



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

2009 ANNUAL REPORT

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

**SUBMITTED TO THE
GOVERNOR AND GENERAL ASSEMBLY
OF MARYLAND**

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I. EXECUTIVE SUMMARY

The 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.¹ During the 2008 Session, the General Assembly enacted legislation to provide additional protections for home buyers, establishing a registration requirement for sales representatives for Maryland home builders and a Home Builder Guaranty Fund.

The Home Builder Registration Unit (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.² The Act requires that the Consumer Protection Division make an annual report of its activities to the Governor and General Assembly. This is the ninth report since the law became fully operational on January 1, 2001.

The report focuses on the following areas:

- **Registration of Builders:** 3,141 builders were registered as of June 30, 2009. 182 of those builders registered for the first time between July 1, 2008 and June 30, 2009.
- **Registration Renewal:** From July 1, 2008 to June 30, 2009, the Unit mailed renewal applications to 2,682 builders whose registrations were due to expire by June 1, 2009. 1,830 of those builders have renewed their registration as of June 30, 2009.
- **Law Enforcement:** The Unit opened 96 investigations between July 1, 2008 and June 30, 2009 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. Forty-

¹ Earlier laws provided partial protections for home buyers by focusing on protection of the buyer’s deposit, required contract provisions and disclosures, and prescribed terms of non-mandatory home warranty security plans. See New Home Deposits, 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.

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

three of the investigations resulted in settlements; other enforcement actions have been taken in another eleven (revocation and/or charges filed in 8 cases, and reprimand issued 3 cases); and forty-two have been closed or remain under continuing investigation. The Unit receives information from many sources, including consumers, other builders, and permit offices.

- **Education of Builders and Consumers:** As of June 30, 2009, the Unit had distributed a total of 225,225 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. The Unit also coordinates with local permit offices 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 270 consumer complaints involving 277 home builders between July 1, 2008 and June 30, 2009. 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 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. During FY 2009, the Unit registered 616 sales representatives, who work for 191 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. As of June 30, 2009, the balance in the Guaranty Fund was \$94,092. As of June 30, 2009, there have been no claims that have proceeded to the Guaranty Fund stage of the process.

• **Legislation:** During the 2009 legislative session, the General Assembly enacted Chapters 58 (Senate Bill 377) and 59 (House Bill 662), which clarified that the Guaranty Fund fee to be collected by permit offices from home builders in connection with each permit for a new home (1) applies to each unit in a multi-family dwelling, such as a condominium, and (2) that the fee must be paid in connection with new home permits issued by municipalities as well as county permit offices. The legislation also authorized permit offices to retain an administrative fee of not more than 2% of the Guaranty Fund fees remitted to the Division.

Chapter 92 (Senate Bill 657) provides that contracts for the sale of a new home are contingent upon the purchaser obtaining financing, unless the contract expressly states that the contract is not so contingent.

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 nine-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 nine positions include: a Director/Assistant Attorney General, an Assistant Attorney General who oversees the registration of sales representatives and administration of 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, two Investigators, and two Secretaries. 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.

B. BUILDER REGISTRATION AND RENEWAL UNDER THE HBRA

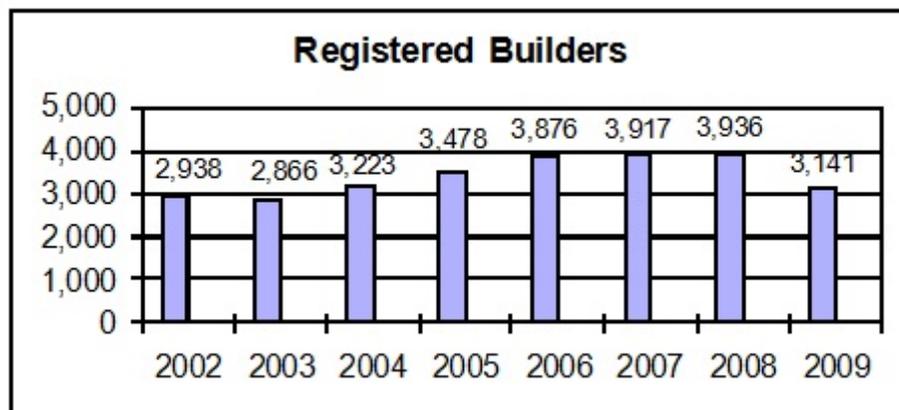
The Act establishes a registration procedure that requires builders to complete a registration form and pay the required registration fee. The Act does not provide for competency testing. The Unit has implemented the registration requirements with an objective of making registration an easy and quick 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, 2009, 3,141 home builders were registered with the Unit. The Unit continues to receive registration applications from new builders on a daily basis. 182 new builders registered with the Unit between July 1, 2008 and June 30, 2009.

