

By Senator Dean

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1 A bill to be entitled
2 An act relating to the Florida Homeowners'
3 Construction Recovery Fund; amending s. 489.1401,
4 F.S.; clarifying legislative intent; making technical
5 changes; amending s. 489.1402, F.S.; redefining terms;
6 amending s. 489.141, F.S.; revising conditions under
7 which a claimant is eligible to seek recovery from the
8 recovery fund; amending s. 489.1425, F.S.; revising
9 the form required to be provided by a contractor which
10 explains a consumer's rights under the recovery fund;
11 amending s. 489.143, F.S.; prohibiting fund
12 disbursements from exceeding a specified amount for
13 each Division I claim and each Division II claim;
14 providing an effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Subsections (2) and (3) of section 489.1401,
19 Florida Statutes, are amended to read:

20 489.1401 Legislative intent.—

21 (2) It is the intent of the Legislature that the sole
22 purpose of the Florida Homeowners' Construction Recovery Fund is
23 to compensate an ~~any~~ aggrieved claimant who contracted for the
24 construction or improvement of the homeowner's residence located
25 within this state and who has obtained a final judgment in any
26 court of competent jurisdiction, was awarded restitution by the
27 Construction Industry Licensing Board, or received an award in
28 arbitration against a licensee on grounds of financial
29 mismanagement or misconduct, abandoning a construction project,

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30 or making a false statement with respect to a project. Such
31 grievance must arise ~~and arising~~ directly out of a any
32 transaction conducted when the judgment debtor was licensed and
33 must involve an act performed ~~any of the activities~~ enumerated
34 under s. 489.129(1)(g), (j) or (k) ~~on the homeowner's residence~~.

35 (3) It is the intent of the Legislature that Division I and
36 Division II contractors set apart funds for the specific
37 objective of participating in the fund.

38 Section 2. Paragraphs (d), (i), (k), and (l) of subsection
39 (1) of section 489.1402, Florida Statutes, are amended to read:

40 489.1402 Homeowners' Construction Recovery Fund;
41 definitions.—

42 (1) The following definitions apply to ss. 489.140-489.144:

43 (d) "Contractor" means a Division I or a Division II
44 contractor performing his or her respective services described
45 in s. 489.105(3)(a)-(q) ~~s. 489.105(3)(a)-(e)~~.

46 (i) "Residence" means a single-family residence, an
47 individual residential condominium or cooperative unit, or a
48 residential building containing not more than two residential
49 units in which the owner contracting for the improvement is
50 residing or will reside 6 months or more each calendar year upon
51 completion of the improvement.

52 (k) "Same transaction" means a contract, or a ~~any~~ series of
53 contracts, between a claimant and a contractor or qualified
54 business, when such contract or contracts involve the same
55 property or contiguous properties and are entered into either at
56 one time or serially.

57 (l) "Valid and current license," for the purpose of s.
58 489.141(2)(d), means a ~~any~~ license issued pursuant to this part

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59 to a licensee, including a license in an active, inactive,
60 delinquent, or suspended status.

61 Section 3. Subsections (1) and (2) of section 489.141,
62 Florida Statutes, are amended to read:

63 489.141 Conditions for recovery; eligibility.—

64 (1) A ~~Any~~ claimant is eligible to seek recovery from the
65 recovery fund after making ~~having made~~ a claim and exhausting
66 the limits of any available bond, cash bond, surety, guarantee,
67 warranty, letter of credit, or policy of insurance, if provided
68 ~~that~~ each of the following conditions is satisfied:

69 (a) The claimant has received final judgment in a court of
70 competent jurisdiction in this state or has received an award in
71 arbitration or the Construction Industry Licensing Board has
72 issued a final order directing the licensee to pay restitution
73 to the claimant. The board may waive this requirement if:

74 1. The claimant is unable to secure a final judgment
75 against the licensee due to the death of the licensee; or

76 2. The claimant has sought to have assets involving the
77 transaction that gave rise to the claim removed from the
78 bankruptcy proceedings so that the matter might be heard in a
79 court of competent jurisdiction in this state and, after due
80 diligence, the claimant is precluded by action of the bankruptcy
81 court from securing a final judgment against the licensee.

82 (b) The judgment, award, or restitution is based upon a
83 violation of s. 489.129(1)(g), (j), or (k) or s. 713.35.

84 (c) The violation was committed by a licensee.

85 (d) The judgment, award, or restitution order specifies the
86 actual damages suffered as a consequence of such violation.

