

How to apply to the Contractor Recovery Fund

The purpose of the Contractor Recovery Fund (the Fund) is to compensate certain owners or lessees of residential property (located in Minnesota) who have suffered a direct and out-of-pocket loss due to the misconduct of a licensed residential contractor.

This packet contains the information and materials necessary to apply to the Fund.

- How the Fund works
- Before you apply to the Fund
- What is a judgment?
- How do I file an application to the Fund?
- Instructions for submitting an application about a contractor's misconduct
- Application for compensation from the Contractor Recovery Fund

To be eligible for payment from the Fund the licensed contractor must have engaged in one of the following while performing any of the special skills enumerated under Minn. Stat. §326B.802, subd. 15 (2014):

- fraudulent practices
- deceptive practices
- dishonest practices
- the conversion of funds, or
- failed to perform

You should review Minn. Stat. § 326B.89 before you submit an application. This law determines whether you will qualify for compensation from the Fund and which losses may be eligible. It also describes how to correctly serve the commissioner of the Minnesota Department of Labor and Industry (DLI) with a verified application for compensation from the Fund.

How the Fund works

Each residential building contractor licensed by DLI must pay a fee into the Fund each year. The DLI commissioner administers the Fund, reviews cases, determines whether a homeowner is eligible, and decides the amount of compensation available based on the circumstances.

DLI reviews each application to determine if it meets the statutory requirements for compensation from the Fund and pays compensation to the eligible homeowners or lessees. Applicants may be paid an amount up to \$75,000, depending on a number of factors.

However, there is no guarantee you will receive money from the Fund. Whether you receive payment from the Fund depends on the facts of your case.

Generally, you can apply to the Fund to recover the amount of actual and direct out-of-pocket loss on the applicant's owner occupied residential real estate that occurs as a result of a transaction with your licensed residential contractor.

The following costs are NOT eligible for compensation:

- attorney fees,
- interest on the loss,
- sweat equity,
- statutory costs awarded under Minn. Stat. § 549.02, and
- pre-judgment and post-judgment interest.

Before you apply to the Fund

Contact the Recovery Fund Administrator at (651) 284-5057. The administrator will assist you with the following:

- Verify the name of the residential contractor and whether they were licensed at the time the work was performed. (Only licensed residential contractors pay into the Fund.)
- Make certain there are funds available to cover losses caused by your residential contractor. (Multiple claims against the same contractor may reduce the amount of available funds.)
- Determine the dollar amount of your loss. If your loss is \$15,000 or less, you may go to Conciliation Court (small claims court) to obtain a judgment. If your loss is more than \$15,000, you will need to go to District Court to obtain a judgment. **You must obtain a judgment.**
- Make certain your judgment has been obtained against the licensed residential contractor. **Your judgment must be against the licensed individual and/or entity to be eligible for compensation from the Fund.**
 - For example, if your contractor is incorporated, obtain a judgment against the corporation. If your contractor is an individual proprietor, [Joe Doe, doing business as (d/b/a) Doe Construction] obtain your judgment against the individual and their assumed (d/b/a) name. If your contractor is a partnership, obtain your judgment against each partner and the partnership name.

What is a judgment?

A judgment is the result of filing a successful lawsuit or the filing of a settlement agreement reached through mediation. A judgment from the court legally verifies the offense committed by the licensed residential contractor and the dollar value of your loss. This judgment may be obtained in Conciliation Court, District Court or any other court of competent jurisdiction such as Bankruptcy Court.

The judgment must be based on a claim of fraudulent, deceptive, or dishonest practices, conversion of funds, or failure of performance that arose directly out of transaction that occurred when the residential contractor was licensed and performing any of the special skills enumerated in Minn. Stat. § 326B.802, subd. 15 (2014).

The residential contractor must have been licensed at the time the work was performed and have paid into the Fund.

After you obtain your judgment you must “docket” and formally “enter” your judgment in District Court, this makes your judgment a legal collectable document. Contact the Clerk of District Court of the county in which you obtained your judgment for instructions.

Once you have a docketed judgment, you may file an application for payment from the Fund.

The verified application must be submitted **within two years after** the judgment becomes final.

How do I file an application to the Fund?

When you apply to the Fund you must complete these items for the process to work successfully.

1. You must have a final judgment against the licensed residential contractor.
2. If your judgment is based on a Stipulation, Default or Confession of Judgment you must include all documentation to prove underlying cause of action against the licensee.
3. If the Commissioner pays compensation to an applicant, the Commissioner shall be subrogated to all of the rights, title and interest in the applicant’s final judgment in the amount of the compensation paid from the Fund. This requires the applicant to assign all rights, title, and interest in the final judgment in the amount of compensation paid to the Commissioner.

According to Minn. Stat. § 326B.89, subd. 9, applications to the Fund are subject to allocation. If the calculated amount exceeds the amount available for payments, DLI can allocate the amount available among the owners and the lessees.