The following chart shows the number of registered builders reported in the Annual Report since 2002.



Source: HBRU

In the past year, the Unit mailed renewal notices to the 2,682 builders that registered under the HBRA, whose initial two year registrations were due to expire between September 1, 2008 and June 1, 2009. As of June 30, 2009, 1,830 of these builders have been approved for renewal. 756 builders did not renew their registrations (152 notified the Unit that they were not renewing, 21 withdrew their applications, and 583 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 1,830 builders that have been renewed, 1,688 (92%) renewed their registrations over the Internet.

C. WHO ARE MARYLAND'S BUILDERS?

The HBRA defines "home builder" and "new home" broadly to ensure that all new home builders in Maryland must be registered. HBRA §4.5-101(g) and (m). The exceptions to the HBRA are narrowly drawn.³ Information provided by builders in the registration process, combined with other available data, provides the following profile of Maryland Builders:

- **Number of Builders:** There were 3,141 registered builders in Maryland as of June 30, 2009. 182 of those builders registered for the first time between July 1, 2008 and June 30, 2009 and the Unit continues to receive new applications weekly.
- **Type of Construction:** The vast majority of Maryland's builders report building either custom homes (49%) or new homes (33%). Another 8% report building condominiums, 7% report building industrialized buildings, and 3% report selling or installing mobile homes.
- **Form of Business:** 50% of Maryland's builders use corporations as their form of business organization. Another 32% are limited liability companies (LLCs), 16% 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: 71.8% of building permits for single family construction were issued in the Baltimore-Washington Region, where 53% of Maryland's builders are headquartered. 10% of building permits were issued in the Eastern Shore Regions, where 20.3% of Maryland's builders are headquartered. The Southern Region was issued 13.7% of the building permits and provided headquarters for 10.2% of Maryland's builders. The

