

# BUYING A NEW HOME

CONSUMER RIGHTS AND REMEDIES  
UNDER MARYLAND LAW



MARYLAND OFFICE OF THE ATTORNEY GENERAL  
CONSUMER PROTECTION DIVISION  
ANTHONY G. BROWN, MARYLAND ATTORNEY GENERAL

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

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## Choosing a Builder

Your builder's reputation should be one of your primary considerations. Ask friends who have bought new homes for recommendations. Interview builders who are likely candidates to build your house. Communication between you and your builder is essential from the beginning, as you will work closely together throughout the construction of your



home. Ask builders for references from previous customers and see what those buyers have to say. Ask to review an example of completed work as well as a project that is underway.

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

Doing business with a registered home builder will ensure that you are eligible for all protections provided by your contract and by state law, including the protection of the Home Builder Guaranty Fund (see page 11). A home builder registers by simply filling out an application form and paying a fee. However, a builder can have its registration denied, suspended, or revoked for a variety of reasons, including if it engages in a pattern of poor workmanship. A builder's sales representatives must also be registered with the Home Builder Registration Unit.

A builder must be registered in order to get building permits and have valid contracts. If a non-registered builder asks you to apply for a building permit in an attempt to avoid having to register, you could risk losing certain rights and remedies. You should never obtain a permit unless you are truly acting as the building contractor.

To find out whether a builder you are considering is registered, call 410-576-6573 or toll-free 1-877-259-4525. You can also get this information by visiting [http://bit.ly/HBRU\\_Registrations](http://bit.ly/HBRU_Registrations).

Buyers of new homes in Montgomery County should call the Montgomery County Office of Consumer Protection at 240-777-3636 to check whether a builder is licensed by that county, as required.

## The Contract

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After you have selected your builder, you will enter into an agreement to purchase a home in the form of a contract. A contract that contains all significant details can eliminate many problems. Do not assume anything. Spell out all terms so there can be no misunderstandings later. Whether or not a form contract is used, you can ask the builder to change provisions in the contract or add provisions you want. Just make sure the changes are put in writing and signed by both parties.

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

Review these items very carefully:

**The construction plans and specifications detailing the scope of the work.** The house's drawings and specifications should be examined carefully. If you are buying a house based on a model you saw, make sure you understand the differences between the model and what your contract specifies.



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

**Completion date.** The contract should state when the house will be started and completed, and list any conditions which can delay or extend the start and completion date.

**Default provisions.** These provisions state what will happen if either you fail or the builder fails to meet the terms of the contract. Many default provisions allow the builder to keep your deposit if you do not go to settlement. As of June 1, 2009, contracts for new homes are contingent upon you obtaining financing, which means you will get your deposit back if you cannot get financing at an agreed-upon interest rate within a certain period of time, unless the contract expressly states that it is not contingent upon financing. Unless you have cash available to make the purchase, you should make certain that the contract is contingent upon your obtaining financing. You also may wish to have a contingency clause stating that settlement on the new home can be postponed if you have a problem selling your old home or if the builder has not fully completed your new home.

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

**Remedies and dispute resolution under the contract.** Some contracts require the builder or the buyer to use certain means of resolving their disputes, such as binding arbitration or alternative dispute resolution, that prohibit a buyer from suing the builder. Read these clauses carefully to see if they provide a fair, efficient, and cost-effective means of resolving disputes. Maryland law prohibits a builder from including a provision that limits the buyer's right to obtain consequential damages if the builder breaches or cancels the contract.

**Requirements specific to custom home contracts.** When having a new home built on land you own, you are buying a "custom home" and the contract must include specific items. See Custom Home Contracts on page 5.

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

Other items that should be in your contract include:

- The builder's registration number
- Legal description of the building site
- Terms of payment: deposit, mortgage type
- A disclosure form that describes the method of deposit protection (see page 5)
- A statement that the builder will comply with all applicable building codes
- A statement referencing all performance standards and guidelines that will govern construction (see page 8)
- A disclosure concerning warranties and hazardous or regulated materials (see page 9)
- A description of when substitutions in materials can be made
- A provision detailing the buyer's right to receive this consumer information booklet
- Additional items must be included in custom home contracts (see page 5)

The contract spells out your builder's understanding of what has been agreed upon and the builder's obligation to carry it out. Make sure you and the builder have the same understanding before you sign the contract. **To avoid any misunderstandings, have all details of the transaction that you discussed with your builder, including what will or will not be done, included in the contract.**

## How Your Deposit Is Protected

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

The builder is required to give you a disclosure form that tells you whether the builder is protecting your deposit with an escrow account, bond, or letter of credit. You should read the form carefully. The amount of the bond or letter of credit is set by law to provide at least partial coverage of the deposits made by the builder's new home buyers. However, this may not provide full coverage for all buyers' deposits. To verify the information about an escrow account, you should call the bank that has the account. To verify a builder's bond or letter of credit, call the Home Builder Registration Unit at 410-576-6573 or toll-free at 1-877-259-4525, or send an e-mail to [homebuilder@oag.state.md.us](mailto:homebuilder@oag.state.md.us).

