



STATE OF MARYLAND  
OFFICE OF THE ATTORNEY GENERAL

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# 2013 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

2013 marked the 12<sup>th</sup> year of operation of the Maryland Home Builder Registration Unit (“the Home Builder Unit” or “Unit”) since the Home Builder Registration Act (“the Act” or “HBRA”) was enacted by the General Assembly in the 2000 Session. 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.<sup>1</sup> 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 Unit of the Consumer Protection Division of the Office of the Attorney General was created by the HBRA to administer and enforce the Act.<sup>2</sup> The Act requires that the Consumer Protection Division make an annual report of its activities to the Governor and General Assembly. This is the twelfth report since the law became fully operational on January 1, 2001.

The report focuses on the following areas

- **Registration of Builders:** 2,347 builders were registered as of June 30, 2013. 168 of those builders registered for the first time between July 1, 2012 and June 30, 2013.
- **Registration Renewal:** From July 1, 2012 to June 30, 2013, the Unit mailed renewal notices to 1,785 builders whose registrations were due to expire by June 1, 2013. 1,401 of those builders renewed their registration as of June 30, 2013.
- **Law Enforcement:** The Unit opened 90 investigations between July 1, 2012 and June 30, 2013, after receiving reports of unregistered builders or violations of the Home Builder Registration Act, the Consumer Protection Act, the New Home Warranties Act or violations of the laws governing deposits on new homes. Sixty-six of the investigations resulted in settlements; enforcement actions have been filed in another nine; and fifteen have been closed or remain under continuing investigation. The Unit receives information from many sources, including consumers, other builders, subcontractors, and permit offices.

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<sup>1</sup> 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, 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.

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

● **Education of Builders and Consumers:** As of June 30, 2013, the Unit had distributed a total of 251,945 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](http://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. 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 119 consumer complaints involving 94 home builders between July 1, 2012 and June 30, 2013. 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.

● **Home Builder Sales Representatives:** Effective October 1, 2008, sales representatives for home builders were required to register with the Unit. A home builder sales representative is an individual employed by a home builder as the home builder's representative to consumers regarding the purchase of a new home from the home builder. Sales representatives are required to complete a registration form and pay a \$200 registration fee for a 2-year registration. As of July 1, 2013, there were 520 registered sales representatives, who worked for 189 builders.

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

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

The Guaranty Fund applies only to contracts entered into after January 1, 2009. The Division is required to maintain the Guaranty Fund at a level of at least \$1,000,000. The Guaranty Fund is funded through a \$50 fee to be paid by home builders to the permit office together with the 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, 2012 until June 30, 2013, there were sixty-seven claims filed with the Guaranty Fund.

## **II. REGISTRATION OF BUILDERS**

### **A. THE HOME BUILDER REGISTRATION UNIT**

A central requirement of the HBRA is that all new home builders in Maryland, except for those home builders that build exclusively in Montgomery County, register with the Unit. The Home Builder Registration Unit was created by the HBRA to administer and enforce the Act. A special fund was created to fund the Unit's activities, which is paid for through the collection of registration fees. The HBRA sets the initial registration fee paid by builders at \$600 for a two-year registration. The Act further provides for renewal fees for an additional two-year period of \$300 for builders who were issued 10 or fewer building permits during the preceding year and of \$600 for builders who were issued 11 or more permits during the preceding year. HBRA §4.5-203, §4.5-303, §4.5-305. The Division's costs for the Unit include salary, benefits, and administrative costs for a ten person unit<sup>3</sup>; production and distribution of the consumer education pamphlet; continued maintenance of the website and data systems; and perhaps most importantly, enforcement costs. The Unit's ten positions include: a Director/Assistant Attorney General, an Assistant Attorney General who oversees the registration of sales representatives and cases involving the Home Builder Guaranty Fund, an Administrator who oversees builder registration, an Administrator who oversees new home warranty security plans and builder compliance with deposit protection laws, an Administrator who oversees registration of sales representatives and administration of the Home Builder Guaranty Fund, a Staff Attorney responsible for assisting with litigation, two Investigators, and two Secretaries.

### **B. BUILDER REGISTRATION AND RENEWAL UNDER THE HBRA**

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

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

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"

