

HOW TO DO AN ASSET SEARCH FOR THE FLORIDA HOMEOWNERS' CONSTRUCTION RECOVERY FUND

The Florida Homeowners' Construction Recovery Fund is a fund created by the Florida Legislature and administered by the Florida Construction Industry Licensing Board (CILB), to provide limited reimbursements to individuals in certain limited circumstances for losses they have experienced as a result of their dealings with State of Florida licensed contractors and construction companies. The Fund was created as a "resource of last resort," meaning that it only pays when there are no assets of the contractor and/or construction company which an individual can reach to satisfy, in whole or in part, his or her claims against the contractor and/or construction company. Therefore, it is up to the individual applying for payment by the Fund to demonstrate to the CILB that no such assets exist. This is normally achieved by means of an *asset search*.

Before the Recovery Fund can consider a request for reimbursement, the requestor must have either a judgment or restitution order entered against the contractor and/or construction company, **based on a violation of Florida Statute (F.S.) 489.129 (1) (g), (j) or (k)**. *Judgments* are orders entered by a court and may be entered against the contractor and/or construction company. *Restitution Orders* are entered by the CILB; and are usually entered against an individual contractor. In both cases, you must demonstrate that neither the contractor nor the construction company named in the judgment or restitution order have any assets you can take collection against.

In most cases, the individual requesting reimbursement from the Recovery Fund will be required to conduct an asset search on the contractor and/or construction company involved in his request. A limited exception to this requirement exists when the contractor and/or construction company has obtained a discharge of their obligation to you in federal bankruptcy court. This discharge must be obtained after your contract date; and you must have been listed as a creditor in the bankruptcy schedules. In most cases when this has occurred, you will have been notified by the bankruptcy court during the bankruptcy proceedings. However, if you know or believe this situation may apply to you, the information should be verified by obtaining copies to the bankruptcy schedules and the discharge order, or copies of all notices which were sent to you by the bankruptcy court.

Once you have obtained either a judgment or restitution order, and if the bankruptcy exception discussed above does not apply, you must conduct an asset search for each contractor and/or construction company, to demonstrate to the CILB that no assets exist. If you have a judgment or restitution order entered against an individual contractor, the asset search must be completed on the contractor's personal assets. If you have a judgment or restitution order entered against the individual contractor and/or the construction company, the asset search must be completed on both the contractor and construction company. The Recovery Fund requires that there be no assets, such as real property (land and structures), bonds, letter or credit, or insurance, motor vehicles, boats, or airplanes against which you could collect even part of what you are owed by the contractor and/or construction company.

To begin the asset search, you should first do the following:

(1) Determine the exact legal name of the contractor and/or construction company. Contractor names and license numbers can be verified with the CILB at (850) 487-1395. The Board can also tell you the name of the construction company with which the contractor qualified; but make sure you ask for the name of the company which the contractor qualified at the time your contract with the contractor was signed, since the contractor may have changed companies since then.

(2) Determine the county of the last known residence for the contractor and the county of the last known principle place of business for the construction company. Counties of residence for contractors can be checked with the CILB at (850) 487-1395. The last known principle place of business for construction companies can generally be determined from the address on the contract with the company, or possibly from any letters, estimates, or business cards received from the company.

Once you have obtained the above information, your actions will generally be determined by the type of asset you are trying to find. It is important to remember that since the Recovery Fund requires that there be no assets available, you should complete all of the following actions for each type of asset, even if you do not believe that the contractor and/or construction company has that type of property.

Real Property

To check on real property (land and structures), contact the tax assessor's office in the last known county of residence for contractors or the county of the last known principle place of business for construction companies, and ask if their records show that the contractor and/or construction company paid any property taxes in the county during the past year. If the assessor's records do not show any tax payments, you may conclude that the contractor and/or construction company does not own any real property. If the assessor's records indicate that taxes have been paid, ask them for a printout copy of their records which will show the exact property that the tax payments were for, and the value of the property according to the assessor's office.

Take this printout to the Circuit Court Clerk's office at the courthouse for the last known county of residence or county of the last known principle place of business. Using this printout, the Clerk should be able to help you determine if the contractor and/or construction company still own any real property in their county. Ask the Clerk if the property on the printout has been sold. If it has, ask for a copy of the deed transferring it. If the property has not been sold, and it appears that the property may be the contractor's residence, ask if he has filed for a homestead exemption on the property. If he has, ask for a copy of the exemption. If the property has been sold, or if the homestead exemption has been filed, you are not required to take further collection actions against the property.

