

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 54.1-1100, 54.1-1119, and 54.1-1123 of the Code of Virginia, relating to Virginia Contractor Transaction Recovery Fund; claim limits; license threshold amounts.

[H 1707]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-1100, 54.1-1119, and 54.1-1123 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-1100. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Board" means the Board for Contractors.

"Class A contractors" perform or manage construction, removal, repair, or improvements when (i) the total value referred to in a single contract or project is ~~\$120,000~~ \$150,000 or more, or (ii) the total value of all such construction, removal, repair, or improvements undertaken by such person within any 12-month period is ~~\$750,000~~ \$1 million or more.

"Class B contractors" perform or manage construction, removal, repair, or improvements when (i) the total value referred to in a single contract or project is ~~\$10,000~~ \$30,000 or more, but less than ~~\$120,000~~ \$150,000, or (ii) the total value of all such construction, removal, repair, or improvements undertaken by such person within any 12-month period is ~~\$150,000~~ \$250,000 or more, but less than ~~\$750,000~~ \$1 million.

"Class C contractors" perform or manage construction, removal, repair, or improvements when (i) the total value referred to in a single contract or project is over \$1,000 but less than ~~\$10,000~~ \$30,000, or (ii) the total value of all such construction, removal, repair, or improvements undertaken by such person within any 12-month period is less than ~~\$150,000~~ \$250,000. The Board shall require a master tradesmen license as a condition of licensure for electrical, plumbing, and heating, ventilation, and air conditioning contractors.

"Contractor" means any person, that for a fixed price, commission, fee, or percentage undertakes to bid upon, or accepts, or offers to accept, orders or contracts for performing, managing, or superintending in whole or in part, the construction, removal, repair, or improvement of any building or structure permanently annexed to real property owned, controlled, or leased by him or another person or any other improvements to such real property. For purposes of this chapter, "improvement" shall include (i) remediation, cleanup, or containment of premises to remove contaminants or (ii) site work necessary to make certain real property usable for human occupancy according to the guidelines established pursuant to § 32.1-11.7.

"Department" means the Department of Professional and Occupational Regulation.

"Designated employee" means the contractor's full-time employee, or a member of the contractor's responsible management, who is at least 18 years of age and who has successfully completed the oral or written examination required by the Board on behalf of the contractor.

"Director" means the Director of the Department of Professional and Occupational Regulation.

"Fire sprinkler contractor" means a contractor that provides for the installation, repair, alteration, addition, testing, maintenance, inspection, improvement, or removal of sprinkler systems using water as a means of fire suppression when annexed to real property. "Fire sprinkler contracting" does not include the installation, repair, or maintenance of other types of fire suppression systems.

"Owner-developer" means any person who, for a third party purchaser, orders or supervises the construction, removal, repair, or improvement of any building or structure permanently annexed to real property owned, controlled, or leased by the owner-developer, or any other improvement to such property and who contracts with a person licensed in accordance with this chapter for the work undertaken.

"Person" means any individual, firm, corporation, association, partnership, joint venture, or other legal entity.

"Value" means fair market value. When improvements are performed or supervised by a contractor, the contract price shall be prima facie evidence of value.

§ 54.1-1119. Assessments by Director; assignment to Fund; minimum balance; notice; penalties; costs of administration.

A. Each initial ~~regular~~ contractor applicant, at the time of application, shall be assessed ~~twenty-five dollars~~ \$25, which shall be specifically assigned to the Fund. Initial payments may be incorporated in any application fee payment and transferred to the Fund by the Director within ~~thirty~~ 30 days.

All assessments, except initial assessments, for the Fund shall be deposited within three ~~work days~~ workdays after their receipt by the Director, in one or more federally insured banks, savings and loan associations, or savings banks located in the Commonwealth. Funds deposited in banks, savings institutions,

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or savings banks, to the extent in excess of insurance afforded by the Federal Deposit Insurance Corporation or other federal insurance agency, shall be secured under the Virginia Security for Public Deposits Act (§ 2.2-4400 et seq.). The deposit of these funds in federally insured banks, savings and loan associations, or savings banks located in the Commonwealth shall not be considered investment of such funds for purposes of this section. Funds maintained by the Director may be invested in securities that are legal investments for fiduciaries under the provisions of § 64.2-1502.