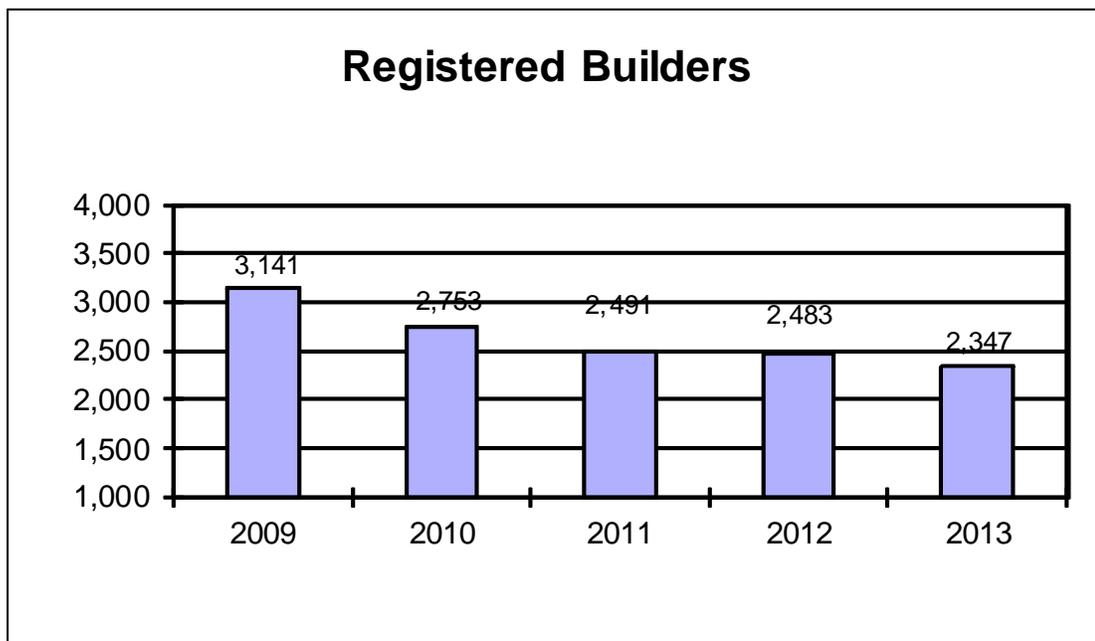
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<sup>3</sup> Two of the positions have been vacant for over one year.

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, 2013, 2,347 home builders were registered with the Unit. 168 new builders registered with the Unit between July 1, 2012 and June 30, 2013.

The following chart shows the number of registered builders reported in the Annual Report since 2009.



Source: HBRU

In the past year, the Unit mailed renewal notices to the 1,785 builders that registered under the HBRA, whose initial two year registrations were due to expire between September 1, 2012 and June 1, 2013. As of June 30, 2013, 1,401 of these builders have been approved for renewal. 366 builders did not renew their registrations (104 notified the Unit that they were not renewing, 18 withdrew their applications, and 244 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 1,401 builders that have been renewed, 1,330 (95%) renewed their registrations over the Internet. However, consistent with the nationwide slowdown in new home building, the overall number of registered builders has continued to decrease since a peak in 2008.

### 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.<sup>4</sup> 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 2,347 registered builders in Maryland as of June 30, 2013. 168 of those builders registered for the first time between July 1, 2012 and June 30, 2013 and the Unit continues to receive new applications monthly.
- **Type of Construction:** The vast majority of Maryland's builders report building either custom homes (54%) or new homes (31%). Another 6% report building condominiums, 6% report building industrialized buildings, and 3% report selling or installing mobile homes.
- **Form of Business:** 51% of Maryland's builders use corporations as their form of business organization. Another 35% are limited liability companies (LLCs), 12% are sole proprietorships, and 2% are partnerships.
- **Location of Builders and Housing Construction:** Not surprisingly, the majority of Maryland's builders continue to be located in the region of Maryland that is experiencing the most new home building activity, as measured by the number of single family housing permits issued: 79.6% of building permits for single family construction were issued in the Baltimore-Washington Region, where 52.7% of Maryland's builders are headquartered. 7.2% of building permits were issued in the Eastern Shore Regions, where 18.5% of Maryland's builders are headquartered. The Southern Region had 11% of the building permits issued and provided headquarters for 10.6% of Maryland's builders. The Western Region had 2.2% of building permits and provided headquarters for 7% of Maryland's builders. 11.3% of builders had headquarters that were out of state.