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

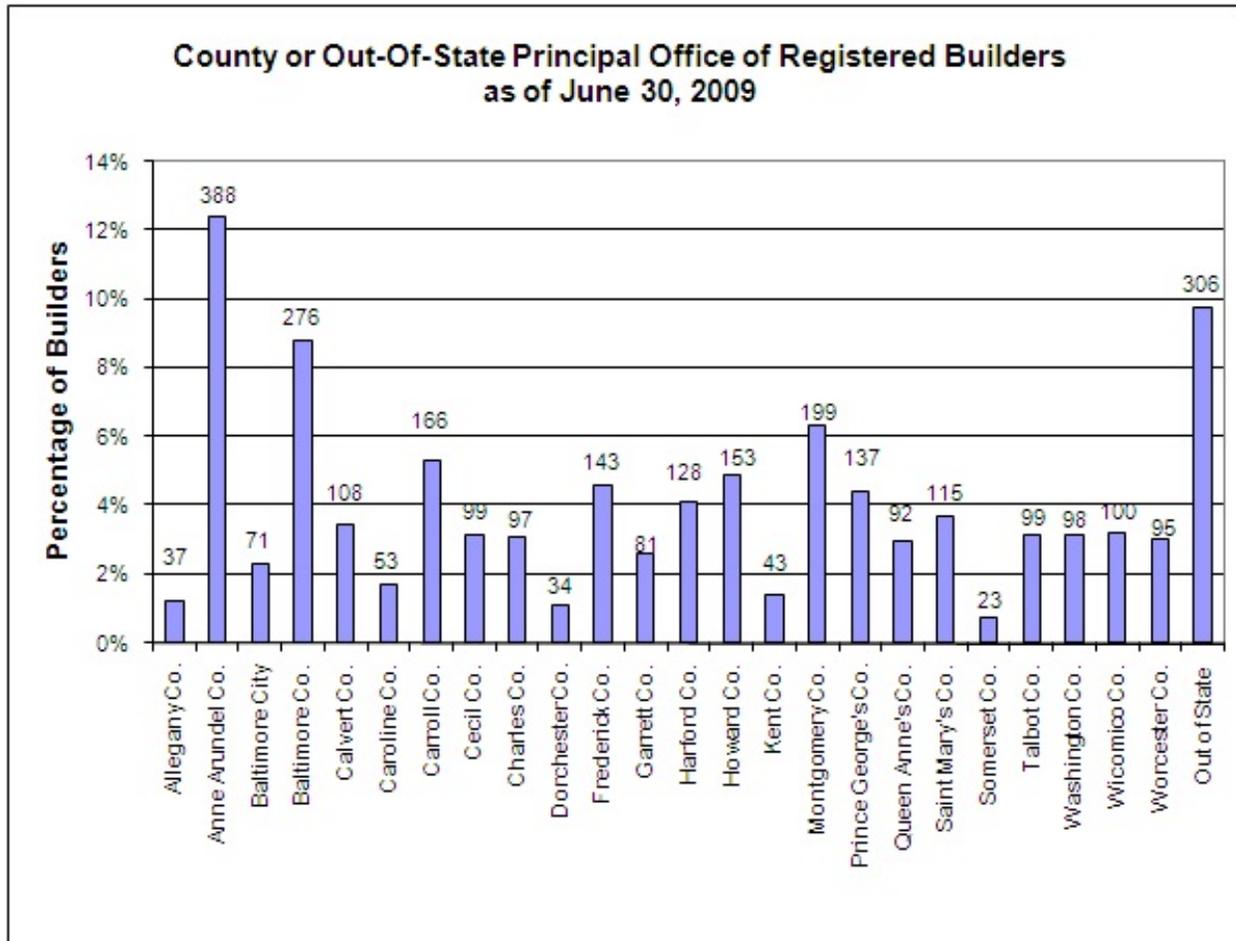
Western Region was issued 4.5% of building permits and provided headquarters for 6.9% of Maryland's builders. 9.6% of builders had headquarters that were out of state.

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, 2008 through June 30, 2009, 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 (7/1/08 - 6/30/09)	Percentage of State-wide Permits Issued in Region
Baltimore Region (Anne Arundel, Baltimore City, Baltimore County, Carroll, Harford, Howard)	37.6%	3,827	39.9%
Suburban Washington Region (Frederick, Montgomery, Prince George's)	15.2%	3,065	31.9%
Upper Eastern Shore Region (Caroline, Cecil, Kent, Queen Anne's, Talbot)	12.3%	498	5.2%
Southern Region (Calvert, Charles, St. Mary's)	10.2%	1,316	13.7%
Lower Eastern Shore Region (Dorchester, Somerset, Wicomico, Worcester)	8.0%	463	4.8%
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)	9.7%		
Western Region (Allegany, Garrett, Washington)	6.9%	430	4.5%
Totals	100%	9,599	100%

