

A bill to be entitled

An act relating to the Florida Homeowners' Construction Recovery Fund; amending s. 489.1401, F.S.; revising legislative intent; amending s. 489.1402, F.S.; revising definitions; amending s. 489.141, F.S.; revising conditions under which a claimant is eligible to seek recovery from the recovery fund; amending s. 489.1425, F.S.; revising the form required to be provided by a contractor which explains a consumer's rights under the recovery fund; amending s. 489.143, F.S.; prohibiting fund disbursements from exceeding a specified amount for each Division I claim and each Division II claim; revising requirements providing caps on payment for certain claims against a licensee; providing an effective date.

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

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

489.1401 Legislative intent.—

(2) It is the intent of the Legislature that the sole purpose of the Florida Homeowners' Construction Recovery Fund is to compensate an ~~any~~ aggrieved claimant who contracted for the construction or improvement of the homeowner's residence located

27 within this state and who has obtained a final judgment in any
 28 court of competent jurisdiction, was awarded restitution by the
 29 Construction Industry Licensing Board, or received an award in
 30 arbitration against a licensee on grounds of financial
 31 mismanagement or misconduct, abandoning a construction project,
 32 or making a false statement with respect to a project. Such
 33 grievance must arise ~~and arising~~ directly out of a any
 34 transaction conducted when the judgment debtor was licensed and
 35 must involve an act performed ~~any of the activities~~ enumerated
 36 under s. 489.129(1)(g), (j) or (k) ~~on the homeowner's residence.~~

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

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

42 489.1402 Homeowners' Construction Recovery Fund;
 43 definitions.—

44 (1) The following definitions apply to ss. 489.140-
 45 489.144:

46 (d) "Contractor" means a Division I or a Division II
 47 contractor performing his or her respective services described
 48 in s. 489.105(3)(a)-(q) ~~s. 489.105(3)(a)-(c).~~

49 (i) "Residence" means a single-family residence, an
 50 individual residential condominium or cooperative unit, or a
 51 residential building containing not more than two residential
 52 units in which the owner contracting for the improvement is

53 residing or will reside 6 months or more each calendar year upon
 54 completion of the improvement.

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

60 (l) "Valid and current license," for the purpose of s.
 61 489.141(2)(d), means a ~~any~~ license issued pursuant to this part
 62 to a licensee, including a license in an active, inactive,
 63 delinquent, or suspended status.

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

66 489.141 Conditions for recovery; eligibility.-

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

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

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

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

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

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

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

90 (e) The contract was executed and the violation occurred
 91 on or after July 1, 1993, and provided that:

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

100 2. If the claimant is unable to comply with subparagraph
 101 1. for a valid reason to be determined by the board, the
 102 claimant has made all reasonable searches and inquiries to
 103 ascertain whether the judgment debtor or licensee is possessed
 104 of real or personal property or other assets subject to being

105 | sold or applied in satisfaction of the judgment and by his or
106 | her search has discovered no property or assets or has
107 | discovered property and assets and has taken all necessary
108 | action and proceedings for the application thereof to the
109 | judgment but the amount thereby realized was insufficient to
110 | satisfy the judgment; and

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

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

117 | (g) Any amounts recovered by the claimant from the
118 | judgment debtor or licensee, or from any other source, have been
119 | applied to the damages awarded by the court or the amount of
120 | restitution ordered by the board.

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

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

125 | (a) The claimant is the spouse of the judgment debtor or
126 | licensee or a personal representative of such spouse;

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

129 | (c) The claim is based upon a construction contract in
130 | which the licensee was acting with respect to the property owned

131 or controlled by the licensee;

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

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

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

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

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

145 489.1425 Duty of contractor to notify residential property
 146 owner of recovery fund.—

147 (1) An ~~Any~~ agreement or contract for repair, restoration,
 148 improvement, or construction to residential real property must
 149 contain a written statement explaining the consumer's rights
 150 under the recovery fund, except where the value of all labor and
 151 materials does not exceed \$2,500. The written statement must be
 152 substantially in the following form:

153
 154 FLORIDA HOMEOWNERS' CONSTRUCTION
 155 RECOVERY FUND
 156

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

165
 166 The statement must ~~shall~~ be immediately followed by the board's
 167 address and telephone number as established by board rule.

