

Arizona Ombudsman-Citizens' Aide
Final Report of Investigation

Case # 20062692

Registrar of Contractors

December 12, 2008



Arizona Ombudsman/Citizens' Aide

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December 12, 2008

Hon. Bob Burns
Senate President Designee
1700 W. Washington, Rm. 204
Phoenix, AZ 85007

Dear Senator Burns:

Enclosed is a copy of the report of our investigation of case number 20062692, regarding the Registrar of Contractors (ROC).

Nine homeowners contacted us to complain about the ROC system as it related to their Recovery Fund cases against a licensed contractor. The complainants alleged the Registrar of Contractors processed the complicated Recovery Fund complaints in an untimely manner. We substantiated the allegation and made 63 findings.

Our investigation indicates that process has overwhelmed purpose at the Registrar's Office. The ROC system harms both homeowners and contractors. The State can and should do a better job by homeowners while still protecting contractors with fair and proper due process systems. Our 68 recommendations would help accomplish that goal.

Thirty-six of the recommendations require legislative action. We request the Legislature consider addressing the problems we identify in the enclosed report.

I hope you find this report useful. If you have any questions or comments, please do not hesitate to call me at 602-285-9136 Ext 26. I would welcome the opportunity to sit down with you to discuss the report in more detail.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick M. Shannahan".

Patrick M. Shannahan
Ombudsman-Citizens' Aide

Enclosure

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 - Timetable A – Administrative Process to the Recovery Fund
 - Administrative Process Described
- Exhibit B --
 - Timetable B - Civil Court Process to the Recovery Fund
 - Civil Court Process to the Recovery Fund Described
- Exhibit C -- Flow Chart of Process (without complications)
- Exhibit D -- Legal memo relating to summary suspension
- Exhibit E -- 2003 Auditor General Report Recommendation
- Exhibit F -- Bond Limits and Regulations
- Exhibit G -- List of the 31 States with Licensing Boards for Contractors
- Exhibit H -- Residential Contracting by State
- Exhibit I -- NASCLA states Recovery Fund Features Summary and Overview
- Exhibit J -- Complaint Forms, Instructions & Brochures
- Exhibit K -- ROC Recovery Fund Forms and Instructions
- Exhibit L -- Office of Administrative Hearings Information
- Exhibit M -- Press Clippings about Similar ROC Cases
- Exhibit N -- ROC web site information regarding subject contractor
- Exhibit O -- ROC Contractor Brochure
- Exhibit P -- ROC Customer Survey
- Exhibit Q -- Charts and Grids
- Exhibit R -- Office of Administrative Hearing Survey about Legal Representation
- Exhibit S -- Summary of Recommendations
- Exhibit T -- References

Executive Summary
Ombudsman – Citizen’s Aide
Investigation of the
Registrar of Contractors

Executive Summary
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Investigation of the Registrar of Contractors

“The agency's mission is to promote quality construction by Arizona contractors through a licensing and regulatory system designed to protect the health, safety and welfare of the public.”

Registrar of Contractors

The Registrar’s Office received grievances filed against a dual-licensed contractor who was accused by 25 families of wrongdoing. Nine of these families subsequently complained about the Registrar of Contractor’s process to the State Ombudsman Office. The owners complained the Registrar’s Office was too passive and not living up to its stated mission. The Office of the Ombudsman Citizen - Aide then conducted an investigation of the Registrar of Contractors pursuant to A.R.S. §41-1376 et seq. Essentially, we examined how well the Registrar was delivering on its mission promise.

Some of the complainant homeowners initially filed with the Registrar’s Office, others with the Superior Court and some filed at both locations. Each owner desired financial recovery via the Residential Recovery Fund. Access to the Recovery Fund is dictated by statutory constraints and controlled by the Registrar’s Office. Homeowners in both the administrative and the civil court processes felt the Registrar of Contractors Office seemed indifferent about the length of time and difficulty of their process. Owners and contractors both complain to the Ombudsman Office that the Registrar’s Office process takes too long.

The contractor in this case had 25 complaints filed against him stemming from contracts dating from 2005 and 2006. After about two years, these complaint cases had gone through most of the system and were closed. Twenty-three of the complaints resulted in discipline while two complaints settled or withdrew. Nine homeowners recovered money from the Recovery Fund to compensate or partially compensate them for their loss. Yet, seven deserving homeowners, with a total of \$96,515 in unrecoverable awards, went away empty-handed despite proving the contractor’s guilt because the Recovery Fund limit of \$200,000 was reached.

Consistently the vast majorities of contractors’ licenses (slightly over 90%) are highly regarded and are not involved in the complaint process. These licensees pride themselves on quality workmanship and good customer service. Regrettably, there are a still a significant number of contractors who receive a complaint. The Registrar of Contractors received 11,867 complaints in FY07 against 5,679 different licensees. In FY06, 11,974 complaints were received. About one-third of the complaints coming into the ROC are serious complaints requiring adjudication. Most of these serious complainants seek reparation from the Recovery Fund. The remaining two-thirds of the complaints are addressed relatively quickly because they are less complex. Typically, less complex complaints are fixed or resolved prior to hearings, not substantiated by the ROC, or the homeowner declines to continue.

We focused our attention on the more involved complaints where complainants must avail themselves of the Registrar’s full process in order to obtain Recovery Fund reparation. We looked at the

Registrar's systems and identified 17 issues. The 68 reforms we are recommending intend to help both homeowners and contractors by reducing the untimely nature of the Registrar's complaint system and by clarifying vague areas of contractor regulation and homeowner responsibility. The recommended reforms also focus the attention and discipline of the Registrar's Office on the worst transgressors amongst contractors because these problem contractors give good contractors a bad name and because they are most likely to harm the public in a substantial way. Lastly, some reforms concentrate on inconsistently pursued aspects of the Registrar's regulatory mission.

ISSUE 1 –

DOES THE RECOVERY FUND SYSTEM TAKE TOO LONG?

See pages 6-14.

The process from complaint to Recovery-Fund-payment-day usually takes well over a year. This is too long. There are two paths to the Recovery Fund. One is through the ROC and the Office of Administrative Hearings and is called the Administrative Process. The other process goes through both the Civil Court and the ROC Recovery Fund. We found:

- There are 65 typical components in the Administrative Process. This translates numerically into a 43-step process, which can take 545 days even if no judicial reviews or other appeals are required. The most time-consuming aspect of the system is the hearing process. Administrative cases usually require two hearings. One hearing determines responsibility while the other determines the actual Recovery Fund amount.
- There are 33 components in the Civil Court Process leading to the Recovery Fund. This translates numerically into a 29-step process generally involving approximately 123 days of interaction with the Registrar of Contractors Office, *after* the case is won in court. Just starting the post-court segment of the process is complicated. Prevailing homeowners must bring their original judgment to the ROC from the Court. Homeowners must then file a twenty-day notice with the ROC to say they are going back to court to ask for damage and payment orders from the judge. Again, with this system, each of the parties and the Registrar's Office must labor through two hearings.
- The ROC complaint process tends to take between one and two years until final penalties are ordered, so bad contractors can continue to accumulate contracts while under investigation. The slow processes for contested cases exacerbates costs and frustrations and results in a system that serves neither homeowners or contractors. Frequently, nine to twelve months pass before an errant contractor starts to experience actual discipline. Additionally, it means a bad contractor can cause significant financial damage to numerous homeowners prior to having his license suspended. For innocent contractors, it means they cannot clear themselves from being negatively categorized in the ROC web database as having an "open complaint."
- Delays stem from many sources - -
 - a) a two-hearing process instead of a one-hearing process.
 - b) scheduling property inspections
 - c) the Registrar's outdated computer system
 - d) the busy hearing calendar at the Office of Administrative Hearings
 - e) too many cases (about 3,500 +) being worked by too few people in the ROC Legal Department
 - f) the Registrar's Office has no formal process to expedite payment out of the Recovery Fund, even if a Court has already established guilt.

- The Registrar's Office has no performance measure to track their complaint system's duration from beginning to end. Such a measure would be critical to assessing problem areas and reducing processing time.
- The ROC's Corrective Work Order and the Citation are largely redundant to one another and having both notices lengthens the process.

The Registrar's Office should

- Revisit their strategic planning process. The ROC should develop a performance measure to track their complaint system's duration from beginning to end in both the administrative system and the court system. Under the current process, the administrative system typically takes 545 days or more and the court system route takes 123 days or more of interaction with the Registrar of Contractors, *after* the case is won in court. (Recommendation 1E)
- Request the Legislature approve enough staff for their agency so property inspections can occur within three weeks for regular cases and within two days when there are habitation or extreme hazard issues. In the current process, inspections typically do not occur until eight weeks after a complaint is filed and then it takes an additional twenty days or more for inspectors to write and distribute their reports. (Recommendation 1F)

The Office of Administrative Hearings (OAH) should

- Request more administrative law judge positions from the Legislature. They should strive to reduce the waiting times for hearing appointments relating to ROC cases to six weeks or less. It currently takes approximately three months to get into a hearing. (Recommendation 1G)

The Legislature should consider:

- Changing the Registrar of Contractors process by establishing a diverse group of stakeholders to analyze the process and recommend changes. The Registrar's *administrative* processes for complaints need to be reduced. The current process takes too long and frustrates homeowners, contractors and even the Registrar's staff. Toward this end, the legislature should consider establishing a study group comprised of complainant homeowners, plaintiff attorneys and consumer advocates along with contractors, respondent attorneys and construction industry representatives to examine the administrative system and suggest further refinements. The Registrar's Office should participate in the evaluation too. (Recommendation 1A)
- Amending statutes so construction cases contested *administratively* via the Registrar of Contractors and the Office of Administrative Hearings have the Recovery Fund claim stipulated in the original case determination and order. This would eliminate the current, time-consuming exercise requiring two proceedings. Under such a scenario, complainants would request a specific Recovery Fund amount when they file their complaint. Subsequently, if ROC inspectors verified the complaint, the inspectors would issue corrective work orders stipulating not only what needs to be fixed/accomplished, but also their evaluation of the claim amount. Contractors would still have their due process rights because they could challenge the claim in the main hearing as to both responsibility and amount. (Recommendation 1B)
- Amending construction statutes so cases contested *in court* have the Recovery Fund claim amount stipulated in the original case determination and order. This would eliminate the current time-consuming exercise where homeowners initially win in court, announce the fact to the ROC, wait twenty or more days and then return to court to ask the judge to direct the ROC to make a Recovery Fund payment. (Recommendation 1C)

- The Registrar's process for Recovery Fund complaints originating *in the courts* need to be reduced. The current system takes too long. Toward this end, the legislature should consider establishing a study group comprised of complainant homeowners, plaintiff attorneys and consumer advocates along with contractors, respondent attorneys and construction industry representatives to examine the ROC process for judicial complaints and suggest ways to speed up the process. The Registrar's Office should participate in the evaluation too. (Recommendation 1D)
- Amending statutes to streamline the Inspection to Citation process. The inspection notice could set an inspection date, inform the contractor about the complaint (via a copy of the actual complaint) and suggest the contractor attempt to work out the problems prior to the inspection. It could give the contractor notice that if the inspector verifies workmanship or other problems at the future inspection, then an official citation will be issued. The current process usually has three written notices at its front end – a Notice of Inspection, a Corrective Work Order and then a Citation. It would be more efficient if this three-step notice process were reduced to two. (Recommendation 1H)
- Adopting a statute, similar to Minnesota's Statute §326-975, to accelerate payment out of the contractor's recovery fund under certain circumstances. (Recommendation 1I)
- Instructing the Office of Management and Budget to closely track and report the progress of the Registrar of Contractor Information Management System (ROCIMS) computer project to ensure it stays on course and has the necessary resources to be successfully completed. (Recommendation 1J)

ISSUE 2 –

RECOVERY FUND REQUIREMENTS -- ARE THE FUND'S LIMITS SET TOO LOW OR ARE OTHER FUND REQUIREMENTS TOO ONEROUS?

See pages 14 – 23.

The Recovery Fund's reparation limits are set too low and getting through the claim process is too onerous.

- The Fund's \$30,000 individual and \$200,000 total monetary limits are too low. They were last increased in 2002. Because of the limit caps, some wronged consumers are likely to go away empty-handed or only partially compensated for their losses. Homeowners may only recover a maximum of \$30,000 per residence, even though they might lose much more. Once the Registrar disperses \$200,000 against a particular contractor, the fund is closed and the Registrar cannot pay more claims against that contractor's license. Homeowners might prove the contractor guilty, yet receive nothing from the Recovery Fund because they happen to be a homeowner who is in line after the fund is closed. Alternatively, homeowners might face actual losses from a contractor's bad acts far exceeding the Recovery Fund's \$30,000 individual limit, but have no effective means to collect the monies.
- Most complaints require lengthy due process procedures before contractors face discipline. Faster processes like summary suspension and administrative suspensions exist, but they have many restrictions and thus, are limited in use.
- Only actual damages are recoverable. The Fund will not pay back homeowners who expend money on legal fees, expert witnesses or other such costs.
- It is too complicated to establish the recovery fund request. The Registrar's Office only gives generalized guidance in developing a homeowner's justification for their recovery fund request. They do not have specific estimating benchmarks for homeowners to go by.

Homeowners are entirely responsible for cost estimates for work, supplies or equipment. The Registrar staff has essentially “veto authority.”

- Estimates are frequently very difficult for homeowners to obtain because other contractors (replacements) tend to shy away from homeowners who have filed with the ROC.
- There is no way for a homeowner to get pre-approval for cost estimates. Either homeowners wait for the entire ROC process to finish (typically over a year) or they get estimates, proceed with repairs and hope they will not be second-guessed and rejected.
- There is almost no way for homeowners to be compensated for their own sweat equity or for the work of a handyman.
- We found other states found creative ways to avoid over extending their recovery funds. They will consolidate claims, limit distributions to proportional amounts per year or allow carryover reparations.

The Registrar should:

- Develop ways to estimate reasonable construction costs in instances where homeowners cannot. The Registrar’s Office could issue a preliminary estimate of the value of labor, equipment, supplies and material that would serve as a suggested floor amount for the recovery fund amount. Homeowners could accept this floor amount or get specific estimates. (Recommendation 2C)
- Develop criteria to define and pre-approve some situations when it is reasonable to accept estimates for homeowner “sweat-equity.” (Recommendation 2D)
- Examine how other states manage multiple claims against one contractor and develop a like proposal for the Arizona Legislature to consider. (Recommendation 2F)

The Legislature should consider:

- Amending construction statutes to increase individual Recovery Fund claim limits from \$30,000 to \$50,000. (Recommendation 2A)
- Amending construction statutes to increase the total claim limit against a contractor from \$200,000 to \$500,000. These changes would compensate or partially compensate more homeowners than allowed under the existing limits. (Recommendation 2B)
- Removing the \$1000 limit found in A.R.S. §32-1121 so that the total cost of the contract is not a factor when using a handyman, just the handyman’s total labor charges as a portion of the project charge. (Recommendation 2E)

ISSUE 3 –

IS THE REGISTRAR’S OVERALL PROCESS REASONABLE OR IS IT TOO COMPLICATED?

See pages 23-32.

The Registrar’s process is confusing and too complicated.

- The current system is dependent on homeowners’ continued pressure on the Registrar to bring errant contractors into compliance with statutes and rules regulating contractors. If a homeowner does not keep pushing for justice, the Registrar will frequently close a case. This is true even if the Registrar’s Office confirms the contractor failed to adhere to contracting laws or workmanship standards.
- The ROC approach is too segmented. The ROC employees only seem to know about their section. Yet the contractors and homeowners seek a bottom-line “big-picture view” so they

can understand what to expect and what is required. Both homeowners and contractors complain to the Ombudsman Office they are frustrated by piecemeal or contradictory communications from the Registrar's Office. Homeowners and contractors see the complaint process from the standpoint of how long they are mired in the total process, while the ROC staff members speak in terms of how long the case has been in their particular segment (e.g., inspection, citation, legal hearing, order, recovery fund justification, recovery fund hearing, and warrant payoff).

- The ROC rarely becomes a party to a case.
- The Registrar's Office fails to consistently pursue many aspects of its regulatory mission. For example, the Registrar might have verified evidence a contractor violated construction laws and harmed a family, yet the ROC will close the case just because the homeowner tires of the fight. We also found the Registrar's Office inconsistently issues fines even in cases where contractors have been suspended or revoked under provisions making financial penalties applicable under law. Additionally, we found the Registrar's Office would receive information a contractor failed to make required workers compensation payments, tax payments and unemployment insurance payments, yet not act on the information.
- Specific to this case, the contractor in question was accused of not paying workers compensation as required under contracting licensing laws. After the Registrar's Office failed to refer the matter or otherwise investigate, homeowners contacted a State Senator and she asked the Industrial Commission to investigate. The Industrial Commission confirmed the contractor violated the law and issued a \$1,000 fine. The Registrar's Office database on the web makes no mention of the violation or the fine. In fact, we could not find any mention of similar infractions by any licensed contractor.
- Consumers and contractors say they find the process confusing. They want more cohesive and comprehensive instructions and they want the ROC to flow chart the process so they have a better understanding of their deadlines and options.
- We informed the Registrar their web site contained some obsolete matrixes, FAQ points, descriptive passages and other misleading information. The Registrar's Office made many corrections and improvements to their web site in the past year. However, the Registrar's contractor database still needs refinement. The database does not disclose the date it was last updated and only displays partial information about contractors' complaints and discipline.
- Imaging of documents takes too long.
- Case timeframes are not posted on the Internet or elsewhere in public view. As a result, the parties to a case often are not sure what more is required of them, if the ROC has received documents or if a delay is avoidable.
- The Registrar's Office fails to supervise or actively monitor settlements between homeowners and contractors stemming from complaints. The ROC closes cases and marks them on the web as "settled" when it is not clear whether the parties will abide by the terms of the agreement. This implies a firmer resolution than what actually exists.
- Lastly, we reviewed the survey form and found its design fails to elicit enough feedback for the organization.

The Registrar's Office should:

- Augment their written instructions to make them more complete so consumers and contractors are less confused about their processes. They should flow-chart the process and show each of

the parties what options are available to them at each possible stage. They should create a consumer handbook and a recovery fund guide. (Recommendation 3C)

- The Registrar's Office deserves kudos for recently implemented web site improvements. The site is much more informative and user friendly than what was available a year ago. The Registrar should continue to improve their main web site. The Registrar's web site should display the status of complaints or link to the Office of Administrative Hearings case information. Registrar staff should have quick research options allowing them to point consumers to online, timesaving data and features. (Recommendation 3D)
- Put more information into their licensed contractor database and web display. They should note the date the information was last updated (Recommendation 3E)
- Consult with Arizona's Government Information Technology Agency (GITA) and develop a project to expand their imaging process so that it is faster and more all encompassing. The current imaging process takes too long, keeps files unavailable and is not comprehensive enough. (Recommendation 3F)
- Post case status and timeframes on their web site. (Recommendation 3G)
- Monitor settlements of contested cases between homeowners and contractors. They should automatically re-open tabled complaints once they get notice either party defaulted on the deal. (Recommendation 3H)
- Develop another term or phrase to describe situations where settlement agreements are in play. They should not display the word "settled" until the matter is fully closed and the parties live up to the terms of the settlement. (Recommendation 3I)
- Improve their survey. The survey should identify whether or not the respondent is a contractor or homeowner, whether or not the case went to the recovery fund stage and how long the complaint took to resolve (date complaint was opened to date case was closed). (Recommendation 3J)

The Legislature should consider:

- Adding 3 to 4 case contact staff to the ROC's organization so that each case has a single point of contact for all parties. (Recommendation 3A)
- Amending statutes to make the Registrar a party to the case if the State has a clear interest. (Recommendation 3B)

ISSUE 4 –

ARE THERE APPROPRIATE TRIGGERS FOR THE SUMMARY SUSPENSION OF A CONTRACTOR'S LICENSE (AS REFERENCED IN ARIZONA REVISED STATUTES §41-1092.11)?

See pages 32 - 37.

We found the Registrar's Office historically avoided invoking the provision that summarily suspends a contractor's license, but a new law is likely to make it easier to issue summary suspensions.

- Historically, provisions in Title 41 have guided the Registrar's Office. A.R.S. § 41-1092.11(B) says, "*Revocation, suspension, annulment or withdrawal of any license is not lawful unless, before the action, the agency provides the licensee with notice and an opportunity for a hearing in accordance with this article. If the agency finds that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, the agency may order summary suspension of a license pending*

proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.”

- Criteria in statute, rule or policy as to what constitutes grounds for Summary Suspension resulting from concern for “public health, safety or welfare *imperatively* requiring emergency action” as referenced in A. R. S. § 41-1092.11(B) are not defined, so the Registrar was reluctant to use it. However, the 48th Legislature, Regular Session passed and the Governor approved Senate Bill 1417. It refines Arizona Revised Statutes Title 32 relating to contractors. A.R.S. §§32-1171(A) and 32-1171(C), “General Remodeling and Repair Contractors” establishes two criteria where the Registrar may issue a summary suspension -- one in the case of a contractor failing to obtain workers’ compensation pursuant to Title 23, Chapter 6, Article 4 and the other when the Registrar believes an investigation indicates the public health and safety requires immediate action.
- Senate Bill 1417 also addresses abandonment complaints. Contractors who are the subject of five or more substantiated complaints lose their right to take on more work until they get below five complaints in a year’s time.
- SB 1417 did not establish an expedited investigatory or repair process in cases where there are threats to public health and safety. For a summary suspension provision to be effective, fast intervention is needed at both points.
- There is no process to expeditiously determine whether a situation rises to the level where the Registrar can confirm a threat of danger to public health and safety requires immediate action.
- The Auditor General recommended the Registrar’s Office define summary suspension rule criteria in 2003, and the Registrar’s Office agreed, but the Registrar’s Office has not developed the definition to date.

The Legislature should consider:

- Creating statutory criteria to specify situations where the Registrar’s office is required to perform expedited inspections (within two working days) when a homeowner credibly alleges a public health, safety or welfare concern exists as the result of faulty acts committed by their contractor. (Recommendation 4A)
- Stipulating that, that in circumstances where the Registrar’s Order confirms a public hazard or active safety issue directly attributable to an error by the contractor, the contractor should be required to fix the hazard within a 24-hour period or some other brief time or deliver specific evidence to counter that it is his responsibility. The hazard should be grave enough to potentially cause death, serious bodily harm or prevent habitation. Failure to comply with both of these provisions should result in a default finding releasing the homeowner from his obligation to continue to work with the initial contractor. However, it should not release the contractor from existing damage claims. (Recommendation 4B)

ISSUE 5 –

CAN PROBLEM CONTRACTORS “GAME THE SYSTEM” AND AVOID DISCIPLINE?

See pages 37- 42.

We found that bad contractors can exploit the ROC system.

- The contractor in these cases illustrates the point. He had 25 complaints filed against him in the past two and half years. As of April 16, 2008, the ROC reported these cases were finally closed. Eight families received payments from the Recovery Fund. The ninth and final

family was assigned only get a partial Recovery Fund payment of \$24,359.66 because the Recovery Fund limits total payouts on any one contractor to the sum of \$200,000. Despite proving the contractor's guilt, seven deserving homeowners, with a total of \$96,515 in unrecoverable awards, went away empty-handed because the Recovery Fund limit was reached.

- It has been almost impossible to suspend a contractor in less than nine month's time unless the contractor had an administrative problem (e.g., Loses his bond or loses his corporate status because the Corporation Commission dissolved him). This is even true when there are multiple complaints against a contractor. A bad contractor can do a lot of harm in 9 months. While it remains to be seen in practice, the new changes to A.R.S. §32-1171 will likely reduce the time in situations where contractors fail to maintain their workers compensation payments or create a situation where public health and safety are at risk.
- Contractors, unlike realtors, do not have standardized contracts. Bad contractors fail to specify timeframes, materials and payment schedules among other things. The absence of such requirements enables badly behaved contractors to exploit unwary homeowners.
- Contractors can stall the process by many means.
- Complaints closed *after* a corrective work order, but before an administrative hearing, largely allow errant contractors to thwart the discipline process.
- Complaints closed *before* an inspection and issuance of a corrective work order, thwart the discipline process even more. The ROC web does not display or count such cases.
- Problem contractors, who consistently fail to adhere to rules or statutes, skirt the penalty phase by fixing problems shortly before or soon after the Registrar's Office issues corrective work orders. Under these scenarios, contractors may commit multiple violations, but never face a consequence from the State for creating the problem in the first place.
- An administrative suspension does not allow a contractor to work, yet it does not automatically release a homeowner from the obligation of working with the contractor. The homeowner must pursue the contractor in an individual complaint and win his case before he is assured that he can terminate the contract.

The Registrar's Office should:

- Create a rule requiring that residential contractors give homeowners a consumer handbook with all formal construction bids. The handbook would list elements common to good construction contracts and display a collection of various sample contracts. It should tell homeowners how to check the record of a contractor and how to document interactions and/or disputes with their contractor. The Registrar's Office should develop the handbook. (Recommendation 5A)
- Set up their official public record posting about each contractor licensee to display the number of times the Registrar's Office verified a complaint against a contractor and the nature of each complaint. It should also indicate the filing date of the complaint, how the complaint was handled and at what stage it was resolved/closed (e.g., before inspection, after corrective work order, after citation, after hearing, after official order, after re-hearing). (Recommendation 5C)
- Display in contractors' records the number of times the Registrar's Office had to issue a corrective work order or citations. (Recommendation 5D)

The Legislature should consider:

- Authorizing automatic criteria in statute, that make contracts voidable, thus giving homeowners a release option in situations where licensed contractors are administratively suspended and fail to clear the suspension after ten to twenty days. (Recommendation 5B)

- Authorizing automatic trigger points in statute that prohibit contractors, who have too many open complaints, from taking on more work until they resolve the complaints or they fall back to a lower number. If a contractor has a defined number of open, confirmed complaints filed against him in a certain period, he should not take on new business until the number of such complaints fall back below the trigger number. SB 1417 addressed the issue of contractors with excessive complaints, but it focused only on contractors who abandon five or more jobs. Contractors who garner numerous complaints due to poor workmanship are no better than those who abandon jobs. In a sense, they are worse because such job sites are sometimes left in worse shape than before the work began.

The natural trigger to limit contractors with an elevated level of confirmed complaints would be the Recovery Fund maximum value. In other words, once confirmed claims against a contractor exceed the total possible Recovery Fund limit, it would block the contractor from taking on new business until the complaints are resolved to the point the Recovery Fund limit is not in jeopardy. With current fund limits, this would mean a contractor could face six full claims before they would be hit the trigger point and have to stop accepting new work. (Recommendation 5E)

ISSUE 6 –

ARE SURETY BOND AMOUNTS SET APPROPRIATELY?

See pages 42 - 48

We found that the surety bond system in Arizona is not adequate:

- Bond amounts are set low in Arizona (\$5,000 to \$15,000). Contractors usually purchase their bond for about 3% of the face amount, so most pay less than \$500 for their bond.
- Bonds are so inexpensive (usually less than \$500); their protection fails to concern their purchasers (contractors). Contractors usually purchase their bond for about 3% of the face amount, so most pay less than \$500 for their bond.
- The surety bond system implies more than it delivers. Because bond amounts are low, they tend to suffice for only one or two creditors. Usually homeowners with claims against contractors do not get to collect on the bonds because sub-contractors have already done so. Once the face amount of a bond is used, the bonds have no value until the contractor pays to have them financed again. In this way, it is different from insurance.
- Consumers think that when a contractor is bonded, they are safe from monetary loss at least to the extent of the bond amount. This is not true. Bonds are not insurance and once claimed, they are not available to other wronged parties. Even if one is lucky enough to claim a bond, the reimbursement might not fully cover the loss due to the low bond face amount. None-the-less, the bond system tends to reduce the financial pressure on the Recovery Fund.
- The Registrar's Office is not legally bound to inform consumers about the possibility of collecting on a financial loss (resulting from a contractor) by way of claiming a contractor's bond. Sometimes bonds are available, yet go unclaimed. Homeowners are ignorant of this fact so they fail to claim the bond.
- One way to rein in contractors more quickly is to claim a contractor's bond. If the claim is paid and the bond used up, then the ROC administratively suspends the contractor until he replaces the bond. Yet, because the Registrar's Office does not inform complainants of this, homeowners do not know that reparation money other than the Recovery Fund might be available to them.

- Twenty-three states require bonding and the majority of them set their bond minimums at a higher amount than Arizona. The other states' bonds tend to have amounts starting at \$10,000 or \$15,000. [See Exhibit G, "Residential Contracting by State] Some states, such as Iowa and South Dakota, have performance bonds.
- Contractor liability insurance requirements are lenient in Arizona. Neither errors and omissions nor general liability insurance policies are required for residential Arizona contractors.
- Each state handles regulating contracting and residential construction risk differently. Twenty-one states require various forms of insurance. Most of these states have minimum coverage amounts in the range of \$150,000 per occurrence and \$500,000 in the aggregate. Approximate costs are \$1,300 annually for \$500,000 in aggregate coverage and about \$1,500 for one million in coverage.
- Some states require bonds *and* insurance.
- Eighteen states require contractors to submit statements of financial condition or credit reports with their license renewals. Fourteen states require Recovery Fund participation as a form of insurance. [See Exhibit G, "Residential Contracting by State] Financial information is an important preventative measure to stop contractors from engaging in more business than they can financially back and to thwart bad contractors from engaging in fraudulent schemes.

The Legislature should consider:

- Having fewer bond levels and set the bond amounts to \$15,000 for a single license and \$30,000 for a dual license if a contractor does \$500,000 or less in annual work. For contractors with annual contracts exceeding \$500,000, the bonds should be \$25,000 for a single license and \$50,000 for contractors with dual licenses. (Recommendation 6A)
- Requiring contractors to have liability insurance. They could benchmark to the average amount of coverage required in the twenty-one states that mandate liability insurance. (Recommendation 6B)
- Amending contracting statutes to require the Registrar's Office to obtain more financial information on prospective contractors. A component of this could be requiring contractors to demonstrate proof of financial accountability when submitting applications or renewals. The Legislature could look at what states such as Alabama, Arkansas, California, Florida, Hawaii, Idaho, Louisiana, Maryland, Michigan, Mississippi, Nevada, New Hampshire, North Carolina, South Carolina, Tennessee, Utah, Virginia and Wisconsin require of their contractors to prove financial accountability. Professional accountants should review and attest to these statements prior to their submittal to the Registrar's Office to prevent contractors from submitting untruthful statements. The Registrar should use the financial statements to set each contractor's bond amount. Arizona legislators could examine Florida, Utah, Nevada or California methodologies as examples of jurisdictions with stronger contractor applicant requirements. (Recommendation 6C)
- Amending statutes relating to contractor bonds and complaints to require the ROC to notify every complainant, upon the filing of their complaint, whether or not the contractor's bond is available or has been claimed. The ROC already sends a notification to both parties acknowledging the complaint and announcing the date of property inspection. They should note the bond amount and status on the notification form and explain the bond claiming process too. The form would then serve three purposes - - as a receipt to confirm the ROC received the complaint and notice to the contractor, as a notice about the date of the property inspection and as notification of the bond amount and availability. (Recommendation 6D)

ISSUE 7 - -

ARE MONETARY PENALTIES APPROPRIATELY APPLIED AGAINST CONTRACTORS FOUND TO BE IN VIOLATION OF STATUTES?

See pages 48 - 52.

The Registrar's Office is not tracking their penalty program well.

We noted:

- Two statutes [see A.R.S. §§32-1154(a) (23) and 32-1154(a) (18)] direct the Registrar's Office to levy penalties.
- There was not evidence that penalties against errant contractors are consistently levied when applicable [under A.R.S. §§32-1154(a) (23), Failure to Take Appropriate Corrective Action; or 32-1154(a) (18), Contracting While in Suspended/Inactive Status].
- The ROC does not issue penalties if complainants resolve their complaint. Contractors might be guilty and have violated A.R.S. §§32-1154(A)(23), yet if they later manage to satisfy the complainant, they tend to avoid hearings, official findings and the whole penalty phase. It takes a long time for penalties to be issued and there are no instances where penalties accrue automatically under certain conditions.
- We did not see comprehensive results of current collection activities. We saw one reference to penalties in a spreadsheet taken from a prior Auditor General audit (2003), but that was it.
- The Registrar of Contractor's *Posting List* appears in two-month increments on the Registrar's web site. The PDF files only list the contractors who lost their licenses due to failure to pay civil penalties. The lists are not comprehensive, but cover weekly summaries of ROC activity. The posting does not give overall tabulations of the number and amount of penalties levied or collected.
- We found no evidence the Registrar's Office receives notice when city or county inspectors tag a property for failing to adhere to local building code criteria.
- The Registrar's Strategic Plan does not have a performance measure to track and report penalties authorized and collected each year.
- The Registrar's staff failed to produce penalty data for us, despite having approximately a year and a half to generate the information.

The Registrar should:

- Have a performance measure to track and report penalties assigned and collected each year. (Recommendation 7A)

The Legislature should consider:

- Establishing triggering criteria in statute to facilitate the issuance of penalties immediately if a contractor fails to respond (defaults), otherwise completely fails to fix items listed on a corrective order with no explanation or fails to ask for a compliance hearing. (Recommendation 7B)
- Requiring contractors forward inspection reports to the Registrar's Office when local government building inspectors cite the contractor for failing to build to code and the contractor takes longer than twenty-one days to make corrections. The statutory change should then require the contractor follow-up with a notice to the Registrar's Office once they have fixed the items listed as problems in the inspection. (Recommendation 7C)

- Refining the statutory criteria for determining when the Registrar must pursue disciplinary action, independent of complainants' individual settlements, with contractors. (Recommendation 7D)

ISSUE 8 –

THE DIFFICULT TWO-PRONGED LEGAL AND FACTUAL QUESTIONS:

- (A) **At what point can a homeowner move on to a new contractor to fix a problem?**
- (B) **At what point can a homeowner rightfully deny access to the original contractor?**

See pages 53 – 60.

We found:

- Neither statutes nor rules clearly answer these questions. What is apparent is the current system is confusing and takes too long. Statute nor rule definitively list what steps a homeowner should take, nor how long they should wait, to demonstrate their good faith attempt to address disputed matters with the original contractor. Waiting nine to sixteen months to make repairs is not a reasonable option for most homeowners. Yet there are no plain answers for homeowners. Instead, the laws offer owners only general guidance. It will take months before a judge or the Registrar issue a ruling. The laws encourage homeowners to make an educated guess whether or not to proceed. Even the plain language found in original contracts is not enough because contractors can contend the homeowner somehow prevented them from fulfilling the contract.
- No one is empowered to give them a definitive answer or permission. The ROC workers could not guarantee that claims of abandonment would hold up despite weeks or months of no response from the contractor. The Registrar's Office could not guarantee the owners that the cost to repair the errant work would be reimbursed even though building inspectors verified the work was faulty. The owners ask, "What citizen in the state would be willing to live in a house waiting for months at a time where wiring has started one fire and threatened to start another, where there is no air conditioning in summer, or where the back end of their home was exposed to the elements, burglars and pests?" The owners thought some circumstances so poisoned the relationship that the system should have a mechanism to more quickly deal with such a breach.
- The existing laws assume homeowners can wait months before fixing what is broken with their home. In many instances, it is not reasonable to delay repairs. Delays might create unhealthy conditions, leave inherent hazards or swell a homeowner's liability. It does not seem reasonable to make homeowners wait for the better part of a year or even longer for a definitive response. The present system fails to deal with reasonable habitability issues. The system takes a substantial amount of time if the contractor even minimally contests the problem. It invites bad actors to "game the system." There should be criteria where the homeowner is given, in limited circumstances, emergency authority to proceed with specific repairs.

The Legislature should consider:

- Going beyond the changes they made via Senate Bill 1417 relating to summary suspensions and define statutory criteria to have expedited inspections and corrective work orders in

limited situations where the Registrar's Office confirms the original contractor's error, negligence or abandonment created an acute hazard. Acute hazards could be listed in statute. Example of acute hazards are:

- Faulty electrical work threatening an immediate fire or electrocution danger.
- Disconnected essential services such as electric/gas/water (disconnected for longer than three days).
- Inoperable cooling or heating apparatus when ambient temperature reaches higher than 90 degrees or lower than 45 degrees Fahrenheit and alternative heating or cooling mechanisms are not available for the structure. (disconnected for longer than three days)
- Poorly engineered roofs, walls or bearing beams, which threaten collapse.

Homeowners should be allowed to petition for quick relief in such scenarios. Petitions to expedite should have at least three components. The homeowners would need to demonstrate to the satisfaction of the Registrar's Office that the problem poses a threat of serious bodily injury, violates health codes or otherwise make the house uninhabitable until fixed. Furthermore, the property owner would need to show that the problem was the result of negligence or error committed by the contractor's company and not a planned event (e.g., a pre-agreement where both parties, know and agree that repairs will be so extensive, the property owner must vacate the property). Lastly, the contractor must have been given at least three days to make repairs.

The contractor would still have the right to contest whether or not they are at fault through the regular course of due process, however, the matter would then just be about the fault determination and possible Recovery Fund or other reparations. This recommendation should be addressed when Recommendation 4A and 4B, relating to summary suspension, are addressed. (Recommendation 8A)

- Defining statutory criteria to allow homeowners to hire a new contractor when a contractor abandons and does not attempt to finish a job. No homeowner should have to wait past the repair time stipulated by the Registrar's Office in the corrective work order. From that date on, the homeowner should be free to hire a different contractor to resolve the problem unless the contractor can provide credible evidence the homeowner barred him from accessing the job in violation of ROC directives. If the contractor produces credible evidence, then the matter must proceed through regular due process channels. However, if the contractor is silent or provides no rationale to the Registrar to explain how the property owner prevented work, then the Registrar can permit the property owner to hire a different contractor.

Senate Bill 1417 focuses on stopping contractors who have five or more claims of abandonment from taking on more work, but it does not help homeowners who are already the victim of abandoned projects. Something should be done for these types of cases too. Enacting the recommendation would still give the contractor the right to contest whether or not they are at fault through the regular course of due process, however, the matter would then just be about the fault determination and possible Recovery Fund reparations. (Recommendation 8B)

ISSUE 9 –

CONTRACTORS FREQUENTLY OPERATE AS A LIMITED LIABILITY COMPANY (LLC). WHAT OMISSIONS IN ARIZONA REVISED STATUTES, TITLE 32, RELATE TO CONTRACTORS OPERATING AS LIMITED LIABILITY COMPANY ENTITIES?

See pages 60 - 62.

- In the course of our review, we noticed instances where limited liability company (LLC) references, in statutes governing contractors, were inconsistent and ambiguous when compared with corporate and partnership references. There are five omissions in A.R.S. Title 32 relating to LLC entities. In many cases, the statutes were silent about limited liability company requirements, yet imposed requirements on partnerships, corporations and sole proprietors. In the context of this investigation, it matters because contractors frequently operate as a limited liability company. The five statutes are A.R.S. §§32-1101, 32-1122, 32-1151, 32-1156 and 32-1166 relating to contracting, should be updated to clearly reflect that they apply to limited liability companies too.
- The Registrar's form mentions limited liability companies, but it asks for a list of corporate officers and directors. Limited liability companies do not have corporate officers or directors, they have "members" or "managers" or "managing members." The form should ask LLC entities to list all managers and list members who hold a 25% interest in the company.
- Further, the Registrar's form asks limited liability companies to file a copy of their limited liability company agreement file at the Corporation Commission, but no such filing exists. The Corporation Commission does not require limited liability companies to file their agreements. The Registrar's Office should be asking for the limited liability company's "articles of organization" in order to accurately reflect the proper legal terms.

The Registrar's Office should:

- Correct their application form to use the proper legal terminology for limited liability company leadership (members, managers, member-managers). (Recommendation 9B)
- Correct their application form to specify the proper legal terminology relating to the original organization of limited liability companies. Limited liability companies file "Articles of Organization" with the Corporation Commission, not "Operating Agreements." (Recommendation 9C)

The Legislature should consider:

- Amending the five identified statutes relating to contracting (A.R.S. §§32-1101, 32-1122, 32-1151, 32-1156 and 32-1166), to clearly reflect that they apply to limited liability companies too. (Recommendation 9A)

ISSUES 10, 11, 12 AND 13 –

DOES THE REGISTRAR FAIL TO ENFORCE CONTRACTING STATUTES RELATING TO WORKERS COMPENSATION, UNEMPLOYMENT INSURANCE, SOCIAL SECURITY PAYMENTS AND OTHER REQUIRED TAXES?

See pages 63 – 71.

The Registrar of Contractors enforcement process is inconsistent relating to:

- A.R.S. §§32-1122(B)(1)(i) and 32-1154 (A)(4) relating to workman compensation laws;

- A.R.S. §32-1154 (A)(4) governing social security; and §32-1154 (A)(4) governing unemployment insurance laws;
- and A.R.S. §32-1154 (A)(5) governing income taxes or any tax imposed by title 42, chapter 5, articles 1 and 4 and incurred in the operation of the licensed business.

The Registrar's Office frequently fails to pursue contractors in instances where they have reason to believe a contractor has violated one of these laws. It is not clear what propels the Registrar's Office to pursue a contractor for violation of these statutes or what leads them to determine not to follow up. The ROC managers say they are complaint-driven, but business obligations such as workers compensation, unemployment insurance or tax payments by contractors are not the concern of homeowners.

A number of states require contractors to prove with their applications and renewals that they are current with their workers compensation claims, unemployment insurance payments and taxes. Arizona

The management adage, "What gets tracked, gets done" is applicable. The ROC does not actively track whether or not contractors maintain their obligations to the workers compensation fund, unemployment, social security or other transaction taxes.

Relating to Contractors Failing to Pay Workman Compensation

The Registrar's Office should:

- Develop formal mechanisms (e.g., interagency agreement) to receive and deliver information related to workers compensation violations to the Industrial Commission.

For example:

- Upon the ROC receiving information or otherwise determining a contractor may not have adhered to workers compensation laws, the ROC should be obliged to inform the Industrial Commission of the allegation.
- Similarly, the Industrial Commission should inform the Registrar's Office when they substantiate a contractor has failed to adhere to workers compensation laws.

(Recommendation 10A)

- The Registrar should develop rules that automatically trigger a summary suspension of a licensed contractor upon the Industrial Commission substantiating the contractor's failure to adhere to workers compensation payment laws. The finding should trigger A.R.S. §32-1171(A) and summarily suspend the contractor's license. This would be similar to the Registrar's process when the Corporation Commission notifies the Registrar that a contractor's corporation or limited liability company has been dissolved. [NOTE: The Legislature ordered the Registrar to develop rules to implement SB1417.] (Recommendation 10B)
- Develop a performance measure to reflect their activity and enforcement of A.R.S. §§32-1122(B)(1)(i) and 32-1154 (A)(4) relating to workers compensation laws requirements for licensed contractors. (Recommendation 10C)

Relating to Unemployment Insurance

The Registrar's Office should:

- The Registrar's Office should collaborate with the DES to develop formal mechanisms to receive information related to unemployment insurance violations from the Department of Revenue. (Recommendation 11A)

- Develop a performance measure to reflect their activity and enforcement of A.R.S. §32-1154(A)(4) relating to unemployment insurance payment requirements of licensed contractors. (Recommendation 11D)

Relating to Social Security Taxes

The Registrar's Office should:

- Develop formal mechanisms to notify the Internal Revenue Service when the ROC receives or develops information indicating a contractor may have violated social security obligations. The ROC should be obliged to inform the Internal Revenue Service of the allegation and facts. (Recommendation 12A)

Relating to income taxes, withholding taxes or any other tax imposed on contractors and incurred in the operation of the licensed business.

The Registrar's Office should:

- Developing formal mechanisms (e.g., an interagency agreement) to receive and deliver information related to tax violations with the Department of Revenue.

For example:

- Upon the ROC receiving information or otherwise determining a contractor may not have adhered to workers compensation laws, the ROC should be obliged to inform the Department of Revenue of the allegation.
- Similarly, the Department of Revenue should inform the Registrar's Office when they substantiate a contractor has failed to adhere to workers compensation laws.

(Recommendation 13A)

- Develop a performance measure to reflect their activity and enforcement of A.R.S. §32-1154(A)(5) relating to tax requirements of licensed contractors. (Recommendation 13C)

Relating to Unemployment Insurance

The Legislature should consider:

- Adjusting Title 32, concerning licensed contractors, to automatically trigger an administrative suspension of a contractor's license at the ROC once DES substantiates the contractor failed to adhere to unemployment insurance laws. (Recommendation 11B)
- Adjusting Title 32 concerning licensed contractors to require the Registrar's Office to collect updated unemployment insurance payment information from all contractors. Essentially, it would be a declaration by contractors (with employees) that unemployment insurance provisions were met. It could be a component of the biennial licensing process. (Recommendation 11C)

Relating to Social Security Taxes

The Legislature should consider:

- Adjusting Title 32 concerning licensed contractors to require the Registrar's Office to collect updated social security payment information from all contractors. Essentially, it would be a declaration by the contractor that his business has met its social security obligations. It could become a component of the existing biennial licensing process. (Recommendation 12B)

Relating to income taxes, withholding taxes or any other tax imposed on contractors and incurred in the operation of the licensed business.

The Legislature should consider:

- Adjusting Title 32 regarding licensed contractors to require the Registrar's Office to collect a declaration that transaction taxes were paid by the contractor. It could become a component of the existing biennial licensing process. (Recommendation 13B)

ISSUE 14 –

TO WHAT EXTENT DOES THE REGISTRAR OF CONTRACTORS OFFICE CHECK CONTRACTOR BACKGROUNDS?

See pages 71 – 75.

The current background-checking process is not thorough and this can leave homeowners in an exposed and vulnerable position. Residential contractors have enormous access to items of value when working on homes and they work near children and other vulnerable individuals.

We found:

- Statutes do not require and the ROC does not perform adequate background checks. Background checks are only performed as a follow-up process on certain applicant provided information.
- Applicants are on their honor to truthfully complete applications, but the ROC does not audit applications unless given a tip or otherwise becoming suspicious. The application asks contractors to disclose felony convictions. They need not disclose misdemeanors, civil lawsuits or bankruptcies, so the contractor is not required to reveal misdemeanor convictions relating to personal violence, misconduct involving a deadly weapon as provided in section 13-3102, dishonesty or fraud, arson, theft, domestic violence, narcotics (Arizona Revised Statutes Title 13, Chapter 34, or similar) or sexual misconduct.
- Fingerprint cards are not required as they are for numerous other professions. However, the Registrar's Office can decide to fingerprint any applicant if they detect problems like multiple drivers licenses.
- Contractors are not required to reveal past or current litigation or bankruptcies.
- The Registrar of Contractors does not require a credit check of contractors.
- Eighteen states run credit checks or ask contractors to financially document they are financially viable to be in business as a licensed contractor. Florida, Utah and California are all examples of states having stronger applications than Arizona.
- There is not a national database for contractors similar to what exists for real estate appraisers, nurses, doctors and behavior therapists.
- Accurate and current mailing addresses for contractors are critical, yet the ROC database does not reflect the status of contractor addresses. The ROC might have discovered a contractor's address is undeliverable, but they do not reveal this on their database.

The Registrar's Office should:

- Improve their vetting process for contractors. Their background checks should be more thorough and ask more questions like the Utah and Florida contractor applications or the Arizona Department of Insurance application. The applications and biennial renewal forms should require contractors to disclose, excepting vehicular matters, whether the contractor was ever convicted of a misdemeanor or felony in any state. Contractors answering "yes" should be required to provide the subject matter, date, court and sentence. (Recommendation 14A)

The Legislature should consider:

- Developing legislation to require contractors be fingerprinted with their initial application. Realtors, teachers and others in a position of trust are required to have fingerprint clearance. Contractors have access to homes and work near children and other vulnerable persons. (Recommendation 14B)

- Developing legislation to require contractors to provide, as a component of their application or biennial license renewal a summary of past and current litigation including case number, date, courts, all parties, subject matter and disposition. Contractors should be asked if all judgments, liens or taxes were paid as required. The Utah application and a number of other Arizona agency applications (e.g., Medical Board, Securities, Gaming, Liquor and Real Estate) ask applicants to provide information about judicial actions involving themselves. (Recommendation 14C)

- Adjusting Title 32 concerning licensed contractors to require contractors to biennially report their known place of business, their statutory agent and answer the question, "Is the address/known place of business information identical to the similar Corporation Commission or Secretary of State record?"

Additionally, these adjustments to Title 32 relating to business addresses should require the ROC to post undeliverable business and statutory agent address information on the ROC contractor web database upon receipt from the Corporation Commission or Secretary of State. The ROC should promptly test undeliverable address information they receive from other sources (via a notice letter). Upon confirming the address is undeliverable, the ROC should post the information to their web database. (Recommendation 14D)

ISSUE 15 –

WHAT IS THE SCOPE OF DISCIPLINE AFFECTING A CONTRACTOR'S REMAINING LICENSES ONCE HE HAS ONE LICENSE SUSPENDED OR REVOKED?

See pages 75 – 78.

We found:

- When a contractor is under an administrative suspension, they are not supposed to perform any contracting duties until they fix the administrative problem that led to the suspension, yet some contractors ignore this rule.
- In workmanship situations where the ROC has already suspended or revoked one license, then the Registrar must gather the contractor's other licenses and go through a second process to determine the fate of the remaining licenses. There currently are no mechanisms to automatically cancel remaining contracting licenses possessed by the contractor if one of his licenses is revoked. Instead, Registrar staff or complainants must initiate another complaint *after* the original suspension or revocation order. It is only at that time the other licenses are gathered and called into question.
- The ROC cannot take away a license automatically from a contractor if they issue it in error. If they issue a license in error, the Registrar must go through the due process routine to revoke the license that should not have been issued in the first place.
- The current process to revoke multiple licenses takes too long. Revoking the second set of licenses requires a second due process run. So this greatly extends the time that problem contractors are allowed to operate and solicit work. In so doing, it exposes the public to risk.

- Contractors can request new licenses subsequent to a homeowner(s) filing an official complaint. Nothing in current statute prohibits the ROC from issuing a new license while the old one is under question.

The Legislature should consider:

- Developing legislation prohibiting the issuance of new licenses to contractors while they have open complaints. Instead, legislators could create a new category of contingent or provisional licenses. (Recommendation 15A)
- Developing legislation authorizing the Registrar to revoke remaining licenses or rescind places where the contractor is listed as a qualifying party simultaneously in instances when the Registrar orders the revocation of one of the contractor's licenses. The initial hearings, findings and order should address the contractors other licenses and listings as a qualified party so as to avoid the redundancy required with the existing system. The scope of discipline affecting a contractors' remaining licenses should be declared and debated in the original charges and hearing process. A completely new set of hearings should not be necessary. (Recommendation 15B)

ISSUE 16 –

TO WHAT DEGREE ARE GENERAL CONTRACTORS REQUIRED TO VERIFY WHETHER A SUB-CONTRACTOR HAS A LICENSE IN GOOD STANDING WITH THE REGISTRAR OF CONTRACTORS?

See pages 78 – 79.

Contractors may hire licensed or unlicensed individuals to work for them. However, contractors must use a licensed sub-contractor when the task requires licensure. Unlicensed employees improperly engage in work requiring construction licensure typically for one of three reasons.

1. They lie to general contractors about their license status.
2. They do not realize the task requires licensure.
3. They and the general contractor knowingly break the law.

We found that lax documentation practices contribute to the problem.

- Sub-contractors are not required to offer any proof of their licensure to general contractors.
- This makes it hard for the Registrar's Office to punish general contractors who knowingly have unlicensed workers performing work which requires a license. Sloppy general contractors avoid punishment by saying, "I didn't know the sub was not licensed."
- Additionally, there is no requirement to license construction job superintendents.
- Homeowners say these regulations create an unfair situation because they are held to a higher standard than licensed contractors are. The ROC makes homeowners verify their replacement workers have appropriate contractor licenses to perform particular tasks. Without this verification, the ROC disqualifies the workers' bills from fund reparation. The same standard is not applied to general contractors because they do not have to use licensed job superintendents, they do not have to check whether their sub-contractors are licensed, they can use handymen and day laborers and they can count their own work. Homeowners cannot do any of these things.
- A.R.S. §32-1121 relates to handymen restrictions and it trips up many people. The law has a provision stipulating the total construction cost cannot exceed \$1,000 if one uses a handyman.

The Legislature should consider:

- Developing legislation to require contractors to obtain the license number and initially verify the good status of each sub-contractor they use. In turn, sub-contractors should then be required to deliver notice of any change of license status to the general contractors they work for within thirty days of any change. (Recommendation 16A)
- Revise the statute relating to handymen. A.R.S. §32-1121 places a \$1,000 limit on the *total* repair cost of a job, not just a \$1,000 limit on what work can be done by a handyman. It does not apply to contractors, only homeowners. Thus, an inequity occurs. A handyman should be allowed to perform up to a \$1,000 in labor which does not require licensure. The total job cost should not be tied to the handyman. (Recommendation 16B)
- Requiring site superintendents be licensed. This requirement will require the creation of a new category of license. (Recommendation 16C)

ISSUE 17 –

IS IT PROPER FOR THE REGISTRAR TO ENCOURAGE COMPLAINANTS TO PURSUE CASES ON THEIR OWN WITHOUT THE BENEFIT OF LEGAL COUNSEL?

