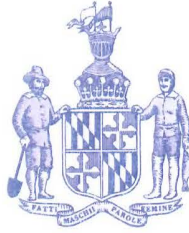


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STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

Writer's Fax No.

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(410) 576-6307

April 21, 2021

The Honorable Bill Ferguson and
The Honorable Adrienne Jones, Co-Chair
Legislative Policy Committee
Department of Legislative Services, Rm 200
90 State Circle
Annapolis, MD 21401

The Honorable Dereck E. Davis, Chairman
Economic Matters Committee
Maryland General Assembly
House Office Building, Rm 231
Annapolis, MD 21401-1912

The Honorable Delores G. Kelley, Chair
Senate Finance Committee
Miller Senate Office Building, 3 East Wing
11 Bladen Street
Annapolis, MD 21401

The Honorable Lawrence J. Hogan, Jr.
State House
Annapolis, MD 21401

Re: *2020 Annual Report of the Home Builder Registration Unit*

Dear Sirs/Madams:

The Home Builder Registration Unit is submitting the enclosed report entitled *Annual Report of the Home Builder Registration Unit* for Fiscal Year 2020 in accordance with our statutory mandate (Md. Code. Ann., Business Regulation §§ 4.5-101 through 4.5-801; SB 380/Ch. 522, Sec. 4, 2000 as amended by SB 1008/Ch. 480, Sec. 2, 2008 and HB 1557/Ch. 481, Sec. 2, 2008).

If you have any questions regarding the report or our implementation of the Maryland Home Builder Registration Act, please do not hesitate to contact me at (410) 576-6307.

Sincerely,

Steven M. Sakamoto-Wengel

Steven M. Sakamoto-Wengel
Assistant Attorney General
Consumer Protection Division

cc: Sarah T. Albert, Mandated Reports Specialist (letter plus 5 copies of Annual Report)





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

2020 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” or “HBRU”) 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 2020.

The report focuses on the following areas:

- **Registration of Builders:** 2,420 builders were registered as of June 30, 2020. 128 of those builders registered for the first time between July 1, 2019 and June 30, 2020. The number of registered builders remained steady over the past fiscal year, with a decrease of less than 1.2%.
- **Registration Renewal:** From July 1, 2019 to June 30, 2020, the Unit mailed renewal notices to 1187 builders whose registrations were due to expire by June 1, 2020. 927 of those builders renewed their registrations as of June 30, 2020.
- **Law Enforcement:** The Unit opened 16 investigations between July 1, 2019 and June 30, 2020, after receiving reports of unregistered building or potential 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. Six of the investigations resulted in settlements; four resulted in charges being filed and final orders are pending;

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

one was closed administratively; one resulted in the builder's registration being revoked; and 12 remained under continuing investigation as of June 30, 2020. The Unit receives information from many sources, including consumers, other builders, subcontractors, and permit offices.

● **Education of Builders and Consumers:** As of June 30, 2020, the Unit had distributed over 275,000 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. Between July 1, 2019 and June 30, 2020, the Unit distributed 1503 pamphlets to builders by mail; and the pamphlet was downloaded 621 times by 549 online users of our website.

● **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 routinely updated and 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 152 consumer complaints involving 88 home builders between July 1, 2019 and June 30, 2020. 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:** Sales representatives for home builders are 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 \$300 registration fee for a 2-year registration. As of July 1, 2020, there were 689 registered sales representatives who worked for 168 builders.

• **Home Builder Guaranty Fund:** 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, 2019 until June 30, 2020, there were 105 claims filed with the Guaranty Fund by buyers who alleged an actual loss as the result of a new home purchase agreement.

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 \$800 for a two-year registration. The Act further provides for renewal fees for an additional two-year period of \$400 for builders who were issued 10 or fewer building permits during the preceding year; \$800 for builders who were issued 11 to 74 permits during the preceding year; and \$1,200 for builders who were issued 75 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 unit; 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 handles cases involving enforcement actions against home builders, a Staff Attorney who is responsible for cases involving the Home Builder Guaranty Fund, an Administrator who oversees registration of builders and sales representatives, an Administrator who oversees new home warranty security plans and builder compliance with deposit protection laws, an Administrator who oversees the administration of the Home Builder Guaranty Fund, 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 the objective of making registration an easy and quick process.

