

**Real Property**  
**Title 10. Sales of Property**  
**Subtitle 5. Custom Home Protection Act**

**§ 10-501. Definitions**

- (a) In this subtitle the following words have the meanings indicated.
- (b) "Buyer" means any person who seeks or enters into a contract for the construction of a custom home.
- (c) "Custom home" means a single-family dwelling constructed for the buyer's residence on land currently or previously owned by the buyer.
- (d) "Custom home builder" means any person who seeks, enters into, or performs custom home contracts.
- (e) "Custom home contract" means any contract entered into with the buyer, with a value equal to or greater than \$20,000, to furnish labor and material in connection with the construction, erection, or completion of a custom home. A custom home contract does not mean an agreement for work to be done by a licensed home improvement contractor and subject to the provisions of Maryland Home Improvement Law.
- (f) "Deposit" means any sum paid to a custom home builder at the time of the execution of a custom home contract.
- (g) "Draw schedule" means a form that sets forth with particularity the sum to which the custom home builder shall be entitled as progress payment on the custom home contract after certain specified items of work have been completed on the custom home.
- (h) "Person" includes an individual, corporation, business trust, estate, partnership, association, 2 or more persons having a joint or common interest, or any other legal or commercial entity.

**§ 10-502. Payments to custom home builders held in trust.**

Any consideration received by a custom home builder in connection with a custom home contract shall be held in trust for the benefit of the buyer. Payments made to subcontractors or suppliers in connection with the custom home contract shall be consistent with the trust.

**§ 10-503. Same – Presumption of appropriation in violation of trust**

Except with the express written approval of the buyer not to pay, in the event a subcontractor or supplier fails, in the opinion of the custom home builder, to perform in accordance with the contract between the subcontractor or the supplier and the custom home builder, the failure of a custom home builder to pay or cause to be paid the lawful claims of any person furnishing labor or material, including fuel, within a reasonable period after the receipt from the buyer of consideration paid to satisfy the claims, shall create a rebuttable presumption that the consideration received by the custom home builder has been used or appropriated in violation of the trust established by this subtitle.

#### **§ 10-504. Escrow accounts**

(a) (1) Except as provided under paragraph (4) of this subsection and in subsection (e) of this section, a custom home builder who receives consideration from a buyer in connection with the performance of a custom home contract shall place the consideration into an escrow account to the extent that the consideration is a payment in advance of the completion of the labor or the receipt of the materials for which the consideration is paid.

(2) The escrow account under paragraph (1) of this subsection shall be separate and apart from the regular funds of the builder in order to assure that the advance payment in the escrow account can be returned to the buyer if the buyer becomes entitled to the return of the advance payment. However, a builder may place advance payments received in connection with more than one home into a single escrow account.

(3) If the advance payment under paragraph (1) of this subsection is made in the form of a check or draft, a custom home builder may accept the advance payment only in the name of the escrow account.

(4) If consideration received under the home contract in advance of the completion of the labor or the receipt of materials for which the consideration is paid does not total in excess of 5 percent of the home contract price, that consideration need not be placed in an escrow account under paragraph (1) of this subsection.

(b) A custom home builder may make withdrawals from an escrow account established in compliance with subsection (a)(1) of this section solely for the purpose of:

- (1) Returning all or a portion of the sum of money to the buyer;
- (2) Paying documented claims of persons who have furnished labor or material, including fuel, according to the draw schedule in the custom home contract for which the funds were advanced;
- (3) Paying a sum of money to the custom home builder if the buyer forfeits the sum

under the terms of the contract of sale; or

(4) Final payment upon the issuance of an occupancy permit or possession.

(c) In lieu of the escrow account required under subsection (a) of this section, a custom home builder may establish and maintain a separate escrow account for each custom home contract for which he receives consideration that he would be required to place into escrow under subsection (a). Each individual escrow account shall require the signature of both the buyer and the custom home builder for any withdrawal. Deposits and withdrawals to and from this account shall be governed by the requirements of subsections (a) and (b) of this section.