Application deadline

The final day the Fund will accept an application is **June 1**. Applications received after June 1 will be processed the next fiscal year, which will result in a one-year delay in any payment.

Accelerated procedure

The Fund suspended accelerated payments of compensation as of May 1, 2012.

Procedure

Once an application is received by the Fund, the administrator reviews the application and determines whether the applicant is eligible for compensation and the actual and direct out-of-pocket loss suffered in the transaction.

Within **120 days** of receipt, DLI's commissioner will enter into an agreement with the applicant that resolves the verified application for compensation or issues an order that accepts, modifies or denies the verified application for compensation from the Fund. The order will become a final order that may not be reviewed by any court or agency unless the commissioner is timely served a written request for hearing.

Written requests for a hearing

If an applicant timely serves a written request for hearing to the DLI commissioner, a hearing before an administrative law judge (ALJ) will be requested within 30 days after service. The commissioner may petition the ALJ to continue the hearing up to 60 days or longer if the commissioner shows good cause.

At the hearing, the applicant has the burden of proving by substantial evidence the affirmations made in the verified application. After the hearing, the ALJ shall issue findings of fact and conclusions of law and order.

If the ALJ determines that compensation from the Fund shall be made, the amount of compensation will be determined by the limitations of Minn. Stat. § 326B.89. The ALJ's order is the final decision of the commissioner, unless a petition for judicial review of the contested case is served according to Minn. Stat. §§ 14.63-14.69.

Payment

If you file your claim before June 30, you will be paid by Dec. 1 of the fiscal year **following the fiscal year the agreement was entered into or the fiscal year in which the order became final**. The State's fiscal year runs July 1 to June 30.

Additional information

If a contractor has filed for bankruptcy ...

You may still be able to file a lawsuit for the sole purpose of recovering your actual and direct out-of-pocket loss from Fund. You will need to petition the Judge of Bankruptcy Court to lift the automatic stay, explain that your lawsuit is only to obtain compensation from the Fund and you understand that you will not be able to collect the judgment from the contractor directly. You may want to consult an attorney for additional information regarding how to lift an automatic stay in a bankruptcy proceeding.

If you are a subsequent homeowner ...

If the homeowner who obtains a judgment was not the owner at the time the contract was signed and the work was done, he or she will not qualify for payment from the Fund unless the subsequent homeowner obtained a final judgment specifically based on the breach of the statutory warranty enumerated in Minn. Stat. chapter 327A. The homeowner would then meet the statutory requirements to be eligible for compensation from the Fund.

The state's home warranty law requires builders to warrant their homes to be free from major construction defects for 10 years. Minn. Stat. § 327A.02, subd. 1 (2014). A major construction defect is defined in the statute as "actual damage to the load-bearing portion of the dwelling (home) ... including damage due to subsidence (sinking), expansion, or lateral movement of the soil, which affects the load-bearing function and which vitally affects, or is imminently likely to vitally affect, use of the dwelling for residential purposes." Minn. Stat. § 327A.01, subd. 5 (2014).

Collecting money ...

If the Contractor Recovery Fund makes payment to you, it will attempt to collect this money from the contractor. In order for the Fund to collect the money, you need to assign to the Commissioner your rights to collect from the contractor the amount of money you have received from the Fund. You will receive an "assignment" form from our department that you will need to sign and have notarized. If your judgment was for an amount greater than the payment you received from the Fund, you may still attempt to collect the balance of the judgment directly from the contractor.

Reduction of payment amount ...

If our department is required to pay you from the Fund, there are two circumstances that would reduce the amount of any payment to you.

1. If the Commissioner determines at the end of the fiscal year that the total amount of compensation to be paid from the Fund pursuant to agreements and final orders is greater than the funds available for payment, then the Commissioner must allocate the available funds among all claimants.
2. If at the end of the calendar year, the total amount of approved claims against one contractor exceeds \$150,000, the Commissioner will prorate the available funds among the claimants. This means if there are multiple claims against your contractor, your payment may be less, since the available dollars in the Fund for that contractor will have to be prorated among the applicants. The Commissioner will mail notice of allocation to all affected claimants not less than 45 days following the end of the fiscal year.

