

**Michael Goldwater**  
**Arizona Registrar of Contractors**

**October 20, 2000**

**Re:Contractor's Recovery Fund**  
**I00-024**  
**(R00-029)**

### **Question Presented**

You have asked whether the language in A.R.S. § 32-1132(A) that limits a single award from the Contractors' Recovery Fund ("Fund") to \$20,000 and provides that "[n]o more than the maximum individual award from the Fund shall be made on any individual residence or to any injured person" (1) forever precludes an injured person from recovering from the Fund after reaching the \$20,000 limit, and (2) precludes any person from recovering from the Fund for damages to a particular residence after the \$20,000 limit has been reached as a result of a claim relating to construction work at that residence.

### **Summary Answers**

The statutes governing the Fund limit to \$20,000 the amount any injured person can recover for an "act, representation, transaction or conduct." A.R.S. § 32-1132(A). After reaching the \$20,000 limit, an injured person cannot recover any more money from the Fund for future construction work done at the residence that was the subject of the \$20,000 claim. However, that person is not precluded from recovering from the Fund in the future for damages resulting from construction work done on a different residence. In addition, subsequent owners of a residence subject to the \$20,000 limit are not precluded from recovering from the Fund for damages resulting from different construction work on that residence.

### **Background**

The Legislature established the Fund in 1981 to compensate people who are damaged by the acts of residential contractors.<sup>(1)</sup> A.R.S. § 32-1132(A). 1981 Ariz. Sess. Laws ch. 221, § 18. Monies in the Fund come from licensed residential contractors who must pay biennial assessments to the Fund. A.R.S. § 32-1132(B). In addition, a registered contractor whose conduct results in a claim against the Fund must reimburse the Fund for any amounts paid, and the contractor's license is suspended until the Fund is repaid in full. A.R.S. § 32-1139(B). To qualify as an "injured person" eligible to receive monies from the Fund, a person must be an "owner of residential real property which is classified as class five property under § 42-162, subsection A, paragraph 5 and which is actually occupied by the owner as a residence." A.R.S. § 32-1131(3). The owner must be "damaged by the failure of a residential contractor . . . to adequately build or improve a residential structure or appurtenance on that real property." *Id.* Lessees of residential real property "who contract directly with a residential contractor or indirectly with a subcontractor of that contractor" are also eligible to seek recovery from the Fund, as are homeowners' associations "after transfer of control from the builder or developer for damages to the common elements within the complex." *Id.*

The Legislature has established limits to Fund recoveries. An "injured person" may recover "not more than twenty thousand dollars for damages sustained by the act, representation, transaction or conduct." A.R.S. § 32-1132(A). Awards from the Fund are limited to actual damages resulting "directly from the contractor's violation" and may not exceed "an amount necessary to complete or repair a residential structure or appurtenance." *Id.* In addition, "[n]o more than the maximum individual award from the fund shall be made on any individual residence or to any injured

person." *Id.* (2) The Legislature has also limited the Fund's liability to \$100,000 per residential contractor license. A.R.S. § 32-1139(A). The Legislature has also established a number procedures related to the management of the Fund, assessments on contractors, subrogation rights against a bond for payments made from the Fund, and procedures for asserting claims against the Fund. See generally A.R.S. §§ 32-1131 through -1140.

Your question concerns the limits on Fund recoveries. Specifically, you ask how the limits apply in the following situations:

1. A homeowner hires a contractor to construct a residence and is damaged by the contractor's actions and recovers \$20,000 from the fund and is later damaged by a second contractor who was hired to do improvements to the house.
2. The homeowner described in scenario one sells the house and the new owner hires a contractor to improve the house and is damaged by the contractor.
3. The homeowner in scenario one who recovered \$20,000 from the fund for damages incurred during the construction of the residence has another home constructed and is damaged by the actions of the contractor who build the second home.

### Analysis

The cardinal rule of statutory construction is to find and give effect to the Legislature's intent. *Mail Boxes, etc., U.S.A. v. Industrial Comm'n of Arizona*, 181 Ariz. 119, 121, 888 P.2d 777, 779 (1995). For purposes of statutory interpretation, "each individual provision at issue must be considered in the context of the entire statute of which it is part." *Goddard v. Superior Court*, 191 Ariz. 402, 404, 956 P.2d 529, 531 (App. 1998). Although courts generally follow the plain meaning of statutes, courts will avoid constructions that lead to impossible or absurd consequences. *Miller v. City of Tucson*, 153 Ariz. 380, 381, 736 P.2d 1192, 1193 (App. 1987). Here, the Legislature has, since the creation of the Fund in 1981, limited the recovery an injured person may receive from the Fund for damages "sustained from . . . [any] act representation, transaction or conduct." A.R.S. § 32-1132(A); 1981 Ariz. Sess. Laws ch. 221, § 18. Currently, the limit is \$20,000. *Id.* In 1987, the Legislature added the limitation that "no more than the maximum individual award from the Fund shall be made on any individual residence or to any injured person." A.R.S. § 32-1132(A); 1987 Ariz. Sess. Laws ch. 297, § 3. The plain language of the 1987 amendment suggests that after an injured person reaches the \$20,000 limit, that person is not eligible to recover ever again from the Fund -- even for work done by a different contractor on a different residence several years later. It also suggests that once the \$20,000 is reached for a particular residence, no person -- even a subsequent owner many years later -- can ever recover from the Fund for any future damages to that residence. This reading, however, renders meaningless the language establishing the \$20,000 limitation for "damages sustained by the act, representation, transaction or conduct" of a contractor because this transaction-based limitation is consumed by the limit of \$20,000 for any injured person. If any injured person is limited to \$20,00, the Legislature could have eliminated the \$20,000 limit that an injured person can recover for any particular transaction because it becomes superfluous if an injured person's cumulative recovery from the Fund is capped at \$20,000. In addition, interpreting the statute to mean that once \$20,000 from the Fund is paid for a claim or multiple claims on a particular residence, no injured person - including future owners -- can recover for claims relating to work done at that residence imposes a restriction that serves no rational purpose. Certainly, the Legislature's statutory scheme attempts to limit the Fund's liability, while serving its purpose of providing some limited protection to homeowners. For example, the \$100,000 limitation per