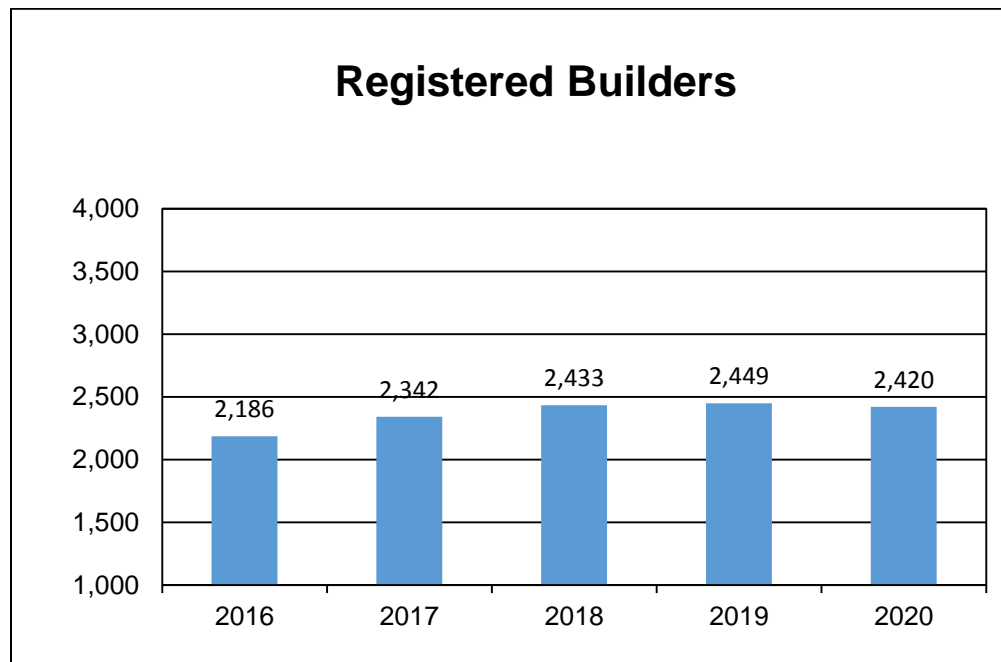
To register, builders are required to complete an application form, provide information about the principals of the company and legal proceedings involving the builder, and pay the registration fee. Each builder's registration lasts two years and expires on one of four quarterly dates based upon the 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.

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, 2020, 2,420 home builders were registered with the Unit. 128 new builders registered with the Unit between July 1, 2019 and June 30, 2020.

The following chart shows the number of registered builders reported in the Annual Report since 2016:



Source: HBRU

In the past year, the Unit mailed renewal notices to the 1187 builders that were registered under the HBRA whose initial two year registrations were due to expire between September 1, 2019 and June 1, 2020. As of June 30, 2020, 927 of these builders have been approved for renewal. 232 builders did not renew their registrations, either notifying the Unit that they were not renewing, failing to send a renewal request or otherwise notifying the Unit of their intentions; one builder was suspended; and, 27 builders' applications are under review. Builders are able to register and renew their registrations over the Internet. Of the 927 builders that have been renewed, 913 (98%) 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.³ Information provided by builders in the registration process, combined with other available data, provides the following profile of Maryland Builders:

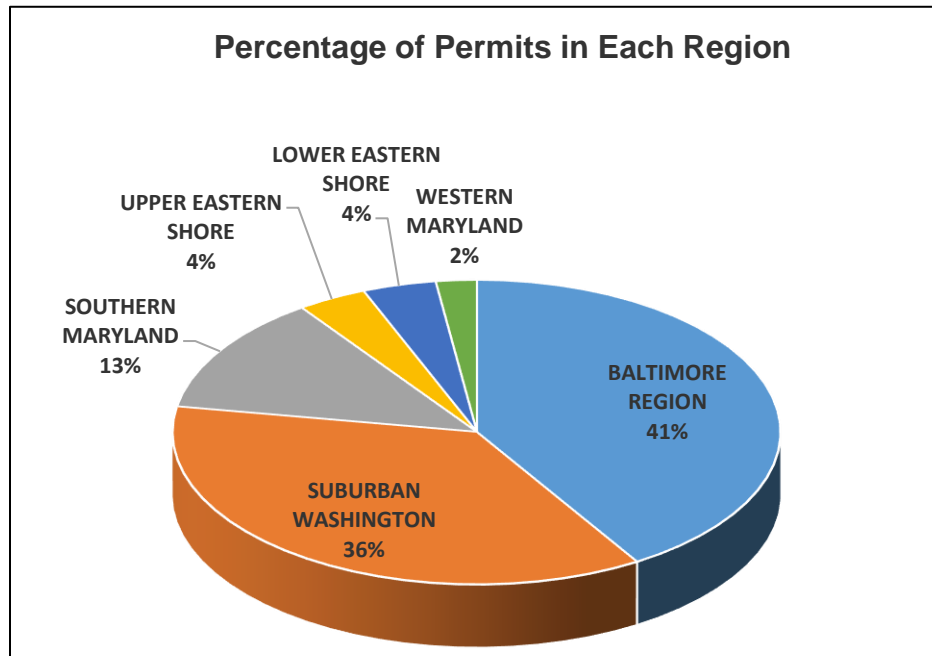
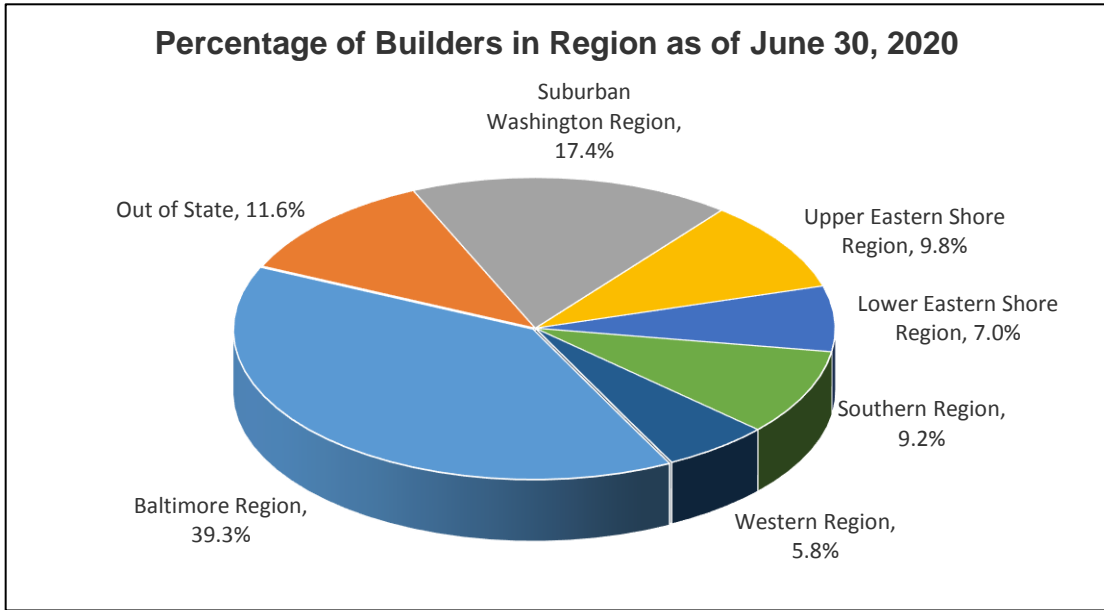
- **Number of Builders:** There were 2,420 registered builders in Maryland as of June 30, 2020. 128 of those builders registered for the first time between July 1, 2019 and June 30, 2020 and the Unit continues to receive new applications monthly.
- **Type of Construction:** The vast majority of Maryland's builders report building either custom homes (55%) or other new homes (31%). Another 6% report building condominiums, 5% report building industrialized buildings, and 3% report selling or installing mobile homes.
- **Form of Business:** 46% of Maryland's builders use limited liability companies (LLCs) as their form of business organization. Another 43% are corporations, 10% are sole proprietorships, and 1% are partnerships.
- **Location of Builders and Housing Construction:** 41.2% of building permits for single family construction were issued in the Baltimore Region, where 39.3% of Maryland's builders are headquartered, and 36.5% of building permits for single family construction were issued in the Suburban Washington Region, where 17.4% of Maryland's builders are headquartered. 7.6% of building permits were issued in the Eastern Shore Regions, where 16.8% of Maryland's builders are headquartered. The Southern Region had 12.5% of the building permits issued and provided headquarters for 9.2% of Maryland's builders. The Western Region had 2.2% of building permits and provided headquarters for 5.8% of Maryland's builders. 11.6% of builders had headquarters that were out of state.

The following charts show the headquarters of builders in each region, the number of single family housing permits issued in each region from July 1, 2019 through June 30, 2020, and the percentage of the total number of single family housing permits issued in Maryland in each region during that period.

