

**TO:** Office of the Attorney General, [REDACTED]@oag.state.va.us and cc:  
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**FROM:** Brian Wolford, Chief Deputy Director, DPOR

**DATE:** May 22, 2024

**SUBJECT:** Possible Legal Loophole playing out in Prince William County

Overview:

Several families in Prince William County ([REDACTED]) have formally communicated with the Department of Professional and Occupational Regulation (DPOR) regarding grievances lodged against a builder operating within the county – [REDACTED]. [REDACTED] has also been associated with [REDACTED], according to records from the State Corporation Commission (SCC).

Their testimonies depict a pattern of misconduct perpetrated by a builder who has allegedly systematically exploited homebuyers, stolen substantial sums of money, and neglected to complete housing construction or deliver satisfactory outcomes. Moreover, [REDACTED] has apparently exhibited a disregard for contractual obligations, failing to pay subcontractors and vendors, while resorting to deceitful practices. Consequently, these actions have inflicted significant financial strain and emotional anguish upon the affected homeowners. The earliest documented encounter with [REDACTED] dates back to 2014, indicating that these allegations span over a decade. Together, the affected families have suffered damages adding up to millions of dollars, and the negative impacts continue without improvement.

The families have initiated contact with law enforcement agencies. However, as of the end of February, a detective has not been assigned to the case. All families are engaged in legal proceedings; however, none of the lawsuits have reached completion. One case has been ongoing for seven years. [REDACTED] filed Chapter 7 bankruptcy in December 2023. It has been reported that [REDACTED] is currently working for [REDACTED] Homes.

Agency Involvement:

The [REDACTED]'s submitted a complaint through the Governor's office on February 29, 2024, hoping to address the concerns of all families involved. Following this, DPOR staff has been in communication with representatives from each family to obtain further details regarding the alleged fraudulent activities of [REDACTED]. The [REDACTED]'s previously submitted complaints to DPOR. The [REDACTED] submitted a complaint with DPOR in 2023 (File No: 2023-02278). However, the complaint was closed as DPOR determined its inability to pursue action against the licensed contractor in this instance, as it was an unlicensed owner/developer case (see next section). The [REDACTED]'s are in the process of submitting a complaint as of April 1, 2024. The [REDACTED] are unable to file complaints against [REDACTED] due to having signed a settlement upon severing ties with [REDACTED].

The remaining families have refrained from submitting complaints to DPOR due to learning that previous complaints from other families were closed without investigation. However, DPOR staff have actively

encouraged them to proceed with filing complaints to determine if any regulatory violations can be identified.

#### Regulatory Enforcement Limitations:

DPOR occasionally gets what we broadly refer to as "unlicensed owner-developer cases." These usually take the form of problems with a house a complainant (buyer) has purchased from an entity not licensed with the Board for Contractors (unlicensed owner/developer who becomes the seller in the real estate transaction). When the house is a new home construction, the complaint typically involves the new home construction warranty in the Code. When the house is a house renovated by a flipper, the complaint typically just deals with problems with the house.

In either case, the Department takes no action on these complaints. In the case where the buyer purchases from the unlicensed owner-developer, the owner-developer typically has a contract with the licensed contractor. In most cases we see, the buyer does not have a separate contract with the licensed contractor. The only contract they have is with the owner-developer (seller). Although it could be interpreted that owner-developers are required to be licensed (see definitions and license exemptions outlined in 54.1-1101 below), in practice, our Investigations section has found the Commonwealth's Attorneys (CA's) will not prosecute these entities for unlicensed activity. As such, we generally recommend that if such complainants wish to pursue criminal charges that they directly contact their local CA. This is the reason why CAR closed the [REDACTED] family complaint.