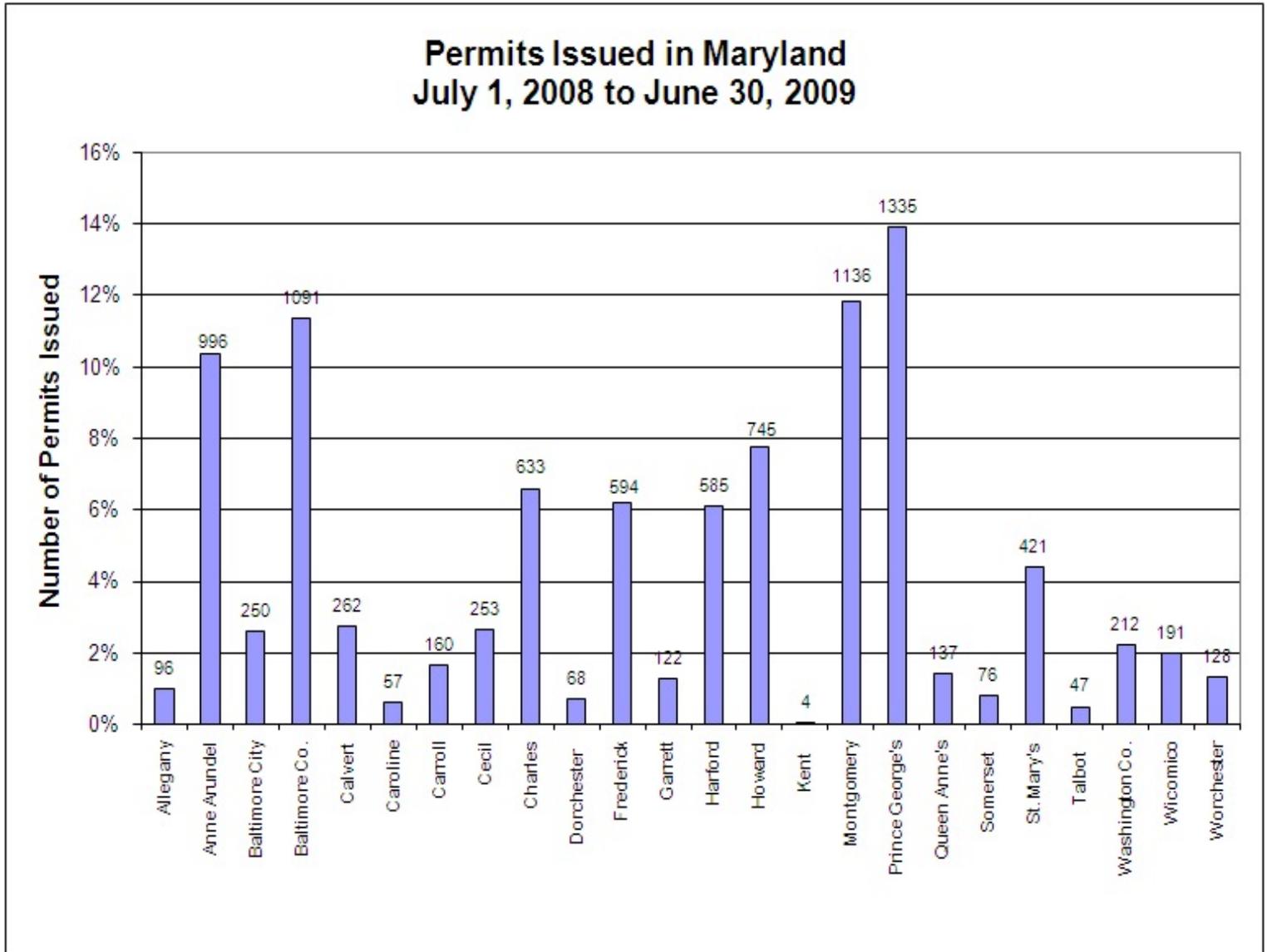
Source: HBRU and Md. Dept. of Planning, for Single Family Permits Issued July 1, 2008 through June 30, 2009

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, 2008 through June 30, 2009.



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.

During FY 2009, the Unit registered 616 sales representatives, who work for 191 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 96 investigations between July 1, 2008 and June 30, 2009. These investigations involved allegations of violations of the HBRA, other home building related laws, or the Consumer Protection Act. Forty-three of the investigations resulted in settlements; other enforcement actions have been taken in another eleven (revocation and/or charges filed in 8 cases, and reprimand issued in 3 cases); and forty-two have been closed or 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 issued a Final Order requiring a Garrett County builder to pay restitution of \$192,974.14 and civil penalties and costs of \$27,026.69. The Division found that the builder violated the Home Builder Registration Act, the Custom Home Protection Act, and the Consumer Protection Act by failing to construct consumers' homes; failing to escrow or otherwise protect consumers' deposits and payments; and failing to include required disclosures and certifications in building contracts.
- The Home Builder Registration Unit reached a settlement with a Beltsville-based home builder and its principal who had been charged with entering into contracts to construct new homes and then failing to begin construction

of the consumers' homes or returning the payments made. Under the settlement agreement, the builder and its principal agreed to pay the Home Builder Registration Unit \$663,888.50 in restitution for the three consumers whose homes they failed to build; arbitrate consumer complaints using the Consumer Protection Division's arbitration program; and to post a performance bond with the Home Builder Registration Unit in the amount of \$750,000.00 prior to engaging in any new home construction activity. The company and its owners also agreed to pay the Home Builder Registration Unit a civil penalty and the costs of its investigation.

