
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1553 Session of
1993

INTRODUCED BY DURHAM, DeLUCA, TRELLO AND CORRIGAN, MAY 10, 1993

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, MAY 10, 1993

AN ACT

1 Providing for new home warranties; requiring the registration of
2 builders of new homes; establishing the New Home Warranty
3 Security Fund and providing for alternate new home warranty
4 security programs; and providing for procedures for claims
5 and for penalties.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Short title.

9 This act shall be known and may be cited as the New Home
10 Warranty and Builders' Registration Act.

11 Section 2. Definitions.

12 The following words and phrases when used in this act shall
13 have the meanings given to them in this section unless the
14 context clearly indicates otherwise:

15 "Builder." An individual corporation, partnership or other
16 business organizations engaged in the construction of new homes.

17 "Bureau." The Bureau of Consumer Protection in the Office of
18 Attorney General.

19 "Director." The Director of the Bureau of Consumer

1 Protection.

2 "Fund." The New Home Warranty Security Fund.

3 "Major construction defect." Any actual damage to the load-
4 bearing portion of the home, including damage due to subsidence,
5 expansion or lateral movement of the soil (excluding movement
6 caused by flood or earthquake) which affects its load-bearing
7 function and which vitally affects or is imminently likely to
8 vitally affect use of the home for residential purposes.

9 "New home." A dwelling unit not previously occupied,
10 excluding dwelling units constructed solely for lease.

11 "Owner." A person for whom the new home is built or to whom
12 the home is sold for occupation by him or his family as a home
13 and his successors in title to the home or mortgagee in
14 possession. The term does not mean a development company,
15 association or subsidiary company of the builder or a person or
16 organization to whom the home may be sold or otherwise conveyed
17 by the builder for subsequent resale, letting or other purpose.

18 "Warranty." The warranty prescribed by the Director of the
19 Bureau of Consumer Protection pursuant to this act.

20 "Warranty date." The first occupation or settlement date,
21 whichever is sooner.

22 Section 3. New home warranty.

23 (a) Prescribing by rule or regulation.--The bureau is hereby
24 authorized and directed to prescribe, by rule or regulation, a
25 new home warranty and procedures for the implementation and
26 processing of claims against the fund, as provided for in
27 section 7(a). The warranty shall include standards for
28 construction and of quality for the structural elements and
29 components of a new home with an indication, where appropriate,
30 of what degree of noncompliance with such standards shall

1 constitute a defect.

2 (b) Time periods of warranties.--The time periods of
3 warranties established pursuant to this act are as follows:

4 (1) One year from and after the warranty date, the
5 dwelling shall be free from defects caused by faulty
6 workmanship and defective materials due to noncompliance with
7 the building standards as approved by the director pursuant
8 to subsection (a), except as set forth in paragraphs (2) and
9 (3).

10 (2) Two years from and after the warranty date, the
11 dwelling shall be free from defects caused by faulty
12 installation of plumbing, electrical, heating and cooling
13 delivery systems; however, in the case of appliances, no
14 warranty shall exceed the length and scope of the warranty
15 offered by the manufacturer.

16 (3) Ten years from and after the warranty date, for
17 major construction defects, as defined in this act.

18 (4) However, any alternate program, as provided for in
19 section 8, submitted for approval subsequent to the effective
20 date of this act, may contain warranties and time periods
21 greater than provided for in paragraphs (1), (2) and (3).

22 Section 4. Liability of builder.

23 A builder of a new home shall be liable to its owner during
24 the time period when the new home warranty, prescribed by the
25 bureau pursuant to this act, is applicable to the home. The
26 builder shall be liable for any defect in the house which is
27 covered by the warranty in accordance with its terms and
28 conditions. The liability of a builder under the new home
29 warranty shall be limited to the purchase price of the home in
30 the first good faith sale thereof or the fair market value of

1 the home on its completion date if there is no good faith sale.

2 Section 5. Certificate of registration.

3 (a) Registration required.--No builder shall engage in the
4 business of constructing new homes unless, within 90 days after
5 the effective date of this act, he is registered with the
6 bureau. The bureau shall provide application forms for
7 registration and shall prescribe the information to be included.
8 Each application shall be accompanied by a reasonable fee,
9 prescribed by the bureau, and proof, satisfactory to the bureau,
10 of participation in the fund or an approved alternate new home
11 warranty security program. Upon receipt of the above, the bureau
12 shall issue a certificate of registration.

13 (b) Duration and renewal.--Each certificate of registration
14 shall be valid for a period of two years from the date of issue
15 and may be renewed for additional two-year periods.

