



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

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**

NOVEMBER 2002

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I. **EXECUTIVE SUMMARY**

Prior to January 1, 2001, home builders were not required to be registered or licensed by the State of Maryland.¹ Existing 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.² The General Assembly heard testimony from home buyers about problems they faced with their builders that were not being adequately prevented or resolved by the then current law. In response to this testimony, 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 will allow the State to prevent builders with a bad track record from building or continuing to build in Maryland.

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. The Act requires that the Consumer Protection Division make an annual report of its activities to the Governor and General Assembly on November 1st of each year. This is the second report since the law became fully operational on January 1, 2001.

The Unit's activities focus on the following areas, which are summarized in this report:

- **Registration of Builders:** 2,938 builders have registered as of June 30, 2002. 773 of those builders registered between July 1, 2001 and June 30, 2002.
- **Education of Builders and Consumers:** The Unit distributed 57,091 copies of *BUYING A NEW HOME - Consumer Rights and Remedies Under Maryland Law* between July 1, 2001 and June 30, 2002; met with home builders and consumers in Southern Maryland following the tornado damage to educate them about rights and responsibilities under Maryland law; and maintained and updated its website – www.oag.state.md.us/homebuilder – to give consumers, builders, permit

¹ Montgomery County and Prince George's County have varying forms of builder licensing or registration.

² New Home Deposits, Md. Code Ann., §10-301 et seq., Custom Home Protection Act, Md. Code Ann., Real Property §10-501 et seq., and New Home Warranty Security Plans, Md. Code Ann., Real Property §10-601 et seq.

offices and the public information about registered builders, building laws, and home building issues for consumers.

- **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 orders are reported to the Unit. Lists of registered builders are mailed to permit offices each month and are publicly available on the Unit's website.
- **Evaluation of Consumer and Builder Dispute Resolution:** The Division's Mediation Unit handled 300 consumer complaints involving 195 home builders between July 1, 2001 and June 30, 2002. The overwhelming majority of the complaints concerned claims about construction defects.
- **Law Enforcement:** The Unit opened 24 investigations between July 1, 2001 and June 30, 2002 after receiving reports of unregistered builders, violations of the Consumer Protection Act, or violations of the Custom Home Protection Act. In one action, the Unit obtained an order requiring an unregistered builder to refund a \$31,000 deposit he had taken from a Prince George's County consumer and pay \$100,000 in civil penalties. Charges have been brought in four other cases. Most of the investigations have been resolved by having the builder register or determining that the builder is no longer building in Maryland and not required to register.
- **Deposit Protection and Home Warranty Programs:** During the 2002 Session, the General Assembly transferred to the Unit responsibility for two programs previously overseen by the Department of Labor, Licensing and Regulation. The first program concerns the requirement that builders of new and custom homes protect consumer deposits by placing those deposits in an escrow account or by posting a surety bond or letter of credit. The second program involves the registration of new home warranty programs. The legislation took effect July 1, 2002 and the Unit is implementing both programs.

II. REGISTRATION OF BUILDERS

A. THE HOME BUILDER REGISTRATION UNIT

A central purpose of the HBRA is to require 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. This session, the General Assembly enacted Chapter 530, which set the initial registration fee paid by builders at \$600 for a two-year registration. The legislation further provided for renewal fees for an additional two-year period at \$300 for builders who were issued 10 or fewer building permits during the preceding year and at \$600 for builders who were issued 11 or more permits during the preceding year. The Unit has four positions: a Director/Assistant Attorney General, an Administrator, an Investigator, and a Secretary.

B. BUILDER REGISTRATION UNDER THE HBRA

The Act establishes a registration procedure that simply requires the disclosure by the builder of necessary information in an application form, and the payment of the required registration fee. The Act does not provide for competency testing or proof of financial responsibility. 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 past legal proceedings involving the builder, and pay the registration fee of \$600. The registration by law 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 will make 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 will mail a renewal application to the builder's last known address at least 60 days before the registration expires. The Unit recently mailed renewal applications to the first 1,600 builders that registered under the HBRA, whose initial registrations expire March 1, 2003.

