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HOUSE BILL NO. 1633

Offered January 11, 2023

Prefiled January 7, 2023

A *BILL to amend and reenact § 54.1-1120 of the Code of Virginia, relating to Department of Professional and Occupational Regulation; Virginia Contractor Transaction Recovery Fund; recovery; arbitration.*

Patron—Bulova

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

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

§ 54.1-1120. Recovery from Fund generally.

A. The claimant shall be (i) an individual whose contract with the regulant involved contracting for the claimant's residence located in the Commonwealth or (ii) a property owners' association as defined in § 55.1-1800 whose contract with the regulant involved contracting for improvements to the common areas owned by the association.

The claimant shall not himself be (a) an employee of such judgment debtor, (b) a vendor of such judgment debtor, (c) another licensee, (d) the spouse or child of such judgment debtor or the employee of such spouse or child, or (e) a financial or lending institution or any person whose business involves the construction or development of real property.

B. Whenever any person is awarded a judgment in a court of competent jurisdiction in the Commonwealth or has a judgment entered in conformity with an order confirming an arbitration award from a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which that 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~~ an action is instituted against a regulant by any person in a court of competent jurisdiction in the Commonwealth, such person shall serve a copy of the complaint upon the Board by certified mail or the equivalent; however, if a person submits a dispute to arbitration against a regulant, such person shall serve upon the Board a copy of the statement of facts and allegations provided to any assigned arbitrator, as well as the name, address, and contact information for any such arbitrator.

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. If the dispute is submitted to arbitration, a copy of any document or exhibit subsequently provided to any assigned arbitrator 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, or exhibit.

3. A verified claim shall be filed with the Director no later than 12 months after the date of entry of the final judgment from which no further right of appeal exists. In addition to a verified claim, if a claimant is granted an order confirming an arbitration award, a verified copy of the decision of any assigned arbitrator, including a statement of reasoning and any findings of fact regarding any improper or dishonest conduct by the regulant shall be filed with the Director no later than 12 months after the date of entry of the judgment entered in conformity with an order from a court of competent jurisdiction in the Commonwealth confirming an arbitration award from which no further right of appeal exists.

4. Prior to submitting the verified claim, the claimant shall:

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

b. Take all legally available actions for the sale or application of any assets disclosed in the debtor's interrogatories.

C. 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 fails to satisfy the claim, the claimant may then file a claim with the Board. The verified claim shall be received by the Board within 12 months of the date of bankruptcy discharge or dismissal. In the event the judgment is silent as to the conduct of the regulant, 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.

INTRODUCED

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