See pages 79 - 82.

Parties represented by attorneys fared better at the Office of Administrative Hearings.

- Both homeowner and contractors fared better when they used attorneys according to a survey of cases performed by the Director of the Office of Administrative Hearings.
- In this case, complainants watched two of the early cases fail and attributed it to the owners representing themselves without an attorney. Families in latter cases got attorneys and they won.
- The owners complained they got bad advice when told they could represent themselves in administrative hearings. They said ROC staff and materials are indifferent and imply attorneys are not necessary. While it is factually true attorneys are not required, citizens said it gave them the wrong impression. They expected conversational meetings where they could just say their story and show their documents, but instead got a hard-edged, legalistic, unforgiving process that intimidated them. Once they experienced actual hearings, the citizens felt the ROC failed to prepare them. Owners thought the ROC should advise citizens that because the two agencies' systems are so complicated, parties tend to fare better with an attorney.
- The Registrar said, "It is wholly inappropriate to advise the parties that they should use an attorney."

The Registrar's Office should:

- The Registrar's Office should change their oral instructions, pamphlets and web site information so they note that parties who utilize a lawyer in contested cases usually improve their position. The instructions could then state a party/layman may represent himself, if he cannot afford an attorney. (Recommendation 17)

**Ombudsman Office – Citizens' Aide
Final Report of Investigation
Registrar of Contractors
Case #20062692**

December 12, 2008

Final Report of Investigation
Case # 20062692
December 12, 2008
Registrar of Contractors

SUMMARY

Nine homeowners contacted us upon deciding the Registrar of Contractor's system was failing them. The homeowners became involved in the Registrar's process when they filed complaints against a dual-licensed contractor.

Some of the complainant homeowners initially filed with the Registrar's Office, others with the Superior Court and some filed at both locations. Each owner desired financial recovery via the Residential Recovery Fund. Access to the Recovery Fund is dictated by statutory constraints and controlled by the Registrar's Office. Homeowners in both the administrative and the civil court processes felt the Registrar of Contractors Office seemed indifferent about the length of time and difficulty of their process. Owners and contractors both complain to the Ombudsman Office that the Registrar's Office process takes too long.

Most of the twenty-five homeowners upset with the contractor in question filed their complaints with the Registrar in the spring or summer of 2006. After about two years, these complaint cases had gone through most of the system and were closed. Twenty-three of the complaints resulted in discipline while two complaints settled or withdrew. Eight homeowners recovered money from the Recovery Fund to compensate or partially compensate them for their loss. The Registrar's Office reported on April 16, 2008, that the Attorney General's Office would likely approve the ninth claim for the remaining monies (\$24,359.66). At that point, the Registrar will close the fund because it will be at its limit. Seven deserving homeowners, with a total of \$96,515 in unrecoverable awards, will go away empty-handed despite proving the contractor's guilt.

ALLEGATION

The complainants alleged the Registrar of Contractors processed the complicated Recovery Fund complaints in an untimely manner.

OVERVIEW

The complainants were overwhelmingly upset at how long the process takes. Many became embroiled in the dispute with the subject contractor in the previous year or even the year before that. They said they alerted the Registrar's Office months earlier to the contractor's bad acts, but a continuous stream of new people were victimized as the Registrar's Office plodded through their long process. Complainants stated that they had no idea the Registrar's complaint process would drag on for so long.

We worked with the Registrar's office to determine a total case time estimate for typical administrative and court complaints. [See Exhibits A and B]. We determined that on average, the administrative process at the ROC takes over 538 days and the ROC portion of the court process takes approximately 178 days, with 123 days occurring subsequent to the initial court action.

Consistently the vast majorities of contractors' licenses (slightly over 90%) are highly regarded and are not involved in the complaint process. These licensees pride themselves on quality workmanship and good customer service. Regrettably, there are still a significant number of contractors who receive a complaint. The Registrar of Contractors received 11,867 complaints in FY07 against 5,679 different licensees. In FY06, 11,974 complaints were received.

About one-third of the complaints coming into the ROC are serious complaints requiring adjudication. Most of these serious complainants seek reparation from the Recovery Fund. The remaining two-thirds of the complaints are addressed relatively quickly because they are less complex. Typically, less complex complaints are fixed or resolved prior to hearings, not substantiated by the ROC, or the homeowner declines to continue.

In 2007, there were about 4000 or so serious complaints. About 2,700 (67%) resulted in an administrative hearing while the remaining 33% went into default (uncontested). The ROC reports that each year, about 3% of the contractors in Arizona are suspended or revoked.

Serious complaints must adhere to the lengthy course of action laid out in statute and rules. It may take years to wind through the Registrar's system, as there is no expedited procedure.

When contractors fail to fix a problem, or otherwise fail to adhere to statutes or rules, they become subject to penalty assignments including license suspensions or revocations; bond forfeiture; the assessment of statutory penalties and/or Recovery Fund debt assignments. However, getting to the point where a contractor is actually subject to a penalty is the rub. This investigation will focus on the troubles created by such a long, complicated process.

BACKGROUND

The Arizona Registrar of Contractors (ROC) was established in 1931 by the Arizona State Legislature to serve as the regulatory body over contractors. The Registrar issues licenses, inspects for quality of workmanship and investigates complaints of statutory violations by contractors. Currently, the ROC oversees 238 specific license classifications within the three categories of commercial, residential, and dual licenses.

The ROC is a 90/10 self-funded agency, with 90 percent of the license fees reserved for agency operations and the remaining 10 percent deposited into the State General Fund. Its mission is, "To promote quality construction through a licensing and regulatory system to protect the health, safety and welfare of the public." [Strategic Plan, 2008 to 2012.]

The Registrar of Contractors maintains the official record listing such things as the name, address and type of license for each licensed contractor in Arizona. They gather and disseminate histories of complaints against licensed contractors and administer the Recovery Fund to reimburse financially harmed homeowners. The ROC also may issue orders to “cease and desist” and impose civil penalties against persons who engage in contracting without a license.

The Arizona Republic noted in a June 1, 2007 article that Arizona is one of 35 states that licenses or registers contractors. Most of these states belong to the National Association of State Contractor Licensing Agencies (NASCLA). Only 14 [AL, AZ, CT, FL, HI, IN, MA, MD, MI, MN, NV, NC, UT, VA] have variations of recovery/home improvement guarantee funds. Each fund is different and has its own unique benefits and limitations. In Arizona, the Recovery Fund is exclusively for homeowners (owner-occupied residences).

Arizona homeowners have two courses of action available to them if they become embroiled in a dispute with a contractor regarding defective construction. Subject to statutory time constraints, they may file a complaint at the Registrar of Contractors or file a civil lawsuit in court alleging warranty breach, contract breach or tort negligence. If they want, homeowners can pursue both courses of action. Either method can lead to a Recovery Fund distribution.

The Fund’s revenues come mainly from annual fees paid by residential contractors. All residential contractors are required to participate in the Fund unless they can establish they are able to maintain financial resources amounting to at least \$200,000. Only a few contractors opt for the financial resource route.

Money for the fund is collected primarily in the form of an assessment, which cannot exceed \$600 per biennial license period, paid by each residential contractor. The ROC is also required to file an annual statement of financial condition of the Fund with the Department of Insurance. The Fund had a balance at the end of FY 2005-2006 of \$10.5 million and a balance at the end of FY 2006-2007 of \$11.9 million.

History of Payouts from the Fund

FY 2003-2004	\$5.5 million
FY 2004-2005	\$5.8 million
FY 2005-2006	\$4.1 million
FY 2006-2007	\$6.2 million

The Registrar’s Office considers the Recovery Fund healthy and well funded. The Registrar’s staff said that a few years ago they lowered the Recovery Fund assessment they collected from each contractor because the fund seemed larger than what was needed to cover claims.

Claims against contractors must be filed within a two-year statute of limitations period. From that point forward, the process usually takes well over a year or more before a homeowner

may succeed and get a Recovery Fund disbursement. The current administrative process is taking approximately 535 days in straightforward cases where there are not appeals, re-hearings, settlements or extraordinary delays. The current court process (in conjunction with the Registrar's Office) is taking approximately 123 days at the ROC *subsequent* to a court case decision for the plaintiff for straightforward cases. The preceding court process may vary in time from a few months to over a year.

RESEARCH

We interviewed the complainants and eight of the Registrar's staff. In order to benchmark nationally, we interviewed staff from the National Association of State Contractor Licensing Agencies (NASCLA) and looked at statistical information on the Nationalcontractors.com web site. To benchmark particular activities across agencies, we also interviewed staff from the Industrial Commission; Motor Vehicle Department; the Board of Technical Registration; the Department of Building, Fire & Life Safety, Medical Board; Nursing Board; Dental Board; Chiropractic Board and the Office of Administrative Hearings.

We reviewed Arizona Revised Statutes, Title 32 and Title 41 and the Arizona Administrative Code rules applicable to the Registrar of Contractors and the Office of Administrative Hearings.

We examined the Registrar's complaint process flow and times. We compared the two routes to the Recovery Fund (Administratively through the Registrar Office and via court). We looked at the individual cases and examined how they fit into each process. We read the most recent Auditor General Report, the Registrar's Strategic Plan for 2007 and their newer Strategic Plan 2008 through 2012. We read the "*Concept of Operations*" for the Arizona Registrar of Contractors relating to the proposed ROC Information Management System (ROCIMS) by Data Site Consortium, Incorporated. We read the related Project Investment Justification and Summary for the ROCIMS computer project prepared by the ROC. We examined how other states in the United States handle residential contractor complaints.

We gathered relevant facts, such as:

1. The total number of active contractor licenses,
2. Number of complaints against licensed contractors,
3. Total complaints closed through compliance,
4. Number of cases resulting in a citation for hearing,
5. Total number of disciplinary license revocations and suspensions,
6. Total number of disciplinary penalties,
7. Recovery Fund claims received,
8. Recovery Fund claims paid out, and
9. Length of time it took if one successfully pursued a Recovery Fund claim (from initial complaint to pay out) in the administrative or the court process.
10. How the ROC measures their service and performance.

ISSUE 1 - - DOES THE RECOVERY FUND SYSTEM TAKE TOO LONG?

We looked at contested complaints on their journey through the system to the Recovery Fund. Created in 1981, the Recovery Fund covers claims against licensed contractors made by owner-occupied residential homeowners. The Legislature established the Fund to assist consumers who suffer financial loss due to the actions of a licensed residential contractor. The Fund can compensate a homeowner injured by an act, a representation, a transaction or the conduct of a residential contractor. Consumers can recover actual damages they suffered up to 2 years after the loss occurred.

As exhibits A and B convey, the process is involved. Two titles in the Arizona Revised Statutes come into play. A.R.S. Title 32, Chapter 10 specifically relates to statutes regarding contracting laws while Title 41 regards statutes relating to State Government including the administrative hearing process utilized by the Registrar's Office.

In brief, the current process is as follows: When a homeowner files a complaint with the Registrar of Contractors, initially the Registrar's Office urges the contractor and the homeowner to attempt to resolve the dispute informally. If the parties do not work out their differences, then an inspector sets up an inspection. In the inspection notice, the ROC tells the contractor the homeowner is not happy and assigns an inspection date. About 8 weeks later, inspectors for the Registrar's Office inspect the subject property. If the inspector substantiates problems, he has two to three weeks to write and issue a corrective work order. The work order directs the contractor to make listed corrections and gives the contractor a minimum of 15 days to remedy the deficiencies. The homeowner cannot bar the contractor from the property during this period.

The homeowner must continue to press the Registrar to remain active and pursue the contractor over the items listed in the corrective work order; otherwise, the ROC will close the case. If the contractor fails to fix the problems or if the homeowner remains otherwise unsatisfied, then the homeowner must request the Registrar's Office issue a citation. The Registrar's office then notifies both parties with a formal notice.

The Registrar's Office must then schedule a hearing with the Office of Administrative Hearings. It occurs about three months later. Within twenty days of the hearing, the administrative law judge issues his findings and recommendations to the Registrar. If the Registrar of Contractors reviews these findings and concludes a contractor is guilty of violating contracting laws [contained in Arizona Revised Statutes Title 32 and the Arizona Administrative Code R4-9-101 through R4-9-131], then the Registrar may issue orders subjecting the contractor to various forms of discipline. A contractor could have their license suspended or revoked, be issued a penalty for certain statutory violations, lose their bond, incur a Recovery Fund judgment assessment against them or a combination of these things can be imposed. If the goal is to get reparations from the Recovery Fund, the homeowner must then take either their winning judgment from court or their Registrar order of suspension or revocation and submit a request to the ROC documenting how much they wish to claim.

This claim amount is then subject to a second round of hearings. The Recovery Fund staff are told what amount was determined in the hearing and they start the check request process. About twenty days later, the owner gets a check.

While the contested process outlined above might not sound too complicated, in practice it usually takes over a year to complete and requires the active and steadfast determination of the complainant. Thus, it might be over a year or more before a wronged homeowner can prevail and actually receive a Recovery Fund award from the Registrar of Contractors.

To arrive at these numbers, we looked at how long it takes to get a Recovery Fund award via the two means one may use to get an award --- through the administrative process and/or through the civil court process. We asked the Registrar's Office if they had a flow chart, matrix or other means of describing their process. Only a simplistic five-step matrix was on the Registrar's web site. The Registrar said that detailed diagrams of their process were in development. Their goal was to expedite the system in the near future. They planned to use the new diagrams as tools to help them identify ways to expedite the system. Even though a year has passed, we never received the diagrams.

Because there was no comprehensive pre-existing diagram or flow chart listing the components of a typical complaint progressing through the system, and we were not given anything from the Registrar's development team, we created our own. With the assistance of Registrar of Contractor staff, we documented sixty-six possible components in the administrative process [Exhibit A and Timeframe A] and over thirty-three components in the Registrar of Contractor's segment of the court process [Exhibit B and Timeframe B].

We applied current timeframes to the two processes based on estimates provided by the Registrar's staff. We based the scenario estimates on an optimistic, straightforward process without early defaults, re-hearings, appeals, settlements or extraordinary delays. We determined it could take a homeowner approximately 545 days to navigate the Registrar's complete administrative process and approximately 123 days to navigate the Registrar's segment of the court process, subsequent to the court's initial judgment, in order to collect from the Recovery Fund.

This investigation examined cases that ran the complete continuum of the system, not cases which settled early. The homeowners represented in this investigation each had cases in which the contractor refused to correct deficiencies, yet disputed the complaint and demanded his complete due process rights. In the few instances where the contractor admitted guilt and asked to settle, he ended up defaulting. When the settlements failed to last, the impacted homeowners had to rejoin the complaint process by asking the Registrar's Office to reopen their complaints.

Timeframes

We separated the time component into two segments for each of the two processes. We asked how long the overall process takes to move through court or move through the administrative route if one is successful in getting a Recovery Fund payout. In other words, how many days

would typically lapse from the time a complainant files a complaint, to the day they get a check from the Fund?

We knew both processes usually require two hearings. So we also wanted to know a subset of the first question, namely, what was the length of time between the first hearing and the final payout? In other words, once there was an initial judgment determination by the court or a revocation/suspension by the Registrar in the administrative process, how long would it be before a homeowner got reparation?

The timeframe for the two processes

For the first segment, we extensively interviewed the Registrar's division leaders and developed both narrative and numerical exhibits designed to illustrate the steps within the two processes and their time estimates. Exhibit A is a narrative of the Administrative route. We documented 66 distinctive components in the administrative process. This translates numerically into a 43-step process.

Exhibit A1 documents a typical timeframe and shows how this can take 545 days even if no judicial reviews or other appeals are required. Should additional hearings be required, each one might take months to get on a civil court or Office of Administrative Hearing calendar. We estimated that an administrative case could theoretically drag out over 1,100 days beyond the typical timeframe if a party dragged out meetings, contested everything possible and got a hearing or appeal at every given opportunity. Such an excruciating case could last 1,645 days ($545 + 1,100 = 1,645$).

Exhibit B is a narrative of the civil court route to the Recovery Fund. We documented 33 typical components in the civil court process leading to the Recovery Fund. This translates numerically into a 29-step process. Exhibit B1 documents a typical timeframe and shows how this translates numerically into 178 days of interaction with the Registrar of Contractors Office. This amount equates to 55 days of likely interaction with the ROC, concurrent with court time, followed by an additional 123 days *after* the case is won in court. It does not count appeals. Should additional hearings be required, each one usually takes months to get on a civil court calendar.

The process from the point of judgment forward

We then honed in on the final segment of the process. We asked how long it typically takes a complainant to receive payment from the Recovery Fund once the homeowner wins a judgment in Superior Court or obtains a final disciplinary order of suspension or revocation from the Registrar. The staff reported that in FY06, the actual time range ran between 135 and 195 days and had an average of 156 days. In FY07, it took longer. The average was 180 days. It is important to remember this time runs *after* the plaintiff gets through the court process or *after* they obtain an official order from the Registrar in the administrative process.

Court action can take anywhere from a couple of months to a couple of years. The staff said it also depends on how fast homeowners submit their judgment to the Registrar of

Contractors. If a homeowner fails to notify the Registrar's Office at the beginning, when the homeowner commences action for a judgment in civil court, there is no formal penalty. However, in that case, it delays the claim because the Registrar's Office must still verify the items and document their findings.

Exhibit A1, the administrative process, shows that if the Registrar's Office took all the time they allocate, then it would not be unusual for 249 days to elapse from the date a contractor's order of suspension/ revocation is effective to the date of Recovery Fund payout [#39 through #66]. Exhibit B1, the civil process, shows approximately 123 days elapse from the date the ROC receives a judgment from a court judge until the date of payout from the Fund [#9 through #33]. These numbers do not reflect the time actually spent in court, but only the time spent in the Recovery Fund line. Appeals or other court actions subsequent to the original judgment are not controlled by the Registrar's Office and could take an indeterminate amount of time.

Complainants' View

The homeowners think the process takes too long if one desires Recovery Fund reparation. They said ROC inspections took a ridiculously long time to schedule and were subject to re-scheduling delays. It was not unusual to wait for over two months for an inspection. They also were upset that administrative hearings took months to schedule or re-schedule.

Registrar of Contractors View

The Registrar's office does not actively keep track specifically how long cases take from beginning to end. They do track time within segments of their process.

The ROC staff noted that some very lengthy cases are due to the mutual agreement of the contractor and the homeowner and are not the result of undue discord. The ROC staff gave the example of the homeowner wanting a particular material used in a repair job. They said it might take months to receive the order. This delay is not held against either party as long as the material is selected and ordered promptly.

The Registrar staff conceded that the contested process takes a long time. They say it frustrates them too, but they pointed out this is largely because due process requirements impose duties on them. The Registrar's Office said they must allow the parties to contest issues and give time for responses. They noted it also takes about three months to fit a case into the Office of Administrative Hearings schedule, it takes about eight weeks to schedule property inspections and then more time to perform their legal reviews. The Registrar staff said their obsolete computer system causes numerous inefficiencies for both staff and the public.

The Registrar of Contractors said they recently received permission to update their computer. They provided us with a copy of their Project and Investment Justification (PIJ). Their proposed new information management system is called Registrar of Contractor Information Management System (ROCIMS). The PIJ for ROCIMS stated,

“Current agency procedures for issuing and renewing licenses, investigating complaints, and providing financial reimbursement through the Recovery Fund are labor-intensive and lengthy in duration.”

The Registrar’s staff places much of the blame for these problems on their current 30-year-old information technology (IT) and communication systems. They say the system is overly reliant on individualized Microsoft Word and Excel software instead of integrated computer systems.

Findings for Issue 1

Finding 1A

The Registrar’s Office process takes too long.

The lengthy process frustrates homeowners, contractors and even the Registrar’s staff. It is not reasonable to expect a homeowner to wait over a year to fix his house, nor should an innocent contractor have to spend over a year trying to clear his name. No matter which of the two processes (administrative or judicial) is used, parties are looking at a complaint-to-pay-off-timeframe that typically runs in excess of a year. Complaints having re-hearings, appeals, settlements or extraordinary delays could stretch on an additional year or so longer.

Segments within the process clearly take too long. The final two segments (from conclusive findings of guilt, to determination of recovery fund amounts, to the payoff date) exemplify the problem. The administrative route runs approximately 249 days for these final segments, while the court route typically runs about 123 days.

Finding 1B

The current process, whether by court or via the administrative hearing route, typically requires two hearings and this significantly delays the process.

The administrative route has one hearing to determine guilt and discipline (e.g., suspension or revocation). It has another to determine the Recovery Fund amount.

The judicial route to the Recovery Fund requires homeowners to make two trips to Court. In the first, they have their original case heard. Should they prevail in court, then the homeowner must take their winning judgment to the Registrar’s Office. The Registrar then requires the homeowner to state a desired Recovery Fund amount. An amount might already be listed in the original order, but no matter, the homeowner must go through the exercise. The homeowner determines the amount and files a twenty-day (minimum) notice to say he intends to go back to court and get the judge to “direct payment.” The homeowner must wait for a minimum of twenty days and then they can go back to court and request the judge direct the Registrar to pay the homeowner from the Recovery Fund.

This second round at Court or at administrative hearing seems to be a time-consuming, unnecessary complication. It would seem more efficient and logical that the Recovery Fund amount be determined as a component of the original court action or alternatively as an original component of first administrative hearing and subsequent order.

Additionally, the Registrar's Office has no formal process to expedite payment out of the Recovery Fund, even if a Court has already established guilt. The current period of approximately 123 days is excessive. Minnesota developed a quicker way to access their recovery funds. It has a statutory process (see Minn. Stat. §326-975) to speed up their recovery fund payment procedure. Minnesota homeowners must apply if they wish to be considered for accelerated payment out of the contractor recovery fund.

Finding 1C

Another source of delay is the length of time it takes to schedule a property inspection.

ROC inspectors say labor constraints mean it takes about eight weeks before they can find the time to visit a property. It then takes the inspectors approximately twenty or more days to write and disseminate their report findings. Private sector appraisers tend to inspect and write up mortgage appraisal inspections in two to five days.

Finding 1D

The Registrar's Legal Section has too many cases to handle, given their staff allotment.

Last year, the section worked about 3,500 cases. The majority of these cases involved the Recovery Fund, which meant the section frequently had to arrange two or more hearings for each case and issue an equal amount of orders.

Finding 1E

Another major source of delay is the Office of Administrative Hearings (OAH).

The Office of Administrative Hearings director, Cliff Vanell, reported that, "In FY 2006, 95% of all ROC cases were scheduled for hearing by the 110th day from the date the Registrar of Contractors requested that a hearing be set." By a large margin, the ROC is the Hearing Office's biggest customer. In order to achieve a reduction down to 90 days, the Office of Administrative Hearings recommended the addition of a .5 Administrative Law Judge to hear ROC cases, and the full implementation of videoconferencing.

Finding 1F

The Registrar's computer system slows the process.

The ROC is aware the current computer system is deeply flawed and too slow. They know this adversely affects the system participants. To address the problem, they created the Registrar of Contractor Information Management System (ROCIMS) project. If delivered as described in the December 2006 Project Investment Justification, this project will do much to address timeliness issues of the Registrar's Office. Citizens can expect to see more self-serve information; more complete and timely contractor status information (available prior to entering agreements with contractors); faster receipt and tracking of consumer complaints; enhanced tracking of investigative matters; improved adjudication processes and Recovery Fund release of monies. Simultaneously, ROC staff will enjoy reduced data entry and the reduction of other manual activities.

Finding 1G

The Registrar's Office has no performance measure to track their complaint system's duration from beginning to end.

When we asked staff how long the process took, they instead reported how long a complaint took while in a particular area, not how long it had been in the overall process. They did not track complaints from the date a homeowner files a complaint to the day the Recovery Fund mails a check to the victorious homeowner. Thus, they do not have a performance measure counting the number of total days it takes to completely handle a complaint. Such a measure would be critical to assessing problem areas and reducing processing time.

We found that under the current process, the administrative system typically takes 545 days or more and the court system route takes 178 days or more.

Finding 1H

The ROC's Corrective Work Order and the Citation are largely redundant to one another and having both notices lengthens the process.

Both notices inform contractors in writing that ROC inspectors have received a complaint. Both notices say that failure of the contractor to correct items within a reasonable amount of time (typically 15 days) may result in the ROC imposing penalties.

Recommendations for Issue 1

Recommendation 1A

The Registrar's administrative processes for complaints need to be reduced. The current process takes too long. Toward this end, the legislature should consider establishing a study group comprised of complainant homeowners, plaintiff attorneys and consumer advocates along with contractors, respondent attorneys and construction industry representatives to examine the administrative system and suggest further refinements. The Registrar's Office should participate in the evaluation too.

Recommendation 1B

The legislature should consider amending statutes so construction cases contested administratively via the Registrar of Contractors and the Office of Administrative Hearings should have the recovery fund claim stipulated in the original case determination and order. This would eliminate the current, time-consuming exercise requiring two proceedings. Under such a scenario, complainants would request a specific Recovery Fund amount when they file their complaint. Subsequently, if ROC inspectors verified the complaint, the inspectors would issue corrective work orders stipulating not only what needs to be fixed/accomplished, but also their evaluation of the claim amount. Contractors would still have their due process rights because they could challenge the claim in the main hearing as to both responsibility and amount.

Recommendation 1C

The Legislature should consider amending statutes so construction cases contested in court have the recovery fund claim stipulated in the original case determination and order. This would eliminate a time-consuming exercise requiring two court proceedings.

Recommendation 1D

The Registrar's process for Recovery Fund complaints originating in the Courts need to be reduced. The current system takes too long. Toward this end, the legislature should consider establishing a study group comprised of complainant homeowners, plaintiff attorneys and consumer advocates along with contractors, respondent attorneys and construction industry representatives to examine the ROC process for judicial complaints and suggest ways to speed up the process. The Registrar's Office should participate in the evaluation too.

Recommendation 1E

The Registrar's Office should develop a performance measure to track their complaint system's duration from beginning to end. It should count from the date a homeowner files a complaint to the day the Recovery Fund mails a check to the prevailing homeowner. They should also establish goals and objectives designed to reduce the overall timeframe for complaints.

Recommendation 1F

The ROC should submit a request to the Legislature justifying an increase in full-time employees (FTEs). They should ask for legislative approval of enough staff for their agency so property inspections can occur within three weeks for regular cases and within two days when there are habitation or extreme hazard issues.

Recommendation 1G

The Office of Administrative Hearings (OAH) should request more administrative law judge positions from the Legislature to reduce the waiting times for hearing appointments relating to ROC cases to six weeks or less.

Recommendation 1H

The legislature should consider amending statutes to streamline the Inspection to Citation process. The inspection notice could set an inspection date, inform the contractor about the complaint (via a copy of the actual complaint) and suggest the contractor attempt to work out the problems prior to the inspection. It could give the contractor notice that if the inspector verifies workmanship or other problems at the future inspection, then an official citation will be issued.

The current process usually has three written notices at its front end – a Notice of Inspection, a Corrective Work Order and then a Citation. It would be more efficient if this three-step notice process were reduced to two. From the moment the contractor receives a notice of an inspection and copy of the complaint, they have warning where the homeowner believes the contractor erred, violated statutes or failed to adhere to workmanship rules. Contractors would have from the time of that notice until the inspection to “make it right.” Subsequent to the inspection, the ROC inspector will issue a citation if he verifies the problems exist and finds the project does not conform to workmanship standards, rules or statutes. The contractor would have 15 days to either fix the problem to the homeowner's satisfaction or write to the Registrar and ask for a hearing to contest the findings in the citation.

Recommendation 1I

The Legislature should consider adopting a statute, similar to Minnesota's Statute §326-975, to accelerate payment out of the contractor's recovery fund under certain circumstances.

Recommendation 1J

The Legislature should consider instructing the Joint Legislative Budget Committee (JLBC) to closely track the progress of the ROCIMS computer project to ensure it stays on course and has the necessary resources to be successfully completed.

Issue 2 – Recovery Fund Requirements - - Are the Fund's limits set too low or are other Fund requirements too onerous?

The Recovery Fund has many restrictions, including monetary limitations. Unlike a bond, the Recovery Fund is not subject to claims by suppliers, subcontractors, laborers or others. The fund is limited to homeowners. Compensation for damages to any one individual cannot exceed \$30,000, nor may the obligation per contractor climb past \$200,000 [see Laws 2002, Chap. 179 §§1 and 5]. We researched the history of these limit settings and found the Legislature last adjusted the fund limits in 2002.

The Recovery Fund is available to claimants via two paths. Using the Registrar's Administrative Process, a homeowner may submit a Recovery Fund claim once they have obtained an order finding violations and suspending or revoking the contractor's license [A.R.S. §32-1154].

Alternatively, it is also available to claimants in court systems under certain conditions. If a homeowner obtains a judgment in court and cannot collect all the damages owed, the homeowner can apply to the Recovery Fund [A.R.S. §32-1136] for partial payment. If a homeowner goes the court route and wins, then he or she is required to bring the judgment papers to the Registrar's Office. After the Registrar's Office receives the initial decision in favor of the homeowner, the homeowner's attorney must then file a 20-day notice at the ROC of the plaintiff's intent to apply to the court for an order directing payment from the Fund.

In both situations, the homeowner must also submit additional material to document their expenditures and exact claim request. Currently, there is no way for a homeowner to get up-front, pre-approval for a Recovery Fund amount. Owners must wait until nearly the end of the lengthy process before the amount is set by an official order.

Getting the amount "set" is very involved and frequently takes numerous submissions before ROC Recovery Fund staff agrees to a preliminary amount. Homeowners must document extensively every item they wish compensated from the Recovery Fund. They must have receipts for supplies and materials.

The Registrar of Contractors Office reviews the claim amount to see if it asks for items outside or above the terms of the contract. The Registrar's Office works cases on a "first in; first out basis" (FIFO) from the time the homeowner returns a completed recovery fund

packet or otherwise submits Recovery Fund backup material. Unless the matter only involves escrow money issues, the Registrar schedules an inspection to look over submitted items. The inspector is required to finish his inspection, analysis and report regarding the appropriateness of a homeowners Recovery Fund claim amount within 30 days. The Registrar's inspector looks at the work and asks a number of questions:

- Was work performed to good workmanship standards?
- Were upgrades, which were not part of the original contract, improperly included?
- If the homeowner completed work with another contractor, was it low bidder or is the documentation sufficient to show reasonable expenses?
- What supplies were purchased?
- Did a licensed contractor perform the work?

Only actual damages are recoverable. Some items are disallowed. According to A.R.S. §32-1121, homeowners cannot use a handyman or unlicensed contractor unless the total job stays below one thousand dollars. Additionally, homeowners cannot recover their personal labor costs from the Fund if they do the work themselves.

The Fund will not pay back homeowners who expend money on legal fees, expert witnesses or other such costs. A homeowner must shoulder the burden of all legal costs, expert witnesses, cost estimates and any pain and suffering. Legal fees from Court may be recoverable via liens and court practices, but the inspector cannot count them when determining Recovery Fund charges. The inspector cannot count late fees stipulated in the contract either. Thus, even successful claims to the Recovery Fund rarely pay a homeowner for their entire loss.

Homeowners are obliged to justify their replacement contractor costs. They cannot simply hire a new contractor, but must demonstrate the contractor they hire is reasonable. The Registrar's staff establishes this by telling homeowners to get three bids for the Registrar's Office to review.

The Registrar's Office then issues a letter setting a proposed Recovery Fund figure. If the homeowner and the Registrar's Office agree on the amount, then the Registrar's Office waits to see if the contractor objects. If no one objects, the Registrar's Office certifies the amount.

If the contractor or homeowner contests the amount of the claim, or if the Registrar decides to intervene, then all three groups (homeowner, contractor, ROC staff & attorneys) will go back to court. If a Recovery Fund hearing is required, the group must again wait to get on the court or hearing office calendar. This hearing will not involve questions about the merits, but will instead center on settling the Recovery Fund amount. At the Recovery Fund hearing, a judge hears the financial issues, determines the facts, then makes the payment decision and issues a directive to payout. About three weeks later, the State Treasurer issues a check.

The Recovery Fund has further limitations. As said before, homeowners may only recover a maximum of \$30,000 per residence even though their losses might be greater than this limit.

Only actual damages are recoverable. Attorney fees, expert witness fees, upgrades not stipulated in the contract, personal injury claims or consequential damages are examples of items normally not recoverable via the Recovery Fund.

Once the Recovery Fund closes to a homeowner because their claim exceeds the individual limit or total limit, the owner has little recourse. They can hire an attorney to go to court to seek a judgment to recover their unpaid losses or write off the loss. If the contractor has no assets to lien or insurance, the homeowner is simply out the money.

Registrar of Contractor staff checked the fund a year ago regarding the question, "Do any complainants go away unpaid due to recovery fund limits?" In 2006, the Registrar staff reported there were only two incidents where the fund maxed-out and only one occasion where a homeowner was not paid. By 2007, the situation worsened. For example, in the case of the particular contractor involved with our complainants, seven families won their case, yet were totally cut off from the fund.

We are aware of at least two additional contractors who performed equally badly in 2007. These contractors also financially injured consumers to a greater degree than the Fund's limit. Latter consumers from each of these cases will be denied access. Clearly, the worse a particular contractor is, the more likely the Recovery Fund will not be adequate to the task.

The ROC staff said the fund is financially in good shape. It operates on a cash basis and is regularly audited. They said income exceeds expenses and the Fund has never been close to running out of money. They said they have authority to raise the levy on contractors if the fund runs low. The staff noted they actually cut the levy a number of years ago. Registrar of Contractor staff members do not view the fund as an insurance policy. They believe it is a "stopgap" if a contractor has no assets to lien.

We also asked about the rationale behind A.R.S. §32-1136, requiring those who file in court to also file with the Registrar's Office in order to obtain access to the Recovery Fund. Registrar staff said the provision is geared toward verifying the legitimacy of recovery fund claims as dictated by statutes.

Alternatives

We spoke to the Department of Building, Fire and Life Safety because their agency also has a Recovery Fund for owners of manufactured homes. We compared the two funds. The Department of Building, Fire and Life Safety Recovery Fund does not have monetary limits like the ROC fund. Recovery from the fund is only limited to actual or compensatory damages, including costs, but excluding interest or attorney fees. While the Arizona Department of Building, Fire & Life Safety's experience with their fund illustrates that a recovery fund can work without artificially imposed limits, other states have not tried completely uncapped systems for their contractor recovery funds.

The Manufactured Housing Consumer Recovery Fund also does not have strict limits on handymen doing remedial work either. Manufactured home property owners can use unlicensed contractors as long as the particular task does not require a contractor's license.

We looked at 13 other Recovery Funds around the United States. Utah is one of three states having a reciprocity agreement with Arizona. It has higher limits of \$75,000 per residence and \$500,000 per contractor for its recovery fund. However, Utah's fund is for lienholders, not homeowners. It only protects homeowners from sub-contractors who have not been paid by general contractors.

Minnesota has set up a two-tier recovery fund system, either accelerated or standard. The accelerated procedure is available to those with claims under \$7,500.

Some states have found creative ways to manage multiple claims so that aggrieved homeowners do not go away empty-handed because of recovery fund limitations. Examples include North Carolina and Michigan. In North Carolina's case, once they become aware of more than one claim, they consolidate all the claims by stipulating a deadline via an Order of Consolidation. North Carolina has no limitation on their recovery fund, but they limit distributions to the amount of the award or 10% of what is in the fund, whatever is less. Homeowners not receiving their full allotment in one year can carry the remainder over to subsequent years and continue to make annual claims until they are fully paid their complete recovery fund award.

Numerous states require general liability insurance instead of, or in addition to, recovery funds or surety bonds. Sometimes insurance or bonds are set according to the cost of the original construction contract. Insurance must be put in place before work is commenced or payments are made. In other cases, flat liability insurance amounts are required. Most frequently, these liability policies depend on the type of license, contractor net worth or average contractual values of the annual construction agreements. The coverage typically ranges from \$100,000 to \$500,000.

Complainants' View

Homeowners view the structure of the Fund as too limited. They think the recovery amounts are set too low. They worry the overall \$200,000 limit is too restrictive, given there is no quick way to stop or suspend a bad contractor. Theoretically, only six homeowners could get a full \$30,000 and one homeowner a partial disbursement before the fund would max out. Homeowners believe the worse a contractor is, the more likely the Recovery Fund will be inadequate. They believe any offer to go to court for additional monies will be useless, given that fraudulent contractors would hide assets or maintain limited liability companies or corporations to limit their personal liabilities.

Homeowners do not believe most Arizonans are aware of these limits. They said the Registrar's Office existence and mission statement lulled them into a false sense of security. They believe the Registrar's Office was created to protect and regulate the public's health, safety and welfare relating to construction. They thought this meant it would act as an

advocate to rectify verified construction wrongs committed by contractors. Yet, when the homeowners availed themselves of the system, they found no advocacy.

Homeowners acknowledged that while due process is necessary, it need not be so piecemeal, nor should it take over a year. The owners believe the system should better allow for advocacy by the Registrar. They believe the Registrar's Office should more frequently become a party to the case. The Courts or the Office of Administrative Hearings can ensure parties get due process. They noted various Arizona commissions and boards become a party to cases. The licensees in those circumstances must maintain pre-set standards or face disciplinary proceedings.

The owners think the Registrar's mission statement is misleading because it indicates the ROC takes a more active roll than they do in practice. Owners believe the Registrar's Office is too passive and they relegate too much responsibility to homeowners. They think the Registrar should more actively regulate construction licensees to make certain contractors adhere to construction standards and laws. Because the Registrar's Office declines to become a party in most cases, it means that whole segments of contracting law have no champions.

Homeowners do not think their claim should compete with others in a race to see who will get a recovery amount before the fund limits stop further payouts. They think all wronged consumers, having actual losses, should be entitled to a recovery fund payment. They think this is only fair given that contractors are not paid via independent escrow account officers, but directly by consumers.

In addition, homeowners complain the Fund requirements impose a cruel hardship when coupled with the provision stating homeowners must only hire licensed contractors. Owners complained that, in their experience, licensed contractors frequently refuse to bid on jobs when they stem from a prior dispute with another contractor and when there has been a complaint filed with the Registrar.

Homeowners further complain it seems unfair that contractors can use the very handymen and unlicensed contractors that the homeowners are barred from using.

Homeowners say these limitations box them into spending more money when they already face financial losses. They think their sweat equity should be allowed if the Registrar deems the amount claimed as reasonable.

Homeowners think the Registrar's Office has unrealistic expectations in regard to justifying Recovery Fund Claims. They tell of extreme difficulties finding alternative contractors willing to step into the midst of another contractor's faulty job. They view the restrictions on handymen as ironic and punitive. They ask, "How is a bad licensed contractor or his unskilled laborers, better than a good unlicensed handyman?"

Homeowners believe that many jobs do not require licensed workers to do the job, but are simply laborious tasks. Homeowners think they should be able to hire laborers for unskilled jobs such as clean up, unloading, paint preparation and minor landscaping. They note that

contractors hire such laborers to do these tasks and more. Additionally, they ask, “How can homeowner sweat equity be of no value if it gets the job done? They think that receipts and alternative contractor estimates should only be one means of determining a fair Recovery Fund amount.

Registrar of Contractors View

The Registrar’s Office thinks the general structure, restrictions and Recovery Fund amounts are about right. They claim few people are rejected if they have valid claims. They note individuals may have damages exceeding the \$30,000 individual limit, but they say the courts can be petitioned for additional re-dress in these circumstances. They watch the Fund and believe most people recover money once their Recovery Fund claim is approved. The Registrar of Contractors supported an increase to the Fund limitation amounts in 2002.

The Registrar’s Office said they would frequently close a case if the homeowner stops pushing the case forward. The office said it is a “complaint-driven system.” Therefore, if a homeowner stops complaining, the ROC will commonly close the case. This is true even if the ROC inspector has already confirmed the contractor failed in some manner.

The Registrar’s Office acknowledges, “Current agency procedures for issuing and renewing licenses, investigating complaints and providing financial reimbursement through the Recovery Fund are labor-intensive and lengthy in duration.” (*Project and Investment Justification, Registrar of Contractors Information Management System, Dec. 2006.*)

The Registrar’s Office does not want handymen or homeowners to be paid for labor to fix an errant contractor’s work. They believe it best to keep the current requirement that a licensed contractor fix another contractor’s work.

The Registrar’s staff said they tend to be impartial and gear their system toward ensuring due process to all parties in a case, but they infrequently become parties to a case themselves.

Findings for Issue 2

Finding 2A

The Registrar of Contractors Recovery Fund’s \$30,000 individual and \$200,000 total monetary limits are too low.

The Fund limits were last increased in 2002. However, the value of residential real estate and the cost of building in Arizona have dramatically risen in the past five years. In many cities, single-family home prices more than doubled since 2002 [ArizonaRealEstateNotebook.com]. Simultaneously, complaints against contractors have risen. Naturally, this means potential losses for homeowners utilizing contractor services likewise escalated. Logically, potential damage awards should rise to compensate for the increased potential losses.

Finding 2B

Low limits mean that some wronged consumers are likely to go away empty-handed or undercompensated.

The specifics of this case demonstrate that one bad contractor can have a devastating effect on many consumers. There is a strong likelihood harm will come to multiple consumers before a bad contractor is reined in. Under the current configuration and \$200,000 limit, only 6.6 homeowners could get a complete Recovery Fund award.

As of May 22, 2008, three contractors reached the maximum payable amount (\$200,000 limit) for fiscal 2007, and five contractors reached the maximum payable amount for fiscal 2008.

The contractor in this case had 25 complaints filed against him stemming from contracts dating from 2005 and 2006. After about two years, these complaint cases had gone through most of the system and were closed. Twenty-three homeowners succeeded in proving the contractor deserved discipline for wrongful acts. Nine of these homeowners recovered money from the Recovery Fund to compensate or partially compensate them for their loss. Yet, seven deserving homeowners, with a total of \$96,515 in unrecoverable awards, went away empty-handed despite proving the contractor's guilt.

We found that this contractor having numerous complaints is not just an anomaly. Other contractors face numerous complaints. One contractor reportedly had over thirty ROC complaints [*Arizona Republic*, June 1, 2007]. Additionally, the ROC issued a press release on January 17, 2007 when they revoked a contractor license after fifty complaints. These cases are all likely to leave numerous homeowners without access to the Fund. Early complainants would potentially receive disbursements, yet latter complainants might be shut out of the Fund due to the statutory limitation amounts.

Finding 2C

The ROC complaint process tends to take between one and two years until final penalties are ordered, so bad contractors can continue to accumulate contracts while under investigation.

Homeowners are often oblivious to the contractor's prior problems. These owners can incur losses deserving compensation, yet they may fail to qualify due to the present Recovery Fund limits. Other deserving families essentially beat them to the Recovery Fund.

Unless the Registrar's Office issues a summary suspension or finds a "quick" reason to revoke a license administratively, a contractor may continue working even if his license has numerous complaints. If the Registrar eventually issues an order suspending a licensee for workmanship reasons, then existing statutes say the contractor may work to correct the problem that resulted in the suspension, but he cannot take on new assignments. Suspensions typically are not ordered in less than 240 days from the day a complaint is filed. More frequently, it takes over 300 days before an order of suspension is issued.

Finding 2D

Most complaints require lengthy due process procedures before contractors face discipline. Faster processes like summary suspension and administrative suspensions exist, but they have many restrictions and thus, are limited in use.

Summary suspensions are highly unlikely and administrative suspensions are not applicable in most circumstances. The Registrar's staff have only issued a summary suspension once in staff memory. Therefore, the rare exceptions to the slow process are instances when the ROC happens to find an administrative reason to suspend a contractor's license. For example, a contractor may lose his corporate status or bond. If this occurs, and the Registrar's Office discovers this, then the Registrar can quickly file an administrative order to suspend the contractor. A contractor may not engage in any contracting work once he is administratively suspended. He may only labor to eliminate the reason for the administrative suspension.

Finding 2E

In addition to the recovery fund process taking a long time, it also is a complicated matter to establish the exact recovery fund request.

Estimates are frequently difficult for homeowners to obtain. Other contractors (replacements) tend to shy away from homeowners who have filed with the ROC. Yet, ROC staff members tend to want to see professional estimates.

The Registrar's Office does not assist homeowners in developing their recovery fund determination. There are no published benchmarks for homeowners to go by. The Registrar's Office does not have a published, clear standard for determining value estimates for work, supplies or equipment. Real estate appraisers and contractors rely on publications such as *Marshall and Swift's Home Repair and Remodel 2007 Cost Guide*. The Registrar's Office could do likewise, but do not.

This means that under existing practices, homeowners are entirely responsible for cost estimates and the Registrar staff has essentially, veto authority. Implicit in the staff member's analysis is their decision as to whether or not the homeowner's claim figures are reasonable. In other words, the Registrar's staff cannot veto a claim unless they conclude the figure assigned to the claim is not reasonable. Currently, ROC staff members give general guidance, but they will not help homeowners establish specific values. Yet later in the process, in order to fulfill their evaluation task, the ROC Recovery Fund staff must determine if the estimates are sound. It seems logical that the Registrar make their valuation judgments sooner, rather than later.

Finding 2F

The Fund does not allow homeowners to be compensated for their own efforts or time, nor does it allow homeowners to utilize the services of handymen in most instances.

A homeowner might engage a handyman to do a small job (\$150), but the owner is barred by statute from submitting the amount as a Recovery Fund claim if the owner's total Fund claim exceeds \$1,000. This does not seem fair, given the same handyman could do the same work for a contractor and it would not be illegal.

The limit should be tied to the handyman's total labor charge in a job, not the cost of the total project. The Registrar already has the discretion to discard unreasonable estimates and contractors have rights to contest estimated amounts so it should not present an undue or unfair hardship on contractors.

Recommendations for Issue 2

Recommendation 2A

The Legislature should consider amending construction statutes to increase individual Recovery Fund claim limits from \$30,000 to \$50,000. Single-family home prices rose over 100% in most cities in Arizona within the past five years, thus risk to homeowners increased similarly. Homeowners frequently incur actual financial damages exceeding the \$30,000 mark.

Raising the amount to \$50,000 would not give impacted homeowners a windfall because Recovery Fund claims only compensate for actual losses.

Recommendation 2B

The Legislature should consider amending construction statutes to increase the total claim limit against a contractor from \$200,000 to \$500,000. The process of stopping an errant contractor is very time-consuming. As a result, there is a high probability such a contractor will cause significant financial damage to numerous homeowners prior to his license being suspended. Bad contractors can have so many legitimate claims that the fund reaches its artificial limit, leaving some worthy claimants with nothing. That is not fair. A higher total claim figure would compensate or partially compensate more deserving homeowners than allowed under the existing limits. If the individual limit rises to \$50,000, then 10 homeowners could receive the full Recovery Fund allocation before the Fund maxes out and closes.

The Registrar's Office said only a few Arizona homeowners have been placed in the bad position where they prevailed in their claims, yet were barred from the fund due to the statutory limits. This is a further argument that the total fund limits should be eliminated or adjusted upward.

Recommendation 2C

The Registrar's Office should develop methods to estimate reasonable construction costs in instances where homeowners cannot produce actual supporting documents or find contractors ready to embroil themselves in another's dispute. The Registrar's Office could issue a preliminary estimate of the value of labor, equipment, supplies and material that would serve as a suggested floor amount for the recovery fund amount. Homeowners could accept this floor amount or get specific estimates.

Numerous resources exist which the Registrar's Office could rely on when developing these estimates. Professional appraisers use cost approaches based primarily on reproduction cost of improvements. There are published cost-estimating manuals and web applications such as Marshall and Swift's *Home Repair and Remodel 2007 Cost Guide* and the *Residential*

Estimator 7. The Registrar's Office should staff their Recovery Fund Department with a qualified appraiser to make and validate official building and remodeling cost estimates.

Recommendation 2D

The Registrar's Office should develop criteria to define and pre-approve some situations when it is reasonable to accept estimates for homeowner "sweat-equity." A homeowner's own labor, in recompense for the failures of a contractor, should be valued. As with every other estimate recommendation, contractors should retain the right to contest the figure.

Recommendation 2E

The Legislature should consider legislation to remove the \$1000 limit found in A.R.S. §32-1121 so that the total cost of the contract is not a factor when using a handyman, just the handyman's total labor charges as a portion of the project charge.

Recommendation 2F

The Registrar should examine how other states manage multiple claims against one contractor and develop a like proposal for the Arizona Legislature to consider.

Issue 3 --Is the Registrar's overall process reasonable or is it too complicated?

We looked at contested complaints on their journey through the system. It did not matter whether we were talking to homeowners, contractors or even ROC staff, one refrain kept being repeated - - the process is complicated.

Some matters consistently caused strife. Scheduling delays, exactly what constituted abandonment and when it was permissible to hire a new contractor frequently frustrated parties because they felt they had no way to effect events or even get a definitive response. The whole topic of settlements was a particular mystery.

Citizens say Registrar staff are usually very pleasant, but frequently cannot assist them because they are personally unfamiliar with the citizen's case. Because the computer record-keeping system is so lacking in imaging and other modern features, the staff must frequently hunt for the paper files. As a result, homeowners are bounced from section to section and must repeat their questions to each employee. This is frustrating, time-consuming and inefficient.

The ROC process is so segmented that homeowners and contractors find it difficult to track what is going on with complaints. Callers said ROC staff would leave them guessing about their case progress. They would get responses from ROC staff saying they did not know more about the case than the fact it was logged in and given to the inspectors. Consumers were then told inspectors would "get in touch", but not to expect a call anytime soon because they were backed up about eight weeks on scheduling inspections.

Other comments indicate that staff members are left in the dark when case documents are sent to imaging. An inquiry to ROC leadership in mid-January 2008 concerning a Recovery Fund case got the following response, "The documents in this matter are still awaiting imaging, so I am unable to look at any of the documents in this case. Currently, imaging is working on scanning late-October and early November Citations. This matter was submitted to the Legal Department for the issuance of a Citation and Complaint on or about November 9, 2007. Thus, a Citation and Complaint should be issued on or about March 9, 2008."

Due process requirements inject multiple levels of notices, response periods, hearings and appeals. A single case moving from complaint to Recovery Fund will likely have at least two separate hearings and may easily have five hearings. It puts a lot of pressure on the ROC Legal Division. The head of the Legal Division commented about the division's backlog, "We are making a strong push to reduce our backlog, but with an tremendous increase in workload, a loss in staff members (we have vacant positions), the over 2- month absence of a Legal Department Manager, the termination of overtime for about 2 months, and the move, we are still telling people 4 months for the issuance of a Citation and Complaint. Even before the move and with no staffing shortage, we were still at about 3 months out for issuing a Citation and Complaint. It is just the sheer volume of work that Legal (has) that dictates this."

At various times during the course of this investigation, we informed the ROC their web site contained some inaccurate FAQ points and descriptive passages, obsolete matrixes and other misleading information. Other times, we found little or no guidance to explain relevant topics and process requirements to aggrieved homeowners or contractors. Consumers and contractors crave instructions, yet many subjects relevant to the ROC complaint process were not explained well. The Registrar's Office recognized these problems and recently deployed a series of excellent improvements to their web site information pages. They eliminated many of the misleading, inaccurate or out-of-date statements. Further, they added a significant amount of new information. Consumers and contractors will both benefit from the added material.

Complainants' View

The complainants believe both the Registrar of Contractor's process and the Court path to the Registrar's Recovery Fund are horribly onerous and geared primarily to protect and benefit contractors. The homeowners recognize that Recovery Fund cases are more complicated than most ROC cases, but they think their experience illustrates that both processes are overly complicated and take too long if one has to contend with the unabridged path to the Recovery Fund.

The homeowners contend the system is a disjointed, grueling, bureaucratic maze, which only a small percentage of the heartiest homeowners can weather. They think few homeowners have the stamina and resources to keep a complaint active from the beginning to the end of the process. They think contractors have a redundant amount of due process rights and the worst contractors use these to "game" the system.

Three homeowners in the background case under discussion got settlement offers from the contractor. The settlements offered to either pay back the homeowners or repair badly

constructed areas by a deadline. Homeowners accepted, but in each case, the contractor defaulted. Worse, the ROC did not wait to see whether the contractor lived up to his settlement, they simply closed the case and marked the matter "settled." Homeowners had to wait for the deadlines to roll around before they were allowed to complain. Once it was clear the contractor defaulted, homeowners then had to plead to the ROC to re-open their complaint.

The homeowners in this case believe the ROC forgot its reason for being is not just to protect homeowners from abuse by unlicensed contractors, but also to protect them from unscrupulous or inept licensed contractors. They felt they were required to constantly prod the Registrar's Office to keep the complaint process going. They also felt the Registrar staff was not independently invested in protecting the public from unscrupulous contractors or seeing that justice was meted out.

