

Subsequent Purchasers and the Recovery Fund

Published as Substantive Policy Statement 2021.01
by the
Arizona Registrar of Contractors

Notice Required by A.R.S. § 41-1091

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Applicable Laws

- A.R.S. § 32-1132(A)
- A.R.S. § 32-1132(B)
- A.R.S. § 32-1132.01(B)
- A.R.S. § 32-1133.01(A)

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.