Instructions for submitting an application for a contractor's misconduct

To apply, the applicant must **assemble and label all** of the following documents:

1. The original completed "Verified Application for Compensation from the Contractor Recovery Fund." This application is attached. (Sign the application before a notary public.)
2. A copy of the Judgment Notice (Conciliation Court) or Findings of Fact, Conclusions of Law, Order for Judgment, and Judgment (if Judgment obtained in District Court.)
3. A copy of the Court Clerk's Notice of Entry and Docketing of Judgment in District Court.
4. If your judgment is based on a Stipulation, Default or Confession of Judgment you must include all documentation to prove underlying cause of action against the licensee.
5. You **must** make an honest effort to collect the judgment from the licensed residential contractor. You may contact the County Clerk's Office for instructions on obtaining a Returned Writ of Execution.
6. A copy of the Statement of Claim and Summons (if claim was filed in Conciliation Court) or Summons and Complaint (if claim was filed in District Court).
7. If applicable, provide documents that you have received from your homeowner's insurance or your licensed residential contractor's insurance company concerning damages to your home.
8. A copy of the entire contract between you and the licensed residential contractor. You must include copies of all change orders, allowance sheets and plans and specifications.
9. You **must** provide proof of payment to the licensed residential contractor. When providing this information, you must clearly demonstrate how payment was made and the total amount paid. This information **must** be provided in chart format:

Sample:

| Check # | Date Paid | Paid to: | Amount | Exhibit # |
|---------|-----------|--------------------|------------|-----------|
| 1011 | 1/5/07 | Joe's Construction | \$5,000.00 | 8A |
| 1012 | 1/22/07 | Joe's Construction | \$3,020.00 | 9B |

10. Provide as exhibits, copies of any cancelled check (front and back), money order, cashier's check, or any statement(s) that would prove that you made a payment that was received by the licensed residential contractor.
 - If loan draws were made, provide a breakdown, in chart format, of the documentation that would connect those draws to the licensed residential contractor along with the supporting documentation.
 - If payment was made through an insurance company, you must request and obtain a copy of the check(s) and the endorsed signature (front and back) from the insurance company.
 - If new construction, you **must** provide a copy of the U.S. Department of Housing and Urban

Development (HUD) Settlement Statement. This will support the amount paid, and the buyer and the seller (contractor).

11. **It is the Applicant's responsibility to provide documentation supporting the actual and direct out-of-pocket loss.** Provide a breakdown of what work needs to be completed and/or repaired. When providing this information, the work that needs to be completed needs to be clearly stated. This information **must** be provided in chart format:

Sample:

| Vendor Name | Amount of Estimate | Work to be performed | How does this estimate/bill relate to the original contract? Indicate where it is outlined in the original contract. | Exhibit # |
|--------------------|--------------------|----------------------------|--|-----------|
| Joe's Construction | \$3,000 | Finish installing railings | Railings were not completed. See item #4 on original contract. | 9A |

These receipts/estimates must **only** be for work as it relates to the original contract with the licensed residential contractor. In addition, the Fund will **not** accept copies of checks for supplies unless accompanied by the receipts from the store showing what was purchased. When applicable, provide copies of any inspection report(s) that will support your application. The documentation supplied must concur with the Statement of Claim.

- If you are providing copies of liens to be included in the calculation of your actual and direct out-of-pocket loss you must have them listed and labeled as exhibits. The Fund will **only** consider liens that have officially filed with the court. The copy you provide must show the county clerk's notice of filing.

Send the application and all supporting documents directly to the Recovery Fund Administrator at the address shown on the cover page. **Your claim will be considered incomplete if you fail to provide all the required information in the format requested. Failure to provide all the required information may delay review and/or approval of the application.**

Note: The facts specified in your application may require additional information or documents that are not discussed in this packet.

How to serve the residential contractor

If you are unable to locate the licensed residential contractor, service can be accomplished by complying with Minn. Stat. § 326B.855 (2014). You may want to give a copy of this statute to the court.

326B.855 SERVICE OF PROCESS.

Subdivision 1. Procedure.

Every applicant for licensure or certificate of exemption under sections [326B.802](#) to [326B.885](#) shall irrevocably consent to the appointment of the commissioner and successors in office to be the applicant's agent to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or a successor, executor, or administrator which arises under sections [326B.802](#) to [326B.885](#) or any rule or order thereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. Service under this section shall be made in compliance with subdivision 3.

Subd. 2. Service on commissioner.

(a) When a person, including any nonresident of this state, engages in conduct prohibited or made actionable by sections [326B.802](#) to [326B.885](#), or any rule or order under those sections, and the person has not consented to service of process under subdivision 1, that conduct is equivalent to an appointment of the commissioner and successors in office as the person's agent to receive service of process in any noncriminal suit, action, or proceeding against the person that is based on that conduct and is brought under sections [326B.802](#) to [326B.885](#), or any rule or order under those sections, with the same force and validity as if served personally on the person consenting to the appointment of the commissioner and successors in office. Service under this section shall be made in compliance with subdivision 3.

(b) Subdivision 3 applies in all other cases in which a person, including a nonresident of this state, has filed a consent to service of process. This paragraph supersedes any inconsistent provision of law.

(c) Subdivision 3 applies in all cases in which service of process is allowed to be made on the commissioner.

Subd. 3. How made.