Homeowners said they expected the Registrar to be initially impartial. Once an ROC inspector confirmed a contractor failed and they issue a corrective work order, then the owners expected the ROC to pursue the matter without constant urging from the homeowner. Homeowners also point out they were the ones asking and prodding ROC staff about apparent contractor transgressions related to workman's compensation, corporate, bond, unemployment and tax violations. The homeowners believe the ROC would not have pursued these violations on their own.

Homeowners say the process was very confusing and when they tried to get clarification from the Registrar's staff, the staff members' answers were frequently inconsistent or too minimal in nature to be useful. Homeowners admit it was inefficient to spend hours on the phone asking various ROC staff for help, but they claimed they had no other option, given they found the web site and other written instructions to be unclear.

Homeowners complain that their case timeframes are not posted. It also upsets them that they cannot see when the Registrar has received documents. This means the parties are frequently unsure where they are in the process, how soon they must act or whether they are entitled to the opposing party's filed documents.

Homeowners said their calls were subject to numerous transfers as ROC staff sought knowledgeable co-workers to answer the questions. The owners thought their case ought to have been assigned to a caseworker from the beginning of the process and that the system ought to rely less on paper and more on a modern computerized record system. Homeowners said they view the complaint process from the standpoint of how long they have been mired in the total process, while the ROC staff members speak in terms of how long the case has been in their segment.

The homeowners said they were also confused about the hearing process. The hearings are conducted by another agency, the Office of Administrative Hearings. The homeowners said they would call the Registrar's Office and be told their case had been transferred to the Office of Administrative Hearings (OAH). The owners felt this like a "no-mans-land" where neither agency took ownership of the cases. Owners did not know who to pose their questions to at

this point. When they would place calls for assistance, both agencies' staff said they rely on the OAH web site to explain the hearing process. However, if the web site failed to cover an area, then both agency staff would tend to fall back to the phrase, "We cannot give legal advice," and suggest citizens contact attorneys. Citizens were frustrated because they often felt this was a put-off line and their questions were not requests for legal advice, but questions of process.

Registrar of Contractors View

The Registrar of Contractor's Strategic Plan states their mission is, "To promote quality construction by Arizona contractors through a licensing and regulatory system designed to protect the health, safety, and welfare of the public." They believe they adhere to the mission and that their values and vision reflect this. They say they get good marks for their work from their consumer surveys.

The Registrar's Office believes the process is complicated, but in accordance with statutes and rules designed to give all sides due process. The Registrar staff believes they are impartial, yet responsive if either a homeowner or contractor contacts them. The ROC note they are not usually parties to the case because statutes do not always set them up as such. They acknowledge they will drop the case against a contractor in most instances if the complainants' fail to actively pursue their complaint.

The Registrar of Contractors staff acknowledge that much of the current process is driven by the determination of a homeowner. If a homeowner tires of the fight against a contractor, the Registrar will not typically take on the task of compelling the contractor to remedy a problem the contractor created.

The lack of a robust computer record keeping system frustrates both the public and the Registrar's Office. The ROC systems for contractor licensing, revenue collection, contractor complaints, complaint adjudication and recovery fund disbursements are performed largely with manual systems or by using human-resource-intensive, outdated COBOL-based applications. Routine data aggregation and compilation tasks rely on multiple non-interlaced systems in the creation of reports. This results in errors, missing data and a tremendous expenditure of time. The ROC managers acknowledge that they and their staff spend a lot of time on the phones answering consumer and contractor questions about process and case specifics.

The Registrar of Contractor's staff are more positive when describing their web site. They believe the site is pretty good. They are proud that it has a feature that allows consumers to check out contractors' licenses.

Findings for Issue 3

Finding 3A

The Registrar's segmented process is confusing and too complicated.

The ROC process is greatly segmented. The inspectors seem to know their piece, the legal department theirs and the Recovery Fund staff knows theirs. However, an overall perspective

seems to be missing. Various parts of the system are not integrated or cohesive. It leads to breakdowns in communication between co-workers and between the ROC staff and homeowners. Homeowners report the ROC sections frequently give conflicting information. Homeowners also complain that at times cases fall between segments and no ROC employee takes responsibility for the status or progression of the case. Homeowners do not think there is enough overall coordination and wish they had the equivalent of a caseworker to shepherd the case through the system.

Finding 3B

The ROC rarely becomes a party to a case and frequently fails to pursue contractors who are alleged to have violated statutes relating to worker's compensation, unemployment insurance or taxes.

Usually it is the homeowner vs. the contractor. In the few instances where the ROC does become a party to a case, it generally stems from times where the ROC discovers that a contractor with a revoked license has become a principle in another contracting firm. Additionally, the ROC will become a party to a case when they revoke one of a contractor's licenses and then decide that the nature of the revocation is so egregious, they decide to go after the contractor's other licenses.

The Registrar does not take the lead when they should. Statutes or rules frequently place the Registrar's Office in the role as the enforcer or regulator. For example, statutes explicitly say contractors must pay workman's compensation, unemployment insurance and other taxes in order to obtain and keep contracting licenses. Despite this, the Registrar's Office does not consistently verify or enforce these provisions, nor do they refer alleged violations on to sister State agencies directly tasked with enforcement of the matters. Beyond initial application requirements, the ROC does not systematically verify contractors adhere to these obligations. Even when the Registrar's Office receives confirmation that a contractor is not adhering to these statutes, they rarely pursue the accused contractor.

The contractor involved behind this situation is a case in point. A few months into the Registrar's investigation, homeowners came forward with information the contractor had not paid workman's compensation payments. Registrar staff members were informed, but after they made no move, the homeowners contacted a State Senator. That person made some inquiries at the Industrial Commission and very quickly, the Commission acted. They investigated the claim, verified the failure and levied a \$1,000 fine on the contractor. To date, the Registrar's Office has not acted on the information.

Finding 3C

Instructions should be more comprehensive.

The Registrar of Contractor's process is very complex and involved. Contractors and homeowners say the written communications emanating from the ROC frequently fail to convey exactly what the ROC and the Office of Administrative Hearings need or expect from the parties to the case. At times the communications are simply confusing; topics, which should be explained, are not even addressed (e.g., bond claim option). Sometimes the offices assume the citizens know more than they do. There is no published flow chart of the process, so the parties easily get confused about deadlines and options. We reviewed the Registrar's

brochures and found they are frequently minimalistic, single topic pieces. Thus, individuals must turn to statutes or the administrative code if they desire more information. However, this does not suit consumers well as many people find reading statutes and rules to be intimidating.

Finding 3D

The ROC website and contractor database need further enhancement.

The ROC has extensively refined portions of their web site over the course of the past year. The site has improved greatly since homeowners first complained to us. However, more remains to be done. The new guidance videos are informative and helpful to both contractors and homeowners alike. New Frequently Asked Question segments and other instructions have addressed and clarified the ROC process. However, the contractor database is not as robust as it should be. The web page showing specific information about licensees only displays part of the known and available data. The ROC site acknowledges, *“This information may not include all applicable suspensions.”* The site has no “last updated on (date),” so web visitors do not know how current the information is. Additionally, it fails to note when the contractor’s address is undeliverable. The web site goes on to say,

“Complaints against this contractor are listed below. Complaints that were cancelled, resolved or settled without a corrective work order or dismissed are not included. Contact the Registrar of Contractors at 602-542-1525 or toll-free statewide at 1-888-271-9286 to identify the ROC office location you need to visit to view complete complaint documentation.”

The last statement refers to “complete complaint documentation.” This makes it clear additional information is available, yet not posted on the web. The Auditor General Report of the Registrar of Contractors in 2003 criticized this practice. They said,

“The agency reports the number of complaints each contractor has received in the past 2 years through its phone center and on its Web site. However, because the agency does not currently record information about the nature of complaints on its database, it does not report this information. Instead, consumers who wish to know the nature of complaints must visit one of the agency’s 12 offices and review complaint files themselves. This information can be important to consumers when choosing a contractor. Without this information, a consumer is unaware if a valid complaint concerned issues such as minor quality workmanship problems or more serious issues such as breach of contract or project abandonment. Having to visit one of the agency’s offices to obtain such information can significantly inconvenience consumers, especially in rural areas.”

The ROC staff members, private consumers and contractors all rely on the web database as a source of information to summarize the status of individual licenses and licensees. The current practice is inefficient because it requires the public to come into an ROC office to view copies of complaints. If more information were put into the web database, then time would be saved because interested parties could simply make inquiries on the web instead of

having to physically go to an ROC office and inspect the file. The Registrar's Office needs more computerized data about filings and cases to better serve callers from the moment of initial contact.

Finding 3E

Imaging of documents takes too long.

The ROC reported that case documents were taking almost three months to get out of the imaging process. Documents are not available to staff while they are in imaging. This is too long a period to have case records unavailable. Other agencies (e.g., Corporation Commission, Secretary of State) can image documents within one to six workdays.

Finding 3F

The Registrar's Office does not supervise or actively monitor settlements between homeowners and contractors.

As a result, homeowners felt abandoned if they engaged in a settlement. When the parties to an ROC complaint reach a settlement agreement, the ROC makes no effort to see if the terms of the agreement are kept, they just close the case. This is true even in cases where the ROC confirmed a contractor was in error/fault and had issued Corrective Work Orders. The ROC web site shows the case as "settled." This confuses the public and gives the false impression that all is well because the matter was "settled." The web site had no means of communicating adherence to the settlement or not. Thus, it gave the false impression the problem was addressed and closed.

Finding 3G

The ROC survey form is too simplistic.

We looked to see if the Registrar's Office had a consumer survey. We reviewed the survey form and found its design does not elicit enough feedback for the organization. It asks only one question, "*Please check one (Excellent, Average, Poor) and comment.*" The survey does not appear to differentiate between contractors and homeowners. It does not differentiate between quickly resolved complaints handled prior to hearings (and not involving the Recovery Fund) or those contested, complicated cases requiring hearings to obtain reparation from the Recovery Fund. The vast majority of cases do not require the utilization of the entire ROC process, because the contractor decides to fix the noted problems or the homeowner discovers they do not have a sustainable action to pursue. These respondents might skew the survey results because their interactions with the ROC are so brief.

Recommendations for Issue 3

Recommendation 3A

The Legislature should consider adding three to four staff to the ROC so that each case has a single point of contact for all parties. Caseworkers will guide the case through the system, nudge parties to act when appropriate and disseminate general case information. This will reduce the feeling of segmentation that currently exists. At least one ROC worker will be responsible for communicating the whole picture to all the parties, not just one particular segment. They will not investigate cases, but will be process experts capable of identifying

exactly which segment a case is in and what the expectations are for that particular segment of the process.

Recommendation 3B

The Legislature should consider amending statutes to make the Registrar a party to the case if the State has a clear interest. Examples where the State would have an interest include instances where a contractor fails to pay workers compensation, unemployment insurance or taxes.

Recommendation 3C

The Registrar's Office should augment their written instructions to make them more complete so consumers and contractors are less confused about their processes.

They should flow-chart the process and show each of the parties what options are available to them at each possible stage. Instructions should be more comprehensive. Sample documents should illustrate expectations. We are not suggesting the elimination of single topic instructions, but they should supplant comprehensive explanations. We suggest the Registrar's Office gather all their various instructional materials and refine them to create a web-based consumer handbook for residential construction projects.

The consumer handbook could include suggestions about how to check out a contractor, the elements of a good construction or re-modeling contract and sample contracts. It could list things to be wary of, give recommendations how to handle disputes and offer suggestions how to avoid misunderstandings. It could explain the Registrar's processes relating to administrative complaints or court complaint cases and explain rules relating to handymen.

The Registrar's Office should also design a guideline packet to help those who file Recovery Fund claims. All complainants having potential Recovery Fund claims should be sent a packet acknowledging the filing of their complaint and explaining the ROC process in detail.

It should,

- timeline and "step" each segment of the standard process,
- cite the relevant statutes and rules,
- index what can be obtained off the ROC web site,
- warn about existing handyman limitations,
- explain how to properly document supply purchases
- explain the need for three competitive bids from replacement contractors
- note what requires photo documentation
- list expectations required of the homeowner
- provide forms for standard communication between the Registrar of Contractors and the homeowner.

When explaining their system, the Registrar's Office should explain each segment of the complaint process. The Registrar's Office could show sample complaint forms, typical timeframes, flow charts, requirement/action-item lists, sample recovery fund documentation and sample responses to complainants and contractors. In the style of the Attorney General

Agency Handbook, it could show sample communications ranging from contracts, corrective work orders, responses, recovery fund amount estimates and justifications, subpoenas and other document samples.

The Registrar of Contractors should explain what documents they are likely to issue to the parties. Further, they should make clear exactly when they expect to hear from complainants to keep the process going.

Recommendation 3D

The Registrar of Contractors should keep improving their main web site. The ROC deployed many improvements in the past year. The site is much more informative and user friendly than what was available a year ago. This is especially true of the Recovery Fund forms, instructions and video. However, the site needs more comprehensive segments to better inform homeowners and contractors about the ROC and Office of Administrative Hearings expectations relating to filing deadlines, rules, hearing procedures and response protocols. Homeowners and contractors crave samples to illustrate instructions and responses. Explanations about compliance hearings and settlements mystify the public so the Registrar should explain them better. The Registrar's web site should be able to display the status of complaints or link to the Office of Administrative Hearings case information. Registrar staff should have quick research options allowing them to point consumers to online, timesaving data and features.

Recommendation 3E

The licensed contractor database posted on the Registrar's web site should be refined to be more comprehensive and up-to-date. The Registrar's Office should post all instances of undeliverable addresses, corrective work orders, citations, suspensions, revocations, pending settlements, closed cases or other like official matters within three working days from the time the ROC becomes aware of the event. The date the information was last updated should be noted.

Recommendation 3F

The Registrar's Office should consult with Arizona's Government Information Technology Agency (GITA) and develop a project to expand their imaging process so that it is faster and more all encompassing. The current imaging process takes too long, keeps files unavailable and is not comprehensive enough.

The public should be able to pull up images of official documents like corrective work orders, citations, hearing date assignments, requests for re-hearings, OAH findings and suggested orders and the final ROC order.

The Office of Administrative Hearings and the Corporations Division of the Corporation Commission are two examples of agencies with extensive imaging systems. These agency sites have modern databases containing images tied to comprehensive lists of documents and events relevant to each case file. Barcode readers coupled with indexing stickers and scanners have been one inexpensive, yet effective method for agencies to image documents.

Recommendation 3G

The Registrar's Office should post case timeframes on their web site. The Registrar's Office should post current information about waiting-time forecasts for initial inspections, hearings and the anticipated time between a Registrar's Recovery Fund Order, to its pay out. Parties to cases should be able to go to the web site and see where their case is in the process.

Recommendation 3H

The Registrar's Office should monitor settlements between homeowners and contractors. They should suggest settlement provisions to require parties to report contract breaches to the Registrar. If the parties reach a settlement agreement, the ROC should verify the contractor keeps to the terms of the agreement or automatically re-open the tabled complaint.

Recommendation 3I

The ROC database should not display the word "settled" until the matter is fully closed and the parties live up to the terms of the settlement. The Registrar's Office should develop some other term or phrase to describe situations where settlement agreements are in play (e.g., "pending settlement").

Recommendation 3J

The Registrar's Office should improve their survey. The survey should identify whether or not the respondent is a contractor or homeowner, whether or not the case went to the recovery fund stage and how long the complaint took to resolve (date complaint was opened to date case was closed).

Issue 4 – Are there appropriate triggers for the summary suspension of a contractor's license (as referenced in Arizona Revised Statutes §41-1092.11)?

Arizona Revised Statutes §41-1092.11 says the Registrar of Contractors may summarily suspend a contractor's license when public health, safety or welfare imperatively require emergency action. However, the Registrar's Office said they almost never invoke this provision and could only recall one situation where they issued a summary suspension. They further explained their assigned attorneys from the Attorney General's Office felt the language was so restrictive; the regular process should be used in most situations to avoid claims of due process violations.

We asked a Legislative Council attorney to examine case law and other statutes relevant to the invocation of such an emergency action [see Exhibit C]. The attorney found, "*The ROC is not mandated to invoke the summary suspension provision. The statute provides that if the ROC finds the exigent circumstances a summary suspension 'may' be ordered.*" The attorney also explained the Registrar may issue a citation with the order to show cause why the license should not be suspended or revoked.

In 2003, the Arizona Auditor General Report of the Registrar of Contractor Office recommended the agency develop criteria as to what constitutes grounds for summary

suspension [see Exhibit D]. The Registrar's Office agreed and said they would develop criteria, but they never followed through on their pledge.

In the 48th Regular Session (2008), a State Senator acted and sponsored SB1417, which set up two criteria for summary suspensions. In the most recent session of the Legislature (48th Regular Session, 2008), the Legislature acted. They approved two provisions listing scenarios where summary suspensions can be invoked. Senate Bill 1417 was passed and became Chapter 261. It amends Arizona Revised Statutes Title 32. A.R.S. §§32-1171(A) and 32-1171(C), General Remodeling and Repair Contractors establishes two criteria where the Registrar may issue a summary suspension -- one in the case of a contractor failing to obtain workers' compensation pursuant to Title 23, Chapter 6, Article 4 and the other when the Registrar believes an investigation indicates the public health and safety requires immediate action.

Complainants' View

The homeowners thought the Registrar's Office should have issued a summary suspension of the contractor's license early in this process. Homeowners said they brought evidence of fires caused by faulty wiring, improper seals that could lead to electrocutions, walls built without rebar reinforcement, ceilings built without adequate support and unfenced deep open trenching, but nothing merited a summary suspension of the contractor in the eyes of the Registrar's Office.

In the cases we investigated involving the one contractor, the contractor's company frequently abandoned projects. Worse, he abandoned projects in mid-stream and after residences were made uninhabitable. Exterior walls, roofs, electrical, plumbing, air conditioning units and other critical items were removed or left inoperable for weeks at a time. Frequently, these incidents took place when summer heat was at its worst.

Homeowners believe the Registrar's Office is not realistic to expect a homeowner to live with obvious, life-threatening safety concerns. They think there should be some process to expedite an ROC complaint to compel contractors to take immediate remedial action when workmanship problems pose grave risks or hardships. They believe there is a precedent with fire inspectors and county health departments. They believe the Registrar's Office should develop an expedited process to give the contractor due process, yet handle the threat in a timely manner in order to safeguard the greater community. They believe the Registrar, in conjunction with the Office of Administrative Hearings should hear a summary suspension case within thirty days.

Homeowners cited numerous examples of hazards created by the particular contractor in this case. One owner had an electrical fire due to the contractor's shoddy work. Numerous others reported electrical work that also failed code inspections. One owner found the contractor's crew failed to install G.F.I. wiring properly and worse, their work incapacitated the previously installed G.F.I. work throughout the house. Others lived without air conditioning for weeks in the heat of summer. Another family feared electrocution where the contractor installed a new roof and interior ceiling. The work was so shoddy; the family could not use electrical lights

and outlets in the impacted room because rainwater from summer monsoons would drip into the devices.

Other homeowners' roofs and walls were removed by the contractor with no concern for the owners' security or the effect of the elements. Still others had plumbing turned off for extended days and even weeks. The contractor constructed a roof and ceiling without a required center support beam at one family's home. The contractor also built block walls without required rebar support. He dug trenches and left them open and unsupported with no safety warnings. Thus, one contractor caused numerous simultaneous hazards because of shoddy work, yet there was no mechanism to curtail the danger to the community.

The pain expressed by the homeowners when they describe their experiences with the contractor in this case is palpable. Three of the families said the constant worry of having their home made uninhabitable for a long period wore them down and gave them serious physical side effects from the stress.

In this case, the contractor was able to continue his business operations and sign new contracts.

The clause might never be invoked with its present interpretation, but homeowners do not understand this when they look at the basic meaning of the statutory language. Consumers interpret the law to mean the Registrar has the right, and even the duty, to suspend a contractor whose acts create a public health, safety or welfare concern.

More than one homeowner said they wished the Registrar of Contractors did not exist because they would have naturally been more wary in dealing with the contractor if they were not lulled into a false sense of security. Many homeowners recall looking at the Registrar's web site, but they did not see complaints against the licensee until it was too late and they had already signed a contract.

At least three families believe their experiences demonstrate the slow ROC process stymied them from appropriately safeguarding their family or members of the public. They think financial and other harm might not have been inflicted on latter consumers if the ROC had more promptly suspended the contractor's license.

Complainant families recount pleading with the ROC staff to give them some assurance they had authorization to hire a new contractor or purchase vital equipment. The long process meant they lost their peace of mind. The owners thought in situations where grave risks or hardships were demonstrated, summary suspensions were merited and should have been invoked.

Without a summary suspension, it usually takes 12 or more weeks just to get to the point where the contractor somewhat documents his bad faith if he fails to respond to the citation. Twelve or more weeks are too long to wait for a roof, air conditioning/heating, or other major habitability failures to be corrected. Yet this is exactly the expectation.

The historic process did not account for different levels of habitability or risk resulting from contractor errors. The ROC staff advised homeowners to wait about 90 days before they fix their homes after they file a complaint. The ROC staff explained this was because it takes an average of 8 weeks for an inspection and then another twenty days for a corrective work order. The contractor then gets about two weeks to fix the project. The ROC workers told owners they would enhance their case by refraining from fixing problems until *after* their allegation was verified (via inspection). The ROC workers also told the homeowners they would further enhance their case by “showing good faith” if they allowed the original contractor to fix the problem within the period stipulated in the ROC citation.

In this case, waiting for remedy took an enormous emotional and physical toll on homeowners. Three complainants sought medical care resulting from stress brought on by the contractor. Property owners felt they were in an untenable position. If they fixed their home, they might lose evidence and the ability to prove good faith. If they did not, then they had to survive living in a health hazard. Such a scenario seems to be at odds with the Registrar’s mission to, “protect the health, safety and welfare of the public.

Registrar of Contractors View

The Registrar’s Office is satisfied with the current language about summary suspensions. They believe this provision is inappropriate to invoke except in very rare instances because of due process concerns. They did not explain why their office initially agreed to develop criteria when the Office of the Auditor General initially proposed they do so in the 2003.

The Registrar’s Office argued they were justified in taking the position that summary suspension should not be used except in the most egregious circumstances. In their view, few things rose to the point of an “imperative public health, safety or welfare” concern. They only invoked a summary suspension once in the managers’ institutional memory.

Findings for Issue 4

Finding 4A

Historically, the Registrar’s Office avoided invoking the provision that summarily suspends a contractor’s license even when warranted.

The Registrar’s Office is not mandated to issue summary suspensions. However, if the ROC finds the “exigent circumstances” a summary suspension may be ordered. This is highly unlikely because staff think the ROC has only issued a summary suspension once in the past decade or so. The Registrar and his staff say they (and their assistant Attorney General legal council) do not believe many circumstances rise to the level of *imperatively* requiring intervention due to threats to health, safety or welfare. However, this ignores the logical question, “Why have such a statutory clause, if it is never to be invoked?”

Other State agencies issue summary suspensions on occasion. These agencies expedite their internal investigation and administrative process in such situations and refer the matter to the hearing office. The Office of Administrative Hearings accommodates these agencies and the

impacted licensees in such circumstances by assigning the case for hearing within an expedited 30-day process.

Subjecting a person to conditions that could plausibly lead to death or serious bodily harm could be considered as an instance rising to an “imperative” level. The contractor in question used unlicensed employees to perform electrical, engineering and trench work, which caused two fires and multiple physical hazards. Additionally, the contractor’s company frequently abandoned projects. Worse, he abandoned projects in mid-stream and after residences were made uninhabitable. Exterior walls, roofs, electrical, plumbing, air conditioning units and other critical items were removed or left inoperable for weeks at a time. One cantilevered ceiling and room addition was red-tagged by a city inspector because the room teetered on the verge of total structural collapse. Despite their knowledge of this licensee’s transgressions, the ROC declined to use its authority to issue a summary suspension. Such a suspension could have addressed the critical hazards and issues and would have expedited the case faster through the process.

In the 48th Regular Session (2008), the Legislature acted on this concern. Senate Bill 1417 adjusted the provision about certain forms of summary suspensions. It eliminated the word “imperative” in regard to regulation of contractors and described two situations where summary suspensions were permitted. The Legislature instructed the Registrar to develop rules to handle summary suspensions.

Finding 4B

Senate Bill 1417 changed Arizona Revised Statutes Title 32 to specify situations where the Registrar may invoke summary suspensions in two situations or stop a contractor from accepting more work in another, but it did not establish an expedited investigatory or repair process in such cases.

SB1417 changed A.R.S. §32-1171. The provision A.R.S. §32-1171(C) speaks to the need for occasional emergency intervention and refers to cases where the Registrar confirms that public health and safety requires immediate action. Another provision, A.R.S. §32-1171(B), stipulates that any contractor who is the subject of five unresolved and substantiated complaints they abandoned projects may not take on additional work until the number of complaints is below five in a twelve month period. The law has not yet gone into effect, so it remains to be seen how this provision will be invoked or otherwise work in practice.

Finding 4C

There is no process to expeditiously determine whether a situation rises to the level where the Registrar can confirm a threat of danger to public health and safety requires immediate action.

Without such a process, the danger would continue unabated while the case slowly progressed through the regular inspection route. Weeks or even months could elapse before the danger is confirmed and a summary suspension ordered. This thwarts the rationale for summary suspensions.

Recommendations for Issue 4

Recommendation 4A

The Legislature should consider creating statutory criteria to specify situations where the Registrar's office is required to perform expedited inspections (within two working days) when a homeowner credibly alleges a public health, safety or welfare concern exists as the result of faulty acts committed by their contractor.

Recommendation 4B

The Legislature should consider further stipulations describing circumstances where the Registrar's Order confirms a public hazard or active safety issue directly attributable to the contractor, the contractor should be required to fix the hazard within a 24-hour period or some other brief time or deliver specific evidence to counter it being his/her responsibility. The hazard should be grave enough to potentially cause death or serious bodily harm. Failure to comply with both of these provisions should result in a default finding releasing the homeowner from his obligation to continue to work with the initial contractor. However, it should not release the contractor from existing damage claims.

Issue 5 - -Can problem contractors "game the system" and avoid discipline?

We examined whether contractors can manipulate the system to avoid discipline or prolong cases.

Construction projects usually are defined via a written contract between a homeowner and a contractor. Details listed in the contract and the overall contract quality can later prove to be critical if disagreements arise. When homeowners believe a contractor has failed to adhere to workmanship standards or abandoned a contractual project, they can complain to the ROC.

The typical complaint process follows a routine where contractors are noticed when homeowners file a complaint. The notice suggests the contractor contact the homeowner and address the problem prior to an ROC worksite inspection. It announces an inspection date weeks in the future. Thus, there are not any surprise inspections and contractors have time to make repairs or otherwise address issues they failed to prior to the filing of the official complaint.

Weeks later, if the homeowner is still unsatisfied, an ROC inspector visits the worksite. If the inspector confirms the complaint, the agency sends the contractor a corrective work order. If the contractor corrects the problems listed in the order at any time prior to a disciplinary hearing, the complainant may tell the agency to close the complaint.

As mentioned previously, Senate Bill 1417 has a provision to address cases where bad contractors chronically abandon work sites without completing projects. After five such substantiated complaints, a contractor may not accept new projects until the number of complaints falls below five in a twelve-month period.

The State of Connecticut has developed an interesting way to keep contract quality high. They require certain provisions in order to have a valid legal home improvement contract. Connecticut requires a contract be:

- 1) in writing
- 2) signed by the owner and the contractor
- 3) contains the entire agreement between the owner and the contractor,
- 4) contains the date of the transaction,
- 5) contains the name and address of the contractor,
- 6) contains a notice of the owner's three day right of cancellation,
- 7) contains a starting date and completion date, and
- 8) the contractor signing the contract is licensed.

Complainants' View

In regard to the contractor involved in these cases, most homeowners said they checked the contractor's record. For months, only one complaint was visible. The homeowners felt the ROC web site information was too minimal and that it deprived the public of useful information. The one visible complaint showed as "closed" and "resolved." The contractor was able to make light of it for those who asked. The consumers felt that due to the six-week long wait for inspections, the contractor was able to use the time to set up his Ponzi scheme. He engaged in other contracts. New customers could either not see the new complaints altogether or they could not determine if the complaints were substantive or not.

Homeowners in this case believe that the worse a contractor is, the more likely he will avail himself of every delay tactic available. They think it takes too long to schedule inspections and hearings. They believe this enables errant contractors to appear unblemished, when actually they have accumulated numerous complaints against their license.

They think there should be default findings or some expedited process in cases where a contractor is administratively suspended. In this case, after the homeowners confronted ROC managers with evidence the contractor's bond was insufficient the ROC suspended the contractor for lack of sufficient bond. Bond companies would not let the contractor buy a bigger bond because he had complaints against his license. From this point forward, the contractor was barred under law from performing any contracting work. The contractor in question ignored the law and kept working until the Registrar's Office got word from the homeowners and issued two, multi-count cease & desist orders against the contractor.

Registrar of Contractors View

The Registrar's Office staff believes their system is good, yet concurs that a bad contractor could exploit it. However, they note the same complaint could be levied against the entire court system. They say most complaints stem from due process constraints. They note due process systems are not instantaneous and frequently are not even reasonably fast.

Despite this, the Registrar's Office thinks that most consumers are satisfied with the system and point to surveys to back their claim.

The Registrar's Office improved their web site and rolled out many new web pages with suggestions for consumers and contractors alike.

Findings for Issue 5

Finding 5A

Bad contractors can exploit the ROC system.

Under recent standards and practices, it has been almost impossible to suspend a contractor in less than nine month's time unless the contractor has had an administrative problem (e.g., lost his bond or lost his corporate status because the Corporation Commission dissolved him). In nine months, a bad contractor can do a lot of harm. The statutory change made by Senate Bill 1417 in this year's session takes steps in the right direction to improve this situation by specifying two circumstances when the Registrar may invoke a summary suspension.

The Arizona ROC system has heretofore not been geared to nip bad contractors in the bud, but rather, it allowed them to continue working relatively unchecked while they exhaust extensive and time-consuming due process rights. Contractors were not required to disclose complaints to potential clients. With the exception of those with multiple abandonment claims (5), those who fail to secure workers' compensation and those whose workmanship creates a threat to public health and safety, they may take on new work until their license is suspended or revoked.

Finding 5B

Contractors, unlike realtors, do not have standardized contracts.

Construction contracts do not have uniform boilerplates explaining the parties' rights and obligations and those of the contractor. Some contracts are excellently crafted and afford notice, specifications, timeframes and disclaimers that inform and protect both the homeowner and the contractor. Others lack information or elements critical to an enforceable contract. The absence of such requirements enables badly behaved contractors to exploit unwary homeowners.

Exploitation by contractors takes many forms. For example, without stated timeframes, homeowners are at the mercy of a contractor even showing up to work or turning in permit applications. If material, hardware or equipment items are not specified, then contractors can use minimal standards in construction. Homeowners will find it difficult, if not impossible, to press for any better standards after they sign a contract. Other times, contractors inappropriately press homeowners into making payments when they should not. Duped homeowners give monetary advances on work and material when such acts are strictly illegal. The contractor in this case used every form of exploitation listed above.

Finding 5C

Contractors can stall the process by many means.

They might say they are attempting to "work the problem out" before an inspection is scheduled. The ROC staff tend to encourage this and will not rush the inspection unless the homeowner insists. Even then, an inspection typically must be set about 8 weeks in advance

in metropolitan areas. Moreover, one of the parties, or the ROC staff, might ask to re-schedule the inspection. The contractor might contest one or more of the inspection findings. If the contractor does not contest the findings, he is given a minimum of 15 days to fix the problem. However, the contractor might make the case he should be given more time. At the conclusion of the allotted time, the ROC issues a citation and asks the contractor to respond within another 15 days. The contractor could wait until the last day to file a response. The ROC would then forward a request to the Office of Administrative Hearings asking to get on their agenda (likely to take about three months). Any of the parties or the two agencies could ask for a continuance

Finding 5D

Complaints closed *after* a corrective work order, but before an administrative hearing, largely allow bad contractors to thwart the discipline process.

Under such a scenario, penalties are not issued and discipline is not imposed. In actuality, the only visible downside is the ROC web site will show those who look that a complaint was closed because it was “resolved,” “settled” or “withdrawn.” The Registrar’s Office does not hold the contractor accountable for creating the violation, violating ROC workmanship standards or inconveniencing the homeowner.

Thus, a contractor who wants to game the system knows that he does not really have to fix the problem until just before a hearing, which is frequently over 225 days after the complaint is filed. Bad contractors, who consistently fail to adhere to rules or statutes, are permitted to operate because they skirt the penalty phase by fixing problems at the last minute. They are not truly held accountable for their failures because they do not incur formal discipline. They operate without the public having a full comprehension of their transgressions.

Finding 5E

Complaints closed *before* an inspection and issuance of a corrective work order, thwart the discipline process even more because they are not recorded as complaints.

These “complaints” never appear against the contractor’s record in the public database. The ROC web database does not display or count such cases. Thus, under this scenario, even less is revealed to consumers. Again, penalties are not issued, discipline is not imposed and contractors are not otherwise held accountable to the ROC.

These two courses of action allow contractors to commit multiple violations, but never receive discipline. Further, the process fails to protect other, future consumers who may hire such a contractor. Essentially, if the contractor wears out the complainant or settles, then the problem just goes away. In such a circumstance, the problem licensee never faces a consequence from the State for creating the problem in the first place.

Finding 5F

A contractor’s administrative suspension does not automatically make a contract voidable for a homeowner.

A contractor is legally barred [A.R.S. §32-1154(A)(18)] from performing any work while they are administratively suspended. The contractor must remedy the cause of the administrative suspension (e.g., purchase a bond, reinstate a dissolved corporation at the

Corporation Commission, get a qualified party, payoff an insufficient funds check, etc.), before they can work. Even though the contractor is not permitted to work, the homeowner is not released unless the contractor consents. The homeowner must fight for release from the contract in court or through the ROC process. Homeowners must still prove their case against the contractor even though the administrative suspension precludes the contractor from working on their home. It is especially frustrating for homeowners who are pursuing claims of shoddy workmanship because they must wait for the days to click by if the contractor was issued a corrective work order.

Recommendations for Issue 5

Recommendation 5A

The Registrar's Office should create a rule requiring that residential contractors give homeowners a consumer handbook with all formal construction bids. The Registrar's Office should develop the handbook and seek input from consumers, contractors and expert attorneys who regularly represent both of these groups. Homeowners should receive the booklet or be "pushed" an electronic notice e-mail prior to the signing of any residential remodeling or construction contract.

The booklet should include a warning page for consumers informing them of good and bad practices in the construction industry. It should list elements common to good construction contracts and display a collection of various sample contracts. It should have model contracts that can be adapted for individual use.

It should tell homeowners how to check the record of a contractor and how to document interactions and/or disputes with their contractor. It should tell them how to file a complaint with the Registrar's Office if they cannot resolve a disagreement with their contractor. It should disclose complaint limitations and alternative means of resolving construction disputes.

The web-based pamphlet could be sent electronically to homeowners. Contractors would be responsible for getting a homeowner's signature on the disclosure form indicating receipt of the consumer booklet prior to contract signing.

The Registrar's Office already has a number of elements gathered for the booklet, presented in a variety of different places. On the "Consumer Corner" of web page, the ROC offers various warnings and suggestions about what to do before a consumer signs a contract, what to include in all construction contracts and how to handle payments. Their "Read this - Ten Tips Brochure" and "Contracting for Residential Construction Consumer Guide" makes other suggestions. The booklet should also include the statutory directions about contracts found in Arizona Revised Statutes §§32-1129 through 32-1129.06.

Similar booklets or disclosures are required in various private industries and government entities. Diverse examples include mortgage lender disclosures, corporate stock prospectuses, banking account practice summaries, escrow forms, vaccine warning forms, residential real estate contracts, HIPAA privacy forms and Child Protective Service's Guide for Parents.

Recommendation 5B

In situations where licensed contractors are administratively suspended, the Legislature should consider authorizing automatic criteria in statute, that make contracts voidable, thus giving homeowners a release option. Statutes currently mandate that contractors who are administratively suspended cannot perform work on any construction project until they solve their administrative problem. Contractors should have a reasonable time to remedy the problem, such as ten to twenty working days, but after that, the homeowner should have the option to cancel the contract. We recommend the criteria stipulate that homeowners not be released until they pay the contractor for already performed work and purchased materials.

Recommendation 5C

The Registrar's Office official public record posting about each contractor licensee should display the number of times the Registrar's Office verified a complaint against a contractor and the nature of each complaint. It should also indicate the filing date of the complaint, how the complaint was handled and at what stage it was resolved/closed (e.g., before inspection, after corrective work order, after citation, after hearing, after official order, after re-hearing).

Recommendation 5D

The Registrar's Office official public record posting about each contractor licensee should display the number of times the Registrar's Office issued corrective work orders and citations against the license.

Recommendation 5E

The Legislature should consider authorizing automatic trigger points in statute that prohibit contractors, who have too many open complaints, from taking on more work until they resolve the complaints or they fall back to a lower number. If a contractor has a defined number of open, confirmed complaints filed against him in a certain period, he should not take on new business until the number of such complaints fall back below the trigger number. SB 1417 addressed the issue of contractors with excessive complaints, but it focused only on contractors who abandon five or more jobs. Contractors who garner numerous complaints due to poor workmanship are no better than those who abandon jobs. In a sense, they are worse because such job sites are sometimes left in worse shape than before the work began.

The natural trigger to limit contractors with an elevated level of confirmed complaints would be the Recovery Fund maximum value. In other words, once confirmed claims against a contractor exceed the total possible Recovery Fund limit, it would block the contractor from taking on new business until the complaints are resolved to the point the Recovery Fund limit is not in jeopardy. With current fund limits, this would mean a contractor could face six full claims before they would be hit the trigger point and have to stop accepting new work.

Issue 6 - - Are surety bond amounts set appropriately?

We examined surety bond requirements, amounts and availability. A.R.S. §32-1152 was created in 1987 and requires contractors to obtain a surety bond when they become licensed

by the State of Arizona. Arizona Administrative Code R4-9-112 provides a graduated dollar amount of bonding required for a contractor's license based on the contractor's anticipated gross volume of work and within the limits set by A.R.S. §32-1152(B).

Bond amounts are determined according to a contractor's level of business from the year before. General residential contractors must secure bonds with limits between \$5,000 and \$15,000, depending on their prior year's income. [See the Bond Limits Exhibit E] It is largely a self-reporting "honor" system. Contractors first estimate their anticipated volume of work for the ensuing year based on their current work volume. Then they shop insurance companies looking for the lowest rates. Registrar staff report bond application forms used by the insurance companies are simplistic and minimal in nature.

Currently, a contractor pays an insurer 2% to 5% to be bonded. Bond fees are calculated based on the percentage of the contractor's bond limit. Thus, a contractor with a \$5,000 bond limit would only pay \$100 for a 2% rate quote and a contractor with a \$15,000 bond limit would pay \$750 for a 5% rate quote. The Registrar's staff says that most contractors pay less than \$500 for their bond.

Other industries have higher bond requirements. Examples include motor vehicle dealers with bond amounts up to \$100,000; pension trust administrators pay for bonds up to \$500,000; manufactured home installers and dealers have bonds up to \$25,000; mortgage brokers, private investigators, insurance agents, notaries and vehicle recyclers are all examples of occupations requiring bonds too.

To claim a contractor bond, an aggrieved homeowner either files a claim in the Registrar's Office, as a component of their lawsuit in court or as a stand-alone lawsuit just for the bond. Regardless of the method, it is important to notify the Registrar's Office of bond claims as soon as possible so that they are not refunded to the contractor by mistake. Registrar staff note supplier companies typically seize bonds before homeowners because they see trouble more quickly than homeowners do.

Once someone claims a contractor's bond, the surety company is given notice. It is also important to notify the Registrar's Office. If they are made aware of a claim, the Registrar will make sure the bond is not refunded to the contractor. The Registrar's Office may administratively suspend the licensee for lack of bond in the event of a bond being awarded.

A bond must be based on the appropriate bond limit level. If a contractor is under-bonded, then the Registrar can suspend the license due to insufficiency of bond. For the contractor in question, the Registrar's Office notified the licensee he was under-bonded after receiving complaints from homeowners. The bonding company canceled the bond, refusing to let the contractor increase the amount. The Registrar's Office then suspended the license due to lack of bond.

When a contractor is under an administrative suspension, they cannot perform any contracting duties until they fix the administrative problem that led to the suspension. To get back in

business, the contractor would need to pay back the bond or obtain a new one. The contractor in question did not adhere to these provisions and kept working.

The Registrar's Office reviews the bond when a contractor initially applies for a license. There is no requirement for the Registrar's Office to audit contractor bonds on a regular basis. The Registrar's Office staff state they also review a contractor's bond when they receive a complaint or otherwise have a cause of concern. According to the Arizona Administrative Code R4-9-112, "The Registrar of Contractors is not responsible for over or under estimates of volume of work made by a licensee or for sufficiency of any bond or deposit. The Registrar considers a gross underestimate knowingly made by a licensee to be a material misrepresentation, which can subject the licensee to suspension or revocation of license."

The last official review of general bond limits was in 2006. The Registrar of Contractor's Rules in the Arizona Administrative Code were reviewed by the Registrar's Office in 2005 and reported to the Governors Regulatory Review Council (G.R.R.C.) in 2006. The Registrar's Office submitted economic impact studies to G.R.R.C. in 2006.

The National Association of State Contractor Licensing Agencies (NASCLA) and the National Contractor.com data base document 23 states require some variation of bonding in one or more of the following categories: residential contractors, electricians, plumbers, roofers or mechanical contractors. These states are Alaska, Arizona, California, Connecticut, Florida, Hawaii, Idaho, Illinois, Iowa, Louisiana, Maryland, Minnesota, Nevada, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Washington and Wisconsin. Additionally, the District of Columbia also requires bonding; Iowa only requires bonding of contractors from out-of-state and North Carolina only requires bonding if the contract exceeds \$50,000.

Some states, such as Iowa and South Dakota, have performance bonds. These systems have bond amounts tied to the cost of the project. A project priced at \$50,000 would require a \$50,000 bond be purchased prior to work commencing and immediately after the contractual agreement is reached.

If one looks beyond bonds, to liability insurance, the results are similar. The National Association of State Contractor Licensing Agencies (NASCLA) and the National Contractor.com database document 21 states require some variation of liability or malpractice insurance, not counting workers compensation. These states are Alaska, Florida, Georgia, Hawaii, Idaho, Illinois (roofers only), Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, New Jersey, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, Tennessee, Texas (electricians & HVAC work only), Utah, Washington and Wisconsin. Additionally, the District of Columbia also requires insurance. Most of the coverage ranged from \$100,000 to \$500,000 insurance minimums.

Financial information is an important preventative measure to stop contractors from engaging in more business than they can financially back and to thwart bad contractors from engaging in fraudulent schemes. In the case at hand, the contractor got a license, but he did not have any assets in Arizona for sub-contractors or homeowners to lien. One owner even hired a

private investigator to look, but was disappointed when no assets were found in the contractor's name. The contractor took money given to him by a homeowner to purchase material (e.g., air conditioning unit) and then used the money for other purposes. He did this repeatedly.

At least eighteen states (e.g., Alabama, Arkansas, California, Florida, Hawaii, Idaho, Louisiana, Maryland, Michigan, Mississippi, Nevada, New Hampshire, North Carolina, South Carolina, Tennessee, Utah, Virginia and Wisconsin) rely on financial evaluation systems where contractors periodically submit official statements of financial condition and/or credit reports to their licensing agencies. These states each have a slightly different approach, but all require contractors to provide the statements of financial condition to determine to what degree they will be certified as financially responsible. Those contractors wishing certification at higher tiers show proof, frequently in the form of CPA audits, of their financial worth and working capital. Sometimes these states exempt contractors whose projects run at lower amounts. Alternatively, states can call for contractors to have a public accountant review their books, which is less expensive than an audit. Others require contractors to simply answer a series of financial questions and attest to their veracity.

Complainants' View

Bonds are too low and imply more than they are. They are usually only sufficient for one claim. They are not like insurance, but they serve until they are depleted. Once depleted, a contractor must refresh with replacement funds. The homeowners note that really bad contractors fail to refresh their bonds once they have been claimed. The bad contractors tend to run from their debts and homeowners often do not benefit from the fact that a contractor had a bond, once-upon-a-time.

Complainant homeowners were also upset they had no way to examine the contractor's capital and financial viability. After signing the contract, the homeowners relayed how they would be approached with unreasonable demands for payments to "meet payroll" or "pre-payment" on phantom equipment orders. Only after the property owners suffered obvious financial loss did they discover the contractor in question had limited financing and no assets of value in his business. At that point, it was too late. The bond was taken, insurance was non-existent and the contractor was in hiding.

In this case, one homeowner claimed the bond. Therefore, it was not available to the 22 other complainants. That homeowner received \$2,500, which was only a portion of the bond and it did not cover their losses that exceeded \$150,000.

Registrar of Contractors View

The Registrar staff explained the purpose of bonds. They said the bonds are required in an attempt to keep licensees more professional. The Registrar staff view it as an incentive for contractors to take care of their license. Registrar staff members do not see it as insurance for lawsuits, but more like a base requirement for doing business. The Registrar staff does not insist that homeowners claim a contractor's bond when they file a complaint with the

Registrars office. The workers say they do not view it as their job to inform homeowners of that option.

We asked Registrar staff why the bond limits were set at the current levels. The Registrar's Office is aware bond amounts are too low. They pushed for an increase in the bond amounts in past years, but the contracting industry and insurance companies fought and defeated it. The Registrar's Office leadership said that some of this resistance waned in 2007, so they plan to propose bond increases for the 2008 legislative session.

The Registrar's Office is also aware that the public misperceives bonds and thinks of them as a form of insurance, which they are not. The Registrar's Office notes that usually only a few individuals benefit from a contractor's bond in the event of awards. Bond limits are so low, sub-contractors and suppliers grab them first. Once the bond is used, other potential claimants are out of luck.

In Arizona, insurance companies cancel contractor bonds approximately 1,200 to 1,400 times per year according to Registrar staff. The staff said they do not keep a running total of how many bonds are paid out. Nor do they benchmark bond amounts or costs against other states, counties or metropolitan areas practices.

Registrar staff point out that not every state regulates contractors through a state system. Some states delegate the regulation of contractors to cities or counties. Only 35 states regulate contractors. Some leave the regulation of contractors to cities or other localities. Thus, not every state has bonding amounts, but the locality might.

Findings for Issue 6

Finding 6A

The surety bond amounts for contractors are too low.

Bond amounts are set low in Arizona (\$5,000 to \$15,000). Because bond amounts are low, they tend to suffice for only one or two creditors. Usually homeowners with claims against contractors do not get to collect on the bonds because sub-contractors have already done so. Once the face amount of a bond is used, the bonds have no value until the contractor pays to have them financed again. Bonds are not insurance and once claimed, they are not available to other wronged parties.

Finding 6B

The ROC does not inform homeowners who file ROC complaints that they might want to also file a claim on the contractor's bond.

The Registrar's Office is not legally bound to inform consumers about the possibility of collecting on a financial loss (resulting from a contractor) by way of claiming a contractor's bond. Sometimes bonds are available, yet go unclaimed. Homeowners are ignorant of this fact so they fail to claim the bond.

If a contractor's bond is claimed and distributed, then the ROC administratively suspends the contractor until he replaces the bond. If no current claims exist against a bond, contractors can usually succeed in finding an insurance company willing to write the replacement bond. The Registrar's Office is not legally obliged to inform complainants of this, homeowners do not know that reparation money other than the Recovery Fund might be available to them. What is paid via a bond is not again recoverable from the Recovery Fund.

Finding 6C

Contractor liability insurance requirements are lenient in Arizona. Neither errors and omissions nor general liability insurance policies are required for residential Arizona contractors. Professional liability insurance (Errors and Omissions Insurance) is an important coverage. It covers claims of alleged negligent acts, errors or omissions in the performance of the contractor's professional services.

Each state handles regulating contracting and residential construction risk differently. Twenty-one states require various forms of insurance. Most of these states have minimum coverage amounts in the range of \$150,000 per occurrence and \$500,000 in the aggregate. Approximate costs are \$1,300 annually for \$500,000 in aggregate coverage and about \$1,500 for one million in coverage. Some states require bonds *and* insurance.

General liability or comprehensive commercial liability coverage is the second basic type of commercial insurance and is limited to liability claims of bodily injury or property damage. Coverage typically covers the contractor at his shop and extends to his customer's locations.

Many contractors purchase liability insurance voluntarily, but the contractor in this case did not. Had the contractor been required to have insurance or a performance bond, then fewer families would likely have been harmed financially.

Finding 6D

The Registrar does not require contractors to submit official statements of financial condition and/or credit reports in order to either obtain or retain a contractor's license. Eighteen states require either accountant audited or reviewed financial statements or financial affirmations by contractors in order to obtain and keep their contractor license.

Recommendations for Issue 6

Recommendation 6A

The Legislature should consider having fewer bond levels and set the bond amounts to \$15,000 for a single license and \$30,000 for a dual license if a contractor does \$500,000 or less in annual work. The estimated cost would be less than \$750 annually for a \$15,000 bond. For contractors with annual contracts exceeding \$500,000, the bonds should be \$25,000 for a single license and \$50,000 for contractors with dual licenses. The Registrar should use financial statements to set each contractor's bond amount [See Recommendation 6C].

Recommendation 6B

The Legislature should consider requiring contractors to have liability insurance. They should have professional liability coverage including coverage for errors and omissions caused by Contractor's negligence in the performance of its duties his agreement. They should also have general liability coverage or commercial general liability insurance for bodily injury, property damage, and personal injury liability. They could benchmark to the average amount of coverage required in the eighteen states that mandate liability insurance. We found estimates for \$500,000 aggregate coverage running \$1,300, while \$1 million in coverage ran just a bit more at \$1,500.

Recommendation 6C

The Legislature should consider amending contracting statutes to require the Registrar's Office to obtain more financial information on prospective contractors. A component of this could be requiring contractors to demonstrate proof of financial accountability when submitting applications or renewals. The Legislature could look at what states such as Alabama, Arkansas, California, Florida, Hawaii, Idaho, Louisiana, Maryland, Michigan, Mississippi, Nevada, New Hampshire, North Carolina, South Carolina, Tennessee, Utah, Virginia and Wisconsin require of their contractors to prove financial accountability. Professional accountants should review and attest to these statements prior to their submittal to the Registrar's Office to prevent contractors from submitting untruthful statements. The Registrar should use the financial statements to set each contractor's bond amount. Arizona legislators could examine Florida, Utah, Nevada or California methodologies as examples of jurisdictions with stronger contractor applicant requirements.

Recommendation 6D

The Legislature should consider amending statutes relating to contractor bonds and complaints to require the ROC to notify every complainant, upon the filing of their complaint, whether or not the contractor's bond is available or has been claimed. The ROC already sends a notification to both parties acknowledging the complaint and announcing the date of property inspection. They should note the bond amount and status on the notification form and explain the bond claiming process too. The form would then serve three purposes - - as a receipt to confirm the ROC received the complaint and notice to the contractor, as a notice about the date of the property inspection and as notification of the bond amount and availability.

Issue 7 - -Are monetary penalties appropriately applied against contractors found to be in violation of statutes?

We examined under what conditions and how frequently the Registrar of Contractors issues penalties and discipline to punish a contractor. Two statutes [see A.R.S. §§32-1154(a) (23) and 32-1154(a) (18)] direct the Registrar's Office to levy penalties.

The statutes say penalties may be applied in limited circumstances. Essentially the penalty process begins when a corrective work order communicates to the contractor that the Registrar's inspector cited the contractor for failing to adhere to some professional practice or

workmanship quality. It is the Registrar's first formal notice that they are confirming at least some aspect of a complaint against the license. It is the contractor's opportunity to formally respond to a complaint. When contractors fail to respond or otherwise correct the problems

listed in the corrective work order, then the next step is for the ROC to issue a citation. If responses to the citation do not resolve the complaint, then the matter is set for hearing.

Penalties are only levied against contractors once the contractor has defaulted or participated in a hearing and has been found to be in violation of A.R.S. §§32-1154(A)(23) or 32-1154(A)(18). The first law relates to a contractor failing to adhere to a corrective work order. The second law relates to contractors who inappropriately work after their license is suspended or after it is in inactive status. Penalties are in addition to a suspension or revocation of a contractor's license. Under existing statute, the contractor's license is revoked unless all penalties are paid within 30 days.

A.R.S. §§32-1154(D) states the Registrar may impose a civil penalty which cannot exceed five hundred dollars on a contractor for each violation of A.R.S. §§32-1154(A)(23). Penalties are deposited into the Recovery Fund. If the licensee fails to pay the fine within thirty days, his license is automatically revoked and no future license may be issued to an entity consisting of a person associated with the contractor.

A.R.S. §32-1154(E) requires that for the first violation of A.R.S. §32-1154(A)(18), the fine shall not be less than \$1,000 and the fine for a second violation shall not be less than \$2,000. Its other provisions are identical to A.R.S. §§32-1154(D).