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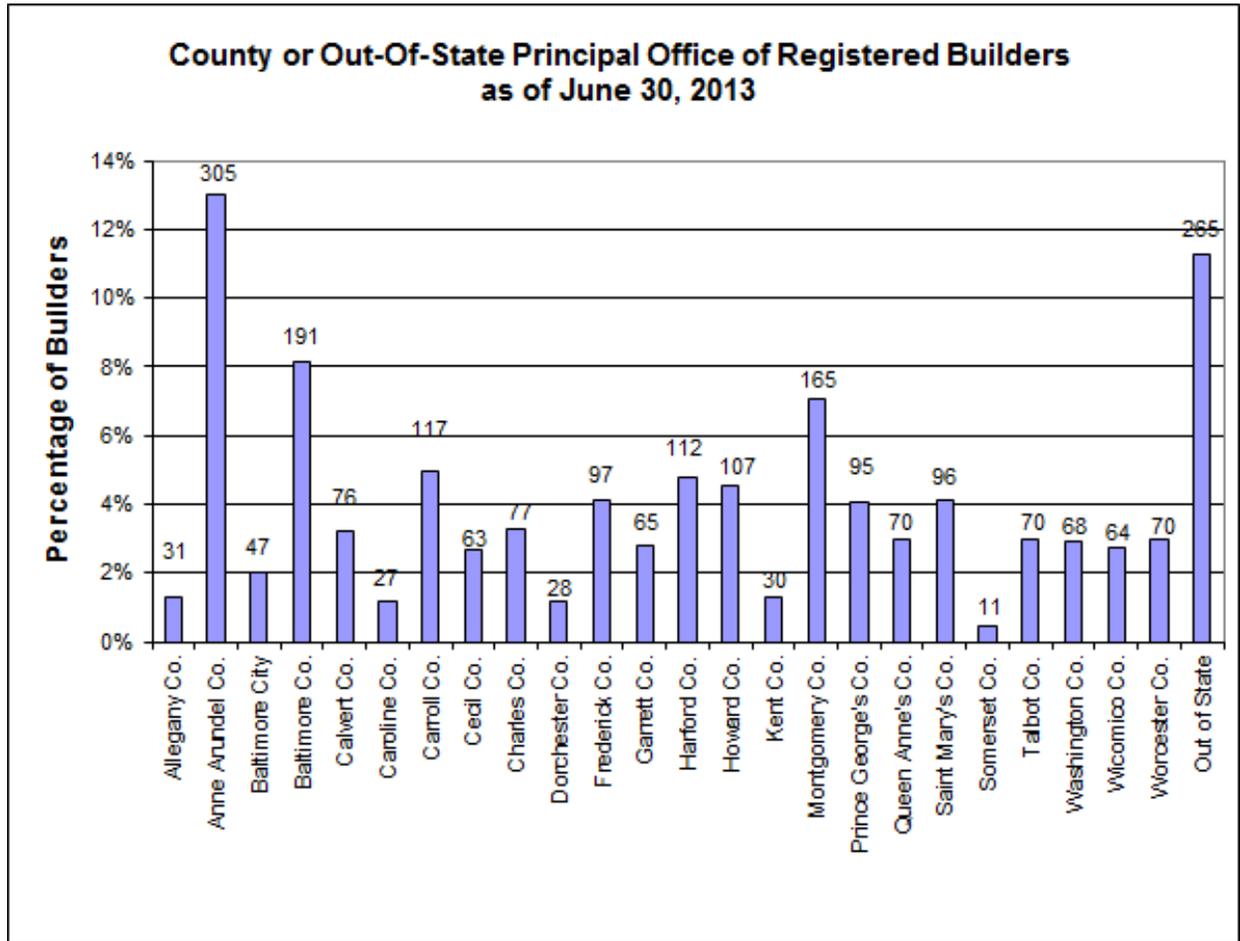
<sup>4</sup> The HBRA excludes from registration employees, subcontractors and vendors of a registered home builder; the manufacturer of industrialized buildings unless it also installs the building; real estate developers who do not also contract for or construct homes; construction financiers; and 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.

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, 2012 through June 30, 2013, 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 (7/1/12 - 6/30/13)	Percentage of State-wide Permits Issued in Region
<b>Baltimore Region</b> (Anne Arundel, Baltimore City, Baltimore County, Carroll, Harford, Howard)	37.5%	7,081	44.1%
<b>Suburban Washington Region</b> (Frederick, Montgomery, Prince George's)	15.2%	5,704	35.5%
<b>Upper Eastern Shore Region</b> (Caroline, Cecil, Kent, Queen Anne's, Talbot)	11.1%	618	3.8%
<b>Southern Region</b> (Calvert, Charles, St. Mary's)	10.6%	1,760	11.0%
<b>Lower Eastern Shore Region</b> (Dorchester, Somerset, Wicomico, Worcester)	7.4%	552	3.4%
<b>Out of State</b> (Delaware, Florida, Illinois, Massachusetts, Michigan, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Texas, Virginia, Washington, D.C., West Virginia)	11.3%		
<b>Western Region</b> (Allegany, Garrett, Washington)	7.0%	348	2.2%
Totals	100%	16,063	100%

