HOME BUILDERS LICENSURE BOARD ADMINISTRATIVE CODE

CHAPTER 465-X-7 RECOVERY FUND

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465-X-7-.01 Homeowners' Recovery Fund.

An aggrieved homeowner who contracts directly with a licensee of the Board holding a license without limitation or with limitation, excluding a license with limitation limited to roofing, may recover, from the Homeowners' Recovery Fund, actual economic damages sustained within the State of Alabama as the direct result of the licensee's gross negligence, incompetence and/or misconduct in the practice of residential home building or a violation by the licensee of the rules and regulations of the Board, provided that the aggrieved homeowner has obtained a valid judgment, excluding a consent judgment, and has exercised reasonable efforts to obtain a satisfaction of the judgment from the licensee prior to making a claim against the Homeowners' Recovery Fund. Actual economic damages is the reasonable cost of repairing the damages, other than minor cosmetic damages, sustained by a homeowner as the direct result of a licensed home builder's gross negligence, incompetence and/or misconduct in the practice of residential home building or a violation by a licensed residential home builder of the rules and regulations of the Board. Actual economic damages shall be supported by an itemized list of the actual economic damages incurred by the homeowner, a description of the repairs reasonable and necessary to correct the damages, and an estimate, by a licensee of the Board holding the type license required to perform the scope of the work included in the estimate, of the reasonable cost of making the repairs. Actual economic damages shall not include interest, damages awarded for pain and suffering or mental anguish, damages awarded for loss of consortium, damages which are the result of acts of the homeowner, court costs or attorney fees.

Author: Kathy Perry Brasfield, Jamie A. Durham, J. Seth Gowan
Statutory Authority: Code of Ala. 1975, §§34-14A-2, 34-14A-5, 34-14A-11, 34-14A-15.
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465-X-7-.02 Procedure For Making A Claim Against The Homeowners' Recovery Fund.

(1) The following procedure shall be followed by a homeowner when making a claim against the Homeowners' Recovery Fund for actual economic damages sustained within the State of Alabama as the direct result of a licensed residential home builder's gross negligence, incompetence and/or misconduct in the practice of residential home building or a violation by a licensed residential home builder of the rules and regulations of the Board:

(a) The homeowner shall notify the Board in writing, by certified mail, at the time a civil action is commenced (not later than 10 days from the date on which the complaint is filed with the court) which may result in liability for the Homeowners' Recovery Fund. The homeowner shall include with the notice a copy of the civil complaint which has been filed in the appropriate court.

(b) The homeowner shall submit to the Board a sworn written complaint, on a form prescribed by the Board, stating in detail the activities complained of and the activities the licensee is alleged to have engaged in.

(c) When the Board receives proper notice that a civil action has been commenced which may result in liability for the Homeowners' Recovery Fund, the Board may, at any time during the course of the proceedings, enter an appearance, file pleadings and appear at court hearings, defend or take action it deems appropriate either on the behalf and in the name of the defendant or in its own name. The Board may seek any appropriate method of judicial review. The Board may settle or compromise the claim.

(d) Upon receipt of the Homeowners' sworn written complaint, on a form prescribed by the Board, stating in detail the activities complained of and that the licensee is alleged to have engaged in, the Board will investigate the matter as prescribed at 465-X-5-.03.

(e) In order for the Homeowners' Recovery Fund to be liable to a homeowner, the homeowner shall first obtain a valid judgment, excluding a consent judgment, from a court of competent jurisdiction against the licensed home builder and said judgment shall be based on the licensed home builder's gross negligence, incompetence, and/or misconduct in the practice of residential home building or a violation of the rules and regulations of the Board. The licensed home builder

must have been licensed at the time the acts constituting gross negligence, incompetence, or misconduct in the practice of residential home building were committed or the violation of the rules and regulations of the Board occurred and at the time the parties entered into the construction contract.

(f) After a homeowner obtains a valid judgment, excluding a consent judgment, in a court of competent jurisdiction against a licensed home builder on the grounds of gross negligence, incompetence and/or misconduct in the practice of residential home building or a violation of the rules and regulations of the Board, the homeowner shall, when the judgment is final, make reasonable efforts to collect the judgment from the licensed home builder. Thereafter, if the homeowner desires to seek recovery from the Homeowners' Recovery fund, the homeowner shall:

1. File a verified claim for actual economic damages in the court in which the judgment was entered; and,

2. Give the Board 30 days written notice that the homeowner intends to apply to the court for an order directing payment out of the Homeowners' Recovery Fund of the amount remaining unpaid on the judgment. Said notice shall include:

(i) The date the judgment was entered by the court, the amount of the judgment, and the amount of the judgment attributable to actual economic damages; and,

(ii) An itemized list of the actual economic damages incurred which forms the basis of the aggrieved homeowner's claim against the Homeowners' Recovery Fund. This list shall include the actual economic damages incurred by the homeowner, a description of the repairs reasonable and necessary to correct the damages, and an estimate, submitted by a licensee of the Board holding the type license required to perform the scope of the work included in the estimate, of the reasonable cost of repairing the damages incurred. The homeowner shall also submit copies of the contract(s) entered into by the parties and any building specifications and/or construction drawings used in building the residence; and,

(iii) The amount owing on the judgment. In showing the amount owing on the judgment, the homeowner shall show evidence of reasonable efforts made by the homeowner to collect the judgment from the licensed home builder/judgment debtor. The homeowner shall provide documentation showing: steps taken by the homeowner to locate the licensed home builder/

judgment debtor; steps taken by the homeowner to discover if the licensed home builder/judgment debtor has assets from which to collect the judgment, including but not limited to bank accounts, real and/or business property and equipment; steps taken by the homeowner to determine whether the licensed home builder is insured and if insured, that the homeowner has filed a claim with the licensed home builder's/judgment debtor's insurance carrier; steps taken by the homeowner to file a lien against the licensed home builder/judgment debtor; and, steps taken by the homeowner to file a garnishment against the licensed home builder/judgment debtor.