#### Definition of Contractor and Owner-developer in 54.1-1100

*"Contractor" means any person, that for a fixed price, commission, fee, or percentage undertakes to bid upon, or accepts, or offers to accept, orders or contracts for performing, managing, or superintending in whole or in part, the construction, removal, repair or improvement of any building or structure permanently annexed to real property owned, controlled, or leased by him or another person or any other improvements to such real property. For purposes of this chapter, "improvement" shall include (i) remediation, cleanup, or containment of premises to remove contaminants or (ii) site work necessary to make certain real property usable for human occupancy according to the guidelines established pursuant to § 32.1-11.7.*

*"Owner-developer" means any person who, for a third-party purchaser, orders or supervises the construction, removal, repair, or improvement of any building or structure permanently annexed to real property owned, controlled, or leased by the owner-developer, or any other improvement to such property and who contracts with a person licensed in accordance with this chapter for the work undertaken.*

#### Exemptions from licensure in 54.1-1101

*11. Any owner-developer, provided that any third-party purchaser is made a third-party beneficiary to the contract between the owner-developer and a licensed contractor whereby the contractor's obligation to perform the contract extends to both the owner-developer and the third party;*

Oftentimes, we see the same individual is a principal behind both companies but because the companies are separate business entities registered with the SCC, with one being the contractor licensed with DPOR (which is not named in the contract) and the other being the owner/developer that is not licensed as a contractor. This is a concept homeowners may have difficulty understanding. As part of the intake analysis of these complaints, staff will perform a property search to confirm the owner of the property and add that to the file as added confirmation that the unlicensed seller/company was indeed the owner

of the property (not the licensed contractor). Generally, this does not change the result in these cases. The reason is because any contractual obligation in the new home warranty belongs to the seller in the real estate transaction (the unlicensed developer), not the contractor. Similarly, even if there is a licensed contractor behind an unlicensed house-flipper, the complainant's contract is a real estate contract with the flipper, not a construction contract with the behind-the-scenes contractor. The existence of a behind-the-scenes licensed contractor is only potentially relevant to whether the developer must be licensed as well (again, see the license exemption in 54.1-1101). However, DPOR not proceeding with these cases is not based on our own interpretation of the statute, but rather on the Investigations section statement to the Complaint Analysis and Resolution (CAR) section that commonwealth's attorneys will not prosecute these cases.

#### Agency Action/Next Steps:

Upon thorough review of these grievances and engaging in discussions with the affected families, DPOR staff is compelled to escalate these cases. We seek to raise awareness in the pursuit of intervention from an agency or entity with the appropriate jurisdiction to address [REDACTED] actions, preventing further harm to these families and potentially others in the future.

#### Teams Folder Files/Folders:

<https://covgov.sharepoint.com/:f:/r/sites/TM-DPOR-SayeghAGOffice-External/Shared%20Documents/General?csf=1&web=1&e=gbmglg>

Email correspondence between Jennifer Sayegh (DPOR) and families ([REDACTED]) beginning March 19, 2024, through present.

Documents received from [REDACTED] and [REDACTED]:

- 3<sup>rd</sup> Amended Complaint (Prince William County Court document)
- Copy of letter from [REDACTED]s to the Supreme Court of Virginia dated February 24, 2024
- Court history ([REDACTED])
- Prince William County Circuit – Civil Division Case Details ([REDACTED], [REDACTED])
- [REDACTED] Bankruptcy Notice (Official Form 309A and Notice of Chapter 7 Bankruptcy Case)
- Itemization of claimed damages.
- **List and detailed summary of other families' complaints.**
  - ([REDACTED])
- Contract addendum, screenshots
- [REDACTED]

Documents received from [REDACTED] and [REDACTED]:

- Letter from DPOR (CAR) to the [REDACTED]' dated April 3, 2023
- Letter from the [REDACTED] summarizing their complaints.

Documents received from [REDACTED]

- DPOR complaint form submitted April 1, 2024

DPOR Case Files (*not enclosed, available upon request*):

- [REDACTED] (File no: 2018-02245; unavailable due to records retention policy, documents have been purged)
- [REDACTED] (File no: 2023-02278)
  - DPOR Closing Letter to [REDACTED] dated July 7, 2023
  - DPOR IR Instructions dated April 3, 2023, revised July 7, 2023)
  - Email from [REDACTED] to DPOR with attachments dated June 28, 2023
- [REDACTED] complaint submission from April 2024

Links to similar case in Fairfax County:

- <https://www.wusa9.com/article/news/local/virginia/virginia-contractor-appear-in-court-for-failing-to-finish-construction-projects-after-being-paid/65-d71e1ef3-d074-45c2-811a-7961daef1ee8>
- <https://www.youtube.com/watch?v=Wbz2L6jN0qY>

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