

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 37  
Committee Substitute Favorable 5/2/91  
Committee Substitute #2 Favorable 5/9/91

Short Title: Homeowners Recovery Fund.

(Public)

Sponsors:

Referred to:

February 11, 1991

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

The General Assembly of North Carolina enacts:

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

**"ARTICLE 1A.**

**"HOMEOWNERS RECOVERY FUND.**

**"§ 87-15.5. Definitions.**

The following definitions apply in this Article:

- (1) Applicant. – The owner of a single-family residential dwelling unit who has suffered a reimbursable loss and has filed an application for reimbursement from the Fund.
- (2) Board. – The State Licensing Board for General Contractors.
- (3) Dishonest conduct. – Fraud or deceit in either of the following:
  - a. Obtaining a license under Article 1 of Chapter 87 of the General Statutes.
  - b. The practice of general contracting by a general contractor.
- (4) Fund. – The Homeowners Recovery Fund.
- (5) General contractor. – A person or other entity who meets any of the following descriptions:

- 1           a.     Is licensed under Article 1 of Chapter 87 of the General  
2                 Statutes.
- 3           b.     Fraudulently procures any building permit by presenting the  
4                 license certificate of a general contractor.
- 5           c.     Fraudulently procures any building permit by falsely  
6                 impersonating a licensed general contractor.
- 7         (6)    Incompetent conduct. – Incompetency or gross negligence by a general  
8                 contractor in the practice of general contracting.
- 9         (7)    Reimbursable loss. – A monetary loss that meets all of the following  
10                requirements:
- 11           a.     Results from dishonest or incompetent conduct by a general  
12                 contractor in constructing or altering a single-family residential  
13                 dwelling unit.
- 14           b.     Is not paid, in whole or in part, by or on behalf of the general  
15                 contractor whose conduct caused the loss.
- 16           c.     Is not covered by a bond, a surety agreement, or an insurance  
17                 contract.

18    **"§ 87-15.6. Homeowners Recovery Fund.**

19         (a)    The Homeowners Recovery Fund is established as a special account of the  
20         Board. The Board shall administer the Fund. The purpose of the Fund is to reimburse  
21         homeowners who have suffered a reimbursable loss in constructing or altering a single-  
22         family residential dwelling unit.

23         (b)    Whenever a general contractor applies for the issuance of a permit for the  
24         construction of any single-family residential dwelling unit or for the alteration of an  
25         existing single-family residential dwelling unit, a city or county building inspector shall  
26         collect from the general contractor a fee in the amount of five dollars (\$5.00) for each  
27         dwelling unit to be constructed or altered under the permit. The city or county inspector  
28         shall forward four dollars (\$4.00) of each fee collected to the Board on a quarterly basis  
29         and the city or county may retain one dollar (\$1.00) of each fee collected. The Board  
30         shall deposit the fees received into the Fund. The Board may accept donations and  
31         appropriations to the Fund. G.S. 87-7 shall not apply to the Fund.

32         The Board may suspend collection of this fee for any year upon a determination that  
33         the amount in the Fund is sufficient to meet likely disbursements from the Fund for that  
34         year. The Board shall notify city and county building inspectors when it suspends  
35         collection of the fee.

36         (c)    The Board may adopt rules to implement this Article.

37    **"§ 87-15.7. Fund administration.**

38         (a)    The Board shall determine the procedure for applying to the Board for  
39         reimbursement from the Fund, for processing applications, for granting requests for  
40         reimbursement, and for the subrogation or assignment of the rights of any reimbursed  
41         applicant. The Board shall submit annually a report to the State Treasurer accounting  
42         for all monies credited to and expended from the Fund.

43         (b)    The Board may use monies in the Fund only for the following purposes:

- 1 (1) To reimburse an applicant's reimbursable loss after approval by the  
2 Board.
- 3 (2) To purchase insurance to cover reimbursable losses when the Board  
4 finds it appropriate to do so.
- 5 (3) To invest amounts in the Fund that are not currently needed to  
6 reimburse losses and maintain adequate reserves in the manner in  
7 which State law allows fiduciaries to invest funds.
- 8 (4) To pay the expenses of the Board to administer the Fund, including  
9 employment of counsel to prosecute subrogation claims.

10 **"§ 87-15.8. Application for reimbursement.**

11 (a) The Board shall prepare a form to be used to apply for reimbursement from  
12 the Fund. Only a person whom the Board determines to meet all of the following  
13 requirements may be reimbursed from the Fund:

- 14 (1) Has suffered a reimbursable loss in the construction or alteration of a  
15 single-family residential dwelling unit owned by that person.
- 16 (2) Did not, directly or indirectly, obtain the building permit in the  
17 person's own name or did not use a general contractor.
- 18 (3) Has exhausted all civil remedies against the general contractor whose  
19 conduct caused the loss and, if applicable, the general contractor's  
20 estate, and has obtained a judgment against the general contractor that  
21 remains unsatisfied. This requirement is waived if the person is  
22 prevented from filing suit or obtaining a judgment against the  
23 contractor due to the automatic stay provision of section 362 of the  
24 U.S. Bankruptcy Code.
- 25 (4) Has complied with the applicable rules of the Board.

26 (b) The Board shall investigate all applications for reimbursement and may reject  
27 or allow part or all of a claim based on the amount of money in the Fund. The Board  
28 shall have complete discretion to determine the order, amount, and manner of payment  
29 of approved applications. All payments are a matter of privilege and not of right and no  
30 person has a right to reimbursement from the Fund as a third party beneficiary or  
31 otherwise. No attorney shall be compensated by the Board for prosecuting an  
32 application before it.

33 **"§ 87-15.9. Subrogation for reimbursement made.**

34 The Board is subrogated to an applicant who is reimbursed from the Fund in the  
35 amount reimbursed amount and may bring an action against the general contractor  
36 whose conduct caused the reimbursable loss, the general contractor's assets, or the  
37 general contractor's estate. The Board may enforce any claims it may have for  
38 restitution or otherwise, and may employ and compensate consultants, agents, legal  
39 counsel, and others it finds necessary and appropriate to carry out its authority under  
40 this section."

41 Sec. 2. This act becomes effective October 1, 1991, and applies to  
42 reimbursable losses caused by the dishonest or incompetent conduct of a general  
43 contractor that occurs on or after that date.