

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 37

Short Title: Homeowners Recovery Fund.

(Public)

Sponsors: Representatives Hasty, Easterling, Ligon, Lineberry, Privette, Woodard; Bowman and Warner.

Referred to: State Government.

February 11, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A HOMEOWNERS RECOVERY FUND UNDER THE
3 SUPERVISION OF THE GENERAL CONTRACTORS LICENSING BOARD.

4 The General Assembly of North Carolina enacts:

5 Section 1. Chapter 87 of the General Statutes is amended by adding the
6 following new Article to read:

7 **"ARTICLE 1A.**

8 **"HOMEOWNERS RECOVERY FUND.**

9 **"§ 87-15.5. Definitions.**

10 As used in this Article, unless the context clearly requires otherwise:

- 11 (1) 'Applicant' means the owner of a single-family residential dwelling
12 unit who has suffered a reimbursable loss because of the dishonest or
13 incompetent conduct of a general contractor in constructing or altering
14 the residential dwelling unit and has filed an application for
15 reimbursement from the Homeowners Recovery Fund.
16 (2) 'Board' means the General Contractors Licensing Board.
17 (3) 'Fund' means the Homeowners Recovery Fund.
18 (4) 'Dishonest conduct' means fraud or deceit in obtaining a license under
19 Article 1 of Chapter 87 of the General Statutes, or fraud or deceit by a
20 general contractor in the practice of general contracting, or the willful
21 violation of Article 1 of Chapter 87 of the General Statutes.

- 1 (5) 'General contractor' means a person licensed under Article 1 of
2 Chapter 87 of the General Statutes, or a person who has failed to
3 obtain a license in violation of Article 1.
- 4 (6) 'Incompetent conduct' means incompetency or gross negligence by a
5 general contractor in the practice of his profession.
- 6 (7) 'Reimbursable losses' are only those losses of money which:
7 a. Result from the dishonest or incompetent conduct of a general
8 contractor which conduct occurred on or after October 1, 1991;
9 b. Are not paid by or on behalf of, in whole or in part, the
10 contractor whose conduct caused the loss; and
11 c. Are not covered by any bond, surety agreement, or insurance
12 contract.

13 **"§ 87-15.6. Homeowners Recovery Fund.**

14 (a) There is established the Homeowners Recovery Fund. The Fund shall be
15 administered by the General Contractors Licensing Board under rules and regulations
16 adopted by it. The purpose of the Fund is to reimburse homeowners who have suffered
17 financial loss as a result of the dishonest or incompetent conduct in North Carolina of a
18 general contractor.

19 (b) The Board shall impose a surcharge of not more than fifty dollars (\$50.00)
20 annually on each license application or renewal, which surcharge shall be deposited by
21 the Board into the Fund. The Board shall maintain a minimum level of one hundred
22 fifty thousand dollars (\$150,000) in the Fund for recovery and guaranty purposes. The
23 Board may suspend the surcharge for any year for which the Fund balance is at least one
24 hundred fifty thousand dollars (\$150,000) and the Board determines by unanimous vote
25 that sufficient funds are available to meet likely disbursements for that year and that an
26 adequate reserve will remain after such disbursements. The Board shall receive,
27 manage, and disburse funds as may from time to time be appropriated or voluntarily
28 contributed to it, or otherwise received by it, as provided in this Article. G.S. 87-7 shall
29 not apply to the Homeowners Recovery Fund.

30 **"§ 87-15.7. Fund administration.**

31 (a) All sums received by the Board pursuant to this Article shall be held in a
32 separate account known as the Homeowners Recovery Fund. Deposits to and
33 disbursements from the Fund account shall be subject to the written direction of the
34 Board under rules established by it.

35 (b) The Board shall adopt regulations and rules of procedure governing
36 management of the Fund account, presentation and processing of applications for
37 reimbursement, processing of reimbursable claims, and subrogation or assignment of
38 the rights of any reimbursed applicant.

39 (c) The Board may use or otherwise expend monies in the Fund for the following
40 purposes:

- 41 (1) To make reimbursements on approved applications;
42 (2) To purchase insurance to cover such losses, in whole or in part,
43 deemed appropriate by the Board and not inconsistent with the
44 purposes of the Fund;

1 (3) To invest such portions of the Fund as are not currently needed to
2 reimburse losses and maintain adequate reserves, and as are permitted
3 to be made by fiduciaries under State law; and

4 (4) To pay the expenses of the Board to administrate the Fund, including
5 employment of counsel to prosecute subrogation claims.

6 (d) The Board shall submit annually a report to the State Treasurer accounting for
7 all monies collected and expended in the administration of the Homeowners Recovery
8 Fund.

9 **"§ 87-15.8. Application for reimbursement.**

10 (a) An application for reimbursement from the Homeowners Recovery Fund may
11 be filed by any person who has suffered a monetary loss as the result of dishonest or
12 incompetent conduct by a general contractor in the construction, alteration, or repair of
13 a single-family residential dwelling unit owned by such person.

14 (b) The Board shall prepare a form of application for reimbursement from the
15 Homeowners Recovery Fund. Effective October 1, 1991, the Board may consider
16 applications for reimbursement of losses that arise after that date and which are caused
17 by the dishonest or incompetent conduct of any general contractor committed on or after
18 that date; provided, however, that such reimbursement shall be made only to the extent
19 to which such losses are not bonded or otherwise covered, protected, or reimbursed, and
20 provided further that the applicant for reimbursement has exhausted all civil remedies
21 against the contractor or his or her estate, has obtained a judgment in his favor in such
22 action which judgment has been unsatisfied, and has complied with other applicable
23 rules of the Board.

24 (c) The Board shall investigate all applications made and may reject or allow
25 such claims in whole or in part based on and to the extent that monies are available in
26 the Homeowners Recovery Fund. The Board shall have complete discretion to
27 determine the order and manner of payment of approved applications. All such
28 payments shall be a matter of privilege and not of right and no person shall have any
29 right in the Homeowners Recovery Fund as a third party beneficiary or otherwise. No
30 attorney shall be compensated by the Board for prosecuting an application before it.

31 **"§ 87-15.9. Subrogation for reimbursement made.**

32 In the event reimbursement is made to an applicant under this Article, the Board
33 shall be subrogated in the reimbursed amount and may bring such action as deemed
34 advisable against the contractor, his assets or his estate. The Board may enforce any
35 claims it may have for restitution or otherwise, and may employ and compensate
36 consultants, agents, legal counsel, and other such employees as it deems necessary and
37 appropriate to carry out its authority under this section."

38 Sec. 2. This act is effective upon ratification.