



**STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL**

2016 ANNUAL REPORT

**OF THE
HOME BUILDER REGISTRATION UNIT
CONSUMER PROTECTION DIVISION
OFFICE OF THE ATTORNEY GENERAL**

SUBMITTED TO THE

**GOVERNOR AND GENERAL ASSEMBLY
OF MARYLAND**

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I. **EXECUTIVE SUMMARY**

The Maryland Home Builder Registration Act (“the Act” or “HBRA”) was enacted by the General Assembly in the 2000 Session and became effective January 1, 2001. The HBRA protects new home buyers by requiring builders to register with the State and by providing an enforcement mechanism that allows the State to prevent builders with a bad track record from continuing to build in Maryland.¹ During the 2008 Session, the General Assembly enacted legislation to provide additional protections for home buyers, establishing a registration requirement for sales representatives for Maryland home builders and a Home Builder Guaranty Fund.

The Home Builder Registration Unit (“Unit”) of the Consumer Protection Division of the Office of the Attorney General was created by the HBRA to administer and enforce the Act.² The Act requires that the Consumer Protection Division make an annual report of its activities to the Governor and General Assembly. This is the report for Fiscal Year 2016.

The report focuses on the following areas:

- **Registration of Builders:** 2,186 builders were registered as of June 30, 2016. 219 of those builders registered for the first time between July 1, 2015 and June 30, 2016.
- **Registration Renewal:** From July 1, 2015 to June 30, 2016, the Unit mailed renewal notices to 1,199 builders whose registrations were due to expire by June 1, 2016. 947 of those builders renewed their registration as of June 30, 2016.
- **Law Enforcement:** The Unit opened 30 investigations between July 1, 2015 and June 30, 2016, after receiving reports of unregistered builders or violations of the Home Builder Registration Act, the Consumer Protection Act, the New Home Warranties Act or violations of the laws governing deposits on new homes. Seventeen of the investigations resulted in settlements; enforcement actions have been filed in another five; and eight remain under continuing investigation as of June 30, 2016. The Unit receives information

¹ Earlier laws provided partial protections for home buyers by focusing on protection of the buyer’s deposit, required contract provisions and disclosures, and prescribed terms of non-mandatory home warranty security plans. See New Home Deposits Act, Md. Code Ann., Real Property §10-301 through § 10-306, Custom Home Protection Act, Md. Code Ann., Real Property §10-501 through § 10-509, and New Home Warranties Act, Md. Code Ann., Real Property §10-601 through § 10-610.

² Montgomery County and Prince George’s County have varying forms of builder licensing or registration.

from many sources, including consumers, other builders, subcontractors, and permit offices.

• **Education of Builders and Consumers:** As of June 30, 2016, the Unit had distributed a total of 263,490 copies of *BUYING A NEW HOME - Consumer Rights and Remedies Under Maryland Law*; and maintained and updated its website – <http://www.marylandattorneygeneral.gov/Pages/CPD/Homebuilder/default.aspx> – to provide information to the public, consumers, builders, and permit offices about registered builders, building laws, and home building.

• **Coordination with Local Building Permit Offices:** The Unit continues to coordinate with local building permit offices to ensure that unregistered builders cannot obtain building permits and that builders with unresolved building code violations are reported to the Unit. Lists of registered builders are e-mailed and mailed to permit offices each month and are publicly available on the Unit's website. The Unit also coordinates with local permit offices concerning the payment of fees by builders to fund the Home Builder Guaranty Fund.

• **Evaluation of Consumer and Builder Dispute Resolution:** The Division's Mediation Unit handled 133 consumer complaints involving 104 home builders between July 1, 2015 and June 30, 2016. The overwhelming majority of the complaints concerned claims about construction defects or incomplete construction.

• **Warranty Programs:** The Unit monitors information from New Home Warranty Security Plans concerning their operation and claims experience to ensure the plans are continuing to meet the requirements of the new home warranty law.

• **Home Builder Sales Representatives:** Effective October 1, 2008, sales representatives for home builders were required to register with the Unit. A home builder sales representative is an individual employed by a home builder as the home builder's representative to consumers regarding the purchase of a new home from the home builder. Sales representatives are required to complete a registration form and pay a \$200 registration fee for a 2-year registration. As of July 1, 2016, there were 598 registered sales representatives, who worked for 172 builders.

• **Home Builder Guaranty Fund:** During the 2008 session, the General Assembly created a Home Builder Guaranty Fund to protect buyers of new homes who purchase a new home from a registered home builder and suffer an actual loss as the result of:

- incomplete construction of a new home;
- breach of an express or implied warranty;
- failure to meet construction standards or guidelines; or
- failure to return a deposit or other payment to which the home buyer is entitled.

The Guaranty Fund applies only to contracts entered into after January 1, 2009. The Division is required to maintain the Guaranty Fund at a level of at least \$1,000,000. The Guaranty Fund is funded through a \$50 fee to be paid by home builders to the permit office together with an application for a permit for a new home. The permit offices remit the fees to the Division monthly and may retain an administrative fee of not more than 2 percent. From July 1, 2015 until June 30, 2016, there were 98 claims filed with the Guaranty Fund.

II. REGISTRATION OF BUILDERS

A. THE HOME BUILDER REGISTRATION UNIT

A central requirement of the HBRA is that all new home builders in Maryland, except for those home builders that build exclusively in Montgomery County, register with the Unit. The Home Builder Registration Unit was created by the HBRA to administer and enforce the Act. A special fund was created to fund the Unit's activities, which is paid for through the collection of registration fees. The HBRA sets the initial registration fee paid by builders at \$600 for a two-year registration. The Act further provides for renewal fees for an additional two-year period of \$300 for builders who were issued 10 or fewer building permits during the preceding year and of \$600 for builders who were issued 11 or more permits during the preceding year. HBRA §4.5-203, §4.5-303, §4.5-305. The Division's costs for the Unit include salary, benefits, and administrative costs for a ten person unit³; production and distribution of the consumer education pamphlet; continued maintenance of the website and data systems; and perhaps most importantly, enforcement costs. The Unit's ten positions include: a Director/Assistant Attorney General, an Assistant Attorney General who oversees the registration of sales representatives and cases involving the Home Builder Guaranty Fund, an Administrator who oversees builder registration, an Administrator who oversees new home warranty security plans and builder compliance with deposit protection laws, an Administrator who oversees registration of sales representatives and administration of the Home Builder Guaranty Fund, a Staff Attorney responsible for assisting with litigation, two Investigators, and two Secretaries.

