

VIRGINIA ACTS OF ASSEMBLY -- 2013 SESSION

CHAPTER 343

An Act to amend and reenact §§ 54.1-1118, 54.1-1120, 54.1-1121, 54.1-1122, and 54.1-1125 of the Code of Virginia and to repeal § 54.1-1126 of the Code of Virginia, relating to the Board for Contractors; Virginia Contractor Transaction Recovery Act.

[H 1801]

Approved March 14, 2013

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-1118, 54.1-1120, 54.1-1121, 54.1-1122, and 54.1-1125 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-1118. Definitions.

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

"Act" means the Virginia Contractor Transaction Recovery Act.

"Biennium" means a two-year period beginning on July 1 of an even-numbered year and continuing through June 30 of the next even-numbered year.

"Claimant" means any person with an unsatisfied judgment involving residential construction against a regulant, who has filed a verified claim under this Act.

"Fund" means the Contractor Transaction Recovery Fund.

"Improper or dishonest conduct" includes only the wrongful taking or conversion of money, property or other things of value which involves fraud, material misrepresentation or conduct constituting gross negligence, continued incompetence, or intentional violation of the Uniform Statewide Building Code (§ 36-97 et seq.). The term "improper or dishonest conduct" does not include mere breach of contract.

"Judgment" includes an order of a United States Bankruptcy Court (i) declaring a claim against a regulant who is in bankruptcy to be a "Debt Nondischargeable in Bankruptcy" or (ii) extinguishing a claim against a regulant who is in bankruptcy and for which claim no distribution was made from the regulant's bankruptcy estate but excluding any such claim disallowed by order of the bankruptcy court.

"Regulant" means any individual, person, firm, corporation, association, partnership, joint venture or any other legal entity licensed by the Board for Contractors. "Regulant" shall not include ~~tradesmen or backflow prevention device workers~~ *contractors holding only the commercial building contractor classification or individuals licensed or certified in accordance with Article 3 (§ 54.1-1128 et seq.) or Article 4 (§ 54.1-1140 et seq.) of this chapter.*

"Verified claim" means a completed application, on a form designed by the Board, the truthfulness of which has been attested to by the claimant before a notary public, along with all required supporting documentation, which has been properly received by the Department in accordance with this chapter.

§ 54.1-1120. Recovery from Fund generally.

A. Whenever any person is awarded a judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct occurring (i) during a period when such individual or entity was a regulant and (ii) in connection with a transaction involving contracting, the claimant may file a verified claim with the Director to obtain a directive ordering payment from the Fund of the amount unpaid upon the judgment, subject to the following conditions:

1. If any action is instituted against a regulant by any person, such person shall serve a copy of the ~~process complaint~~ upon the Board in the manner prescribed by law. ~~Included in such service shall be an affidavit stating all acts constituting improper or dishonest conduct. The provisions of § 8.01-288 shall not be applicable to the service of process required by this subdivision by certified mail or the equivalent.~~

2. A copy of any pleading or document filed subsequent to the initial service of process in the action against a regulant shall be provided to the Board. The claimant shall submit such copies to the Board by certified mail, or the equivalent, upon his receipt of the pleading or document.

3. ~~For judgments entered on or after July 1, 1996, a~~ A verified claim shall be filed with the Director no later than ~~twelve~~ 12 months after the *date of entry of the final judgment became final from which no further right of appeal exists.* Such verified claim shall be accompanied by the copies of the order for the underlying judgment, and evidence of compliance with subdivisions 6 and 7 below.

4. The claimant shall be (i) an individual whose contract with the regulant involved contracting for the claimant's residence(s) located in the Commonwealth or (ii) a property owners' association as defined in § 55-509 whose contract with the regulant involved contracting for improvements to the common area owned by such association.

5. The claimant shall not himself be (i) an employee of such judgment debtor, (ii) a vendor of such judgment debtor, (iii) another licensee, (iv) the spouse or child of such judgment debtor nor the

employee of such spouse or child, or (v) any financial or lending institution nor anyone whose business involves the construction or development of real property.

6. No directive ordering payment from the Fund shall be entered unless and until the claimant has filed with the Director a verified claim containing the following statements *Prior to submitting the verified claim, the claimant shall:*

a. That the claimant has ~~conducted~~ *Conduct or make a reasonable attempt to conduct* debtor's interrogatories to determine whether the judgment debtor has any assets ~~which that~~ may be sold or applied in *whole or partial* satisfaction of the judgment; *and*

b. A description of the assets disclosed by such interrogatories.

c. That all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom.

d. The balance remaining due the claimant after the sale or application of such assets. *Take all legally available actions for the sale or application of any assets disclosed in the debtor's interrogatories.*

7. A claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper or dishonest conduct." Any language in the order which supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

B. If the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, *or the distribution ordered by the bankruptcy court fails to wholly or partially satisfy the claim*, the claimant may then file a claim with the Board. The Board shall determine (i) whether the conduct of the regulant that gave rise to the claim was improper or dishonest and (ii) what amount, if any, such claimant is entitled to recover from the Fund.

