



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

2008 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

Prior to January 1, 2001, home builders were not required to be registered or licensed by the State of Maryland.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.² The General Assembly heard testimony from home buyers about problems they faced with their builders that were not being adequately prevented or resolved by the then current law. In response to this testimony, the General Assembly in the 2000 Session passed the Maryland Home Builder Registration Act (the "Act" or "HBRA"). The HBRA is designed to provide additional protections to 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. 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 (the "Unit") of the Consumer Protection Division of the Office of the Attorney General was created by the HBRA to administer and enforce the Act. The Act requires that the Consumer Protection Division make an annual report of its activities to the Governor and General Assembly. This is the eighth report since the law became fully operational on January 1, 2001.

The report focuses on the following areas:

- **Registration of Builders:** 3,936 builders were registered as of June 30, 2008. 426 of those builders registered for the first time between July 1, 2007 and June 30, 2008.
- **Registration Renewal:** From July 1, 2007 to June 30, 2008, the Unit mailed renewal applications to 1,750 builders whose registrations were due to expire by June 1, 2008. 1,437 of those builders have renewed their registration as of June 30, 2008.

¹ Montgomery County and Prince George's County have varying forms of builder licensing or registration.

² New Home Deposits, 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 Warranty Security Plans, Md. Code Ann., Real Property §10-601 through § 10-610.

- **Law Enforcement:** The Unit opened 72 investigations between July 1, 2007 and June 30, 2008 after receiving reports of unregistered builders, violations of the Home Builder Registration Act, the Consumer Protection Act, or violations of the Custom Home Protection Act. In one action, the Consumer Protection Division obtained a judgment in the Circuit Court for Prince George's County against a Baltimore builder, enforcing the order of the Consumer Protection Division and ordering the builder to refund payments of \$1,107,249 collected from consumers and pay penalties of \$509,000. The builder entered into contracts with consumers, accepted payments, and then failed to begin construction or refund the payments. The Consumer Protection Division also issued a Final Order requiring an Anne Arundel County builder to pay penalties for acting as a builder while not registered. Charges and/or Notices of Proposed Agency action have been brought in eleven other cases, and the Unit entered into settlement agreements with another thirty-five builders. Most of the investigations concerning unregistered builders have been resolved by having the builder register and pay a civil penalty.

- **Education of Builders and Consumers:** As of June 30, 2008, the Unit had distributed a total of 218,322 copies of *BUYING A NEW HOME - Consumer Rights and Remedies Under Maryland Law*; and maintained and updated its website – www.oag.state.md.us/homebuilder – 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.

- **Evaluation of Consumer and Builder Dispute Resolution:** The Division's Mediation Unit handled 302 consumer complaints involving 232 home builders between July 1, 2007 and June 30, 2008. The overwhelming majority of the complaints concerned claims about construction defects.

- **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.

- **Legislation:** During the 2008 legislative session, the General Assembly enacted Chapters 480 (Senate Bill 1008) and 481 (House Bill 1557), which (1) require sales representatives for Maryland home builders to register with the Home Builder Registration Unit and (2) establish a Home Builder Guaranty Fund.

Chapter 119 (House Bill 1253) amended the Chesapeake and Atlantic Coastal Bays Critical Areas law by making a failure to comply with that law a violation of the Home Builder Registration Act for purposes of considering whether a home builder's registration application should be approved or whether a registration should be revoked or subject to other sanctions.

II. REGISTRATION OF BUILDERS

A. THE HOME BUILDER REGISTRATION UNIT

A central requirement of the HBRA is that all new home builders in Maryland 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 \$300 for a two-year registration through September 30, 2008 and at \$600, effective October 1, 2008. The Act further provides for renewal fees for an additional two-year period of \$150 (\$300 effective October 1, 2008) for builders who were issued 10 or fewer building permits during the preceding year and of \$300 (\$600 effective October 1, 2008) 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 five-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 five positions include: a Director/Assistant Attorney General, an Administrator who oversees builder registration, an Administrator who oversees new home warranty security plans and builder compliance with deposit protection laws, an Investigator, and a Secretary. The number of positions has been increased to handle the new responsibilities for registering sales representatives for Maryland home builders and to administer the Home Builder Guaranty Fund. The new positions include an Assistant Attorney General, Administrator, Investigator and Secretary.

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.