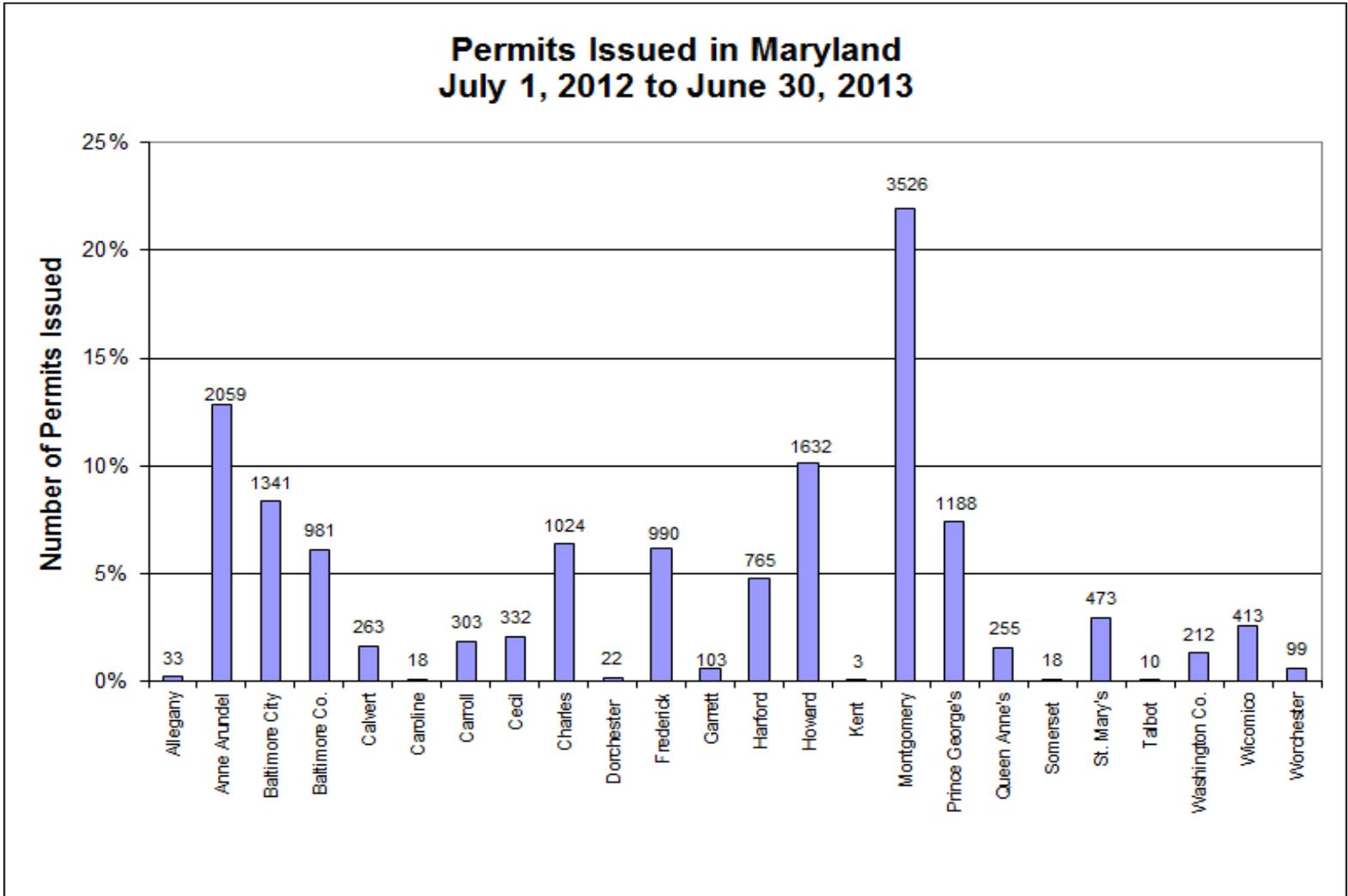
Source: HBRU and Md. Dept. of Planning, for Single Family Permits Issued July 1, 2012 through June 30, 2013

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



Source: HBRU

The following chart shows the number of permits issued in each county from July 1, 2012 through June 30, 2013.



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

### III. **HOME BUILDER SALES REPRESENTATIVES**

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

As of July 1, 2013, there were 520 registered sales representatives, who worked for 189 builders. A registered sales representative may be employed by more than one builder. The Unit issues a Registration Certificate to a registered sales representative, who is required to conspicuously display the Certificate at the location where the sales representative primarily works.

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

### IV. **LAW ENFORCEMENT**

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

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

The Unit opened 90 investigations between July 1, 2012 and June 30, 2013 after receiving reports of unregistered builders or violations of the Home Builder Registration Act, the Consumer Protection Act, the New Home Warranties Act or violations of the laws governing deposits on new homes. Sixty-six of the investigations resulted in settlements; other enforcement actions have been taken in another nine; and fifteen have been closed or remain under continuing investigation.<sup>5</sup> The Unit receives information from many

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<sup>5</sup>The Unit settled or took enforcement action in 103 cases between July 1, 2012 and June 30, 2013, including investigations opened prior to July 1, 2012.

