not manufacturers of these homes unless the manufacturers also install the homes.

Doing business with a registered home builder will ensure that you are eligible for all protections provided by your contract and by state law. A home builder registers by simply filling out an application form and paying a fee. However, a builder can have its registration denied, suspended or revoked for a variety of reasons, including if it engages in a pattern of poor workmanship.

A builder must be registered in order to get building permits and have valid contracts. If a non-registered builder asks you to

apply for a building permit yourself in an attempt to avoid having to register, you could be putting yourself at risk of losing certain rights and remedies. You should never obtain a permit unless you are truly acting as the building contractor.

To find out whether a builder you are considering is registered with the Home Builder Registration Unit, call 410-576-6573 in the Baltimore area or toll-free 1-877-259-4525 from other parts of the state. You can also get this information by visiting www.oag.state.md.us/homebuilder.

Buyers of new homes in Montgomery County should call the Montgomery County Division of Consumer Affairs to check whether the home builder is licensed by that county as required: 240-777-3636.



The Contract

After you have selected your builder, you will enter into an agreement to purchase a home in the form of a contract. A contract that contains all significant details can eliminate many problems. Don't assume anything. Spell out all terms so there can be no misunderstandings later.



Whether or not a form contract is used, you can ask the builder to change provisions in the contract or add provisions you want. Just make sure the changes are put in

writing and signed by both you and the builder.

You should thoroughly review the contract before signing it. Ask the builder to carefully go over each item and explain it to you in detail. Consult with an attorney if you need additional help.

Review these items very carefully:

The construction plans and specifications detailing the scope of the work.

The house's drawings and specifications should be reviewed carefully. If you are buying a house based on a model you saw, make sure you understand the differences between the model and what your contract specifies.

The price. The contract should state the price you agreed to pay for the house and describe how the cost for any changes you make to the order later will be determined.

Time of completion. The contract should state when the house will be started and completed and list any conditions which can delay or extend the start and completion.

Default provisions. These state what will happen to the contract and the deposit if either you or the builder fail to do what is required by the contract. Many default provisions allow the builder to keep your deposit if you do not qualify for financing or do not go to settlement for other reasons. You may wish to have a contingency clause that would allow you to get your deposit back if you cannot get financing within a certain period of time, or one that states that settlement on the new home can be postponed if you have a problem selling your old home.

Notice provisions. These tell you how to send official notices to the builder. Make sure you follow these procedures if you ever need to contact the builder about something you are dissatisfied with. In fact, it is a good idea to put all communications with your builder about important issues in writing, even if it is not required in the contract.

Remedies and dispute resolution under the contract. Some contracts require the builder or the buyer to use certain means of resolving their disputes, such as requiring arbitration or alternative dispute resolution and prohibiting a buyer from suing the builder in court. Read these clauses carefully to see if they provide a fair, efficient and cost-effective means of resolving disputes.



Requirements specific to custom home contracts. When having a new home built on land you own, you are buying a “custom home” and the contract must include certain specific items. See Custom Homes Contracts, p. 8.

Other documents accompanying the contract. Federal, state and local laws require that certain disclosures be given to the buyer with the contract. These may pertain to items such as estimated deferred water and sewer charges, homeowner's association rules and fees, disclosures about county master plans, insulation, hazardous materials, FHA and VA financing, and first-time home buyer programs or benefits. Read all of these disclosures as carefully as the contract before signing them or the contract.

Other items that you should make sure your contract includes are:

- The builder's registration number.
- Legal description of the building site.
- Term of payment: deposit, mortgage type.
- Method of deposit protection (see page 7).
- Draw schedule of payments to the builder as work progresses, only in custom home contracts.
- A statement that the builder will comply with local building codes.
- What performance standards will govern the construction (see page 12).
- A description of any warranty offered by the builder or manufacturer (see page 13).
- A description of when substitutions in materials can be made.

Remember, it's what's in writing that counts. The contract spells out your builder's understanding of what has been agreed upon and his obligation to carry it out. Make sure your understanding and the builder's match before you sign the contract.

How Your Deposit Is Protected

Maryland law requires the home builder to put your deposit in an escrow account, unless the builder has a corporate surety bond or irrevocable letter of credit on file with the State. The builder must use an escrow account only to hold buyers' deposits and, except in custom home construction, may not use deposit money for operating expenses or any other purpose. Except in the case of a custom home, any money you pay before the house is completed must be kept in the escrow account or be covered by the bond or letter of credit.

The builder is required to give you a disclosure form that tells you whether the builder is protecting your deposit with an escrow account, bond, or letter of credit.

You should read the form carefully. The amount of the bond or letter of credit is set by law to provide at least partial coverage of the deposits of that builder's new home buyers, but may not provide full coverage for all buyers' deposits. To verify the information about an escrow account, you should call the bank that has the account. To verify a builder's bond or letter of credit, call the Home Builder Registration Unit at 410-576-6573.