- The Home Builder Registration Unit also reached a settlement with a Harford County builder and its principals whose registration was suspended for failing to resolve building code violations and failing to disclose pending lawsuits on its application to register and renew registration. The Final Order by Consent required the builder and its principals to pay restitution in the amount of \$7,000.00; post a performance bond of \$50,000.00 prior to engaging in future building activity; arbitrate consumer complaints with the Consumer Protection Division's Arbitration Program; and pay a civil penalty.
- The Office of Administrative Hearings issued a Proposed Decision finding that a builder from Baltimore and its principals had entered into contracts to construct homes for 26 consumers in Baltimore City and 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 \$50,000.00 from a consumer and then failed to begin construction. 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 and its principals pay restitution of \$1,221,994.94, civil penalties of \$854,000.00, and costs of \$7,702.86. The HBRU is awaiting a Final Order from the Consumer Protection Division.
- The Office of Administrative Hearings issued a Proposed Decision finding that a builder from Prince George's County and its principal had entered into contracts to construct homes for 20 consumers in Prince George's and Charles Counties and then failed to either begin or complete construction of the homes or refund any of the money paid. The builder also failed to provide warranties as provided in its contracts with consumers. The Proposed Decision found violations of the Home Builder Registration Act,

the New Home Deposits Act, the New Home Warranties Act, and the Consumer Protection Act and recommended that the builder and its principal pay restitution, civil penalties, and costs. The HBRU is awaiting a Final Order from the Consumer Protection Division.

- The Office of Administrative Hearings also issued a Proposed Decision against a Prince George's County home builder and its principal, finding that they took deposits and payments from 3 consumers and then failed to complete construction of the homes or refund the payments made. The builder also failed to disclose lawsuits and judgments on its applications to register and renew registration as new home builder in the State of Maryland. 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 awaiting 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 also issued a Proposed Decision against a Prince George's County home builder and its principal, finding that they took deposits and payments from 2 consumers and then failed to either begin or complete construction of the homes or refund the payments made. The builder also failed to disclose lawsuits, judgments, and a bankruptcy filing on its application to renew registration as a home builder in the State of Maryland. 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 awaiting 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 against a Baltimore County home builder and its principal, finding that they took deposits and payments from consumers and then failed to complete construction of a home in Pasadena, Maryland. The builder also failed to correct building code violations resulting from its poor workmanship. 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

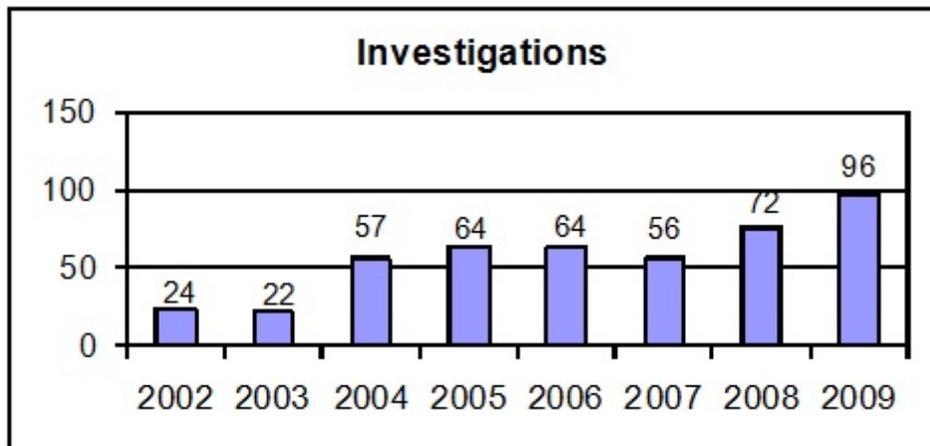
Consumer Protection Division requiring the builder and its principal to pay restitution, economic damages, civil penalties and the costs incurred by the Unit in bringing the action.