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

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

The builder may make withdrawals from the escrow account to pay documented claims of subcontractors who have provided labor or material in the construction of the house.

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

## Custom Home Contracts

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Maryland law has additional requirements for custom home contracts. When the buyer pays a builder to build a house on land the buyer already owns, the contract is for a custom home. Usually, the buyer pays the builder a deposit and then a series of "progress payments" as stated in a "draw schedule" as each stage of the building is completed. Within 30 days after each progress payment, the builder must provide the buyer with a list of the subcontractors, suppliers, and materialmen who have provided more than \$500 of goods or services to date and indicate which of them have been paid. If at any time the buyer has any questions or concerns about whether a subcontractor has been properly paid, the buyer should discuss them with the builder, the subcontractor, and the financial institution (see pages 6 and 7). The buyer pays the last progress payment after the builder has completed the house and has provided the buyer with the "waivers of liens," which prove that all of

the subcontractors have been paid and will not file a mechanics' lien on the house. The Custom Home Protection Act applies to this type of housing purchase. The law covers both houses constructed on site and those manufactured elsewhere and installed on site.

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



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

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

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

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



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

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



Additionally, a custom home contract must include:

- a statement that all change orders must specify any changes to the contract and the effect on the price of the house;
- a disclosure whether the builder is covered by a warranty program guaranteed by a third party; and
- a list of the primary subcontractors who will be working on the home.

The following disclosures must be on a separate page and signed by the buyer:

- Certification of whether the builder has had adverse adjudications or unsatisfied judgments in connection with a custom home contract within the last three years. Any such adjudications or unsatisfied judgments must be listed.
- Any disclosures concerning the Buyer's Risk Under Mechanics' Lien Laws.
- Any notices concerning the Escrow Account Requirement.

**Limitations on liens.** A subcontractor is not legally entitled to a lien against your home if you have made all payments you owe to your builder, even if the builder has failed to pay the subcontractor.



## Construction of Your Home

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It is your builder's obligation under the contract to build the house according to the specifications set forth in the contract, the building code, and applicable performance standards. If you wish to visit the construction site, contact your builder to schedule visits at times that are convenient for



both parties. If you spot something that concerns you or if you decide to make a change, contact the builder as soon as possible, verbally as well as in writing.

Before you go to settlement, you should have a final walk-through inspection of the house to make sure that all work was completed and done

properly according to the contract. During the walk-through, you should make a "punch list" of any items that will need to be completed or fixed prior to settlement. Some builders may provide a pre-printed form to record defects and workmanship problems. Other builders may not provide a form, leaving it up to the buyer to prepare and present the punch list. Faced with major work remaining to be done, consumers may ask the builder to set up an escrow account at settlement to hold back part of the purchase price until the work is completed.

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

**Building codes.** All new homes built in Maryland must meet all applicable building codes in effect at the time of construction. The specific codes must be referenced in your contract. For more information, contact your county's building code/permits office and the Maryland Department of Housing and Community Development (1-800-756-0119, [www.dhcd.maryland.gov](http://www.dhcd.maryland.gov)).

**Performance standards.** All contracts in Maryland must also incorporate building performance standards. Performance standards describe acceptable levels of quality and finish and describe what the builder's or homeowner's obligation is to repair any defects. The minimum performance standards in Maryland are those established by the National Association of Home Builders. Your builder may adopt higher standards, and so may your county or city. Along with the applicable building codes, the performance standards will be used in any dispute you have with your builder about whether the construction was done properly.

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



**Construction standards for industrialized/modular residential use buildings.**

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

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

All new residential construction must also comply with **implied warranties** that the home is free from faulty materials, constructed according to sound engineering standards, constructed in a workmanlike manner, and fit for habitation. You may have a legal remedy against a builder who fails to meet these implied warranties.

Unless an express warranty specifies a longer period of time, if the home is complete at the time the deed is delivered to the original purchaser, express and implied warranties cover the entire new home for one year after the date the original purchaser takes possession **or** the deed is delivered, whichever occurs first. If the home has not yet been completed at the time the deed is delivered to the original purchaser, the warranties cover the home for one year after the date the home is completed **or** the original purchaser takes possession, whichever occurs first. In addition, structural defects are covered for two years from that date of completion, delivery, or taking possession, whichever occurs first.

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

Mobile homes built to the HUD Code are covered by the manufacturer's warranty. Refer to the homeowner's manual for the specifics of the warranty. Only the home is covered by the manufacturer's warranty, not any site work done by the builder. Coverage



for structural defects caused at the time of manufacture in a home built to the HUD Code does not expire as long as the home is owned by the original purchaser.