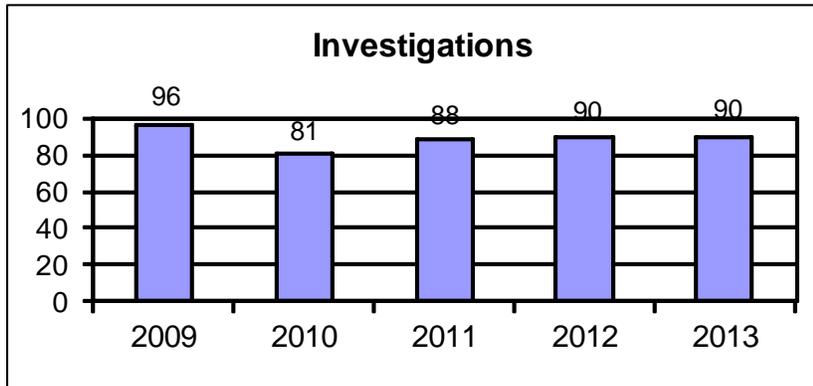
sources, including consumers, other builders, subcontractors, and permit offices. The results of some of these enforcement actions are summarized as follows:

- The Consumer Protection Division issued a Final Order finding that several builders based in Howard County and their related principals entered into contracts with 19 consumers to construct homes in Howard and Harford Counties, took deposits and payments toward the construction of the homes, and then failed to complete construction or return the money paid. The Final Order found violations of the Home Builder Registration Act, the Custom Home Protection Act, the New Home Deposits Act, and the Consumer Protection Act and ordered that the builders and their principals pay restitution of \$847,613.13, economic damages of \$276,248.21, civil penalties of \$144,000.00, and costs of \$27,252.30.
- The Consumer Protection Division issued a Final Order finding that a St. Mary's County builder and its principals entered into contracts to construct two homes, took deposits and payments toward the construction of the homes, and then failed to complete construction or return the money paid. The Final Order found violations of the Home Builder Registration Act, the Custom Home Protection Act, the New Home Deposits Act, and the Consumer Protection Act and ordered that the builders and their principals pay restitution of \$169,359.03, economic damages of \$46,216.86, civil penalties of \$10,000.00, and costs of \$2,966.34.
- The Consumer Protection Division issued a Final Order finding that an unregistered Anne Arundel County builder entered into contracts with consumers to construct homes, took deposits and payments toward the construction of the homes, and then failed to complete construction or return the money paid. The Final Order found violations of the Home Builder Registration Act, the Custom Home Protection Act, and the Consumer Protection Act and ordered that the builder pay restitution of \$282,841.88, civil penalties of \$465,000.00, economic damages of \$84,833.72, and costs of \$4,348.56.
- The Consumer Protection Division issued a Final Order upholding the denial of the registration of a Montgomery County builder whose principals had also been principals of a home builder that had its registration revoked for failure to satisfy a consumer judgment.
- The Home Builder Registration Unit reached a settlement with a Prince George's County builder whose registration was suspended for failing to comply with the terms of a prior settlement and allowing unregistered related entities to use its registration number in contracts with consumers. The Final Order by Consent required the builder to comply with all registration requirements prior to being registered, submit to binding arbitration with the Consumer Protection Division's Arbitration Program, post a performance bond of \$200,000.00, and pay a civil penalty.

- The Home Builder Registration Unit revoked the registration of a Virginia builder for violation of the Home Builder Registration Act. The builder failed to disclose the existence of a principal of the company on the application to register and failed to disclose lawsuits filed against the company and its principals, including the company's petition for bankruptcy and a criminal proceeding involving the undisclosed principal.
- The Home Builder Registration Unit revoked the registration of a Harford County builder for violation of the Home Builder Registration Act. The builder failed to satisfy a judgment entered in favor of a consumer in the amount of \$23,460.28 by the Circuit Court for Baltimore City.
- The Home Builder Registration Unit denied the registration of a Baltimore City builder for violation of the Home Builder Registration Act. The builder's license with the Maryland Home Improvement Commission was suspended for failure to reimburse the Maryland Home Improvement Commission's Guaranty Fund and the builder failed to notify the Home Builder Registration Unit of the filing of the lawsuit, entry of judgment, and suspension of its home improvement license.
- The Office of Administrative Hearings issued a Proposed Decision finding that an unregistered Anne Arundel County builder sold a home to a consumer without correcting code violations or otherwise bringing the property in compliance with the local code. The Proposed Decision found violations of the Home Builder Registration Act, the New Home Deposits Act, and the Consumer Protection Act and recommended that the builder pay restitution, civil penalties, and costs.
- The Office of Administrative Hearings issued a Proposed Decision finding that an unregistered Baltimore County builder and its principal entered into contracts with consumers to construct homes in Baltimore County and then failed to complete construction of the homes, pay subcontractors, or return the money paid. The Proposed Decision found violations of the Home Builder Registration Act, the New Home Deposits Act, the Custom Home Protection Act, and the Consumer Protection Act and recommended that the builder and its principal pay restitution, civil penalties, economic damages, and costs.
- The Office of Administrative Hearings issued a Proposed Decision finding that a Carroll County builder and its principal entered into contracts with consumers to construct homes in Carroll County and then failed to complete construction of the homes, pay subcontractors, or return the money paid. The Proposed Decision found violations of the Home Builder Registration Act, the New Home Deposits Act, the Custom Home Protection Act, and the Consumer Protection Act and recommended that the builder and its principal pay restitution, civil penalties, economic damages, and costs.