87 (e) The contract was executed and the violation occurred on

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88 or after July 1, 1993, and provided that:

89 1. The claimant has caused to be issued a writ of execution
90 upon such judgment, and the officer executing the writ has made
91 a return showing that no personal or real property of the
92 judgment debtor or licensee liable to be levied upon in
93 satisfaction of the judgment can be found or that the amount
94 realized on the sale of the judgment debtor's or licensee's
95 property pursuant to such execution was insufficient to satisfy
96 the judgment;

97 2. If the claimant is unable to comply with subparagraph 1.
98 for a valid reason to be determined by the board, the claimant
99 has made all reasonable searches and inquiries to ascertain
100 whether the judgment debtor or licensee is possessed of real or
101 personal property or other assets subject to being sold or
102 applied in satisfaction of the judgment and by his or her search
103 has discovered no property or assets or has discovered property
104 and assets and has taken all necessary action and proceedings
105 for the application thereof to the judgment but the amount
106 thereby realized was insufficient to satisfy the judgment; and

107 3. The claimant has made a diligent attempt, as defined by
108 board rule, to collect the restitution awarded by the board.

109 (f) A claim for recovery is made within 1 year after the
110 conclusion of any civil, criminal, or administrative action or
111 award in arbitration based on the act. This paragraph applies to
112 any claim filed with the board after October 1, 1998.

113 (g) Any amounts recovered by the claimant from the judgment
114 debtor or licensee, or from any other source, have been applied
115 to the damages awarded by the court or the amount of restitution
116 ordered by the board.

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117 (h) The claimant is not a person who is precluded by this
118 act from making a claim for recovery.

119 (2) A claimant is not qualified to make a claim for
120 recovery from the recovery fund, if:

121 (a) The claimant is the spouse of the judgment debtor or
122 licensee or a personal representative of such spouse;

123 (b) The claimant is a licensee who acted as the contractor
124 in the transaction that ~~which~~ is the subject of the claim;

125 (c) The claim is based upon a construction contract in
126 which the licensee was acting with respect to the property owned
127 or controlled by the licensee;

128 (d) The claim is based upon a construction contract in
129 which the contractor did not hold a valid and current license at
130 the time of the construction contract;

131 (e) The claimant was associated in a business relationship
132 with the licensee other than the contract at issue;

133 (f) The claimant has suffered damages as the result of
134 making improper payments to a contractor as defined in part I of
135 chapter 713 on contracts entered into before July 1, 2014; or

136 (g) The claimant has contracted with a licensee to perform
137 a scope of work described in s. 489.105(3)(d)-(p) on contracts
138 entered into before July 1, 2014.

139 Section 4. Subsection (1) of section 489.1425, Florida
140 Statutes, is amended to read:

141 489.1425 Duty of contractor to notify residential property
142 owner of recovery fund.—

143 (1) Each ~~Any~~ agreement or contract for repair, restoration,
144 improvement, or construction to residential real property must
145 contain a written statement explaining the consumer's rights

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146 under the recovery fund, except where the value of all labor and
147 materials does not exceed \$2,500. The written statement must be
148 substantially in the following form:

149
150 FLORIDA HOMEOWNERS' CONSTRUCTION
151 RECOVERY FUND
152

153 PAYMENT, UP TO A LIMITED AMOUNT, MAY BE AVAILABLE FROM
154 THE FLORIDA HOMEOWNERS' CONSTRUCTION RECOVERY FUND IF
155 YOU LOSE MONEY ON A PROJECT PERFORMED UNDER CONTRACT,
156 WHERE THE LOSS RESULTS FROM SPECIFIED VIOLATIONS OF
157 FLORIDA LAW BY A LICENSED CONTRACTOR. FOR INFORMATION
158 ABOUT THE RECOVERY FUND AND FILING A CLAIM, CONTACT
159 THE FLORIDA CONSTRUCTION INDUSTRY LICENSING BOARD AT
160 THE FOLLOWING TELEPHONE NUMBER AND ADDRESS:

161
162 The statement must ~~shall~~ be immediately followed by the board's
163 address and telephone number as established by board rule.

164 Section 5. Section 489.143, Florida Statutes, is amended to
165 read:

166 489.143 Payment from the fund.—

167 (1) The fund shall be disbursed as provided in s. 489.141
168 on a final order of the board.

169 (2) A ~~Any~~ claimant who meets all of the conditions
170 prescribed in s. 489.141 may apply to the board to cause payment
171 to be made to a claimant from the recovery fund in an amount
172 equal to the judgment, award, or restitution order or \$25,000,
173 whichever is less, or an amount equal to the unsatisfied portion
174 of such person's judgment, award, or restitution order, but only

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175 to the extent and amount of actual damages suffered by the
176 claimant, and only up to the maximum payment allowed for each
177 respective Division I and Division II claim. Payment from the
178 fund for other costs related to or pursuant to civil proceedings
179 such as postjudgment interest, attorney ~~attorney's~~ fees, court
180 costs, medical damages, and punitive damages is prohibited. The
181 recovery fund is not obligated to pay a ~~any~~ judgment, an award,
182 or a restitution order, or any portion thereof, which is not
183 expressly based on one of the grounds for recovery set forth in
184 s. 489.141.

