

FREQUENTLY ASKED QUESTIONS

Re: The Florida Homeowners' Construction Recovery Fund

Q. What is the recovery fund?

A. The Florida Homeowners' Construction Recovery Fund is a fund of last resort 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.

For contracts entered into prior to July 1, 2016, the fund is restricted to contracts entered into with Division I contractors. A contract by a Division 2 contractor to install or repair a pool, plumbing, or roof for example will be eligible for reimbursement from the fund so long as it was executed after July 1, 2016.

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

A. In conjunction with the above answer, you may contact the Recovery Fund office by writing: Florida Homeowners' Construction Recovery Fund, 2601 Blair Stone Road, Tallahassee, FL 32399-2215 to request a claim application and information packet, or you may call the office at (850) 921-6593. You may review the Florida Statutes at www.flsenate.gov by reviewing sections 489.141 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. No matter the amount of the judgment or final order award, the order must find violations of at least one of those listed in the eligibility Statutes, section 489.129 g, j, or k. Please see below for a further explanation.

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

A. Florida Statutes section 489.129 identifies the following violations:
A "g" violation is committing 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 g, j, or k, violations.

Q. I have a civil judgment in which a violation of the above statutes was committed; when do I get my check?

A. Having a civil court judgment, a criminal court award or a final order of discipline based on 489.129, g, j, or k, awarding financial 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. Once those steps are taken you may be eligible for making a claim with the recovery fund.

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

A. The fund awards the lesser amount of your judgment/restitution order, the statutory cap, and the actual damages. The statutory cap for a Division 1 contractor is \$50,000. The statutory cap for a Division 2 contractor is \$15,000. Actual damages are computed based on the verified amount to complete the terms of the original contract and pay off all liens, minus the price of the original contract. However, where no work was performed actual damages are the amount of the deposit paid to the original contractor.

Q. What happens if other claims were made against the same contractor, or when the Fund has awarded many claims in a given year?

A. Each contractor has an aggregate lifetime cap. The total claims against a Division 1 contractor are capped at \$500,000. Total claims against a Division 2 contractor are capped at \$150,000. Claims are heard in the order they are completed, unless the claimant requests a continuance. Each year, the legislature appropriates a certain total amount for payment of claims. Should the total awards by the fund reach the total yearly appropriated amount, claims will be carried forward to the next year fiscal year, beginning on July 1.

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.

This sample is also online at:

http://www.myfloridalicense.com/dbpr/pro/cilb/documents/fhcrf_affidavit_of_asset_search.pdf

For instruction on how to perform the asset search, please see:

http://www.myfloridalicense.com/dbpr/pro/cilb/documents/fhcrf_how_to_do_asset_search.pdf

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

A. All claimants filing for the Florida Homeowners' Construction Recovery Fund are required to complete an Affidavit of Diligent Asset search per Florida Administrative Code Definition [61G4 - 21.002(1)]: "All reasonable searches and inquiries," as provided in Section 489.141(1), F.S., shall mean that exhaustive efforts have been made to determine whether the contractor possesses any property or assets with which to satisfy the underlying judgment, order of restitution, or award in arbitration, in whole or in part, and that no such property or assets have been identified or located. Furthermore, a claimant shall not be excused from making all reasonable searches and inquiries because the contractor filed for protection under the bankruptcy code.

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 civil judgment. The suit can be pursued in civil court with permission of the bankruptcy court, or it can be pursued through the bankruptcy court. However, if you have been precluded from obtaining a judgment from the contractor, you may obtain a "Motion to Preclude" from the bankruptcy court pursuant to Section 489.141 (1)(a) 2. 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. Claims can vary greatly in complexity and some claimants are able to obtain documentation more quickly than others. The scheduling of your claim for Board hearing is determined by whether all of the required documents are submitted and whether there is corroborating or supporting documentation needed. If the claim is missing required documentation we will notify you via letter and it is in your best interest to provide the requested documentation as quickly as possible. Additional information is reviewed in order of the date received and claims are listed as complete based on the date

received of the final documentation which completed the claim. 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 at least 14 days prior to the hearing; therefore it is important you keep the Recovery Fund informed of your current contact information. 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 hearing.

Q. What happens after the Board hears my claim?

A. No more than 45 days following the hearing, the Board Counsel prepares a Final Order detailing the determination of the Committee and informing you of your appellate rights. Both the claimant and the contractor will receive a copy of that Order. Either party may appeal the Order within 35 days of mailing. If there are no appeals, by law, the check may not be requested until 35 days from the filing date of the Order has elapsed. Once the appellate time has expired, you may be required to submit additional documentation, pursuant to Section 489.143 (3), before payment can be issued. Board staff will contact you once the appellate time has expired to instruct you on additional measures you may have to take. Once the check is ordered, it usually takes an additional 2-4 weeks to get the check from the Comptroller and mail the check to you.