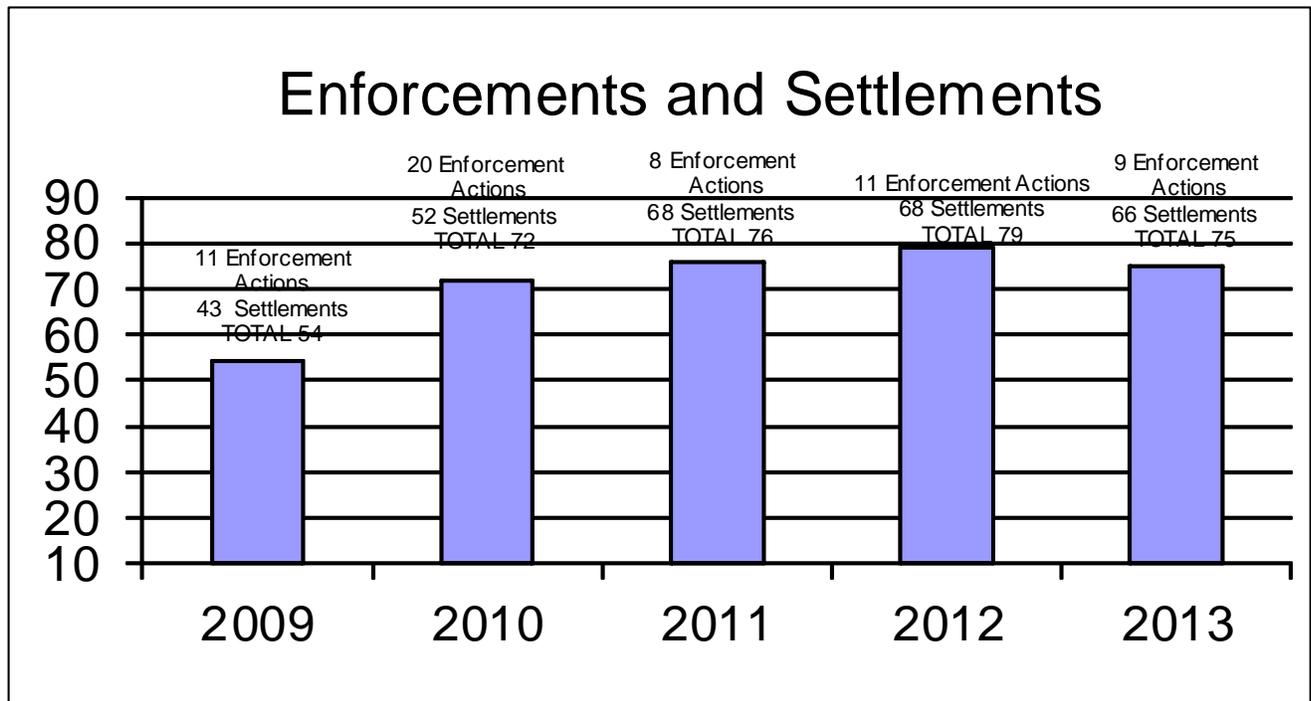
- The Home Builder Registration Unit entered into Assurances of Discontinuance with sixty-six builders to settle allegations that the companies acted as home builders without having registered with the Unit in violation of the Home Builder Registration Act or engaged in other violations. The companies brought their registrations into compliance, agreed to penalties totaling \$51,000.00, and agreed to submit any complaints that cannot be resolved through mediation to binding arbitration through the Division's Arbitration program. The builders were located in Anne Arundel, Baltimore, Calvert, Charles, Frederick, Howard, Montgomery, Prince George's, Queen Anne's, St. Mary's, Talbot, Washington, Wicomico, and Worcester Counties.

The following chart shows the number of Investigations reported in the Annual Reports since 2009.



Source: HBRU

The following chart shows the number of Enforcement Actions reported in the Annual Reports since 2009.