168 Section 5. Section 489.143, Florida Statutes, is amended
 169 to read:

170 489.143 Payment from the fund.—

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

173 (2) A ~~Any~~ claimant who meets all of the conditions
 174 prescribed in s. 489.141 may apply to the board to cause payment
 175 to be made to a claimant from the recovery fund in an amount
 176 equal to the judgment, award, or restitution order or \$25,000,
 177 whichever is less, or an amount equal to the unsatisfied portion
 178 of such person's judgment, award, or restitution order, but only
 179 to the extent and amount of actual damages suffered by the
 180 claimant, and only up to the maximum payment allowed for each
 181 respective Division I and Division II claim. Payment from the
 182 fund for other costs related to or pursuant to civil proceedings

183 such as postjudgment interest, attorney ~~attorney's~~ fees, court
 184 costs, medical damages, and punitive damages is prohibited. The
 185 recovery fund is not obligated to pay a ~~any~~ judgment, an award,
 186 or a restitution order, or any portion thereof, which is not
 187 expressly based on one of the grounds for recovery set forth in
 188 s. 489.141.

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

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

206 (5)~~(4)~~ Payments for claims arising out of the same
 207 transaction shall be limited, in the aggregate, to the lesser of
 208 the judgment, award, or restitution order or the maximum payment

209 allowed, for a Division I claim or a Division II claim,
 210 regardless of the number of claimants involved in the
 211 transaction.

212 ~~(6)(5) Payments for claims against any one licensee shall~~
 213 ~~not exceed, in the aggregate, \$100,000 annually, up to a total~~
 214 ~~aggregate of \$250,000. For any claim approved by the board which~~
 215 ~~is in excess of the annual cap, the amount in excess of \$100,000~~
 216 ~~up to the total aggregate cap of \$250,000 is eligible for~~
 217 ~~payment in the next and succeeding fiscal years, but only after~~
 218 ~~all claims for the then-current calendar year have been paid.~~
 219 ~~Payments may not exceed the aggregate annual or per claimant~~
 220 ~~limits under law.~~ Beginning January 1, 2005, for each Division I
 221 contract entered into after July 1, 2004, payment from the
 222 recovery fund is subject only to a total aggregate cap of
 223 \$500,000 for each Division I licensee. Beginning January 1,
 224 2015, for each Division II contract entered into on or after
 225 July 1, 2014, payment from the recovery fund is subject only to
 226 a total aggregate cap of \$150,000 for each Division II licensee.

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

233 ~~(8)(7)~~ If the annual appropriation is exhausted with
 234 claims pending, such claims shall be carried forward to the next

235 | fiscal year. Any moneys in excess of pending claims remaining in
 236 | the recovery fund at the end of the fiscal year shall be paid as
 237 | provided in s. 468.631.

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

248 | ~~(10)-(9)~~ A ~~Any~~ firm, a corporation, a partnership, or an
 249 | association, or a ~~any~~ person acting in his or her individual
 250 | capacity, who aids, abets, solicits, or conspires with another
 251 | ~~any~~ person to knowingly present or cause to be presented a ~~any~~
 252 | false or fraudulent claim for the payment of a loss under this
 253 | act is guilty of a third-degree felony, punishable as provided
 254 | in s. 775.082 or s. 775.084 and by a fine of up to ~~not exceeding~~
 255 | \$30,000~~7~~, unless the value of the fraud exceeds that amount,
 256 | ~~\$30,000~~ in which event the fine may not exceed double the value
 257 | of the fraud.

258 | ~~(11)-(10)~~ ~~All~~ Payments and disbursements from the recovery
 259 | fund shall be made by the Chief Financial Officer upon a voucher
 260 | signed by the secretary of the department or the secretary's

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261 | designee.

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