

## **FREQUENTLY ASKED QUESTIONS REGARDING THE RECOVERY FUND FOR THE CONSTRUCTION INDUSTRY LICENSING BOARD**

### **Q. What is the recovery fund?**

**A.** The Construction Industries Recovery Fund (now known as the Florida Homeowners' Construction Recovery Fund) is a fund of last resort that is available to a natural person who has suffered monetary damages by the financial mismanagement or misconduct of a contractor, and who has exhausted all other resources of payment. The Construction Industry Licensing Board makes the determination of eligibility for an award.

A contract to purchase a completed residence and property from a developer is not eligible.

For contracts entered into after January 1, 2005, the fund is restricted to homeowners only and is limited to contracts entered into with Division I contractors only. If you have a contract to install or repair a pool or roof, for example, you will no longer be eligible for reimbursement from the fund after January 1, 2005.

### **Q. I have a civil judgment, when do I get my check?**

**A.** Having either a civil court judgment, a criminal court award or a final order of discipline with restitution is just the first step in the process. Once you have a judgment, you must attempt to discover assets of the judgment debtor and execute on that judgment. In addition, the court or disciplinary Board must have made a determination that the damages or losses that you suffered were as a result of specific violations in Florida Statutes Chapter 489. Once those steps are taken, then you may be eligible for making a claim with the recovery fund.

### **Q. How do I know if I am eligible for the fund?**

**A.** In conjunction with the above answer, you should contact the Construction Industries Recovery Fund section by writing: Construction Industries Recovery Fund, 1940 North Monroe Street, Tallahassee, FL 32399 to request a claim application and information packet. Or you may call their office at (850) 921-6593. With the information that they provide, you will be able to see if you are eligible. Or you may review the Florida Statutes by clicking on: [www.myflorida.com/dbpr/pro/cilb/index.html](http://www.myflorida.com/dbpr/pro/cilb/index.html) and click on Statutes and Rules. You should view sections 489.140, 489.141, 489.143 and 489.129, Florida Statutes.

### **Q. Do you mean that even if I sued the contractor and have a judgment, I may not be able to be reimbursed from the recovery fund?**

**A.** Yes, that is correct. No matter what amount of money the judgment or final order awards, the violations must match with those listed in the statute for eligibility.

**Q. What are the violations that would make me eligible?**

**A.** Florida Statutes section 489.141 identifies the following violations:

A "g" violation is the commission of mismanagement or misconduct in the practice of contracting that causes financial harm to a customer. This occurs when there were valid liens filed that were not satisfied by the contractor; the contractor abandoned the job and the percentage of completion is less than the percentage paid; or the job was completed and the customer pays more than what was contracted for as a result of circumstances beyond the control of the contractor.

A "j" violation is abandoning the job. Here the contractor has done nothing for 90 days, termination was without cause or notice to the owner, or the contractor failed to perform without cause.

A "k" violation is for signing a statement falsely indicating that the work is bonded, or falsely stating that all subcontracted work, labor and materials has been paid for, or falsely stating that workers' compensation or public liability insurance is provided.

**Q. Are there any other restrictions?**

**A.** Yes. Section 489.141(2), Florida Statutes gives the exceptions to eligibility for making a claim against the Recovery Fund. In addition, the Recovery Fund can only compensate you for actual damages directly caused by the contractor's mismanagement.

**Q. I have a judgment awarding me \$78,000 in damages. Can I get all my money back from the fund?**

**A.** No. If all or a portion of the award is a result of violations mentioned above, and all other conditions are met, you can only be awarded up to the maximum amount allowed under the Recovery Fund statutes. Depending upon when your claim arose, this may be \$25,000 or \$50,000.

**Q. How do I do an asset search?**

**A.** When you request your application packet you will be given a document that will help prepare an asset search. We provide a **sample** outline of an affidavit that may be used. You must do the actual search.

**Q. The contractor filed Bankruptcy, what will I need to say on the Asset Search Affidavit?**

**B.** The answer depends upon whether your judgment is against the individual contractor or the corporation, or both. Once a bankruptcy is filed, we need a copy of the petition, a copy of the page of the list of creditors showing that your claim is listed, a copy of the Trustee's filing of No Distribution and a copy of the discharge, if the contractor individually filed a Chapter 7 petition, or a copy of the final decree if the corporation filed for bankruptcy. If the bankruptcy was not filed by the person or entity against whom you have a judgment, then you should

attempt collection and provide an asset search affidavit against your judgment debtor. Contact the recovery fund office if you have any questions regarding documentation.

**Q. Help! The contractor filed bankruptcy and the Civil Court won't let me continue, or begin, my lawsuit. What should I do?**

**A.** If the contractor filed bankruptcy, this does not stop you from pursuing a judgment. The suit can be pursued in civil court with permission of the bankruptcy court, or it can be pursued through the bankruptcy court. You should ask your attorney for more information on how to take either action.

**Q. How long will it take for my claim application to be processed?**

**A.** This is a difficult question to answer. The time element depends on how much information you have provided. We have claims from 1998 that are not yet ready to be heard by the Board and claims filed this year that already have awards. The decision as to when your claim will be heard is determined by whether all of the required documents are submitted and whether there is corroborating or supporting documentation needed. Each claim is reviewed in order of the date received. Claims cannot be presented to the Board without all of the required documents, unless the case is presented for administrative closure.