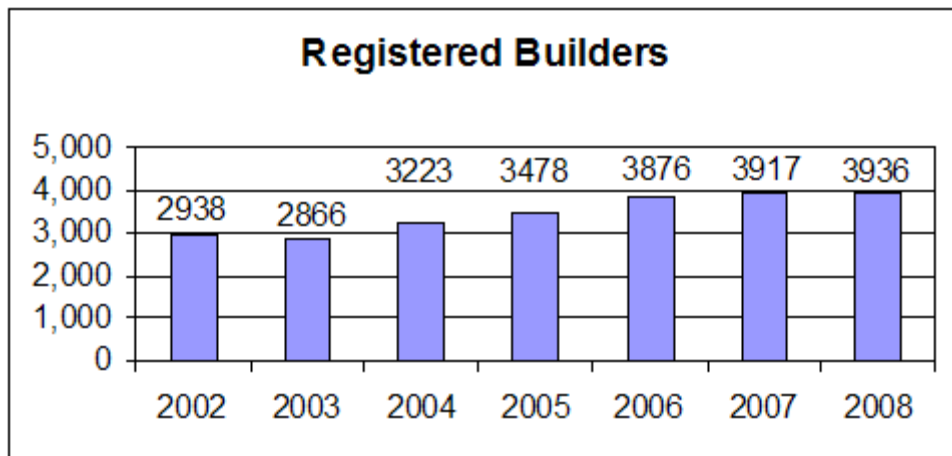
To register, builders are required to complete an application form, provide information about the principals of the company and legal proceedings involving the builder, and pay the registration fee. Each builder's registration lasts two

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.

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, 2008, 3,936 home builders were registered with the Unit. The Unit continues to receive registration applications from new builders on a daily basis. 426 new builders registered with the Unit between July 1, 2007 and June 30, 2008.

The following chart shows the number of registered builders reported in the Annual Report since 2001 and shows a continued increase in the number of builders in the State of Maryland.



Source: HBRU

In the past year, the Unit mailed renewal notices to the 1,752 builders that registered under the HBRA, whose initial two year registrations were due to expire between September 1, 2007 and June 1, 2008. As of June 30, 2008, 1,437 of these builders have been approved for renewal. 246 builders did not renew their registrations (62 notified the Unit that they were not renewing, 8 withdrew their applications, and 176 did not submit a renewal application). Since January 1, 2005, builders have been able to register and renew their registrations over the Internet. Of the 1,437 builders that have been renewed, 1,225 (85%) 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(f) and (k). 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 3,936 registered builders in Maryland as of June 30, 2007. 426 of those builders registered for the first time between July 1, 2007 and June 30, 2008 and the Unit continues to receive new applications daily.
- **Type of Construction:** The vast majority of Maryland's builders report building either custom homes (48%) or new homes (34%). Another 8% report building condominiums, 7% report building industrialized buildings, and 3% report selling of installing mobile homes.
- **Form of Business:** 49% of Maryland's builders use corporations as their form of business organization. Another 32% are limited liability companies (LLCs), 17% are sole proprietorships, and 2% are partnerships.
- **Location of Builders and Housing Construction:** Not surprisingly, Maryland's builders continue to be located in the regions of Maryland that are experiencing the most new home building activity, as measured by the number of single family housing permits issued: 69.8% of building permits for single family construction were issued in the Baltimore-Washington Region, where 52.9% of Maryland's builders are headquartered. 11.4% of building permits were issued in the Eastern Shore Regions, where 20.3% of Maryland's builders are headquartered. The Southern Region was issued 14.0% of the building permits and provided headquarters for 10.3% of Maryland's builders. The Western

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(f)(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.

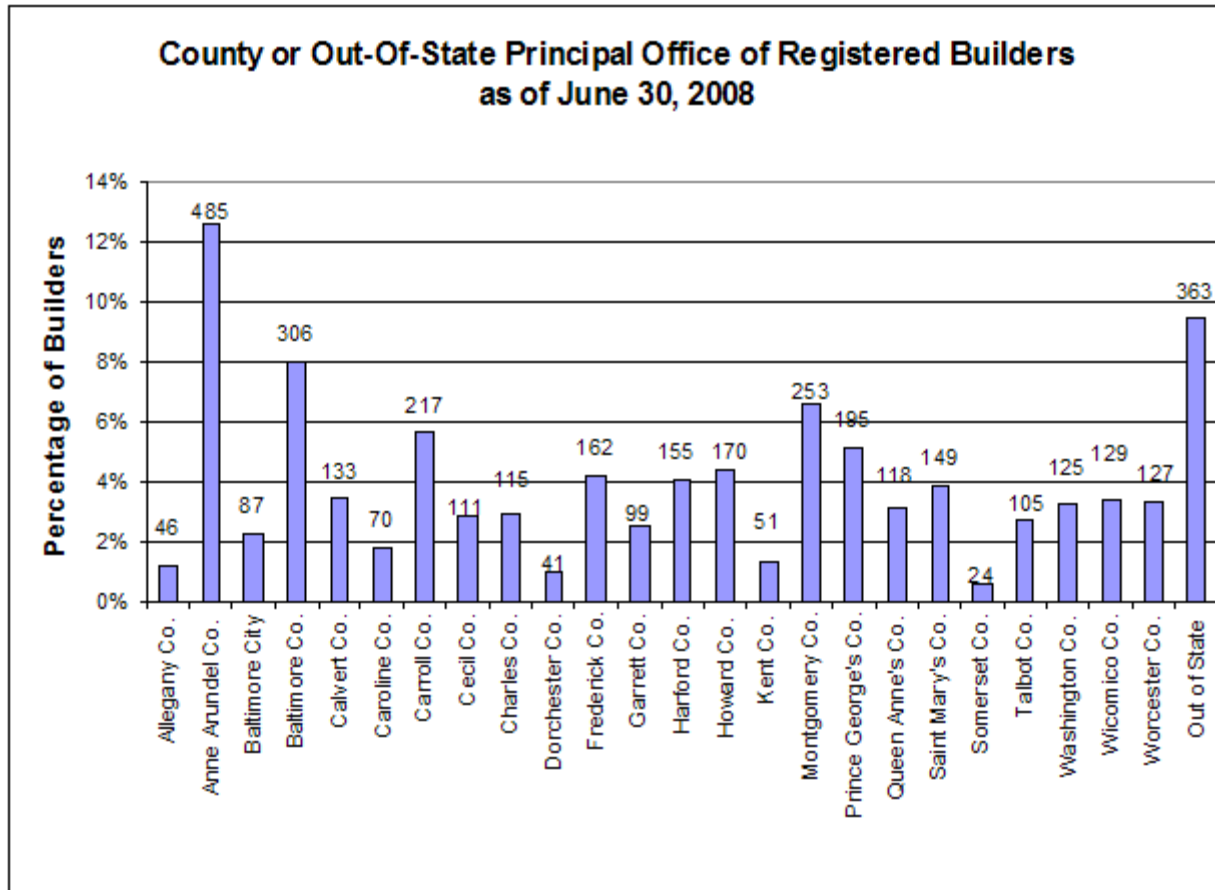
Region was issued 4.9% of building permits and provided headquarters for 7.0% of Maryland's builders. 9.5% of builders had headquarters that were out of state.

