

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

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

234 (8)-(7) If the annual appropriation is exhausted with

235 claims pending, such claims shall be carried forward to the next  
 236 fiscal year. Any moneys in excess of pending claims remaining in  
 237 the recovery fund at the end of the fiscal year shall be paid as  
 238 provided in s. 468.631.

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

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

259 (11)~~(10)~~ ~~All~~ Payments and disbursements from the recovery  
 260 fund shall be made by the Chief Financial Officer upon a voucher

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261 | signed by the secretary of the department or the secretary's  
262 | designee.

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