(d) (1) In lieu of the escrow accounts required under subsection (a) or (c) of this section, a custom home builder may obtain and maintain a corporate surety bond in the form and in the amounts required of a vendor or builder under § 10-302 of this title.

(2) The surety bond obtained shall be conditioned on the return of the sum to the buyer in the event the buyer becomes entitled to the return of the money.

(3) The custom home builder shall maintain the surety bond until the custom home builder complies with § 9-114 of this article.

(e) This section does not apply to:

(1) A custom home contract financed by a mortgage loan issued by a federally chartered financial institution or a financial institution regulated under the Financial Institutions Article; and

(2) A sale by or through a licensed real estate broker in connection with which all sums of money in the nature of deposits, escrow money, or binder money are paid to a broker to be held in the escrow account of the broker.

### **§ 10-505. Contracts between custom home builders and buyers**

Every custom home contract between a custom home builder and the buyer must be in writing. The custom home contract shall:

(1) Include a draw schedule that shall be set forth on a separate sheet of paper and that shall be separately signed by the buyer and the custom home builder;

(2) Identify to the extent known the names of the primary subcontractors who will be working on the custom home;

(3) Expressly state that any and all changes that are to be made to the contract shall be recorded as "change orders" that specify the change in the work ordered and the effect of the change on the price of the house;

(4) Set forth in bold type whether or not the vendor or builder is covered by a warranty program guaranteed by a third party;

(5) Require the vendor or builder to deliver to the purchaser within 30 days after each progress payment a list of the subcontractors, suppliers, or materialmen who have provided more than \$500 of goods or services to date and indicate which of them have been paid by the vendor or builder; and

(6) Require that the custom home builder provide waivers of liens from all applicable subcontractors, suppliers, or materialmen within a reasonable time after the final payment for the goods or services they provide.

**§ 10-506. Contracts between custom home builders and buyers – Disclosures.**

(a) (1) A custom home builder must include in each custom home contract a disclosure concerning the buyer's risk under mechanics' lien laws.

(2) The disclosure concerning the buyer's risk under mechanics' lien laws under paragraph (3) of this subsection shall:

(i) Be on a separate page of the custom home contract; and

(ii) Be separately signed by the buyer.

(3) The disclosure required under paragraph (1) of this subsection shall state:

**"BUYER'S RISK UNDER MECHANICS' LIEN LAWS**

Unless your builder pays each subcontractor, materialman, or supplier, the subcontractor, materialman, or supplier may become entitled to place a lien against your property in order to ensure payment to the subcontractor, materialman, or supplier for services rendered or goods delivered on or to your home. This could mean that your home could be sold to satisfy the lien. Your builder is required by law to give you periodic reports that list the subcontractors, suppliers, and materialmen who have provided more than \$500 of goods or services to your custom home, and indicate whether they have been paid. If at any time you have any questions or concerns about whether a subcontractor has been properly paid you should discuss them with your builder, your subcontractor, and your financing institution."

(b) (1) A custom home builder shall include in each custom home contract a certification by the builder.

(2) The certification by the builder under paragraph (3) of this subsection shall be:

- (i) On a separate page of the custom home contract; and
- (ii) Separately signed by the buyer.

(3) Except as provided under paragraph (4) of this subsection, the certification required under paragraph (1) of this subsection shall state:

**"CERTIFICATION BY BUILDER**

I (name of builder) hereby certify that to the best of my knowledge, both I and any business entity in which I had an ownership interest in excess of 51 percent have not:

(1) Within the past 3 years been adjudged by a court of competent jurisdiction in Maryland to have failed to comply with any provision of the Custom Home Protection Act or the Consumer Protection Act as it applies to the construction of new homes; or

(2) Been adjudged liable for a final judgment in connection with a custom home contract, which judgment currently remains unsatisfied."

