



OFFICE OF THE INSPECTOR GENERAL
MONTGOMERY COUNTY MARYLAND

MEGAN DAVEY LIMARZI, ESQ.
INSPECTOR GENERAL

Review of the New Home Builder and New Home
Seller Program

Office of Consumer Protection

OIG Publication # 22-010

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51 MONROE STREET, SUITE 600 | ROCKVILLE, MARYLAND 20850

☎ 240 777 8240 | 🌐 MONTGOMERYCOUNTYMD.GOV/OIG

EXECUTIVE SUMMARY

We initiated this review pursuant to our mandate to conduct reviews of the internal accounting practices and controls used by principal offices in the Executive Branch. After examining the Office of Consumer Protection's (OCP's) various business lines and considering potential risks, we selected the OCP's New Home Builder and New Home Seller program as the focus of this engagement. In fiscal year 2021, the OCP collected approximately \$148,190 in application fees through the program, representing the largest source of revenue in the OCP's portfolio.

OBJECTIVES

Through this review we attempted to determine (1) if the OCP is following its policies and procedures in processing registration fees related to the New Home Builder and New Home Seller programs; (2) whether builder status is correctly reflected in the OCP's internal records and in publicly available records; (3) if the Board of Registration for Building Contractors follows its policies and procedures when making decisions on New Home Builder and New Home Seller applications; and (4) the status of the county's New Home Warranty Security Fund which was eliminated from the County Code but continues to be included in county regulation.

SCOPE & STANDARDS

Our review was conducted between July and October 2021 in accordance with the *Association of Inspectors General Principles and Quality Standards for Inspections, Evaluations, and Reviews by Offices of Inspector General* (May 2014).

RESULTS

- We examined a random sample of 71 applications and associated fees and found that the OCP properly credited accounts and that associated records contained accurate information.
- The OCP and the Board of Registration for Building Contractors do not have written policies, and documented procedures are lacking and incomplete.
- The county's New Home Warranty Security Fund remains in county regulations even though the fund was closed in fiscal year 2007 and is no longer in the County Code.

RECOMMENDATIONS

We made two recommendations aimed at improving the effectiveness and efficiency of the OCP's New Home Builder and New Home Seller Program and the integrity of county regulations:

- We recommend the Office of Consumer Protection and Board of Registration for Building Contractors develop detailed written policies and procedures for processes and criteria for decisions.
- We recommend the county expedite updating COMCOR Chapter 31C to remove references to the New Home Warranty Security Fund.

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BACKGROUND

The Montgomery County Office of Consumer Protection (OCP) enforces county consumer protection laws that prohibit unfair and deceptive business acts to ensure a fair marketplace for consumers and businesses. The OCP investigates and works to resolve consumer complaints, manages business registration¹, and engages in education, legislation, advocacy, and outreach activities.²

The primary focus of this review was the OCP's registration of businesses through the New Home Builder and New Home Seller program and the viability of the county's New Home Warranty Security Fund. Chapter 31C of the County Code requires that a new home builder or seller "must not engage, or offer to engage, in the business of constructing, selling, or advertising a new home for sale or act in the capacity of a building contractor in the County unless the builder or seller are first registered by the Office." To be approved for a registration with the OCP, builders must demonstrate that they have "the requisite knowledge of the construction industry and that he/she has supervised, managed, and performed the duties necessary to build a home." In fiscal year (FY) 2021, the OCP processed 237 new home builder and seller registrations, resulting in the collection of \$148,190 in application fees.

Builders apply for registration by completing an application; providing references, proof of insurance and copies of relevant licenses; and paying a fee.³ Upon receipt of an application, OCP staff utilizes a checklist and reviews each application to ensure all required information has been provided. Additionally, OCP staff conducts background research on each applicant to verify the business' credentials, status, and history. After the application information has been reviewed and verified, OCP staff forwards the application to the Board of Registration for Building Contractors (Board) for consideration.

The Board consists of five volunteer members appointed by the County Executive and confirmed by the County Council. Board members serve three-year terms without compensation. County law requires that no more than two members may be active in the residential construction field at the time of their appointment. The Board recommends to the OCP director whether an applicant should be registered, however, the director makes the final decision. The OCP director may deny, suspend, refuse to renew, or revoke the registration of a new home builder or new home seller if the director finds that the builder or seller (1) committed fraud or gross negligence related to specific building activities; (2) violated building code or laws of the county or state; or (3) otherwise did not comply with related county law in any material way.