The builder must keep your deposit in the escrow account, or maintain the surety bond or letter of credit in effect, until one of three things happens:



- the builder transfers the deed to you at settlement,
- the builder returns the deposit money to you, or
- you default on the contract, and the contract provides that the builder can keep the deposit.

Before you sign the contract, make sure you understand the rules for return of your deposit and what you have to do to avoid losing your deposit.

Custom Home Contracts

Maryland law has additional requirements for custom home contracts. When the buyer pays a builder to build a house on land the buyer already owns, then the contract is for a custom home. Usually the buyer pays the builder a deposit, and then a series of “progress payments” as stated in a “draw schedule” as each stage of the building is completed. The buyer pays the last progress payment after the builder has completed the house and has provided the buyer with the “waivers of liens,” which prove that all of the subcontractors have been paid and will not file a mechanics’ lien on the house. The Custom Home Protection Act applies to this type of housing purchase. The law covers both houses constructed on site and those manufactured elsewhere and installed on site.



Deposits: The Custom Home Protection Act requires that any deposit you pay that is greater than five percent of the total contract price must be held by the builder in an escrow account

or be covered by a bond on file with the State. For the greatest protection, you may ask the builder to put the deposit in an individual escrow account that requires both your signature and the builder's signature for any withdrawal.

A custom home builder may make withdrawals from an escrow account only:

- > when returning all or a portion of the money to you,
- > when paying subcontractors and suppliers in accordance with the draw schedule,
- > if you forfeit the money under the terms of the contract, or
- > as final payment upon your possession of the house.

Draw schedule: A custom home contract is required by law to have a draw schedule, which describes when the builder is entitled to receive progress payments as each stage of the construction is completed. In shopping for a construction loan, check that your bank has adequate procedures to ensure that it does not release progress payments to the builder until the bank has verified that the work has been completed. Some buyers have chosen to require that, in addition to the bank, the buyer or a buyer's representative with building experience has to sign off before a progress payment is made.

Builder's list of payments to subcontractors. Within 30 days after receiving each progress payment, the builder is required by law to provide you with a list of all subcontractors or suppliers who have provided more than \$500 of goods or services to date and indicate which of them have been paid by the builder. You should call the subcontractors and suppliers to verify that they have been paid. If they have not been paid, do not authorize further progress payments to the builder until the builder pays the subcontractors.

Waivers of liens. The custom home builder is required by law to provide you with “waivers of liens” from all subcontractors and suppliers within a reasonable time after these subcontractors have provided the goods and services. You should make sure that all subcontractors who have finished their work or provided their goods and services have been paid, and you should obtain the waivers of liens, before authorizing the next progress payment to the builder.

Additionally, a custom home contract must include:

- Certification that the builder has, or has not, had adverse adjudications or unsatisfied judgments in connection with a custom home contract within the last three years. Any such adjudications or unsatisfied judgments must be listed.
- A statement that all change orders must be in writing and specify any change they will cause in the price of the house.
- A disclosure whether the builder is covered by a warranty program guaranteed by a third party.



Construction of Your Home

It is your builder's obligation under the contract to build the house according to the specifications set forth in the contract, the building code, and applicable performance standards. If you wish to visit the construction site, contact your builder to schedule visits at times that are convenient for you and the builder. If you spot something that concerns you or if you decide to make a minor change, contact the builder as soon as possible, verbally as well as in writing.



Before you go to settlement, you should have a final walk-through inspection of the house to make sure that all work is completed and done properly according to the contract. At the conclusion of the walk-through, the builder should give you a “punch list” of any items that the builder agrees will need to be completed or fixed after settlement. Faced with major work remaining to be done, some consumers have asked the builder to set up an escrow account at settlement to hold back part of the purchase price until the work was completed.

Here are the laws and standards that govern construction quality issues:

Building codes. All residential housing built on site in Maryland must meet all applicable building codes in effect at the time of the

construction of the new home. The specific code must be referenced in your contract. Contact your county's building code/permits office for more information.



Performance standards. All contracts in Maryland must incorporate building performance standards. Performance standards describe how a building and components of buildings are supposed to perform, and prescribes what the builder's or homeowner's obligation is to repair any defects. They are the standards that will be used in any dispute you have with your builder about whether the construction was done properly. The

minimum performance standards in Maryland are those established by the National Association of Home Builders. Your builder may adopt higher standards, and so may your county or city. Which standards govern your contract must be stated in your contract.

Construction standards for manufactured/mobile homes. Many new homes sold in Maryland are manufactured homes, also known as mobile homes, that have been built at an offsite factory. The Federal Manufactured Home Construction and Safety Standards establish the standards to which mobile homes must be built. These standards are referred to as the HUD Code, which also sets performance standards for the heating, plumbing, air conditioning, thermal and electrical systems. Mobile homes contracts must reference the HUD Code as the appropriate performance standards. On-site additions, such as garages, decks, and driveways, must meet the standards set by the local building codes.