B. BUILDER REGISTRATION AND RENEWAL UNDER THE HBRA

The Act establishes a registration procedure that requires builders to complete a registration form and pay the required registration fee. The Act does not provide for competency testing. The Unit has implemented the registration requirements with an objective of making registration an easy and quick procedure.

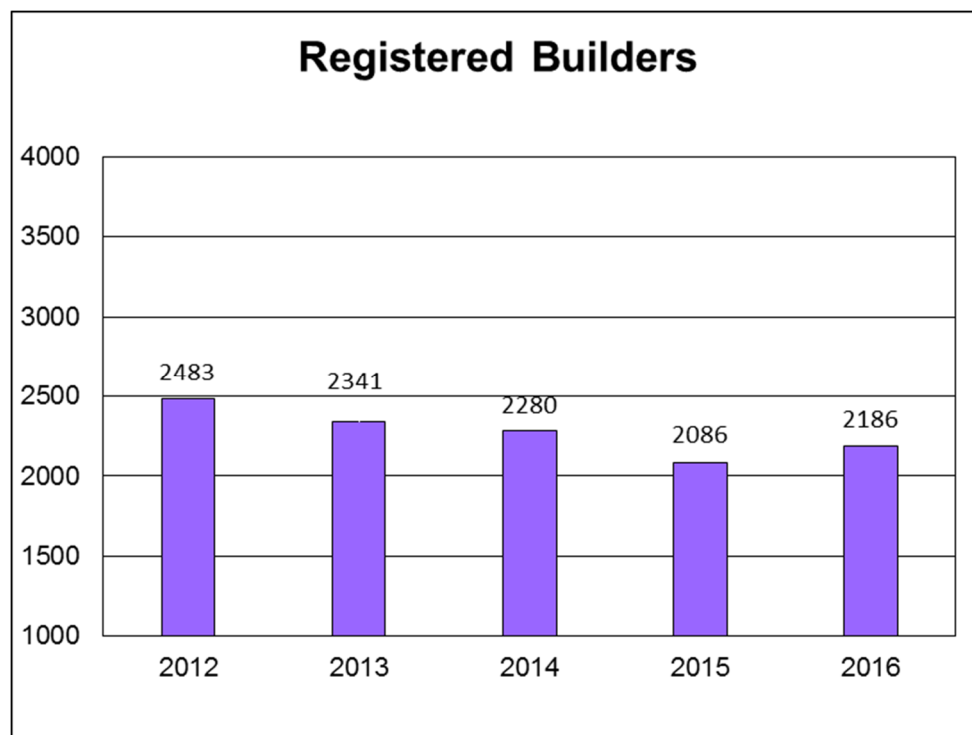
To register, builders are required to complete an application form, provide information about the principals of the company and legal proceedings involving the builder, and pay the registration fee. Each builder's registration lasts two years and expires on one of four quarterly dates based upon the date the builder initially registered: March 1, June 1, September 1, or December 1. Having registrations expire quarterly makes it easier for builders, permit offices, consumers and the Unit to keep track of whether builders are currently registered and when registrations expire. The Unit mails a renewal notice to the builder's last known address at least 60 days before the registration expires.

³ Two of the positions have been vacant for over one year.

The application provides the Unit with general information about the company or entity that is registering. It also provides the Unit with information about each "principal" of the company, which the HBRA defines to be persons with at least a 10% ownership interest, and directors, partners, officers and managers of the company. One of the purposes of the Home Builder Registration Act is to track builders who dissolve entities without meeting their financial obligations and then begin building again under a new company name. Such builders may be subject to denial or revocation of their registration under HBRA §4.5-308. To achieve this goal, the Unit must gather information from the applicants about the principals who own and operate building companies.

As of June 30, 2016, 2,186 home builders were registered with the Unit. 219 new builders registered with the Unit between July 1, 2015 and June 30, 2016.

The following chart shows the number of registered builders reported in the Annual Report since 2012.



Source: HBRU

In the past year, the Unit mailed renewal notices to the 1,199 builders that registered under the HBRA, whose initial two year registrations were due to expire between September 1, 2015 and June 1, 2016. As of June 30, 2016, 947 of these builders

have been approved for renewal. 240 builders did not renew their registrations, either notifying the Unit that they were not renewing or failing to send a renewal request or otherwise notifying the Unit of their intentions. Since January 1, 2005, builders have been able to register and renew their registrations over the Internet. Of the 947 builders that have been renewed, 912 (96%) renewed their registrations over the Internet.

C. WHO ARE MARYLAND'S BUILDERS?

The HBRA defines "home builder" and "new home" broadly to ensure that all new home builders in Maryland must be registered. HBRA §4.5-101(g) and (m). The exceptions to the HBRA are narrowly drawn.⁴ Information provided by builders in the registration process, combined with other available data, provides the following profile of Maryland Builders:

- **Number of Builders:** There were 2,186 registered builders in Maryland as of June 30, 2016. 219 of those builders registered for the first time between July 1, 2015 and June 30, 2016 and the Unit continues to receive new applications monthly.
- **Type of Construction:** The vast majority of Maryland's builders report building either custom homes (54%) or new homes (32%). Another 6% report building condominiums, 5% report building industrialized buildings, and 3% report selling or installing mobile homes.
- **Form of Business:** 47% of Maryland's builders use corporations as their form of business organization. Another 41% are limited liability companies (LLCs), 11% are sole proprietorships, and 1% are partnerships.
- **Location of Builders and Housing Construction:** Not surprisingly, the majority of Maryland's builders continue to be located in the region of Maryland that is experiencing the most new home building activity, as measured by the number of single family housing permits issued: 81.9% of building permits for single family construction were issued in the Baltimore-Washington Region, where 50.5% of Maryland's builders are headquartered. 4.4% of building permits were issued in the Eastern Shore Regions, where 16.6% of Maryland's builders are headquartered. The Southern Region had 11.9% of the building permits issued and provided headquarters for 10.2% of Maryland's builders. The Western

⁴ The HBRA excludes from registration employees, subcontractors and vendors of a registered home builder; the manufacturer of industrialized buildings unless it also installs the building; real estate developers who do not also contract for or construct homes; construction financiers; and builders who build solely in Montgomery County. HBRA §4.5-101(g)(3). Landowners who obtain building permits in their own name and who directly perform the construction on their own land for their own use are also exempted. HBRA §4.5-601.