- The HBRU filed a Statement of Charges seeking injunctive relief, restitution, economic damages, and civil penalties against several related Howard County builders and their principals for failing to begin or complete the homes of 20 consumers in Harford and Howard Counties. The HBRU alleges that the builders 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 Home Builder Registration Act and the Consumer Protection Act by failing to complete homes, resolve building code violations and report lawsuits and judgments to the HBRU. The HBRU also revoked this builder's registration and a hearing on the charges was convened on September 29, 2009.
- The HBRU filed a Statement of Charges seeking injunctive relief, restitution, economic damages, and civil penalties against a builder and its principal from Waldorf. The HBRU alleges that the builder acted as a builder without registration by contracting to construct a new home for a consumer, accepting deposits and payments toward the construction of the home, and then failing to complete construction of the home or refunding any of the deposits and payments made. A hearing on the charges was scheduled for November 20, 2009.
- The HBRU filed a Statement of Charges seeking injunctive relief, restitution, economic damages, and civil penalties against a builder and its principal from Annapolis. The HBRU alleges that the builder acted as a builder without registration by contracting to construct a new home for a consumer, accepting deposits and payments toward the construction of the home, and then failing to complete construction of the home or refunding any of the deposits and payments made. A hearing on the charges was scheduled for December 18, 2009.
- The HBRU revoked the registration of a builder from Waldorf for violation of the Home Builder Registration Act. The builder failed to satisfy a judgment in the amount of \$13, 941.00 entered against it in favor of a consumer by the District Court for Charles County and failed to disclose the existence of

the lawsuit or the entry of the judgment on its application to renew registration as a builder in the State of Maryland.

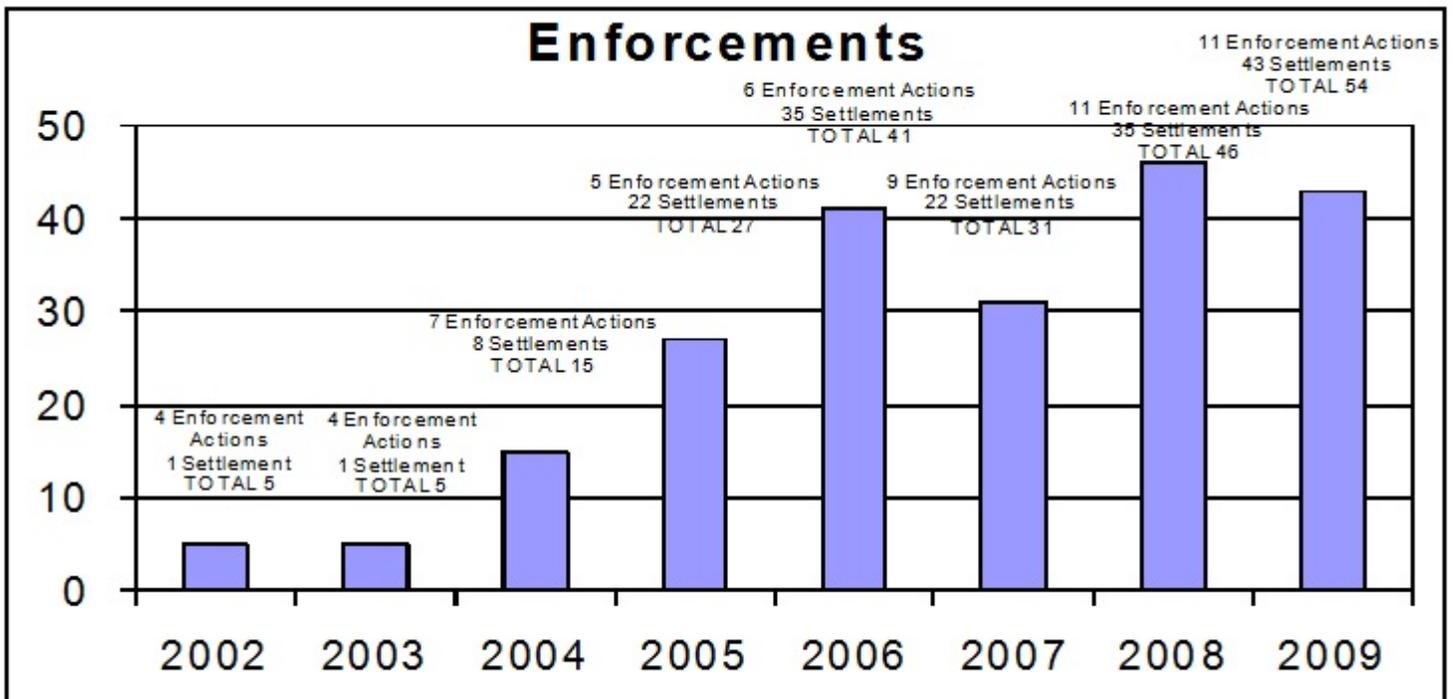
- The HBRU entered into Assurances of Discontinuance with forty-three builders to settle allegations that the companies acted as home builders without having registered with the Unit in violation of the Home Builder Registration Act or engaged in other violations. The companies brought their registrations into compliance, agreed to penalties totaling \$25,000, 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. One builder was located in Pennsylvania.
- The Court of Special Appeals issued a decision upholding the Consumer Protection Division's Final Order entered against a builder from Talbot County finding that the builder had violated the Home Builder Registration Act and the Consumer Protection Act by failing to register with the HBRU and failing to comply with a settlement agreement entered into with the Consumer Protection Division. In its ruling, the Court of Special Appeals held that by entering into contracts with consumers to sell or construct new homes the builder had acted as a home builder and was required to register with the HBRU.