¹ OCP licenses automotive repair facilities, towing companies, new home builders and sellers, small appliance repair firms, and pawn shops and consignment shops.

² For FY 2022, the OCP was given the additional responsibility of administering the Public Elections Fund.

³ The Montgomery County new home builder registration fee is \$805, and the new home seller fee is \$100. Additionally, the OCP collects a \$250 State Guaranty Fund fee from applicants who are not registered with the Maryland Home Builder Registration Unit.

Registrations for new home builders and sellers are valid for two years from the date of issue and may be renewed. OCP management clarified that registration renewals do not go before the Board unless staff identifies questionable conduct, such as selling homes prior to being registered. The OCP tracks registration approval dates and notifies registrants when their registrations near expiration. Entities that continue business without properly applying for a renewal may be subject to a \$500 civil fine for each day of the violation.

Beginning in 1986, Montgomery County required that each newly constructed home be covered by either a warranty program operated by a third-party or the county's New Home Warranty Security Fund (Fund). The county ceased enrolling new homes into the Fund at the end of 1995, and the Fund was officially closed in FY 2007. The county allowed homeowners to file warranty claims for 10 years beyond the date the Fund was closed to new enrollees. Currently, builders are required to provide consumers a written builder's warranty providing the level of coverage specified in county law. Additionally, consumers can seek reimbursement from the State of Maryland Home Builder Guaranty Fund for losses resulting from acts or omissions by registered home builders related to new home construction.

Objectives, Scope, and Methodology

We conducted this review pursuant to § 2-151(h) of the County Code, which mandates the OIG conduct a systematic risk-based rotating group-by-group review of the internal accounting and contracting practices and controls used by each department and principal office in the Executive Branch.

Through this review we attempted to determine (1) if the OCP is following its policies and procedures in processing registration fees related to the New Home Builder and New Home Seller programs; (2) whether builder status is correctly reflected in the OCP's internal records and in publicly available records; (3) if the Board follows its policies and procedures when making decisions on New Home Builder and New Home Seller applications; and (4) the status of the county's New Home Warranty Security Fund which was eliminated from the County Code⁴ but continues to be included in county regulation.⁵

In pursuing the first objective, we reviewed the application fees the OCP collected in FY 2021 associated with new home builder and new home seller registrations. We used data analytic software to extract a random sample of 71 applications from the 227 applications the OCP processed in FY 2021. For the sampled applications, we reviewed the OCP's records related to fee deposits and process documents. We also conducted interviews with relevant staff and consulted the OCP's website.

⁴ Council Bill 31-18, effective May 16, 2019

⁵ Code of Montgomery County Regulations (COMCOR) 31C.00.01.06

For the second objective, we reviewed 74 randomly selected builder and seller registrations from the 237 received by the OCP in FY 2021.⁶

In pursuing the third objective, we determined that 70 applications were provided to the Board in FY 2021 and used data analytic software to obtain a random sample of 47 applications. We reviewed the 47 applications to ascertain whether the Board followed its policies and procedures when making decisions on new home builder and new home seller applications. As the Board had no formal written procedures, we relied on documents provided by the OCP, interviews of OCP staff, and observations made while attending a Board meeting.

We reviewed the County Code, applicable regulations, and legislation, and interviewed the OCP and county Department of Finance staff as the basis of our examination for the fourth objective.

Our review was conducted between July and October 2021 in accordance with the *Association of Inspectors General Principles and Quality Standards for Inspections, Evaluations, and Reviews by Offices of Inspector General* (May 2014).

⁶ There were more registrations than applications because there were registrations processed in FY 2021 that were applied for in FY 2020.

FINDINGS AND RECOMMENDATIONS

Consistent with our mandate to conduct reviews of the internal accounting practices and controls used by principal offices in the Executive Branch, we selected the OCP's New Home Builder and Seller program as the focus of our review after analyzing the OCP's various business lines and considering potential risks. The New Home Builder and Seller program represents the largest source of revenue in their portfolio. In FY 2021, the OCP collected approximately \$148,190 in application fees through the program. We examined a random sample of 71 applications and associated fees to determine if the OCP had reasonable controls in place to ensure that the funds were credited to the proper accounts, applicants were credited the amounts remitted, and that associated records contained accurate information. We found no deficiencies in the areas we tested.