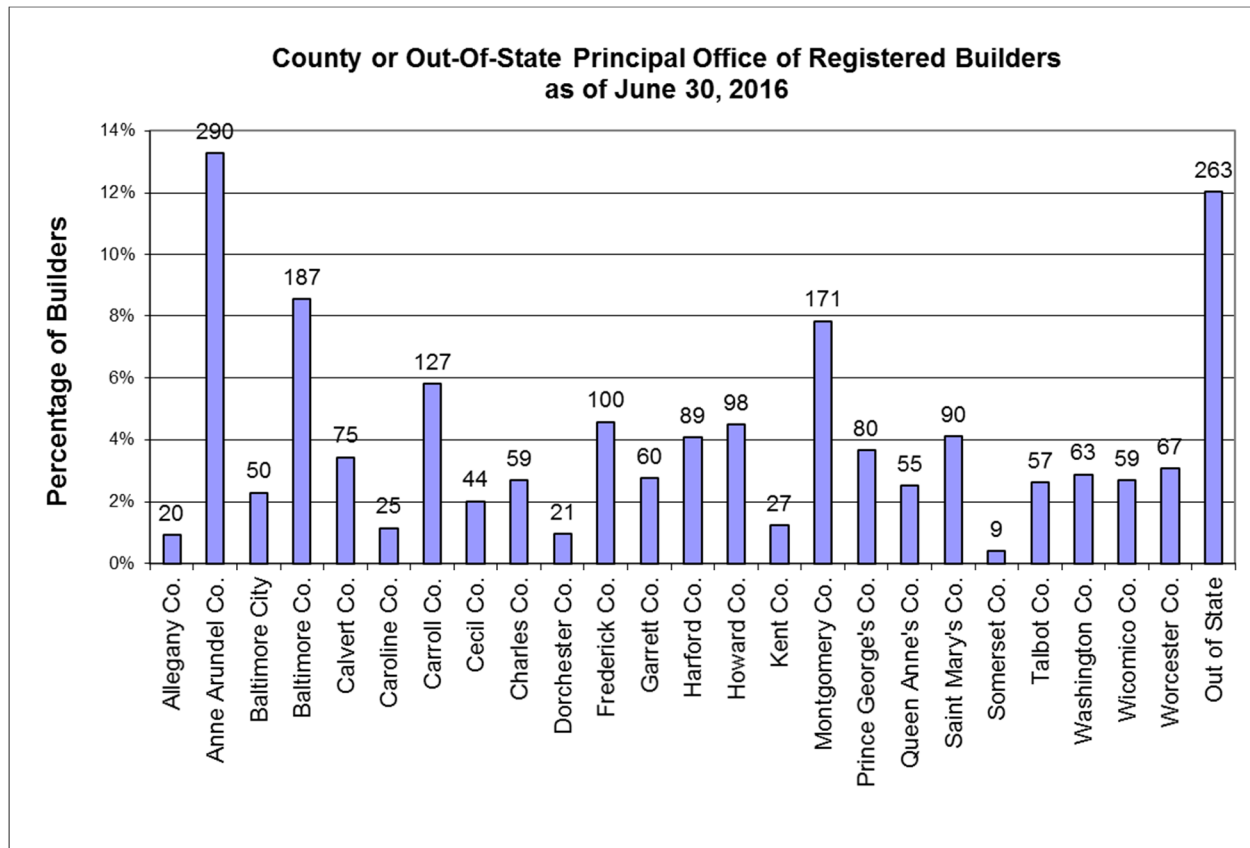
Region had 1.7% of building permits and provided headquarters for 6.5% of Maryland's builders. 12.0% of builders had headquarters that were out of state.

The following chart shows the headquarters of builders in each region, the number of single family housing permits issued in each region from July 1, 2015 through June 30, 2016, and the percentage of the total number of single family housing permits issued in Maryland in each region during that period.

Region	Percentage of Builders With Headquarters in Region	Number of Permits Issued in Region (7/1/15 -6/30/16)	Percentage of State-wide Permits Issued in Region
Baltimore Region (Anne Arundel, Baltimore City, Baltimore County, Carroll, Harford, Howard)	38.5%	6,573	39.1%
Suburban Washington Region (Frederick, Montgomery, Prince George's)	16.1%	7,212	42.9%
Upper Eastern Shore Region (Caroline, Cecil, Kent, Queen Anne's, Talbot)	9.5%	466	2.8%
Southern Region (Calvert, Charles, St. Mary's)	10.2%	2,007	11.9%
Lower Eastern Shore Region (Dorchester, Somerset, Wicomico, Worcester)	7.1%	280	1.7%
Out of State (Alabama, California, Connecticut, Delaware, Georgia, Illinois, New Jersey, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, Washington, D.C., West Virginia)	12.0%		
Western Region (Allegany, Garrett, Washington)	6.5%	283	1.7%
Totals	100%	16,821	100%