B. The minimum balance of the Fund shall be \$400,000. Whenever the Director determines that the balance of the Fund is or will be less than this minimum balance, the Director shall immediately inform the Board, which shall assess each regulant at the time of his license renewal a sum sufficient to bring the balance of the Fund to an amount of not less than \$400,000, when combined with similar assessments of other regulants. No regulant shall be assessed a total amount of more than ~~fifty dollars~~ \$50 during any biennium.

Notice to regulants of these assessments shall be by first-class mail, and payment of such assessments shall be made by first-class mail addressed to the Director within ~~forty-five~~ 45 days after the mailing of the notice to regulants.

C. If any regulant fails to remit the required assessment mailed in accordance with subsection B within ~~forty-five~~ 45 days of such mailing, the Director shall notify such regulant by first-class mail at the latest address of record filed with the Board. If no payment has been received by the Director within ~~thirty~~ 30 days after mailing the second notice, the license of the regulant shall be automatically suspended and shall be restored only upon the actual receipt by the Director of the delinquent assessment.

Interest earned on the deposits constituting the Fund shall be used for administering the Fund. The remainder of this interest may be used for the purposes of providing educational programs about the Uniform Statewide Building Code (§ 36-97 et seq.), for providing education on subjects of benefit to licensees or members of the public relating to contracting, or shall accrue to the Fund.

§ 54.1-1123. Limitations upon recovery from Fund; certain actions not a bar to recovery.

A. The maximum claim of one claimant against the Fund based upon an unpaid judgment arising out of the improper or dishonest conduct of one regulant in connection with a single transaction involving contracting is limited to ~~\$20,000~~ \$30,000, including any amount paid from a contractor's surety bond under § 54.1-1120.1, regardless of the amount of the unpaid judgment of the claimant.

B. The aggregate of claims against the Fund based upon unpaid judgments arising out of the improper or dishonest conduct of any one regulant involving contracting, is limited by the Board to ~~\$40,000~~ \$100,000 during any biennium. If a claim has been made against the Fund, and the Board has reason to believe there may be additional claims against the Fund from other transactions involving the same regulant, the Board may withhold any payment(s) from the Fund involving such regulant for a period of not more than one year from the date on which the claimant is awarded in a court of competent jurisdiction in the Commonwealth the final judgment on which his claim against the Fund is based. After this one-year period, if the aggregate of claims against the regulant exceeds ~~\$40,000~~ \$100,000, during a biennium, ~~\$40,000~~ \$100,000 shall be prorated by the Board among the claimants and paid from the Fund, less the amount of any applicable contractor's bond, in proportion to the amounts of their judgments against the regulant remaining unpaid. Claims shall be prorated only after any applicable contractor's bond has been exhausted.

C. Excluded from the amount of any unpaid judgment upon which a claim against the Fund is based shall be any sums representing interest, or punitive damages, or any amounts that do not constitute actual monetary loss to the claimants. Such claim against the Fund may include court costs and attorney fees.

D. If, at any time, the amount of the Fund is insufficient to fully satisfy any claims or claim filed with the Board and authorized by this Act, the Board shall pay such claims, claim, or portion thereof to the claimants in the order that the claims were filed with the Board.

E. Failure of a claimant to comply with the provisions of subdivisions B 1 and 2 and subsection C of § 54.1-1120 and the provisions of § 54.1-1124 shall not be a bar to recovery under this Act if the claimant is otherwise entitled to such recovery.

F. The Board shall have the authority to deny any claim which otherwise appears to meet the requirements of the Act if it finds by clear and convincing evidence that the claimant has presented false information or engaged in collusion to circumvent any of the requirements of the Act.