During testing we observed that the OCP approves registrations before ensuring that payments have cleared an applicant's bank account. This practice could lead to applicants being registered without paying the requisite fee. When questioned about this practice, OCP management stated that waiting for applicants' checks to clear before issuing registrations would delay the processing of applications. The OCP informed us that they are considering implementing an electronic application system by the beginning of calendar year 2023 which should help address this issue. We encourage the OCP to continue working towards implementation of an electronic system as it would promote efficiencies in the program.

Finding 1: The Office of Consumer Protection and the Board of Registration for Building Contractors do not have written policies, and their documented procedures are lacking and incomplete.

At the initiation of our engagement, we requested copies of the OCP and Board policies and procedures for the New Home Builder and New Home Seller program, including those related to the processing of fees. We found that the OCP and the Board generally lacked formalized, written policies. The OCP however had documented procedures covering essential workflows, but some of them lacked sufficient detail. The absence of policy and inadequacy of documented procedures resulted in inconsistent processing of applications and could lead to inequitable decisions regarding registration approvals.

Inconsistency in Processing Checks

We observed inconsistencies in how staff processed checks received to cover required fees. Applications and fees submitted to the OCP are processed by two staff members, one who maintained copies of checks with bank deposit reports and one who did not. We also observed an instance in which OCP staff attempted to deposit two checks for the same applicant.

We were told the OCP does not have written policies and procedures for the processing of registration fees. The OCP did have flow charts depicting who opens the mail, makes copies or scans of checks and applications, and enters application information in an assignment spreadsheet. However, we observed that the flow charts lacked detail on fee processing, including how checks are deposited and recorded.

Without written policies and procedures, each staff member determines their own methods for performing their work, which may make it more difficult for others to reconcile transactions and validate decisions.

Inconsistency in Reviewing Application Packets

We also found inconsistencies among OCP staff in the methodology used to validate registration information provided by applicants. In advance of consideration by the Board, OCP staff reviews each registration application for content and completeness and queries a variety of sources looking for information about applicants, some of which are required by statute and others that have been identified as containing pertinent information.

Staff from the OCP prepares information packets that are provided to the Board for each application. Each packet contains a cover sheet titled "Building Contractors License Application Review" which has a list of six queries that should be conducted by the OCP staff prior to Board meetings. The queries include:

- 1) State Department of Assessments and Taxation (SDAT)
- 2) MD Case Search - Maryland court records
- 3) PACER – federal court records
- 4) Permit Compliance – DPS records
- 5) Office of the Attorney General Consumer Complaints
- 6) Undisclosed Building Entities⁷

We reviewed a random sample of 47 out of the 70 applications presented to the Board during our scope period in order to evaluate whether the OCP staff completed the six queries contained on the cover sheet. For 39 (83%) of the applications all six queries were conducted, while eight applications (17%) were missing some combination of queries. For some of the applications, we also noted an absence of documentation detailing the results of queries. Table 1 displays the number of queries conducted for each record type.

⁷ To determine undisclosed building entities, the OCP checks a number of sources, including internet research, related building permits issued by the county, SDAT records, and the source of the payment provided by the applicant.

Table 1: Application Queries by Record Type

RECORD SEARCHED	APPLICATIONS QUERIED	% of SEARCHES PERFORMED
SDAT	45	96%
MD Case Search	46	98%
PACER	47	100%
Permit Compliance	47	100%
Office of the Attorney General Consumer Complaints	45	96%
Undisclosed Building Entities	43	91%

We found that there were no written policies outlining how queries should be conducted, an explanation of the relevancy of results from such queries, instructions on how to address different findings, what backup documentation should be retained, or what specific information the OCP staff should submit to the Board. The OCP provided copies of flow charts outlining employee responsibilities and required steps in processing registration applications however, the charts did not provide context, explanation, or instruction on how to evaluate the information obtained. The absence of policy and inadequacy of documented procedures could result in staff failing to identify disqualifying information, the Board not receiving necessary information to fully evaluate applicants, and potentially lead to unjust decisions.

Board Lacks Formal Policies and Procedures

While the final decision regarding registration approval lies with the OCP director, the County Code requires that the Board make written recommendations to the director regarding whether an applicant should receive a registration.⁸ The Board considers information provided on the application and the results of the OCP staff research to inform their decision.