**Home warranty plans.** Your builder may provide you with a written home warranty plan that is guaranteed by a third party. If your builder does so, Maryland law requires the plan to cover, at minimum:

- any defects in materials or workmanship for one year;
- any defects in the electrical, plumbing, heating, cooling, and ventilating systems for two years (not to exceed the period of the manufacturer's warranty); and
- defects to any load-bearing structural elements for five years.

If your builder offers you such a warranty, you should call the third-party warranty company to verify that your builder is in good standing with them and has registered your house for warranty protection. Your builder is required to provide the details, terms, and conditions of the warranty at the time of purchase or signing of the construction contract. At settlement, make sure that your builder has paid the warranty company for the coverage. Read the warranty carefully. It may contain many exclusions or limitations on your right to recover, and may contain strict rules on how you have to proceed to make a claim. You may be entitled to waive third-party warranty coverage if the builder belongs to a warranty plan that does not require coverage for every home the builder sells. Before you waive coverage, the builder must inform you in writing of the cost, nature, and extent of the warranty coverage that will be provided if not waived. You also have the right to rescind the waiver within three days of the contract. Without a home warranty or other express warranty described on page 9, you may have only a limited implied warranty as provided by law.

## Resolving Problems

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

You may be able to **file a claim under your home warranty plan** if the builder has provided that coverage. Be sure to read the policy carefully, follow the rules for filing a claim and do so in a timely manner. Make certain that you notify the warranty company before the claims period expires of any defects that have not been repaired by your builder. The notice should be sent to the warranty company by certified mail, return receipt requested.

If you cannot resolve the problem with your builder, you can call the Consumer Protection Division's **Mediation Unit**:

- 410-528-8662 in Baltimore
- 301-386-6200 in Prince George's County
- 301-791-4780 in Hagerstown
- 410-713-3620 in Salisbury
- 301-274-4620 in Southern Maryland
- 1-888-743-0023 toll-free elsewhere in the state



You may file a complaint at [www.marylandattorneygeneral.gov/Pages/CPD/complaint.aspx](http://www.marylandattorneygeneral.gov/Pages/CPD/complaint.aspx). The Mediation Unit will attempt to resolve the dispute through mediation with the builder.

You may also file a complaint with the Mediation Unit against a **subcontractor** who attempts to impose a **mechanic's lien** against your home based upon work for which you have paid the home builder. In addition to filing a complaint, you should file a response to any mechanic's lien action informing the court that you have already paid the builder for the work.

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

For contracts entered into with a registered builder beginning January 1, 2009, you may be eligible to file a claim with the Division's Home Builder Guaranty Fund. The Guaranty Fund may compensate you for actual losses up to \$50,000 based on incomplete construction, breach of warranty, failure to meet standards or guidelines, or deposits that a builder fails to return. To initiate a claim against the Guaranty Fund, you must file a complaint with the Mediation Unit and already have provided the

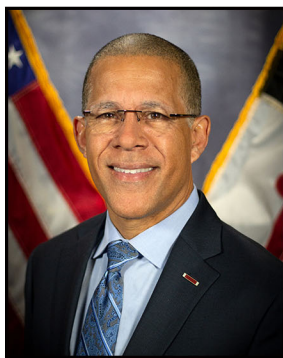
builder with a chance to address any problems. If you have a home warranty plan, you may be required to first file a claim with the warranty company. If your contract contains an arbitration clause, you may be required to have your claim arbitrated first if you and the builder agree upon an arbitrator.

If you are having problems with a **mobile home or an industrialized/modular residential building**, you should provide a written list of those problems to the retailer, manufacturer, and installer. If your home is not repaired in a reasonable time period, or if the responsible party refuses to make repairs, you should contact the local building officials for required repairs related to work performed at the site. For required repairs related to work performed at the manufacturing facility, you should contact:

**Maryland Codes Administration of the Department of  
Housing and Community Development**

7800 Harkins Road  
Lanham, MD 20706  
(301) 429-7400

You should provide all the information related to required repairs and the following information: your name, address, city, state, home phone number, work phone number, email address (if applicable), your home label and serial number(s), and the manufacturer's and retailer's names and phone numbers.



ANTHONY G. BROWN  
MARYLAND ATTORNEY GENERAL

**MARYLAND OFFICE OF THE ATTORNEY GENERAL**  
CONSUMER PROTECTION DIVISION  
200 ST. PAUL PLACE BALTIMORE, MD 21202  
(410) 576-6300 OR 1 (888) 743-0023 TOLL-FREE IN MARYLAND  
TDD: (410) 576-6372  
[WWW.MARYLANDATTORNEYGENERAL.GOV](http://WWW.MARYLANDATTORNEYGENERAL.GOV)