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 the persons with at least a 10% ownership interest, 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, 2002, 2,938 home builders have registered with the Unit. Although the significant majority registered in late 2000 and early 2001 when the program first began, the Unit continues to receive registration applications from new builders on a daily basis. 773 builders registered with the Unit between July 1, 2001 and June 30, 2002, which averages more than two per day.

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(f) and (k). 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 are 2,938 registered builders in Maryland as of June 30, 2002. 773 of those builders registered between July 1, 2001 and June 30, 2002 and the Unit continues to receive new applications daily.
- **Type of Construction:** The vast majority – 79% – of Maryland's builders report that they build new homes, custom homes or condominiums. Another 7% report they build industrialized buildings, and 4% report they build mobile homes. (The remaining 10% did not report).
- **Form of Business:** The majority (54%) of Maryland's builders use corporations as their form of business organization. Another 20% are sole proprietorships, 20% are limited liability companies (LLCs), and 3% are partnerships.

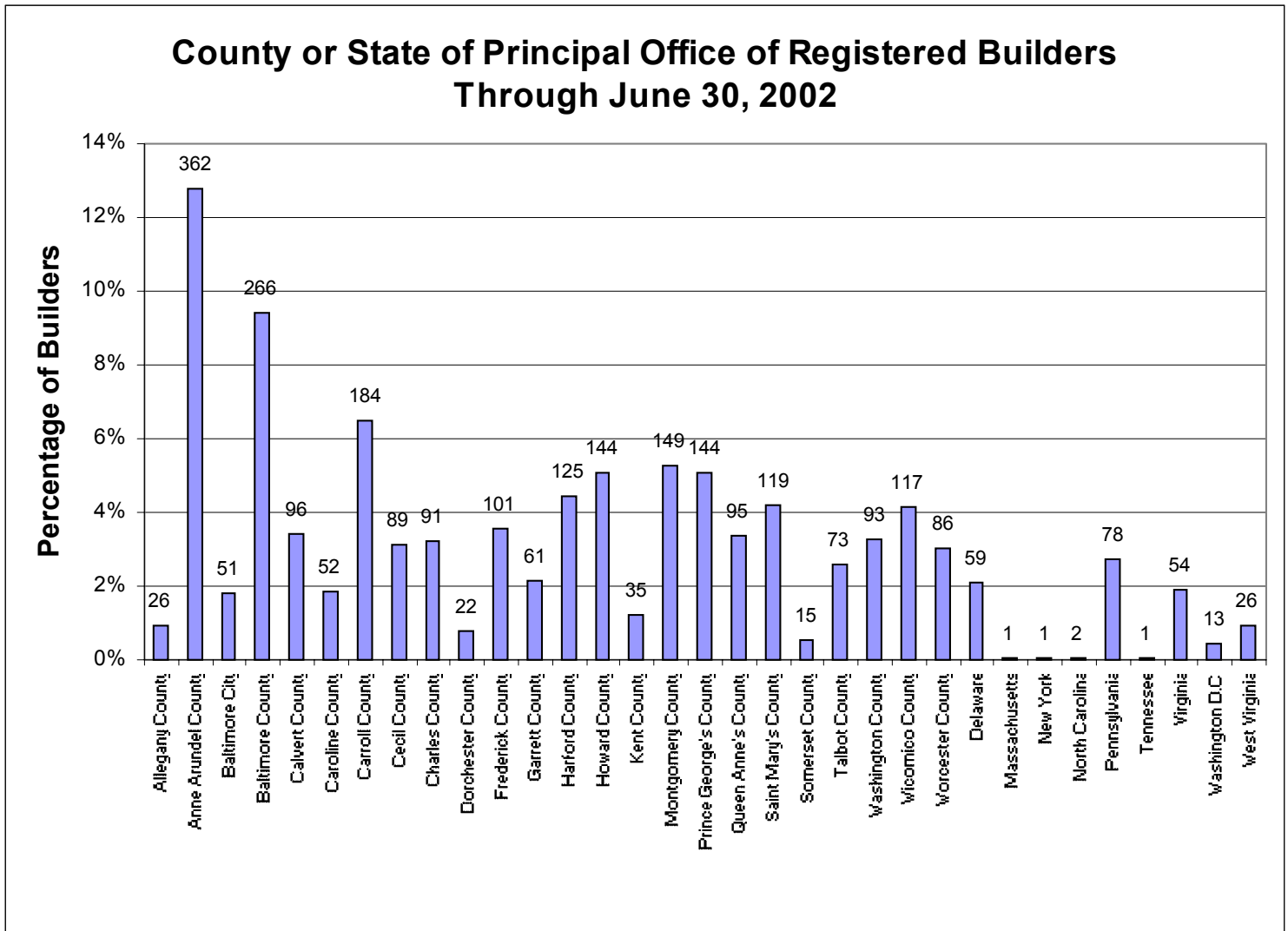
³ The HBRA excludes from registration employees, subcontractors and vendors of a registered home builder; the manufacturer of industrialized building unless the manufacturer also installs the building; real estate developers who do not also construct homes; construction financiers; and builders who build solely in Montgomery County. HBRA §4.5-101(f)(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.