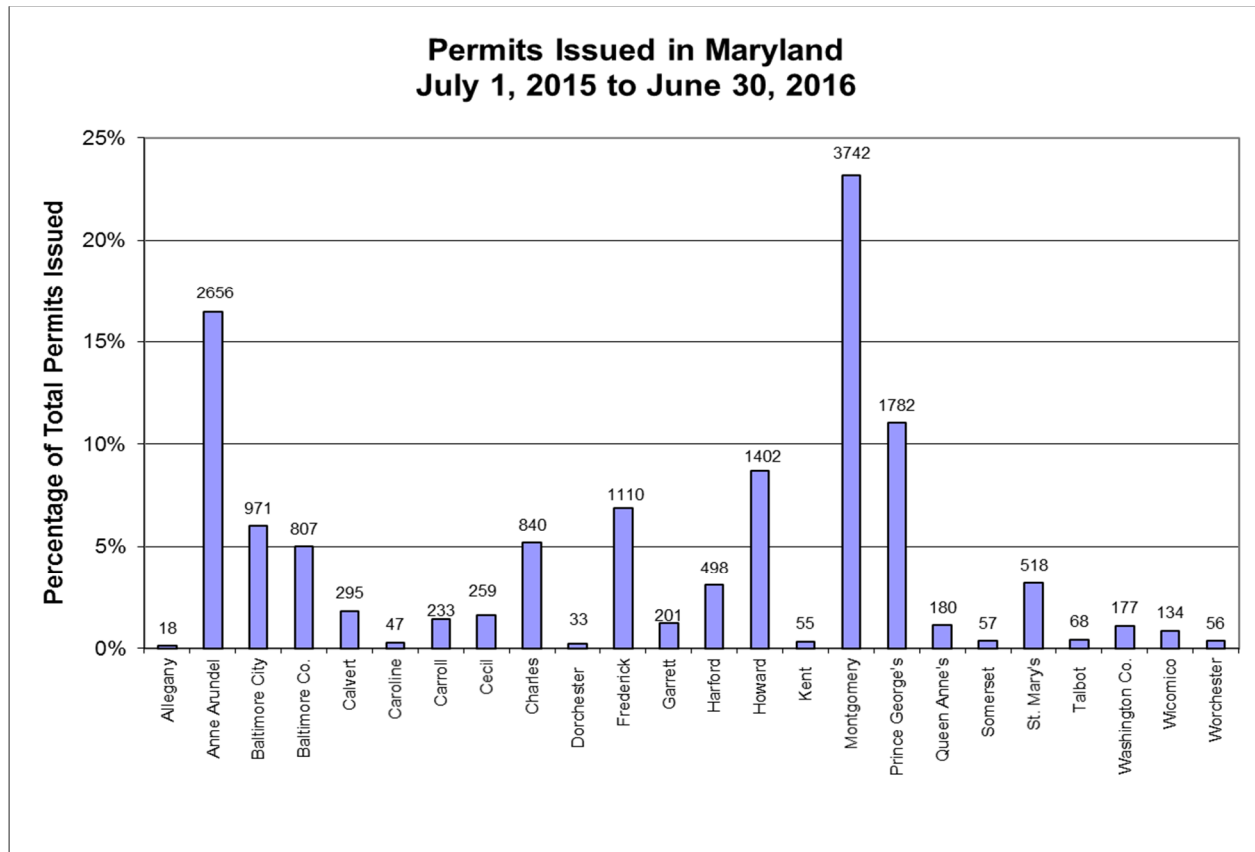
Source: HBRU and Md. Dept. of Planning, for Single Family Permits Issued July 1, 2015 through June 30, 2016

The following graph shows the breakdown of builders' headquarters for each county and how many are out of state:



Source: HBRU

The following chart shows the number of permits issued in each county from July 1, 2015 through June 30, 2016.



Source: Md. Department of Planning data, Dorchester County, Somerset County & Talbot County Permit Authority

III. **HOME BUILDER SALES REPRESENTATIVES**

Effective October 1, 2008, sales representatives for home builders were required to register with the Home Builder Registration Unit. A home builder sales representative is an individual employed by a home builder as the home builder's representative to consumers regarding the purchase of a new home from the home builder. Sales representatives are required to complete a registration form and pay a \$200 registration fee for a 2-year registration.

As of July 1, 2016, there were 598 registered sales representatives, who worked for 172 builders. A registered sales representative may be employed by more than one builder. The Unit issues a Registration Certificate to a registered sales representative, who is required to conspicuously display the Certificate at the location where the sales representative primarily works.

Additionally, home builders are required to disclose to prospective home buyers that the sales representative works for the home builder and that, while the sales representative may assist the buyer in purchasing the property, the sales representative's duty of loyalty is to the home builder.

IV. **LAW ENFORCEMENT**

The Home Builder Registration Act provides an enforcement mechanism with the objectives of (1) keeping unregistered builders from building in Maryland and (2) preventing registered builders who establish a bad track record or engage in violations of the law from continuing to build in Maryland.

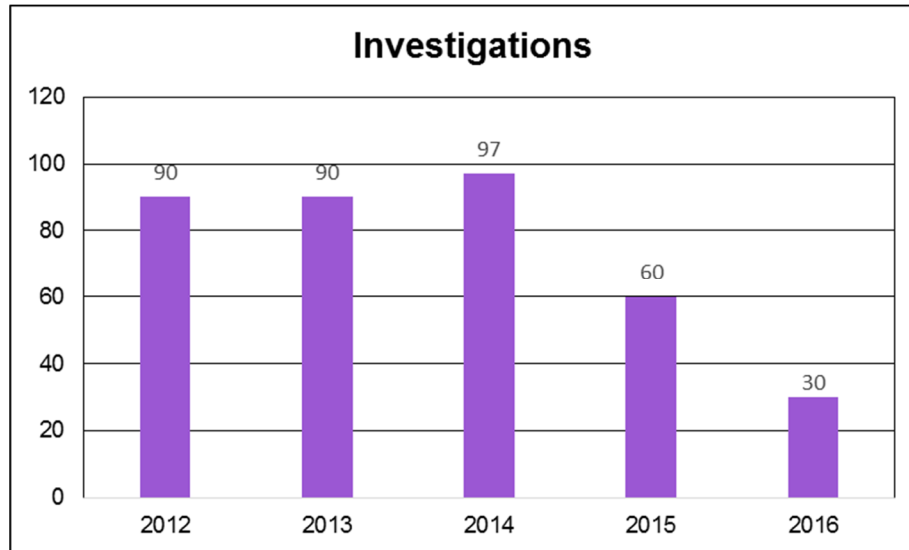
To accomplish these objectives, the HBRA prohibits unregistered builders from building and authorizes the Unit to use civil administrative proceedings to seek a cease and desist order and a civil penalty of up to \$1,000 per day of unregistered practice. HBRA §§ 4.5-501 and 4.5-502. In addition, the HBRA provides that the Unit may deny registration to an applicant, reprimand a registrant, suspend or revoke a registration, or impose a civil penalty if the Unit determines that the applicant or registrant has engaged in any of the specified practices stated in HBRA §4.5-308.