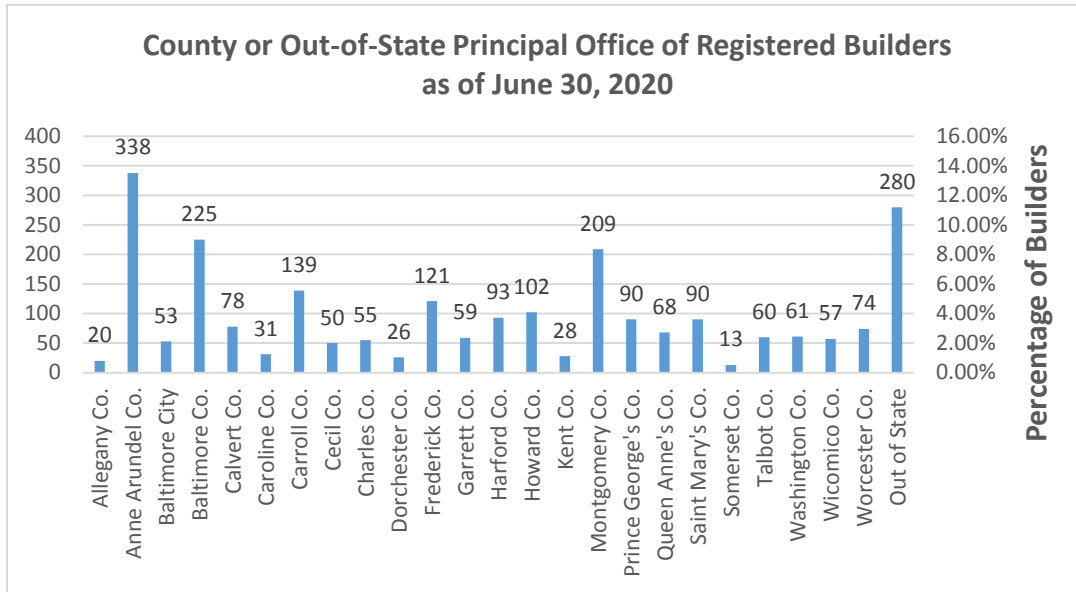
³ The HBRA excludes from registration employees, subcontractors and vendors of a registered home builder; the manufacturer of industrialized buildings unless it also installs the building; real estate developers who do not also contract for or construct homes; construction financiers; and builders who 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	Percentage of Builders With Headquarters in Region	Number of Permits Issued in Region (7/1/19- 6/30/20)	Percentage of State-wide Permits Issued in Region
Baltimore Region (Anne Arundel, Baltimore City, Baltimore County, Carroll, Harford, Howard)	39.3%	6,945	41.2%
Suburban Washington Region (Frederick, Montgomery, Prince George's)	17.4%	6,151	36.5%
Upper Eastern Shore Region (Caroline, Cecil, Kent, Queen Anne's, Talbot)	9.8%	623	3.7%
Southern Region (Calvert, Charles, St. Mary's)	9.2%	2,115	12.5%
Lower Eastern Shore Region (Dorchester, Somerset, Wicomico, Worcester)	7.0%	658	3.9%
Western Region (Allegany, Garrett, Washington)	5.8%	366	2.2%
Out of State (California, Connecticut, Delaware, Florida, Georgia, Illinois, Missouri, New Hampshire, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, Washington, D.C., West Virginia)	11.6%		
Totals	100%	16,858	100%

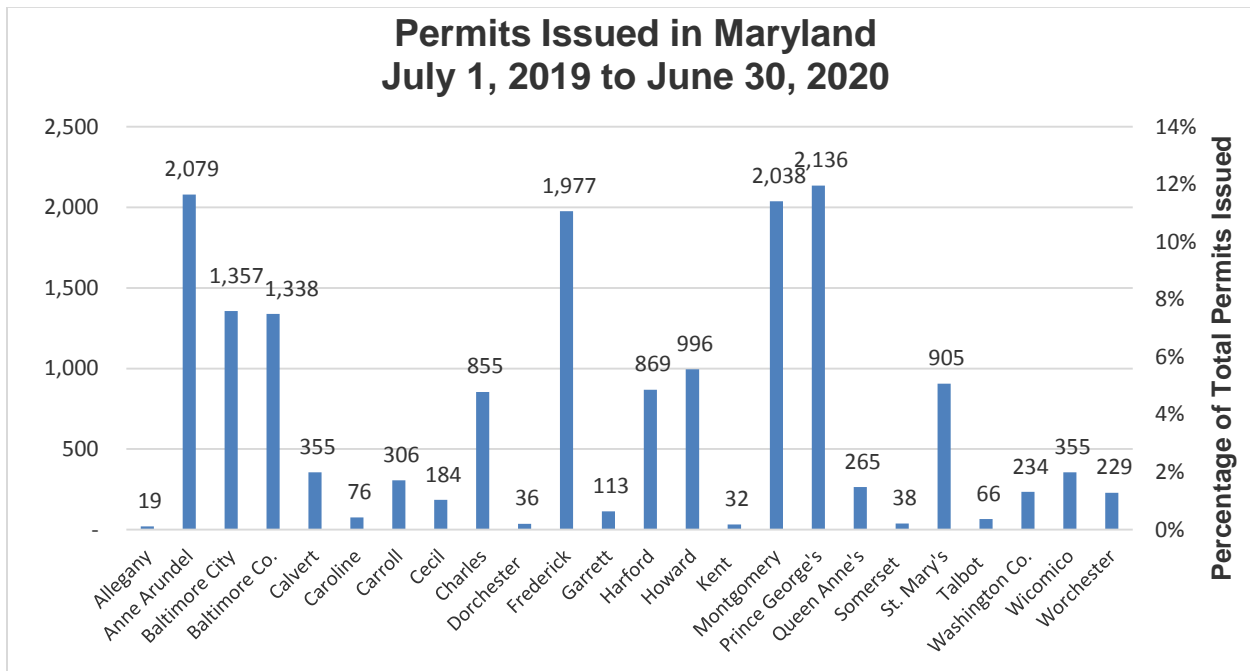
Source: HBRU and Md. Dept. of Planning, and Allegany, Caroline, Dorchester, Kent, & Talbot County Permit Offices for Single Family Permits Issued July 1, 2019 through June 30, 2020.



