

Department of Legislative Services  
Maryland General Assembly  
2018 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 1086 (Delegate Proctor, *et al.*)  
Environment and Transportation

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**Real Property - New Residential Construction - Correction of Drainage Defect**

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This bill requires a builder of a new home to correct a drainage defect within 30 days after receiving written notice of the defect under specified circumstances. The bill also expands the definition of “actual loss” for the purposes of the Home Builder Guaranty Fund to include the costs of restoration, repair, replacement, or completion that arise from a “drainage defect.” It also authorizes an owner to pursue a claim for compensation from the Home Builder Guaranty Fund for an actual loss if a home builder fails to correct a drainage defect as required by the bill.

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**Fiscal Summary**

**State Effect:** Nonbudgeted expenditures may increase as a result of the bill’s provisions, as discussed below. The Office of the Attorney General (OAG), Consumer Protection Division (CPD), can likely handle any additional complaints with existing resources. Revenues are not affected.

**Local Effect:** None.

**Small Business Effect:** Potential meaningful.

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**Analysis**

**Bill Summary:** “Drainage defect” means improper grading, poor soil composition, or any other design or workmanship defect attributable to a home builder that results in a flooded yard or water in the basement of a new home. “Home builder” means a person that builds a new home. “New home” means a newly constructed, single-family dwelling unit, and it includes a custom home as defined in § 10-501 of the Real Property Article or a mobile

home as defined in § 8A-101 of the Real Property Article. “Owner” means the purchaser of a new home who uses the home primarily for residential purposes.

A builder of a new home must correct a drainage defect within 30 days after receiving written notice of the defect if (1) the owner notifies the home builder of a drainage defect within one year of taking possession of the new home, or the day the home builder completes any grading or landscaping work on or adjacent to the lot, whichever occurs later, and (2) the written notice includes documentation of the flooding, including the frequency and extent, caused by the drainage defect.

If a home builder fails to correct a drainage defect as required under the bill, the owner is deemed to have complied with specified mediation requirements of the Business Regulation Article.

**Current Law:** Statute does not specifically address the correction of a drainage defect by a builder of a new home.

### *Express and Implied Warranties*

Generally, in addition to any express warranty made by a builder, in every sale, warranties are generally implied that, at the time of completion, any improvement is:

- free from faulty materials;
- constructed according to sound engineering standards;
- constructed in a workmanlike manner; and
- fit for habitation.

If any express or implied warranty is breached, a court may award legal or equitable relief, or both, as justice requires. Unless an express warranty specifies a longer period of time, express or implied warranties generally expire one year after the delivery of the home, or after the taking of possession by the original purchaser, whichever occurs first. Warranties for structural defects expire two years after the date of completion, delivery, or taking possession, whichever occurs first. Warranties do not expire on the subsequent sale of a dwelling. However, the warranties do not apply to any defect *caused* by the original purchaser.

Additionally, in Baltimore City and all counties except Montgomery County, prior to entering into a contract for sale or construction of a new home, the builder must disclose in writing to the owner whether (1) the builder participates in a new home warranty security plan through which the builder must provide the owner with a new home warranty or the

builder may provide a new home warranty to the owner at the owner's option or (2) the builder does not participate in a new home warranty security plan.

In Montgomery County, builders are required to provide specified disclosures, including notice of specified performance standards and the existence of a specified new home warranty.

Additional notice and disclosure requirements apply, statewide, to contracts for the initial sale or resale of residential real property.

### *Home Builder Guaranty Fund*

The Home Builder Guaranty Fund is overseen by CPD within OAG. The fund allows consumers to seek compensation for losses resulting from an act or omission by a registered builder who constructs a new home for a consumer. When a home builder applies for a building permit, \$50 of the cost of that permit is used to fund the Home Builder Guaranty Fund. Builders are permitted to pass this cost onto the consumer.

A consumer who entered into a contract with a registered builder to construct a new home in the State of Maryland on or after January 1, 2009, may file a claim against the fund. Claims may not be filed by the spouse or immediate relative of the registered builder, an employee or principal of the registered builder, or an immediate relative of an employee or principal of a registered builder. The fund pays for the actual loss which results from an act or omission by a registered builder as determined by CPD or a court of competent jurisdiction. Generally, "actual loss" means the costs of restoration, repair, replacement, or completion that results from the incomplete construction of a new home, a breach of an express or implied warranty, or a failure of the builder to meet certain construction standards or guidelines. OAG advises that the fund may award up to \$50,000 to any one claimant for acts of any one registered builder, and up to \$300,000 for all claims against the same registered builder, unless that builder first reimburses the fund for monies paid on his or her behalf.

**Background:** The U.S. Census Bureau reports that, in 2016, the most recent year for which complete data is available, 17,044 housing units were newly authorized for construction in the State. These included 11,108 single units, as well as 177 structures containing 5 or more units.

CPD advises that the Home Builder Guaranty Fund disbursed \$598,884 in fiscal 2017 and ended the fiscal year with a balance of \$2.1 million.

**State Expenditures:** Nonbudgeted expenditures may increase as a result of the expansion of the definition of "actual loss" and the authorization for an owner to pursue a claim for

compensation from the Home Builder Guaranty Fund under specified circumstances. However, any increase depends on the number of home builders that fail to correct a defect as required by the bill as well as the number of claims subsequently filed by homeowners. As a result, a specific estimate is not available at this time, but any increase in claims is not anticipated to materially impact the solvency of the fund.

**Small Business Effect:** Home builders that qualify as small businesses may incur significant costs to correct drainage defects not covered under express or implied warranties or a new home warranty security plan.

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### **Additional Information**

**Prior Introductions:** HB 1413 of 2017, a similar bill, received an unfavorable report from the House Environment and Transportation Committee. Its cross file, SB 1185, was withdrawn.

**Cross File:** None.

**Information Source(s):** Office of the Attorney General (Consumer Protection Division); U.S. Census Bureau; Department of Legislative Services

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