We noted the Auditor General Report of 2003 said fines were \$9,000 in 2000, \$800 in 2001 and \$9,475 in 2002. ROC managers said the organization had gotten more aggressive since then and numbers were up. We asked them to document the claim. In the fall of 2006, we asked ROC managers for fines from 2004 forward. We asked the Registrar's Office how frequently they issued penalties in cases and how much penalty money was collected. We asked them to provide the following information:

1. **Are fines issued rarely or frequently?** (Total cases compared to cases w/ penalty).

FY04= ___/___; FY05 = ___/___; FY06 = ___/___; FY07 = ___/___

2. **Amounts Issued:**

FY04= \$ _____; FY05 = \$ _____; FY06 = \$ _____; FY07 = \$ _____

3. **Of the fines issued, how often does ROC collect?**

FY04= \$ _____; FY05 = \$ _____; FY06 = \$ _____; FY07. = \$ _____

The Registrar's Office managers frequently said they were gathering the information, but never managed to provide the data despite frequent reminders. It is more than a little troubling that the agency was not able to answer such basic administration and revenue questions in well over a year and a half.

An Additional Factor

In April 2003, The Office of the Auditor General issued a performance audit report on the Registrar of Contractors. They recommended the agency address matters that limit the degree of protection it provides consumers. They said,

“The agency needs to ensure that problem contractors, such as those with serious or multiple complaints, are disciplined. The majority of contractors do not have complaints filed against them. However, contractors who have complaints filed against them can avoid disciplinary action by addressing the complaints before the complaints progress to an administrative hearing. Although this may satisfy the consumer, it can allow a problem contractor to continue to operate. The agency needs to develop criteria for determining when to pursue disciplinary action.”

Under the scenario noted by the Office of the Auditor General, the problem contractor must only fix their failure. The contractors do not incur penalties. They face no consequence for having failed in the first place, for having inconvenienced the homeowner or for having used the Registrar of Contractor resources.

Complainants’ View

Penalties come too late in the process and are too minimal. It is inefficient to have all penalties require due process hearings. Certain penalties should be set by default under defined circumstances.

Registrar of Contractor’s View

The Registrar’s Office believes the current process calling for penalties only after the conclusion of the due process system is good and fair. They say they issue penalties in accordance with statutory standards at the end of the process.

Findings for Issue 7

Finding 7A

There was not evidence that financial penalties against errant contractors are consistently levied when applicable [under A.R.S. §§32-1154(a) (23), Failure to Take Appropriate Corrective Action; or 32-1154(a) (18), Contracting While in Suspended/Inactive Status].

In this case, the contractor was disciplined 23 times. We did not see mention of any fines for the contractor on the ROC contractor database. We checked two other contractors that the ROC revoked during the course of this investigation and their web records on the database made no mention of financial penalties either. One had been disciplined 52 times and the other 32 times.

Logically, the public database page for each contractor should reveal the amount of penalties levied against a contractor, yet this is not the case.

Finding 7B

It takes a long time for penalties to be issued and there are no instances where penalties accrue by default.

Currently, no financial penalties are issued by default. Under existing statute, all penalties emanate from hearings and the resulting official orders. If certain penalties were tied automatically to default actions, then it would help streamline a portion of the process. Civil traffic citations and their pre-determined fines serve as the model for this type of system.

Penalties must be paid within 30 days under existing statute or the contractor's license is revoked.

Finding 7C

There is no evidence the ROC issues penalties if complainants resolve their complaint.

Contractors frequently violate A.R.S. §§32-1154(A)(23), yet if they later manage to satisfy the complainant, they tend to avoid hearings. From hearings flow official recommendations which in turn, result in orders. The agency issues penalties with official orders; they are the mechanism the Registrar uses to impose penalties. Thus, if a contractor can dispel with a complaint prior to a hearing, there is no order and they never face the prospect of having the Registrar order a penalty.

Finding 7D

There were no comprehensive results of collection activities.

The Registrar's Strategic Plan does not have a performance measure to track and report penalties authorized and collected each year. We saw references to penalties in a prior Auditor General audit (2003). Additionally, we found the Registrar of Contractor's *Posting List*. The list appears in two-month increments on the Registrar's web site. The PDF files only list the contractors who lost their licenses due to failure to pay civil penalties. The lists are not comprehensive, but cover weekly summaries of ROC activity. The posting does not give overall tabulations of the number and amount of penalties levied or collected.

Finding 7E

There was no evidence the Registrar's Office receives notice when city or county inspectors tag a property for failing to adhere to local building code criteria.

The Registrar's Office is oblivious to these local code violations unless the homeowner notes them in formal complaints. The city and county inspectors are experts trained to identify contractor failures as they relate to building codes and workmanship. There is not a formal means of communication between the local governmental agencies and the Registrar's Office. There should be.

In this case, local municipalities (e.g., Scottsdale, Phoenix and Chandler) cited the contractor in question numerous times for failing to adhere to local building codes. For the most part, the contractor failed to remedy or even address the building code failures. His solution was to stop responding to calls or to hide behind lower level employees.

Finding 7F

Because the Registrar's Office failed to provide data about penalties, we could not determine if the Registrar appropriately issues penalties in the instances where penalties should be charged under law.

It was difficult to get the Registrar's Office to gather and disseminate information related to penalties. This should not be, given that penalty orders are a statutory obligation of the Registrar's. We found no evidence the Registrar's Office monitors penalties or tracks them as a performance measure. Penalties are not a component of the performance measures listed in the ROC Strategic plan. The Registrar's penalty process is inconsistent at best.

Recommendations for Issue 7

Recommendation 7A

The Registrar's Strategic Plan should have a performance measure to track and report penalties assigned and collected each year.

Recommendation 7B

The assessment of penalties should be made automatic in certain cases in order to streamline the process. A.R.S. §§32-1154(D) and 32-1154(E) would need to be amended. The Legislature should consider amending these statutes and setting statutory criteria for instances where automatic penalties are triggered in specific circumstances. For example, the ROC could assess automatic penalties at the deadline date for citations if the contractor:

- Fails to respond,
- Otherwise fails to demonstrate any attempt to remedy the deficiency or
- Fails to ask for a compliance hearing.

Citations could state at their issuance that certain failures by a contractor would likely result in "automatic" penalties. The contractor could contest these penalties and ask for a hearing or accept the penalty determination. Existing statute stipulates that penalties must be paid within thirty days or the contractor's license is revoked.

Recommendation 7C

The Legislature should consider requiring contractors to forward inspection reports to the Registrar's Office when local government building inspectors cite the contractor for failing to build to code and the contractor fails to make the necessary repairs within twenty-one working days. The statutory change should then require the contractor follow-up with a notice to the Registrar's Office once they have fixed the items listed as problems in the inspection. Open violations should appear in the contractor's public file. The Registrar should develop a process to verify the contractor corrected the deficiencies and received local inspection approval within a pre-set period or face automatic penalties.

Recommendation 7D

The Legislature should consider refining the statutory criteria to define more precisely when the Registrar must pursue disciplinary action against contractors, independent of complainants' individual settlements.

Issue 8 - - We looked at the applications of law dealing with the two-part question:

(A) At what point can a homeowner hire a new contractor to fix a problem, and

(B) At what point can a homeowner rightfully deny access to the original contractor?

At what point can a homeowner hire a new contractor to fix a problem?

One might think this would be obvious in cases such as when a contractor abandons a job or when the contractor constantly violates workmanship standards. They would be wrong. In situations concerning existing Arizona contractor laws, statutes and rules do not provide clear definitions as to what constitutes abandonment or what failures in workmanship are so atrocious a homeowner may conclude the contractor is without enough skill to finish a job. In this case, there were numerous allegations of abandonment, of sub-standard workmanship and of other egregious acts by the contractor. A reasonable person might think this would be sufficient, yet every one of them took months to get to the point where the contractor was even forced into a hearing.

The Registrar's Office managers said determining when it is appropriate to hire a replacement contractor is not clear, but is decided on a case-by-case basis and depends on many factors. They suggest the answers may depend on when the property-owner involves their office and what the original contract says. Almost anytime, a homeowner can have another contractor take over a task. However, the homeowner must assess how this will look to the judge. Did they give the original contractor a chance to remedy the problem? Do they have their documentation in order? Was the contract clear? Did the homeowner contribute to the falling out by breaching the contract in some area? Did both the contractor and the homeowner create confusion that caused the dispute?

The Registrar's Office said homeowners do not need to receive permission from the Registrar's Office. There is no such thing as "formal permission." If a homeowner decides to proceed and fix a problem utilizing a different company, they assume the risk and they might not be reimbursed.

Under current law, only a judge or the Registrar may definitively determine that a homeowner has a legitimate reason(s) to cancel a contract and move on. Prior to such an official finding, abandonment, workmanship or other issues might exist as the working theory a contractor is in breach of contract. The key is for the homeowner to document facts to support their theory of breach.

A homeowner enhances his position by spelling out their expectations clearly in the original written contract and by demonstrating their cooperation in giving access to the contractor. Further, they should document incidents where they communicated in writing with the contractor and notified him of workmanship issues or areas of contractual breach. The Registrar's Office recommends giving the contractor a reasonable opportunity to fix the

problems. The homeowner needs to be careful they do not cause a breach by their own actions.

Once a homeowner decides to proceed without the original contractor, they need to defend how they choose to complete the construction contract. To defend their position, the Registrar's Office recommends that a homeowner solicit work estimates, use a licensed contractor to replace the original contractor, take photos and keep bills and receipts.

However, the Registrar's Office strongly recommended it is best to wait for the Registrar's inspectors to distribute their warning letter, examine the property and issue a corrective work order to the contractor. This gives the homeowner official "Registrar of Contractor" documentation of the problem. Such documentation is useful in court or at hearings. It would help prove that the contractor did not perform up to workmanship standards.

The Registrar's Office warned that homeowners need to be wary of A.R.S. §32-1121. Many homeowners do not understand repair work by unlicensed contractors (e.g., handymen) is only allowed if the cost of the total job is under one thousand dollars. Numerous homeowners mistakenly believe they will be in compliance if they keep the handyman work to under a thousand dollars. They do not understand the statute encompasses the total cost of the job, not just the handyman's portion.

We asked what, if any, emergency measures might be in place to deal with habitability problems (e.g., no air conditioning in summer, no operable plumbing, no electricity, no roof or exterior wall, etc.) created by the original contractor. The Registrar's Office said statutes and rules did not specifically address such scenarios. [Note: Senate Bill 1417 from the 48th Regular Session directs the Registrar to enact rules to summarily suspend licenses in situations where the Registrar determines the public health and safety requires immediate action. These rules have not yet been formulated or approved by the Governor's Regulatory Review Committee (GRRC).]

Studies have shown that features like air conditioning in housing structures reduce mortality rates. Mortality increases significantly when apparent temperatures reach or exceed 30°C /86°F. "It is likely that air conditioning has been a critical factor in reducing heat-related mortality [Environmental Health Perspectives, "Changing Heat-Related Mortality in the United States." Volume 111, #14, Nov. 2003]. Logically, a lack of air conditioning would lead to a higher mortality when temperatures exceed 86°F.

The Registrar's Office agrees it would be extremely hard for homeowners to wait two or more months for the Registrar's process in critical-need situations where major structures or home systems are non-operational or compromised. The Registrar's Office acknowledges it takes time for them to mail warning letter(s), complete inspections and issue corrective work orders. The Registrar and the homeowner are then bound to comply with statute and wait a minimum of 15 more days to provide the contractor his opportunity to obey and perform. If a homeowner needs to proceed with repairs due to weather or safety concerns, then it is imperative the property owner documents their position carefully.

At what point can the homeowner legitimately deny access to the original contractor for the property?

Again, the statutes and rules do not clearly answer the question. In bad workmanship cases, the homeowner is bound from the point the corrective order is issued to grant the contractor at least 15 days to access the property to remedy the problem, pursuant to A.R.S. §32-1154(A)(23) and A.R.S. §32-1155(C)(1). The 15-day period is the one time when a homeowner unquestionably should not refuse access to the contractor. The Registrar can extend this time if they consider it reasonable and prudent to do so. An example of a case where the Registrar would grant more time is when the homeowner insists the contractor use a particular material, but the material is backordered and unavailable to the contractor.

A judge or the Registrar may definitively find that a contractor breached a contract and then give the homeowner permission to deny access to the contractor from that point forward. Prior to such an official finding, a contractual breach or workmanship concerns are not considered more than just the homeowner's opinion. The Registrar's office said it is key for the homeowner to document and to seek advice from them or an attorney before they deny access to a contractor. Homeowners enhance their position by making sure they spell out their expectations in the contract, by demonstrating their cooperation in giving access, by communicating concerns in writing to their contractor, and by not acting rashly.

Complainants' View

Homeowners looking for clear direction relating to their cases were keenly frustrated with the existing process. They think it is unfair and unrealistic. They relayed troubling stories how the ROC system simply does not work in the real world. They said the bad contractor's workers did very faulty work that left the families exposed to hazards. One relayed how her house had an electrical fire due to sub-standard electrical work. Another relayed that the only reason they avoided a fire was that a city inspector alerted them to a dangerous wiring condition before they activated the equipment. Another owner went weeks without air conditioning in mid-summer. Another had his entire back corner of his family room torn off and then workers abandoned the job. Another person had his roof removed and left unfinished. Others had plumbing disconnected. One couple returned from a medical appointment to find their North Scottsdale lot had their pristine natural desert landscaping reduced to dirt with a ten-foot deep trench.

The homeowners were stuck in each of these situations. Most of the circumstances demanded immediate action to maintain habitability or to eliminate a severe hazard. Despite these clear facts, no one at the ROC has the authority to guarantee the owners that it would be acceptable to hire a new contractor to fix the bad contractor's work. The owners ask, "What citizen in the state would be willing to live in a house waiting for months at a time where wiring has started one fire and threatened to start another, where there is no air conditioning in summer, or where the back end of their home was exposed to the elements, burglars and pests?" The owners thought some circumstances so poisoned the relationship that the system should have a mechanism to more quickly deal with such a breach.

The homeowners believe the ROC should have a means of giving better direction or pre-approval of estimates. Additionally, most homeowners say they are unwilling to wait months to have a replacement contractor repair an item. They think once a city, county or ROC inspector confirms a contractor erred; the contractor should only have a limited time to perform repairs to remedy the problem. They think the time to remedy should be two-tiered with one tier for extreme problems which prevent habilitation, pose health hazards or present the possibility of catastrophic loss. They think those problems should have an expedited release program. The other tier would be for non-extreme problems. After those waiting periods expire, the homeowners believe the contract should be voidable at their discretion with access to the Recovery Fund assured.

A number of the homeowners felt one of their ranks was directly abused by the nebulous nature of the process. In that homeowner's case, the contractor failed to adhere to the contractual timeline. When the contractor failed to construct any aspect of the original contract within the contractually agreed time-period, the homeowner filed a complaint.

In the ensuing hearing, the contractor convinced the Administrative Hearing Officer that it was all the homeowner's fault. He did this by swearing and having his secretary swear it was the homeowner who delayed the project in two areas. The contractor said the delay was due to the homeowner taking too much time to approve the design for the permit application required by the City of Chandler. The contractor claimed he went into the City and gave them a letter addressing the corrections. Second, the contractor said the homeowner failed to get construction permission from his homeowner association.

The homeowner said he fired the contractor after giving him repeated opportunities to return his calls, pick up permits, make corrections or explain away other complaints. The homeowner believed the contractor breached the terms of the contract, making it voidable.

The homeowner testified the City of Chandler rejected the first permit application the contractor submitted due to contractor errors. The contractor never came to the house to take measurements critical to the permit. There were other problems too. However, the contractor failed to correct the permit. The homeowner had to retrieve the permit and submit corrections himself because the contractor failed to follow up. The City said they gave up trying to get the contractor to pick up the permit documents after he ignored their contact attempts for over three weeks. The City called the homeowner, told him the contractor was ignoring them and asked the homeowner to retrieve the documents.

The homeowner also contested the contractor's claim that the Homeowner Association (HOA) had not approved the construction. The homeowner testified that his homeowner's association granted construction permission in 2005. The HOA Architectural Review Committee reviewed and approved the proposal. The Treasurer and President for the HOA signed the approval documents. The only stipulation was that the homeowner was also required to obtain a permit from the City. The homeowner got the required permit.

None of this mattered to the Office of Administrative Hearings judge. She sided with the contractor and said the homeowner had never gotten final permission from the HOA.

The homeowner appealed the case dismissal and supplied documents from both the City of Chandler and the Homeowner Association supporting his position and contradicting the contractor. The City formally refuted the contractor's assertion that he submitted corrections by issuing a letter statement recounting the timeline of events and noting they never received corrections from the contractor. The City had no record of the contractor coming into their office to discuss the matter or correct the problems. Further, the homeowner submitted an affidavit from the HOA as part of his appeal. The President of the homeowner association, in a notarized affidavit, verified the homeowner was never required to come back to the HOA for another approval. Somehow, this was not persuasive to the judge and she denied the appeal.

The involved homeowner and other complainants harmed by the same contractor do not understand why the Registrar allowed this injustice to stand. They know the Registrar's Office was aware of the extent of the contractor's transgressions, perjury and proven lack of veracity. They know the Registrar received copies of the affidavits demonstrating the independent sources (Chandler and the HOA) corroborated the homeowner's version of events and contradicted the contractor's testimony. They thought if ever there was a case in which the Registrar would be justified in rejecting the administrative hearing judge's recommendation, this case should be it. They believe the case illustrates the system is broken as homeowners do not have a clear way to determine whether or not they can ever be sure they may fire a contractor short of waiting for the entire hearing process to play out.

Lastly, the owners thought some circumstances so poisoned the relationship between themselves and contractors that the ROC system should have a mechanism to more quickly deal with such a breach.

Registrar of Contractors View

The Registrar's Office points out that many homeowners cause harm to their case when they refuse access to their property. They said denying access often gives a contractor grounds to allege the homeowner breached the contract. They explained homeowners frequently deny contractors access to property when they decide the contractor failed to adhere to proper workmanship standards. The Registrar's staff said this is a weak position for the homeowner and puts them at risk of being in breach of the contract themselves.

The Registrar staff said it is wiser for the homeowner to call in the Registrar's Office to do an inspection and give the contractor an opportunity to correct the problem, than to retaliate by cutting off property access. The Registrar staff said they have the authority to demand the contractor's work meets state and local standards. They said city and county inspectors could also make official findings relating to workmanship and local code standards.

The ROC acknowledges that homeowners often have difficulty finding replacement contractors to bid on their jobs once contractors hear it is for a Recovery Fund job. The agency will not recommend contractors because they license and regulate them. They suggest homeowners consider not volunteering the fact they have an open complaint against another

contractor since the homeowner will contract directly with the contractor after receiving the award.

Concerning the question about when a homeowner can proceed with replacement work, the Registrar's Office says, "If you feel you need to get the work done, the decision must be made by you, the homeowner." The ROC suggests homeowners fully document their claim and the condition of their home with estimates, receipts, photos and other validation documents, so they are prepared to support their claim if a hearing is required. The ROC specifically recommends owners obtain at least three itemized bids from licensed Arizona residential contractors and submit them to the fund along with copies of cancelled checks as proof of payment to the new contractor.

The Registrar's staff notes the Recovery Fund staff cannot guarantee payment nor can it guarantee a claimant will receive full reimbursement for the amounts they pre-spend.

Findings for Issue 8

Finding 8A

Neither statutes nor rules clearly answer these questions.

What is clear is the current system is too confusing and takes too long. Statute nor rule definitively list what steps a homeowner should take, nor how long they should wait, to demonstrate their good faith attempt to address disputed matters with the original contractor. There are no clear answers for homeowners. Instead, the laws offer owners only general guidance. The laws encourage homeowners to make an educated guess whether or not to proceed.

Finding 8B

No one is empowered to give them a definitive answer or permission prior to the issuance of a final order by an administrative law judge or the Registrar.

The ROC workers could not guarantee that claims of abandonment would hold up despite weeks or months of no response from the contractor. The Registrar's Office could not guarantee the owners that the cost to repair the errant work would be reimbursed even though building inspectors verified the work was faulty.

Finding 8C

The existing laws assume homeowners can wait months before fixing what is broken with their home. In many instances, it is not reasonable to delay repairs.

Delays might create unhealthy conditions, leave inherent hazards or swell a homeowner's liability. It does not seem reasonable to make homeowners wait for the better part of a year or even longer for a definitive response. The present system fails to deal with reasonable habitability issues. The system takes a substantial amount of time if the contractor even minimally contests the problem. It invites bad actors to "game the system." There should be criteria where the homeowner is given, in limited circumstances, emergency authority to proceed with specific repairs.

Recommendations for Issue 8

Recommendation 8A

The Legislature should consider going beyond the changes they made via Senate Bill 1417 relating to summary suspensions and define statutory criteria to have expedited inspections and corrective work orders in limited situations where the Registrar's Office confirms the original contractor's error, negligence or abandonment created an acute hazard. Acute hazards could be listed in statute. Example of acute hazards are:

- Faulty electrical work threatening an immediate fire or electrocution danger.
- Disconnected essential services such as electric/gas/water (disconnected for longer than three days).
- Inoperable cooling or heating apparatus when ambient temperature reaches higher than 90 degrees or lower than 45 degrees Fahrenheit and alternative heating or cooling mechanisms are not available for the structure. (disconnected for longer than three days)
- Poorly engineered roofs, walls or bearing beams, which threaten collapse.

Homeowners should be allowed to petition for quick relief in such scenarios. Petitions to expedite should have at least three components. The homeowners would need to demonstrate to the satisfaction of the Registrar's Office that the problem poses a threat of serious bodily injury, violates health codes or otherwise make the house uninhabitable until fixed. Furthermore, the property owner would need to show that the problem was the result of negligence or error committed by the contractor's company and not a planned event (e.g., a pre-agreement where both parties, know and agree that repairs will be so extensive, the property owner must vacate the property). Lastly, the contractor must have been given at least three days to make repairs.

Upon receiving such a petition and finding it credible, the Registrar's Office should be required to expedite the inspection and issue an inspection report within three working days. Should the report confirm the acute hazard, the Registrar would require the contractor to perform necessary corrections within 15 days or thereafter lose the right to correct their own work. From that date on, the homeowner should be free to hire a different contractor to resolve the problem unless the contractor can provide credible evidence the homeowner barred him from accessing the job in violation of ROC directives. If the contractor produces credible evidence, then the matter must proceed through regular due process channels. However, if the contractor is silent or provides no rationale to the Registrar to explain how the property owner prevented work, then the Registrar can permit the property owner to hire a different contractor.

The contractor would still have the right to contest whether or not they are at fault through the regular course of due process, however, the matter would then just be about the fault determination and possible Recovery Fund or other reparations. This recommendation should be addressed when Recommendation 4A and 4B, relating to summary suspension, are addressed.

Recommendation 8B

The Legislature should consider defining statutory criteria to allow homeowners to hire a new contractor when a contractor abandons and does not attempt to finish a job. No homeowner should have to wait past the repair time stipulated by the Registrar's Office in the corrective work order. From that date on, the homeowner should be free to hire a different contractor to resolve the problem unless the contractor can provide credible evidence the homeowner barred him from accessing the job in violation of ROC directives. If the contractor produces credible evidence, then the matter must proceed through regular due process channels. However, if the contractor is silent or provides no rationale to the Registrar to explain how the property owner prevented work, then the Registrar can permit the property owner to hire a different contractor.

Senate Bill 1417 focuses on stopping contractors who have five or more claims of abandonment from taking on more work, but it does not help homeowners who are already the victim of abandoned projects. Something should be done for these types of cases too. Enacting the recommendation would still give the contractor the right to contest whether or not they are at fault through the regular course of due process, however, the matter would then just be about the fault determination and possible Recovery Fund reparations.

Issue 9 - - Contractors frequently operate as a Limited Liability Company (LLC). What omissions in Arizona Revised Statutes, Title 32, relate to contractors operating as Limited Liability Company entities?

We examined instances where the limited liability company statutes were not in accord with construction laws for two reasons. This creates the potential for errant contractors to escape punishment because of inadvertent statutory omissions. Additionally, we found problems with the Registrar's contractor application. The Registrar's Office should be using the correct legal terminology regarding limited liability companies on their forms.

Many contractors operate through corporations, partnerships and limited liability companies to reduce their personal liability exposure. In a limited liability company for instance, if structured properly a member can only lose what they invested in the company, their membership interest. If they keep their personal property outside of the company and do not invest much in the company in the way of assets, then claimants and lien holders will not have much to attach. A long-time collections attorney at the Industrial Commission called it a 50/50 proposition whether or not the Limited Liability Companies would make good and pay in situations where they face large judgments or debts.

Limited liability companies (LLCs) have become the favored type of business entity for small businesses. The concept was created in the early 1990s and has swiftly evolved into the dominant type of business form. The statutes governing limited liability companies have not always kept pace with the growth. Each year, legislatures across the country institute further refinements to the body of law covering limited liability companies to address statutory gaps.

Registrar of Contractors View

Registrar staff considered these limited liability company omissions an oversight. They told us they would look further at the statutes and were likely to ask the Legislature to fix the omissions the next time they ran a contracting bill. The staff members were uncertain bad results would come from the omissions, but considered it prudent to update the statutory language to avoid potential legal challenges.

The Registrar's office know LLC members can walk away from LLCs leaving creditors without many assets to claim, but they do not feel it is a major problem. They think most LLC members would find it is too costly.

One business operating as an LLC can build all over the state. However, if a contractor gets another LLC or DBA, then each one needs its own license.

Findings for Issue 9

Finding 9A

A number of statutes in Title 32, relating to contracting, do not reflect the existence of limited liability companies.

In the course of our review, we noticed instances where limited liability company (LLC) references, in statutes or forms governing contractors, were inconsistent and ambiguous when compared with corporate and partnership references. In many cases, the statutes were silent about limited liability company requirements, yet imposed requirements on partnerships, corporations and sole proprietors. The statutes should be consistent.

Limited liability company entities should logically be included in Arizona Revised Statutes Title 32, in the following areas:

1. A.R.S. §32-1101, Definitions. Sections 2, 3, 4 and 7 explain definitions and refer to partnerships and corporations, but not limited liability companies. Section 5 lists limited liability companies, but it would be logical to be consistent and list them also in sections 2, 3, 4 and 7 too.
2. A.R.S. §32-1122, Qualifications for license. Section (B) pertains to how an entity applies to the Registrar to obtain or renew a license. It lists application requirements for individuals, corporations, associations and partnerships, yet limited liability companies are not mentioned.
3. A.R.S. §32-1151, Engaging in contracting without license prohibited. Again, partnerships and corporations are specifically stated as entities covered by the statute, but limited liability companies are not.
4. A.R.S. §32-1156, Hearings. This statute states contractors with a corporate structure may be represented by a corporate officer or employee who is not a member of the state bar. It would seem logical that similar allowances be made for limited liability company structures with managers and members.

5. A.R.S. §32-1166, Injunctive relief; civil penalty. The statute pertains to how the Registrar can issue citations against a license. It lists application requirements for individuals, corporations, associations and partnerships, yet limited liability companies are not specifically mentioned.

Despite knowing of these issues in the fall of 2006, the Registrar's Office did not ask the Legislature to tighten these areas of the statutes in their 2007 session.

Finding 9B

The Registrar's application form is incorrect.

The terminology used on the Registrar's application form is wrong. Limited liability companies are referenced, but the form only asks for a list of corporate officers and directors. Limited liability companies do not have corporate officers or directors, they have "members" or "managers" or "managing members." The form should ask limited liability companies to list all managers and list members who hold a 25% interest in the company.

Finding 9C

The Registrar's application asks limited liability companies to submit a copy of the LLC Agreement they previously filed with the Corporation Commission, but no such filing exists.

The Corporation Commission does not require limited liability companies to file their "agreements." The Registrar's Office should ask for the limited liability company's "Articles of Organization" in order to accurately reflect the proper legal terms. It is good practice for an LLC to create an agreement document for its members, but agreements are internal to the LLC organization and are not filed with the Corporation Commission.

Recommendations for Issue 9

Recommendation 9A

The Legislature should consider amending the five identified statutes relating to contracting (A.R.S. §§32-1101, 32-1122, 32-1151, 32-1156 and 32-1166), to clearly reflect that they apply to limited liability companies too.

Recommendation 9B

The Registrar's Office should correct their application form to use the proper legal terminology for limited liability company leadership (members, managers, member-managers).

Recommendation 9C

The Registrar's Office should correct their application form to specify the proper legal terminology relating to the original organization of limited liability companies. Limited liability companies file "Articles of Organization" with the Corporation Commission, not "Operating Agreements."

Issue 10 - - What is the enforcement process the Registrar of Contractors follows to ensure compliance with Arizona Revised Statutes §§32-1122(B)(1)(i) and 32-1154 (A)(4) relating to workman compensation laws?

We examined how the Registrar's Office followed up in instances where they were given information that a contractor was violating A.R.S. §§32-1154(A)(4) by not reporting workers compensation as required by law.

In the case that drew our involvement, the contractor was not paying workers compensation. The contractor's original application at the ROC indicated he paid workers compensation at one time, but he stopped making the payments. The ROC was informed of this; however, it was a State Senator who alerted the Industrial Commission on behalf of constituents.

The Industrial Commission opened an investigation in October 2006. The Commission reported they found no record of workers compensation payments required from the named contractor since 2004. The ROC failed to discover this.

The Commission issued a finding and penalty of a \$1,000 fine against the contractor in November 2006. It went unpaid. In December 2006, the Industrial Commission sent an investigator to look for the contractor, or signs the contractor was still operating, as part of their compliance program. The investigator looked again in February and March to no avail. By this time, the contractor moved. The contractor failed to update any of his mailing addresses recorded at the Registrar's Office, the Corporation Commission or the Industrial Commission.

We examined the enforcement process the Registrar of Contractors follows to ensure compliance with Arizona Revised Statutes §§32-1122(B)(1)(i) and 32-1154 (A)(4) relating to workman compensation laws.

We spoke to administrators and a lawyer from the Industrial Commission. One longtime Commission attorney, with over a decade of experience in collections, said their agency used to be very pro-active and send letters to the Registrar's Office and to other involved governmental agencies in instances where the Industrial Commission concluded a company was guilty of failing to pay workers compensation. However, the Industrial Commission found the other agencies' staff did not seem to follow through on their agency's statutory role in the workers compensation process. That, coupled with a lack of resources, inclined the Industrial Commission to stop focusing on the other agencies' rolls and instead concentrate on their own.

The lawyer also said that experience led him to believe it is a 50/50 proposition whether limited liability companies or corporations pay damages or penalties when they are found guilty of failing to pay workers compensation. Many of them have limited assets and simply fold, defaulting on all the creditors.

Homeowners felt their complaints relating to workers compensation were ignored. Three homeowners said they brought the contractor's failure to pay workman compensations to the

attention of ROC workers. They saw no evidence the Registrar's Office followed up on this problem and note that it never came up in their case hearings or orders.

Aside from initial applications, ROC investigators are not required to look for evidence of workers compensation compliance at any stage of their investigation of a contractor. There system is to wait for homeowners to complain. They do not have a form to send to the Industrial Commission formally requesting an investigation of a contractor regarding compliance with workers comp laws, nor is there any formal structure ensuring the Industrial Commission is alerted to likely workers compensation violations. The Registrar's Office does not log or track complaints about licensed contractors with the Industrial Commission. In contrast, the Registrar's Office does track whether contractors fall out of good standing with the Corporation Commission.

We asked the ROC how they interact with the Industrial Commission and about their method of sharing information regarding requirements common to both offices. They said that interactions would depend on individual circumstances. Most frequently, they would treat it as a regular "due process/contested case situation." In other words, if asked, they will provide information. If a complainant wishes them to follow up, they will. If no one broaches the subject, the Registrar's Office is not likely to pursue the matter.

We do not understand why the Registrar's Office thinks that business practices such as workers compensation payments by contractors are the concern of homeowners. We do not know why the Registrar's Office waits for a homeowner to complain about something that is in the interest of the State and the contractor's employees. The failure to pay worker's compensation is not related to homeowners' contractual arrangement with contractors, nor are they subject to Recovery Fund claims.

The ROC said there is no interagency agreement between themselves and the Industrial Commission. The ROC said they do not work closely with the Industrial Commission and do not have a set process for interacting with them. In contrast, they said they are closer to the Corporation Commission and regularly receive information from the Commission's database. This is somewhat ironic as the ROC shares a building with Industrial Commission.

The Registrar's Office said if they were notified workers compensation was not paid, their office would notify the contractor that his license is subject to discipline. Should the contractor fail to remedy the situation, the ROC said they could ultimately suspend/revoke the contractor license. However, we found no evidence that the ROC ever suspended or revoked a contractor's licensee due to the contractor violating statutes relating to workman compensation laws [Arizona Revised Statutes §§32-1122(B)(1)(i) and 32-1154 (A)(4)].

The Legislature prodded the agency to do more by passing Senate Bill 1417. The Forty-eighth Legislature, Second Regular Session passed SB 1417 which enables the Registrar to more easily summarily suspend a contractor's license in situations where the Registrar finds that a remodeling and repair contractor failed to secure workers' compensation as prescribed in Title 23 in the Arizona Revised Statutes.

We looked at how other states handle workers compensation. A number of states require contractors to prove they are current with their workers compensation claims. Examples are California, Connecticut, Mississippi, Maryland and Hawaii. California deals with its workers compensation enforcement by requiring contractors to submit a certificate of insurance for workers compensation. Connecticut and Mississippi require their contractors to submit proof of workers compensation payments with the annual renewal of a contractor's license. Maryland and Hawaii do the same with their contractors except their licenses are good for two years.

Findings for Issue 10

Finding 10A

The Industrial Commission staff stopped sending notices of workman's compensation violations to the Registrar's Office years ago. The notices communicated to the Registrar's Office the official findings and orders issued by the Industrial Commission when contractor licensees were found guilty of violating workers compensation laws. The Commission expected the Registrar's Office to follow up with the licensees, but this did not occur. Registrar staff did not seem to know what to do with the information or have any interest in following up.

Finding 10B

The ROC does not actively track their enforcement as to whether or not contractors maintain their obligations to the workers compensation fund.

The management adage, "What gets tracked, gets done" is applicable. There is no performance measure to reflect ROC activity and enforcement of Arizona Revised Statutes §§32-1122(B)(1)(i) and 32-1154 (A)(4) relating to workers compensation laws requirements for licensed contractors. The ROC should track the number of allegations received (that contractors have not adhered to workers compensation laws) against the number confirmed and penalized.

Recommendations for Issue 10

Recommendation 10A

The Registrar's Office should develop formal mechanisms (e.g., an interagency agreement) to receive and deliver information related to workers compensation violations with the Industrial Commission.

For example:

- Upon the ROC receiving information or otherwise determining a contractor may not have adhered to workers compensation laws, the ROC should be obliged to inform the Industrial Commission of the allegation
- Similarly, the Industrial Commission should inform the Registrar's Office when they substantiate a contractor has failed to adhere to workers compensation laws.

Recommendation 10B

The Legislature ordered the Registrar to develop rules to implement SB1417. These rules should automatically trigger a summary suspension of a licensed contractor upon the

Industrial Commission substantiating the contractor's failure to adhere to workers compensation payment laws. The finding should trigger A.R.S. §32-1171(A) and summarily suspend the contractor's license. This would be similar to the Registrar's process when the Corporation Commission notifies the Registrar that a contractor's corporation or limited liability company has been dissolved.

Recommendation 10C

The Registrar's Office should develop a performance measure to reflect their activity and enforcement of Arizona Revised Statutes §§32-1122(B)(1)(i) and 32-1154 (A)(4) relating to workers compensation laws requirements for licensed contractors.

Issue 11 - - What is the enforcement process the Registrar of Contractors follows to ensure compliance with Arizona Revised Statutes §32-1154 (A)(4) governing unemployment insurance laws?

We examined how the Registrar's Office followed up in instances where they were given information that a contractor was violating A.R.S. §32-1154(A)(4) and not submitting unemployment insurance payments.

Very similar to the workers compensation payment question is the issue of payment of unemployment insurance to the Department of Economic Security (DES).

Registrar of Contractors View

The Registrar said they are quite active in all forms of tax cases. They said they would let the Department of Economic Security know, if a complainant brought it to their attention. The ROC staff said they do not typically look for such transgressions, but will pursue the matter if a consumer complains.

Findings for Issue 11

Finding 11A

The ROC fails to consistently enforce statutory provisions requiring contractors to adhere to unemployment insurance requirements found in contracting statutes.

There was no evidence the ROC has any consistent punishment process even if they receive confirmation unemployment insurance was not paid [A.R.S. §32-1154 (A)(4) was violated]. While we saw evidence the Department of Economic Security follows up on ROC tips or communications, we did not see any evidence that licensed contractors are held accountable by the ROC for their unemployment insurance payment failures once confirmed by the Department of Economic Security. It seems it is an infrequent occurrence that the ROC punishes a contractor for violation of this provision. There does not seem to be any process to get the matter sown back into an existing ROC complaint or to open a new complaint at the Registrars.

Finding 11B

We found no evidence of regular or formalized communication between the Registrar of Contractors and the DES relating to unemployment insurance.

However, the ROC does appear to work more closely with DES than they work with the Industrial Commission. There does not seem to be set criteria for the exchange of information. We did not find any forms, systems, tracking mechanisms or logs to indicate the ROC monitors such cases. What communication does occur is on a piecemeal basis.

ROC investigators are not required to look for evidence of unemployment insurance compliance at any stage of an investigation of a contractor or in the biennial renewal process. Instead, the ROC waits for homeowners to complain. The ROC says they will follow up on the complaints, but homeowners have no personal stake in complaining about unemployment insurance. Thus, the system has no champion in these areas.

Finding 11C

The ROC does not actively track whether contractors comply with obligations relating to unemployment insurance regulations, nor do they count the instances where they held contractors accountable for failing to adhere to these requirements.

Again, the management adage, "What gets tracked, gets done" is applicable. There is no performance measure to reflect ROC activity and enforcement of Arizona Revised Statutes §32-1154 (A)(4) relating to contractor duties concerning unemployment insurance.

Recommendations for Issue 11**Recommendation 11A**

The Registrar's Office should collaborate with the Department of Economic Security to develop formal mechanisms to receive information related to unemployment insurance violations from the Department of Economic Security.

Recommendation 11B

The Legislature should consider adjusting Title 32, concerning licensed contractors, to automatically trigger an administrative suspension of a contractor's license at the ROC once DES substantiates the contractor failed to adhere to unemployment insurance laws. This would be similar to the provision in SB 1417 summarily suspending contractors who fail to pay their workers compensation debts.

Recommendation 11C

The Legislature should consider adjusting Title 32 concerning licensed contractors to require the Registrar's Office to collect updated unemployment insurance payment information from all contractors. Essentially, it would be a declaration by contractors (with employees) that unemployment insurance provisions were met. It could be a component of the biennial licensing process.

Recommendation 11D

The Registrar's Office should develop a performance measure to reflect their activity and enforcement of A.R.S. §32-1154(A) (4) relating to unemployment insurance requirements of licensed contractors.

Issue 12 - - What is the enforcement process the Registrar of Contractors follows to ensure compliance with Arizona Revised Statutes §32-1154 (A) (4) governing social security?

We examined how the Registrar's Office followed up in instances where they were given information that a contractor was violating A.R.S. §§32-1154(A)(4) and not submitting social security payments.

Registrar of Contractors View

The Registrar said they are quite active in all forms of tax cases. They said they would let the Federal and State tax departments know, if a complainant brought it to their attention. The ROC staff said they do not typically look for such transgressions, but will pursue the matter if a consumer complains.

Findings for Issue 12

Finding 12A

The ROC fails to consistently enforce statutory provisions requiring contractors to adhere to social security tax requirements in contracting statutes - - Arizona Revised Statutes §32-1154 (A)(4) .

We did not see evidence the ROC holds licensed contractors accountable for failing to pay social security tax as required by law. The ROC does not have a consistent punishment process even if they receive confirmation social security taxes were not paid by a contractor as required under law [e.g., A.R.S. §32-1154 (A)(4) was violated].

Finding 12B

We found no evidence of regular or formalized communication between the Registrar of Contractors and the Internal Revenue Service (IRS) regarding contractors adherence to social security regulations.

There are no set criteria for an exchange of information or follow up. This is not to say the Registrar and the IRS never act on allegations that a contractor failed to adhere to social security laws, just that the systems are not in place to ensure the consistent application of the law [A.R.S. §§32-1154(A)(4)].

Again, the Registrar's Office said they are reliant on a "complaint-driven" system. This means the Registrar's Office will pursue a complaint regarding this issue typically only if a private party complains the contractor failed to pay taxes. A private party does not have a personal interest in this law, but the State does. As stated in statute, one of the State's agents

to ensure tax compliance by contractors is the Registrar of Contractors. Yet the ROC is disinclined to independently pursue this matter, sans a private complainant.

Recommendations for Issue 12

Recommendation 12A

The Registrar's Office should develop formal mechanisms to notify the Internal Revenue Service when the ROC receives or develops information indicating a contractor may have violated social security allegations. The ROC should be obliged to inform the Internal Revenue Service of the allegation and facts.

Recommendation 12B

The Legislature should consider adjusting Title 32 concerning licensed contractors to require the Registrar's Office to collect updated social security payment information from all contractors. Essentially, it would be a declaration by the contractor that his business has met its social security obligations. It could become a component of the existing biennial licensing process.

Issue 13 - - What is the enforcement process the Registrar of Contractors follows to ensure compliance with Arizona Revised Statutes §32-1154 (A)(5) governing income taxes or any tax imposed by title 42, chapter 5, articles 1 and 4 and incurred in the operation of the licensed business.

We examined the enforcement process the Registrar of Contractors follows to ensure compliance with Arizona Revised Statutes §32-1154 (A)(5) governing income taxes or other taxes imposed by title 42, chapter 5, articles 1 and 4 and incurred in the operation of the licensed business.

Most contracting activity is subject to the transaction privilege tax (TPT). The tax is based on 65 percent of the gross proceeds of sales or gross income from the contract. In addition, cities, towns and counties also impose a tax on prime contracting activities. Contractors must also pay their own income tax and withholding tax for any employees.

The Registrar staff said it is a violation of A.R.S. §32-1154(A) (5) for a contractor not to pay taxes. However, the staff notes it only pertains to State taxes. A less specific statute covers city, Federal and other taxes.

Registrar of Contractors View

The Registrar said they are quite active in all forms of tax cases. They said they would let the Federal and State tax departments know, if a complainant brought it to their attention. The ROC staff said they do not typically look for such transgressions, but will pursue the matter if a consumer complains.

Findings for Issue 13

Finding 13A

We found no evidence of regular or formalized communication between the Registrar of Contractors and tax authorities regarding allegations that contractors violated tax laws.

Our findings are virtually identical for the issue of contractors failing to make required tax payments as the prior issue relating to unemployment insurance payments. There does not seem to be set criteria for an exchange of information or follow up. The systems are not in place to ensure the consistent tax compliance of licensed contractors as implied by A.R.S. §§32-1154(A)(5) governing income taxes or any tax imposed by title 42, chapter 5, articles 1 and 4 and incurred in the operation of the licensed business.

Again, the Registrar's Office said they are reliant on a "complaint-driven" system. This means the Registrar's Office will pursue a complaint regarding this issue typically only if a private party complains about the contractor relating to this topic. The Registrar's Office is disinclined to independently pursue this matter, sans a complainant.

Finding 13B

The Registrar's Office does not uniformly follow up on tax complaints, nor uniformly refer suspected offenders to tax authorities so the authorities could appropriately investigate the suspected transgressors.

We did not see evidence the ROC holds licensed contractors accountable for failing to pay taxes as required by law. The ROC does not have a consistent punishment process even if they receive confirmation taxes were not paid by a contractor as required under law [e.g., A.R.S. §32-1154 (A)(5) was violated]. Our findings are similar to those in issues 9 through 11. The Registrar's Office does not have consistent systems in place to ensure that tax requirements relating to licensed contractors are enforced.

Finding 13C

The ROC does not track whether contractors meet their tax obligations, nor do they track instances where the ROC held a contractor accountable for failing to comply with these requirements.

Arizona Revised Statute §32-1154 (A) (5) requires contractors to adhere to tax requirements, or face possible discipline, yet the ROC does not have systems in place to ensure compliance. There is no performance measure to reflect ROC activity and enforcement of Arizona Revised Statutes §32-1154 (A) (5) relating to tax requirements of contractors. The ROC does not actively track whether or not contractors uphold their tax obligations.

Recommendations for Issue 13

Recommendation 13A:

The Registrar's Office should develop formal mechanisms (e.g., an interagency agreement) to receive and deliver information related to tax violations with the Department of Revenue.

For example:

- Upon the ROC receiving information or otherwise determining a contractor may not have adhered to workers compensation laws, the ROC should be obliged to inform the Department of Revenue of the allegation.
- Similarly, the Department of Revenue should inform the Registrar's Office when they substantiate a contractor has failed to adhere to workers compensation laws.

Recommendation 13B

The Legislature should consider clarifying A.R.S. §32-1154(A)(5) regarding licensed contractors obligation to pay income taxes to require the Registrar's Office to collect a declaration by the contractor that required transaction and income taxes were paid by the contractor. This would be similar to the tax declaration made by corporations in their annual reports filed with the Corporation Commission. It could become a component of the existing biennial licensing process.

Recommendation 13C

The Registrar's Office should develop a performance measure to reflect their activity and enforcement of A.R.S. §32-1154(A)(5) relating to tax requirements of licensed contractors.

Issue 14 - - To what extent does the Registrar of Contractor's Office check contractor backgrounds?

We examined the extent which the Registrar of Contractor's Office checks contractor backgrounds. [See A.R.S. §32-1122(D)] A.R.S. §32-1122(D) – lists licensee requirements and prohibitions. The ROC posts all licensees in paper to comply with the "20 day notice" rule. Anyone can protest in this period, but once a license is issued, there is no easy way to deal with the problem. It requires a whole after-the-fact regular complaint process. The ROC also checks the NASCLA database for discipline data. This database is open via password to NASCLA member like ROC, but it is not for public use.

The ROC does not perform full background checks or run credit checks on applicants. They ask the applicant to reveal felony convictions. They do not ask for information about lawsuits or bankruptcies the person might have been involved in or misdemeanors. They do not run credit checks or ask contractors to verify they are financially viable like California, Utah, Nevada, Florida and 14 other states.

The ROC will check on other application information. The ROC asks licensees to submit to Department of Public Safety and FBI fingerprint checks if the applicant discloses a felony. However, if the contractor lies and does not disclose the felony, the ROC would not ask for the law enforcement checks. This creates an obvious loophole for contractors who conceal their past.

The ROC does not ask for misdemeanors, so the contractor is not required to reveal misdemeanor convictions relating to personal violence, misconduct involving a deadly

weapon, dishonesty or fraud, arson, theft, domestic violence, narcotics or sexual misconduct. In contrast, the Department of Real Estate asks for misdemeanors; the Department of Gaming asks if applicants have ever been arrested or even questioned by law enforcement; and the Department of Liquor asks if applicants have ever been cited, arrested, indicted or summoned into court for violation of any law or ordinance.

The ROC can fingerprint anyone if they detect problems like multiple drivers licenses. The ROC does not audit applications.

If a complainant came forth with information or the Registrar otherwise found out that a contractor had a felony criminal record, then the ROC would investigate. Similarly, they would investigate if they heard the applicant had numerous judgments against him in other jurisdictions. The ROC points out they can investigate tips they receive, but they need someone to come forward, which is unlikely.

One core piece of information about a contractor is their business address. Contractors are required to maintain a current known place of business with the Registrar's Office under contracting laws. If the entity is a corporation or limited liability company, they must additionally maintain their current business address and statutory agent address with the Corporation Commission. Likewise, partnerships and trade name holders must keep a known place at the Secretary of State's Office.

The Registrar's Office relies on their address of record for the contracting entity, but they typically check with the other two agencies if mail is undeliverable and returned by the U.S. Post Office. If the known place of business on record at the Corporation Commission or Secretary of State differs from the known place of business at the Registrar's, the Registrar's Office will use their address of record when sending certified mail, while the other addresses of record are sent by regular mail.

Complainants' View

Contractors go into people's homes and engage in contracts worth thousands of dollars. They often need keys to access property or turn off alarms, they work amongst valuables and children are frequently in their presence. The ROC should perform more thorough background checks.

It is relatively easy for contractors to hide money and assets, change their address and continue to operate. Homeowners also express frustration that contractors can close up shop and go underground easily. The contractor in this case hid his assets and failed to maintain an address of record.

Attorneys and the Registrar's Office themselves have a difficult time determining what, if any, business address is legit, as the "known place of business." The Registrar's Office and the Attorney General's office must gather and serve all addresses for the contractor listed at the Registrar's Office, the Corporation Commission or the Secretary of State. While homeowners are pleased the Registrar makes these efforts, they are frustrated that other tools

are not available to them such as driver's licenses of the principle contractor, credit reports and tax returns.

Registrar of Contractors View

Registrar staff say they administratively suspend contractors if the Corporation Commission administratively dissolves their business entity. As soon as the Corporation Commission classifies the entity as "not in good standing," the Registrar's Office updates their record system and issues the contractor a notice saying they cannot work until they remedy the Commission problem.

Findings for Issue 14

Finding 14A

The current background-checking process is not thorough and this can leave homeowners in an exposed position.

Residential contractors have enormous access to items of value when working on homes and they work near children and other vulnerable individuals.

We found:

- Statutes do not require, and the ROC does not perform, what could be termed full background checks. Instead, the background checks follow-up on certain applicant provided information.
- The application asks contractors (including corporate directors and owners holding more than 25% of the beneficial interest of the corporation) to disclose felony convictions. It does not ask for misdemeanors, so the contractor is not required to reveal misdemeanor convictions.
- Applicants are on their honor to truthfully complete applications, but the ROC does not audit applications unless given a tip or otherwise becoming suspicious.
- Contractors are not required to reveal past or current litigation or bankruptcies.
- Fingerprint cards are not required as they are for numerous other professions (e.g., real estate, insurance, teaching, nursing and other medical professions and private investigators). However, the Registrar's Office can decide to fingerprint any applicant if they detect problems like multiple drivers licenses.
- The Registrar of Contractors does not require a credit check of contractors.
- Contractors are asked to reveal if they had a license in another jurisdiction (state) and whether they were disciplined. However, because there is not a national database for contractors or a credit check, it is difficult for the Registrar's Office to verify the truth of what they are told. NASCLA keeps some discipline information on contractors, but most states (28) do not belong or report to NASCLA. Only members to the organization have access to the NASCLA database. Comprehensive national databases exist for real estate appraisers, nurses, doctors and behavior therapists among other professions. The lack of a national database or credit check, allows bad contractors to move from state to state preying upon consumers. The contractor in this case was sued by a number of entities in Utah prior to moving to Arizona, but we did not find evidence the Arizona ROC knew this.

- Eighteen states run credit checks or ask contractors to financially document they are financially viable to be in business as a licensed contractor. Florida, Utah and California are all examples of states having stronger applications than Arizona.

Finding 14B

Accurate and current mailing addresses for contractors are critical, yet the ROC database does not reflect the status of contractor addresses.

Outdated, incorrect addresses for contractors cause difficulty when citizens or governmental entities attempt to serve the business with legal notices and other correspondence. The Registrar's Office did not update their web database about the contractor involved in this case despite knowing for almost two years that his address was undeliverable. This does not appear to be an isolated case. The ROC has not developed a mechanism to note undeliverable addresses on their public database. Incorrect information on the database misleads the public.

The Registrar's Office can order administrative discipline if a contractor fails to keep their known place of business address listing accurate. This discipline is usually triggered when the Corporation Commission dissolves a business entity for the same reason. The ROC has tied into the Corporation Commission database so whenever the Commission dissolves a corporation or limited liability company, the ROC typically follows suit and suspends affected contractors' licenses. We know the Corporation Commission administratively dissolved the limited liability company owned by the contractor involved in this case, but we do not see any mention of this in the ROC web database. The ROC should mark contractors' addresses on the web database undeliverable as soon the Corporation Commission informs them or upon independently confirming information provided by other sources.

The contractor in question in this case failed to keep his business address current. Initially people could contact the man, but about nine months into the series of complaints, all addresses of record became undeliverable. Private investigators hired by the homeowners and even homeowners themselves, discovered where the contractor worked after he "went underground." The Registrar did not have the means to follow up on these leads or force the contractor to update his address records. The Registrar did not discipline the contractor for this failure.

Recommendations for Issue 14

Recommendation 14A

The Registrar's Office should improve their vetting process for contractors. Their background checks should be more thorough and ask more questions like the Utah and Florida contractor applications or the Arizona Department of Insurance application. The applications and biennial renewal forms should require Arizona contractors to disclose, excepting vehicular matters, whether the contractor was ever convicted of a misdemeanor or felony in any state. Contractors answering "yes" should be required to provide the subject matter, date, court and sentence.