The following graphs show: (1) the breakdown of builders' headquarters for each county and how many are out of state; and (2) the number of permits issued in each county from July 1, 2019 through June 30, 2020:



Source: HBRU



Source: HBRU and Md. Dept. of Planning, and Allegany, Caroline, Dorchester, Kent, & Talbot County Permit Offices for Single Family Permits Issued July 1, 2019 through June 30, 2020.

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 \$300 registration fee for a 2-year registration.

As of July 1, 2020, there were 689 registered sales representatives who worked for 168 builders. 58 new sales representatives registered with the Unit between July 1, 2019 and June 30, 2020. 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 16 investigations between July 1, 2019 and June 30, 2020 after receiving reports of unregistered builders or potential 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. Including matters that were still pending at the end of the prior fiscal year, six investigations resulted in settlements; four resulted in charges being filed and final orders are pending; one was closed administratively; one resulted in the builder's registration being revoked; and 12 remained under continuing investigation as of June 30, 2020.

The Unit receives information from many sources, including consumers, other builders, subcontractors, and permit offices. The results of some of the Unit's enforcement actions are summarized as follows:

- The Consumer Protection Division entered into a Final Order by Consent with two Somerset County builders and their principal for impersonating registered home builders when in fact they were not registered with the Unit, fraudulently obtaining a builder registration, and misrepresenting to consumers that they were lawfully registered to act as home builders. The Final Order by Consent found violations of the Home Builder Registration Act and the Consumer Protection Act, and ordered the builders and their principal to pay \$20,000 in civil penalties and \$500.00 in costs. In addition, the Final Order by Consent required the builders and their principal to institute protections for homebuyers, such as securing a \$400,000 performance bond for the benefit of consumers, prior to engaging in any home building activity in Maryland.
- The Consumer Protection Division entered into an Assurance of Discontinuance with three Harford County builders and their principal to settle allegations that they violated the Home Builder Registration Act, the Consumer Protection Act, and a prior Assurance of Discontinuance by acting as or holding themselves out as home builders without being registered, failing to include required provisions, notices, and disclosures in contracts with consumers, misrepresenting to consumers they were lawfully entitled to act as home builders, and attempting to fraudulently obtain a registration. The builders and their principal agreed to, among other things, pay a civil penalty of \$6,000 and costs of \$500, maintain a performance bond totaling \$200,000 for the benefit of consumers, and arbitrate any unresolved consumer complaints through the Division's arbitration program for the next five years.
- The Consumer Protection Division entered into an Assurance of Discontinuance with a Baltimore County builder and its principal to settle allegations that they violated the Home Builder Registration Act and the Consumer Protection Act by acting as or holding themselves out as home builders without being registered, failing to include required provisions, notices, and disclosures in contracts with consumers, and misrepresenting to consumers they were lawfully authorized to act as a home builder when they were not authorized. The builder and its principal agreed to, among other things, pay a civil penalty of \$2,000 and costs of \$500, maintain a performance bond in the amount of \$200,000 for the benefit of consumers, and arbitrate any unresolved consumer complaints through the Division's arbitration program for the next five years.

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

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, 2020, the Unit had distributed over 275,000 consumer information pamphlets to builders. Between July 1, 2019 and June 30, 2020, the Unit distributed 1503 pamphlets to builders by mail; and the pamphlet was downloaded 621 times by 549 online users of our website.

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 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 local and municipal permit offices across the state. Permit offices are able 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, 2019 and June 30, 2020, the Mediation Unit of the Consumer Protection Division handled 152 written consumer complaints filed against 88 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, 64% of the complaints were mediated, and of those 7.9% were referred for arbitration. Overall, 8.5% were filed for information only and 40% were sent to the Guaranty Fund for possible claims. Thirty-eight (39%) of the complaints mediated 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 \$202,660.10.