Service of process under this section may be made by leaving a copy of the process in the office of the commissioner, or by sending a copy of the process to the commissioner by certified mail, and is not effective unless:

(1) the plaintiff, who may be the commissioner in an action or proceeding instituted by the commissioner, sends notice of the service and a copy of the process by certified mail to the defendant or respondent at the last known address; and

(2) the plaintiff's affidavit of compliance is filed in the action or proceeding on or before the return day of the process, if any, or within further time as the court allows.

Minnesota Department of Labor and Industry
Contractor Recovery Fund
443 Lafayette Road N.
St. Paul, MN 55155
(651) 284-5057

**APPLICATION FOR COMPENSATION FROM
THE CONTRACTOR RECOVERY FUND:
FOR A CONTACTOR'S MISCONDUCT**

Name of owner/lessee (applicant/s):

Address:

Name of contractor (licensee):

Contractor license number:

PURSUANT TO Minnesota Statutes, section 326B.89 (2014) the Applicant, for their verified application for compensation from the Contractor Recovery Fund, state and affirm as follows:

1. The Applicant is an Owner of residential real estate or a Lessee of residential real estate that is eligible for payment of compensation from the Contractor Recovery Fund;

2. The specific grounds upon which the Applicant seeks to recover from the fund are:

3. The Applicant obtained a Final Judgment in the amount of \$_____ in a court of competent jurisdiction against the Licensee, which was entered on _____, and docketed on _____, and is incorporated herein by reference;

4. The Applicant received \$ _____ toward the amount of the Final Judgment on _____ **OR** The Applicant has not received any payment toward the amount of the Final Judgment; (Cross out the sentence that does not apply.)
5. The Final Judgment against the Licensee was obtained on the grounds of fraudulent, deceptive, or dishonest practices, conversion of funds, or failure of performance that arose directly out of a transaction that occurred between the Applicant and the Licensee when the Licensee was licensed and performing any of the special skills enumerated under Minn. Stat. § 326B.02, subd. 15 (2014);
6. All proceedings on the judgment specified in item three have either been pursued and concluded or have been foregone, and there are no reviews or appeals pending in any court.
7. The amount of the Applicant's actual and direct out-of-pocket loss on the residential real estate or the leased residential real estate, or on new residential real estate that has never been occupied or that was occupied by the Licensee for less than one year prior to purchase by the Applicant, is \$ _____;
8. The residential real estate is located at _____ (address) , City of _____, County of _____, State of Minnesota, _____ (ZIP code);
9. The Applicant is not the spouse of the Licensee or the personal representative of the Licensee;
10. The Applicant knows of no other individual or entity that would be liable to the Applicant in the transaction for which the Applicant is seeking recovery from the Contractor Recovery Fund. **OR** Other parties that are liable, or may be liable, to the Applicant in the transaction for which the Applicant is seeking recovery from the Contractor Recovery Fund are: (Cross out the sentence that does not apply.)

_____;

11. The Applicant filed a claim with their homeowner's insurance carrier on _____, based upon the facts alleged in the Final Judgment the Applicant obtained against the Licensee, and received \$_____ for their claim/the claim is pending/the claim has been denied (circle one). **OR** The Applicant has not filed a claim with their homeowner's insurance carrier; (Cross out the sentence that does not apply.)

12. The Applicant filed a claim with the Licensee's insurance carrier on _____, based upon the facts alleged in the Final Judgment the Applicant obtained against the Licensee, and received \$_____ for that claim/the claim is pending/the claim has been denied (circle one). **OR** The Applicant has not filed a claim with the Licensee's insurance carrier; (Cross out the sentence that does not apply.)

13. The Applicant has taken the following steps to try to collect on the Final Judgment:

14. This verified application is served upon the Commissioner of the Minnesota Department of Labor and Industry within two years of the date the Final Judgment specified in item three became final; and

15. The Applicant has complied with all the requirements of Minn. Stat. § 326B.89 (2014).

NOW, THEREFORE, the Applicant requests the following.

An Agreement or Order directing payment from the Contractor Recovery Fund to the Applicant herein in the amount of \$ _____, said amount being equal to the Applicant's actual and direct out-of-pocket loss/amount of the Final Judgment (circle one), but excluding attorney's fees, any costs and disbursements incurred in obtaining the judgment and applying to the Fund, costs awarded under Minn. Stat. § 549.02, any interest on the loss, and any pre-judgment and post-judgment interest.

Dated: _____

By: _____

Attorney for plaintiff/applicant

VERIFICATION

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

I have read the attached Verified Application for Compensation from the Contractor Recovery Fund, (the Application). I am an Applicant listed in the Application. I swear under oath that all of the statements made in the Application are true.

Signature of applicant/s

Applicant

Telephone number

Applicant

Telephone number

Subscribed and sworn to before me on this the _____ day of _____, 20____.

Notary Public

My commission expires on _____.