Recommendation 14B

The Legislature should consider developing legislation requiring contractors be fingerprinted with their initial application. Realtors, medical professionals, insurance agents, teachers and others in a position of trust are required to have fingerprint clearance.

Recommendation 14C

The Legislature should consider developing legislation to require contractors to provide, as a component of contractor application or biennial license renewal, a summary of past and current litigation including case number, date, courts, all parties, subject matter and disposition. Contractors should be asked if all judgments, liens or taxes were paid as required. The Utah application and a number of other Arizona agency applications (e.g., Medical Board, Securities, Gaming, Liquor and Real Estate) ask applicants to provide information about judicial actions involving themselves.

Recommendation 14D

The Legislature should consider adjusting Title 32 concerning licensed contractors to require contractors to biennially report their known place of business, their statutory agent and answer the question, "If on is a corporation, limited liability company or any form of partnership, is the address/known place of business information identical to the respective Corporation Commission or Secretary of State record?"

Additionally, these adjustments to Title 32 relating to business addresses should require the ROC to post undeliverable business and statutory agent address information on the ROC contractor web database upon receipt from the Corporation Commission or Secretary of State.

The ROC should promptly test undeliverable address information they receive from other sources (via a notice letter). Upon confirming the address is undeliverable, the ROC should post the information to their web database and suspend the license until the entity corrects its address problem.

Issue 15 - -What is the scope of discipline affecting a contractor's remaining licenses once he has one license suspended or revoked?

Contractors can have their licenses suspended due to administrative reasons or as the result of contested cases. In situations where the Registrar administratively suspends a license, (e.g., lack of bond, dissolved corporation, etc), the affected contractor cannot do any work for any client until they fix what caused them to be suspended. If the contractor was suspended pursuant to discipline in A.R.S. §32-1154(A) involving workmanship, then the contractor can fix that particular problem, but he cannot take on new work under that license until the suspension is lifted. However, if he has another license, he can take on work under the other license.

Workmanship complaints normally relate to just one license of the contractor. Other licenses are not impacted immediately, if ever. Contractors can even request additional licenses

subsequent to the filing of an official complaint. The current process has no mechanism automatically suspending the issuance of new licenses during an investigation.

Similarly, there is no mechanism automatically cancelling the remaining contracting licenses possessed by the contractor if one license is revoked. Instead, Registrar staff or complainants must initiate another complaint *after* the original suspension or revocation order. It is only at that time the other licenses are gathered and called into question. Revoking the remaining licenses then requires a second due process run.

The ROC staff state they often cannot distinguish all the owners of limited liability companies or corporations. They note business entity statutes typically do not require the disclosure of names of those members or stockholders whose interest is under 25%. Because the ROC cannot "see" the names of people owning less than, 25%, they often miss the fact that an objectionable person (e.g., a previously revoked contractor) is involved in a license.

In the case which led to this investigation, the contractor was suspended for having his bond claimed and because he did not have the proper amount of bond. To get back in business in such a case, the contractor would need to pay back the bond and obtain a new one. The contractor in question did neither. He kept working despite being served with a cease and desist order by the Registrar's Office. He then abandoned his work address, so the ROC could not find him.

Complainants' View

The homeowners believe that once a contractor is revoked, all of his licenses should be automatically revoked. They think the revocation is prima-facie evidence the contractor is unfit to be licensed.

Registrar of Contractors View

Sometimes one person has numerous contractor licenses. If one license is suspended, then the other licenses can be brought into question. This is not a default process. The homeowner or the ROC must go through the whole complaint process. [See A.R.S. §§32-1120 and 32-1154(A)(21)]. This is one of the few occasions where the process is only disciplinary. If a person with multiple licenses goes through the complaint process and is suspended or revoked, then all his other licenses are grouped together by the Registrar's Office and a second process occurs for them. While this is frequently the case, it is not always true. On occasion, the Registrar's Office will not pursue the contractor's other licenses.

The Registrar's Office said that sometimes contractors start multiple businesses and have multiple contracting licenses. If one license is suspended or revoked, the Registrar lacks statutory authority to summarily suspend the other licenses that might exist in the contractor's name. See A.R.S. §§32-1120 and 32-1154(A)(21). They must go through a second process where they gather the remaining businesses into a subsequent complaint and proceed with a new, second course of action.

The ROC staff point out that some contractor licenses have little to do with others and that the due process system is the fairest way to establish if the previous suspension or revocation bear on the other licenses.

The Registrar permits contractors to apply for new licenses while they have open complaints. They will issue a new license to the contractor if they otherwise comply with statute because no statutes authorize them to wait. Once a contractor's license is suspended or revoked, the Registrar tries to not issue them new licenses. The ROC cannot take away a license automatically under current law. If they issue a license in error, the Registrar must go through the due process routine to revoke the license that should not have been issued in the first place. [See ARS §32-1101(A)(5).]

Findings for Issue 15

Finding 15A

The current process to revoke multiple licenses takes too long.

It greatly extends the time sub-standard contractors are allowed to operate and solicit work. It exposes the public to risk.

Finding 15B

Nothing in current statute prohibits the ROC from issuing a new license while the old one is under question.

The Registrar does not deny a new license if there is only a complaint against a licensee, but they do not wait for the complaint to be resolved either. The Registrar's Office says no statutes authorize them to wait. They said in contrast, they stop new license requests if one has already been suspended or revoked.

Recommendations for Issue 15

Recommendation 15A:

The Legislature should consider developing legislation prohibiting the issuance of new licenses to contractors while they have open complaints. Instead, legislators could create a new category of contingent or provisional licenses. Contractors with open complaints could file for contingent or provisional licenses that would automatically convert to licenses with full rights if the contractor were exonerated from the complaint. On the other hand, if the contractor were found guilty and disciplined, the conditional license would suffer the same fate as the license in question. A suspension or revocation of the one license would automatically impart the same consequence on the new, conditional license. In this way, time and expense would be saved in dealing with guilty contractors, yet innocent contractors would not be impeded from commerce unfairly.

Recommendation 15B:

The Legislature should consider developing legislation authorizing the Registrar to revoke remaining licenses or rescind places where the contractor is listed as a qualifying party simultaneously in instances when the Registrar orders the revocation of one of the

contractor's licenses. The initial hearings, findings and order should address the contractors other licenses and listings as a qualified party to avoid the redundancy required with the existing system. The scope of discipline affecting contractors' remaining licenses should be declared and debated in the original charges and hearing process. A completely new set of hearings should not be necessary.

Issue 16 - -To what degree are general contractors required to verify whether a sub-contractor has a license in good standing with the Registrar of Contractors?

We looked at the issue of what degree a general contractor is required to verify whether a sub-contractor has a license in good standing with the Registrar of Contractors.

Contractors hire licensed and unlicensed individuals to work for them. However, contractors must use a licensed sub-contractor when it is required. Some administrative code rules or city zoning codes require licensed contractors to perform particular tasks. For example, frequently codes relating to electrical processes require a contractor licensed to perform electrical work carry out the work.

The Registrar's Office said that under many circumstances it is appropriate for a contractor to hire unlicensed individuals. They said a person could be unlicensed and legally work at a construction site. Numerous tasks do not require licensure. Examples would be clean up crews, purchasing agents, movers, some demolition workers and those performing certain landscaping tasks. Employees perform these types of jobs. The Registrar's Office notes they have no jurisdiction over employees. They said a person could even be a site superintendent without holding any form of contractor license. They said the licensed general contractor is responsible to ensure work meets code specifications and ultimately it is up to them. However, some work, like electrical and plumbing requires a license to perform the task.

The Registrar's staff said it is a violation if the contractor knowingly hires an unlicensed person to perform work requiring licensure. The Registrar's Office said they would investigate such allegations, but it is hard to prove because under current statute and rule, the general contractor must be responsible for the work, but he does not have to verify the worker is licensed. As a result, when confronted with an allegation a sub-contractor is unlicensed, contractors defend themselves by saying, "Well, I thought he was licensed . . ."

Findings for Issue 16

Finding 16A

The ROC does not require contractors to show proof that their sub-contractors have appropriate licenses.

Contractors may hire licensed or unlicensed individuals to work for them. However, contractors must use a licensed sub-contractor when the task requires licensure. Unlicensed employees improperly engage in work requiring construction licensure typically for one of three reasons:

1. They lie to general contractors about their license status.
2. They do not realize the task requires licensure.
3. They and the general contractor knowingly break the law.

Lax documentation practices contribute to the problem. Sub-contractors are not required to offer any proof of their licensure to general contractors and general contractors are not required to verify whether a sub-contractor has a license in good standing with the Registrar of Contractors. There is no formal validation process, so it is next to impossible to prove bad intent and punish negligent contractors in this area. Sloppy or bad general contractors avoid punishment simply by saying, "I didn't know the sub was not licensed."

Finding 16B

Under current law, site superintendents need not have any form of licensure. Homeowners might not see much of the general contractor, but then they will be in regular contact with the site superintendent. There should be at least a basic license for site superintendents, given they are the designated monitor for the other workers at the site and the fact they are put into a position of trust having access to the home's valuables and vulnerable residents (children).

Recommendations for Issue 16

Recommendation 16A

The Legislature should consider developing legislation to require contractors to obtain the license number and initially verify the good status of each sub-contractor they use. In turn, sub-contractors should then be required to deliver notice of any change of license status to the general contractors they work for within thirty days of any change.

Recommendation 16B

The Legislature should consider revising the statute relating to handymen. A.R.S. §32-1121 places a \$1,000 limit on the *total* repair cost of a job, not just a \$1,000 limit on what work can be done by a handyman. It does not apply to contractors, only homeowners. Thus, an inequity occurs. A handyman should be allowed to perform up to a \$1,000 in labor that does not require licensure. The total job cost should not be tied to the handyman.

Recommendation 16C

The Legislature should consider requiring site superintendents be licensed. This requirement will require the creation of a new category of license.

Issue 17 - - Is it proper for the Registrar to encourage complainants to pursue cases on their own without the benefit of legal counsel?

We examined the propriety of the Registrar of Contractor staff and Office of Administrative Hearings (OAH) communication to complainants and contractors regarding whether or not the parties should pursue cases on their own without the benefit of legal counsel.

We looked at the written material offered by the agencies to both homeowners and contractors discussing the use of attorneys.

The Registrar of Contractors FAQ document relating to legal issues in response to the Question "Do I need an attorney" said the following, "This is a matter of choice. You may but are not required to be represented by an attorney." The Registrar's Legal Section prepares the Notice of Hearings too. Each notice states the parties may, but do not have to be, represented by an attorney.

The Office of Administrative Hearings informs the public that a lawyer is not required to plead their case. In their web-based advice entitled, "*Do I Need A Lawyer?*" the agency advises that individuals may represent themselves. Business entities have to be represented by a lawyer or an authorize party subject to certain requirements listed in Rule 31, Rules of the Supreme Court.

However, the Office of Administrative Hearings strikes a more cautious tone, at least with contractors. They have a three-page article dating from April 2005 giving contractors a brief overview of who may represent a contractor in a disciplinary proceeding, and under what circumstances. One statement says, ". . . the manner in which a contractor chooses to represent himself, herself or itself at hearing can have significant ramifications, and is not a decision to be lightly or hastily made."

We looked at the results for this particular case. Parties represented by attorneys fared better at the Office of Administrative Hearings than non-lawyers. In this case, most of the families had attorneys and they won. Only two homeowners lost and we noted that neither of them used an attorney.

Complainants' View

In this case, a number of the homeowners decided to prepare by attending other similar case hearings before their own case came up. They attended the other hearings and came away scared. They believed that aggressive council, even if wrong, was often persuasive to the Office of Administrative Hearing judges. Homeowners said viewing the hearings taught them that non-lawyers tend to lose.

Complainants who went through the process without benefit of council told other homeowners that it was hard to do well on their own. They stated their inexperience harmed them because they failed to grasp how quickly the dynamics of a hearing can change. They often felt ill-prepared dealing with objections, evidence and witnesses. They found the process to be intimidating and complicated and believed they would have had a better outcome had they engaged legal council. They strongly recommended the other owners use lawyers when presenting cases at the Office of Administrative Hearings.

Many of the complainant said they got bad advice. They said ROC staff and written materials are indifferent and imply attorneys are not necessary. The complainants felt this downplayed the need for an attorney. While it is factually true attorneys are not required, citizens said it

gave them the wrong impression. They expected conversational meetings where they could just say their story and show their documents, but instead got a hard-edged, legalistic, unforgiving process that intimidated them. Once they experienced the actual hearing, the citizens felt the ROC failed to prepare them. They thought the agencies should encourage the use of an attorney, instead of the current practice where the agencies say attorneys *may* be used, but give no indication that both parties benefit from utilizing an attorney.

Those with later cases felt they benefited from the experiences of the earlier cases. They saw the advantage of employing the services of an attorney and noted that none of the complainants who used attorneys ever lost against the contractor, but some of those who represented themselves lost.

Registrar of Contractors View

The Registrar's Office believes a lawyer is likely to help in an administrative hearing, but they do not want to require them because they worry it would increase the costs too much. The Registrar's web material and other communications state that attorney representation is the option of the individual party. Privately, the Registrar's staff members say that they recommend people use attorneys.

The Registrar responded to the preliminary edition of this report and said they believe, "It is wholly inappropriate to advise the parties that they should use an attorney."

Findings for Issue 17

Finding 17

Parties represented by attorneys fare better at the Office of Administrative Hearings than non-lawyers.

We asked the Office of Administrative Hearings to look into this recommendation. Director Cliff Vanell responded with a statistical analysis [see exhibit R]. Director Vanell summarized his survey by saying, "It should come as no surprise that having counsel provides a benefit." He went on to say, "Unrepresented parties may not be aware of certain defenses, or may not take the time to prepare for a procedure which is necessarily adversarial."

Director Vanell noted that ones chances of success are the same if either both parties are represented or neither party is. In cases where one side had an attorney and the other did not, the results were dramatic. The complainant prevailed 87% of the time if legal council did not represent the respondent (contractor). This meant the homeowner bettered his chances by a 6:1 margin. In the opposite scenario, the contractor did better by a 2:1 margin. The contractor prevailed 64% of the time if legal council did not represent the complainant.

We concluded a contractor put himself at huge risk if he did not use an attorney and a homeowner doubled his chances of victory if he used an attorney. Thus, all parties would benefit from knowing that representation by an attorney in OAH hearings significantly boosts one's chances in hearing.

Recommendations for Issue 17

Recommendation 17

The Registrar's Office should change their oral instructions, pamphlets and web site information so they note that parties who utilize a lawyer in contested cases usually improve their position, but a party does not have to use an attorney if they cannot afford one. The instructions could then state a party/layman may represent himself, if he cannot afford an attorney.

CONCLUSIONS

This report examined the operations of the Registrar of Contractors Office. It focused on complicated cases and issues created by the troubled contractors. The vast majority of contractors are highly regarded and never, or rarely, involved in the complaint process. There were about 12,000 complaints last year. Of these cases, only about a third required adjudication. The other two-thirds of the complaints were successfully resolved at the front-end of the process. In the end, only about 3% of the contractors have their license suspended or revoked. This illustrates that the vast majority (97%) of contractors perform honorably and deserve licensure. The bad, 3% of contractors, cause the most trouble and have the most adverse impact on consumers and the system.

We examined the Registrar's entire process, but we focused most on what happens to people who must participate in the entire process in order to receive Recovery Fund reparations. We looked at how the Registrar's system works and fails to work for contractors and homeowners.

Our case emanates from nine homeowner complaints. It was their misfortune to make a deal with a contractor destined to be part of the bad 3% of contractors. Part way through the complaint process, the owners decided the Registrar's process was skewed toward contractors over homeowners and that homeowners are not protected as the Registrar's mission statement pledges. This drove the homeowners to file a complaint with us.

We started our investigation by looking at the Registrar's charge. The Registrar of Contractor's Office Strategic Report says their mission is,

"To promote quality construction through a licensing and regulatory system to protect the health, safety and welfare of the public."

The aforementioned statement implies the Registrar's Office would place emphasis on developing systems to exemplify this issue. After concluding our investigation, we are not convinced the Registrar's Office is fully adhering to the intent of its mission. That is not to say they are not working extremely hard. They are working hard and they seem to want to do the right thing, but some elements of their process are preventing them from living up to the full potential of their mission. These elements vary from statutory constraints to manpower limitations to computer system capabilities to policy decisions.

Our investigation of the Registrar's process revealed a time consuming, overly complicated system dependent on homeowners' continued pressure to bring errant contractors into compliance with statutes and rules regulating contractors. Absent regular pressure from homeowners, the Registrar's Office is not inclined to independently pursue allegations that particular contractors violated contracting laws. However, the Registrar's Office does aggressively pursue unlicensed handymen. The Registrar's Office issues many cautions to consumers suggesting they only use licensed contractors for building and landscaping projects. The Registrar regularly files complaints against unlicensed contractors.

To a degree, the aggressive stance against unlicensed handymen, instead of errant contractors, is curious as the public should not expect that an unlicensed individual is fit or qualified to do contracting work. In contrast, once a contractor obtains a license from the State, the presumption is that he is sanctioned (via license) by the State as at least minimally fit to perform the work.

We found the priorities to be backward. While admirable the Registrar's Office wishes to protect the public from misdeeds by unlicensed contractors, they should have an even greater duty to protect consumers from misdeeds by contractors they license.

The home owning public and the staff of the ROC seem to be most at odds over the process. The public thinks the ROC system is excessively convoluted and the existing due process systems take too long. Homeowners note the system is not for the faint-hearted and can take well over a year to conclude. The Registrar's Office concedes this and says contested cases do take a long time to work their way through the hearing process.

Waiting three or more months to get onto the Office of Administrative Hearing's calendar frustrates homeowners, contractors and the Registrar's staff. Because most Recovery Fund cases require two separate hearings under the current system and because each of these can be appealed two or more times, it is not difficult to see where most of the time is spent. A system designed to handle complaints in one hearing, with hearings scheduled within two months from the request, would remove many of expressed frustrations.

In some of the cases, we found the Registrar did not take responsibility for certain statutory requirements. For example, we found the Registrar's office does not consistently investigate or pursue discipline against contractors who violate contracting laws relating to workers compensation, unemployment, privilege taxes or social security.

The Registrar's Office should vigorously enforce the entire body of contracting laws, not just certain parts. Further, when they uncover suspected abuse in areas also subject to the jurisdiction of other state agencies, they need to formally communicate their concerns and ask the receiving agency to investigate and report their findings back to the Registrar. The Registrar should then attach all substantiated findings to the involved contractor's file and impose discipline measures where appropriate.

The Registrar's licensing process is not as thorough as it could be. We identified a number of areas to tighten up. We benchmarked Arizona against other states and recommended expanding the application and renewal process to require the disclosure by contractors of

more background information. The Registrar would be in a better position to protect the public if they were more aware of contractor's arrest records, bankruptcy proceedings or other lawsuit information.

The public would also benefit from a more thorough examination of contractor finances. At least 18 states have found the value in obtaining detailed financial statements from contractors. Many authorize future contractual amounts by tying to these statements. The better the financials, the more work the contractor is permitted to take on. The states requiring financials found this reduces the problem of contractors engaging in Ponzi-type schemes or otherwise getting over their heads financially. We noted that some states have an alternative method; they require the contractor to obtain a bond specific to each project to cover the total amount of the project.

We also recommended that contractor affirmations about mandatory payments (e.g., unemployment insurance, workers compensation, taxes, etc.) be incorporated into the Registrar of Contractors standard biennial license renewal process.

We saw the purpose of the Registrar's Office described in one of the affected complainant's administrative hearings. Administrative Law Judge Brian E. Smith quoted a prior court finding which said,

"The purpose of licensing Arizona contractors is to regulate the conduct of contracting and protect the public from unscrupulous act [Beazer Homes Ariz., Inc. v. Goldwater, 196 Ariz. 98, 101,993P.2d 1062,1065 (App. 1999); Better Homes Constr. v. Goldwater, 203 Ariz. 295,300,53 P.3d 1139 (App. 2002)]."

and

"The statutory purpose is to prevent unscrupulous or financially irresponsible contractors from deceiving and taking advantage of those who engage them to build. [Sobel v. Jones, 96 Ariz. 297,394 P.2d 415 (1964)]."

Our investigation of the Registrar's Office indicates that process has overwhelmed purpose at the Registrar's Office. We respectfully contend the State can and should do a better job by homeowners while still protecting contractors with proper due process systems. We believe our 68 recommendations would help accomplish that goal.

Agency Response

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ARIZONA REGISTRAR *of* CONTRACTORS

Janet Napolitano, Governor

Armando Contreras, Director

October 8, 2008

Mr., Patrick M. Shannahan
Ombudsman-Citizens' Aide
3737 N. 7th Street, Suite 209
Phoenix, Arizona 85012-1946

Dear Patrick,

The ROC has completed its review of Arizona Ombudsman-Citizens' Aide Investigative Report #20062692. Our response to the issues presented and recommendations made is attached.

Our delay in responding to your investigation is regretful but unavoidable. ROC Director Fidelis V. Garcia resigned from the agency in September without completing his review of the agency's response to your investigation. Prior to forwarding our response to your office, I felt, as the newly appointed ROC Director, that a review of that response was warranted before affixing my signature to it. I appreciate your tolerance and understanding of the position in which I was placed regarding this response.

If you have any questions or concerns regarding our response, please do not hesitate to contact me.

Sincerely,

Armando Contreras, Director
Registrar of Contractors

The ROC (Registrar of Contractors) issues the following positions and statements relating to the Arizona Ombudsman-Citizens' Aide Investigation #20062692.

Issue #1

The findings of the Ombudsman-Citizens' Aide is agreed to but a different resolution will be implemented.

The Registrar requested and received funding for a new computer system. This new computer system will allow the agency to track and process complaints in a more efficient manner. Implementation of this new system is scheduled for FY 2009.

The Registrar has requested more personnel to process complaints. The legislature has approved our request for more personnel but before the hiring of new personnel could take place, the state invoked an employee hiring, transfer and promotional freeze. Additionally, the state transferred a significant portion of agency funds to the state's general fund to balance the state's general fund budget. Such action will impede the agency's current streamlining efforts.

The Registrar presented legislation last legislative session that had provisions, which could have speed up our complaint process. However, Arizona legislators failed to pass this legislative initiative authored by the Registrar.

Issue #2

Split finding - The findings of the Ombudsman-Citizens' Aide is not agreed to and the recommendation will not be implemented

The Registrar has personnel designated to determine whether work performed by licensed contractors meets or does not meet construction standards. The Registrar does not have the statutory authority to hire project estimators to determine minimal construction costs. If this additional function is supported by the legislature with funds for training and additional support personnel then the suggestion may be feasible.

Split finding – The findings of the Ombudsman-Citizens Aide is agreed to but a different resolution will be implemented.

The Registrar already researches contracting laws in other states and does suggest, promote and assist in the development statutory changes with legislators before each legislative session. The Registrar will maintain its current program.

Issue #3

The findings of the Ombudsman-Citizens Aide is agreed to but a different resolution will be implemented.

The Registrar has implemented many changes to our website, which includes a breakdown of our complaint and Residential Recovery Fund claim process. Additionally, basic written guides to these processes are available from the Registrar's office upon request or they can be downloaded from our website

The Registrar is working with GITA to develop our new computer system. This collaboration will determine what type of information will be available to consumers in accordance with prevailing privacy laws. Other changes to the agency website and other agency publications will be considered with the development of software for the new computer system.

Finally, the agency website hosts videos which breakdown our processes in plain language for those not inclined to read prevailing law. The development of more videos is planned for the future.

Issue #4

Issues listed require legislative enactment.

Issue #5

The finding of the Ombudsman-Citizens Aide is not agreed to and the recommendation will not be implemented.

Unless otherwise directed by legislative enactment, the Registrar cannot mandate private industry provide additional material to consumers at a cost to be borne by the industry. The development of any handbook for consumers would be charged to the agency. Such funds are not currently available because of the transfer of funds from the agency to the state's general fund. Without such an increase, the legislature would have to appropriate sufficient funds for the development and printing of such materials.

Complaints filed with the Registrar are not displayed on the website until they are verified as accurate. Listing the number of complaint received but unsubstantiated could lead to fraudulent complaints being filed by competing contractors or consumers.

Displaying the number of corrective work orders and citations issued is not necessary. Open complaints that are later satisfied are listed on the website, as are those that resulted in disciplinary action being taken against the contractor.

Access to our database to review current complaints is not feasible. Such ability may be available when our new computer is on line but any information displayed must be highly regulated because of privacy laws.

Issue #6

Issues listed here require legislative enactment.

Bond amounts were addressed in HB 2030 – contractors; regulations during the last legislative session. However, the bill was not passed by the legislature.

Issue #7

The findings of the Ombudsman-Citizens' Aide is agreed to but a different resolution will be implemented.

The Registrar will have a new computer system in place by the end of FY 2009. The software limitations of our new computer system will dictate what information can or cannot be gathered and obtained.

Issue #8

The findings of the Ombudsman-Citizens Aide is agreed to but a different resolution will be implemented.

The question is two pronged. First, when can a homeowner employ a new contractor to fix a problem? Second, when can a homeowner deny access to the original contractor?

Both of these questions were addressed by SB1417, which just became law. It provides that "The registrar shall not issue a citation for failure to perform work in a professional and workmanlike manner or in accordance with any applicable building codes and professional industry standards if either: 1. The contractor is not provided an opportunity to inspect the work within fifteen days after receiving a written notice from the registrar. 2. The contractor's work has been subject to neglect, modification, or abnormal use.

A homeowner may have someone correct the contractor's work at any time, but there are consequences to doing so. Based upon the above, if the contractor's work is modified prior to the issuance of a citation, no citation may be issued. If the modification is made after a citation is issued it may be determined by an administrative law judge or court that

the contractor was deprived of the opportunity to correct the work and that the case should be dismissed.

A homeowner may deny access at any time, but there are consequences to doing so. Based on one above, the homeowner must apparently allow any contractor to inspect complained of work within 15 days after notice from the registrar. Failure to allow that inspection means we must close their complaint. Thereafter, the homeowner may not "unreasonably" deny access to the contractor to correct its work. Whether the denial was unreasonable is a factual determination, which may be addressed at a hearing.

The impending Homeowners Bill of Rights, if passed by the electorate, would also impact relations between purchasers, albeit outside of the Registrar's regulatory scheme.

Issue #9

The finding of the Ombudsman-Citizens' Aide is agreed to and the recommendation will be implemented.

All forms used by the Registrar will be updated in accordance with the new computer guidelines established with the implementation of ROCIMS.

Issue #10, 11, 12 and 13

When notified that a contractor does not possess Workers' Compensation Insurance, Unemployment Insurance, or does not pay their appropriate taxes the Registrar does implement processes to discipline a contractor's license. Direct access to other agencies computer databases is not permitted in most circumstances because of state or federal laws that govern the dissemination of information contained within their databases.

The Registrar does commonly pass information on to other state agencies as deemed appropriate. Such communication may be done in writing or by other interagency communication.

Only legislative enactment can force agencies to share information directly with the Registrar of Contractors.

SB 1417 requires the agency to develop guidelines when a license may be summarily suspended. The requirements for the agency under the provisions of this bill are being reviewed for later implementation.

Issue #14

There are insufficient personnel within the agency to thoroughly check all parts of an individual application. The Registrar relies on the information supplied to us by the applicant and by citizens when the applicant applies for a contractor's license. A detailed background check of each applicant would require more personnel and funding.

Issue #15

Requires legislative action.

Issue #16

Requires legislative action.

Issue #17

The finding of the Ombudsman-Citizen Aide is not agreed to and the recommendation will not be implemented.

The need to have a lawyer present at an administrative hearing is a personal choice, which should not be influenced by a statement by the Registrar. The Registrar does advise consumers that they may hire a legal representative (lawyer) to represent them at the administrative hearing process if they so desire. The Registrar also advises consumer that they are not required to have legal council at the hearing. The agency should not make any statement, which can be construed as legal advice to either party involved in a dispute

This concludes the agency's response to the issues raised by the Ombudsman-Citizen Aide in their investigation #20062692.

LIST OF ATTACHMENTS

LIST OF ATTACHMENTS

1. Exhibit A --
 - Timetable A – Administrative Process to the Recovery Fund
 - Administrative Process Described
2. Exhibit B --
 - Timetable B - Civil Court Process to the Recovery Fund
 - Civil Court Process to the Recovery Fund Described
3. Exhibit C -- Flow Chart of Process (without complications)
4. Exhibit D -- Legal memo relating to summary suspension
5. Exhibit E -- 2003 Auditor General Report Recommendation
6. Exhibit F -- Bond Limits and Regulations
7. Exhibit G -- List of the 31 States with Licensing Boards for Contractors
8. Exhibit H -- Residential Contracting by State
9. Exhibit I -- NASCLA states Recovery Fund Features Summary and Overview
10. Exhibit J -- Complaint Forms, Instructions & Brochures
11. Exhibit K -- ROC Recovery Fund Forms and Instructions
12. Exhibit L -- Office of Administrative Hearings Information
13. Exhibit M -- Press Clippings About Similar ROC Cases
14. Exhibit N -- ROC web site information regarding subject contractor
15. Exhibit O -- ROC Contractor Brochure
16. Exhibit P -- ROC Customer Survey
17. Exhibit Q -- Charts and Grids
18. Exhibit R -- Office of Administrative Hearings Survey About Legal Representation
19. Exhibit S -- Summary of Recommendations
20. Exhibit T -- References

EXHIBIT A

- **Timetable A – Administrative Process to the Recovery Fund**
- **Administrative Process Described**

Scenario A: Straightforward process without early defaults, re-hearings, appeals, settlements or extraordinary delays

EVENT

	NUMBER FROM EXHIBIT A:	ESTIMATED DAYS	EXTRA DAYS
1. Homeowner files initial complaint to assignment of inspector and initial entry into the system	#1 THRU #2	4	
2. Inspector initially reviews, writes initial letter to notify contractor of problem, sets up & waits for inspection date	#3	56	
3. Inspection	#5	1	
4. Inspector writes & issues corrective work order to contractor. Copy sent to homeowner	#6	4	1
5. Contractor given a min. of 15 days to fix issues listed in work order.	#7	15	Indeterminate
6. PROCESS MAY END NOW IF ISSUES ARE FIXED AND HOMEOWNER CONCURS	#8		Indeterminate
7. Corrective order expires if issues not fixed. Homeowner has 6 months to tell ROC, but they will close w/ in 30 if no word	#9	15	1 to 165
8. If homeowner is unhappy due to unresolved problems, then the ROC prepares an official citation	#10, #11	37	1 to 3
9. Contractor is sent citation and given 15 days to respond. Homeowner is sent copy	#12	10	4
10. MATTER COULD GO INTO DEFAULT IF CONTRACTOR FAILS TO RESPOND	#13, #14, #15		40 to 50
11. Contractor responds to citation	#16	1	
12. ROC prepares documents, then sends them to OAH to request a hearing date	#17	7	3
13. OAH sets matter for hearing (the date is typically 60 to 110 days in the future) and informs the ROC	#18	5	
14. ROC mails a hearing notice to both parties. Must be a minimum of 30 days notice.	#19	30	
15. Parties wait for hearing date to arrive	#20	40	30 to 50
16. CONTINUANCE MAY BE REQUESTED	#21		1 to 90
17. Hearing occurs	#22	1	1
18. Judge writes report and issues findings and recommendations	#23, #24	20	1 to 10
19. Registrar issues order or default order occurs	#25	10	3 to 21
20. PARTIES MAY REQUEST A RE-HEARING	#26 through #33		5 to 160
21. Contractor is given 40 days to comply with order or the discipline becomes effective on 40th day	#34	40	
22. COMPLIANCE HEARING MAY BE REQUESTED BY EITHER PARTY	#35, #36, #37		5 to 160
23. PARTIES MAY REQUEST A HEARING IN SUPERIOR COURT (JUDICIAL REVIEW)	#38		5 to 100+
24. Legal Dept at ROC sends victorious homeowner a recovery fund packet to complete	#39	1	2
25. Homeowners complete recovery fund packet	#40	10	1 to 90+
26. ROC Processes recovery Fund claims in the order they are received	#41	54	
27. ROC checks the Recovery Fund claim for completeness	#42	30	
28. ROC rejects incomplete documents & asks for corrections or additional submissions to get packet declared complete	#43	1	10 to 30
29. Recovery Fund Inspection is scheduled and occurs	#44	30	1 to 10
30. Registrar reviews inspection report and determines recommended Recovery fund claim amount	#45	45	4 to 15
31. The Recovery Fund notice claim is sent to the contractor and homeowner.	#46	1	1 to 4
32. The contractor must respond within 15 days.	#47	15	
33. PARTIES CAN CONTEST THE CLAIM AMOUNT AND ASK FOR A RECOVERY FUND HEARING	#47, #50 to #57, #59		5 to 160
34. PARTIES MAY REQUEST A HEARING IN SUPERIOR COURT (JUDICIAL REVIEW)	#47		5 to 100+
35. Registrar issues a Decision, Order and Award in the case of a contractor default	#48	40	
36. PARTIES MAY REQUEST A HEARING IN SUPERIOR COURT (JUDICIAL REVIEW)	#49, #58		5 to 100+
37. Registrar staff request checks on civil and administrative orders twice a month	#60	4	1 to 7
38. Recovery Fund staff finalize the claim file and initially process the warrant/check request	#61	3	1
39. Recovery Fund sends warrant request to their administration department for processing and entry into the AFIS system	#62	4	
40. State General Accounting Office produces and issues the warrant/check	#63	5	5
41. ROC Accounting Dept. picks up the warrant from the General Accounting Office	#64	1	2
42. Recovery Fund Dept updates the ROC database & financial records & preps letters which accompany check.	#65	3	
43. Check is mailed or designated for pick up	#66	2	
		545	144 to 1,107+

EXHIBIT A

REGISTRAR'S ADMINISTRATIVE PROCESS:

- From Filing of Complaint to Recovery Fund Payout

- 1) Complaint comes into the Registrar of Contractor's Office and is routed to the appropriate office and section.
- 2) Complaint reviewed and entered into system.
- 3) The complaint is then assigned to an inspector. An early determination is made about whether or not the problem involves workmanship. The initial determination about whether or not it involves workmanship goes only to whether it is immediately placed on the website as an open complaint. If it is abandonment or some other problem unrelated to workmanship, it does not require an inspection, it appears on the website and a 10-day letter is sent immediately. The contractor is informed of the issues and encouraged to resolve them. If not resolved, the homeowner can request a hearing. If no hearing request is received from the homeowner within 30 days of the date of the 10-day letter, then the complaint is closed.

If the complaint involves workmanship, the inspector then typically writes to the contractor within the first week to warn him a complaint was filed and tell the contractor that inspections will occur unless corrections are made. The complainant is also sent a copy of this letter. There is no statute regarding this warning letter time frame. However, the initial warning gives the contractor an opportunity to do corrective work and get the complaint closed without the formality of the jobsite inspection and the more involved portion of the statutory process. The Registrar of Contractor's staff believes this initial informal encouragement is the best scenario for the homeowner. The initially scheduled jobsite inspection date is stated in this letter. The inspection date may change if the complainant adds more allegations,

if either party asks for a change in the inspection date or if the parties make progress on resolving their dispute informally.

- 4) If items get fixed, the case is closed. If not, then the inspector proceeds with the worksite inspection (this takes a few days in rural areas and up to 8 weeks/56 days in Phoenix or other busy urban cities.) There is no actual "deadline" in statute. The typical length of time is determined by the sending of the notice stating the date of the jobsite inspection.
- 5) On the date of the scheduled inspection, the Registrar of Contractor's inspector, the complainant, and the contractor or his representative meet at the property and review each issue listed in the complaint. The inspector would typically listen to each party and visually inspect each listed item.
- 6) Three to five days after the inspection, the inspector issues a corrective work order via mail noting any remaining deficiency. The contractor and the homeowner each receive a copy of the order.
- 7) The Corrective Work Order gives the contractor a minimum of 15 days to fix the listed items. This is per statute: ARS §32-1154 A,23. The homeowner jeopardizes his position, and subjects his complaint to a dismissal, if he bars the contractor from the property during this period. The Registrar's Office encourages the homeowner and contractor to resolve the matter instead of giving up and moving on to a formal hearing.
- 8) If the items are fixed and the homeowner concurs, the matter is closed.
- 9) If the item(s) is not fixed, then the corrective work order expires. The homeowner decides whether or not he wishes to continue. If the homeowner is not happy, then he can inform the Registrar's Office of his displeasure and ask to move forward with a hearing. If no hearing request is received within 30 days of the date of the corrective work order, the complaint is closed because the Registrar assumes the homeowner would complain if this was not the case. The homeowner

has up to 6 months to reopen the complaint and request a hearing.
This is per policy, not per statute.

- 10) When a homeowner is still unhappy because noted problems remain unresolved, then the Registrar of Contractors must issue a citation to the contractor. The Inspection Department does the initial preparation of the file; pencil cites and forwards it to Legal.
- 11) The Legal Department then issues the citation. Because of current volume, it is taking Legal 25-30 days to prepare the citation upon its receipt from Inspections.
- 12) The contractor is given 15 days (by statute) to respond to the Registrar of Contractors. The response must be in writing.
- 13) If the contractor fails to respond within 15 days, then he goes into default. A default order is issued by the Registrar's Office imposing appropriate discipline for the circumstances. The discipline may vary from probation, to suspension to revocation. Civil penalties, increased bond requirements or other measures could also be imposed. The default negates the need for an initial hearing because it is viewed as an admission of guilt. The ROC notifies the contractor of his default and informs him of the discipline.
- 14) The Registrar of Contractors may take subsequent information to determine if the default has any rationale (e.g., excusable mistake). The Contractor may file a request for rehearing in 35 days from the date of the order, appeal within 40 days or comply with the order. [See process below, #28].
- 15) The Registrar of Contractors may lift a suspension resulting from a default or keep it in place. The severity of discipline is determined by Registrar of Contractors chief administrators. Any discipline imposed by the Registrar of Contractors may be lifted or set aside in appropriate circumstances. [See normal rehearing/appeal process below].
- 16) A contractor avoids a default altogether by responding to the citation and contesting the matter. When the contractor responds within the

fifteen day deadline, with virtually any statement of denial, then the matter is set for hearing at the Office of Administrative Hearings. A.R.S. §41-1092 et el, Uniform Hearing Procedures states the process. Thus, if the contractor files a timely response, then the matter is sent to hearing.

- 17) A week or so later, the Registrar of Contractors officially sends the case to the Office of Administrative Hearings. The Registrar of Contractor Office requests a hearing date from the Office of Administrative Hearings. When a hearing request is received from the homeowner, it lists the items which remain unresolved. The citation and the entire record (including the complaint form and the agency's written corrective work order) are sent to Office of Administrative Hearings by the Registrar's Office. The Office of Administrative Hearings hearing is generally restricted to items that were listed by the homeowner. It is the homeowner's list, not something that the Registrar of Contractors creates or alters. Generally, if a homeowner discovers new items after the citation, a new complaint would have to be filed.
- 18) It takes Office of Administrative Hearings about 5 days to set a date and get word of the assigned date back to the Registrar of Contractors. [NOTE: The Office of Administrative Hearings reports that 95% of the cases were scheduled for hearing at the Office of Administrative Hearings by the 110th day from the date the Registrar of Contractors requested that a hearing be set. 95% concluded, including Registrar of Contractor final agency action, by the 200th day of such a request.]
- 19) The Registrar's Office mails a hearing notice to both parties. The notice must provide at least 30-days warning prior to the hearing (by statute). A typical notice packet includes the three-page, Notice of Hearing; a two-page flyer stating the administrative rules for the Office of Administrative Hearings (R2-19-101 through R2-19-122); "*The Informational Guide*" to the Office of Administrative Hearings and two

small inserts. One insert notes the web site address for the Office of Administrative Hearings and the other pushes the importance of viewing the instructional video, "*Preparing for the Hearing*." A Notice of Hearing informs the parties about what to do if they resolve their dispute, how to file continuances and ask for subpoenas and notes that the respondent's prior record may be considered by the judge if the Respondent is found to have violated any of the statutory provisions charged in the case.

- 20) The parties must typically wait 2-3 months for the hearing to occur. It may be longer in rural areas.
- 21) Parties can ask for a continuance. Office of Administrative Hearings normally requires that all motions be filed at least 15 days prior to hearing and be copied to the other party. This is in Office of Administrative Hearings rules. [NOTE: Continuances are typically granted for "good cause" not "convenience." Continuances occur in just over ten percent of the cases. Of the thirty agencies which regularly utilize the Office of Administrative Hearings, the majority of continuances are filed by parties to a Registrar of Contractors case.]
- 22) The hearing occurs. If the hearing does not finish in the originally allotted time, it may be necessary to get an additional hearing slot. This may take no time, days or even months. It depends on the hearing judge's calendar.
- 23) The administrative law judge has 20 days to write findings and results. [Note: By statute, the administrative law judge has 20 days to forward the recommended decision to the agency although there is no penalty provided if this time is not met. Overwhelmingly the administrative law judge does forward the decision within that time].
- 24) The administrative law judge issues their decision. The administrative law judge recommended decision and order contains findings of fact, conclusions of law and a recommended order. The Registrar of

Contractors may adopt, modify or reject this recommended decision. Overwhelmingly, they are adopted.

- 25) The Registrar reviews the file and issues his order. The Registrar also can issue a civil penalty if either A.R.S. §§ 32-1154(A)(23) or 32-1154(A)(18) are violated. The first law relates to a contractor failing to adhere to a corrective work order. The second law relates to contracting after one's license has been suspended or is in inactive status. The ROC has 30 days from the date the recommended decision is forwarded from the administrative law judge to adopt, modify or reject the recommendation. If the Registrar of Contractors does not act within the 30 days, then the Office of Administrative Hearings will certify the recommended decision and it will become the order in the case.
- 26) 35 days in statute for parties to request a rehearing.
- 27) If they request a rehearing, then the Registrar of Contractors must evaluate their request. Either party may request a rehearing of an order whether issued as a result of a default or a hearing within 35 days of the date the order is mailed.

A rehearing request, in cases where there were initial hearings before Office of Administrative Hearings, goes back to Office of Administrative Hearings for a recommendation. The Office of Administrative Hearings processes the request and forwards a recommended order to the Registrar of Contractors. Most rehearing requests are denied for failure to state a valid legal reason.

There is no time limit for the administrative law judge to make a recommendation. Once the Registrar of Contractors receives the recommendation, they have 30 days to adopt, modify or reject. The criteria for rehearing used by the administrative law judge are found in AAC R4-9-120.

If the request is relating to a default order, it is filed with the Registrar of Contractors. A rehearing request in a default case is addressed by Registrar of Contractors and there is no time requirement for doing so. The same rule applies and we also look at whether there is an excusable reason for failing to file a timely answer. While rehearings are granted in both instances, most are denied for failure to state a valid legal reason.

- 28) A copy is sent to the other party for a 10 day response and a decision is made to grant or deny. The Registrar of Contractors has 30 days within which to adopt, modify or reject the recommended order. Other than this 30 day period, there is no statutory time limit on either agency for the initial processing of the request. Re-hearing requests are rarely granted.
- 29) If the Registrar of Contractors approves the request for rehearing, then it must be sent back to Office of Administrative Hearings where the wait is 2-3 months. This process is the same whether the grant of the rehearing is from a default or a hearing order. Office of Administrative Hearings conducts the re-hearing.
- 30) The administrative law judge for Office of Administrative Hearings has 20 days to write results of re-hearing.
- 31) The administrative law judge issues a report with finding of fact, conclusions of law and a recommended order.
- 32) The Registrar can accept or amend the report and then issues post re-hearing order. Again, the Registrar of Contractors has 30 days to adopt, modify or reject a recommended order from Office of Administrative Hearings pursuant to statute.
- 33) The Contractor is given 40 days to comply. - - - If the contractor is ordered to comply and hasn't applied for a judicial review, then the contractor must finish work and get complainant to sign off and notify ROC within 40 days. The contractor has 40 days by statute from the mailing of the order whether resulting from a default, hearing or

rehearing order to file an appeal in Superior Court. (35 days, plus 5 days for mailing) Normally, unless there was a prior default, discipline is not imposed until this time. This gives the contractor time to comply if the order is provisional.

- 34) If there is a reasonable dispute between the parties as to whether there has been compliance or denial of access to hinder compliance, then the matter may be sent to a compliance hearing. The Compliance Hearing is scheduled with the Office of Administrative Hearings (takes 2-3 months). The Registrar of Contractors, as a policy, currently abides with rulings from Maricopa County Superior Court which seem to require a compliance hearing before a provisional disciplinary order may be put into effect. The Registrar's Office is reviewing this policy to determine if the best practice is having a compliance hearing or should the statute be changed to create an alternative process.
- 35) The administrative law judge takes 20 days to write the results of a compliance hearing. Compliance hearings follow the same post hearing procedures as initial hearings. There can be a rehearing request, appeal or compliance.
- 36) The Registrar takes the administrative law judge report and issues a final order. Again, pursuant to statute, the Registrar of Contractors has 30 days to adopt, modify or reject a recommended order from Office of Administrative Hearings. See post-hearing process set out above.
- 37) Parties can then ask for Judicial Review in Superior Court if they still disagree. If a matter is appealed to Superior Court, the Registrar of Contractors generally loses jurisdiction to act in the case further unless the court issues an interim order allowing the Registrar of Contractors to continue to make compliance determinations (which the courts have done) or the court formally remands the matter back to the Registrar of Contractors to take further action specified by the court.
- 38) The Legal Dept within the ROC sends a package to the homeowner telling them about Recovery Fund process. It is sent to the homeowner

at the time a licensed contractor is actually disciplined. The administrative claim form package is mailed to the homeowner the same day the disciplinary order of suspension or revocation against the license becomes effective and is posted to the system. After becoming effective, depending on workload it takes the Legal Department staff approximately 2 days to 1 week to post the suspension or revocation to the system. The disciplinary order of suspension or revocation becomes effective 40 days after the date it is mailed. The homeowner is not eligible for the Fund until this point in time. The Registrar of Contractor's Office packet contains the administrative claim form, materials explaining the process and instructions from Legal. Homeowners are told to fill out the administrative claim form and supply all supporting documentation (i.e. basic documents including contracts; front and backsides of cancelled checks or other proof of payment; three estimates from licensed residential contractors or homeowner's expenditures; contracts/invoices from licensed residential contractors/suppliers and proof of payment on same). No deadline is given to the homeowner. However, the instructions advise the homeowner that claims are processed in the order in which they are received.

- 39) Homeowners complete their Recovery Fund package and send the completed documentation back to Registrar of Contractors. The time frame is homeowner driven. The time frame varies from claim to claim; it could be as soon as immediately or as long as one or two years. The standard is typically 1 week to 3 months. No time limit is imposed as long as the contractor's Recovery Fund account has not been depleted.
- 40) The Recovery Fund claims are processed in the order they are received. The claim is date stamped and the Recovery Fund claim number is assigned. Up until this point, the case has been numbered with an initial complaint number. It is assigned a Recovery Fund number once the revocation or suspension becomes final [A.R.S. §32-

1154.F.]. The underlying disciplinary case is incorporated and the documents are sorted into appropriate document types. The licensee information is researched and license screens are printed for bid/costs documents. Information contained on the claim form is entered into Registrar of Contractor's data base and all supporting documents are scanned into Registrar of Contractor's imaging system. Eligibility, pursuant to ARS 32-1154.F, is researched and verified. (Current time frame is approximately 54 days). [NOTE: The FY06 payout time periods ranged from a low of 135 days to a high of 195 days. FY07 is running 159 to 187 days. Thus, from this point forward to the end of the process could take as long as five to seven months, based on past history expectations.]

- 41) The Registrar's Office reviewer checks the Recovery Fund claim submittal for completeness. The plaintiff must also meet all other eligibility requirements per Registrar of Contractors statutory requirements of A.R.S. 32-1131 through A. R. S. 32-1140, including a determination of whether the homeowner has already received, on a previous clam, up to the \$30,000 maximum payout on the same property location. The current time frame for the review is approximately 30 days if the file is found to be complete. Once the paperwork for the claim is deemed complete, then the Registrar of Contractor's inspector goes to the home and inspects each item listed in the claim. [skip to #44]
- 42) If the file is deemed incomplete, the reviewer notifies the homeowner of the deficiencies by phone, letter or e-mail. Typically, a letter is sent to the homeowner that specifies the deficiency and requests the homeowner supply the missing documents. The Registrar asks the homeowner to respond to the request for additional information/ documents within 30 days.

- 43) The Registrar of Contractor's inspector has 30 days to conduct a Recovery Fund inspection, write a report of his findings and submit them to the Recovery Fund Manager.
- 44) The Registrar (through the Recovery Fund Manager) reviews the inspector's report and verifies all statutory requirements have been met and the claim is complete. The department then determines the recommended amount payable upon the Recovery Fund claim. The process includes a review of the contractor's license. Additionally, the Recovery Fund "account summary" is examined to determine whether the \$200K maximum limit has been reached for that particular license [per A.R.S. 32-1139.A.]. The Registrar's Office has three options. They can approve the full amount requested by the homeowner (up to statutory limit of \$30,000), the homeowner can be offered a good faith settlement amount (followed by further negotiations) or the claim can be denied as ineligible. The time frame varies from 30 to 60 days.
- 45) The Recovery Fund notice goes out to the contractor and a copy is sent to the homeowner stating the amount claimed.
- 46) The contractor must respond within 10 days of service + 5 days more for registered mail [total of 15 days] by requesting a hearing if he wishes to contest the amount or propriety of the payment. A contractor can request a re-hearing OR appeal to Superior Court regarding the amount claimed. The homeowner can also request a Recovery Fund hearing on the Registrar of Contractor's decision to deny a claim or if homeowner disputes/does not accept the Registrar's good faith offer.
- 47) If the contractor or homeowner does not request a hearing, the Registrar issues a default Decision, Order and Award. A default Decision, Order and Award becomes effective 40 days after the date of mailing. The time frame on a default decision to grant or deny a rehearing is ruled upon by the Registrar of Contractor's Legal Department.

- 48) A default Decision, Order and Award is subject to judicial review. The time frame on an appeal to Superior Court varies - it is homeowner/attorney driven as the civil court system and calendar is not within control of ROC. The process and time frame on a default Rehearing Decision and Order is the same as on previous hearings. A Rehearing Decision, Order and Award is effective 40 days after the date of a mailing.
- 49) If a hearing is requested by the contractor, the Recovery Fund Division copies the entire file and organizes it by document type. It is then delivered to the Registrar of Contractors Legal Department (approx. time frame, 7 days).
- 50) The Legal Department, will then manage the claim/case throughout the administrative hearing process until the Decision and Order of the Registrar becomes final. The Legal Department then sends the file to the Office of Administrative Hearings and asks for the case to be scheduled. (approx. time frame, 20 days).
- 51) If the homeowner requests a hearing, the Registrar of Contractors will intervene. Homeowners request hearings at this time in the proceedings largely due to one of two reasons. One, the Registrar denied the claim. Alternatively, the homeowner disputes the Registrar's good faith offer.

When a hearing is requested, numerous tasks are involved. Once the homeowner submits their written request for hearing, the Recovery Fund Manager prepares the "Request for Intervention Memo" for the Legal Department. The memo provides details of the claim, specifies the agency's position and requests intervention by the Office of the Attorney General. Next, the notice to the contractor (discussed in #47) is prepared and mailed. The Recovery Fund staff copy the entire file and organize it by document type, and then deliver it to Registrar of

Contractor's Legal Department (Approximate time frame, 30 to 60 days).

- 52) The Office of Administrative Hearings typically assigns a hearing date within 5 to 10 days. The hearings occur approximately 16 to 20 weeks in the future. Rural locations tend to take 20 weeks while the Phoenix metro area are typically be accommodated in 16 weeks.
- 53) The Recovery Fund hearing is noticed to parties. The hearing must be noticed 30 days prior to the hearing in accordance with the same Title 41 statutory requirement for all hearings in contested cases at the Office of Administrative Hearings. Notice is mailed out 40 days prior to ensure the 30 day statutory requirement is met.
- 54) The hearing on the proposed Recovery Fund amount is conducted at Office of Administrative Hearings and officiated by an administrative law judge.
- 55) The Administrative Law Judge (ALJ) then ponders the matter and issues his findings and recommendations to the Registrar within 20 days from the date the hearing is held.
- 56) The Registrar reviews the recommendation and issues an order approving, modifying or rejecting the final amount the Recovery Fund is to pay. The time limit gives the Registrar 30 days to review and issue his order.
- 57) Parties can again ask for judicial review at this point. The time frame for an appeal to Superior Court varies – it is homeowner/attorney driven as the civil court system and calendar is not within the control of the Registrar of Contractors.
- 58) Process and time frame on a Rehearing Decision and Order same as on previous pages as addressed in the Legal Department section. A Rehearing Decision, Order and Award are effective 40 days after the date of mailing.
- 59) The Registrar request checks on civil and administrative orders twice a month (the 10th and 25th).