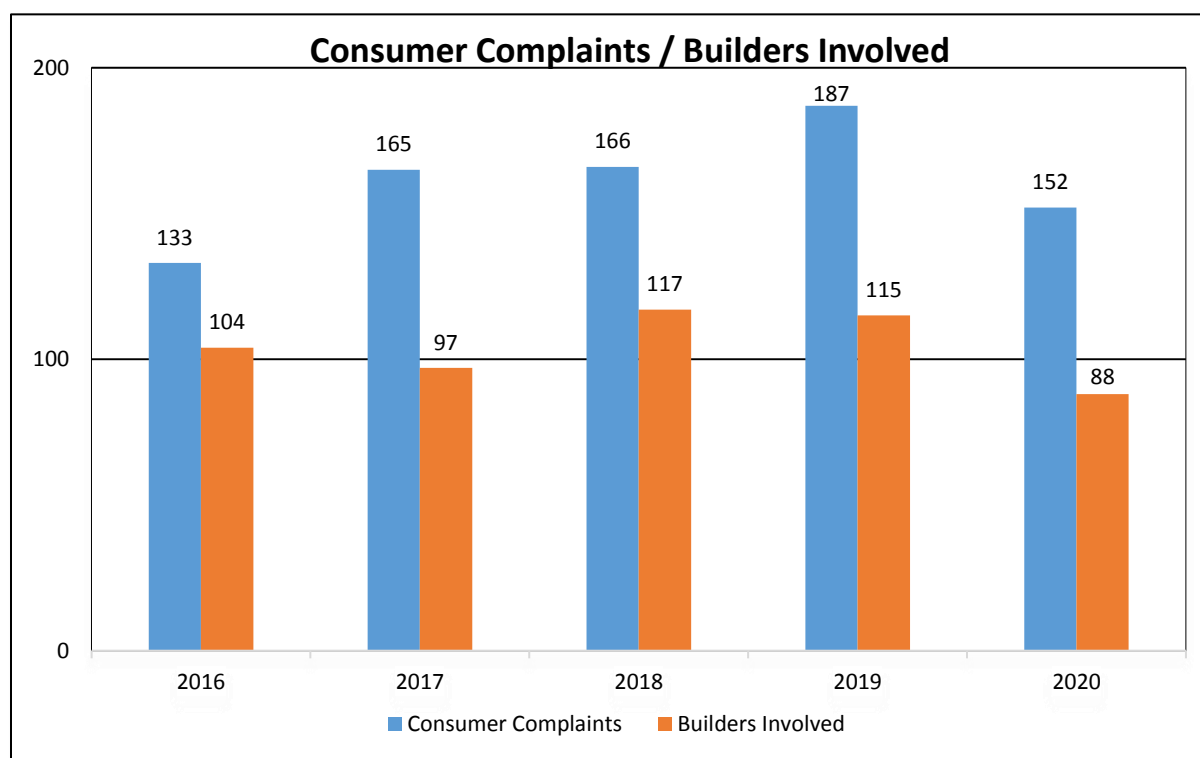
The 152 written complaints raised the following issues:

- *Construction Defect Issues* (71);
- *Incomplete Construction* (34), including disputes between the builder and owner about whether construction had been completed;
- *Contract Disputes* (21);
- *Misrepresentation Claims* (1), including claims that the finished home was not constructed in the manner promised by the builder;
- *Warranty Issues* (16);
- *Deposit Issues* (18), including consumers seeking return of their deposits after being denied financing or withdrawing from their contracts for other reasons;
- *Unsatisfactory Services/Workmanship* (8);
- *Nonpayment of Subcontractors* (3);

- No Escrow Account/Disclosure Form (1);
- Discrimination (1); and
- Other/No Consumer Transaction (23).

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, 2019 and June 30, 2020, there were 24 complaints filed in Montgomery County. In Howard County, five 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 2016:



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 2019, the seven approved plans reported a total statewide enrollment of 60,422 homes. Also, in 2019 the warranty plans enrolled 6,800 new homes, generating \$2,485,968 in revenue. The plans reported a total of 161 consumer claims for warranty coverage in 2019. The plans approved 36 claims for coverage and denied 92 claims. The warranty plans reported that 10 claims were resolved without action by the plan. The warranty plans settled 27 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, 2019 to June 30, 2020, the Unit received notice of 46 denied warranty claims. The claims that were denied are categorized with the plan's response as follows:

- *Structural Defects* (10), including the plan's claim that the defect did not meet the plan's definition of a structural defect ;
- *Material/Workmanship Defects* (29), including the plan's claim that warranty coverage expired (22), the defect did not meet the plan's definition of a structural defect (1), the defect is excluded under plan (5); or there was no defect under plan performance standard (1).
- *Equipment/Appliance/Fixture Defects* (5); and
- *Plumbing/Electrical/HVAC* (2).

