

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
Senate Judiciary I Committee Substitute Adopted 6/18/91

Short Title: Homeowners Recovery Fund.

(Public)

Sponsors:

Referred to:

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 The following definitions apply in this Article:

- 11 (1) Applicant. – The owner or former owner of a single-family residential
12 dwelling unit who has suffered a reimbursable loss and has filed an
13 application for reimbursement from the Fund.
14 (2) Board. – The State Licensing Board for General Contractors.
15 (3) Dishonest conduct. – Fraud or deceit in either of the following:
16 a. Obtaining a license under Article 1 of Chapter 87 of the General
17 Statutes.
18 b. The practice of general contracting by a general contractor.
19 (4) Fund. – The Homeowners Recovery Fund.

- 1 (5) General contractor. – A person or other entity who meets any of the
2 following descriptions:
3 a. Is licensed under Article 1 of Chapter 87 of the General
4 Statutes.
5 b. Fraudulently procures any building permit by presenting the
6 license certificate of a general contractor.
7 c. Fraudulently procures any building permit by falsely
8 impersonating a licensed general contractor.
9 (6) 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 (7) Single-family residential dwelling unit.–A separately owned residence
19 for use of one or more persons as a housekeeping unit with space for
20 eating, living, and permanent provisions for cooking and sanitation,
21 whether or not attached to other such residences.

22 **"§ 87-15.6. Homeowners Recovery Fund.**

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

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

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

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

41 **"§ 87-15.7. Fund administration.**

42 (a) The Board shall determine the procedure for applying to the Board for
43 reimbursement from the Fund, for processing applications, for granting requests for
44 reimbursement, and for the subrogation or assignment of the rights of any reimbursed

1 applicant. The Board shall submit annually a report to the State Treasurer accounting
2 for all monies credited to and expended from the Fund.

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

4 (1) To reimburse an applicant's reimbursable loss after approval by the
5 Board.

6 (2) To purchase insurance to cover reimbursable losses when the Board
7 finds it appropriate to do so.

8 (3) To invest amounts in the Fund that are not currently needed to
9 reimburse losses and maintain adequate reserves in the manner in
10 which State law allows fiduciaries to invest funds.

11 (4) To pay the expenses of the Board to administer the Fund, including
12 employment of counsel to prosecute subrogation claims.

13 **"§ 87-15.8. Application for reimbursement.**

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

17 (1) Has suffered a reimbursable loss in the construction or alteration of a
18 single-family residential dwelling unit owned or previously owned by
19 that person.

20 (2) Did not, directly or indirectly, obtain the building permit in the
21 person's own name or did use a general contractor.

22 (3) Has exhausted all civil remedies against the general contractor whose
23 conduct caused the loss and, if applicable, the general contractor's
24 estate, and has obtained a judgment against the general contractor that
25 remains unsatisfied. This requirement is waived if the person is
26 prevented from filing suit or obtaining a judgment against the
27 contractor due to the automatic stay provision of section 362 of the
28 U.S. Bankruptcy Code.

29 (4) Has complied with the applicable rules of the Board.

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

37 **"§ 87-15.9. Subrogation for reimbursement made.**

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

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