(g) After expiration of the 30-day notice requirement, the homeowner shall make application to the court for an order directing payment out of the Homeowners' Recovery Fund. When the homeowner's application to the court for an order directing payment out of the Homeowners' Recovery Fund is set for hearing, the homeowner shall be required to show:

1. That he or she is not the spouse, child, or parent of the debtor, or the personal representative of the spouse, child, or parent or a shareholder officer or director of the debtor; and,

2. That he or she has obtained a judgment, other than a consent judgment, based on the gross negligence, incompetence and/or misconduct of a licensed home builder in the practice of residential home building or a violation by a licensed home builder or the rules and regulations of the Board; and,

3. That the licensed home builder was licensed at the time the parties entered into the construction contract, and at the time of the occurrence of the acts which form the basis of the complaint and which resulted in a judgment for the homeowner based on the licensed home builder's gross negligence, incompetence, and/or misconduct in the practice of residential home building or a violation by a licensed home builder of the rules and regulations of the Board and,

4. The amount of the judgment awarded by the court and the amount of the judgment attributable to actual economic damages, i.e., the reasonable cost of repairing the damages, other than minor cosmetic damages, sustained by the homeowner as the direct result of the licensed home builder's gross negligence, incompetence and/or misconduct in the practice of residential home building or a violation of the rules and regulations of the Board. Actual economic damages shall not include interest, damages awarded for pain and suffering or mental anguish,

damages awarded for loss of consortium, damages which are the result of acts of the homeowner, court costs or attorney fees. The evidence required to show actual economic damages shall include, but not be limited to, an itemized list of the damages incurred, a description of the repairs reasonable and necessary to correct the damages and an estimate, submitted by a licensee of the Board holding the type license required to perform the scope of the work included in the estimate, of the reasonable cost of repairing said damages; and,

5. That the homeowner has joined any and all bonding companies which issued corporate surety bonds to the judgment debtor as principal and all other necessary parties; and,

6. That the following items, if recovered by the homeowner, have been applied to the actual economic damages:

(i) Any amount recovered from the judgment debtor.

(ii) Any amount recovered from bonding companies.

(iii) Any amount recovered in out-of-court settlements.

(2) The maximum amount of payment from the Homeowners' Recovery Fund is as follows:

(a) Payments for claims based on judgments or settlements against any one licensee shall not exceed $90,000 in the aggregate.

(b) Payments for claims arising out of the same transaction shall not exceed $30,000 in the aggregate.

(3) The Board may review and challenge the actual economic damages submitted by the homeowner and the Board may submit evidence to dispute said damages. The Board may also challenge, as inadequate, the steps taken by the homeowner to collect the judgment.

(4) Failure of the homeowner to follow the provisions set forth in this chapter of these Rules for making a claim against the Homeowners' Recovery Fund shall preclude payment from the Fund.
Author: Kathy Perry Brasfield, Jamie A. Durham, J. Seth Gowan, Lauren Latham, Darlene Burt
Statutory Authority: Code of Ala. 1975, §§34-14A-8, 34-14A-11, 34-14A-15.
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465-X-7-.03 Subrogation.

If the Court orders the Board to pay any sum from the Homeowners' Recovery Fund, the Board shall be subrogated to all the rights of the homeowner/judgment creditor. As the judgment creditor, the homeowner to whom any sum from the Homeowners' Recovery Fund was paid shall execute and Assignment of Rights, assigning the Board all of his/her/its rights, title, and interest in the judgment, to the extent of the amount paid from the Homeowners' Recovery Fund, to the Board.
Author: Kathy Perry Brasfield
Statutory Authority: Code of Ala. 1975, §§34-14A-11, 34-14A-15.
History: New Rule: Filed May 5, 1999; effective June 9, 1999. **Amended:** Filed May 6, 2002; effective June 10, 2002. **Amended:** Filed August 25, 2011; effective September 29, 2011.

465-X-7-.04 Repayments To Recovery Fund.

(1) Should the Board pay from the Homeowners' Recovery Fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensee, the Board may revoke the following licenses and may no longer recognize the experience and ability qualifications of the individual licensee or the qualifying representative of the licensee:

(a) The license of the licensee,

(b) Any individual license held by the licensees' qualifying representative,

(c) The licenses of any entities with the same qualifying representative as the licensee.

(2) The Board may refuse to issue a new license to any of the licensees or individuals listed in subsection (1)(a)-(c) above, or to recognize the experience and ability qualifications of the individual licensee or the qualifying representative of the licensee, until the amount paid out of the Homeowners' Recovery Fund on behalf of the licensee has been repaid in full, plus interest at the rate of twelve percent (12%) per annum.

(3) The Board may enter into a Consent Agreement setting terms and conditions for the repayment of the Recovery Fund amount paid out on behalf of a licensee and the issuance of a new license.

(a) A person wishing to enter into a Consent Agreement shall submit a written request for the Board to consider such and to set terms and conditions,

(b) The request if approved shall require the applicant to execute a written consent agreement with the Board prior to issuance of any new license,

(c) Non-compliance with the Consent Agreement terms may result in the suspension, revocation, or nonrenewal of a license.

Author: David R. Boyd, Lois Woodward, Kathy Perry Brasfield, Jamie A. Durham, J. Seth Gowan, Lauren Latham, Darlene Burt
Statutory Authority: Code Of Ala. 1975, §§34-14A-8, 34-14A-11, 34-14A-15.
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