Table of Reported Claims Since 2018

Type of Claim	Claims Denied in FY 2018	Claims Denied in FY 2019	Claims Denied in FY 2020
Structural Defects	14	35	10
Material/Workmanship Defects	25	50	29
Equipment/Appliance/Fixture Defects	0	3	5
Plumbing/Electrical/HVAC Defects	0	0	2

Note: The 92 denied claims that the warranty plans reported were for the 2019 calendar year (January 1, 2019 to December 31, 2019), while the 46 denied claim notices the Unit received were during the fiscal year (July 1, 2019 to June 30, 2020).

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 two percent. The balance of the Guaranty Fund is currently maintained in an amount consistent with the statutory requirement.

Claims against the Guaranty Fund were limited to not more than \$50,000 to one claimant or not more than \$300,000 to all claimants against a single registered builder.

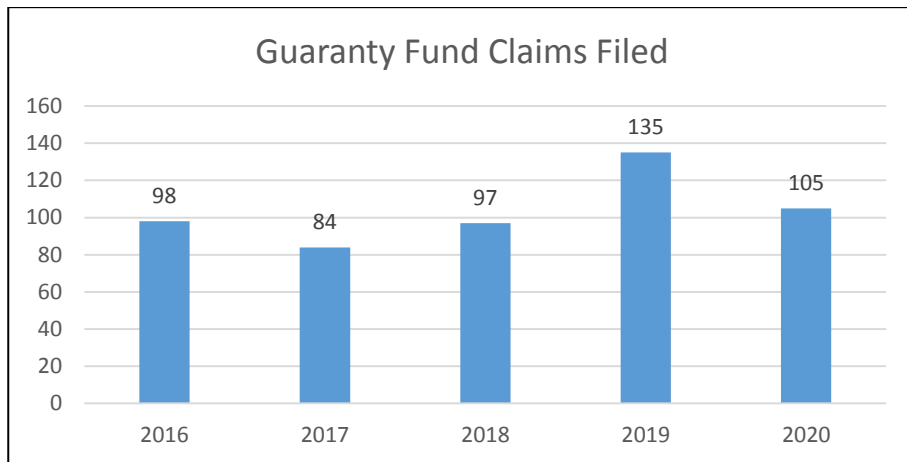
The single builder limit will increase to \$500,000, as of October 1, 2020.⁴ If a consumer is awarded payment from the Guaranty Fund, the builder’s registration is suspended until the Guaranty Fund has been repaid.

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, 2019 until June 30, 2020:

- 105 claims were filed with the Guaranty Fund. Three claims were settled through mediation with consumers receiving awards totaling \$79,431, in five claims the builders agreed to repair the defective work, and seven claims were settled with consumers receiving unknown results.

The following chart shows the number of Guaranty Fund claims reported in the Annual Reports since 2016:



Source: HBRU

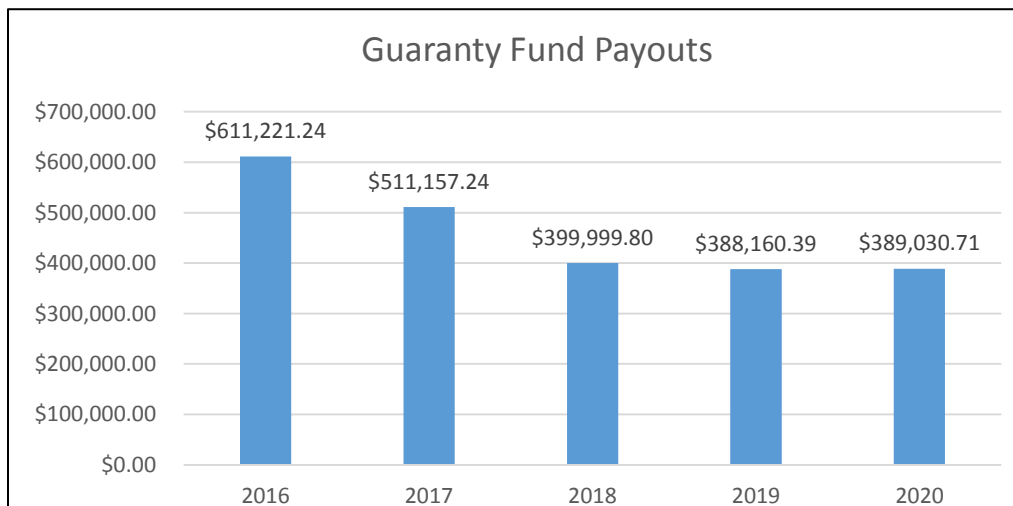
- Two claims were referred to arbitration and are pending hearings.
- Nine claims were determined not to be eligible for relief from the Guaranty Fund, and five were closed because the claimants failed to provide documentation to support their claims.