(4) If a custom home builder is unable to execute the certification under paragraph (2) of this subsection truthfully, then another certification shall be substituted, which shall state:

**"CERTIFICATION BY BUILDER**

I (name of builder) hereby certify that, to the best of my knowledge, the information provided below includes all instances in which I or any business entity in which I had an ownership interest in excess of 51 percent have:

(1) Within the past 3 years been adjudged by a court of competent jurisdiction in Maryland to have failed to comply with any provision of the Custom Home Protection Act or the Consumer Protection Act as it applies to the construction of a new home.

(2) Been adjudged liable for a currently unsatisfied final judgment in connection with a custom home contract.

Adverse adjudication(s):

(            ).

Unsatisfied judgment(s):

(            )."

(c) (1) A custom home builder shall include in each custom home contract an escrow account requirement notice under paragraph (3) of this subsection.

(2) The escrow account requirement notice under paragraph (3) of this subsection shall:

(i) Be on a separate page of the custom home contract; and

(ii) Be separately signed by the buyer.

(3) The escrow account requirement notice required under paragraph (1) of this subsection shall state:

**"ESCROW ACCOUNT REQUIREMENT**

Unless your contract is financed by a mortgage issued by a federally chartered financial institution or a financial institution supervised under the Financial Institutions Article of the Annotated Code of Maryland, or unless all deposits, escrow money, binder money, or any other money paid in advance, or is paid to the licensed real estate broker, to be held in the escrow account of the broker, Maryland law requires that all consideration exceeding 5 percent of the total contract price which is paid by a buyer to a custom home builder in advance of the completion of the custom home shall be deposited in an escrow account and paid out of that account only for certain purposes specified by law. To ensure this, the law requires that your builder may only accept such payment in the name of the escrow account. Thus, you should make out your check to "(name of builder), escrow account". Records of payments out of this account must be carefully maintained by your builder, and the builder must permit you reasonable access to escrow account records. Your builder, however, may choose to establish a separate escrow account for your project which will require your signature for any withdrawals."

**§ 10-507. Violations.**

(a) In addition to any other penalty provided elsewhere in the Annotated Code, any conduct that fails to comply with this subtitle, or any breach of any trust created by this subtitle, is:

(1) An unfair or deceptive trade practice within the meaning of Title 13 of the Commercial Law Article; and

(2) Is subject to all of the provisions of that title except § 13-411 of the Commercial Law Article.

(b) (1) A person is guilty of a felony, if the person willfully and knowingly:

(i) Fails to obtain and maintain a corporate surety bond or to hold sums of money in an escrow account as required under this subtitle;

(ii) Fails to make a disclosure required under § 10-506(b)(4) of this subtitle; or

(iii) Commits a breach of the trust provided in § 10-502 of this subtitle.

(2) A person convicted under paragraph (1) of this subsection shall make restitution to the purchaser as determined by the court and be subject to a fine not exceeding \$10,000 or imprisonment not exceeding 15 years or both.

(3) Other than the conduct described in paragraph (1) of this subsection, any conduct that fails to comply with this subtitle, or any breach of any trust created by this subtitle, is a misdemeanor, and on conviction, any violator is subject to a fine not exceeding \$1,000 or imprisonment not exceeding 1 year, or both.

(c) (1) Subject to the limitations under paragraph (2) of this subsection, a court may order, in addition to any other penalty provided elsewhere in the Annotated Code, that an individual violating this subtitle may not be permitted to seek, enter into, or perform any contract for the construction of real property in the State for a period of time to be specified by the court.

(2) A court may make an order under paragraph (1) of this subsection only if the court determines:

(i) That a criminal offense that resulted in financial losses to the victims has been committed by a violation of this subtitle or by a breach of any trust created by this subtitle; and

(ii) That it would not be inconsistent with a plan for restitution ordered in any other proceeding brought to enforce this subtitle.

#### **§ 10-508. Applicability of subtitle**

Repealed by Acts 1987, chs. 520 and 529, effective January 1, 1988.

#### **§ 10-509. Citation of subtitle**

This subtitle may be cited as the Maryland Custom Home Protection Act.