**Q. May I come to the hearing and speak?**

**A.** Yes. Although it is not mandatory, you are encouraged to be present in the event that Recovery Fund Committee members have questions you might be able to answer. You and the contractor will be sent a letter notice approximately 14 days prior to the hearing. Any new information that you send after that notice or hand carry to the Board meeting will be cause for the Committee to continue the hearing to a subsequent month.

**Q. What happens next if the Board does not approve my claim?**

**A.** If the Board did not approve or continue your claim, they will have issued a "Denied With Prejudice" order, which means that there was a definite cause for them to deny your claim. You can, however, still appeal and request an informal hearing before the full Board or you may have the right to appeal to a higher level. If the Board issued a "Denied Without Prejudice" order, it means that your claim still has merit; however, it is lacking some specific information or document. You may resubmit your claim when you have the required items without having to open a new claim.

**Q. The Board approved my claim last month. When do I get my check?**

**A.** No more than ninety days following the hearing, the Board Counsel prepares an Order. Both you and the contractor will receive a copy of that Order. Either party may appeal the Order within 21 days of filing. If there are no appeals, by law, the check may not be requested for 45 days from the filing date of the Order. Once the check is ordered, it usually takes an additional four weeks to get the check from the Comptroller and mail the check to you.

## LIST OF REQUIRED DOCUMENTS FOR RECOVERY FUND CLAIM

### ***FAILURE TO PROVIDE THIS DOCUMENTATION WILL RESULT IN YOUR CLAIM PACKAGE BEING RETURNED TO YOU WITHOUT PROCESSING:***

1. **CONSTRUCTION INDUSTRIES RECOVERY FUND CLAIM FORM.** All pages completed, with **original** signature(s) and date(s).
2. Copy of **CONSTRUCTION CONTRACT**, signed by yourself, your spouse, or other home/property owner, AND the contractor (or company representative). If you signed the contract but the contractor did not, a copy of the canceled check proving initial payment was made to, and accepted by, the contractor.
3. Either one of the following:

A **FINAL ORDER** of disciplinary action from the State Construction Industry Licensing Board (and the Administrative Complaint, or local order, attached to it). This is an order of the Department of Business and Professional Regulation which was issued as the result of your having filed a complaint against the contractor.

## OR

A **JUDGMENT** from a Court of competent jurisdiction. This may be a civil court, a criminal court, or may be pursuant to an award in arbitration. **THE JUDGMENT MUST BE A COURT CERTIFIED COPY.**

A civil or criminal judgment must also include a copy of the complaint filed with the court clerk at the civil court which initiated the civil suit.

***A proof of claim in a bankruptcy is NOT sufficient to establish your eligibility under this requirement!*** If you have questions on the bankruptcy issue, please consult your attorney.

The Final Order, Judgment or arbitration award must be based on actions of the contractor that are specific, compensable violations of section 489.129(1), Florida Statutes, which are:  
(g): Mismanagement/misconduct where financial harm has occurred;  
(j): Abandonment of a construction project for more than 90 days; **or**  
(k): Signing a false statement that all work was bonded; subcontractors/suppliers have been paid, or claimed to have provided certain workers compensation and insurance protection.

4. Court certified copies of **Levy and Execution documents, Asset Search or Bankruptcy Information.** Please include all information that applies to your attempts to collect:
  - a) Court certified copies of **Levy and Execution documents, post judgment discovery, etc.**

b) **ASSET SEARCH** on the judgment debtor, to include:

1) **Notarized Affidavit** of diligent asset search and attempts to collect. This search would be for person or entity that you received a judgment against. The Affidavit should include all of the following information.

- i. Legal Name(s) searched
- ii. Real Property owned by the contractor and/or the company
- iii. Boats and Motor Vehicles (including Motorcycles) owned by the contractor and/or the company
- iv. Aircraft owned by the contractor and/or the company

2) Any printouts obtained during the asset search.

c) *If the person/entity named in the judgment or restitution*

THE FOLLOWING DOCUMENTS ARE NOT REQUIRED FOR ELIGIBILITY, BUT ARE REQUIRED BEFORE YOUR CLAIM CAN BE PRESENTED TO THE CONSTRUCTION INDUSTRY LICENSING BOARD

A copy of contract signed with the contractor who completed the project, and proof that this contractor received payment for the work.

Any **LIENS** filed against your property

Any **Satisfaction of Liens** (proof you paid the liens off)

Any **Waiver of Liens** obtained from the contractor

Any **Mediation Agreements, Awards Statement** explaining percentage of monies paid to percentage of work completed by contractor

**Building Permits and Inspection Reports** (if available)

Please only send **copies**, not originals, of these documents, as they will not be returned to you.

**IN THE EVENT THE JUDGMENT DEBTOR FILED BANKRUPTCY**, you will need

- 1) A copy of the Trustee's filing of "No Distribution" for a Chapter 7 case;
- 2) A copy of the Debtor's plan for Chapters 11 and 13 cases;
- 3) A copy of the **Discharge of Debtor** in place of the Asset Search. (In the case of a **business** going bankrupt, this would be called a *Final Decree*). The Discharge is the bankruptcy court's pronouncement of the debtor's freedom from all listed debts.
- 4) Schedule of Creditors showing that you were someone who was listed as a Debtor.

These documents are not required to initiate your claim, but they assist the Construction Industry Licensing Board in establishing the extent of damages on your claim.