185 (3) Beginning January 1, 2005, for each Division I contract
186 entered into after July 1, 2004, payment from the recovery fund
187 shall be subject to a \$50,000 maximum payment for each Division
188 I claim. Beginning January 1, 2015, for each Division II
189 contract entered into on or after July 1, 2014, payment from the
190 recovery fund shall be subject to a \$15,000 maximum payment for
191 each Division II claim.

192 (4)~~(3)~~ Upon receipt by a claimant under subsection (2) of
193 payment from the recovery fund, the claimant shall assign his or
194 her additional right, title, and interest in the judgment,
195 award, or restitution order, to the extent of such payment, to
196 the board, and thereupon the board shall be subrogated to the
197 right, title, and interest of the claimant; and any amount
198 subsequently recovered on the judgment, award, or restitution
199 order, to the extent of the right, title, and interest of the
200 board therein, shall be for the purpose of reimbursing the
201 recovery fund.

202 (5)~~(4)~~ Payments for claims arising out of the same
203 transaction shall be limited, in the aggregate, to the lesser of

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204 the judgment, award, or restitution order or the maximum payment
205 allowed, for a Division I claim or a Division II claim
206 regardless of the number of claimants involved in the
207 transaction.

208 ~~(6)(5) Payments for claims against any one licensee shall~~
209 ~~not exceed, in the aggregate, \$100,000 annually, up to a total~~
210 ~~aggregate of \$250,000. For any claim approved by the board which~~
211 ~~is in excess of the annual cap, the amount in excess of \$100,000~~
212 ~~up to the total aggregate cap of \$250,000 is eligible for~~
213 ~~payment in the next and succeeding fiscal years, but only after~~
214 ~~all claims for the then current calendar year have been paid.~~
215 ~~Payments may not exceed the aggregate annual or per claimant~~
216 ~~limits under law. Beginning January 1, 2005, for each Division I~~
217 ~~contract entered into after July 1, 2004, payment from the~~
218 ~~recovery fund is subject only to a total aggregate cap of~~
219 ~~\$500,000 for each Division I licensee. Beginning January 1,~~
220 ~~2015, for each Division II contract entered into on or after~~
221 ~~July 1, 2014, payment from the recovery fund is subject only to~~
222 ~~a total aggregate cap of \$150,000 for each Division II licensee.~~

223 ~~(7)(6) Claims shall be paid in the order filed, up to the~~
224 ~~aggregate limits for each transaction and licensee and to the~~
225 ~~limits of the amount appropriated to pay claims against the fund~~
226 ~~for the fiscal year in which the claims were filed. Payments may~~
227 ~~not exceed the total aggregate cap per licensee or per claimant~~
228 ~~limits under this section.~~

229 ~~(8)(7) If the annual appropriation is exhausted with claims~~
230 ~~pending, such claims shall be carried forward to the next fiscal~~
231 ~~year. Any moneys in excess of pending claims remaining in the~~
232 ~~recovery fund at the end of the fiscal year shall be paid as~~

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233 provided in s. 468.631.

234 (9)~~(8)~~ Upon the payment of any amount from the recovery
235 fund in settlement of a claim in satisfaction of a judgment,
236 award, or restitution order against a licensee as described in
237 s. 489.141, the license of such licensee shall be automatically
238 suspended, without further administrative action, upon the date
239 of payment from the fund. The license of such licensee may ~~shall~~
240 not be reinstated until he or she has repaid in full, plus
241 interest, the amount paid from the fund. A discharge of
242 bankruptcy does not relieve a person from the penalties and
243 disabilities provided in this section.

244 (10)~~(9)~~ A ~~Any~~ firm, a corporation, a partnership, or an
245 association, or a ~~any~~ person acting in his or her individual
246 capacity, who aids, abets, solicits, or conspires with another
247 ~~any~~ person to knowingly present or cause to be presented a ~~any~~
248 false or fraudulent claim for the payment of a loss under this
249 act is guilty of a third-degree felony, punishable as provided
250 in s. 775.082 or s. 775.084 and by a fine of up to ~~not exceeding~~
251 \$30,000~~7~~, unless the value of the fraud exceeds that amount,
252 ~~\$30,000~~ in which event the fine may not exceed double the value
253 of the fraud.

254 (11)~~(10)~~ ~~All~~ Payments and disbursements from the recovery
255 fund shall be made by the Chief Financial Officer upon a voucher
256 signed by the secretary of the department or the secretary's
257 designee.

258 Section 6. This act shall take effect July 1, 2014.