Source: HBRU

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

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

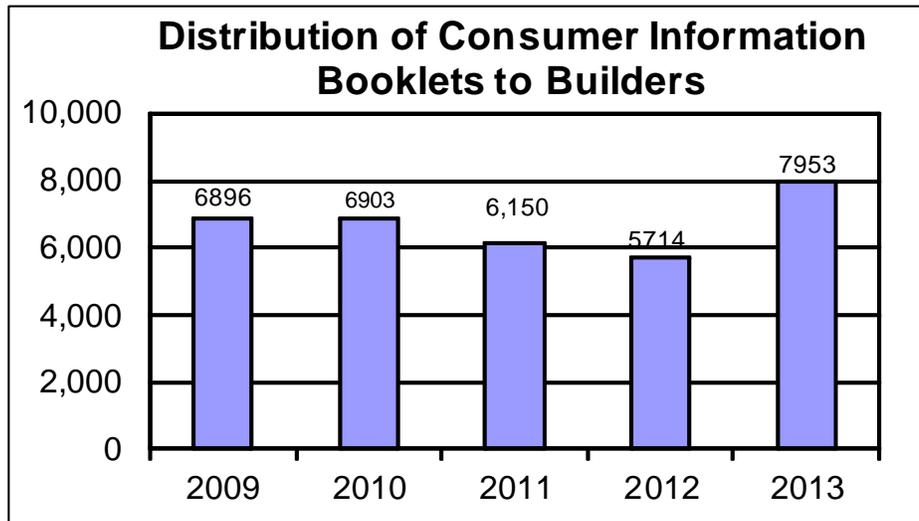
**B. CONSUMER EDUCATION PAMPHLET**

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

The Unit consulted with the industry, and initially developed and published a consumer education pamphlet, *BUYING A NEW HOME - Consumer Rights and Remedies Under Maryland Law*. The Unit also drafted and distributed a model form for the consumer to sign to acknowledge receipt of the pamphlet. The Unit regularly updates the pamphlet to reflect changes to the law. A copy of the revised pamphlet is available on our website at [www.oag.state.md.us/homebuilder](http://www.oag.state.md.us/homebuilder).

As of June 30, 2013, the Unit had distributed a total of 251,945 consumer information pamphlets to builders. Between July 1, 2012 and June 30, 2013, the Unit distributed 7,953 pamphlets to builders.

The following chart shows the number of Consumer Information Booklets distributed to Builders since 2009.



Source: HBRU

### C. HBRU WEBSITE

The Home Builder Registration Unit has maintained and updated its website to make information readily available to consumers, builders, and permit offices. The website has been operational since January, 2001 and is updated regularly as information changes. Since the website can be accessed by anyone with Internet access, it is a significant mode of outreach and is an educational resource for both consumers and builders. The website provides consumers, permit offices and others the ability to search for builders either by the name of the builder or by registration number. The website address is [www.oag.state.md.us/homebuilder](http://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 and sales representatives pursuant to the Act.
- A list of currently registered builders that can be searched either by builder name or by registration number.
- Registration materials including all the registration forms. Builders and sales representatives are able to register and renew their registrations over the Internet.

- The Home Builder Registration Act and other applicable laws, and updates to those laws.
- The consumer information pamphlet developed by the Home Builder Registration Unit, *BUYING A NEW HOME - Consumer Rights and Remedies Under Maryland Law*.
- The Builder New Home Disclosure Form.
- A sample Surety Bond and Letter of Credit that builders can use for the protection of consumer deposits.
- Previous Annual reports of the Home Builder Registration Unit.

#### VI. **COORDINATION WITH LOCAL PERMIT OFFICES**

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

The Unit has communicated regularly with the 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. 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, 2012 and June 30, 2013, the Mediation Unit of the Consumer Protection Division handled 119 written consumer complaints filed against 94 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.

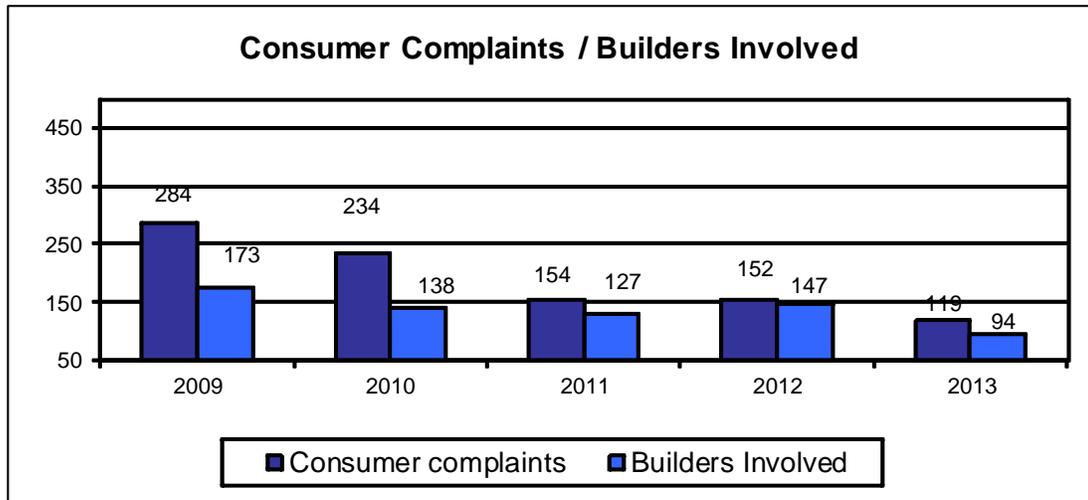
Of the complaints received by the Division's Mediation Unit, 52% of the complaints were mediated; 1% were filed for information only; 3% were resolved by the consumer; 7% were closed after the Division provided advice to the consumer; 5% were referred to other agencies having jurisdiction; 2% were arbitrated; 15% required administrative review and 15% had other miscellaneous resolutions. Thirty five percent (35%) 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 \$85,745.00.