The Board does not have any written policy detailing criteria by which to evaluate applicants’ qualifications or that defines what constitutes an “experienced, qualified” builder or seller. We attended the September 2021 Board meeting and observed the Board questioning the OCP staff about how similar issues were handled previously and the relevance of an applicant’s experience. Written policies and procedures could have assisted the Board in making these decisions and

⁸ County Code §31C-5(a) requires that a builder be “first registered” before constructing a new home, which would not address the lapsing of a registration during construction. It states, “A new home builder or a new home seller must not engage, or offer to engage, in the business of constructing, selling, or advertising a new home for sale or act in the capacity of a building contractor in the County unless the builder or seller are first registered by the Office.”

ensured consistency and equity in their recommendations. Written policies may also assist the OCP staff and the Board in defending a decision should the matter be appealed.

Recommendation 1

We recommend the Office of Consumer Protection and Board of Registration for Building Contractors develop detailed written policies and procedures for processes and criteria for decisions.

Finding 2: The county's New Home Warranty Security Fund remains in county regulations, even though the fund was closed in FY 2007 and removed from the County Code.

In 1995, the county ceased enrolling new homes into the New Home Warranty Security Fund and the Fund was officially closed in FY 2007 with a transfer of \$164,434 to the county's General Fund.⁹ In 2019, the County Council passed Bill 31-18 which removed references to the Fund from the County Code. However, the Montgomery County Code of Regulations (COMCOR) Chapter 31C still contains references to the outdated Fund and continues to describe how homeowners may file claims with the county's New Home Warranty Security Fund. The OCP management explained that in 2019, they drafted a proposed revision of the regulation that removes reference to the fund and will continue to work with the Office of the County Attorney to implement the change.

Recommendation 2

We recommend the county expedite updating COMCOR Chapter 31C to remove references to the New Home Warranty Security Fund.

⁹ Montgomery County Comprehensive Annual Financial Report for FY 2007 pp. 112, 121; Bill 31-18, effective May 16, 2019.

OIG COMMENTS TO CAO RESPONSE

The County Chief Administrative Officer's response to our report is included in its entirety in Appendix A. The response notes concurrence with the OIG's recommendations.

We expect specific details related to the County's actions and plans to implement our recommendations to be included in the Internal Auditor's fiscal year 2021 annual report which, in accordance with County Code §2-25A, is due in the fall of 2022.

APPENDIX A: CHIEF ADMINISTRATIVE OFFICER RESPONSE



OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

Richard S. Madaleno
Chief Administrative Officer

MEMORANDUM

December 17, 2021

TO: Megan Davey Limarzi, Inspector General

FROM: Richard S. Madaleno, Chief Administrative Officer *RSM*

SUBJECT: Inspector General Confidential Draft Report OIG Publication OIG-22-0xx;
Review of the New Home Builder and New Home Seller Program – Office of Consumer Protection

Thank you for the opportunity to respond to the issues identified in the draft report. We are pleased, that the OIG, during the conduct of the review, found no deficiencies in the areas tested. This is particularly noteworthy given that the cases used for testing were processed during the challenging period of the COVID-19 pandemic.

We recognize that there are opportunities to improve the documented policies and procedures for the New Home Builder and New Home Seller program. As noted in the report, the Office of Consumer Protection (OCP) and the Board of Registration for Building Contractors have documented procedures covering essential workflows, and additional levels of detail would help further strengthen administration of the program and consistency of documentation maintained.

We concur with the two recommendations in the report: that the Office of Consumer Protection and Board of Registration for Building Contractors develop detailed written policies and procedures for processes and criteria for decisions; and that the County expedite updating COMCOR Chapter 31C to remove references to the New Home Warranty Security Fund. I have directed the Director of OCP to take the lead in developing a corrective action plan to address both recommendations as expeditiously as possible.

Thank you for bringing these matters to our attention.

cc: Fariba Kassiri, Deputy Chief Administrative Officer, Office of the County Executive
Eric Friedman, Director, Office of Consumer Protection
Marc Hansen, County Attorney, Office of the County Attorney
Bill Broglie, Internal Audit Manager, Office of the County Executive

101 Monroe Street • Rockville, Maryland 20850
240-777-2500 • 240-777-2544 TTY • 240-777-2518 FAX
www.montgomerycountymd.gov