The Unit opened 30 investigations between July 1, 2015 and June 30, 2016 after receiving reports of unregistered builders or violations of the Home Builder Registration Act, the Consumer Protection Act, the New Home Warranties Act or violations of the laws governing deposits on new homes. Seventeen of the investigations resulted in settlements; enforcement actions have been filed in another five; and eight remain under continuing investigation as of June 30, 2016. The Unit receives information from many sources, including consumers, other builders, subcontractors, and permit offices. The results of some of these enforcement actions are summarized as follows:

-
- The Consumer Protection Division issued a Final Order finding that an Anne Arundel County builder entered into contracts to construct four homes, took deposits and payments toward the construction of the homes, and then failed to begin or complete construction or return the money paid. The Final Order found violations of the Home Builder Registration Act, the Custom Home Protection Act, and the Consumer Protection Act and ordered that the builder and its principals pay restitution of \$399,038.37, economic damages of \$155,240.03, civil penalties of \$26,000.00, and cost of \$6,446.10
 - The Consumer Protection Division issued a Final Order finding that a Prince George's County builder entered into a contract to construct two homes, took deposits and payments toward the construction of the homes, and then failed to complete construction, pay subcontractors, or return the money paid. The Final Order found violations of the Home Builder Registration Act, the Custom Home Protection Act, the New Home Deposits Act, and the Consumer Protection Act and ordered that the builder and its principals pay restitution of \$124,665.77, economic damages of \$46,216.86, and civil penalties of \$20,000.00.
 - The Home Builder Registration Unit denied the application to register of a Baltimore County builder for violation of the Home Builder Registration Act. The company's principals had previously been principals of a builder whose registration was revoked for failing to post a performance bond as required by an Assurance of Discontinuance the builder entered into with the Home Builder Registration Unit.
 - The Home Builder Registration Unit filed a Statement of Charges seeking injunctive relief, restitution, economic damages, and civil penalties against a Howard County builder and its related entities for violations of the Home Builder Registration Act, the Maryland Express and Implied Warranties Act, and the Consumer Protection Act. The Home Builder Registration Unit alleged that three of the entities, owned by related principals and corporate entities, entered into contracts to construct new homes for consumers in Maryland without being registered. The Home Builder Registration Unit further alleged that the contracts that the companies entered into with consumers to construct their homes included provisions that improperly attempted to waive implied warranties and the consumer's right to consequential damages. Finally, the charges alleged that some of the homes delivered by one entity had defects that allowed water infiltration, which the company had failed to remedy.
 - The Home Builder Registration Unit filed a Statement of Charges seeking injunctive relief, restitution, economic damages, and civil penalties against a Harford County builder for contracting to construct homes for seven consumers in Anne Arundel, Baltimore, and Montgomery Counties and then failing to begin or complete construction of the homes or return the money paid. The Home Builder

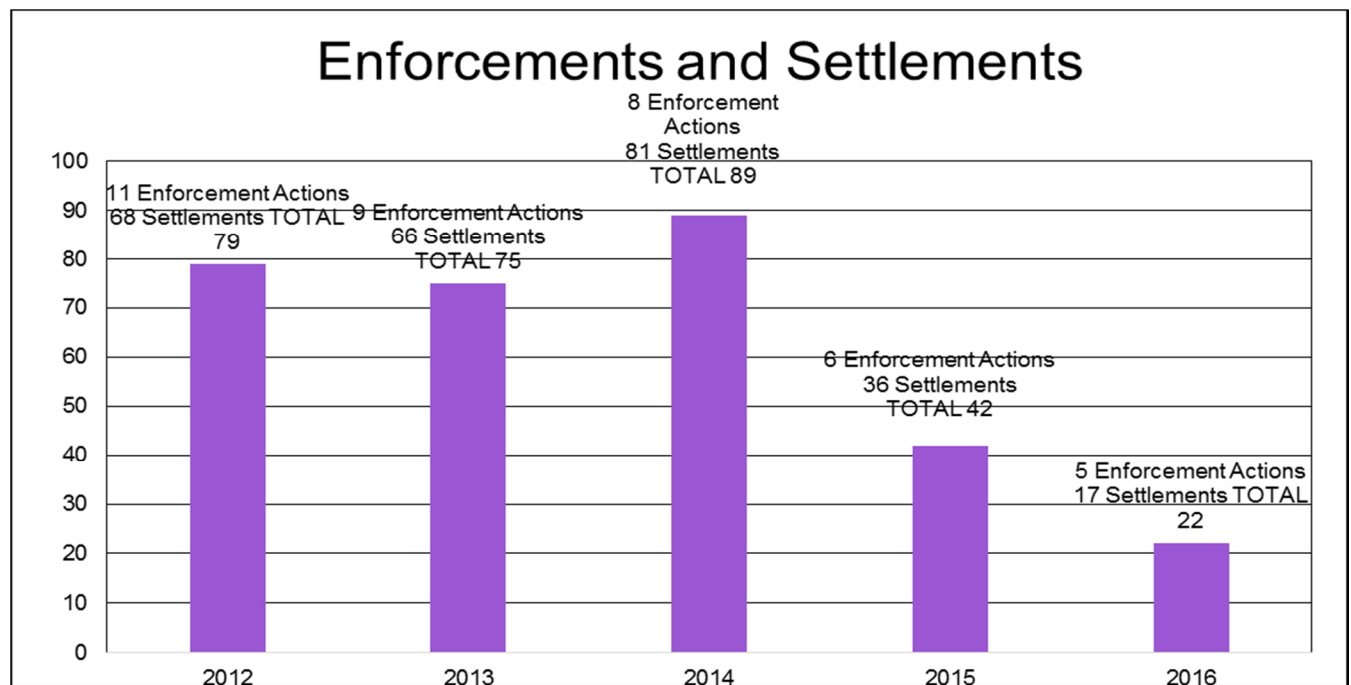
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- Registration Unit alleged that the builder violated the laws governing deposits on new homes by failing to maintain proper protection for deposits and payments, and violated the Home Builder Registration Act and Consumer Protection Act by failing to begin or complete the homes.
 - The Office of Administrative Hearings issued a Proposed Decision finding that a Queen Anne's County builder and its principals entered into contracts to construct nine homes, took deposits and payments toward the construction of the homes, and then failed to begin or complete construction or return the money paid. The Proposed Decision found violations of the Home Builder Registration Act, the New Home Deposits Act, the Custom Home Protection Act, and the Consumer Protection Act and recommended that the builder and its principals pay restitution, civil penalties, economic damages, and costs.
 - The Office of Administrative Hearings issued a Proposed Decision finding that a Wicomico County builder entered into contracts with consumers to construct six homes and then failed to either begin or complete construction of the homes, pay subcontractors, or return the money paid. The Proposed Decision found violations of the Home Builder Registration Act, the New Home Deposits Act, the Custom Home Protection Act, and the Consumer Protection Act and recommended that the builder and its principal pay restitution, civil penalties, economic damages, and costs.
 - The Home Builder Registration Unit entered into Assurances of Discontinuance with seventeen builders to settle allegations that the companies acted as home builders without having registered with the Unit in violation of the Home Builder Registration Act or engaged in other violations. The companies brought their registrations into compliance, agreed to penalties totaling \$15,000.00, and agreed to submit any complaints that cannot be resolved through mediation to binding arbitration through the Division's Arbitration program. The builders were located in Anne Arundel, Baltimore, Calvert, Charles, Frederick, Howard, Montgomery, and Prince George's Counties.