- 60) Internally, the Recovery Fund Department finalizes the claim file and processes the warrant/check request. This process includes another review of the contractor's license Recovery Fund account summary to determine whether the \$200K maximum limit has been reached per A.R.S. 32-1130.A, for each contractor that warrant/check is being requested. This process takes 2-3 days depending on the number of claims being paid.
- 61) The Recovery Fund sends a warrant/check request document to their administration department for processing and entry into the AFIS system. From this point to actual receipt of warrant/check by Plaintiff is approximately three weeks.
- 62) The State General Accounting Office produces and issues the warrant/check.
- 63) The Registrar's Accounting Department picks up the warrant/check from the State General Accounting Office typically the same day they are notified the warrants are ready.
- 64) Over the course of one to two days, the Recovery Fund Department performs a variety of administrative tasks before releasing the warrant/check. The Registrar's database records are updated, financial records are balanced and a variety of letters which accompany the warrant/check are prepared.
- 65) The Plaintiff is mailed the warrant/check by certified mail or arrangements are made for pick-up.

NOTE: Complainant can add to / amend their complaint at any time, but this can de-rail their complaint for a while as new issues work through processes listed above.

EXHIBIT B

- **Timetable B – Civil Court Process to the Recovery Fund**
- **Civil Court Process to the Recovery Fund Described**

B1: TYPICAL TIMEFRAME ESTIMATE FOR EXHIBIT B:

Scenario A: Straightforward process without early defaults, re-hearings, appeals, settlements, arbitration or extraordinary delays

EVENT

1. Plaintiff files court case. He must notify ROC in writing of their intent to collect from Recovery Fund
2. Plaintiff must pursue all bonds that are in effect.
3. If the contractor filed for bankruptcy, plaintiff must file for relief from stay order imposed on all claimants.
4. Upon notification of lawsuit, ROC will date stamp and log claim. Preliminary validation is performed.
5. Reviewer will check submittal to see if the plaintiff meets all the statutory eligibility requirements
6. The Reviewer notifies the plaintiff if they detect any deficiency in the submittal.
7. PLAINTIFF PROCEEDS WITH THEIR LAWSUIT LARGELY INDEPENDENT OF THE ROC - See note
8. Once the plaintiff obtains a judgment against the contractor, he must deliver a copy to the Registrar.
9. Registrar's Office staff makes sure the packet was deemed complete
10. Inspector will schedule a jobsite inspection to view the items targeted for recovery fund reimbursement.
11. Inspection
12. ROC inspector writes a report of his findings and submits them to the Recovery Fund manager
13. Recovery Fund Manager will determine proposed Recovery Fund claim amount or deny claim
14. Plaintiff determines it is time to return to court to ask judge to issue an order directing payment.
15. Plaintiff must first give 20-days written notice to the ROC of their intent to file for order directing payment
16. If the ROC decides to challenge the pay order application, they request Attorney General Office intervention
17. ROC & AG state their intention to offer a settlement, intervene or take a passive role (not object to claim).
18. Contractor determines if he wishes to challenge the amount of pay order application.
19. IN CONTESTED CLAIMS, PARTIES GO BACK TO COURT TO DETERMINE PROPRIETY & AMOUNT OF CLAIM.
20. Civil court issues an order setting forth its decision on the pay order application.
21. PARTIES MAY REQUEST AN APPEAL IN COURT
22. Plaintiff delivers the Order Directing Payment, in certified form, back to the Registrar's Office
23. Registrar staff request checks on civil and administrative orders twice a month
24. Recovery Fund staff finalize the claim file and initially process the warrant/check request
25. Recovery Fund sends warrant request to their administration department for processing & entry into AFIS system
26. State General Accounting Office produces and issues the warrant/check
27. ROC Accounting Dept. picks up the warrant from the General Accounting Office
28. Recovery Fund Dept updates the ROC database & financial records & preps letters which accompany check.
29. Check is mailed or designated for pick up

<u>NUMBER FROM EXHIBIT B:</u>	<u>ESTIMATED DAYS</u>	<u>EXTRA DAYS</u>
#1 & 4	1	Plaintiff decision
#2	Indeterminate	
#3	Plaintiff&Court timetable	
#5	10	
#6	22	
#7	22	1 to 30
#8	Court timetable	Indeterminate
#9	1	Indeterminate
#10	24	Indeterminate
#11	15	5
#12	1	unlikely
#13	5	10
#14	20	
#15	Plaintiff decision	
#16	15	5
#17	5	
#18 - #21	AG Office timetable	
#22	Contractor decision	
#23	0	Court timetable
#24	14	Court timetable
#25	0	Court timetable
#26	1	Indeterminate
#27	4	1 to 7
#28	3	1
#29	4	
#30	5	5
#31	1	2
#32	3	
#33	2	Plaintiff decision
	178 +	Indeterminate

Note: Events 1 - 7 normally occur concurrently with court action. Events 8 - 29 take place at the ROC
 Thus, 123+/- days are incurred at the ROC beyond the time in court while 55 days (approx.) run concurrent w/ court.

EXHIBIT B

REGISTRAR'S PROCESS TO RECOVERY FUND via CIVIL COURT:

1. The homeowner (Plaintiff) files a court case in Superior Court or with a Justice Court pursuant to A.R.S §32-1136. The time frame varies – it is homeowner/attorney driven as the civil court system and calendar is not within the control of the ROC.
2. The homeowner must pursue all bonds that are in effect. This can be accomplished in the same lawsuit. The time frame varies from a few months to over a year. It is not within Registrar of Contractor control.
3. The homeowner must be sure that the contractor has not filed for bankruptcy. If the contractor has filed for bankruptcy, then the plaintiff must file for relief from the automatic stay order imposed on all potential claimants. Once granted, then a plaintiff can continue with his lawsuit.
4. The homeowner/plaintiff is required to notify the ROC in writing of their desire to collect from the Recovery Fund at the time they commence their civil law suit against the licensed residential contractor.
5. The Registrar of Contractors staff, upon the written notification of the lawsuit, date stamp the claim and log it in. A Recovery Fund claim number is assigned and eligibility pursuant to A.R.S. §32-1136 is verified. If the homeowner also filed an administrative complaint with the Registrar, the underlying discipline case is incorporated, documents are sorted into appropriate segments, licensee information is researched and license screens are printed for bid/cost documents. Information and documents stemming from the court case are entered into the Registrar's data base and file. The claim and its supporting documents are scanned into the Registrar's imaging system. The claims are processed in the order in which they are received and deemed complete. The Registrar's Office reviewer will check the claim submittal. The reviewer will look for a copy of the civil summons and complaint along with supporting documentation. Supporting documentation would typically consist of items such as contracts, cancelled checks or other proof of payment, receipts for supplies, estimates or bills from licensed residential contractors. Typical timeframe to this point is 54 days.
6. The Reviewer will check the submittal to see if the plaintiff/homeowner meets all the statutory eligibility requirements of A.R.S. §§ 32-1131 through 32-1140, including the determination of whether the plaintiff, on a previous claim, has already received up to the maximum 30K pay out on the same property location. This verification typically takes 30 days.
7. At this time, the Registrar's staff typically receives and responds to plaintiff questions relating to Recovery Fund criteria. The Reviewer notifies the plaintiff by phone, letter or e-mail if they detect any

deficiency in the submittal. Typically, the plaintiff is sent a letter specifying the deficiency. This step is part of the 30-day timeframe in #6 above and is a result of the review and verification. The reviewer attempts to notify the plaintiff of any deficiencies immediately or within one or two days of the review. Often the plaintiff requests additional time to gather missing information or otherwise correct deficiencies. If the plaintiff fails to respond at all, then the Reviewer mails a follow-up letter asking the plaintiff to respond. Sometimes plaintiffs respond quickly, other times they wait until they have judgment.

8. Meanwhile, the plaintiff proceeds with their lawsuit largely independent of the ROC. Again, the court time frame varies. [It is determined by the type and number of filings with the court from the parties, judicial acts and orders.] It is not within the control of the Registrar's Office.
9. Once the plaintiff successfully navigates through the initial civil court process and obtains a valid judgment against the licensed residential contractor, he must return to ROC and give the Registrar a copy of the judgment.
10. At this point, if not before, the Registrar's Office staff makes sure the packet was deemed complete. [As explained in #6 and #7].
11. Then an inspector will schedule a jobsite inspection at the house to view the items targeted for recovery fund reimbursement. The time frame to schedule the inspection typically runs about two weeks, but is dependent on the inspector's caseload. The time can run more or less, but the inspector must be cognizant that he typically is limited to 30 days to conduct the Recovery Fund inspection, write a report of his findings and submit it to the Recovery Fund Manager.
12. On the date of the inspection, the ROC inspector goes to the home and inspects each item listed in the claim submittal and judgment.
13. The ROC inspector writes a report of his findings and submits it to the Recovery Fund Manager. Again, the inspector must be aware of time limitations. He typically has thirty days from the date the Registrar's Office was notified of the judgment. However, the time allotment may be reduced to 20 days if the plaintiff receives the valid judgment and simultaneously gives the Registrar's Office official notice of the plaintiff's intent to apply to the court for an order directing payment from the Recovery Fund. In that case, the inspector has less than 20 days to perform the jobsite inspection, write his report of findings and turn it in to the Recovery Fund Manager.
14. The Recovery Fund Manager, acting on behalf of the Registrar, will:
 - a) Review the report's documentation and the inspector's recommendation.
 - b) Verify that all statutory requirements have been met and the claim is otherwise complete.
 - c) Conclude what is considered reasonable of the requested damages and determine the amount payable for the claim.

- d) Review the contractor's license account summary to determine whether the \$200K maximum has been reached for that particular license per A.R.S. 32-1139.A
- e) Decide whether or not to intervene. If the plaintiff has already submitted official notice of their intent to apply to the court for an order directing payment, then the manager must decide on intervention within the 20 day notice period.

The matter may be resolved by one of three options:

- a) The amount requested by the plaintiff (up to \$30K) can be approved;
- b) The plaintiff can be offered a good faith settlement amount, followed by further negotiations;
- c) Or the claim can be denied as ineligible.

Time frame varies from 30 days to 60 days approximately, unless a 20-day-notice was filed. The agency system must be internally expedited if a 20-day-notice is filed.

15. Meanwhile, the plaintiff must decide when they desire to go back to court to obtain an order directing payment (issued by the court judge).
16. Once the plaintiff is ready to go back to court, they must first give 20-days written notice to the ROC. In doing so, they serve notice of the plaintiff's intent to apply (submit a pay order application) to the court for an order directing payment from the Recovery Fund. The time frame varies as it is plaintiff/attorney driven. The civil court system and calendar is not within the control of Registrar's Office.
17. At this point, the ROC must decide if they are going to intervene or not. If the ROC decides to challenge the pay order application, they request Attorney General Office intervention. The Recovery Fund Manager submits a written request for intervention to the Attorney General's Office. They provide details of the case and specify the Registrar's position in their request. Time frame is approximately 5 days or less.
18. The ROC, in concert with the Attorney General's Office officially state their intention to:
 - a) Make the plaintiff a good faith settlement offer,
 - b) To intervene in the matter
 - c) Take a passive role and not object to the claimed amount.

The Attorney General's office communicates the decision to the Plaintiff. The time frame is not within the control of the Registrar's Office, but is up to the Attorney General's Office.

19. If the Registrar's Office takes a passive role on the pay order application and the court does not receive any response or objection from the contractor, the Court issues an Order Directing Payment from the Recovery Fund. The time frame varies as it is plaintiff/attorney driven. The civil court system and calendar is not within the control of Registrar's Office.
20. If the Plaintiff and the Registrar's Office **are in agreement**, the Plaintiff will submit the agreed pay order application to the Court and stipulate

they are in agreement with the Registrar. A copy is also sent to the Registrar's Office. If the Plaintiff is **not in agreement** with the Registrar's determined amount, the Plaintiff will submit the amount they are claiming to the court. Again, the Plaintiff sends a copy to the Registrar's Office. The time frame varies as it is plaintiff/attorney driven. The civil court system and calendar is not within the control of Registrar's Office.

21. The Attorney General files a Notice of Intervention with the civil court. The time frame is not controlled by the Registrar's Office, but is controlled by the Attorney General's Office. All notices pertaining to civil court motions, court dates, the judgment, hearing on the civil pay order application etc., are issued by the civil court not the Registrar's Office.
22. The Contractor contemplates and determines if he wishes to challenge the amount of pay order application.
 - A. **Option A. - Contractor Does Not Contest Amount of Pay Order Application.**
 1. Contractor either fails to respond by deadline given by the civil court or responds that he does not object to proposal amount.
 2. If the Registrar does not intervene and the court does not receive contractor's objection to the pay order application the court rules on the pay order application then issues an order directing payment from the Recovery Fund.
 3. Time frame varies = Plaintiff/attorney driven and civil court system and calendar is not within control of ROC.
 - B. **Option B. - Contractor Objects To Proposed Amount of Pay Order Application**
 1. Contractor must respond/submit his objection directly to the court.
 2. Time frame varies – homeowner/attorney driven and civil court system and calendar is not within control of ROC.
23. When either the contractor or ROC challenges the amount, all parties are noticed by the civil court. Then the Plaintiff, the Contractor, the Registrar's Office and their Assistant Attorney General must go back to Superior Court (or a court of competent jurisdiction) and argue over the propriety of the claim and/or what the amount (if any) that is to be paid. The Registrar's Office is represented by the Office of the Attorney General, who will appear in civil court and defend the Registrar's position along with the Registrar of Contractor staff necessary to provide testimony (typically the Recovery Fund Manager or Supervisor and the Inspector). The time frame varies as it is plaintiff/attorney

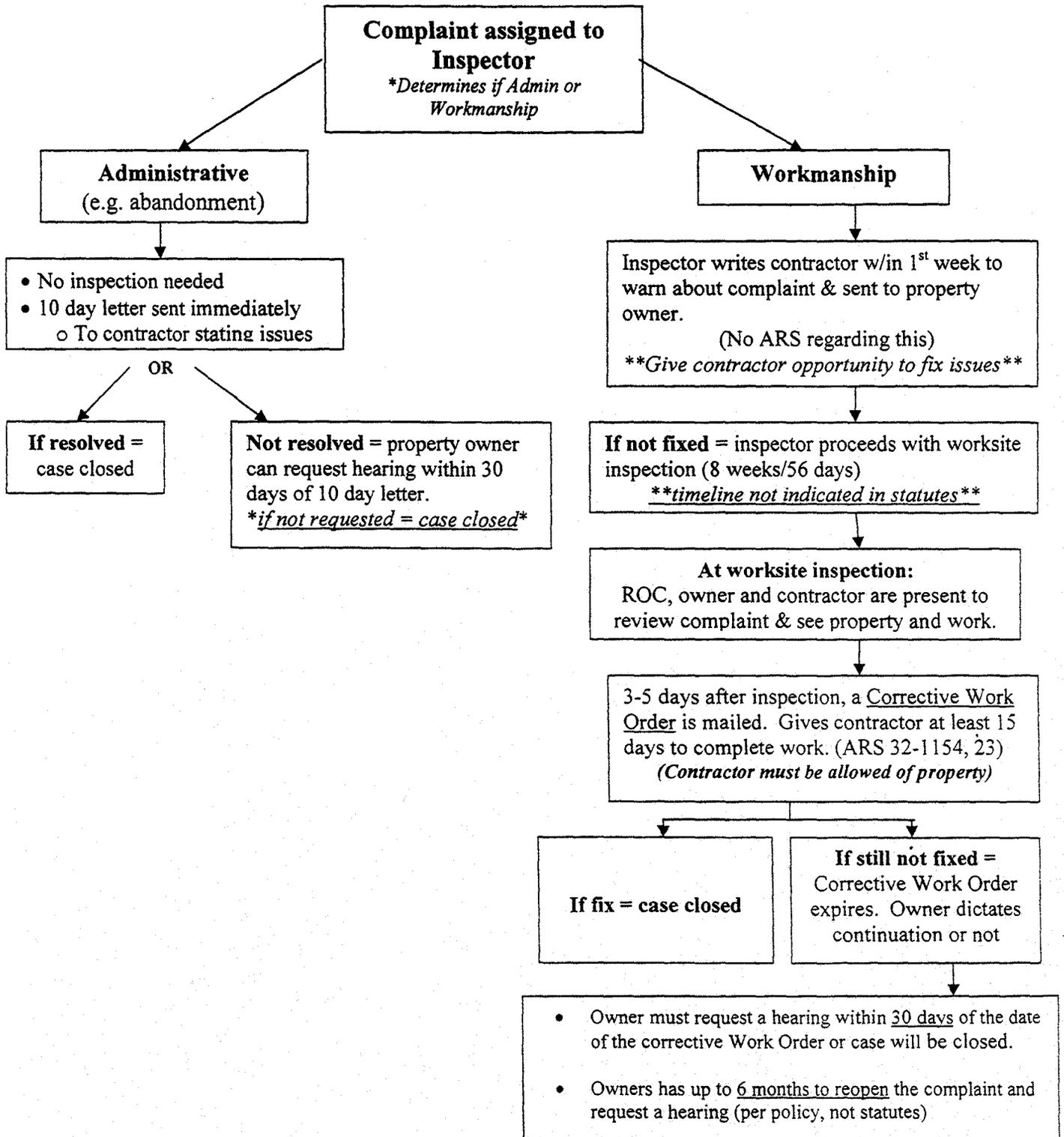
driven. The civil court system and calendar is not within the control of Registrar's Office.

24. The civil court issues an order setting forth its decision on the pay order application. This takes about two weeks.
25. Superior Court orders directing payment can be appealed to the Court of Appeals. This event could potentially delay the case for years if the case was appealed to the Supreme Court.
26. The plaintiff delivers the Order Directing Payment, in certified form, back to the Registrar's Office.
27. The Registrar request warrants/checks relating to civil and administrative orders twice a month (10th and 25th).
28. Internally, the Recovery Fund Department finalizes the claim file and processes the warrant/check request. This process includes another review of the contractor's license Recovery Fund account summary to determine whether the \$200K maximum limit has been reached per A.R.S. §32-1139.A, for each contractor that warrant/check is being requested. This takes 2-3 days depending on the number of claims paid.
29. The Recovery Fund Department sends the warrant/check request document to their administrative department for processing and entry into the AFIS accounting system. From this point to the actual receipt of the warrant/check by the plaintiff (as stated in #33 below) is approximately three weeks.
30. State General Accounting Office produces and issues the warrant/check.
31. The Registrar's Office Accounting Department picks up the warrant/check from the State General Accounting Office typically the same day they are notified the warrants are ready.
32. The Recovery Fund Department performs a variety of administrative tasks before releasing the warrant/check. This includes updating Registrar Office records, preparing a variety of letters that accompany the warrant/check and the balancing of Registrar data records. The time frame is approximately 1 to 2 days depending on the number of claims being paid.
33. The plaintiff's attorney is mailed the warrant/check by certified mail unless the attorney instructs the Recovery Fund staff otherwise. If there is no attorney of record, arrangements are made directly with the plaintiff.

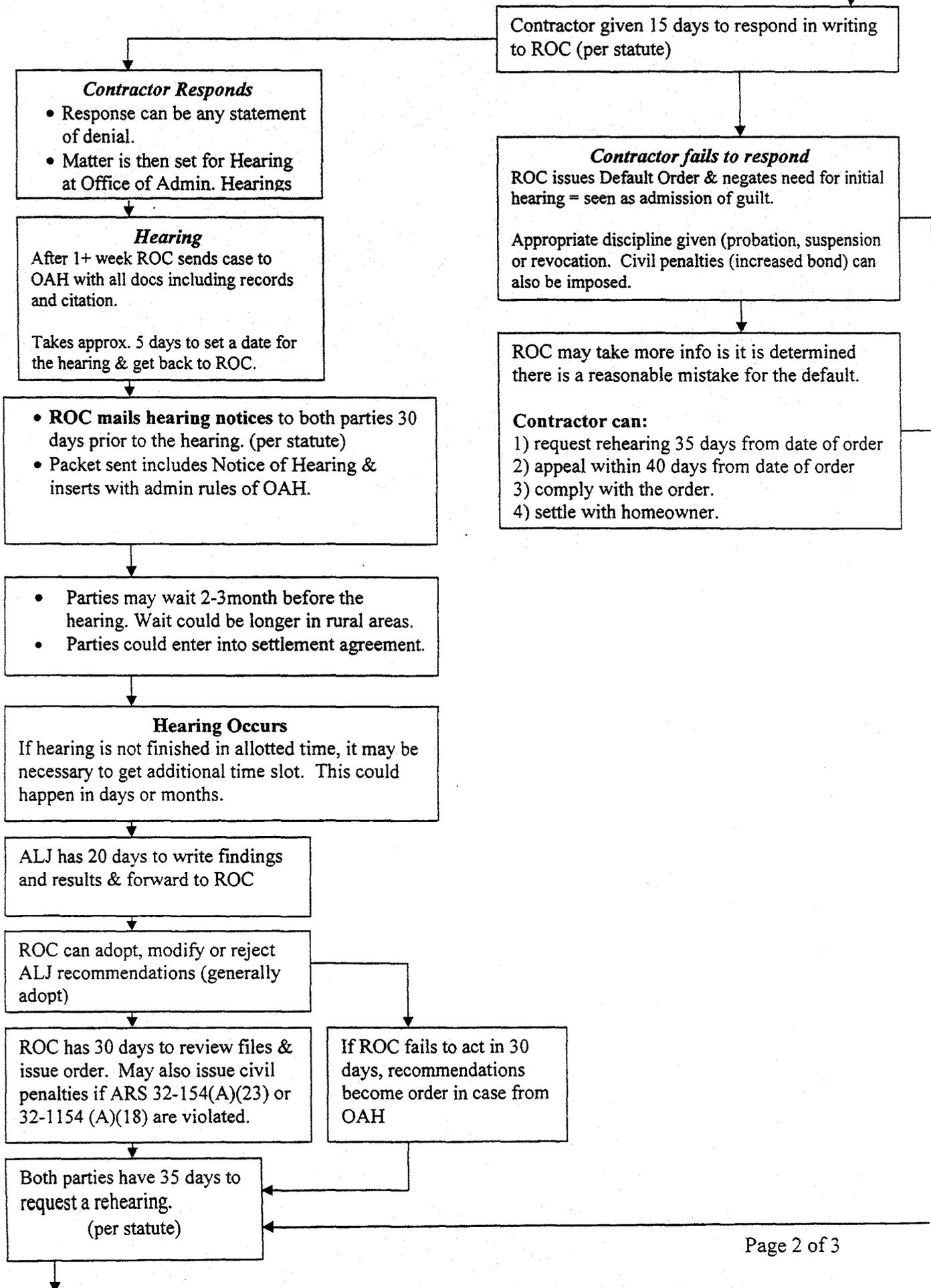
EXHIBIT C --

Flow Chart of Process *(without complications)*

Flowchart of the Registrar of Contractor's Administrative Process



Flowchart of the Registrar of Contractor's Administrative Process



Flowchart of the Registrar of Contractor's Administrative Process

Re-hearings are granted in both settings however most are denied for not stating a legal reason

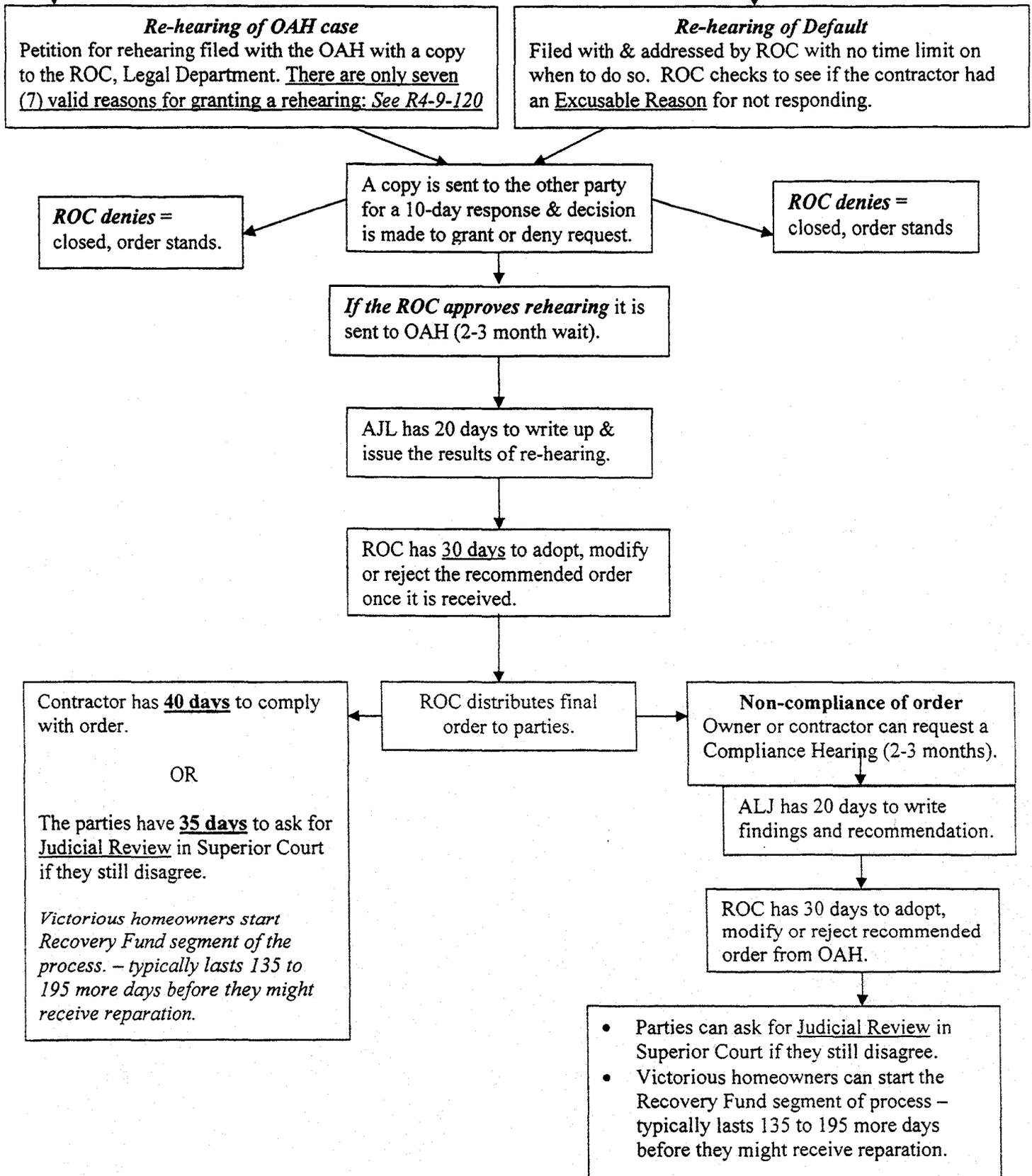


EXHIBIT D --

**Legal memo relating to summary
suspension**

ARIZONA LEGISLATIVE COUNCIL

MEMO

October 5, 2006

TO: Joanne MacDonnell
FROM: Ken Behringer, General Counsel
RE: ROC; License; Summary Suspension (R-47-197)

QUESTION

May the Registrar of Contractors (ROC) summarily suspend the license of a contractor?

ANSWER

The ROC may summarily suspend the license of a contractor under the provisions of the Administrative Procedure Act if the public health, safety or welfare is threatened. However, the ROC is not required to use this summary suspension authority.

DISCUSSION

The ROC may temporarily suspend or permanently revoke the license of a contractor if the contractor commits a prohibited act. Arizona Revised Statutes (A.R.S.) section 32-1154. If a written complaint is filed with the ROC concerning a licensee, the ROC may issue a citation or, if requested by the complainant, require the licensee to show cause why the license should not be suspended or revoked. A.R.S. section 32-1155.

In addition to the specific statutes for the ROC, the Administrative Procedures Act may have applicable provisions. A.R.S. section 41-1092.11, subsection B provides:

Revocation, suspension, annulment or withdrawal of any license is not lawful unless, before the action, the agency provides the licensee with notice and an opportunity for a hearing in accordance with this article. If the agency finds that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its

order, the agency may order summary suspension of a license pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

This section requires a hearing before a license may be suspended, unless the agency finds that the public health, safety or welfare requires immediate action. As part of the Administrative Procedure Act, the section sets out general rules applicable to agencies in the absence of more specific statutes. *Didlo v. Talley*, 21 Ariz. App. 447 (1974). If this section conflicts with a statute that specifically applies to the ROC, the more specific statute controls.

The only possible conflict would be with the order to show cause provision in A.R.S. section 32-1155. However, that provision is not mandatory because it provides that the registrar "may" issue a citation with the order to show cause. Therefore, the summary suspension provision should apply to ROC actions.

The ROC is not mandated to invoke the summary suspension provision. The statute provides that if the ROC finds the exigent circumstances a summary suspension "may" be ordered. Therefore, the ROC has the discretion on whether to use this authority.

EXHIBIT E --

**2003 Auditor General Report
Recommendation**



A REPORT
TO THE
ARIZONA LEGISLATURE

Performance Audit Division

Performance Audit

Registrar of Contractors

APRIL • 2003
REPORT NO. 03 - 02



STATE OF ARIZONA
OFFICE OF THE
**AUDITOR
GENERAL**

Debra K. Davenport
Auditor General

Still Relevant Today . . .

Excerpts taken from the 2003 Auditor General Performance Audit of the Registrar of Contractors:

. . . "The agency needs to ensure that problem contractors, such as those with serious or multiple complaints, are disciplined. The majority of contractors do not have complaints filed against them. However, contractors who do have complaints filed against them can avoid disciplinary action by addressing the complaints before the complaints progress to an administrative hearing. Although this may satisfy the consumer, it can allow a problem contractor to continue to operate. The agency needs to develop criteria for determining when to pursue disciplinary action."

. . . "The agency needs to develop criteria for identifying and disciplining problem contractors."

. . . "The agency can keep complaints open regardless of whether or not the original complainant has dropped the complaint, but rarely does so. Keeping a complaint open ensures that a contractor faces a disciplinary hearing. Additionally, the agency has the authority to summarily suspend a contractor's license for very serious problems that imminently threaten public safety, such as failing to meet basic electrical or plumbing standards. However, the agency has not established criteria for when it should use summary suspensions, and agency officials could not recall the last time the agency issued a summary suspension."

. . . "The agency should establish criteria for when it should pursue disciplinary action. Criteria should consider such factors as the severity of an individual complaint, the amount of money likely needed to correct problems, or the number of previously received complaints. For example, the agency could establish criteria to help inspectors identify individual workmanship violations that are serious enough to warrant license suspension, revocation, or other discipline."

. . . "The agency reports the number of complaints each contractor has received in the past 2 years through its phone center and on its Web site. However, because the agency does not currently record information about the nature of complaints on its database, it does not report this information. Instead, consumers who wish to know the nature of complaints must visit one of the agency's 12 offices and review complaint files themselves. This information can be important to consumers when choosing a contractor. Without this information, a consumer is unaware if a valid complaint concerned issues such as minor quality workmanship problems or more serious issues such as breach of contract or project abandonment. Having to visit one of the agency's offices to obtain such information can significantly inconvenience consumers, especially in rural areas."

EXHIBIT F --

Bond Limits and Regulations

BOND LIMITS AND REGULATIONS

Contractor's license bonds are established in the following amounts as based upon the gross volume of work contemplated by the licensee within the State of Arizona for the ensuing fiscal year:

License Type	Contemplated Gross Volume (Per License)	Bond Amount
Residential General Contractors	\$150,000 or less	\$5,000
	In Excess of \$150,000 but not more than \$750,000	\$9,000
	Over \$750,000	\$15,000
Residential Specialty Contractors	\$100,000 or less	\$1,000
	In excess of \$100,000 but not more than \$375,000	\$4,250
	Over \$375,000	\$7,500
Commercial General Contractors (Includes General Engineering Contractors)	\$150,000 or less	\$5,000
	In excess of \$150,000 but not more than \$500,000	\$10,000
	In excess of \$500,000 but not more than one million	\$15,000
	In excess of one million but not more than five million	\$40,000
	In excess of five million but not more than ten million	\$65,000
	Over ten million	\$90,000
	Commercial Specialty Contractors	\$150,000 or less
	In excess of \$150,000 but not more than \$500,000	\$5,000
	In excess of \$500,000 but not more than one million	\$10,000
	In excess of one million but not more than five million	\$20,000
	In excess of five million but not more than ten million	\$32,500
	Over ten million	\$45,000

Dual license bond amounts are calculated by combining the amount required for residential and commercial.

Source: ROC web site, "Contractor's License Bond Requirements,"
http://www.azroc.gov/l_Bond.html

EXHIBIT G --

**List of the 31 States with Licensing
Boards for Contractors**

List of States Licensing Contractors:

1(a) Alabama Licensing Board for General Contractors

2525 Fairline Drive
Montgomery, Alabama 36116
(334) 272-5030
FAX (334) 395-5536
<http://www.genconbd.state.al.us/>

1(b) Alabama Home Builders Licensure Board

400 S. Union Street, Suite 195
Montgomery, Alabama 36130-3605
(334) 242-2230
FAX (334) 263-1397
www.hblb.state.al.us

2. Alaska

P.O. Box 110806
Juneau, AK 99811-0806
(907) 465-8443
FAX (907) 465-2974
<http://www.dced.state.ak.us/occ/pcon.htm>

3. Arizona Registrar of Contractors

800 West Washington, 6th Floor
Phoenix, Arizona 85007
(602) 542-1525
FAX (602) 542-1599
<http://www.rc.state.az.us/>

4. Arkansas Contractors Licensing Board

400 Richards Road
North Little Rock, AR 72117
(501) 372-4661
FAX (501) 372-2247
www.arkansas.gov/clb

5. California Contractors License Board

Post Office Box 26000
Sacramento, California 95826
(916) 255-3900
FAX (916) 366-9130
www.cslb.ca.gov

6. Connecticut Department of Consumer Protection

165 Capitol Ave.
Hartford Ct. 06106
(860)-713-6000
http://www.ct.gov/dcp/cwp/view.asp?a=1625&Q=275784&dcpNav=|&dcpNav_GL=1546&dcpNav=|&dcpNav

7(a). Florida Construction Industry Licensing Board

1940 Monroe Street
Tallahassee, FL 32399-0783
(850) 487-1395
FAX (850) 487-8748
<http://www.myflorida.com/dbpr/>

7(b). Florida Electrical Contractors Licensing Board

1940 Monroe Street
Tallahassee, FL 32399-0783

8. Georgia Construction Industry Licensing Board

237 Coliseum Drive
Macon, Georgia 31217-3858
(478) 207-1416
FAX (478) 207-1425
<http://sos.georgia.gov/plb/construct/>

9. Hawaii Contractors Licensing Board

Post Office Box 3469
Honolulu, Hawaii 96801
(808) 586-2700
FAX (808) 586-2689
<http://www.hawaii.gov/dcca/areas/pvl/boards/contractor/>

10. State of Idaho Division of Building Safety Public Works Contractors License Board
1090 East Watertower Street Meridian, Idaho 83642
(208) 334-4057; (800) 358-6895
Fax (208) 855-9666
<http://dbs.idaho.gov/>
<http://www.ibol.idaho.gov/cont.htm>

11. Louisiana Licensing Board for Contractors
Post Office Box 14419
Baton Rouge, Louisiana 70898-4419
(225) 765-2301
FAX (225) 765-2431
<http://www.lslbc.louisiana.gov/>

12. Maryland Home Improvement Commission
500 N. Calvert Street
Baltimore, Maryland 21202 – 3651
(410) 230-6309
FAX (410) 333-0851
<http://www.dllr.state.md.us/license/occprof/homeim.html>

13. Minnesota Department of Labor and Industry Residential Building Contractors
443 Lafayette Road North
St. Paul, MN 55155
(651) 284-6065
FAX (651) 284-5749
<http://www.doli.state.mn.us/>

14. Michigan Dept. of Consumer & Industry - Commercial Services - Residential Bldr. Unit
Post Office Box 30245
Lansing, Michigan 48909
(517) 241-9223
FAX (517) 241-9280
<http://www.michigan.gov/dleg>

15. Mississippi Board of Contractors
215 Woodline Drive, Suite B
Jackson, MS 39232
(601) 354-6161
FAX (601) 354-6715
<http://www.msdoc.us/>

16. State of Montana Department of Labor and Industry Contractor Registration

Post Office Box 8011
Helena, Montana 59604-8011
(406) 444-7734
Fax (406) 444-3465

17. Nebraska Department of Revenue

Post Office Box 94818 Lincoln
Nebraska 68509
(800) 742-7474
Fax (402) 471-5990

18. Nevada Contractors Board

9760 Gateway Drive, Suite 100
Reno, NV 89521
(775) 688-1141
FAX (775) 688-1271
<http://www.nvcontractorsboard.com/>

19. New Mexico Construction Industries Division

Regulation & Licensing Department
725 Michael's Drive
Santa Fe, NM 87505
(505) 827-7030
FAX (505) 827-7045
<http://www.rld.state.nm.us/cid/>

20(a). North Carolina Board of Examiners of Electrical Contractors

Post Office Box 18727
Raleigh, North Carolina 27619
(919) 733-9042
FAX (919) 733-6105
<http://www.ncbeec.org/modules/content/index.php?id=1>

20(b). North Carolina Board of Plumbing, Heating & Fire Sprinkler Contractors

1109 Dresser Court
Raleigh, North Carolina 27609
(919) 875-3612
FAX (919) 875-3616
<http://www.nclicensing.org/>

20(c). North Carolina Licensing Board for General Contractors

Post Office Box 17187
Raleigh, North Carolina 27619
(919) 571-4183
FAX (919) 571-4703
<http://www.nclbgc.com/>

21. North Dakota Secretary of State Licensing Division

600 East Boulevard Avenue, Department 108
Bismarck, ND 58505-0500
(701) 328-3665
Fax (701) 328-1690

22. Ohio Construction Industry Examining Board Department of Commerce

6606 Tussing Road
Reynoldsburg, Ohio 43068
(614) 644-3493
FAX (614) 728-1200
<http://www.com.state.oh.us/dic/dicocilb.htm>

23. Oregon Construction Contractors Board

Post Office Box 14140
Salem, Oregon 97309
(503) 378-4621
FAX (503) 373-2007
<http://www.ccb.state.or.us/>

24. Rhode Island Contractors' Registration Board

One Capitol Hill
Providence, Rhode Island 02908
(401) 222-1268
FAX (401) 222-2599
<http://www.crb.ri.gov/default.php>

25(a) South Carolina Residential Home Builders Commission

Post Office Box 11329
Columbia, South Carolina 29211-1329
(803) 896-4696
FAX (803) 896-4656
<http://www.llr.state.sc.us/POL/ResidentialBuilders/INDEX.ASP>

25(b). South Carolina Licensing Board for Contractors

Post Office Box 11329

Columbia, South Carolina 29211-1329

(803) 896-4686

FAX (803) 896-4701

<http://www.llr.state.sc.us/POL/Contractors/>

26. Tennessee Board for Licensing General Contractors

500 James Robertson Parkway

Davy Crockett Tower

Nashville, Tennessee 37243

(615) 741-8307

FAX (615) 532-2868

<http://www.state.tn.us/commerce/boards/contractors/index.html>

27. Texas Department of Licensing & Regulation

Post Office Box 12157

Austin, Texas 78711

(512) 463-6599

FAX (512) 475-2854

<http://www.license.state.tx.us/index.html>

28. Utah Construction Trades Bureau

Post Office Box 146741

Salt Lake City, Utah 84114-6741

(801) 530-6628

FAX (801) 530-6511

<http://www.dopl.utah.gov/>

29. Virginia Department of Professional & Occupational Regulation

9960 Mayland Drive, Suite 400

Richmond, Virginia 23233-1463

(804) 367-8500

Fax (804) 367-2475

License Board (804) 367-8511

http://www.dpor.virginia.gov/dporweb/con_main.cfm

30. Washington Department of Labor & Industries

Post Office Box 44450

Olympia, Washington 98504-4450

(360) 902-5226

FAX (360) 902-5792

<http://www.lni.wa.gov/>

31. West Virginia Contractors Licensing Board

Capitol Complex, Building 6, Room B749

Charleston, West Virginia 25305

(304) 558-7890

FAX (304) 558-3797

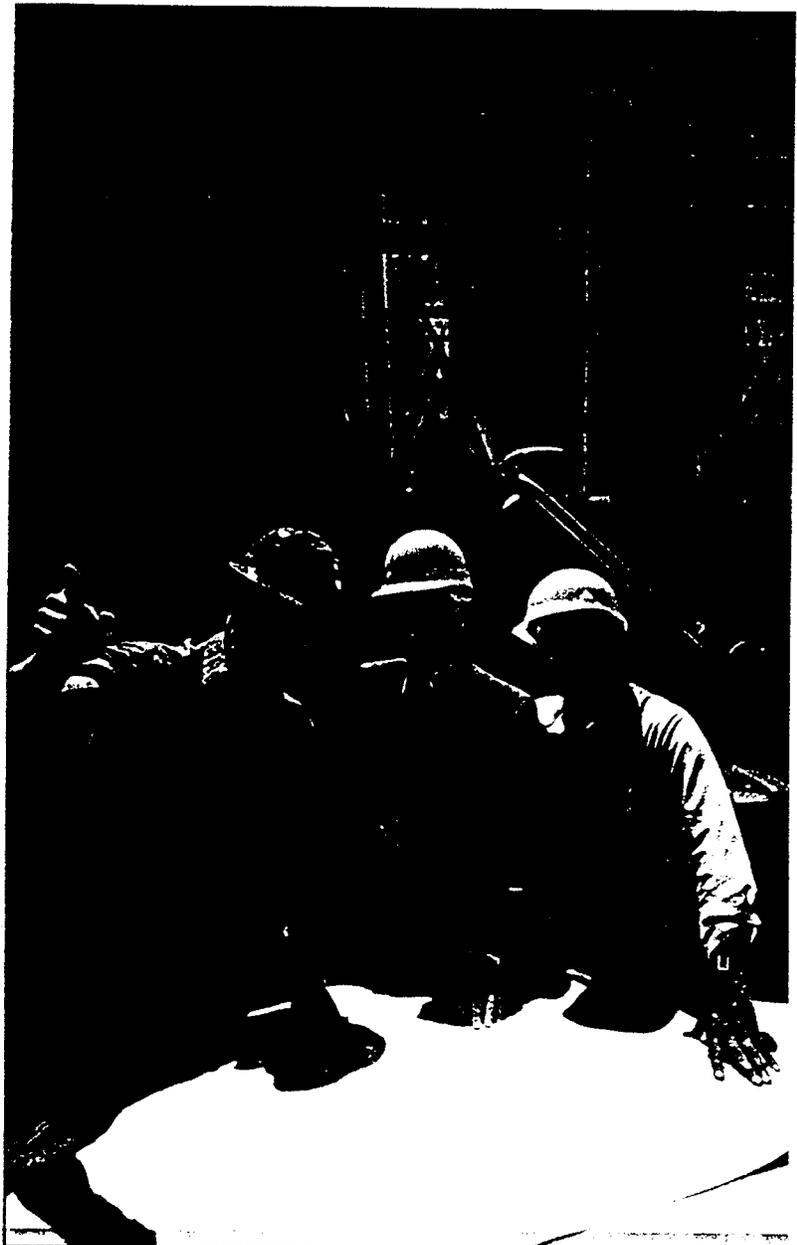
<http://www.wvlabor.org/>

EXHIBIT H --

Residential Contracting by State

EXHIBIT I --

**NASCLA states Recovery Fund Features
Summary and Overview**



CONTRACTOR RECOVERY FUNDS

Introduction

A primary purpose for regulating residential contractors at the state level is consumer protection. State agencies who license construction contractors have set up rules, regulations and laws to protect the health, welfare and safety of the general public. Unfortunately, even hiring a licensed contractor can cause harm to the public. For example, homeowner's can be the last to discover that their contractor is in financial trouble, has gone out of business and left them with an abandoned project. Licensing agencies have established ways to safeguard the public from financial loss incurred by using licensed contractors on residential projects.

Construction Recovery Funds were created to help consumers recoup from financial loss incurred from project abandonment, negligence and fraud by licensed residential contractors. In most instances, claims against a Fund require an unsatisfied court action on behalf of the homeowner before the claim will be considered. Recovery Funds were not created to prevent harm to the homeowner (except lien restrictions) but they can provide some relief from financial loss. Recovery Funds are not disciplinary agents for the contractor; however, disciplinary action may be the final outcome.

The history of construction related Recovery Funds began in Hawaii in May 1974. The *Hawaii Contractors Recovery Fund* was designed to cover construction improvements and alterations made to private residences. Today, most Funds cover claims against licensed residential contractors made by aggrieved homeowners. Currently, there are nine (9) NASCLA State Members across the United States that have construction Recovery Funds in operation.

There is no such thing as a "typical" Recovery Fund; each is unique in design and management. The efficiency of a Fund varies with the cost of outside legal support and administrative expenses. Similarly, the aggressiveness of pursuing repayments from the contractor to the Fund can have an impact on the efficiency of the Fund. Additional aspects vary as well from what type of construction is covered to who is covered and from the method of accessing the Fund to the statute of limitations.

For example, the *Arizona Residential Contractors' Recovery Fund* is easily accessible. A homeowner may recover actual damages caused by a contractor for any reason that is in violation of the contractor licensing statutes by an administrative process. The *Michigan Homeowner Construction Lien Recovery Fund*, by contrast, is tied to the lien law and protects homeowners from paying twice for materials and labor. In Michigan, court judgments are required for restitution and attorney fees are not reimbursed.

This publication has been created to provide NASCLA State Members with an overview of the Recovery Funds that are operating in states around the country today. This information has been compiled from extensive research on the statutes, laws and regulations of states with Recovery Funds. The appendices contain the statutes and rules pertaining to all NASCLA State Members Recovery Funds.

Contractor Recovery Fund Features

As previously mentioned, there are no typical contractor Recovery Funds. Individual Fund characteristics vary greatly among the different Funds; however, the following items cover some of the basic components common to all Funds.

Statute of Limitations

Most Funds provide for a specific time frame in which claimants may go against the Fund for compensation. The allowable time to file varies from one to ten years among the Funds and is also variable as to when the time begins. The statute of limitations may be measured from the contract date, cause of action date, completion date or date of discovery depending on the particular Fund.

Groups Covered

Most Funds have residential homeowners as the exclusive group protected under the Fund. The exceptions to this are the "lien Recovery" Funds that either directly or indirectly include suppliers, other contractors and labor in the claimant class.

Actions Necessary to Collect

The actions necessary to collect can vary from a relatively simple administrative procedure to the requirement of a court judgment and an exhaustive asset search.

Most states require court judgments as a precondition to payment from the Fund. This has the effect of increasing the pay out on a given claim if attorney fees are included and can significantly increase the legal fees of the Fund if it is a party to the litigation.

Fund Revenue Sources

The revenue source usually consists of fees charged to new licensees and subsequent reassessments either as needed or on a routine renewal basis.

Fund Balance

The minimum balance to be maintained is generally covered by statute and can vary from \$100,000 to \$2,000,000. When a Fund goes below this specified floor, special assessments may be made to bring the balance back up.

Pay Out Limits

Limits on the amount paid to individual claimants exist in all Funds. These limits may be set as a fixed amount or be based on the value of the structure. Contractor limits can be fixed or may be based on the number of completed projects.

Overview of Recovery Funds

State	Fund Since	Payout Limits		Group Covered	Revenue Source
		Claimant	Contractor		
AL	1993	\$20,000	\$50,000	Homeowners	\$60.00 no more than once a year
AZ	1981	\$30,000	\$200,000	Homeowners	Funded by assessments paid upon application and renewal
FL	1993	—————	—————	Homeowners	One-half cent per square foot surcharge on building permits
HI	1974	\$12,500	\$25,000	Homeowners	\$150 for new licensees
MD	1985	\$15,000	—————	—————	\$100 for new licensees
MI	1982	—————	—————	Homeowners	\$50.00 membership fee
NC	1991	—————	—————	Homeowners	\$10.00 per building permit
UT	1994	\$75,000 per residence	\$500,000	Homeowners	\$195 initial fee
VA	1980	\$20,000	\$40,000 per biennium	Homeowners	\$25.00 on application \$30.00 on renewal

Arizona Residential Contractors' Recovery Fund

Fund Overview

The Residential Contractors' Recovery Fund was established to cover claims against Arizona licensed residential contractors made by the owner of residential real property which is occupied or intended to be occupied by the owner as a residence.

Any person injured by an act, representation, transaction or conduct of a licensed residential contractor may be awarded in the county where the violation occurred an amount of not more than thirty thousand dollars (\$30,000) for damages sustained by the act, representation, transaction or conduct of a contractor.

History

In 1981 the Arizona Registrar of Contractors started the Residential Contractors' Recovery Fund which compensates homeowners for actual damages sustained by the act, representation, transaction or conduct of a contractor.

Statute of Limitations

There is a two year statute of limitation from the commission of the act in which to file an action against the contractor.

Group Covered

Eligible persons are owner occupants of a class three (3) residential property who contracted with a contractor who was properly licensed to perform residential construction and whose license was in good standing.

The Recovery Fund is not subject to claims by suppliers, subcontractors, laborers or others.

Actions Necessary to Collect

A homeowner can pursue the Fund by way of the administrative procedure or the civil procedure.

Administrative Procedure for Recovery

If the contractor's license has been revoked or suspended as a result of an order to remedy a violation, a homeowner may be eligible to apply directly to the Fund.

An administrative claim must be filed on forms prescribed by the Registrar and submitted to the office along with supporting documentation. Required documentation includes a copy of the contract with the contractor, proof of payment on that contract and at least three itemized bids from licensed Arizona residential contractors as to necessary costs to complete or repair the project.

Arizona Residential Contractors' Recovery Fund (continued)

Actions Necessary to Collect (continued)

Civil Procedure for Recovery

A civil action must be brought against the contractor in either Justice of the Peace Court or Superior Court. The plaintiff (claimant) must also pursue the contractor's license bond. This can be accomplished in the same action.

The claimant must notify the Registrar of the commencement of the action. The claimant must submit a copy of the summons and complaint, judgment and all supporting documentation for review prior to obtaining a certified order from the court directing payment from the Recovery Fund. If awarded in the civil judgment, the Fund can cover court costs and attorney's fees, not to exceed the thirty thousand dollars (\$30,000) maximum individual award payable (civil procedure only).

Fund Revenue Sources

The Residential Contractors' Recovery Fund is Funded by the assessments paid upon application and at renewal by residential and dual licensed contractors.

Fund Balance

If at any time the balance remaining in the Recovery Fund is less than two million dollars (\$2,000,000), every residential contractor who paid into the Fund may be reassessed (in an amount determined by the Registrar) and required to make payment into the Fund. The Registrar shall suspend a residential contractor's license for failure to make the required payment until the amount owed is paid in full.

If at any time the monies deposited in the Recovery Fund are insufficient to satisfy any duly authorized claim or portion thereof, the Registrar shall, when sufficient monies have been deposited in the Fund, satisfy any unpaid claims or portion of the unpaid claim with priority for payment based on the time frame of filing a certified copy of the court order with the Registrar.

Pay Out Limits

A "person injured" can recover as much as thirty thousand dollars (\$30,000), but the award is limited to actual damages (workmanship) and will not exceed the amount necessary to complete or repair the project. The maximum payout per residential contractor's license is two hundred thousand dollars (\$200,000).

EXHIBIT J --

**Complaint Forms, Instructions &
Brochures**

If you contemplate legal action to recover damages of less than \$5,000, contact the Justice Court which is usually listed in the telephone book under County Governments. If you seek restitution for damages of \$5,000 or more, you must file your action in Superior court, which may require the services of an attorney. You do not have to wait for the Registrar to complete its action before filing a suite in court.

Additional Information

For additional information about Residential construction dispute resolution and financial recovery options, including the Residential Contractor's Recovery Fund, visit our Website or call our office and request the booklet

"Handling a Dispute in Residential Construction."

OFFICES

PHOENIX MAIN OFFICE
800 W. Washington, 6th Floor
Phoenix, AZ 85007-2940
(602) 542-1525

FLAGSTAFF OFFICE
2901 Shamrell Blvd., Ste. 100
Flagstaff, AZ 86001-1829
(928) 526-2325

GLENDAL REGIONAL OFFICE
17235 N. 75TH Ave., Bldg E, Ste. 175
Glendale, AZ 85308-8692
(602) 5421525

KINGMAN OFFICE
519 E. Beale St., Ste. 140
Kingman, AZ 86401-5918
(928) 753-4220

LAKE HAVASU CITY OFFICE
1845 Mc Culloch Blvd., Ste. B-5
Lake Havasu City, AZ 86403-5722
(928) 855-2144

MESA REGIONAL OFFICE
2222 S. Dobson Rd., Ste. 101
Mesa, AZ 85202-6483
(602) 542-1525

PRESCOTT OFFICE
240 S. Montezuma St., Ste. 202B
Prescott, AZ 86303-3028
(928) 445-5710

SHOW LOW OFFICE
581 E. Old Linden Rd., Ste. C
Show Low, AZ 85901-4819
(928) 537-8842

SIERRA VISTA OFFICE
333 W. Wilcox, Ste. 104
Sierra Vista, AZ 85635-1756
(520) 459-5119

TUCSON REGIONAL OFFICE
400 W. Congress, Ste. 212
Tucson, AZ 85701-1311
(520) 628-6345

YUMA OFFICE
Crescent Center
2450 S. 4th Ave., Ste. 117
Yuma, AZ 85364-8557
(928) 344-6990

Or Toll Free outside Maricopa County

1 (888) 271-9286

Visit our Website at

<http://www.azroc.gov>

The Registrar of Contractors is an Equal
Employment Opportunity Reasonable
Accommodation Agency

A
Consumer's
Guide...

