Subsequent Purchasers and the Recovery Fund

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Notice Required by A.R.S. § 41-1091

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Applicable Laws

- A.R.S. § 32-1132(A)
- A.R.S. § 32-1133.01(A)
- A.R.S. § 32-1132(B)
- A.R.S. § 32-1133.01(B)

Substantive Policy Statement

Generally, a claimant who is damaged because of a contractor’s violation may apply to the Residential Contractor’s Recovery Fund. A.R.S. § 32-1133.01(A). “However, the Fund is not and was never intended to serve as a panacea for every ill-advised construction contract.” Ramsey v. Ariz. Registrar of Contractors, 241 Ariz. 102, 107, 384 P. 3d 316, 321 (App. 2016). Instead, the “general purpose [of the recovery fund is to make] a homeowner who suffers from a contractor’s misdeeds ‘whole.’” Id. Notably, an award “may not exceed the actual damages suffered by the claimant as a direct result of a contractor’s violation.” A.R.S. § 32-1132.01(B).

The recovery fund statutes do not require that a claimant contract directly with the contractor. See Pinnamaneni v. Ariz. Registrar of Contractors, 237 Ariz. 147, 151, 347 P. 3d 593, 597 (App. 2015). To be “eligible for an award,” a claimant must both own “residential real property that is damaged by the failure of a residential contractor to adequately build or improve a residential structure or appurtenance”, and actually occupy or intend to occupy it as their primary residence. A.R.S. § 32-1132(B).

A purchaser of residential property damaged by a licensed residential contractor may not receive a payout if:

1. The purchaser knew of the defect prior to purchasing the property;
2. The purchaser could have discovered the defect by reasonable inspection; or
3. The sales contract included an “as-is” clause which included the claimed defective work.

Prohibiting awards in these situations is consistent with the purpose of the Fund, which is established “for the benefit of a claimant damaged by an act, representation, transaction or conduct of a residential contractor....” A.R.S. § 32-1132(A) (emphasis added). However, a “person who purchases a damaged residence at a discounted price from an owner who hired a contractor who caused the damage” is not damaged for purposes of the recovery fund because the discounted purchase price reflects the damage to the property. McMurren v. JMC Builders, Inc., 204 Ariz. 345, 351, 63 P.3d 1082, 1088 (App. 2003).

Required Documentation from Subsequent Purchasers

When applying for a payout from the Recovery Fund, in addition to the normally required documentation (e.g. contract with licensed residential contractor, proof of payment, deed, etc.), a subsequent purchaser must also provide the Registrar with:

- Sales contract and addendums/attachments;
- Seller Property Disclosure Statement (SPDS);
- Third-party home inspection report; and
- Any additional agreements with the contractor that performed the work.