The following chart shows the number of Investigations reported in the Annual Reports since 2012.



Source: HBRU

The following chart shows the number of Enforcement Actions reported in the Annual Reports since 2012.



Source: HBRU

V. COMMUNICATION WITH BUILDERS AND CONSUMERS**A. OUTREACH TO BUILDERS**

The Unit has continued to correspond with builders to keep them updated about issues affecting them. The Unit provides builders with two months' notice that their registrations will be expiring and provides them with the information and forms they will need to renew their registrations. The Unit also handled numerous builder inquiries by phone and by e-mail about the Home Builder Registration Act's registration and renewal processes and corresponded with builders about the requirements of any amendments to the law.

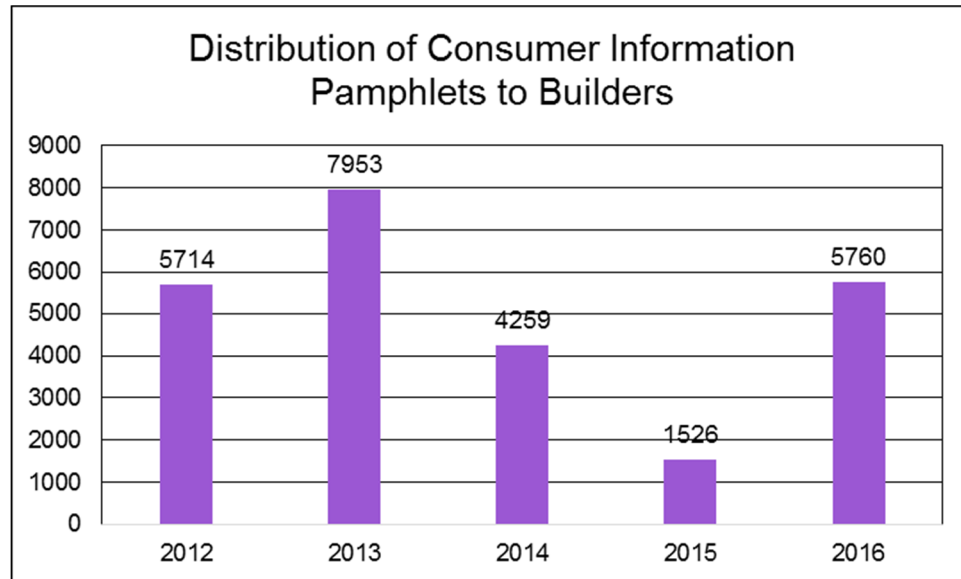
B. CONSUMER EDUCATION PAMPHLET

The HBRA requires that the Unit develop a consumer information pamphlet describing the rights and remedies of consumers in the purchase of a new home and providing any other information that the Division considers reasonably necessary to assist consumers in the purchase of a new home. The law further requires that the consumer information pamphlet be given to consumers by builders before they sign a contract to purchase a new home and that the receipt of the consumer information pamphlet be acknowledged in writing. HBRA §4.5-202(c).

The Unit consulted with the industry, and initially developed and published a consumer education pamphlet, *BUYING A NEW HOME - Consumer Rights and Remedies Under Maryland Law*. The Unit also drafted and distributed a model form for the consumer to sign to acknowledge receipt of the pamphlet. The Unit regularly updates the pamphlet to reflect changes to the law. A copy of the revised pamphlet is available on our website at <http://www.marylandattorneygeneral.gov/Pages/CPD/Homebuilder/default.aspx>

As of June 30, 2015, the Unit had distributed a total of 263,490 consumer information pamphlets to builders. Between July 1, 2015 and June 30, 2016, the Unit distributed 5,760 pamphlets to builders.

The following chart shows the number of Consumer Information Booklets distributed to Builders since 2012.



Source: HBRU

C. HBRU WEBSITE

The Home Builder Registration Unit has maintained and updated its website to make information readily available to consumers, builders, and permit offices. The website has been operational since January, 2001 and is updated regularly as information changes. Since the website can be accessed by anyone with Internet access, it is a significant mode of outreach and is an educational resource for both consumers and builders. The website provides consumers, permit offices and others the ability to search for builders either by the name of the builder or by registration number. The website address is:

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

On the website can be found:

- Information about the Home Builder Registration Unit, the Home Builder Registration Act, and the responsibility of builders and sales representatives pursuant to the Act.
- A list of currently registered builders that can be searched either by builder name or by registration number.