● **Location of Builders and Housing Construction:** Not surprisingly, Maryland's builders continue to be located in the regions of Maryland that are experiencing the most new home building activity, as measured by the number of single family housing permits issued: 62.7% of building permits for single family construction were issued in the Washington Suburban Region and in the Baltimore Region, where 52.4% of Maryland's builders are headquartered. Both the Upper Eastern Shore and Southern Maryland Regions showed increases in the percentage of builders headquartered there (22.3% vs. 19% last year) as well as the number of permits for new homes issued (21.7% vs. 19% last year). The percentage of builders who registered in Maryland but were headquartered in other states dropped from 14% last year to 8.1% this year. 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, 2001 through June 30, 2002, 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 (7/1/01 - 6/30/02)	Percentage of Permits Issued in Region
Baltimore Region (Anne Arundel, Baltimore City, Baltimore County, Carroll, Harford, Howard)	39.5%	8,436	35.2%
Suburban Washington Region (Frederick, Montgomery, Prince George's)	13.4%	7,661	32.0%
Upper Eastern Shore Region (Caroline, Cecil, Kent, Queen Anne's, Talbot)	11.8%	2,279	9.5%
Southern Region (Calvert, Charles, St. Mary's)	10.5%	2,922	12.2%
Lower Eastern Shore Region (Dorchester, Somerset, Wicomico, Worcester)	8.2%	1,409	5.9%
Out of State (Pennsylvania, Delaware, Virginia, West Virginia, Washington, D.C., Massachusetts, New York, North Carolina, Tennessee)	8.1%		
Western Region (Allegany, Garrett, Washington)	6.2%	1,230	5.1%
Totals		23,937	100%