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

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 three months notice that their registrations will be expiring 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 corresponded with builders about the requirements of the amendments to the law.

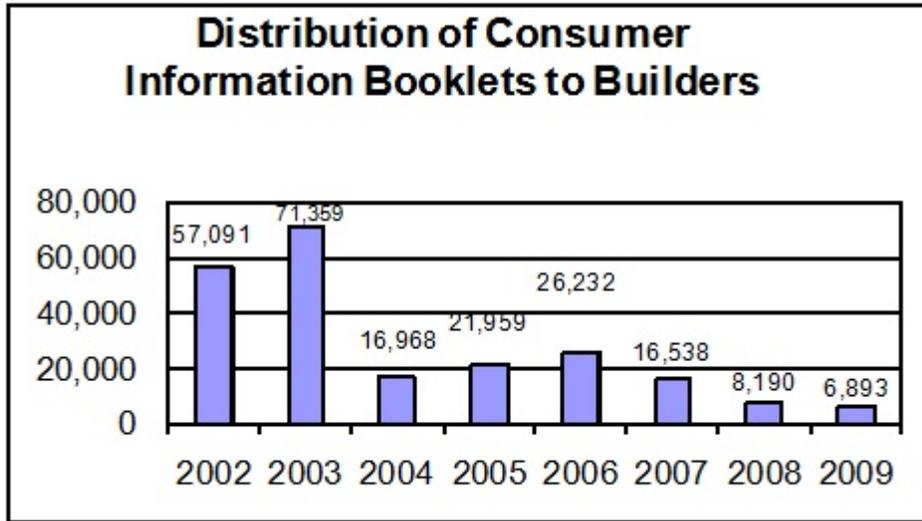
B. CONSUMER EDUCATION PAMPHLET

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*, 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, 2009, the Unit had distributed a total of 225,225 consumer information pamphlets to builders. Between July 1, 2008 and June 30, 2009, the Unit distributed 6,893 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 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. 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 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 the payment of fees by builders to fund the Home Builder Guaranty Fund.

VII. EVALUATING CONSUMER AND BUILDER DISPUTE RESOLUTION

Between July 1, 2008 and June 30, 2009, the Mediation Unit of the Consumer Protection Division handled 284 written consumer complaints filed against 173 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.