16 (c) Condition.--As a condition of registration, a builder
17 shall be required to participate in the fund or an approved
18 alternate new home warranty security program.

19 (d) Prohibition.--No corporation, partnership or other
20 business organization shall be entitled to registration, nor
21 shall they engage in the construction of new homes, unless a
22 stockholder, director, officer, partner or employee, as the case
23 may be, is a registered builder.

24 Section 6. Investigation of allegations.

25 (a) Procedure.--The bureau, upon the complaint of an
26 aggrieved person, may conduct investigations into the
27 allegations made against any builder required to be registered
28 under this act. In pursuit of such investigations, the bureau
29 shall be authorized to hold hearings, to subpoena witnesses and
30 compel their attendance, to require the production of papers,

1 records or documents, to administer oaths or affirmations to
2 witnesses, to inspect such relevant books, papers, records or
3 documents of such builder at his place of business during
4 business hours and to conduct inspections of new home
5 construction sites owned by a builder or in which a builder has
6 an ownership interest.

7 (b) Denial, suspension or revocation of certificate of
8 registration.--The bureau may deny, suspend or revoke any
9 certificate of registration, after affording the registrant or
10 applicant the opportunity for a hearing, if the registrant or
11 applicant has done any of the following:

12 (1) Willfully made a misstatement of a material fact in
13 his application for registration or renewal.

14 (2) Willfully committed fraud in the practice of his
15 occupation.

16 (3) Practiced his occupation in a grossly negligent
17 manner.

18 (4) Willfully violated any applicable building code to a
19 substantial degree.

20 (5) Failed to continue his participation in the fund or
21 an approved alternate new home warranty security program
22 after proper notice from the bureau, in writing, by certified
23 mail.

24 (6) Violated any provision of this act or any rule or
25 regulation adopted pursuant thereto after proper notice from
26 the bureau, in writing, by certified mail.

27 Section 7. New Home Warranty Security Fund.

28 (a) Establishment.--There is hereby established the New Home
29 Warranty Security Fund, to be maintained by the State Treasurer
30 and administered by the bureau. The purpose of the fund is to

1 provide moneys sufficient to pay claims by owners against
2 builders participating in the fund for defects in new homes
3 covered by the new home warranty. The amounts payable by
4 participating builders shall be established and may be changed,
5 from time to time, as the experience of the fund shall require,
6 by the bureau, and shall be sufficient to cover anticipated
7 claims, to provide a reasonable reserve and to cover the costs
8 of administering the fund. Amounts paid by participating
9 builders shall be forwarded to the State Treasurer and shall be
10 accounted for and credited by him to the fund.

11 (b) Administration.--The State Treasurer shall hold, manage
12 and invest moneys in the fund and credit all income earned
13 thereon to the fund in the same manner as provided by law for
14 the investment of retirement funds administered by the State
15 Employees' Retirement Board. The bureau shall keep the State
16 Treasurer advised of anticipated cash demands for payment of
17 claims against the fund.

18 (c) Procedure for claims.--Prior to making a claim against
19 the fund for defects covered by the warranty, an owner shall
20 notify the builder of such defects and allow a reasonable time
21 period for their repair. If the repairs are not made within a
22 reasonable time or are not satisfactory to the owner, he may
23 file a claim against the fund in the form and manner prescribed
24 by the bureau. The bureau shall investigate each claim to
25 determine the validity thereof, and the amount of the award that
26 shall be made thereon, and shall hold a hearing if requested by
27 either party. Reasonable hearing fees shall be assessed against
28 the unsuccessful party. The amount of the award shall be
29 sufficient to cover the reasonable costs necessary to correct
30 any defect or defects covered under the warranty, but the total

1 amount of awards from the fund for any new home shall not exceed
2 the purchase price of the home in the first good faith sale
3 thereof or the fair market value on the home on its completion
4 date if there is no good faith sale. All claims submitted by an
5 owner shall first be reviewed through a conciliation or
6 arbitration procedure by the bureau, and, in the event that the
7 owner is found to be in the right, then the builder shall be
8 required to correct such claims as determined through the
9 conciliation or arbitration procedure. If a builder is unable or
10 willfully refuses to correct such deficiency, then an amount
11 sufficient to cure the problem shall be paid from the fund to
12 the owner. In such cases, the bureau may then proceed against
13 the builder in accordance with section 6(b). Upon certification
14 from the bureau of the amount of an award, the State Treasurer
15 shall make payment to the claimant from the fund.