If the property has not been sold, and it either does not appear to be a residence or the homestead exemption has not been filed for, ask if there are any mortgages, tax liens, or other judgments on the property which were entered before the date of your judgment or restitution order. If so, ask for a copy of these. If the total dollar amount of all the mortgages, tax liens, or other judgments is more than the value of the property as determined by the tax assessor's

office, you are not required to take further collection actions against the property. However, if the value of the property is more than the total amount of all mortgages, tax liens, and judgments which were entered before the date of your judgment or restitution order, you must attempt to go after these assets to satisfy your claim before the Recovery Fund can consider paying your claim. If the amount of your claim against the contractor and/or construction company (up to \$25,000.00) is more than the value of the property minus all mortgages, tax liens, and judgments which were entered before the date of your judgment or restitution order, you may have the option of having your claim reduced by the value of the property minus all mortgages, tax liens, and judgments which were entered before the date of your judgment or restitution order. This may save you from having to pursue further collection efforts.

Bonds, Letters of Credit, Insurance

If your contractor included this information, this part of your asset search can be found in your original contract.

Motor Vehicles/Boats

<http://www.flhsmv.gov/dmv/forms/BTR/85054.pdf>

Print out this form and complete it to the best of your ability. You must submit a copy of your Final Order or Final Judgment along with this form to DMV. You may also want to submit a check of \$5 to cover the cost of the records. If this amount is less than what you paid, DMV will send you a refund.

When you receive your information from DMV, if their records do not show any valid information, you may conclude that the contractor or company does not own any motor vehicles or boats. If their records do show motor vehicles or boats, you will need to show that you are attempting to collect or why you cannot collect from this information. If the records show any liens against the motor vehicles or boats, if the motor vehicle or boat is currently registered in Florida, and the names of all owners that appear on the title for each motor vehicle or boat, the Recovery Fund does not require you to take further collection actions against motor vehicles or boats if 1) there is a lien (loan) against the property entered before the date of your judgment or restitution order, 2) the motor vehicle or boat is not currently registered, or 3) at least one of the registered owners of the motor vehicle is an individual or company that is not included in your judgment or restitution order.

If none of these situations apply, you will next have to determine the value of the motor vehicle or boat. To determine the value, contact your bank, credit union or insurance agent and ask them for the current wholesale value for the motor vehicle or boat. They have blue books or black books which have listings for most motor vehicles and boats, If there is no listing for the particular motor vehicle or boat, contact a car or boat dealer and ask for a written estimate of the current wholesale value.

After you have determined the value, contact the Circuit Court Clerk's office in the last known county of residence for contractors or the county of the last known principle place of business for construction companies. Ask them if there are any tax liens or judgments on file which were entered before the date of your judgment or restitution order. If there are, and their total amount is more than the value of the motor vehicle or boat, you are not required to take

further collection actions against the motor vehicle or boat. If the value of the motor vehicle or boat is more than the total amount of all tax liens and judgments which were entered before the date of your judgment or restitution order, you must attempt to go after these assets to satisfy your claim before the Recovery Fund can consider paying your claim. However, if the cost to have the county sheriff seize and sell the motor vehicle or boat at a public auction is more than the value of the motor vehicle or boat, minus all tax liens and judgments which were entered before the date of your judgment or restitution order, you are not required to take further collection actions against it. In most counties, the minimum cost is \$500.00. You will need to check with the county sheriff to determine the actual cost. Again, you may have the option of having your claim reduced by the value of the property minus all tax liens and judgments which were entered before the date of your judgment or restitution order. This may save you from having to pursue further collection efforts.

Aircraft

To check on aircraft owned by the contractor and/or construction company, contact the Federal Aviation Administration office in Oklahoma City, OK at (405) 954-3116 or online at <http://www.faa.gov>. Ask them if their records show any aircraft registered to the contractor and/or construction company. If their records do not show any, you may conclude that they do not own any aircraft. If their records do show any aircraft, ask them for a printout copy of their records. Then proceed with the asset search for aircraft using the same procedures as for motor vehicles and boats.

Once you have completed your asset search on real property, bonds, letters of credit, and insurance, motor vehicles, boats, and aircraft, you will need to document your findings and results with an **Affidavit of Asset Search**. This is a sworn statement by you or the person who actually performed the search see example below. **The affidavit should explain the results of your search.** If you have not found any assets for the contractor and/or construction company, the affidavit should say so. If you have found assets, explain what property you found, and why you feel that you are not required to take further collection actions against it. Remember, if you found assets, and have no reason not to take further collection actions against it, you will not be able to be reimbursed by the Recovery fund until after you do so. **The affidavit must be signed by you or the individual who actually performed the search and notarized by a Florida Notary Public.** Copies of all printouts and any other supporting documentation should also be included. All materials should be sent to the Department of Business and Professional Regulation, Florida Homeowners' Construction Recovery Fund, 1940 North Monroe Street, Tallahassee, FL 32399-2215.