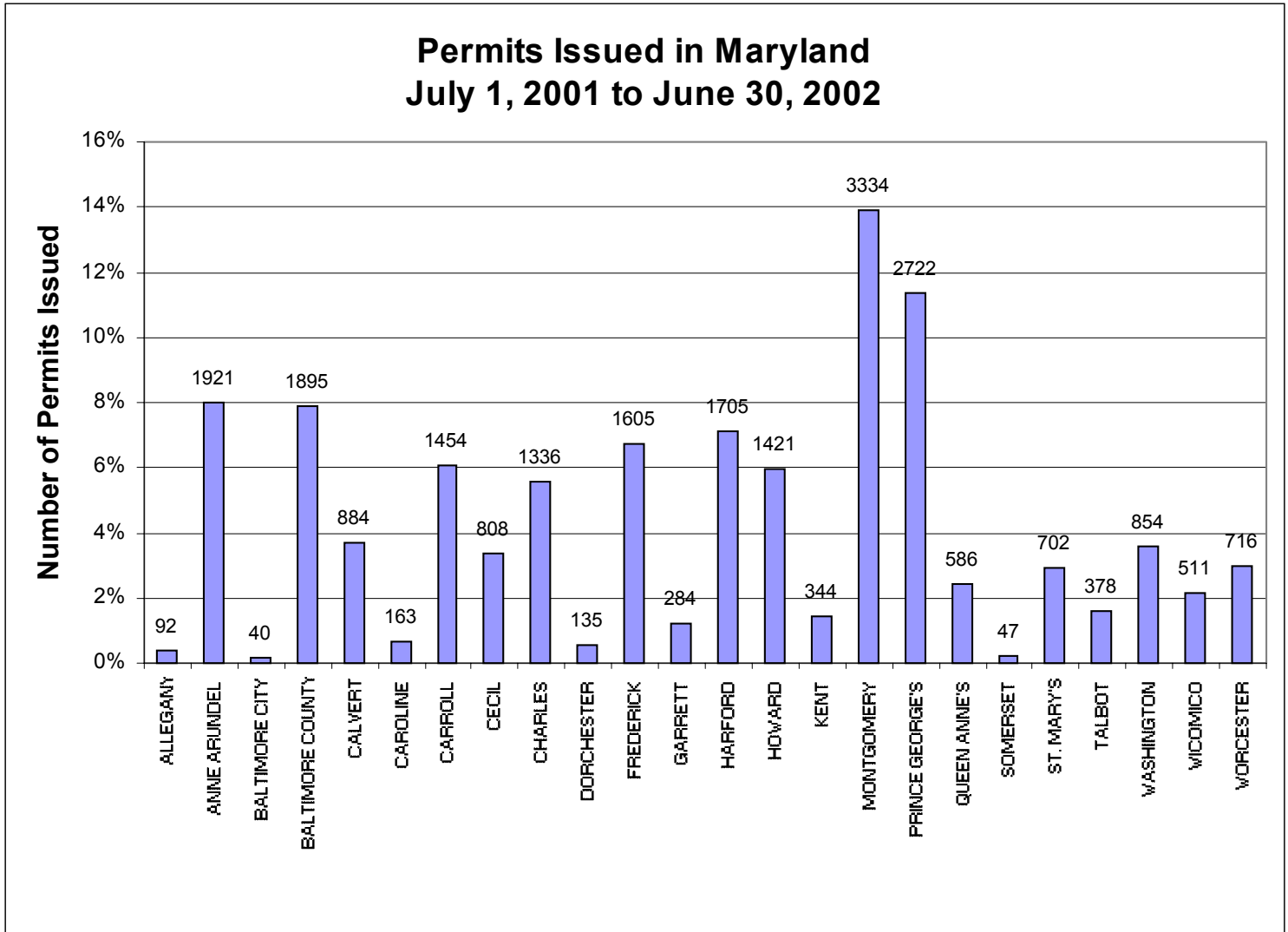
Source: HBRU and Md. Dept. of Planning, for Single Family Permits Issued July 1, 2001 through June 30, 2002

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, 2001 through June 30, 2002.



Source: Md. Department of Planning data

III. **COMMUNICATION WITH BUILDERS AND CONSUMERS**

A. **OUTREACH TO BUILDERS**

The Home Builder Registration Unit continued to travel throughout the State to meet with builders and consumers about issues related to new home builders. The Unit participated in two workshops in Waldorf, one with builders and representatives of the manufactured housing industry about issues particular to their industry, and the other with builder and consumer groups participating in the rebuilding of structures damaged in the April 28th tornado in Charles and Calvert Counties.

The Unit has also continued to correspond with builders to keep them updated about issues affecting them. Letters were sent to all builders updating them about changes to the law including the changes to the deposit protection requirements, new home warranty program and renewal fee schedule.⁴ More recently, the Unit has begun writing to builders notifying them of the 2003 renewal requirements and providing them with the information and forms they will need to renew their registrations. The Unit also handled, and continues to handle, numerous builder inquiries by phone in regard to the Home Builder Registration Act, and the registration and renewal process.

B. **CONSUMER EDUCATION PAMPHLET**

The HBRA required that the Unit develop, in consultation with the industry, a consumer information pamphlet that describes the rights and remedies of consumers in the purchase of a new home and provides 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. The receipt of the consumer information pamphlet shall be acknowledged in writing. HBRA §4.5-202(c).

The Division consulted with the industry, and developed and published a consumer education pamphlet, *BUYING A NEW HOME - Consumer Rights and*

⁴ The General Assembly passed Chapters 492 and 530 transferring responsibility for administering builder's surety bonds, letters of credit, and for new home warranty security plans, from the Department of Labor, Licensing and Regulation to the Home Builder Registration Unit, and also changing the fee schedule for renewal of registration.