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, 2007 through June 30, 2008, 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 (7/1/07 - 6/30/08)	Percentage of State-wide Permits Issued in Region
Baltimore Region (Anne Arundel, Baltimore City, Baltimore County, Carroll, Harford, Howard)	37.0%	4,084	39.6%
Suburban Washington Region (Frederick, Montgomery, Prince George's)	15.9%	3,112	30.2%
Upper Eastern Shore Region (Caroline, Cecil, Kent, Queen Anne's, Talbot)	11.9%	549	5.3%
Southern Region (Calvert, Charles, St. Mary's)	10.3%	1,442	14.0%
Lower Eastern Shore Region (Dorchester, Somerset, Wicomico, Worcester)	8.4%	627	6.1%
Out of State (Delaware, Florida, Illinois, Massachusetts, Michigan, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Texas, Virginia, Washington, D.C., West Virginia)	9.5%		
Western Region (Allegany, Garrett, Washington)	7.0%	504	4.9%
Totals	100%	10,318	100%

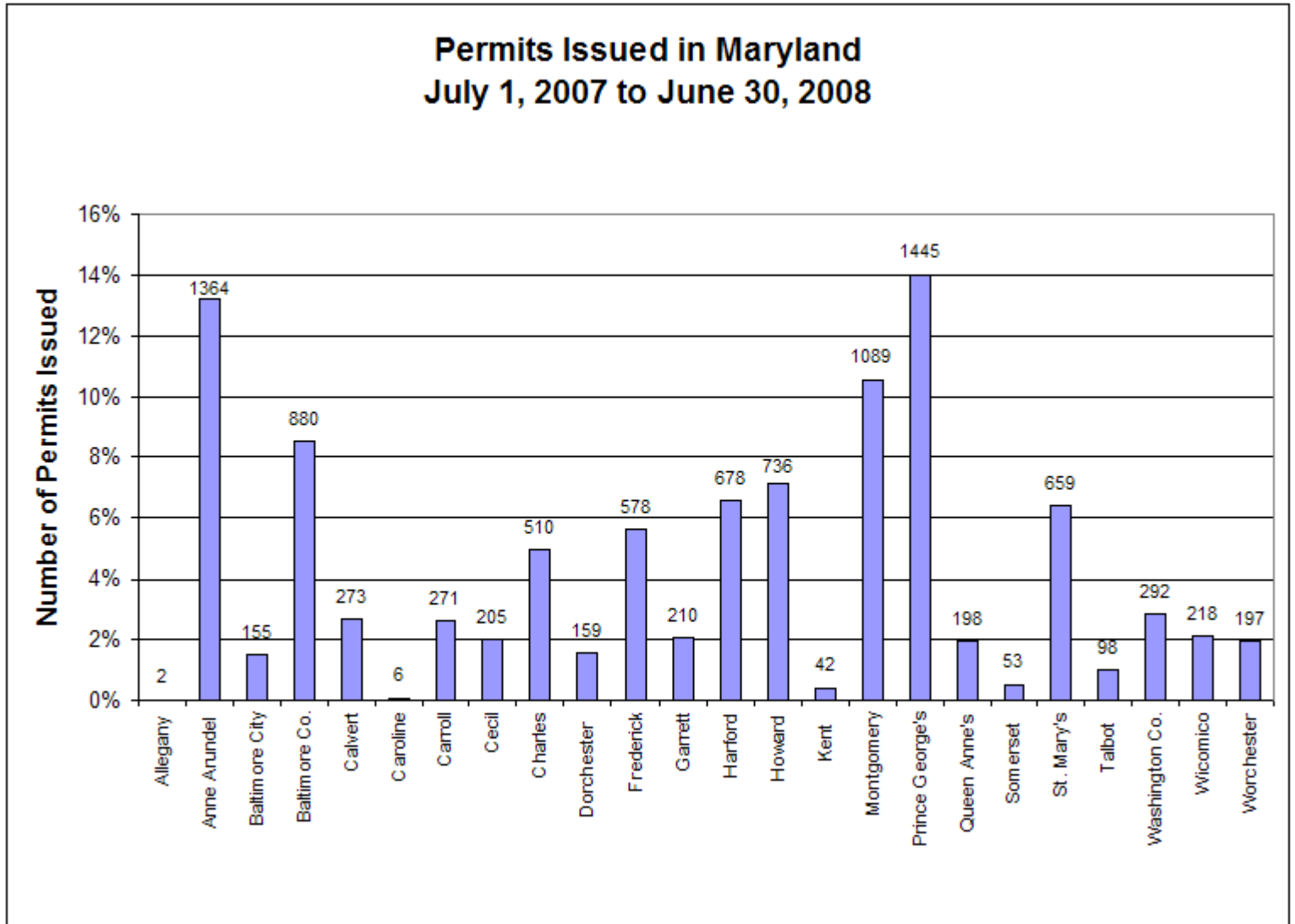
Source: HBRU and Md. Dept. of Planning, for Single Family Permits Issued July 1, 2007 through June 30, 2008