- Registration materials including all the registration forms. Builders and sales representatives are able to register and renew their registrations over the Internet.
- The Home Builder Registration Act and other applicable laws, and updates to those laws.
- The consumer information pamphlet developed by the Home Builder Registration Unit, *BUYING A NEW HOME - Consumer Rights and Remedies Under Maryland Law*.
- The Builder New Home Disclosure Form.
- A sample Surety Bond and Letter of Credit that builders can use for the protection of consumer deposits.
- Previous Annual reports of the Home Builder Registration Unit.

VI. **COORDINATION WITH LOCAL PERMIT OFFICES**

Permit offices play a pivotal role in implementing the Home Builder Registration Act. First, the building and permits department of a county may not issue a permit for home building unless the permit includes the home builder registration number of a registrant. HBRA § 4.5-601. This is the critical first line of defense against unregistered builders. Second, local permit offices are required to notify the Unit about any builder who fails to correct a building code violation within a reasonable period of time.

The Unit has communicated regularly with the 66 local and municipal permit offices across the state. The Unit continues to e-mail and send out printed copies of the lists of registered and expired builders to local permit offices on a monthly basis and communicates with them regularly. Additionally, permit offices are encouraged to check the Unit's website to find out if a builder applying for a permit is registered. The Unit also coordinates with local permit offices regarding the payment of fees by builders to fund the Home Builder Guaranty Fund.

VII. **EVALUATING CONSUMER AND BUILDER DISPUTE RESOLUTION**

Between July 1, 2015 and June 30, 2016, the Mediation Unit of the Consumer Protection Division handled 133 written consumer complaints filed against 71 different home builders. When a consumer complaint is filed with the Consumer Protection Division, a mediator from the Mediation Unit contacts both the builder and consumer and assists them in resolving their dispute. A mediated agreement is possible only if both parties can agree upon mutually acceptable terms. A mediation is considered successful if it results in an agreement. The Division also offers arbitration at no cost to the parties if

the builder and consumer are unable to resolve the complaint through mediation and both the builder and consumer agree to submit their dispute to arbitration. Effective January 1, 2009, consumers who are unable to resolve their complaints through mediation are able to submit their claims to the Home Builder Guaranty Fund.

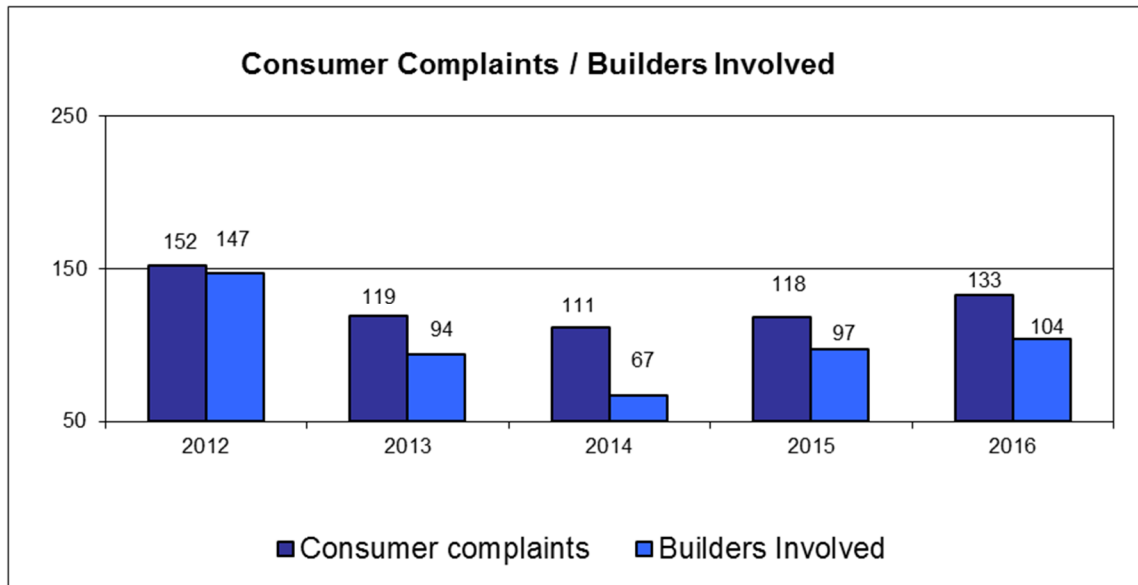
Of the complaints received by the Division's Mediation Unit, 78% of the complaints were mediated, including 3% of those which resulted in arbitration. Overall, 6% were filed for information only; 5% were acknowledged by the businesses against which the complaints were filed, 5% were sent to the Guaranty Fund for possible claims; and 3% had other miscellaneous resolutions. Twenty-nine (22%) of the complaints received by the Division resulted in positive relief for consumers, such as the defects being corrected by the builder or money being paid to the consumer. The total amount of money or savings obtained for consumers in these complaints was \$158,094.00.

The 133 written complaints raised the following issues:

- *Construction Defect Issues* (56);
- *Incomplete Construction* (47), including disputes between the builder and owner about whether construction has been completed;
- *Contract Disputes* (7);
- *Misrepresentation Claims* (3), including claims that the finished home was not constructed in the manner promised by the builder;
- *Warranty Issues* (4); and
- *Deposit Issues* (14), including consumers seeking return of their deposits after being denied financing or withdrawing from their contracts for other reasons.

Consumers also filed complaints against builders with the Montgomery County Office of Consumer Protection and with the Howard County Office of Consumer Affairs. Between July 1, 2015 and June 30, 2016, there were 7 complaints filed in Montgomery County. In Howard County, 14 were handled during this period.

The following chart shows the number of Consumer Complaints and the Number of Builders Involved in those complaints by year since 2011.



