

# VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

## CHAPTER 96

*An Act to amend and reenact §§ 54.1-1119 and 54.1-1120 of the Code of Virginia, relating to the Virginia Contractor Transaction Recovery Act.*

[H 1277]

Approved March 5, 1996

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 54.1-1119 and 54.1-1120 of the Code of Virginia are amended and reenacted as follows:**

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

A. Each initial regulant, at the time of application, shall be assessed twenty-five dollars, 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 days.

All assessments, except initial assessments, for the fund shall be deposited within three work days 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 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 Security for Public Deposits Act (§ 2.1-359 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 § 26-40.01.

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 ~~within thirty days of this determination~~ 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 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 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 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 days after mailing the second notice, the license or certificate 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.

§ 54.1-1120. 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 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.

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 verified claim shall be filed with the Director no later than ~~six~~ *twelve* months after the judgment became final. 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 an individual whose contract with the regulant involved contracting for the claimant's residence(s).

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:

a. That the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment.

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.

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, the claimant may then file a claim with the Board. The Board shall determine (i) whether the conduct 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.