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



Source: HBRU

The following chart shows the number of permits issued in each county from July 1, 2007 through June 30, 2008.



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

III. 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 72 investigations between July 1, 2007 and June 30, 2008. These investigations involved allegations of violations of the HBRA, other home building related laws, or the Consumer Protection Act. Thirty-five of the investigations resulted in settlements, other enforcement actions have been taken in another eleven (revocation and/or charges filed in 10 cases, and denial of registration in 1 case), and twenty-six remain under continuing investigation. The Unit receives information from many sources, including consumers, other builders, and permit offices. The results of some of these enforcement actions are summarized as follows:

- The Consumer Protection Division obtained a judgment from the Circuit Court for Prince George's County against a Baltimore builder and its principals, ordering them to pay restitution of \$1,107,249, civil penalties of \$509,000, and costs of \$6,428.06. The builder had entered into contracts with consumers to construct homes in Prince George's County, accepted partial payment from those consumers, and then failed to begin construction or refund the money paid. The Agency found that the builder violated the Maryland Home Builder Registration Act by acting as a builder while not registered; the New Home Deposits Act by failing to place deposits and payments into an escrow account or having a surety bond to cover the deposits; and the Consumer Protection Act by failing to build the homes as promised.
- The Consumer Protection Division issued a Final Order requiring an Anne Arundel County builder to pay civil penalties of \$809,000 and costs of \$1,775.94. The Division found that the builder violated the Home Builder Registration Act, the Custom Home Protection Act, and the Consumer Protection Act by acting as a builder while not being registered; failing to escrow or otherwise protect

consumers' deposits and payments; and failing to include required disclosures and certifications in building contracts.

- The Consumer Protection Division reached a settlement with a builder and its principal from Pittsburgh, Pennsylvania who had been charged with entering into a contract with consumers to build a home in Garrett County without being registered and then failing to complete construction of the home. Under the settlement agreement, the builder and its principal agreed to pay restitution to the consumers whose home they had failed to complete of \$45,000; comply with applicable laws or regulations that relate to building homes; comply with all registration and renewal requirements; and pay a civil penalty of \$2,500.
- The Office of Administrative Hearings issued a Proposed Decision finding that a builder from Savage, Maryland entered into contracts to construct homes for consumers in Prince George's County and then failed to either begin or complete construction of the homes or refund any of the money paid. In one case the builder took \$34,000 from a consumer and then failed to begin construction. The Proposed Decision found violations of the Home Builder Registration Act, the Custom Home Protection Act, and the Consumer Protection Act and recommended that the builder and its principals pay restitution, civil penalties, and costs. The HBRU is seeking a Final Order from the Consumer Protection Division in this case.
- The Office of Administrative Hearings also issued a Proposed Decision against a Harford County home builder and its principal, finding that they took deposits and payments from 4 consumers and then failed to complete construction of the homes or refund the payments made. The Proposed Decision found that the builder's actions violated the Home Builder Registration Act, the Custom Home Protection Act, and the Consumer Protection Act. The HBRU is seeking a Final Order from the Consumer Protection Division requiring the builder and its principal to pay restitution, economic damages, civil penalties and the costs incurred by the Unit in bringing the action.
- The Office of Administrative Hearings issued a Proposed Decision upholding the revocation of a builder's registration from Greensboro, Maryland who failed to satisfy a judgment entered in the District Court for Queen Anne's County in favor of a consumer in the amount of \$25,000. The HBRU is seeking a Final Order from the Consumer Protection Division requiring the builder to pay civil penalties and the costs incurred by the Unit in bringing the action.