Source: HBRU

VIII. **WARRANTY PROGRAM**

New Home Warranty Security Plans are required to register with the Home Builder Registration Unit. There are seven third-party warranty plans approved for operation in Maryland. The Unit requests information from each plan concerning their operations and claims experience to monitor compliance with the requirements of Maryland law.

In calendar year 2015, the seven approved plans reported a total statewide enrollment of 60,119 homes. Also, in 2015 the warranty plans enrolled 5,618 new homes, generating \$1,951,141 in revenue. The plans reported a total of 111 consumer claims for warranty coverage in 2015 with 23 claims approved for coverage and 78 claims being denied. The warranty plans reported that 26 approved claims were resolved without action by the plan. The warranty plans settled 14 approved claims by making payments to the consumers.

New Home Warranty Security Plans are required to notify the Home Builder Registration Unit of each decision to deny warranty coverage for a claim or any part of a claim. From July 1, 2015 to June 30, 2016 the Unit received notice of 56 denied warranty claims. The claims that were denied are categorized with the plan's response as follows:

- *Structural Defects* (26), including the plan's claim that the defect did not meet the plan's definition of a structural defect (26);
- *Material/Workmanship Defects* (26), including warranty coverage expired (15), defect is excluded by plan (5), and no defect under plan performance standard (6);
- *Equipment/Appliance/Fixture Defects* (3), including warranty coverage expired (1), and no defect under plan performance standard (2);
- *Plumbing/Electrical/HVAC* (1), including no defect under plan performance standard (1).

Table of Reported Claims

Type of Claim	Claims Denied in FY 2014	Claims Denied in FY 2015	Claims Denied in FY 2016
Structural Defects	48	29	26
Material/Workmanship Defects	22	19	26
Equipment/Appliance/Fixture Defects	1	0	3
Plumbing/Electrical/HVAC Defects	1	2	1

Note: The 78 denied claims that the warranty plans reported were for the 2015 calendar year (January 1, 2015 to December 31, 2015), while the 56 denied claim notices the Unit received were during the fiscal year (July 1, 2015 to June 30, 2016).

IX. **HOME BUILDER GUARANTY FUND**

During the 2008 session, the General Assembly created a Home Builder Guaranty Fund to protect buyers of new homes who purchase a new home from a registered home builder and suffer an actual loss as the result of:

- incomplete construction of a new home;
- breach of an express or implied warranty;
- failure to meet construction standards or guidelines; or
- failure to return a deposit or other payment to which the home buyer is entitled.

The Guaranty Fund applies only to contracts entered into after January 1, 2009.

The Division is required to maintain the Guaranty Fund at a level of at least \$1,000,000. The Guaranty Fund is funded through a \$50 fee to be paid by home builders to the permit office together with the application for a permit for a new home. In the case of a multi-family dwelling, such as a condominium, the Guaranty Fund fee must be paid for each unit to be constructed. The permit offices remit the fees to the Division monthly and may retain an administrative fee of not more than 2 percent. The balance of the Guaranty Fund is currently maintained in an amount consistent with the statutory requirement.

Claims against the Guaranty Fund are limited to not more than \$50,000 to one claimant or not more than \$300,000 to all claimants against a single registered builder. If a consumer is awarded payment from the Guaranty Fund, the builder's registration is suspended until the Guaranty Fund has been repaid.

Under the Guaranty Fund law, consumers and builders are encouraged to resolve any issues voluntarily before a claim against the Guaranty Fund can proceed. First, consumers must give the builder notice and an opportunity to remedy any defects with the new home. Second, if the consumer is still not satisfied, the Division's Mediation Unit will attempt to resolve the matter through mediation between the consumer and the builder. If the Division's mediation efforts are unsuccessful, the consumer may proceed with a claim against the Guaranty Fund.

From July 1, 2015 until June 30, 2016, there were 98 claims filed with the Guaranty Fund.

- Of those claims, sixteen were settled through mediation with consumers receiving awards totaling \$115,884.00, in seven claims the builders agreed to repair the defective work, and another three claims are currently being mediated.
- Two claims were referred to arbitration and are pending a decision by the arbitrator.
- Forty-six claims were scheduled for hearings at the Office of Administrative Hearings. Final Orders were issued resolving sixteen claims that awarded Guaranty Fund relief to the claimants totaling \$611,221.24. Ten claims are pending issuance of a Final Order by the Consumer Protection Division and thirteen claims are pending issuance of proposed decisions from the Office of Administrative Hearings. Three claim were settled by the consumer and builder prior to or at the hearing and four claims are awaiting a hearing before the Office of Administrative Hearings.
- Four claims were withdrawn by the claimants.

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- Thirteen claims remain in the investigation stage.
 - Fourteen claims were determined not to be eligible for relief from the Guaranty Fund.

From July 1, 2015 until June 30, 2016, the Guaranty Fund paid a total of \$611,221.24 to claimants for actual losses resulting from acts or omissions by a registrant in relation to new home construction and the registrations of five builders were suspended as a result.

X. **LEGISLATION AFFECTING HOME BUILDERS**

The General Assembly enacted the following legislation affecting home builders during the 2016 session:

- **Chapter 705 (SB 968)/Chapter 706 (HB 1448) – Home Builder Registration Fees:** These bills increase the registration fees paid by home builders and home builder sales representatives in order to close a deficit in the Home Builder Registration Fund, which is intended to support the Division's Home Builder Registration Program. The bills increased the initial registration fee paid by home builders to \$800 for a two year registration; the fee paid by home builders to renew their registration for an additional two year period to \$400 for a builder who built 10 or fewer homes the previous year, \$800 for a builder who built between 11 and 74 homes the previous year, and \$1,200 for a builder who built 75 or more homes the previous year; the administrative fee paid by home builders who build exclusively in Montgomery County to \$250; and the registration and renewal fee paid by home builder sales representatives for a two-year registration to \$300.
- **Chapter 370 (SB 285) – Subcontractor Licensing:** This bill eliminates the requirement that a subcontractor be licensed by the Maryland Home Improvement Commission. The bill further requires the Commission to identify subcontractors who should instead be licensed as a home improvement contractor.