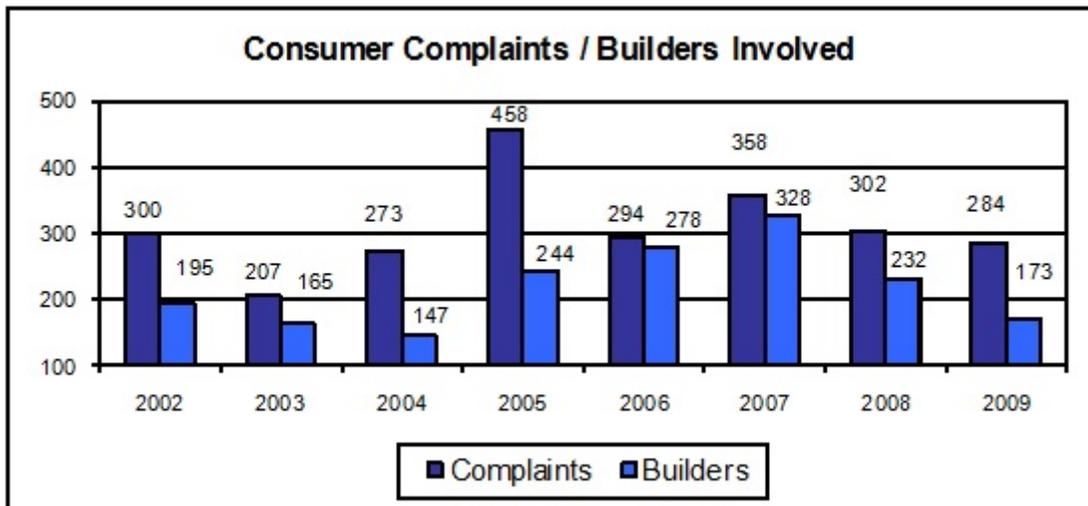
Of the complaints received by the Division's Mediation Unit, 67.9% of the complaints were mediated; 6.3% were filed for information only; 5.4% were arbitrated; 3.0% were resolved by the consumer; 1.8% were closed after the Division provided advice to the consumer; 2.4% were referred to other agencies having jurisdiction; and 13.2% had other miscellaneous resolutions. Thirty-six percent (36%) 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 \$431,422.

The 284 written complaints raised the following issues (many complaints included more than one issue):

- *Construction Defect Issues* (120);
- *Contract Disputes* (54);
- *Deposit Issues* (42), including consumers seeking return of their deposits after being denied financing or withdrawing from their contract for other reasons;
- *Incomplete Construction* (33), including disputes between the builder and owner about whether construction has been completed;
- *Warranty Issues* (20); and
- *Misrepresentation Claims* (18), 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, 2008 and June 30, 2009, there were 27 complaints filed in Montgomery County. In Howard County, 26 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

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 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 the remaining 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 and 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

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. As of June 30, 2009, the balance in the Guaranty Fund was \$94,092.

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. As of June 30, 2009, there have been no claims that have proceeded to the Guaranty Fund stage of the process.

X. LEGISLATIVE CHANGES

A. Home Builder Guaranty Fund

During the 2008 legislative session, the General Assembly established a Home Builder Guaranty Fund, which is applicable to new home contracts entered into after January 1, 2009. During the 2009 session, the General Assembly enacted Chapters 58 (Senate Bill 377) and 59 (House Bill 662), which clarified that the Guaranty Fund fee to be collected by permit offices from home builders in connection with each permit for a new home (1) applies to each unit in a multi-family dwelling, such as a condominium, and (2) that the fee must be paid in connection with new home permits issued by municipalities as well as county permit offices. The legislation also authorized permit offices to retain an administrative fee of not more than 2% of the Guaranty Fund fees remitted to the Division.

B. New Home Contracts

Chapter 92 (Senate Bill 657) provides that contracts for the sale of a new home are contingent upon the purchaser obtaining financing, unless the contract expressly states that the contract is not so contingent. If the contract is contingent on financing, the contract is also required to state the maximum interest rate that the purchaser is required to accept.