- The HBRU filed a Statement of Charges seeking injunctive relief, restitution, economic damages, and civil penalties against a builder and its principal from Lanham, Maryland for failing to begin or complete the homes of 20 consumers in Prince George's and Charles Counties. The HBRU alleges that the builder violated the laws governing deposits on new homes by failing to maintain proper protection for deposits and payments and by failing to pay subcontractors; that it violated the New Home Warranties Act by failing to enroll homes in a new home warranty security plan; and that it violated the Home Builder Registration Act and the Consumer Protection Act by failing to complete homes and report lawsuits and judgments to the HBRU. The HBRU also revoked this builder's registration. A hearing on the charges was convened on August 25, 2008.

- The HBRU filed a Statement of Charges seeking injunctive relief, restitution, economic damages, and civil penalties against a builder and its principal from Fort Washington, Maryland. The HBRU alleges that the builder contracted to construct new homes for 3 consumers, accepted deposits and payments toward the construction of the homes, and then failed to begin or complete construction of the homes, pay subcontractors, or refund any of the deposits and payments made. In one case, the builder failed to begin construction of the home after being paid \$46,000 in deposits and payments and has failed to refund any of the money paid. The company also failed to disclose outstanding lawsuits existing against it and its principal in its application to register and renew registration. The HBRU alleges that the builder violated the Custom Home Protection Act by failing to place deposits and payments into an escrow account or have surety bond to cover the deposits, and by failing to pay subcontractors; and that it violated the Home Builder Registration Act and the Consumer Protection Act by failing to build the homes as promised and report lawsuits and judgments to the HBRU. The HBRU also revoked this builder's registration. A hearing on the charges was convened on July 25, 2008.

- The HBRU filed a Statement of Charges against a builder from Pasadena, Maryland alleging violations of the Home Builder Registration Act, the Custom Home Protection Act and the Consumer Protection Act for failing to complete construction of a home in Baltimore County. The builder failed to resolve building code violations, place deposits and other advance payments in an escrow account or have a surety bond to cover the deposits and advance payments, and failed to disclose lawsuits and judgments to the HBRU. The HBRU also revoked this builder's registration. A hearing on the charges was convened on September 29, 2008.

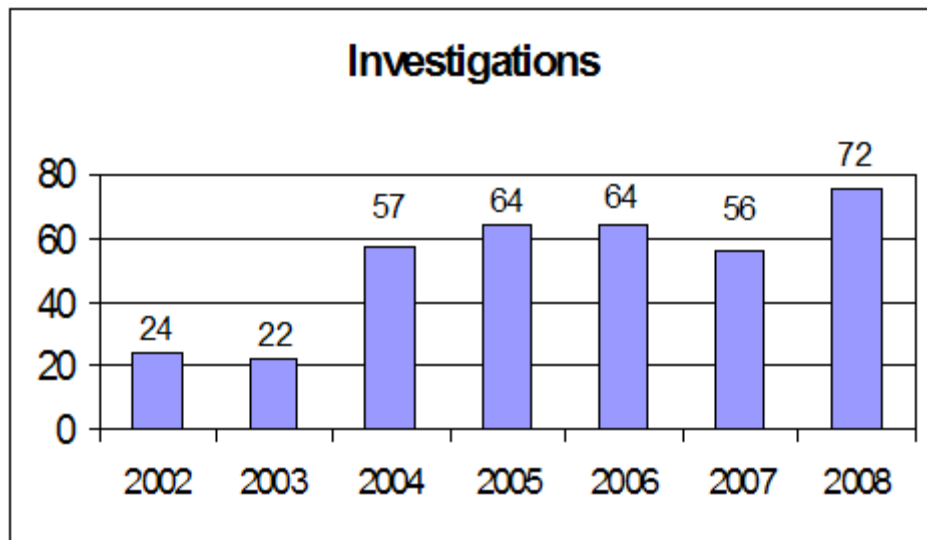
- The HBRU filed a Statement of Charges against a home builder from Upper Marlboro, Maryland alleging violations of the Home Builder Registration Act, the

Custom Home Protection Act and the Consumer Protection Act. The builder contracted to construct new homes for consumers, accepted deposits and payments toward the construction of the homes, and then failed to begin or complete construction of the homes, pay subcontractors, or refund any of the deposits and advance payments. Consumers and subcontractors have filed lawsuits against the builder resulting in judgments that have not been satisfied and that were not reported to the HBRU. In one case, the Circuit Court for Charles County entered a judgment against the builder in favor a consumer in the amount of \$130,000, which the builder failed to satisfy. The HBRU also revoked this builder's registration. A hearing on the charges was convened on October 17, 2008.