⁴ Chapter 58 (HB 116)/Chapter 59 (SB 164)

- 72 claims remain in the investigation stage. Two additional claims are stayed by pending litigation.
- 19 claims were scheduled for hearings at the Office of Administrative Hearings. Final Orders were issued resolving three of the 19 claims, 10 claims are pending issuance of a Final Order by the Consumer Protection Division, three claims are pending issuance of proposed decisions from the Office of Administrative Hearings, and three claims settled prior to a hearing at the Office of Administrative Hearings or prior to the issuance of a proposed decision.
- Final Orders were issued resolving 43 Guaranty Fund claims. Final Orders were issued resolving 40 of the 43 claims after hearings at the Office of Administrative Hearings; Guaranty Fund relief was awarded in 30 of the 40 claims in the amount of \$837,193, no Guaranty Fund relief was awarded in nine of the claims, and one claim was settled. Final Orders were issued in two claims based on arbitration awards with findings that supported the consumers’ right to recover actual losses totaling \$63,293, \$50,000 of which was paid from a performance bond. A Final Order was issued resolving one claim of less than \$7,500 without a hearing at the Office of Administrative Hearings; awarding Guaranty Fund relief of \$4,400.

From July 1, 2019 until June 30, 2020, the Guaranty Fund paid a total of \$389,030.71 to claimants for actual losses resulting from acts or omissions by a registrant in relation to new home construction. The total payout from the Guaranty Fund to Maryland consumers over the past five years exceeds \$2.3 million.

The following chart shows the number of Guaranty Fund Payouts reported in the Annual Reports since 2016:



Source: HBRU

X. LEGISLATIVE CHANGES AFFECTING HOME BUILDERS

During the 2020 session, the General Assembly enacted the following laws affecting home builders, which became effective October 1, 2020:

- **Chapter 58 (HB 116)/Chapter 59 (SB 164) - Home Builder Guaranty Fund - Award Limitations – Revisions:** This bill increases the total amount of awards, from \$300,000 to \$500,000, the Consumer Protection Division is authorized to pay to all claimants for acts or omissions of one registered home builder from the Home Builder Guaranty Fund.
- **Chapter 48 (HB 93)/Chapter 49 (SB 155) - Consumer Protection – Mobile Home Purchasers:** This bill limits the ability of mobile home sellers to steer buyers to related finance companies and provides consumers with additional notice before a mobile home can be foreclosed upon.
- **Chapter 116 (HB 231)/Chapter 117 (SB 530) - Housing Opportunities Made Equal (HOME) Act:** This bill expands the housing policy of the State to include providing for fair housing to all citizens regardless of source of income; states the Act seeks to deconcentrate poverty by providing additional opportunities for tenants utilizing public subsidies to live in certain neighborhoods; and prohibits a person from refusing to sell or rent a dwelling to any person because of source of income.
- **Chapter 124 (HB 241)/Chapter 125 (SB 170) - Real Property - Ground Leases - Past Due Ground Rent:** This bill clarifies that a ground lease holder may not bring any suit, action, or proceeding against the current leasehold tenant or a former leasehold tenant to recover the ground rent that was due and owing before the date the current leasehold tenant acquired title to the leasehold interest if the ground lease was not registered prior to the date the current leasehold tenant acquired title.
- **Chapter 32 (HB 25)/Chapter 33 (SB 293) - Condominiums and Homeowners Associations - Amendments to Declarations and Governing Documents:** This bill establishes that if a mortgage holder or deed of trust is required to consent to a vote by the governing documents that, except in certain situations that directly affect the mortgage holder, if the mortgage holder or deed of trust fails to return a proxy within 60 days, it will be deemed to have consented to proposed amendments to the governing documents.

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- **Chapter 559 (SB 472) - Condominium Associations and Homeowners Associations – Adopted Annual Budget – Submission to Unit Owners and Lot Owners:** This bill requires the council of unit owners or other governing body of a condominium association to submit the adopted annual budget to the unit owners not more than 30 days after the meeting at which the budget was adopted; and, authorizes the adopted annual budget to be submitted to each unit owner by electronic transmission, by posting on the condominium association's home page, or by inclusion in the homeowners association's newsletter.
 - **Chapter 56 (HB 108)/Chapter 57 (SB 175) - Condominiums - Responsibility for Property Insurance Deductibles:** This bill specifies that the council of unit owner's property insurance deductible is a common expense if the cause of any damage to the condominium originates from an event outside of the condominium units and common elements; and, increases, from \$5,000 to \$10,000, the maximum amount of the council of unit owners' property insurance deductible for which a unit owner is responsible.
 - **Chapter 218 (HB 482)/Chapter 219 (SB 428) - Southern Maryland - Homeowners Association Commission - Alternative Dispute Resolution Authority:** This bill expands the authority of homeowners association commissions in Southern Maryland to hear and resolve through alternative dispute resolution certain issues between a homeowners association and a homeowner regarding the enforcement of the governing documents including declarations, bylaws, deeds, and recorded covenants and restrictions.