Filing

Construction

Complaints



STATE REGISTRAR OF CONTRACTORS

The Registrar of Contractors is an Arizona state agency. Our purpose is to promote quality construction by Arizona contractors through a licensing and regulatory system designed to protect the health, safety and welfare of the public.

A "contractor" is any individual or firm who offers services to improve residential or commercial real property. Some of the more common services include: homebuilding; remodeling; room additions; swimming pool construction; painting; roofing; landscaping; plumbing; and electrical, heating and air conditioning work.

Filing a Complaint

The Registrar of Contractors can assist you with problems you may have with licensed contractors. If you believe a contractor has done something wrong or has violated the law, you can file a complaint. Here are some of the common problems/complaints:

- Contractor failed to fulfill the terms of an agreement.
- Construction or workmanship is poor.
- Contractor abandoned contract or refused to perform.
- Contractor failed to pay subcontractors/material suppliers.
- Contractor violated building codes or failed to comply with safety or labor laws.
- Contractor departed from project plans or specifications.
- Contractor used false, misleading or deceptive advertising.

In addition to helping you with the illegal or inappropriate actions of a licensed contractor, we also investigate complaints involving unlicensed persons. Contracting without a license is a Class 1 misdemeanor punishable by a fine of up to \$2,500 and/or six months in prison. One exception, however, applies to work where the materials and labor are less than \$1,000, no building permit is required and the work is not part of a larger project. Cases like these are investigated and referred to the city or county prosecutor. Remember, if you contract with an unlicensed individual and are not satisfied with the work, the Registrar of Contractors cannot require corrective repairs or restitution.

If you wish to file a complaint, you can obtain a standard complaint form by writing, calling one of our offices or it is also available and may be downloaded from our website, www.azroc.gov. Complete the complaint form, attach copies of any contracts, canceled checks or other pertinent information and send them to the nearest office. Office locations are listed on our website or listed on the back of this pamphlet.

How Your Complaint is Handled

Each written complaint is reviewed to determine if it falls within the Registrar of Contractors' jurisdiction. If it is, we will notify you of what action may be taken and, if necessary, schedule an inspection of the related property. This inspection usually takes place within two to four weeks of receipt of your complaint, depending upon our current workload.

A copy of your complaint and notice of your scheduled property inspection will be sent to the contractor with an admonition to resolve the complaint without further involvement of the Registrar.

If, after this notification to the contractor, the problem is not resolved, our construction inspector will go ahead with an inspection.

To determine if there are violations of the Contractor's License Law, the construction inspector will interview you, the contractor and any other parties who can furnish information. The inspector will also look at any work performed and review any documents relating to your project. The inspector will then determine what action needs to be taken by the contractor, and a written directive will be issued. If the contractor refuses or is unable to take corrective action, you may then request a formal hearing to resolve the issue.

A proven violation of the Contractor's License Law may result in the probation, suspension or revocation of the contractor's license, as well as possible civil penalties up to \$500 for each violation. In addition, the contractor may be required to make repairs or replace defective construction work.

The Registrar of Contractors offers one way to resolve your problems with a licensed contractor, however, we are not a substitute for the courts. If the Residential Contractor's Recovery Fund is not an available option or if your losses exceed its limits, and your primary interest is to obtain restitution rather than having poor workmanship corrected, you should consider filing a civil court action.

COMPLAINT FORM

- FOR OFFICE USE ONLY -

License No.: _____	Correct Name of Contractor: _____
SS: _____	Assigned To: _____
Type of Entity: _____	Complaint Number: _____
Status: _____	

- Submit this form to any office of the Arizona Registrar of Contractors -

PHOENIX OFFICE
800 W. Washington, 6th Floor
Phoenix, AZ 85007
(602) 542-1525

Toll Free (within Arizona)
1-888-271-9286

TUCSON REGIONAL OFFICE
400 W. Congress, Suite 212
Tucson, AZ 85701-1311
(520) 628-6345

(PLEASE PRINT)

ANSWER ALL QUESTIONS. MISSING INFORMATION MAY CAUSE DELAYS WITH PROCESSING YOUR COMPLAINT

1. COMPLAINT FILED AGAINST:

- a) CONTRACTOR: Click here to start
- b) LICENSE NO.: ROC - DAYTIME PHONE: ()
- c) ADDRESS: _____ CITY: _____ STATE: _____ ZIP: _____

2. COMPLAINT FILED BY:

- a) NAME: _____
- b) COMPANY: _____ LICENSE NUMBER: ROC -
(YOUR COMPANY NAME IF FILING ON BEHALF OF A COMPANY)
- c) MAILING ADDRESS: _____ CITY: _____ STATE: _____ ZIP: _____
- d) HOME PHONE: () DAYTIME PHONE: ()
- e) E-MAIL ADDRESS: _____
- f) JOBSITE ADDRESS: _____ CITY: _____ STATE: AZ ZIP: _____
- g) TYPE OF WORK DONE: _____

3. JOB INFORMATION:

- a) WORK WAS: RESIDENTIAL COMMERCIAL
- b) BUILDING PERMIT: Yes No
- c) PLANS AND SPECIFICATIONS: Yes No
- d) MOVE-IN DATE: _____
- e) DATE WORK LAST PERFORMED: _____
- f) IS NEIGHBORHOOD ACCESS RESTRICTED? Yes No

4. CONTRACT INFORMATION:

- a) NEW HOME BUILT: Yes No
- b) CONTRACT: WRITTEN VERBAL
- c) DATE OF CONTRACT: _____
- d) CONTRACT AMOUNT: _____
- e) CONTRACTOR PAID IN FULL: Yes No
- f) AMOUNT DUE ON CONTRACT: _____

5. STATE ITEMIZED COMPLAINT BELOW. RETAIN ALL ORIGINAL DOCUMENTATION FOR YOUR FUTURE USE:

Enclose **COPIES** of documentation including the contract, cancelled checks (front & back), building permit and/or invoices. (If you have additional complaints, list them numerically on a separate sheet of paper).

6. SIGN AND DATE COMPLAINT

I VERIFY UNDER PENALTY OF LAW THAT THE ALLEGATIONS CONTAINED IN THIS COMPLAINT ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Signature

Date

SUBMIT THIS ORIGINAL FORM WITH YOUR SIGNATURE (NO COPIES OR FAXES)
This document is available in alternative formats for individuals with disabilities by contacting the ADA Coordinator: 602-542-1525; TDD 602-542-1588; Toll Free (within Arizona) 888-271-9286

5. STATE COMPLAINT BELOW (CONTINUED):

Continue your statement

[Empty box for continuing the statement]

INFORMATION ON DEPARTMENTAL PROCEDURE

- 1. Prior to filing a complaint, we strongly urge you to contact your contractor and advise them of your problems. Many complaints can be resolved by simply opening the lines of communications.**
2. When both a general contractor and subcontractor(s) are used on a project, we recommend you consider filing a complaint against both the general contractor and any subcontractor(s) that you believe to be at fault. This procedure allows our office to investigate all complaints simultaneously to insure that the responsible party is ultimately held accountable. It also helps us to render a timely decision; otherwise, the filing of additional complaints at a later date may be required, which can cause delays and inconvenience.

Include in your complaint everything you want to be considered by the inspector. The inspector is limited to evaluating only those items listed in your complaint. **IT IS IMPERATIVE THAT ALL ITEMS BE LISTED IN THE INITIAL COMPLAINT. AN ADDENDUM TO YOUR COMPLAINT MAY RESULT IN SIGNIFICANT DELAYS IN RESOLVING YOUR COMPLAINT.** Verbal amendments to a complaint will only be accepted with the agreement of the contractor. Otherwise, all amendments must be in writing and presented prior to any jobsite meeting. You may want to make a copy for your files. Mail or take the complaint form(s) to the nearest Registrar of Contractors office.

3. When this office receives your complaint(s), it will be processed and a copy of the complaint will be mailed to the contractor (if properly licensed by this agency) along with a letter advising them to contact you to attempt to resolve the problem. If the contractor is unlicensed, it will be assigned to our investigations department and referred to the appropriate prosecuting agency, providing that enough evidence can be found. A letter will be mailed to you with a complaint number and the name of the assigned inspector or investigator.
4. When an inspection is necessary, the inspector will schedule a meeting at the jobsite with you and the contractor(s). After this meeting the inspector will advise both the complainant and the contractor(s) by letter of the findings. If corrections are required, the letter will include a time period in which the work should be completed. Although over 80% of the complaints filed with this agency are resolved at this stage, the inspector's findings are only recommendations.
5. In the event that the complaint cannot be resolved after the inspector's recommendations have been issued and the time period has expired, either party may file a written request for a hearing. A legally binding order will then be issued after an administrative hearing before the Office of Administrative Hearings, a separate State Agency, at 602-542-9826 in Phoenix and 520-628-5488 in Tucson. The time required resolving a complaint may vary from a few weeks to several months depending on the nature of the complaint and the cooperation of the parties.
6. Every licensed contractor must post a bond. All residential contractors participate in the Recovery Fund. The filing of this complaint may allow you to seek judgement against the Recovery Fund through the Registrar of Contractors office. **You may also file civil action against a contractor in addition to filing this complaint. One does not preclude the other.**

COMPLAINTS FILED WITH THIS AGENCY ARE PUBLIC RECORD

AND AS SUCH, SUBJECT TO REVIEW BY THE PUBLIC

INSTRUCTIONS FOR FILLING OUT COMPLAINT FORMS

A complaint against a licensed contractor must be filed in writing on a Registrar of Contractors Complaint Form within two years from the date of occupancy or discovery of defect, whichever comes first, or from the date the work was last performed for the Registrar of Contractors to have jurisdiction.

The official complaint form is divided into six groups. Each of these is important to the processing of the complaint. List only one contractor per complaint form. File a separate complaint form for each contractor involved. Please read carefully and follow the instructions below. If you have any questions or require clarification, please call the nearest Registrar of Contractors office.

1. **AGAINST**

- a) The name under which the contractor conducts business, e.g.: XYZ Const. Co. **List only one contractor per complaint form.** A separate form is required for each contractor involved.
- b) The contractor's Registrar of Contractors license number, the business phone number of the contractor, include area code.
- c) The business address of the contractor; including city, state and zip code.

2. **FILED BY**

- a) Your name.
- b) Fill in **ONLY** if you are filing on behalf of a company or Homeowners Association. Include the company's name and your license number if the Registrar of Contractors licenses you. If filing on behalf of a Homeowners Association, **YOU MUST** include a homeowners Association Form, which you can download a *Sample Association form* from our website or call us for additional instructions.
- c) The address, city, and zip code to which you want correspondence sent.
- d) Your phone number and a phone number where you may be reached during business hours, include area codes.
- e) Your e-mail address.
- f) The address, city, state and zip code of the actual location where the work was done.
- g) The nature of the work for which you contracted, e.g.: remodeling, new home built, roofing, etc.

JOB INFORMATION

- (a) Was the work Residential or Commercial? Check the appropriate area.
- (b) Was a building permit secured for the work done?
- (c) Were there building plans for the work to be done?
- (d) The move in date or when you began utilizing the structure.
- (e) The last date the contractor actually performed any work.
- (f) Will we need special access to enter the community?

4. **CONTRACT INFORMATION**

- (a) Is this a new home? Check the appropriate area.
- (b) Was your contract written or verbal?
- (c) The date the contract was effective.
- (d) The total amount of the contract.
- (e) Has the contractor been paid in full?
- (f) If contractor was not fully paid, how much is owed?

****Retain all original documentation for your future use****

5. **LIST THE ACTUAL PROBLEM AND THE REASON FOR YOUR COMPLAINT.** Additional pages may be attached if needed. **IT IS IMPERATIVE THAT ALL ITEMS BE LISTED IN THE INITIAL COMPLAINT. ANY ADDENDUM TO YOUR COMPLAINT MAY RESULT IN SIGNIFICANT DELAYS IN RESOLVING YOUR COMPLAINT.** Enclose only photocopies of original documents. **DO NOT** enclose photographs, videotapes, audiotapes or items that may be required for any future civil or administrative proceeding. Any material submitted as a part of the complaint becomes a public record document and **CANNOT** be returned to you.

6. **THE COMPLAINING PARTY(IES) MUST SIGN AND DATE THE COMPLAINT.** If the complaint is filed on behalf of a company, the owner, partner or an officer must sign it. The complaint form **WILL BE RETURNED TO YOU IF NOT SIGNED.** Submit complaint with original signature only, **NO COPIES OR FAXES ACCEPTED.**

DO NOT WRITE ON REVERSE SIDE OF COMPLAINT FORM

EXHIBIT K --

**ROC Recovery Fund Forms and
Instructions**

INSTRUCTIONS FOR FILING A CLAIM UNDER A.R.S. § 32-1154(E)

**THE FOLLOWING DOCUMENTS ARE REQUIRED TO PROCESS YOUR CLAIM.
FAILURE TO ENCLOSE THESE DOCUMENTS WILL CAUSE PROCESSING DELAYS!**

- Copy of your original construction contract plus any addendums or change orders.
- Copies of documents that verify payment(s) made on the contract (examples):
 - front and back sides of cancelled checks
 - close of escrow settlement statement including deed
 - executed lien release waivers
 - bank records of payment(s) made through construction draws or wire transfers
- Three (3) itemized bids (copies) from licensed residential contractors to repair or complete the project.**
- If repairs are already complete enclose copies of new contract(s) with licensed residential contractors, invoices, receipts and proof of payment as specified above.**

Enclose copies of all other supporting documentation for the registrar's review.

"Notwithstanding any other provisions in this chapter, if a contractor's license has been revoked or has been suspended as a result of an order to remedy a violation of this chapter and the contractor refuses or is unable to comply with the order of the registrar to remedy the violation, the registrar may order payment from the residential contractors' recovery fund to remedy the violation. The contractor or injured person may seek judicial review of the registrar's award under Title 12, Chapter 7, Article 6."

The fund is available to a person injured who is the owner, occupant of residential property who contracts with a residential licensed contractor as defined under A.R.S. § 32-1131(3).

An action which may result in collection from the fund shall not be commenced later than two years from the date of the commission of the act by the contractor that is the cause of the injury or from the date of occupancy.

A.R.S. § 32-1132(A) allows for a maximum payout of \$30,000.00 to an injured person, with \$200,000.00 as the maximum amount paid on any one residential contractor's license on judgments awarded after September 1, 2002. An award is limited to actual workmanship but shall not exceed an amount necessary to repair or complete. An award shall not be available to persons injured by a residential contractor whose license was in an inactive status, expired, cancelled, revoked or suspended at the time of the contract.

You may file this claim if the contractor is involved in a pending bankruptcy action only if relief has been granted by the Federal Bankruptcy Court allowing access to the Recovery Fund under A.R.S. § 32-1154(E).

The contractor must be notified by the agency of your recovery fund claim and has the right to request a hearing in this matter. The registrar may also ask for a hearing on your claim. If either party or you the claimant request a hearing, you will be notified of the time and date of the hearing. Approximate time frame for actual disbursement of funds without convening a hearing is SIXTEEN WEEKS. Claims are processed in the order in which they are received; however, claims are paid in the order of the date of entry of the order directing payment from the fund, by the registrar or a court.

The funds payable to the claimant are to be used to remedy the damages caused by the contractor. Any misuse of these funds may be considered fraudulent on your part and the registrar may initiate a court action against you.

Forward the signed original of this form along with all required and supporting documentation to the Phoenix office. Retain this copy for your records. For additional information visit our Website at: <http://www.azroc.gov/> or refer to the consumers' booklet, Handling a Dispute in Residential Construction. If further assistance is required contact the Recovery Fund directly at (602) 542-1525, ext. 7730, 7740 or toll-free within Arizona at 1-888-271-9286.

RECOVERY FUND CLAIM
ARIZONA STATE REGISTRAR OF CONTRACTORS
800 W. Washington, 5th Floor, Phoenix, AZ 85007
(602) 542-1525, Ext. 7730 or Toll-Free within Arizona 1-888-271-9286

PLEASE TYPE OR PRINT

ANSWER ALL QUESTIONS (See Instructions on Reverse Side)

Claim No. _____
FOR OFFICE USE ONLY

CLAIM FILED AGAINST:			
Contractor's Company Name _____			
License No. _____	Home Phone () _____	Business Phone () _____	
Contractor's Address _____		City _____	Zip _____
CLAIM FILED BY:			
Claimant's Name _____		Home Phone () _____	
Claimant's Address _____		Work Phone () _____	
City _____	State _____	Zip _____	E-mail Address _____
Address/Location Where Work Performed _____			
Contract Date / / _____		Do you own and occupy the residence? Yes _____ No _____	
Written Contract? Yes _____ No _____		New Construction Project? Yes _____ No _____	
Verbal Contract? Yes _____ No _____		Remodel Project? Yes _____ No _____	
Date Work Began / / _____		Other Type Project? _____	
Amount of Contract \$ _____	Paid in Full? Yes _____ No _____	Balance Due \$ _____	
Date contractor last performed work on the defective item(s) claimed / / _____			
Date contractor abandoned the project / / _____			
Close of Escrow Settlement Date / / _____		Move-In Date / / _____	
Pursuant to A.R.S. § 32-1136 you are required to notify the registrar if you have recovered any portion of your losses from other sources. Have you recovered any portion of your losses from the source(s) listed below?			
Contractor's Bond: Yes _____ No _____		Amount \$ _____	
Homeowner's Insurance: Yes _____ No _____		Amount \$ _____	
Other: Yes _____ No _____		Amount \$ _____	
Explain briefly the situation that transpired between you and the contractor. Attach additional sheets if necessary. An Inspector will contact you to schedule an appointment for the inspection of your property.			

Amount of losses you are claiming \$ _____

I VERIFY UNDER PENALTY OF LAW THAT THE STATEMENTS CONTAINED IN THIS CLAIM ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Claimant's Signature _____ Date _____
 (Original)

(Revised April 2003)

EXHIBIT L --

**Office of Administrative Hearings
Information**

1 the parties of any rescheduled date and time if the motion is granted. Motions for continuance will
2 be granted only for good cause, which should be detailed in the motion. The party requesting the
3 continuance must indicate the position of all other parties regarding the continuance.

4 SUBPOENAS: The party requesting a subpoena shall prepare it for the Administrative
5 Law Judge who will review it and sign it, if approved. Service is to be effected by the party
6 requesting the subpoena according to the regulations of the agency or applicable statute. Subpoena
7 forms are available at the Phoenix Office of Administrative Hearings (602) 542-9826 or at the
8 Tucson Office of Administrative Hearings (520) 628-5488.

9 PRIOR RECORD: The parties are further advised that in the event Respondent is found
10 to have violated any of the statutory provisions charged in this case, then the assigned
11 Administrative Law Judge, in accordance with a standing motion filed by the Registrar of Contractors
12 with the Office of Administrative Hearings, may properly consider the Respondent's prior disciplinary
13 record and current license status as a matter in mitigation or aggravation when formulating and
14 submitting an appropriate recommended disposition of this matter.

15
16 STATE REGISTRAR OF CONTRACTORS

17
18
19 LEGAL DEPARTMENT

RULES FOR THE OFFICE OF ADMINISTRATIVE HEARINGS

Article 1 Prehearing and Hearing Procedures

- R2-19-101. Definitions
- R2-19-102. Applicability
- R2-19-103. Request for Hearing
- R2-19-104. Assignment of Administrative Law Judge; Setting the Hearing
- R2-19-105. Ex Parte Communications
- R2-19-106. Motions
- R2-19-107. Computing Time
- R2-19-108. Filing Documents
- R2-19-109. Consolidation or Severance of Matters
- R2-19-110. Continuing or Expediting a Hearing; Reconvening a Hearing
- R2-19-111. Vacating a Hearing
- R2-19-112. Prehearing Conference
- R2-19-113. Subpoenas
- R2-19-114. Telephonic Testimony
- R2-19-115. Rights and Responsibilities of Parties
- R2-19-116. Conduct of Hearing
- R2-19-117. Failure of Party to Appear for Hearing
- R2-19-118. Witnesses; Exclusion from Hearing
- R2-19-119. Proof
- R2-19-120. Disruptions
- R2-19-121. Hearing Record
- R2-19-122. Notice of Judicial Appeal; Transmitting the Transcript

R2-19-101. Definitions

The following definitions apply unless otherwise stated:

1. "Agency" means the department, board, or commission from which a matter originates.
2. "Matter" means a contested case or appealable agency action.

R2-19-102. Applicability

- A. These rules apply to any matter heard by the Office of Administrative Hearings.
- B. An administrative law judge may waive the application of any of these rules to further administrative convenience, expedition, and economy if:
 1. The waiver does not conflict with law, and
 2. The waiver does not cause undue prejudice to any party.
- C. If a procedure is not provided by statute or these rules, an administrative law judge may issue an order using the Arizona Rules of Civil Procedure and related local rules for guidance.

R2-19-103. Request for Hearing

- A. An agency requesting the Office schedule an administrative hearing shall provide the following information on a form provided by the Office:
 1. Caption of the matter, including the names of the parties;
 2. Agency matter number;
 3. Identification of the matter as a contested case or appealable agency action;
 4. In an appealable agency action, the date the party appealed the agency action;
 5. Estimated time for the hearing;
 6. Proposed hearing dates;
 7. Any request to expedite or consolidate the matter; and
 8. Any agreement of the parties to waive applicable time limits to set the hearing.
- B. The Office may require the agency to supply information regarding the nature of the proceeding, including the specific allegations.

R2-19-104. Assignment of Administrative Law Judge; Setting the Hearing

- A. Within 7 days of the Office's receipt of a request for hearing, the Office shall provide the agency in writing with:
 1. The name of the administrative law judge assigned to hear the matter;
 2. The date, time, and location of the hearing; and
 3. The docket number assigned by the Office.

R2-19-105. Ex Parte Communications

A party shall not communicate, either directly or indirectly, with the administrative law judge about any substantive issue in a pending matter unless:

1. All parties are present;
2. It is during a scheduled proceeding, where an absent party fails to appear after proper notice; or
3. It is by written motion with copies to all parties.

R2-19-106. Motions

- A. **Purpose.** A party requesting a ruling from an administrative law judge shall file a motion. Motions may be made for rulings such as:
 1. Consolidation or severance of matters pursuant to R2-19-109;
 2. Continuing or expediting a hearing pursuant to R2-19-110;
 3. Vacating a hearing pursuant to R2-19-111;
 4. Prehearing conference pursuant to R2-19-112;
 5. Quashing a subpoena pursuant to R2-19-113;

6. Telephonic testimony pursuant to R2-19-114; and
7. Reconsideration of a previous order pursuant to R2-19-115.

- B. **Form.** Unless made during a prehearing conference or hearing, motions shall be made in writing and shall conform to the requirements of R2-19-108. All motions, whether written or oral, shall state the factual and legal grounds supporting the motion, and the requested action.
- C. **Time Limits.** Absent good cause, or unless otherwise provided by law or these rules, written motions shall be filed with the Office at least 15 days before the hearing. A party demonstrates good cause by showing that the grounds for the motion could not have been known in time, using reasonable diligence and:
 1. A ruling on the motion will further administrative convenience, expedition or economy; or
 2. A ruling on the motion will avoid undue prejudice to any party.
- D. **Response to Motion.** A party shall file a written response stating any objection to the motion within 5 days of service, or as directed by the administrative law judge.
- E. **Oral Argument.** A party may request oral argument when filing a motion or response. The administrative law judge may grant oral argument if it is necessary to develop a complete record.
- F. **Rulings.** Rulings on motions, other than those made during a prehearing conference or the hearing, shall be in writing and served on all parties.

R2-19-107. Computing Time

In computing any time period, the Office shall exclude the day from which the designated time period begins to run. The Office shall include the last day of the period unless it falls on a Saturday, Sunday, or legal holiday. When the time period is 10 days or less, the Office shall exclude Saturdays, Sundays, and legal holidays.

R2-19-108. Filing Documents

- A. **Docket.** The Office shall open a docket for each matter upon receipt of a request for hearing. All documents filed in a matter with the Office shall be date stamped on the day received by the Office and entered in the docket.
- B. **Definition.** "Documents" include papers such as complaints, answers, motions, responses, notices, and briefs.
- C. **Form.** A party shall state on the document the name and address of each party served and how service was made pursuant to subsection E. A document shall contain the agency's caption and the Office's docket number.
- D. **Signature.** A document filed with the Office shall be signed by the party or the party's attorney. A signature constitutes a certification that the signer has read the document, has a good faith basis for submission of the document, and that it is not filed for the purpose of delay or harassment.
- E. **Filing and Service.** A copy of a document filed with the Office shall be served on all parties. Filing with the Office and service shall be completed by personal delivery; first-class, certified or express mail; or facsimile.
- F. **Date of Filing and Service.** A document is filed with the Office on the date it is received by the Office, as established by the Office's date stamp on the face of the document. A copy of a document is served on a party as follows:
 1. On the date it is personally served.
 2. 5 days after it is mailed by express or first class mail.
 3. On the date of the return receipt if it is mailed by certified mail.
 4. On the date indicated on the facsimile transmission.

R2-19-109. Consolidation or Severance of Matters

- A. **Standards for consolidation.** An administrative law judge may order consolidation of pending matters, if:
 1. There are substantially similar factual or legal issues, or
 2. All parties are the same.
- B. **Determination.** When different administrative law judges are assigned to the matters that are the subject of the motion for consolidation, the motion shall be filed with the administrative law judge assigned to the matter with the earliest pending hearing date.
- C. **Order.** The administrative law judge shall send a written ruling granting or denying consolidation to all parties, identifying the cases, the reasons for the decision, and notification of any consolidated prehearing conference or consolidated hearing. The administrative law judge shall designate the controlling docket number and caption to be used on all future documents.
- D. **Severance.** The administrative law judge may sever consolidated matters to further administrative convenience, expedition, and economy, or to avoid undue prejudice. Severance may be ordered upon the administrative law judge's own review, or a party's motion.

R2-19-110. Continuing or Expediting a Hearing; Reconvening a Hearing

- A. **Continuing or Expediting a Hearing.** When ruling on a motion to continue or expedite, the administrative law judge shall consider such factors as:
 1. The time remaining between the filing of the motion and the hearing date;
 2. The position of other parties;
 3. The reasons for expediting the hearing or for the unavailability of the party, representative, or counsel on the date of the scheduled hearing;
 4. Whether testimony of an unavailable witness can be taken telephonically or by deposition; and

5. The status of settlement negotiations.
- B. **Reconvening a Hearing.** The administrative law judge may recess a hearing and reconvene at a future date by a verbal ruling.

R2-19-111. Vacating a Hearing

An administrative law judge shall vacate a calendared hearing and return the matter to the agency for further action, if :

1. The parties agree to vacate the hearing;
2. The agency dismisses the matter;
3. The non-agency party withdraws the appeal; or
4. Facts demonstrate to the administrative law judge that it is appropriate to vacate the hearing for the purpose of informal disposition, or if the action will further administrative convenience, expedition and economy and does not conflict with law or cause undue prejudice to any party.

R2-19-112. Prehearing Conference

- A. **Procedure.** The administrative law judge may hold a prehearing conference. The conference may be held telephonically. The administrative law judge may issue a prehearing order outlining the issues to be discussed.
- B. **Record.** The administrative law judge may record any agreements reached during a prehearing conference by electronic or mechanical means, or memorialize them in an order.

R2-19-113. Subpoenas

- A. **Form.** A party shall request a subpoena in writing from the administrative law judge and shall include:
1. The caption and docket number of the matter;
 2. A list or description of any documents sought;
 3. The full name and home or business address of the custodian of the documents sought or all persons to be subpoenaed;
 4. The date, time, and place to appear or to produce documents pursuant to the subpoena; and
 5. The name, address, and telephone number of the party, or the party's attorney, requesting the subpoena.
- B. An Administrative Law Judge may require a brief statement of the relevance of testimony or documents.
- C. **Service of Subpoena.** Any person who is not a party and is at least eighteen years of age may serve a subpoena. The person shall serve the subpoena by delivering a copy to the person to be served. The person serving the subpoena shall provide proof of service by filing with the office a certified statement of the date and manner of service and the names of the persons served.
- D. **Objection to Subpoena.** A party, or the person served with a subpoena who objects to the subpoena, or any portion of it, may file an objection with the administrative law judge. The objection shall be filed within 5 days after service of the subpoena, or at the outset of the hearing if the subpoena is served fewer than 5 days before the hearing.
- E. **Quashing, Modifying Subpoenas.** The administrative law judge shall quash or modify the subpoena if:
1. It is unreasonable or oppressive, or
 2. The desired testimony or evidence may be obtained by an alternative method.

R2-19-114. Telephonic Testimony

The administrative law judge may grant a motion for telephonic testimony if:

1. Personal attendance by a party or witness at the hearing will present an undue hardship for the party or witness;
2. Telephonic testimony will not cause undue prejudice to any party; and
3. The proponent of the telephonic testimony pays for any cost of obtaining the testimony telephonically.

R2-19-115. Rights and Responsibilities of Parties

- A. **Generally.** A party may present testimony and documentary evidence and argument with respect to the issues and may examine and cross-examine witnesses.
- B. **Preparation.** A party shall have all witnesses, documents and exhibits available on the date of the hearing.
- C. **Exhibits.** A party shall provide a copy of each exhibit to all other parties at the time the exhibit is offered to the administrative law judge, unless it was previously provided through discovery.
- D. **Responding to Orders.** A party shall comply with an order issued by the administrative law judge concerning the conduct of a hearing. Unless objection is made orally during a pre-hearing conference or hearing, a party shall file a motion requesting the administrative law judge to reconsider the order.

R2-19-116. Conduct of Hearing

- A. **Public access.** Unless otherwise provided by law, all hearings are open to the public.
- B. **Opening.** The administrative law judge shall begin the hearing by reading the caption, stating the nature and scope of the hearing, and identifying the parties, counsel, and witnesses for the record.
- C. **Stipulations.** The administrative law judge shall enter into the record any

stipulation, settlement agreement, or consent order entered into by any of the parties before or during the hearing.

- D. **Opening Statements.** The party with the burden of proof may make an opening statement at the beginning of a hearing. All other parties may make statements in a sequence determined by the administrative law judge.
- E. **Order of presentation.** After opening statements, the party with the burden of proof shall begin the presentation of evidence, unless the parties agree otherwise or the administrative law judge determines that requiring another party to proceed first would be more expeditious or appropriate, and would not prejudice any other party.
- F. **Examination.** A party shall conduct direct and cross examination of witnesses in the order and manner determined by the administrative law judge to expedite and ensure a fair hearing. The administrative law judge shall make rulings necessary to prevent argumentative, repetitive, or irrelevant questioning and to expedite the examination to the extent consistent with the disclosure of all relevant testimony and information.
- G. **Closing argument.** When all evidence has been received, parties shall have the opportunity to present closing oral argument, in a sequence determined by the administrative law judge. The administrative law judge may permit or require closing oral argument to be supplemented by written memoranda. The administrative law judge may permit or require written memoranda to be submitted simultaneously or sequentially, within time periods the administrative law judge may prescribe.
- H. **Conclusion of hearing.** Unless otherwise provided by the administrative law judge, the hearing is concluded upon the submission of all evidence, the making of final argument, or the submission of all post hearing memoranda, whichever occurs last.

R2-19-117. Failure of Party to Appear for Hearing

If a party fails to appear at a hearing, the administrative law judge may proceed with the presentation of the evidence of the appearing party, or vacate the hearing and return the matter to the agency for any further action.

R2-19-118. Witnesses; Exclusion from Hearing

All witnesses at the hearing shall testify under oath or affirmation. At the request of a party, or at the discretion of the administrative law judge, the administrative law judge may exclude witnesses who are not parties from the hearing room so that they cannot hear the testimony of other witnesses.

R2-19-119. Proof

- A. **Standard of proof.** Unless otherwise provided by law, the standard of proof is a preponderance of the evidence.
- B. **Burden of Proof.** Unless otherwise provided by law:
1. The party asserting a claim, right, or entitlement has the burden of proof;
 2. A party asserting an affirmative defense has the burden of establishing the affirmative defense; and
 3. The proponent of a motion shall establish the grounds to support the motion.

R2-19-120. Disruptions

A person shall not interfere with access to or from the hearing room, or interfere, or threaten interference with the hearing. If a person interferes, threatens interference, or disrupts the hearing, the administrative law judge may order the disruptive person to leave or be removed.

R2-19-121. Hearing Record

- A. **Maintenance.** The Office shall maintain the official record of a matter.
- B. **Transfer of record.** Before an agency takes final action, the agency may request that the record be available for its review or duplication. Any party requesting a copy of the record or any portion of the record shall make a request to the Office and shall pay the reasonable costs of duplication.
- C. **Release of exhibits.** Exhibits shall be released:
1. Upon the order of a court of competent jurisdiction; or
 2. Upon motion of the party who submitted the exhibits if the time for judicial appeal has expired and no appeal is pending.

R2-19-122. Notice of Judicial Appeal; Transmitting the Transcript

- A. **Notification to the Office.** Within 10 days of filing a complaint for judicial review of a final administrative decision based on or resulting from a recommended decision of an administrative law judge, the party shall file a copy of the complaint with the Office. The Office shall then transmit the record to the Superior Court.
- B. **Transcript.** A party requesting a transcript shall arrange for transcription at the party's expense. The Office shall make a copy of its audio taped record available to the transcriber. The party arranging for transcription shall deliver the transcript, certified by the transcriber under oath to be a true and accurate transcription of the audio taped record, to the Office, together with one unbound copy.

Office of Administrative Hearings

1400 West Washington
Suite 101
Phoenix, Arizona 85007
Phoenix: (602) 542-9826 Fax: (602) 542-9827

Tucson Office:

100 North Stone Ave., Suite 704
Tucson, Arizona 85701
(520) 628-5488 Fax (520) 628-5575

e-mail: oah@azoah.com
website: www.azoah.com



Informational Guide

This document available in alternative formats by contacting
the Office of Administrative Hearings at (602) 542-9826

FROM THE DIRECTOR

The Arizona Legislature established the Office of Administrative Hearings, an independent state agency, to ensure that parties are given a fair opportunity to be heard before a state regulatory agency takes an action. My guiding principles in managing the Office have been to streamline procedures as much as possible and to make sure that the record of any hearing reflects all the facts necessary for an informed and just decision. It is my sincere hope that you will find that through the Office of Administrative Hearings your government has become more responsive and accessible to you.

Cliff J. Vanell
Director

HOW DO I KNOW WHAT RULES TO FOLLOW?

You will find a copy of the OAH rules accompanying your brochure. If you have not received a copy, please contact the Office and a copy will be sent to you. In addition, statutory provisions found in A.R.S. §41-1092.01 to A.R.S. §41-1092.11 are applicable. A.R.S. §12-904 to A.R.S. §12-910 will guide any appeal to Superior Court. Other statutes may apply in special cases. You can find the rules and statutes at our website at www.azoah.com, "Research Procedures, Rules and Statutes Affecting Your Case."

WHERE AND WHEN WILL THE HEARING BE HELD?

You will be notified of the date, time and place of the hearing in the "Notice of Hearing" sent to you by the agency.

WILL THERE BE A RECORD?

There will always be a record made of any hearing, generally by audio tape. Either party can hire a court reporter instead. The record will be available to either side. For more information see OAH Rule 2-19-121.

WHAT IS AN ADMINISTRATIVE LAW JUDGE (ALJ)?

The Administrative Law Judge (ALJ) is not part of a court. The ALJ is an employee of the Office of Administrative Hearings and not an employee of the regulating agency which has initiated the action or from whose action or inaction you have appealed. You may view a biography and a picture of the assigned ALJ at our website at www.azoah.com, "About your Assigned Administrative Law Judge." The ALJ will decide facts, apply law, and make recommendations to the regulating agency. Normally, it will be the regulating agency, and not the ALJ, who will make the final decision in your case. There are exceptions where the ALJ makes the final decision. In most cases, if the agency does not act within 30 days of receiving the recommendation of the ALJ, the ALJ's recommendation will become final. In some cases, the board or commission may only have 5 days to take action after a meeting.

The ALJ of the Office of Administrative Hearings is charged with making sure that you have had a fair, impartial, and independent opportunity to be heard before an agency acts. The function of the ALJ can best be summed up by our Mission Statement:

"We will contribute to the quality of life of the State of Arizona by fairly and impartially hearing the contested matters of our fellow citizens arising out of State regulation."

WHERE DO I SEND REQUESTS?

After you receive the "Notice of Hearing" in your case, you should file requests or motions with the Administrative Law Judge (see the addresses on the cover of this brochure). However, you must send a copy of whatever you file to any other party and the agency, even if the agency is not a party. Likewise, the agency must send you a copy of what it sends to the Administrative

Law Judge or any other party. Sometimes the agency or you will refer to documents that you intend to use at the hearing to make your point. In that case, both the agency and you must make those other documents reasonably available for inspection by the other party if requested prior to the hearing. Be sure to list on whatever you file both the names and addresses of everyone who has been given a copy. For more information see OAH Rule 2-19-108.

WHAT IF I NEED A DELAY?

Sometimes either or both parties may request that a hearing be rescheduled. The Administrative Law Judge will make a decision as to whether there is a good reason for the delay. If there is, the hearing will be rescheduled to the next available date. Your request for a continuance must be in writing and generally must be received fifteen days before the scheduled hearing. For more information, see OAH Rule 2-19-110.

PRE-HEARING MOTIONS

Normally pre-hearing motions will be heard on the day of the hearing. The Administrative Law Judge will determine in advance whether the hearing itself will be rescheduled and will inform the parties whether only the motion will be heard that day. For more information, see OAH Rule 2-19-106.

HOW DO I SUBPOENA WITNESSES?

There are basically two types of subpoenas. The first is an order for someone to appear. The second is an order for someone to make documents or other items available to you. If you want either of these types of subpoena, you must prepare a subpoena form for the Administrative Law Judge's signature. The second type of subpoena requires a justification as well, normally a letter attached to the subpoena. The subpoena may not be served by a party. Process servers can be found in the

yellow pages. A copy of the subpoena, along with an affidavit from the person serving the original subpoena must be returned to the Office of Administrative Hearings. Subpoena forms, along with a guide on how to fill them out and have them served, are available through the Office of Administrative Hearings. Since you are required to have the subpoena served, you should request subpoenas well in advance of the hearing. For more information, see OAH Rule 2-19-113.

WHAT IF I HAVE A COMPLAINT?

Sometimes things may not appear to be going along as you think they should. Not everyone will be pleased with all of the decisions of the Administrative Law Judge. However, all parties have the right to be treated courteously and to have their hearing conducted with the aim of finding the truth. At the end of each hearing the parties will have the opportunity to complete a questionnaire to comment on how each felt the hearing was conducted and to comment on the work of the Administrative Law Judge. The questionnaire will not affect the result of the hearing, but will help the Office of Administrative Hearings improve its work. Any complaints either before or during the hearing should be made to the Director of the Office of Administrative Hearings. Your concerns will be addressed, consistent with the spirit of providing a fair, impartial and independent hearing.

DO I NEED A LAWYER?

No one is required by the Office of Administrative Hearings to have a lawyer. Individuals may, of course, represent themselves. However, when a party wishes to be represented by another, or when a party must be represented (such as a corporation), Rule 31(a)(3) and (a)(4) and Rule 33(d), Rules of the Supreme Court, apply. These rules and a more detailed discussion may be found on our website at www.azoah.com, "Attorney Issues."

APPEALS

In most cases you have the right to appeal the regulating agency's final order to the Superior Court. Final orders should specify your appeal rights.

SPECIAL ACCOMMODATIONS

The Office of Administrative Hearings endeavors to ensure the accessibility of its hearings to all persons with disabilities. Should you, or anyone you call as a witness need special accommodations, contact the Office of Administrative Hearings three working days before the hearing.

MORE INFORMATION

To research your case by case number, and for more information, visit our website at www.azoah.com.

TO RECEIVE OUR NEWSLETTER

The Office of Administrative Hearings publishes a free quarterly newsletter. To subscribe, visit our website at www.azoah.com, or contact the Phoenix Office.

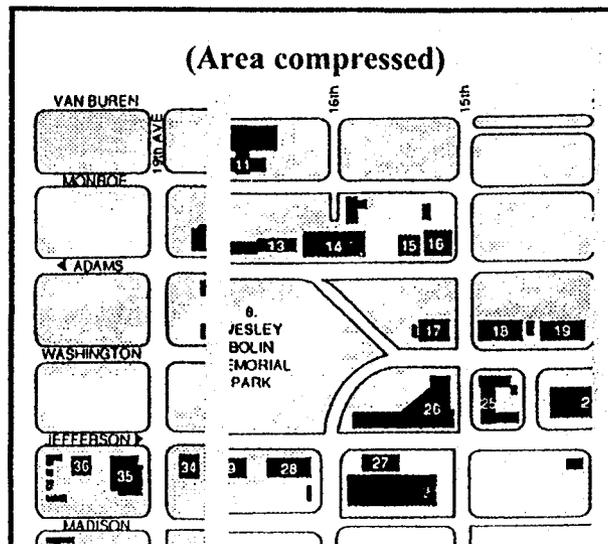
LOCATIONS

Hearings are held primarily in Phoenix and Tucson. Those locations are illustrated on the maps below. Your "Notice of Hearing" will specify the location of your hearing, including locations in other areas of the State.

PHOENIX

1400 W. Washington, Suite 101, Phoenix, AZ 85007

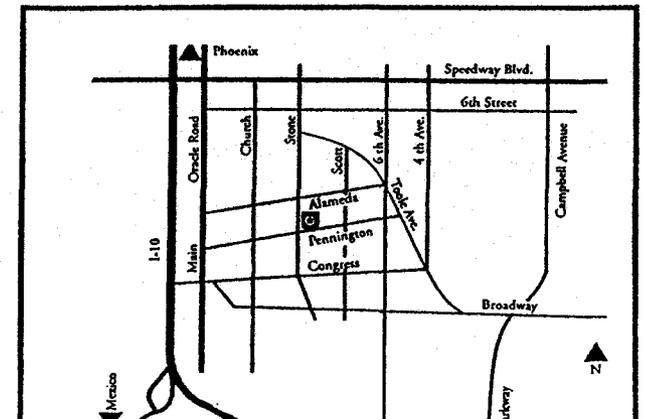
See 18 (below). The OAH is located on the northeast corner of Washington and 15th Ave. Parking is available north of that location in the rear parking lot or just north of that between Adams and Monroe.



TUCSON

100 North Stone Ave., Suite 704, Tucson, Arizona 85701

The OAH is labeled by the star (see below). It is located on the NE corner of Stone and Pennington. Metered parking is available along both Stone and Pennington. Garage parking is located at the Wells Fargo garage between Stone and Scott on Alameda. Additional garage parking is available at the Tucson City Library between Church and Stone at Alameda.



Try *www.azoah.com* first!

The website for the Arizona Office of Administrative Hearings is a one-stop way to learn about procedures, get valuable practice pointers, research your case, find statutes and agency rules that affect your case and MORE!

View our instructional video
“Preparing for Hearing”
at www.azoah.com

EXHIBIT M --

**Press Clippings About Similar ROC
Cases**

888-271-9286 or 602-542-1525



www.azroc.gov

NEWS RELEASE

FOR IMMEDIATE RELEASE - Jan. 17, 2007

Contacts: Brian Livingston, Arizona Registrar of Contractors: (602) 542-1525 X7130

ROC Revokes Albrite Bath and Kitchens

The Registrar of Contractors revoked the contractor's license for Albrite Bath and Kitchens on Monday. This move comes after company officials failed to answer a Citation and Complaint issued by the Registrar within the ten day period as required by ARS §32-1155 (B).

The Registrar of Contractors as received over 50 complaints against Albrite Bath and Kitchens since September 14, 2006. These complaints allege poor workmanship and abandonment after taking and failing to return significant deposited funds from complainants.

The Registrar shall not issue any future or additional contractor's license to any entity comprised of persons associated with Albrite Bath and Kitchen until all outstanding civil penalties are paid in full.

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The ROC regulates construction contractors in the state by providing a licensing and regulatory system for residential and commercial contractors designed to protect the health, safety and welfare of the public. Additionally, the ROC offers financial protection to residential consumers who use licensed contractors through its Residential Contractors' Recovery Fund. Established in 1931, the ROC operates 11 offices statewide. For more information about the agency, call 602-542-1525 or toll-free outside Maricopa County at 888-271-9286 or visit www.azroc.gov.



Residents file complaints against Valley contractor

Catherine Reagor and Glen Creno

The Arizona Republic

Jun. 1, 2007 12:00 AM

Moses Smith wanted to expand his Tempe home, put in new windows, renovate the kitchen and add a back patio.

He hired a contractor, and crews went to work ripping off the back of his house.

Then the work stopped.

That was nearly a year ago. Today, his house still sits exposed to bad weather and transients who have left fast-food containers behind. The condition is so bad, he's been living in an apartment.

"I'm tapped out," said Smith, who is paying rent, his mortgage and the payment on his \$50,000 construction loan.

Smith is one of at least 30 Valley homeowners who hoped to have new bathrooms, garages or other big renovations done by now. Instead, they are out tens of thousands of dollars because their contractor, Solymar Homes, cashed their checks and never did the work, according to complaints filed with the Arizona Registrar of Contractors.

Now the company is out of business and preparing to file for bankruptcy. The registrar revoked its license this week, and the Maricopa County Attorney's Office is looking into a case against its top salesperson.

The registrar, which licenses contractors, handles a recovery fund set up to reimburse people who lose money to contractors. But the fund is capped at \$200,000, and homeowners can't get more than \$30,000 each out of it. That won't cover all of the money lost by Solymar customers.

A review of the consumer complaints filed against Solymar shows that combined, Valley homeowners are out more than \$600,000.

"There have been discussions at the Legislature about increasing the recovery fund," said Brian Livingston, assistant director of communications for the registrar. "But of the 57,000 contractors we license, less than 1 percent end up in a situation like Solymar's. So do we penalize everyone?"

Solymar attorney Brian Spector sent a letter to customers informing them of the expected bankruptcy and offering an explanation of what had happened.

Spector wrote that company President Anthony Hinrichs said he and Solymar salesman Gary Miller decided to set up their own firm in January and started taking deposits on new construction contracts acting on behalf of

Solymar.

- The letter also stated that about \$80,000 from customers was deposited in a new account set up in the name of Solymar, and many other deposit checks received were cashed.

Homeowners sent copies of cashed checks to the registrar.

Miller was with the contractor until March. Hinrichs was terminated in April. Kevin Anolick, listed as the principal on Solymar's license, is now heading the company, though it has ceased operations.

Hinrichs and Miller set up a separate contracting firm, Scottsdale-based H&M Construction, in early March. That license is still current.

Neither could be reached for comment. Calls to their attorney weren't returned, and the phone number listed on the license of their new contracting firm wasn't answered.

The Maricopa County Attorney's Office is reviewing information sent by the registrar for a case against Miller.

When Solymar's license was suspended May 24, there were 43 open complaints against it, according to the registrar. Not all are from homeowners. Some complaints can be filed by subcontractors who didn't get paid for a job.

It could take up to two years for Smith and the other homeowners to get any money from the recovery fund.

- Homeowners say they had no reason to question the company. Solymar's Web site touted its credentials:

"We welcome projects of just about any size. And you can expect us to stand by our work and our guarantee. We are licensed, bonded, and insured, so call us with confidence."

A license isn't a guarantee, said Jay Butler, director of Realty Studies at Arizona State University's Polytechnic campus.

"Licensing can give consumers a false sense of protection," he said. "This contractor was licensed, but homeowners who did their homework are still going to lose."

Complaints up

Arizona is one of 35 states that license or at least register contractors. Only about 15 states, including Arizona, have recovery funds to compensate homeowners who pay for work that isn't done.

Sunvek, one of the Valley's biggest remodelers, filed for bankruptcy late last year and left at least 100 homeowners scrambling to get money from the recovery fund. Some are still waiting for some kind of compensation.

- A general residential contractor pays \$445 for a two-year license, and then can pay \$300 into the recovery fund for the first year and then \$150 a year after. Or the contractor can post a consumer bond for \$200,000.

Contractors' licenses can be suspended or revoked if they don't respond to the complaints.

So far in the registrar's fiscal year ending June 30, complaints against contractors numbered 9,960. That puts complaints on pace to beat 2006's record of 11,079. License suspensions and revocations reached 1,539 at the end of April, already topping 2005's record of 1,448.

Part of the increases can be attributed to the Valley's growth. But a slowdown in the housing market could mean more contractors are struggling, and more customers are complaining.

Homeowner beware

The registrar is warning homeowners not to put more than \$30,000 down on a construction project because they can't get more than that from the recovery fund. But for some it's too late.

Helen and Richard Dahlstrom said they gave Solymar a \$50,000 down payment on a \$138,000 motor home garage for their Peoria house. Their check was cashed but no work crews showed up.

The couple's attorney, Terrance Mead, sent Solymar a letter asking for full refund. Instead, they received a letter from Solymar's attorney telling them that "various customer deposits received by Hinrichs and Miller were not deposited into the company's regular bank accounts," and that Solymar wants the men to turn over any money received from the contractor's customers.

The last letter customers like the Dahlstroms and Smith received was one sent last week from Solymar's attorney saying the company was going to file for Chapter 7 bankruptcy.

Homeowners with complaints filed against Solymar can try to get some compensation from the bankruptcy liquidation of the company.

But Helen Dahlstrom expects a long legal process.

"We'll never get it all back," she said. "And we have to put out money for legal fees."

What do you think?

Post a comment about this article

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Your comments

One way to protect yourself is to use to utilize a third party referral company like ToFixIt. I have used several companies who ToFixIt recommends without any issues. ToFixIt regularly checks with the BBB and ROC to be sure a company is in good standing. If a company receives too many complaints or has outstanding issues not resolved, ToFixIt no longer recommends them. Check them out at www.tofixit.com. (Michael833, June 1, 2007 11:15AM)

I'm a contractor. I agree that taking someone's money and not doing the work should be a crime and not just a civil matter. It should also not be so easy to bleed a business to death with criminal activity and then just walk away and start doing it again with a different name. Making these scams criminal offenses would be a great start. Being a principal of a company with unresolved complaints should bar further licensing until all past complaints are taken care of.

As far as asking for money up front, please realize that protecting yourself works both ways. I ask for down payments and sometimes progress payments depending on the size of the job. (I am a landscaping contractor).

I do this because once I deliver materials to the site, the customer owns them. If there is a problem I can be barred from retrieving the material and would be at a loss. At the same time, customers don't want to be at risk either. It comes down to a certain degree of trust. Sometimes I am not comfortable with someone and it's easier to walk away at the beginning.

I also have several years with the same business name and no complaints. I'm also happy to share referrals. I get plenty of 'word of mouth' jobs.

I never ask for full payment up front, ever.

When someone seems concerned about paying a little up front, they can pay me the down payment when I show up on the first day and actually start the work.

Insurance refers to general liability and not to whether or not I'll rip you off.

Bonding has little to do with me ripping you off either.

Licensing is as easy as taking a \$400 class and passing a basic business and trade test. These are computer based tests that are multiple choice.

Compared to how many good, hard working contractors there are, it's really a very few that give all of us a bad name.

Doug.(Doug9311, June 1, 2007 11:14AM)

Guys,

Its simply amazing but the State won't do anything at all, I can't fathom how the ROC even exists and for what purpose. I hired Carl Rose of CR Solid Surfaces to remodel a few bathrooms in my house. He quoted a price and a duration of 3-4 weeks, it took him 5 months to complete the job (working one day a week) and I had to threaten him with a law suit. In these instances the law seems to favor the contractor, but I would have chased that @\$%& to hell. (br2723, June 1, 2007 11:06AM)

ROC? Like any company they have issues too. My husband and I inherited a condo in Mesa when his mother died in 2006.

We were in need of updating it and hired a company "CLASSIC GRANITE AND MARBLE" to do the cabinet refacing. We checked them thru the ROC "in good standing" After 3 in home visits over 1 month we hired them and gave them a check for 1/2 the job up front just over 5K. The check was cashed the following day and the 2nd day after the check was given the sales person called me and told me to put a stop pmt on the check, they were going out of business. I called the bank and found it was already cashed and they couldn't do anything.

We called the police and filed a police report. They called our wonderful AG "Terry Goddard" to see if criminal charges would be filed and the AG's office said no. Hmmn. The state allows a contractor in our homes and refuses to protect us when we are stolen from.