- The HBRU revoked the registration of a builder from Millersville, Maryland for violation of the Home Builder Registration Act. The builder accepted advance payments of \$38,341.00 from a consumer and then failed to either begin construction or refund the money paid. In addition, the builder falsely stated on its application to register that it did not take deposits in excess of 5% of the contract price, when that was not the case, and failed to disclose a number of legal proceedings that had been brought against it.
- The HBRU revoked the registration of a builder from Goldsboro, Maryland for failing to satisfy a judgment entered in the District Court for Caroline County in favor of a consumer in the amount of \$24,988.75.
- The HBRU revoked the registration of a builder from Dunkirk, Maryland for failing to satisfy a judgment entered in the District Court for Calvert County in favor of a consumer in the amount of \$4,445.
- The HBRU revoked the registration of an Elkton, Maryland builder for failing to resolve building code violations in the construction of a home in Cecil County.
- The HBRU also denied the application of a builder from Newark, Delaware for failing to satisfy a consumer judgment entered in the Circuit Court for Dorchester County.
- The HBRU entered into Assurances of Discontinuance with thirty-five 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 \$34,500, and agreed to submit any

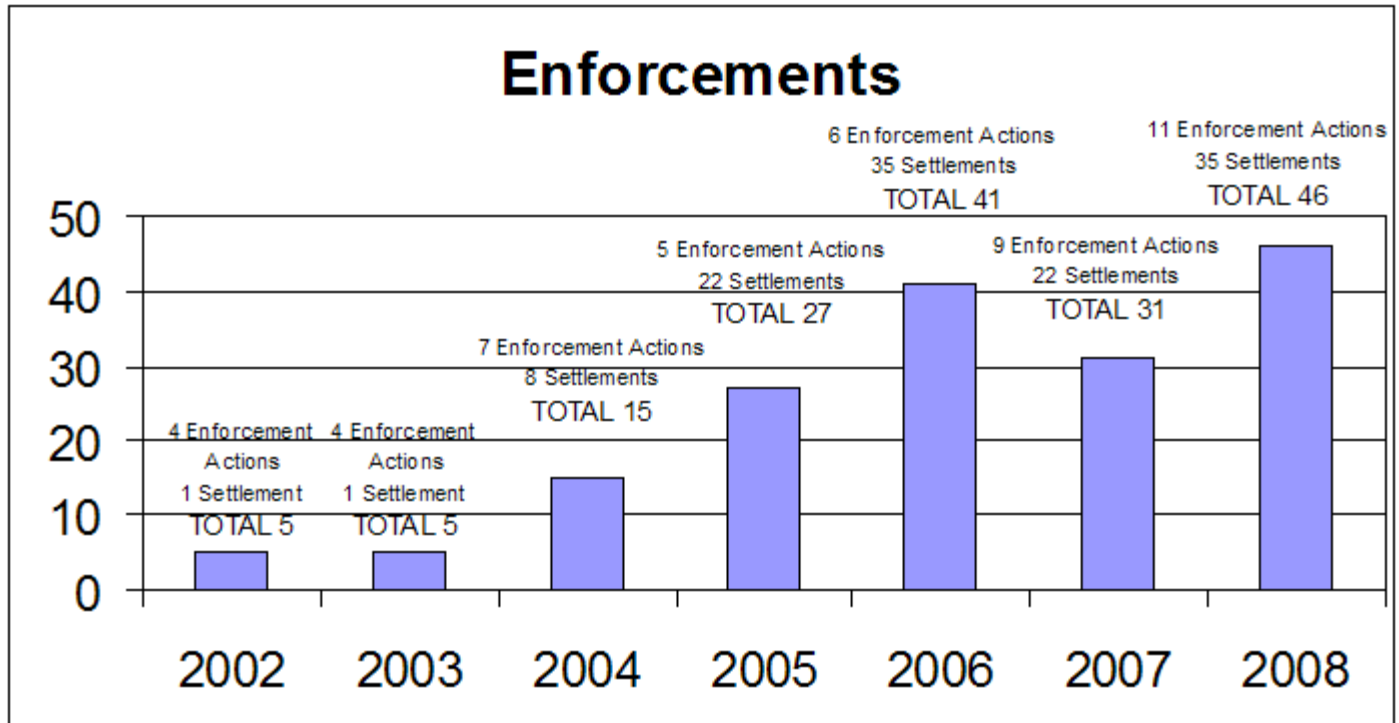
complaints that cannot be resolved through mediation to binding arbitration through the Division's arbitration program. The builders were located in Anne Arundel, Baltimore, Calvert, Carroll, Charles, Howard, Montgomery, Prince George's, Queen Anne's, Talbot, and Worcester Counties. One builder was located in Laurel, Delaware and another in Florida.

The following chart shows the number of Investigations reported in the Annual Reports since 2001.



Source: HBRU

The following chart shows the number of Enforcement Actions reported in the Annual Reports since 2001.



Source: HBRU

IV. 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 writes to builders notifying them that their registrations will be expiring in three months and providing 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 met with and corresponded with builders about the requirements of the new laws.