Construction standards for industrialized/modular residential use

buildings. Industrialized buildings, also known as modular homes, are manufactured offsite and transported in sections to a building site, where they are assembled and installed by a local builder. Industrialized buildings do not include mobile homes. The Maryland Department of Housing and Community Development, Codes Administration, adopts and enforces construction standards for industrialized/modular buildings that preempt any construction standards required by local jurisdictions. While local jurisdictions are excluded from enforcing the construction standards for industrialized/modular buildings and mobile homes, local officials continue to play an important role in the regulation of these units by inspecting their installation and all on-site work.



Express and implied warranties.

Under Maryland law, any promise that is included in the contract, and any written description of the home, including plans and specifications, that is in the contract creates an **express warranty** that the home will conform to that promise or description. It is not necessary that the words “warranty” or “guarantee” be used. Any sample or model that is part of the basis of the bargain between the buyer and builder creates an express warranty that the home will conform substantially to the sample or model.

All new residential construction must also comply with **implied warranties** that the home is free from faulty materials, constructed according to sound engineering standards, constructed in a

workmanlike manner, and fit for habitation. You may have a legal remedy against a builder who fails to meet these implied warranties.

Unless an express warranty specifies a longer period of time, express and implied warranties cover the entire new home for one year after the purchaser obtains the deed or the new home is completed, whichever occurs last. In addition, structural defects are covered for two years.

Consider consulting an attorney before agreeing to exclude your express or implied warranty rights in the contract.



Mobile homes built to the HUD Code are covered by the manufacturer's warranty. Refer to the homeowner's manual for the specifics of the warranty. Only the home is covered by the manufacturer's warranty, not any site work done by the builder. Coverage for structural defects caused at the time of manufacturer in a home built to the HUD Code does not expire as long as the home is owned by the original purchaser.

Home warranty plans. Your builder may provide you with a written home warranty plan that is guaranteed by a third party. If your builder does so, Maryland law requires the plan to cover, at minimum, any defects in materials or workmanship for one year, any defects in the electrical, plumbing, heating, cooling and ventilating systems for two years (not to exceed the period of the manufacturer's warranty), and defects to any load-bearing structural elements for five years.

If your builder offers you such a warranty, you should call the third-party warranty company to verify that your builder is in good standing with them and has registered your house for warranty protection. At settlement, make sure that your builder has paid the

warranty company for the coverage and that you receive the terms and conditions of the warranty. Read the warranty carefully. It may contain many exclusions or limitations on your right to recover, and may contain strict rules on how you have to proceed to make a claim. You are entitled to waive third-party warranty coverage after the builder informs you in writing of the cost, nature and extent of warranty coverage that will be provided.

Resolving Problems

If you have any problem with how your builder is performing, you should **contact the builder**. It is best to put your problem in writing and mail or deliver it to the builder. Keep a copy of all correspondence and a written log of all contact with the builder and the builder's response. Your best chance of resolving problems is to catch them early and try to work them out with the builder. Also, **review your contract**. It may provide a method to resolve your dispute.



You may be able to **file a claim under your home owner warranty** if the builder has provided that coverage. Be sure to read the policy, follow the rules for filing a claim, and file your claim in a timely manner.

If you cannot resolve the problem with your builder, you can call

the Consumer Protection Division's **Mediation Unit** at 410-528-8662 in Baltimore, 301-791-4780 in Hagerstown, 410-713-3620 in Salisbury, 301-274-4620 in Southern Maryland/Hughesville (toll-free 1-866-366-8343) and toll-free 1-888-743-0023 elsewhere in the state. The Mediation Unit will attempt to resolve the disputes through mediation with the builder.

If the Mediation Unit is unable to resolve the problem through mediation, the dispute can be submitted to the Division's **Arbitration Unit**, if both you and your builder agree to that. There is no fee for this Unit to arbitrate your dispute. The arbitrator will usually conduct the hearing at the house so that both you and the builder can explain and show the parts of the new home that may have problems. After the hearing the arbitrator will issue a written decision that will be binding on both you and the builder.

If you are having problems with a **mobile home or an industrialized/modular residential building**, you should provide a written list of those problems to the retailer, manufacturer, and installer. If your home is not repaired in a reasonable time period, or if the responsible party refuses to make repairs, you should contact the local building officials for required repairs related to work performed at the site. For required repairs related to work performed at the manufacturing facility, you should contact the Maryland Code Administration of the Department of Housing and Community Development, 100 Community Place, Crownsville, MD 21032-2023; phone number 410-514-7220; and fax 410-987-8902. You should provide all the information related to required repairs and the following information: your name, address, city, state, home phone number, work phone number, e-mail address if applicable, your home label and serial number(s), and the manufacturer's and retailer's names and phone numbers.