16 (d) Moneys in fund.--If at any time the moneys available in
17 the fund are insufficient to satisfy outstanding awards and
18 anticipated awards for the succeeding year, the bureau shall, by
19 regulation and after public hearing upon reasonable notice to
20 all interested parties, require participating builders to pay
21 additional amounts to replenish the fund. The bureau may also
22 provide for surcharges against those participating builders who
23 are responsible for a significant number of awards against the
24 fund, and may discontinue the participation in the fund of any
25 builder who is responsible for an excessive number of awards
26 against the fund after notice and a hearing. At no time shall
27 the Commonwealth be required to contribute any moneys to the
28 fund, nor shall the Commonwealth have any liability to any
29 person having any right to or claim against the fund over and
30 above the amount therein.

1 Section 8. Alternate new home warranty security programs.

2 (a) Review and approval.--The bureau is authorized and
3 directed to review and approve alternate new home warranty
4 security programs which provide for payment of claims against
5 builders for defects covered under the new home warranty and
6 financial security adequate to cover the total amount of claims
7 that may be reasonably anticipated against participating
8 builders at least equivalent to that provided by the New Home
9 Warranty Security Fund. However, any new home warranty insurance
10 program approved by the Insurance Commissioner prior to the
11 effective date of this act shall:

12 (1) constitute an approved alternate new home warranty
13 security program and shall be deemed in accordance with this
14 section and in compliance with this act in the form and
15 substance heretofore approved by the Insurance Commissioner;
16 and

17 (2) not be subject to any rules and regulations adopted
18 by the bureau under this act when such rules and regulations
19 are in conflict with said previously approved new home
20 warranty security program.

21 (b) Procedure.--Any person desiring approval of a new home
22 warranty security program shall make application to the bureau
23 in such form and manner as it shall prescribe. The bureau may
24 establish and charge reasonable fees to cover the costs incurred
25 in reviewing and approving such applications. The bureau shall
26 review each application and conduct any investigation it deems
27 necessary with respect to an application. The bureau may, and if
28 an applicant so requests, shall hold a hearing on an
29 application. If the bureau finds that a new home warranty
30 security program provides coverage and financial security at

1 least equivalent to the New Home Warranty Security Fund, it
2 shall approve the program. The bureau may revoke or suspend the
3 approval for such a program after a hearing in accordance with
4 the same procedures applicable to hearings on applications if it
5 finds that the program no longer provides coverage and financial
6 security equivalent to the New Home Warranty Security Fund.

7 Section 9. Availability of any legal remedy to owner; election
8 of remedy.

9 Nothing contained in this act shall affect other rights and
10 remedies available to the owner. The owner shall have the
11 opportunity to pursue any remedy legally available to the owner.
12 However, initiation of procedures to enforce a remedy shall
13 constitute an election which shall bar the owner from all other
14 remedies. The bureau shall provide the owner with a clear,
15 written examination of the legal implications of such an
16 election before the owner signs any complaint initiating a
17 procedure under this act. Nothing contained in this act shall be
18 deemed to limit the owner's right of appeal as applicable to the
19 remedy elected.

20 Section 10. Supersedure of municipal ordinance or regulation.

21 This act shall supersede any municipal ordinance or
22 regulation which provides for the licensing or registration of
23 builders or for the protection by bonds or warranties required
24 to be supplied by builders, exclusive of those required by
25 water, sewer, utilities or land use requirements.

26 Section 11. Offenses defined.

27 (a) Unfair trade practices.--A violation of this act shall
28 constitute a violation of the act of December 17, 1968
29 (P.L.1224, No.387), known as the Unfair Trade Practices and
30 Consumer Protection Law, and shall be subject to the enforcement

1 provisions and private rights of action contained in that act.

2 (b) Failure to register.--A builder who engages in the
3 construction of new homes without a valid certificate of
4 registration under this act or who has made a willful
5 misrepresentation of a material fact in his application for
6 registration or renewal commits a misdemeanor of the second
7 degree.

8 Section 12. Rules and regulations.

9 The bureau may adopt rules and regulations necessary to
10 enforce and administer this act. These rules and regulations,
11 when promulgated pursuant to the act of July 31, 1968 (P.L.769,
12 No.240), referred to as the Commonwealth Documents Law, shall
13 have the force and effect of law.

14 Section 13. Provisions of act not exclusive.

15 The provisions of this act are not exclusive and do not
16 relieve the parties or the contracts subject to this act from
17 the duty to comply with all other applicable provisions of law.

18 Section 14. Effective date.

19 This act shall take effect in 60 days.