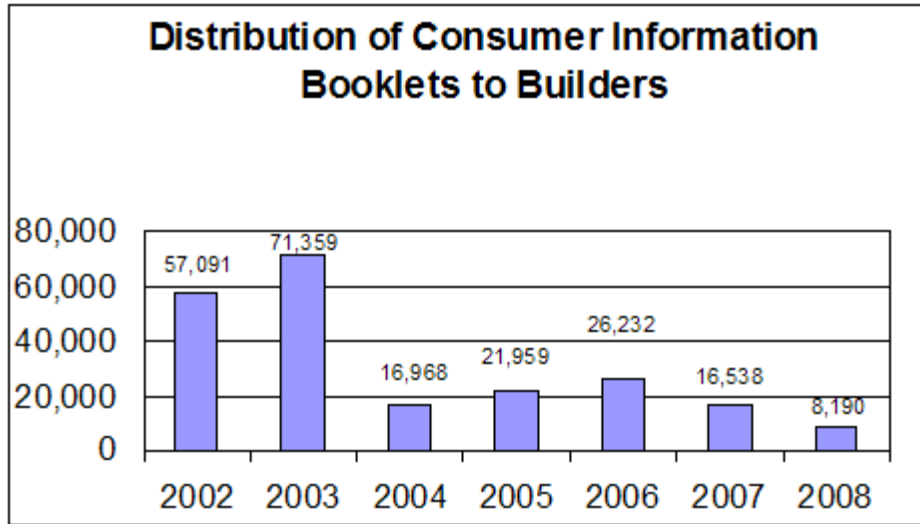
B. CONSUMER EDUCATION PAMPHLET

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 shall be acknowledged in writing. HBRA §4.5-202(c).

The Unit consulted with the industry, and developed and published a consumer education pamphlet, *BUYING A NEW HOME - Consumer Rights and Remedies Under Maryland Law*, in December, 2000. The Unit also drafted and distributed a model form for the consumer to sign to acknowledge receipt of the pamphlet. The Unit recently updated the pamphlet to reflect recent changes to the law. A copy of the revised pamphlet is available on our website at www.oag.state.md.us/homebuilder.

As of June 30, 2008, the Unit had distributed a total of 218,332 consumer information pamphlets to builders. Between July 1, 2007 and June 30, 2008, the Unit distributed 8,190 pamphlets to builders.

The following chart shows the number of Consumer Information Booklets distributed to Builders since 2001.



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 consumer, 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 www.oag.state.md.us/homebuilder. On the website can be found:

- Information about the Home Builder Registration Unit, the Home Builder Registration Act, and the responsibility of builders 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. Since January 1, 2005, builders have been 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 that builders can use for the protection of consumer deposits.
- A sample Letter of Credit that builders can use for the protection of consumer deposits.

- Previous Annual reports of the Home Builder Registration Unit.

V. **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 42 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.

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

Between July 1, 2007 and June 30, 2008, the Mediation Unit of the Consumer Protection Division handled 302 written consumer complaints filed against 232 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. Beginning January 1, 2009, consumers who are unable to resolve their complaints through mediation will be able to submit their claims to the Home Builder Guaranty Fund.

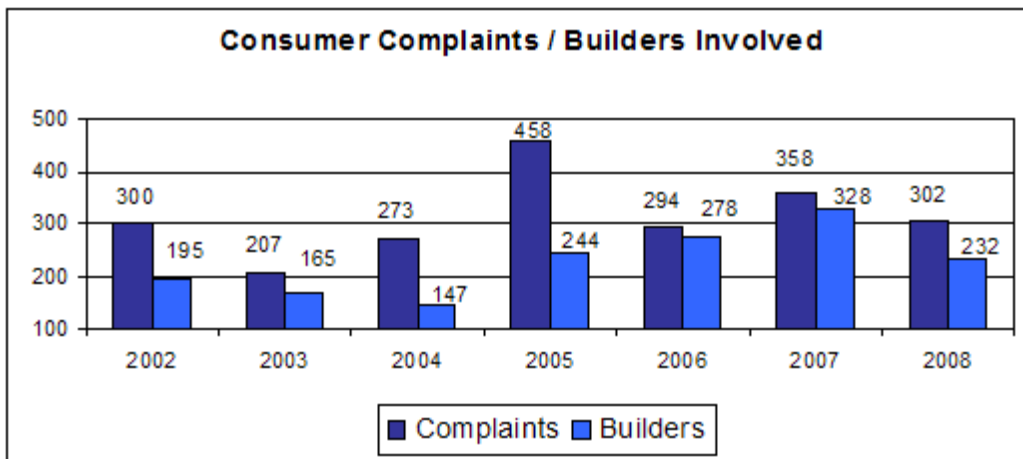
Of the complaints received by the Division's Mediation Unit, 62.1% of the complaints were mediated; 8.7% were filed for information only; 5.5% were resolved by the consumer; 2.3% were closed after the Division provided advice to the consumer; 2.4% were referred to other agencies having jurisdiction; 1.7% were arbitrated; and 17.3% had other miscellaneous resolutions. Sixty-one percent (61%) 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 \$582,577.