§ 54.1-1121. Investigations.

Upon receipt of the notice of proceedings against the regulant, the ~~Board~~ *Department* may cause its own investigation to be conducted *pursuant to § 54.1-306.*

§ 54.1-1122. Consideration of applications for payment.

A. *The claimant shall submit the following supporting documentation with the claim:*

1. *Copies of the contract with the regulant and all written change orders to the contract. If no written contract between the regulant and the claimant is available, the claimant may submit an affidavit attesting to the terms of the agreement, promise, or other contractual obligation;*

2. *All pleadings or other documents filed with the court from which judgment was obtained;*

3. *All orders and opinions of the court from which judgment was obtained, including the final judgment order;*

4. *The transcript of the debtor's interrogatories, if conducted, or if no transcript is available, a sworn affidavit affirming that debtor's interrogatories were conducted, or evidence that debtor's interrogatories were attempted if not conducted; a description of assets of the judgment debtor disclosed in the debtor's interrogatories; and a description of all steps taken for the sale or application of those disclosed assets in whole or partial satisfaction of the judgment, or a statement why no means are legally available for the sale or application of those disclosed assets, or a statement that the value of the disclosed assets is less than the cost of levying upon and selling such assets including reasonable estimates of the fair market value of the disclosed assets and costs of levying upon selling such assets;*

5. *A statement of the balance of the judgment remaining unpaid at the time the claim is submitted to the Department, and a statement that the claimant agrees to notify the Department of any additional payment that may be received in whole or partial satisfaction of the judgment during the pendency of the claim before the Board; and*

6. *Any other documentary evidence or exhibits the claimant wishes the Board to consider with the claim.*

B. The Department shall promptly consider the verified claim of the claimant administratively. If it appears that a *prima facie* case has been made for payment of the claim, the Department shall provide the regulant with a notice offering the opportunity to be heard at an informal fact-finding conference pursuant to § 2.2-4019 of the Administrative Process Act (§ 2.2-4000, et seq.). Such notice shall state that if the regulant does not request an informal fact-finding conference within 30 days, with three days added in instances where the notice is sent by mail, the Department shall present the claim to the Board with a ~~recommendation to pay the verified claim~~. *If the claim form is incomplete or not properly notarized, or if all required supporting documentation is not included with the claim, then the Department may provide the claimant with notice of any deficiency and an additional opportunity to submit a corrected verified claim. The burden shall be on the claimant to comply with all claim requirements and to submit the necessary documentation within 12 months of the initial claim submission. Once the Department confirms that the verified claim is complete, it shall present such verified claim, along with a recommendation regarding payment, to the Board for the Board's consideration and shall notify the claimant of the Board's recommendation.*

C. *The Department's and Board's consideration of the claim shall be based solely on the contents of*

the verified claim. Neither an informal fact-finding conference pursuant to § 2.2-4019 nor a formal hearing pursuant to § 2.2-4020 shall be required, but an informal fact-finding conference may be held at the discretion of the Department if requested by the claimant within 15 days of the claimant's receipt of the Department's recommendation to the Board.

D. A claimant shall not be denied recovery from the Fund due to the fact that order for judgment filed with the verified claim does not contain a specific finding of "improper or dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant meets the definition of "improper or dishonest conduct" in § 54.1-1118 shall be used by the Board to determine eligibility for recovery from the Fund. To the extent the judgment order is silent as to the court's findings on the conduct of the regulant, the Board may determine whether the conduct of the regulant meets the definition of improper or dishonest conduct by substantial evidence in the verified claim.

~~B.~~ *E. If the Board finds there has been compliance with the required conditions, the Board shall issue a directive ordering payment from the fund to the claimant the amount remaining unpaid on the judgment, subject to the limitations set forth in § 54.1-1123. The claimant shall be notified in writing of the findings of the Board. The Board's findings shall be considered a "case decision" and judicial review of these findings shall be in accordance with § 2.2-4025 of the Administrative Process Act (§ 2.2-4000 et seq.). Notwithstanding any other provision of law, the Board shall have the right to appeal a decision of any court which is contrary to any distribution recommended or authorized by it.*

§ 54.1-1125. Assignment of claimant's rights to Board; payment of claim.

A. Subject to the provisions of § 54.1-1123 upon the claimant's execution and delivery to the Director of an assignment to the Board of his rights against the regulant, to the extent he received satisfaction from the Fund, the Director shall pay the claimant from the Fund the amount ordered by the Board.

B. The Board may consider any amount owed to the Board for repayment of the Fund by an applicant for a license under this chapter when determining whether to grant such license.

2. That § 54.1-1126 of the Code of Virginia is repealed.