The 119 written complaints raised the following issues:

- *Construction Defect Issues* (61);
- *Incomplete Construction* (32), including disputes between the builder and owner about whether construction has been completed;
- *Contract Disputes* (10);
- *Misrepresentation Claims* (9), including claims that the finished home was not constructed in the manner promised by the builder;
- Warranty Issues (9); and
- *Deposit Issues* (7), including consumers seeking return of their deposits after being denied financing or withdrawing from their contracts for other reasons.

Consumers also filed complaints against builders with the Montgomery County Office of Consumer Protection and with the Howard County Office of Consumer Affairs. Between July 1, 2012 and June 30, 2013, there were 36 complaints filed in Montgomery County. In Howard County, 23 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 2009.



Source: HBRU

**VIII. 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 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 2012, the seven approved plans reported a total statewide enrollment of 76,250 homes. Also, in 2012 the warranty plans enrolled 4,011 new homes, generating \$1,876,257 in revenue. The plans reported a total of 147 consumer claims for warranty coverage in 2012 with 33 claims approved for coverage and 114 of the claims being denied. The warranty plans determined that 4 approved claims were resolved without action by the plan. The warranty plans settled the remaining 29 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, 2012 to June 30, 2013 the Unit has received notice of 78 denied warranty claims.<sup>6</sup> From the same time period, the warranty plans provided notice that 1

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<sup>6</sup>The 114 denied claims that the plans reported were for the 2012 calendar year (January 1, 2012 to December 31), while the 78 denied claim notices the Unit received were during the fiscal year ( July 1, 2012 to June 30, 2013).

claim was accepted or partially accepted for coverage. The claims that were denied are categorized with the plan's response as follows:

- Structural Defects (32), including the plan's claim that the defect did not meet the plan's definition of a structural defect (31), warranty coverage expired (0), and defect is excluded by plan (1);
- Material/Workmanship Defects (43), including warranty coverage expired (40), defect is within plan standards (0), and defect is excluded by plan (3);
- Equipment/Appliance/Fixture Defects (0);
- Plumbing/Electrical/HVAC (3), including warranty coverage expired (2), defect is excluded by plan (1), and defect is within plan standards (0).

### Table of Reported Claims

Type of Claim	Claims Denied in FY 2010	Claims Denied in FY 2011	Claims Denied in FY 2012
Structural Defects	32	46	32
Material/Workmanship Defects	35	30	43
Equipment/Appliance/Fixture Defects	0	2	0
Plumbing/Electrical/HVAC Defects	7	3	3

### IX. HOME BUILDER GUARANTY FUND

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

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

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

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

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

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

From July 1, 2012 until June 30, 2013, there were sixty-seven claims filed with the Guaranty Fund.

- Of those claims, nine were settled through mediation with consumers receiving awards in the amounts of \$7,500.00, \$500.00, \$21,900.00, \$1,145.00, \$5,000.00, \$2,100.00, \$10,000.00, \$1,000.00, and \$1,500.00, for total mediation awards of \$50,645.00.
- Two claims were referred to arbitration. One resulted in an award to the consumer of \$11,706.79, and no award was made in the other.
- Eighteen claims were scheduled for hearings at the Office of Administrative Hearings. One of the eighteen claims was dismissed after being confidentially settled by the consumer and builder prior to the hearing and another was withdrawn by the consumer. Four claims are in various stages of the hearing process; three claims were consolidated with an enforcement action by the Division and are pending a hearing; and the other unrelated claim is also pending a hearing. A Final Order was issued in five claims denying Guaranty Fund relief to the claimants based on their failure to establish an actual loss that was recoverable from the Guaranty Fund. Final Orders were issued in two claims that awarded Guaranty Fund relief to each consumer in the amount of \$50,000.00, for a total of \$100,000.00. Five claims are pending Final Orders by the Consumer Protection Division.

- Ten claims, which involved other enforcement action by the Division, were settled by Final Order by Consent that enabled the consumers to recover from the Guaranty Fund.
- Two claims are being scheduled before the Office of Administrative Hearings and eight remain in investigation.
- Eighteen claims were determined not to be eligible for relief from the Guaranty Fund.

From July 1, 2012 until June 30, 2013, the Guaranty Fund paid a total of \$445,595.00 to claimants for actual losses resulting from acts or omissions by a registrant in relation to new home construction and the registrations of 5 builders were suspended as a result.

#### **X. Legislation Affecting Home Builders**

There was no legislation affecting home builders that was enacted during the 2013 session of the General Assembly.