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 that the General Assembly transferred responsibility for oversight of Deposit Protection and Home Warranty programs to the Unit. A copy of the revised pamphlet is attached.

The Unit has now distributed a total of 117,228 consumer information pamphlets to builders as of June 30, 2002. 57,091 of those were distributed to builders between July 1, 2001 and June 30, 2002.

C. **HBRU WEBSITE**

The Home Builder Registration Unit has maintained and updated its website to make information readily available to consumers, builders, permit offices and other entities requiring information about the home building industry. 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 education resource for both consumers and builders. The Unit has added the ability to search the website for builders either by the name of the builder or by its 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.
- The Home Builder Registration Act and other applicable laws.
- The consumer information pamphlet developed by the Home Builder Registration Unit, *BUYING A NEW HOME - Consumer Rights and Remedies Under Maryland Law*.

IV. **COORDINATION WITH LOCAL PERMIT OFFICES**

Permit offices have a pivotal role in the regulatory scheme of 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 of any builder who, within a reasonable time, fails to correct a building code violation, so that the Unit may consider imposing registration sanctions. HBRA §§4.5-602(b), 4.5-308.

The Unit has communicated regularly with 42 local and municipal permit offices across the state. An informational letter and copies of the registration packets were provided to the offices for distribution to builders in need of registration. The Unit continues to send out printed copies of the lists of registered 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.

V. **EVALUATING CONSUMER AND BUILDER DISPUTE RESOLUTION**

The Home Builder Registration Act requires that the Unit "collect and maintain information on the resolution of consumer complaints involving new home builders." HBRA §4.5-202(d). Although there is no central repository of information about consumer/builder disputes, consumer complaints filed with the Mediation Unit of the Consumer Protection Division are illustrative.

Between July 1, 2001 and June 30, 2002, the Mediation Unit of the Consumer Protection Division handled 300 written consumer complaints filed against 195 different home builders. When a consumer complaint is filed with the Consumer Protection Division, a mediator from the Mediation Unit is assigned. The mediator contacts both the builder and consumer and assists them in resolving their dispute. A mediated agreement is possible only if both parties are willing to mediate and can reach mutually acceptable terms. A mediation is considered successful if it results in a mediation 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 arbitrate the dispute.

Of the 300 written complaints, 206 were mediated by the Division's mediation unit; 11 were arbitrated; 32 were filed for information only; 22 were resolved by the consumers without mediation by the Division; 12 were closed after the Division provided advice to the consumer; 6 were referred for investigation or enforcement; 3 were referred to other agencies having jurisdiction; and 8 had other miscellaneous resolutions. 112 of the 206 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 was \$60,434.99. The Division was unable to resolve the remaining 94 complaints through mediation.

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

- *Construction Defect Issues* (647), including interior finishing (100), exterior shells (94), landscaping (93), electric or plumbing problems (85), foundation or basement defects (67), external structures (54), roofing issues (47), HVAC issues (46), and appliances (15);
- *Misrepresentation Claims* (40), including whether the finished home was constructed in the manner promised by the builder or anticipated by the consumer;
- *Deposit Issues* (38), including consumers seeking return of their deposits after being denied financing or withdrawing from their contract for other reasons;
- *Incomplete Construction* (26), including failure to complete construction following a dispute between the builder and the consumer;
- *Construction Delays* (20);
- *Subcontractors* (10), including failure to pay or identify subcontractors; and
- *Coverage by Home Warranty Service Plans* (5).

VI. **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 of unresolved disputes or legal violations 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 orders 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 an 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 24 investigations between July 1, 2001 and June 30, 2002. These investigations have involved allegations of violation of the HBRA, other

building related laws, or the Consumer Protection Act. Four of these investigations have now been closed, an enforcement action has been filed in another four, and sixteen remain under continuing investigation. The Unit receives information from many sources, including consumers, other builders, and permit offices about builders who were alleged to be building without being registered. Subpoenas for depositions and documents were issued in several cases. The results of these investigations are summarized as follows:

- The Unit obtained a final order against an unregistered builder who took \$31,000 from a Prince George's County consumer to build a custom home but never began construction, failed to place the deposit in an escrow account, and did not refund the deposit, as required by law. The builder was ordered to pay a \$100,000 civil penalty for acting as an unregistered home builder and restitution in the amount of \$31,000 to the consumer who was the subject of the case.
- The Unit entered into an Assurance of Discontinuance with an unregistered builder working in Charles County, who tried to avoid registration. The builder was building and selling homes to consumers on land that he purchased in his own name. On two occasions, the builder falsified affirmations to the local permitting authority that he was building the homes for his own use and not sale. Pursuant to the Assurance, the builder paid a \$5,000 civil penalty and agreed to discontinue the unlawful practice.
- The Unit sought and obtained a cease and desist order against a home builder from Delaware who is not registered, but who contracted to build a home for a consumer in Baltimore County, and took \$56,847 in payments. The builder never completed construction of the home and constructed so poorly the portions that were done that the code department for the county issued a stop work order. The consumer had to pay an additional \$24,000 to repair the faulty work done by builder and other monies to hire outside subcontractors to finish the house. A hearing was held at OAH on August 30, 2002 to determine the amount of restitution and civil penalties due for the harm, and for acting as a builder without being registered. The Unit is awaiting the decision of the Office of Administrative Hearings.
- The Unit sought and obtained a cease and desist order against a builder for violation of the Maryland Custom Homes Protection Act and the Consumer Protection Act. This builder, a Delaware corporation, filed for bankruptcy and left the homes of many customers on the Eastern Shore incomplete. The Unit has charged that the builder accepted deposits and other monies from

consumers in the months before its bankruptcy filing, when it knew it was in financial difficulty and knew, or should have known, that it could not complete construction as promised. The builder did not protect the advance payments made by consumers by placing them in an escrow account or securing them through a bond or letter of credit, as required by Maryland law. A hearing is scheduled before the Office of Administrative Hearings on December 2, 2002, at which the Division will seek restitution for all Maryland consumers harmed, as well as civil penalties and costs.

- The Unit sought and obtained a cease and desist order against an unregistered home builder who took \$7,539 from a Prince George's County consumer to build a custom home but never began construction, failed to place the deposit in an escrow account, and didn't refund the deposit, as required by law. A hearing is scheduled before the Consumer Protection Division to determine the amount of restitution and civil penalties due for the harm, and for acting as a builder without being registered.
- The Unit settled a case involving revocation of a builder's registration assessing a civil penalty against the builder of \$1,000. The builder presented a check to pay the registration fee from an account with insufficient funds to cover the check. The builder subsequently refused to pay the outstanding fee due for registration and the Unit revoked the registration.

VII. **LEGISLATIVE CHANGES**

During the 2002 Session, the Maryland General Assembly addressed concerns raised by smaller builders that they should not be paying the same registration fee as larger builders by enacting Chapter 530, which becomes effective January 1, 2003. Under that legislation, all builders will continue to pay an initial registration fee of \$600 for a two-year period. However, upon renewal of that registration, a builder who was issued ten or fewer permits for the construction of new homes during the preceding year will pay a renewal fee of only \$300 for an additional two year period. A builder who was issued 11 or more permits during the preceding year will pay a renewal fee of \$600 for an additional two year period. The fees are paid to a special fund – the Home Builder Registration Fund – which is used solely to fund the direct and indirect costs of the Home Builder Registration Unit. HBRA §4.5-203, §4.5-303, §4.5-305. The Division's costs for the Home Builder Registration Unit include salary, benefits, and administrative costs for a four-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 General Assembly also enacted Chapter 492 during the 2002 Session. That law transferred responsibility to the Unit from the Department of Labor, Licensing, and Regulation for oversight of laws requiring builders of new and custom homes to protect deposits made by consumers by placing those deposits into an escrow account or by posting a surety bond or letter of credit. Md. Code Ann., Real Prop. §§ 10-301, *et seq.* and 10-501, *et seq.* Chapter 492 further transferred to the Unit responsibility for oversight of plans providing third-party warranties on new homes. Md. Code Ann., Real Prop. § 10-601, *et seq.* Chapter 492 became effective July 1, 2002 and the Unit is currently implementing both programs.