The 302 written complaints raised the following issues (many complaints included more than one issue):

- *Construction Defect Issues* (122);
- *Deposit Issues* (42), including consumers seeking return of their deposits after being denied financing or withdrawing from their contract for other reasons;
- *Incomplete Construction* (40), including disputes between the builder and owner about whether construction has been completed;
- *Contract Disputes* (39);
- *Warranty Issues* (17); and
- *Misrepresentation Claims* (14), including claims that the finished home was not constructed in the manner promised by the builder.

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, 2007 and June 30, 2008, there were 65 complaints filed in Montgomery County. In Howard County, 5 were handled during this period.

The following chart shows the number of Consumer Complaints compared to the Number of Builders Involved since 2001.



Source: HBRU

VII. WARRANTY PROGRAM

During the 2002 Session, the Maryland General Assembly enacted Chapter 492, which transferred responsibility for New Home Warranty Security Plans from the Department of Labor, Licensing and Regulation to the Home Builder 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 ensure the plans are meeting the requirements of Maryland law.

In 2007, the seven approved New Home Warranty Security Plans reported a total enrollment of 14,710 homes. From those homes, the plans reported a total of 272 claims for warranty coverage in 2007 with 138 of the claims being denied. The warranty plans determined that 134 claims were either excluded from warranty coverage, warranty coverage had expired, or the claim was resolved without action by the plan. Only fourteen claims were accepted and paid by the plans in 2007. Enrollment and claims statistics are not yet available for 2008.

New Home Warranty Security Plans are required to notify the Home Builder Unit of each decision to deny warranty coverage for a claim or any part of a claim. In 2007 the Unit received notice of 108 warranty claims. Of the 108 claims for warranty service, the warranty plans provided notice of six accepted or approved claims, the remaining 102 claims were denied. The claims that were denied are categorized with the plan's response as follows (the warranty plans failed to identify the nature of the defect(s) for five of the denied claims):

- Structural Defects (67), including the plan's claim that the defect did not meet the plan's definition of a structural defect (61), warranty coverage expired (4), and defect excluded by plan (2);
- Material/Workmanship Defects (28), including warranty coverage expired (23), and defect excluded by plan (5);
- Plumbing/Electrical/HVAC (2), including warranty coverage expired (2).

Table of Reported Claims

Type of Claim	Claims Denied in 2005	Claims Denied in 2006	Claims Denied in 2007
Structural Defects	90	84	67
Material/Workmanship Defects	35	32	28
Plumbing/Electrical/HVAC Defects	8	6	2
Unknown Defects	6	7	5

VIII. **LEGISLATIVE CHANGES**

A. **Sales Representative Registration and Home Builder Guaranty Fund**

During the 2008 legislative session, the General Assembly enacted Chapters 480 (Senate Bill 1008) and 481 (House Bill 1557), which (1) require sales representatives for Maryland home builders to register with the Home Builder Registration Unit and (2) establish a Home Builder Guaranty Fund.

During the 2007 session, the General Assembly passed legislation that required sales agents for home builders to be licensed as real estate agents by the Real Estate Commission. Effective October 1, 2008, home builder sales representatives are no longer required to be licensed real estate agents. Instead, sales representatives will be required to register with the Consumer Protection Division's Home Builder Registration Unit, which will be renamed the Home Builder and Home Builder Sales Representative Registration Unit. Each sales representative will be required to complete a registration form to be made available by the Unit and pay a \$200 registration fee for a 2-year registration.

The General Assembly has also established a Home Builder Guaranty Fund to protect consumers, similar to the fund operated by the Maryland Home Improvement Commission. The Guaranty Fund will be available to consumers who have contracted with a registered home builder and who suffer an "actual loss" due to incomplete construction, breach of warranty, failure to meet standards or guidelines, or failure to return a deposit. Claims against the Guaranty Fund will be limited to \$50,000 per claimant and \$300,000 per builder. The Guaranty Fund applies only to contracts entered into after January 1, 2009.

The Guaranty Fund will be funded through a \$50 fee to be paid with each application for a new home construction permit, which permit offices will begin collecting January 1, 2009. Also, effective October 1, 2008, the registration fee for home builders returned to (1) \$600 for an initial 2-year registration and (2) \$600 for a 2-year renewal for builders who pulled 11 or more permits during the preceding year and \$300 for a 2-year renewal for builders who pulled 10 or fewer permits during the preceding year. The increased registration fee is necessary to cover the costs of administration and enforcement of the Guaranty Fund.

Both the registration requirement for Sales Representatives and the Home Builder Guaranty Fund apply to builders who only build new homes in Montgomery County and are not required to register with the Home Builder Registration Unit.

B. Chesapeake and Atlantic Coastal Bays Critical Areas Law

Chapter 119 (House Bill 1253) amended the Chesapeake and Atlantic Coastal Bays Critical Areas law by making a failure to comply with that law a violation of the Home Builder Registration Act for purposes of considering whether a home builder's registration application should be approved or whether a registration should be revoked or subject to other sanctions. The Home Builder Unit may take action against a builder who fails to comply with the terms of a permit, license or approval or a state or local law within the Chesapeake and Atlantic Coastal Bays Critical Area. The law took effect July 1, 2008. More information is available at www.dnr.state.md.us/criticalarea