licensed contractor may preclude some injured persons from recovering, but this \$100,000 recovery is clearly limited to the Fund's solvency, since contractors must reimburse the Fund for amounts paid. However, precluding future owners from asserting claims, without requiring any notice to such owners of such a limitation is inconsistent with the goal of protecting homeowners and does not rationally protect the Fund's solvency.

Thus, some interpretation is necessary to provide meaning to the \$20,000 limit for each transaction and also to the 1987 amendment limiting to \$20,000 the award "on any individual residence or to any injured person."<sup>(3)</sup> The statute also should be read in a manner consistent with the overall statutory scheme, and the expressed legislative intent to establish a system to provide some protection to homeowners damaged as a result of the work of residential contractors.

Such a restrictive reading, however, leads to results that are inconsistent with the Fund's purpose of protecting people injured by residential contractors. Such an interpretation also substantially restricts the definition of who is an "injured person" able to recover from the Fund. Courts attempt to avoid statutory interpretations leading to "impossible or absurd results." For example, although courts usually interpret "or" in the disjunctive, courts have adopted a different construction when "impossible or absurd consequences will result." *State v. Pinto*, 179 Ariz. 593, 595, 880 P.2d 1139 (App. 1994). When statutory language "gives rise to different interpretations . . . [courts] will adopt the interpretation that is most harmonious with the statutory scheme and legislative purpose." *Id.*

In this situation, the Legislature attempted to place an additional limitation on a person's ability to recover from the Fund when it amended the law in 1987. The \$20,000 cap limits an injured person's recovery for a particular construction project ("the act, representation, transaction, or conduct" of a contractor). The additional language extending the \$20,000 limit "to any individual residence or to any injured person" precludes the injured person who received \$20,000 from the Fund from receiving any additional monies from the Fund for that residence. Thus, in addition to the \$20,000 limit for a particular project, cumulative claims by an individual cannot exceed \$20,000 for that particular residence. However, the \$20,000 limit does not restrict on a subsequent owner's ability to recover from the Fund for construction work at that same property. This interpretation applies to the scenarios you pose as follows:

1. A homeowner who hires a contractor to construct a residence and is damaged by the contractors and recovers \$20,000 from the Fund is precluded from a subsequent Fund award for damages caused by a second contractor at a later date who was hired to do improvements to the house.
2. If the homeowner in scenario one sells the house and the new owner hires a contractor to improve the house, the new owner would not be precluded from recovering a Fund award for damages caused by the second contractor.
3. If the homeowner in scenario one who recovered \$20,000 from the Fund later has another home built and is damaged by the actions of the contractor who built the second home, the homeowner is not precluded from recovering a Fund award for damages on this subsequent residence.

### **Conclusion**

*No person can recover from the Fund more than \$20,000 for damages resulting from damage to*

*a particular residence. However, a person who received \$20,000 from the Fund may later recover for damages incurred in a different residence. In addition, a subsequent owner may recover for damages to a property even though an earlier owner received claims for \$20,000 on that property.*

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Janet Napolitano  
Attorney General

*1. When the Legislature created the Fund, the Legislature stated that the legislation's purpose was "the protection of owners and lessees by establishing a contractors' recovery fund . . ." 1981 Ariz. Sess. Laws, ch. 221, § 1.*

*2. Section 32-1132(A) provides in part: There is established the residential contractors' recovery fund, to be administered by the registrar, from which any person injured by an act, representation, transaction or conduct of a residential contractor, which is in violation of this chapter or the rules adopted pursuant to this chapter, may be awarded in the county where the violation occurred an amount of not more than twenty thousand dollars for damages sustained by the act, representation, transaction or conduct. An award from the fund is limited to the actual damages suffered by the claimant as a direct result of the contractor's violation but shall not exceed an amount necessary to complete or repair a residential structure or appurtenance within residential property lines, except that an award from the fund shall not be available to persons injured by an act, representation, transaction or conduct of a residential contractor whose license was in an inactive status, expired, cancelled, revoked or suspended pursuant to § 32-1154, subsection A at the time of the contract. Not more than the maximum individual award from the fund shall be made on any individual residence or to any injured person. . . .*

*3. The need to construe a statute to avoid results that seem inconsistent with the statutory scheme suggests a legislative clarification of the limits on Fund recoveries may be appropriate.*

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