We also filed with the ROC and told it was a refund since no work was ever started. Okay...How long? about 16 weeks is what I was told.Here we are 8 months later, still no refund from the recovery fund.But we are waiting.

CLASSIC GRANITE AND MARBLE" took my check and decided to close shop the next day? There are over 100 open claims for this company. The owners? "DANIEL & ROSE MARIE KLABUNDE" whose parent company ROSE INVESTMENTS live in Scottsdale @ Greyhawk have filed bankruptcy. There's a shock.

ROC requires notifying the company that a claim has been filed. The company is given weeks to respond. Then ROC takes weeks to send another letter and gives them weeks to respond. Then their license is revoked and the company can respond. Then a letter is sent that a claim has been received for the recovery fund and the company is given weeks to respond. Then the ROC sends a letter that they will pay from the fund and the company is given weeks to respond. I think you get the drift....The contractors take our money immediately yet we are to wait weeks, months to get our money back. Somewhere in all these months of waiting the ROC received notification of their bankruptcy but still this didn't speed anything up either.

I'm feeling quite like the energizer bunny right now...Still waiting and waiting and waiting.....(Pam7726, June 1, 2007 11:00AM)

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I'm feeling quite like the energizer bunny right now...Still waiting and waiting and waiting.....(Pam7726, June 1, 2007 10:52AM)

I can't agree more with these writers. If this isn't fraud, grand theft, or what ever you want to call it, I don't know what else it could be. Jail is to good for this sleeze balls, try tent city this summer.(dave3962, June 1, 2007 10:49AM)

I can't agree more with these writers. If this isn't fraud, grand theft, or what ever you want to call it, I don't know what else it could be. Jail is to good for this sleeze balls, try tent city this summer.(dave3962, June 1, 2007 10:49AM)

Put this sleeze in Jail!!! That's the only way to set an example for all of the other fly-by-night contractors that are overtaking the valley and giving all contractors a bad name!!!(steve713, June 1, 2007 10:22AM)

There is nothing to force you to make pre-payments for contracted work. DON'T DO IT.

That's what a mechanic's lien (aka construction lien) is for, and any reputable contractor will use that instead of asking for money up front.

Got it yet? A contractor who asks for money up front = crook = can't be trusted.

And progress payments, while not necessary for most legitimate contractors, can be OK as long as you don't pay a dime more than for what work has ALREADY been done.

Forget about help from the Registrar of Contractors. How many years of stories do we need to read about the ROC before we dismantle this worthless agency?

The best advice I can give to consumers is to ask contractors for references from local customers, then talk with

those customers. A license from the ROC is meaningless. There are hundreds of crooked contractors operating in Arizona right now that have had their licenses (under a different company name) revoked by the ROC. Yet they can get another license by switching names.

The last thing I'll say is: Get it in writing. Every change order, every "extra," every modification. And don't pay for it until the job is finished. If the contractor threatens to walk off the job, let them walk and count your blessings. Any contractor who threatens this is NOT legitimate.

(lowell6888, June 1, 2007 10:00AM)

Just what does it mean to the consumer when you say this contractor was licensed, bonded and insured???

The article makes great reference to the so called slush fund maintained by the Registrar Of Contractors yet is totally silent to what role the bonding and insuring will make in this case. What is the purpose of bonding and insuring by a contractor if it doesn't mean anything to the consumer wht make constant reference to it???

I carry insurance on my life, car and home, if a problem occurs the insurance kicks in. Is this not the case with contractors?(Royce3711, June 1, 2007 09:51AM)

I am at a loss to explain why anyone would pay a contractor in advance for work that is to be done. If a contractor can't buy the material and start the work, that should be a clue. I have had a good bit of work done in the past but when the person doing my work says he needs money up front for material, he and I part company and I find someone else.(Bob6346, June 1, 2007 09:50AM)

Please don't blame the lawyers for the problems. I have worked for attorneys for many years, and I can tell you, we turned away many clients with "sour grapes" cases wanted to get rich off of others for their own stupidity. the majority of contractors are hard-working folks who do want to do a good job. All good reputable contractors will NOT require payment in full up front, and any that do, run like the wind from them.

In defense of construction/remodeling contractors, many, many, over the years I have worked for "rich attorneys", have had to file suit against homeowners for payment for work done, only to have the customer threat to file a suit with the ROC in order to get out of paying, or to delay having to pay, claiming faulty workmanship, causing the ROC to have to go out and investigate bogus claims. The customer who files a bogus claim should be required to pay a fee with the ROC. (betty2207, June 1, 2007 09:44AM)

Once again, the public needs to post the names, addresses, of those involved, also the vehicles they drive and the license plates, we must take the law into our own hands, funny how they have no money to refund to customers, but they have a lawyer getting paid.....(Darrel849, June 1, 2007 09:38AM)

The reason these "contractors" ask for money up front is because they are leveraging against the previous job and are over budget. I was paying for the work to be completed on two other jobs when I paid GARY CORNETT over \$20,000. When he finally couldn't do the work because he was tapped out I hired real professionals and they had to redo most of what he did. Now this guy is filing Chapter 7 and will probably get away with not paying me a dime. Anyone (especially contractors) who file for bankruptcy should lose a limb or get a tattoo on their foreheads so we all know what crooks they are. Now we do like Scott3525 says and pay for the materials at Depot ourselves.(Gordon4628, June 1, 2007 09:37AM)

The best contractor I ever had said he did not want the money till he was done, and it would take him a week. He got done in a week and I paid him happily, they should make a law that contractors cant take money up front, if they need supplies have the customer pay for it directly and delivered to the site, then the contractor can start.

But we need far more stringent rules on contractors, with stiff penalties this is not a new thing, this type of scam has been going on forever.(Scott3525, June 1, 2007 09:19AM)

888-271-9286 or 602-512-1525



WWW.AZROC.GOV

NEWS RELEASE

FOR IMMEDIATE RELEASE

April 3, 2007

Contact: Brian Livingston, Assistant Director of Communications for the Arizona Registrar of Contractors: (602) 542-1525 X7130; 602-510-6239 (cell)

Home Sweet Home Construction faces ROC Scrutiny

PHOENIX – The Arizona Registrar of Contractors (ROC) has been carefully investigating a number of complaints regarding Home Sweet Home Construction. These complaints range from abandonment to failure to initiate the construction process after contracts were signed and earnest monies deposited. Currently Home Sweet Home Construction's contractor's license has been suspended by the ROC for not meeting the statutory bonding requirement that all contractors are required to meet.

"From our investigation of Home Sweet Home Construction so far, it appears to be a case of over sales and lack of a sufficient labor force on the part of the contractor. The ROC is taking the appropriate steps to investigate and resolve the complaints against Home Sweet Home Construction," said Brian Livingston, Assistant Director of Communications at the ROC.

The ROC suggests that all consumers affected by the activities of Home Sweet Home Construction file a complaint with the ROC immediately. Consumers can download a complaint form from the ROC website (www.azroc.gov). Upon completing and signing the form consumers may mail or drop off the completed complaint form at any ROC office. Due to the number of complaints that have already been filed against Home Sweet Home Construction the ROC urges consumers to not delay in filing their complaint. Homeowners that prevail in their claims through the complaint process may, upon disciplinary action being taken against the contractor, file a claim for damages with the Residential Contractor's Recovery Fund.

The Residential Contractor's Recovery Fund was established to assist residential homeowners in the recovery of actual damages caused by a licensed contractor. Each residential homeowner has the ability to recover up to \$30,000 in actual damages caused by a licensed contractor. The maximum allowable payout from the Residential Contractor's Recovery Fund is \$200,000 per license. The Residential Contractor's Recovery Fund pays claims on a first come, first served basis and for this reason the Registrar urges affected homeowners to file their complaint as soon as possible. Consumers also have the right to file civil court claims against the contractor at the same time they file their complaint with the ROC.

To help prevent consumers from becoming a victim when hiring a contractor, the ROC provides the public with information resources that can be found on their website (www.azroc.gov). The ROC encourages anyone thinking of hiring a contractor to check the ROC website or call the ROC to verify that the person or

company that they are hiring is licensed to do contract work in Arizona and is in current license standing with the ROC. Consumers are strongly encouraged to check references provided by the contractor and to get multiple bids before finalizing any contract. It is also important not to be pressured into any contract and to remember "if a bid sounds too good to be true, it probably is".

For the latest information on this investigation or the status of any registered contractors in Arizona, please contact the ROC at 888-271-9286 or www.azroc.gov. Media inquires should be directed to Brian Livingston at 602-542-1525 ext. 7130 or 602-510-6239 (cell).

The ROC regulates construction contractors in the state by providing a licensing and regulatory system for residential and commercial contractors designed to protect the health, safety and welfare of the public. Additionally, the ROC offers financial protection to residential consumers who use licensed contractors through its Residential Contractors' Recovery Fund. Established in 1931, the ROC operates 11 offices statewide. For more information about the agency, call 602-542-1525 or toll-free outside Maricopa County at 888-271-9286 or visit www.azroc.gov.

888-271-9286 or 602-542-1525



www.azroc.gov

NEWS RELEASE

FOR IMMEDIATE RELEASE

April 11, 2007

Contact: Brian Livingston, Assistant Director of Communications for the Arizona Registrar of Contractors: (602) 542-1525 X7130; 602-510-6239 (cell)

ROC Revokes Gomez Pools & Spas license, Warns Homeowners

PHOENIX – The Arizona Registrar of Contractors (ROC) has revoked the contractor's license of Gomez Pools & Spas after the company violated ROC statutes. A number of complaints have been filed against Gomez Pools & Spas alleging problems ranging from abandonment to workmanship issues. These complaints are currently being processed by the ROC.

"The ROC believed the best course of action to protect the health, welfare and safety of the Yuma community was to stop Gomez Pools & Spas from continuing to conduct business. We are taking all appropriate steps to investigate and resolve the complaints against Gomez Pools & Spas." said Brian Livingston, Assistant Director of Communications at the ROC.

The ROC suggests that all consumers affected by the activities of Gomez Pools & Spas file a complaint with the ROC immediately. Consumers can download a complaint form from the ROC website (www.azroc.gov). Upon completing and signing the form consumers may mail or drop off the completed complaint form at any ROC office. Due to the number of complaints that have already been filed against Gomez Pools & Spas the ROC urges consumers to file their complaints as soon as possible. Homeowners that prevail in their claims through the complaint process may, upon disciplinary action being taken against the contractor, file a claim to recover actual damages with the Residential Contractor's Recovery Fund.

The Residential Contractors' Recovery Fund was established in 1981 to assist residential homeowners in the recovery of actual damages caused by a licensed contractor. Each residential homeowner has the ability to recover up to \$30,000 in actual damages caused by a licensed contractor. The maximum allowable payout from the Residential Contractors' Recovery Fund is \$200,000 per license. The Residential Contractors' Recovery Fund pays claims on a first come, first served basis and for this reason the Registrar urges affected homeowners to file their complaint as soon as possible. Consumers also have the right to file civil claims against the contractor at the same time they file their complaint with the ROC.

To help prevent consumers from becoming a victim when hiring a contractor, the ROC provides the public with information resources that can be found on their website (www.azroc.gov). The ROC encourages anyone thinking of hiring a contractor to check the ROC website or call the ROC to verify that the person or company that they are hiring is licensed to work in Arizona and is in current license standing with the ROC. Consumers are strongly encouraged to check

references provided by the contractor and to get multiple bids before finalizing any contract. It is also important not to be pressured into any contract and to remember "if a bid sounds too good to be true, it probably is."

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EXHIBIT N --

**ROC website information regarding
subject contractor**

Closed:

- Disciplined: 23 This is the number of complaints against this contractor that resulted in discipline being imposed after an administrative hearing or default because of a violation(s) of state contracting law.
- Resolved/Settled/ Withdrawn: 1 This is the number of complaints closed against this contractor that were resolved or settled by the contractor or withdrawn by the complainant after issuance of a corrective work order or formal citation.
- Denied Access: 0 This is the number of complaints against this contractor that were closed without corrective work being performed because the contractor was denied access by the complainant.
- Bankruptcy: 0 This is the number of complaints against this contractor that were closed because the contractor is in bankruptcy.

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Closed:

Disciplined:	21	This is the number of complaints against this contractor that resulted in discipline being imposed after an administrative hearing or default because of a violation(s) of state contracting law.
Resolved/Settled/ Withdrawn:	2	This is the number of complaints closed against this contractor that were resolved or settled by the contractor or withdrawn by the complainant after issuance of a corrective work order or formal citation.
Denied Access:	0	This is the number of complaints against this contractor that were closed without corrective work being performed because the contractor was denied access by the complainant.
Bankruptcy:	0	This is the number of complaints against this contractor that were closed because the contractor is in bankruptcy.

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Arizona Registrar of Contractors


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License Information ROC191815

→ Jul 18, 2007 10:12:06 AM

Please note: The company or individuals listed on this license may hold other Arizona contracting licenses. To view information, status and complaint history for the past two years on other licenses held, go to the License Inquiry page and do a "Company Name and Personnel" search by entering the name of the company or individuals listed on the license.

Company Name: [REDACTED] BUILDERS L L C

CONTRACTOR IS NOT ABLE TO CONTRACT WITH THIS LICENSE AT THIS TIME.
THIS CONTRACTOR MAY BE OPERATING WITH OTHER CURRENT LICENSES.

License Status: REVOKED Status Date: 1/22/2007

Action:

Status Narrative: SUSP 9/22/06 LACK OF BOND

Additional Information: (This information may not include all applicable suspensions.)

SUSP 2/5/-2/9/05 LACK OF BOND;SUSP 7/12-7/28/06 LACK OF BOND;R/F PAYOUT
1ST REV (06-2250);2ND REV 1/25/07 (06-2449);3RD REV 3/14/07 (06-2501)
REV (06-2510,07-0912,M06-2573,M07-0463,06-2563,07-0511,06-2466)

Address: 3519 E SHEA BLVD #138
PHOENIX, AZ 85028

Phone Number: 602-770-6479

Former Company Name:

Date of Name Change:

License Number: [REDACTED]

License Class: KB-02 DUAL
DUAL RESIDENCE AND SMALL COMMERCIAL

License Entity: LIMITED LIABILITY CO

License Issue Date: 1/ 5/2004 Renewed Date: 1/24/2006 Renewed Thru: 1/31/2008

Qualifying Party Information: (Last name listed first)

[REDACTED] Position: MEMBER

Date Qualified: 1/ 5/2004

Principal Information: (Last name listed first)

NONE

Complaint Information:

Complaints against this contractor are listed below. Complaints that were cancelled, resolved or settled without a corrective work order or dismissed are not included.

Contact the Registrar of Contractors at 602-542-1525 or toll-free statewide at 1-888-271-9286 to identify the ROC office location you need to visit to view complete complaint documentation.

Open: 14 This is the number of complaints against this contractor that are currently open except those in which an agency inspection has not occurred or a violation was not found. Upon adjudication some complaints are found to be without merit and are dismissed.

Closed:

Disciplined:	10	This is the number of complaints against this contractor that resulted in discipline being imposed after an administrative hearing or default because of a violation(s) of state contracting law.
Resolved/Settled/ Withdrawn:	1	This is the number of complaints closed against this contractor that were resolved or settled by the contractor or withdrawn by the complainant after issuance of a corrective work order or formal citation.
Denied Access:	0	This is the number of complaints against this contractor that were closed without corrective work being performed because the contractor was denied access by the complainant.
Bankruptcy:	0	This is the number of complaints against this contractor that were closed because the contractor is in bankruptcy.

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EXHIBIT O --

ROC Contractor Brochure



Frequently Asked Questions

Q: How do I register for the contractor's license examination?

A: You may register by either:

- a) Calling Thomson Prometric at 800-899-4089
- b) Faxing your registration form to: 800-347-9242
- c) Mailing your payment and complete Examination Registration form to:
Arizona Contractor
1360 Energy Park Drive
St. Paul, MN 55108-5252

Q: Are there any bond requirements for a contractor's license?

A: Yes. It is your responsibility to file a Contractor's Bond in the amount required for your license classification and anticipated annual gross volume (see Rule 4-9-112)

Q: What kind of experience is required for a contractor's license?

A: Credit is given for experience as a journeyman, foreman, supervising employee or contractor.

OFFICES

PHOENIX MAIN OFFICE

800 W. Washington, 6th Floor
Phoenix, AZ 85007-2940
(602) 542-1525

FLAGSTAFF OFFICE

2901 Shamrell Blvd., Ste. 100
Flagstaff, AZ 86001-1829
(928) 526-2325

GLENDALE REGIONAL OFFICE

17235 N. 75TH Ave., Bldg E, Ste. 175
Glendale, AZ 85308-8692
(602) 542-1525

KINGMAN OFFICE

519 E. Beale St., Ste. 140
Kingman, AZ 86401-5918
(928) 753-4220

LAKE HAVASU CITY OFFICE

1845 Mc Culloch Blvd., Ste. B-5
Lake Havasu City, AZ 86403-5722
(928) 855-2144

MESA REGIONAL OFFICE

2222 S. Dobson Rd., Ste. 101
Mesa, AZ 85202-6483
(602) 542-1525

PRESCOTT OFFICE

240 S. Montezuma St., Ste. 202B
Prescott, AZ 86303-3028
(928) 445-5710

SHOW LOW OFFICE

581 E. Old Linden Rd., Ste. C
Show Low, AZ 85901-4819
(928) 537-8842

SIERRA VISTA OFFICE

333 W. Wilcox, Ste. 104
Sierra Vista, AZ 85635-1756
(520) 459-5119

TUCSON REGIONAL OFFICE

400 W. Congress, Ste. 212
Tucson, AZ 85701-1311
(520) 628-6345

YUMA OFFICE

Crescent Center
2450 S. 4th Ave., Ste. 117
Yuma, AZ 85364-8557
(928) 344-6990

TDD (602) 542-1588

Or Toll Free outside Maricopa County

1 (888) 271-9286

Visit our Website at

www.azroc.gov

**The Registrar of Contractors is an Equal
Employment Opportunity Reasonable
Accommodation Agency**

Contractors

Read this for
important
licensing
information

*"Let's make sure the
job's done right."*



License Fees

"H I'm Al with the Arizona Registrar of Contractors. here to remind you to follow these simple steps when applying for a contractor's license."

RESIDENTIAL CONTRACTORS:

Original Biennial Specialty and General Licenses.....\$320-\$445

Biennial Renewal – Specialty and General License.....\$240-\$290

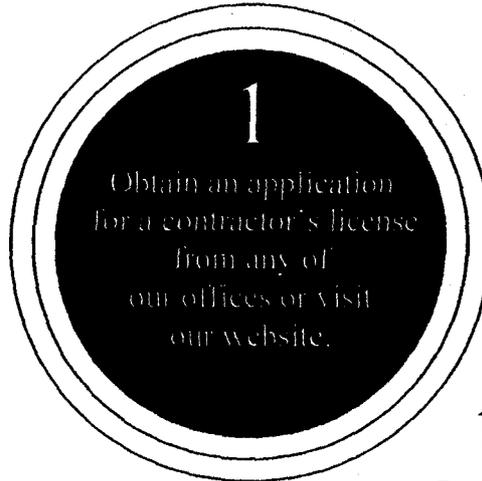
Recover Fund – Initial Biennial fee.....\$450

Recover Fund – Biennial Renewal Fee.....\$300

COMMERCIAL CONTRACTORS:

Original Biennial Specialty and General Licenses.....\$645-\$890

Biennial Renewal – Specialty and General Licenses.....\$490-\$580



two
Carefully read and follow all instructions.

seven
Submit the completed application with required fees and bonds.

6
Proofread your application.

3
Complete the testing requirements for the classification of license you are applying for.

4
Complete all forms and sign and date them.

8
Remember, applications will not be accepted until completed according to instructions and all requirements have been met.

five
Get a Transaction Privilege Tax License number from the Arizona Department of Revenue.



602-542-1525



www.azroc.gov

EXHIBIT P --
ROC Customer Survey



NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

BUSINESS REPLY MAIL
FIRST-CLASS MAIL PERMIT NO. 14719 PHOENIX, AZ

POSTAGE WILL BE PAID BY ADDRESSEE



REGISTRAR OF CONTRACTORS
800 W WASHINGTON ST FL 6
PHOENIX AZ 85007-9918



Registrar of Contractors

We are committed to providing the most timely,
courteous and professional service possible.
You are the best one to tell us how we are doing. Please
rate and comment on the service you have received. Fill
out this postage-paid card and drop it in the mail today.
Thank you very much.

Please check one and comment.

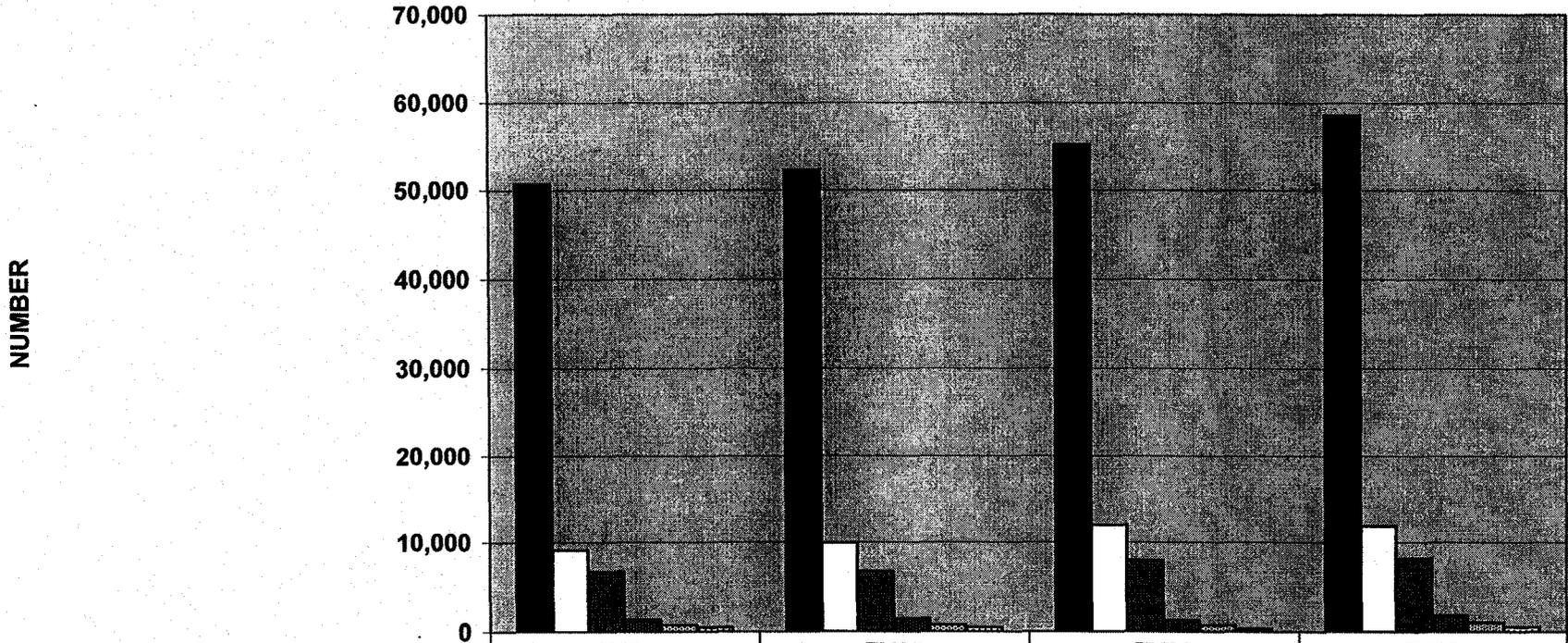
Excellent Average Poor

Name and Phone (Optional) _____

ROC comment cards are public documents and may be posted for public view.

EXHIBIT Q --
Charts and Grids

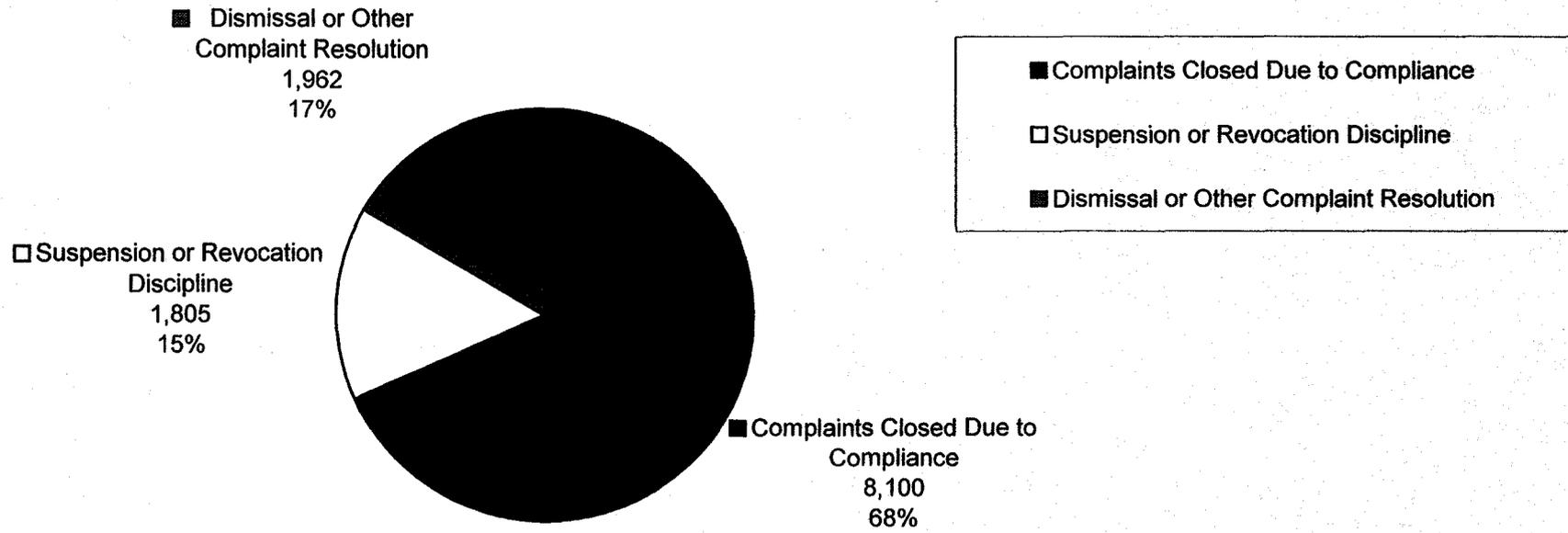
CONTRACTORS & COMPLAINTS



	FY04	FY05	FY06	FY07
■ Total Contractors	50,657	52,242	55,199	58,559
□ Number of Complaints Against Licensed Contractors	9,075	9,903	11,974	11,867
■ Complaints Closed by Compliance	6,678	6,717	7,914	8,100
■ Suspension or Revocation Discipline	1,336	1,448	1,285	1,805
▨ Recovery Fund Claims Received	765	762	721	1,034
▨ Recovery Fund Claims Paid Out	503	521	347	555

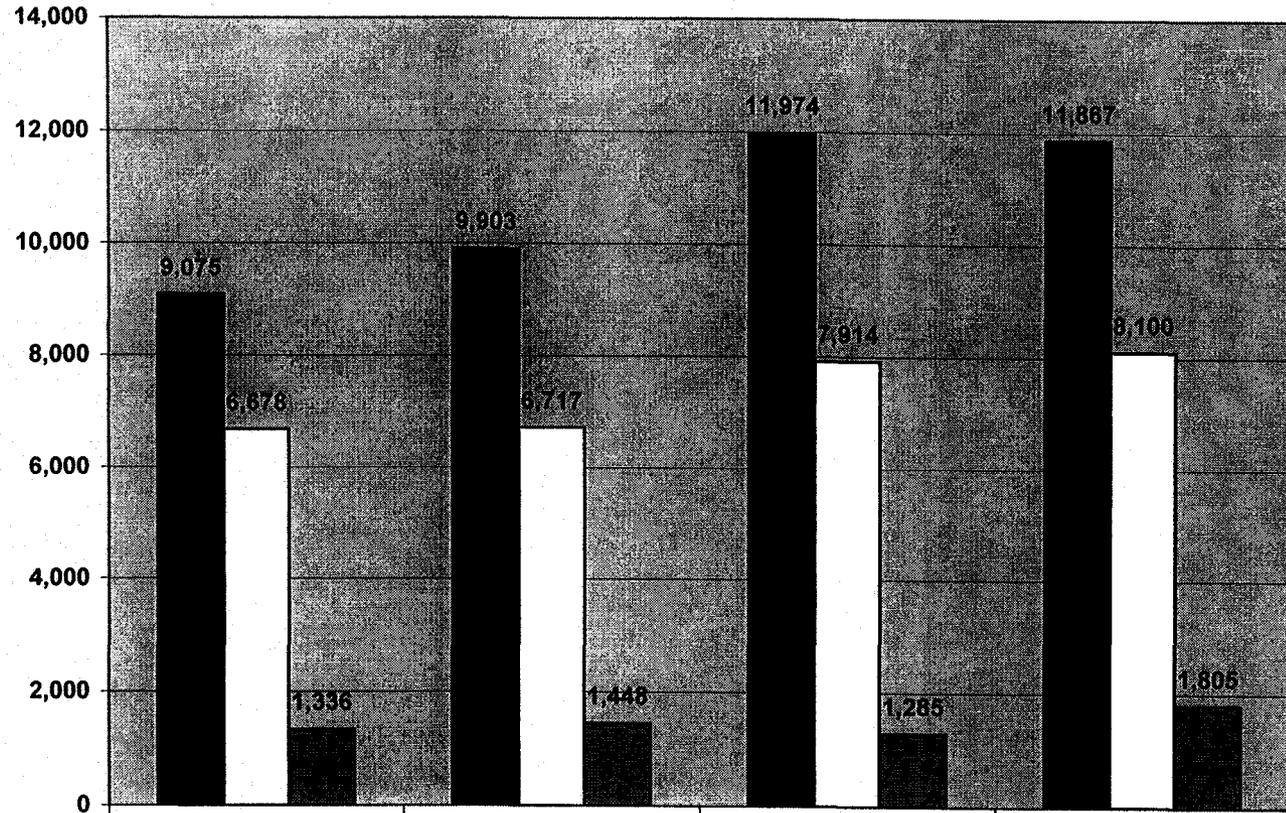
YEARS

FY07 COMPLAINT RESOLUTION



Complaint Resolution

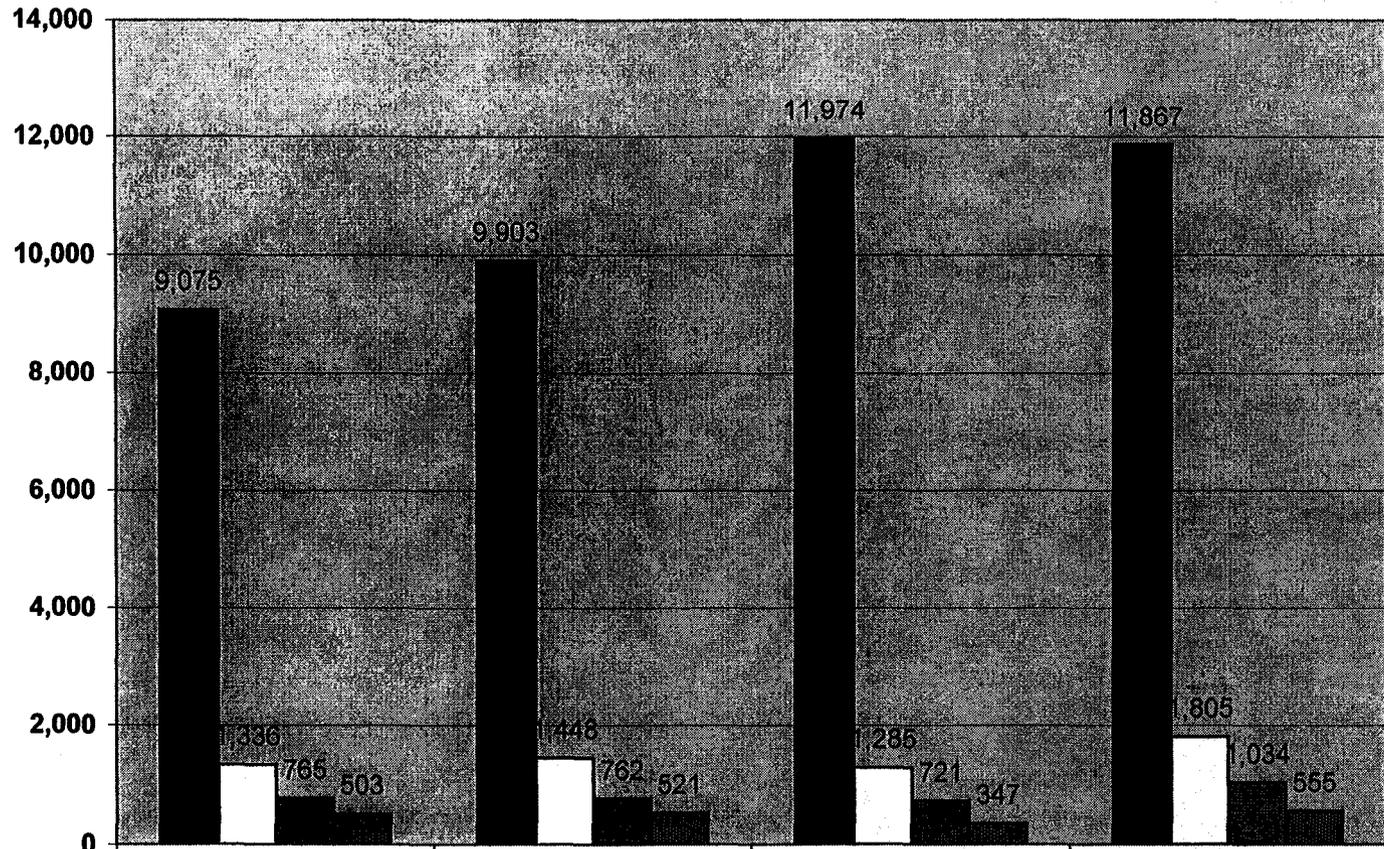
- Number -



	FY04	FY05	FY06	FY07
■ # OF COMPLAINTS AGAINST LICENSED CONTRACTORS	9,075	9,903	11,974	11,867
□ COMPLAINTS CLOSED BY COMPLIANCE	6,678	6,717	7,914	8,100
■ SUSPENSION OR REVOCATION DISCIPLINE	1,336	1,448	1,285	1,805

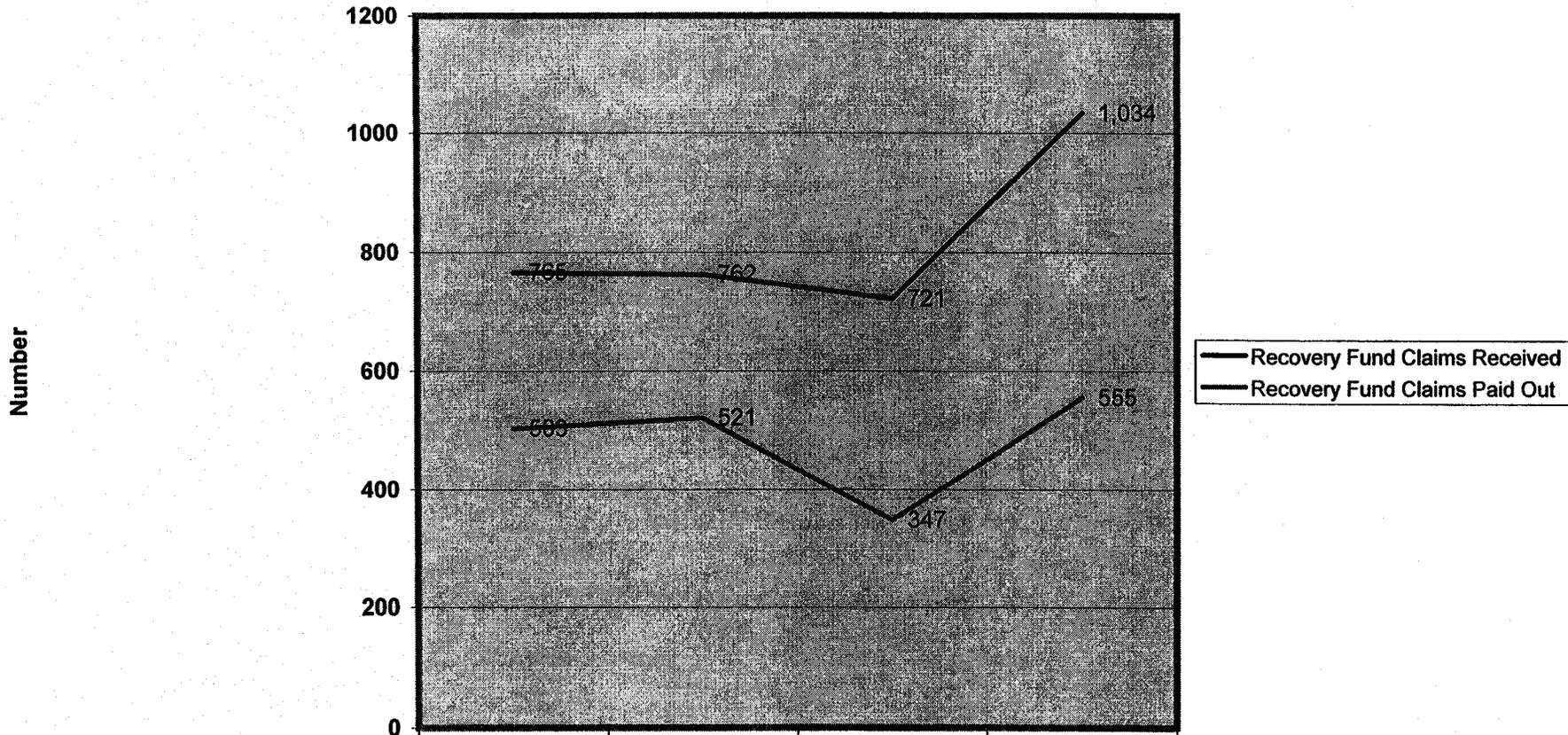
- Year -

Complaints to Recovery Fund Pay Out



	FY04	FY05	FY06	FY07
■ Number of Complaints Against Licensed Contractors	9,075	9,903	11,974	11,867
□ Suspension or Revocation Discipline	1,336	1,448	1,285	1,805
■ Recovery Fund Claims Received	765	762	721	1,034
■ Recovery Fund Claims Paid Out	503	521	347	555

Recovery Fund Claims to Pay Out



	FY04	FY05	FY06	FY07
— Recovery Fund Claims Received	765	762	721	1,034
— Recovery Fund Claims Paid Out	503	521	347	555

Year

ROC CONTRACTORS TO COMPLAINT STATISTICS INCLUDING %

	<u>FY04</u>	<u>FY05</u>	<u>FY06</u>	<u>FY07</u>
Total Contractors	50,657	52,242	55,199	58,559
Number of Complaints Against Licensed Contractors	9075	9,903	11,974	11,867
Complaints Closed by Compliance	6678	6,717	7,914	8,100
Number of Cases Resulting in Citation & Hearing	2804	3,230	3,259	4,315
Suspension or Revocation Discipline	1336	1,448	1,285	1,805
Recovery Fund Claims Paid Out	503	521	347	555
Percent of Contractors with Complaints	17.9%	19.0%	21.7%	20.3%
Percent of Complaints Closed Via Compliance	73.6%	67.8%	66.1%	68.3%
Percent of Complaints Resulting in Suspension or Revocation	14.7%	14.6%	10.7%	15.2%
Percent of Contractors Suspended or Revoked Per Year	2.6%	2.8%	2.3%	3.1%
Percent of Contractors Assigned Recovery Fund Debt	1.0%	1.0%	0.6%	0.9%
Percent of Complaints Resulting in Recovery Fund Payout	5.5%	5.3%	2.9%	4.7%

updated 10/31/2008

EXHIBIT R --

**Office of Administrative Hearings Survey
About Legal Representation**

Office of Administrative Hearings

1400 West Washington, Suite 101 - Phoenix, Arizona 85007
Telephone (602)-542-9826 FAX (602)-542-9827

Janet Napolitano
Governor

Cliff J. Vanell
Director

January 7, 2008

Patrick M. Shannahan, Ombudsman – Citizen's Aide
3737 N. 7th Street, Suite 209
Phoenix, Arizona 85014

Re: Ombudsman-Citizens' Aide preliminary Report 12/17/07; Registrar of Contractors

Dear Mr. Shannahan,

Please find as Attachment A the result of my statistical analysis of Administrative Law Judge Decisions involving the Registrar of Contractors (ROC) issued In August 2006, November 2006, February 2007 and May 2007. These months were selected to represent a slice of such decisions issued during FY 2007, each representing the second month of each quarter. Of the 396 cases analyzed, 110 involved the non-appearance of either complainant or respondent. Only the 286 cases in which there was a contest between two parties were further analyzed to determine: 1) which party prevailed; and 2) which parties were represented by counsel. The results are attached.

There are a variety of interpretations that can be overlaid on the data, but based on the numbers, ones chances of success are the same if either both parties are represented or neither party is. Respondents are particularly well advised not be unrepresented if the complainant has counsel.

It should come as no surprise that having counsel provides a benefit. Unrepresented parties may not be aware of certain defenses, or may not take the time to prepare for a procedure which is necessarily adversarial. My understanding is that the ROC's Notices of Hearing advise individuals that the hearing is adversarial. Parties receive an OAH informational brochure which directs them to our website. There they can read informational articles and watch videos that make clear the need to prepare.

Examining the evaluation responses in ROC cases submitted by unrepresented parties in FY 2007 discloses no pervasive dissatisfaction with the process. In fact, there is little difference in how represented and non-represented parties responded. I have attached as Attachment B1 (percentage responses) and B2 (raw number of responses)



Mission Statement: We will contribute to the quality of life in the State of Arizona by fairly and impartially hearing the contested matters of our fellow citizens arising out of State regulation.

representing the results of ROC evaluations received for FY 2007. Attachment C represents all written comments received in ROC cases in FY 2007. As you can see there is a large body of data.

I note that the exhibit included in section N is not fully redacted as apparently you intended. You may wish to redact the license number as you have the name of the contractor.

Sincerely,

.pdf only

Cliff J. Vanell
Director

Attachment A Representation v. Outcome (ROC Cases 2nd Month of Each Quarter FY 2007)

Neither Complainant nor Respondent represented		
	Number of cases	Percent
Complainant prevails	85	55%
Respondent prevails	69	45%
	154	100%
Complainant and Respondent both represented		
	Number of cases	Percent
Complainant prevails	17	55%
Respondent prevails	14	45%
	31	100%
Complainant not represented /Respondent represented		
	Number of cases	Percent
Complainant prevails	28	36%
Respondent prevails	50	64%
	78	100%
Complainant represented/Respondent not represented		
	Number of cases	Percent
Complainant prevails	20	87%
Respondent prevails	3	13%
	23	100%

EXHIBIT S --

Summary of Recommendations

SUMMARY OF RECOMMENDATIONS

Recommendations for Issue 1

Recommendation 1A

The Registrar's administrative processes for complaints need to be reduced. The current process takes too long. Toward this end, the legislature should consider establishing a study group comprised of complainant homeowners, plaintiff attorneys and consumer advocates along with contractors, respondent attorneys and construction industry representatives to examine the administrative system and suggest further refinements. The Registrar's Office should participate in the evaluation too.

Recommendation 1B

The legislature should consider amending statutes so construction cases contested administratively via the Registrar of Contractors and the Office of Administrative Hearings should have the recovery fund claim stipulated in the original case determination and order. This would eliminate the current, time-consuming exercise requiring two proceedings. Under such a scenario, complainants would request a specific Recovery Fund amount when they file their complaint. Subsequently, if ROC inspectors verified the complaint, the inspectors would issue corrective work orders stipulating not only what needs to be fixed/accomplished, but also their evaluation of the claim amount. Contractors would still have their due process rights because they could challenge the claim in the main hearing as to both responsibility and amount.

Recommendation 1C

The Legislature should consider amending statutes so construction cases contested in court have the recovery fund claim stipulated in the original case determination and order. This would eliminate a time-consuming exercise requiring two court proceedings.

Recommendation 1D

The Registrar's process for Recovery Fund complaints originating in the Courts need to be reduced. The current system takes too long. Toward this end, the legislature should consider establishing a study group comprised of complainant homeowners, plaintiff attorneys and consumer advocates along with contractors, respondent attorneys and construction industry representatives to examine the ROC process for judicial complaints and suggest ways to speed up the process. The Registrar's Office should participate in the evaluation too.

Recommendation 1E

The Registrar's Office should develop a performance measure to track their complaint system's duration from beginning to end. It should count from the date a homeowner files a complaint to the day the Recovery Fund mails a check to the prevailing homeowner. They should also establish goals and objectives designed to reduce the overall timeframe for complaints.

Recommendation 1F

The ROC should submit a request to the Legislature justifying an increase in full-time employees (FTEs). They should ask for legislative approval of enough staff for their agency so property inspections can occur within three weeks for regular cases and within two days when there are habitation or extreme hazard issues.

Recommendation 1G

The Office of Administrative Hearings (OAH) should request more administrative law judge positions from the Legislature to reduce the waiting times for hearing appointments relating to ROC cases to six weeks or less.

Recommendation 1H

The legislature should consider amending statutes to streamline the Inspection to Citation process. The inspection notice could set an inspection date, inform the contractor about the complaint (via a copy of the actual complaint) and suggest the contractor attempt to work out the problems prior to the inspection. It could give the contractor notice that if the inspector verifies workmanship or other problems at the future inspection, then an official citation will be issued.

The current process usually has three written notices at its front end – a Notice of Inspection, a Corrective Work Order and then a Citation. It would be more efficient if this three-step notice process were reduced to two. From the moment the contractor receives a notice of an inspection and copy of the complaint, they have warning where the homeowner believes the contractor erred, violated statutes or failed to adhere to workmanship rules. Contractors would have from the time of that notice until the inspection to “make it right.” Subsequent to the inspection, the ROC inspector will issue a citation if he verifies the problems exist and finds the project does not conform to workmanship standards, rules or statutes. The contractor would have 15 days to either fix the problem to the homeowner’s satisfaction or write to the Registrar and ask for a hearing to contest the findings in the citation.

Recommendation 1I

The Legislature should consider adopting a statute, similar to Minnesota’s Statute §326-975, to accelerate payment out of the contractor’s recovery fund under certain circumstances.

Recommendation 1J

The Legislature should consider instructing the Joint Legislative Budget Committee (JLBC) to closely track the progress of the ROCIMS computer project to ensure it stays on course and has the necessary resources to be successfully completed.

Recommendations for Issue 2**Recommendation 2A**

The Legislature should consider amending construction statutes to increase individual Recovery Fund claim limits from \$30,000 to \$50,000. Single-family home prices rose over 100% in most cities in Arizona within the past five years, thus risk to homeowners increased

similarly. Homeowners frequently incur actual financial damages exceeding the \$30,000 mark.

Raising the amount to \$50,000 would not give impacted homeowners a windfall because Recovery Fund claims only compensate for actual losses.

Recommendation 2B

The Legislature should consider amending construction statutes to increase the total claim limit against a contractor from \$200,000 to \$500,000. The process of stopping an errant contractor is very time-consuming. As a result, there is a high probability such a contractor will cause significant financial damage to numerous homeowners prior to his license being suspended. Bad contractors can have so many legitimate claims that the fund reaches its artificial limit, leaving some worthy claimants with nothing. That is not fair. A higher total claim figure would compensate or partially compensate more deserving homeowners than allowed under the existing limits. If the individual limit rises to \$50,000, then 10 homeowners could receive the full Recovery Fund allocation before the Fund maxes out and closes.

The Registrar's Office said only a few Arizona homeowners have been placed in the bad position where they prevailed in their claims, yet were barred from the fund due to the statutory limits. This is a further argument that the total fund limits should be eliminated or adjusted upward.

Recommendation 2C

The Registrar's Office should develop methods to estimate reasonable construction costs in instances where homeowners cannot produce actual supporting documents or find contractors ready to embroil themselves in another's dispute. The Registrar's Office could issue a preliminary estimate of the value of labor, equipment, supplies and material that would serve as a suggested floor amount for the recovery fund amount. Homeowners could accept this floor amount or get specific estimates.

Numerous resources exist which the Registrar's Office could rely on when developing these estimates. Professional appraisers use cost approaches based primarily on reproduction cost of improvements. There are published cost-estimating manuals and web applications such as Marshall and Swift's *Home Repair and Remodel 2007 Cost Guide* and the *Residential Estimator 7*. The Registrar's Office should staff their Recovery Fund Department with a qualified appraiser to make and validate official building and remodeling cost estimates.

Recommendation 2D

The Registrar's Office should develop criteria to define and pre-approve some situations when it is reasonable to accept estimates for homeowner "sweat-equity." A homeowner's own labor, in recompense for the failures of a contractor, should be valued. As with every other estimate recommendation, contractors should retain the right to contest the figure.

Recommendation 2E

The Legislature should consider legislation to remove the \$1000 limit found in A.R.S. §32-1121 so that the total cost of the contract is not a factor when using a handyman, just the handyman's total labor charges as a portion of the project charge.

Recommendation 2F

The Registrar should examine how other states manage multiple claims against one contractor and develop a like proposal for the Arizona Legislature to consider.

Recommendations for Issue 3**Recommendation 3A**

The Legislature should consider adding three to four staff to the ROC so that each case has a single point of contact for all parties. Caseworkers will guide the case through the system, nudge parties to act when appropriate and disseminate general case information. This will reduce the feeling of segmentation that currently exists. At least one ROC worker will be responsible for communicating the whole picture to all the parties, not just one particular segment. They will not investigate cases, but will be process experts capable of identifying exactly which segment a case is in and what the expectations are for that particular segment of the process.

Recommendation 3B

The Legislature should consider amending statutes to make the Registrar a party to the case if the State has a clear interest. Examples where the State would have an interest include instances where a contractor fails to pay workers compensation, unemployment insurance or taxes.

Recommendation 3C

The Registrar's Office should augment their written instructions to make them more complete so consumers and contractors are less confused about their processes.

They should flow-chart the process and show each of the parties what options are available to them at each possible stage. Instructions should be more comprehensive. Sample documents should illustrate expectations. We are not suggesting the elimination of single topic instructions, but they should supplant comprehensive explanations. We suggest the Registrar's Office gather all their various instructional materials and refine them to create a web-based consumer handbook for residential construction projects.

The consumer handbook could include suggestions about how to check out a contractor, the elements of a good construction or re-modeling contract and sample contracts. It could list things to be wary of, give recommendations how to handle disputes and offer suggestions how to avoid misunderstandings. It could explain the Registrar's processes relating to administrative complaints or court complaint cases and explain rules relating to handymen.

The Registrar's Office should also design a guideline packet to help those who file Recovery Fund claims. All complainants having potential Recovery Fund claims should be sent a

packet acknowledging the filing of their complaint and explaining the ROC process in detail.

It should,

- timeline and “step” each segment of the standard process,
- cite the relevant statutes and rules,
- index what can be obtained off the ROC web site,
- warn about existing handyman limitations,
- explain how to properly document supply purchases
- explain the need for three competitive bids from replacement contractors
- note what requires photo documentation
- list expectations required of the homeowner
- provide forms for standard communication between the Registrar of Contractors and the homeowner.

When explaining their system, the Registrar’s Office should explain each segment of the complaint process. The Registrar’s Office could show sample complaint forms, typical timeframes, flow charts, requirement/action-item lists, sample recovery fund documentation and sample responses to complainants and contractors. In the style of the Attorney General Agency Handbook, it could show sample communications ranging from contracts, corrective work orders, responses, recovery fund amount estimates and justifications, subpoenas and other document samples.

The Registrar of Contractors should explain what documents they are likely to issue to the parties. Further, they should make clear exactly when they expect to hear from complainants to keep the process going.

Recommendation 3D

The Registrar of Contractors should keep improving their main web site. The ROC deployed many improvements in the past year. The site is much more informative and user friendly than what was available a year ago. This is especially true of the Recovery Fund forms, instructions and video. However, the site needs more comprehensive segments to better inform homeowners and contractors about the ROC and Office of Administrative Hearings expectations relating to filing deadlines, rules, hearing procedures and response protocols. Homeowners and contractors crave samples to illustrate instructions and responses. Explanations about compliance hearings and settlements mystify the public so the Registrar should explain them better. The Registrar’s web site should be able to display the status of complaints or link to the Office of Administrative Hearings case information. Registrar staff should have quick research options allowing them to point consumers to online, timesaving data and features.

Recommendation 3E

The licensed contractor database posted on the Registrar’s web site should be refined to be more comprehensive and up-to-date. The Registrar’s Office should post all instances of undeliverable addresses, corrective work orders, citations, suspensions, revocations, pending settlements, closed cases or other like official matters within three working days from the

time the ROC becomes aware of the event. The date the information was last updated should be noted.

Recommendation 3F

The Registrar's Office should consult with Arizona's Government Information Technology Agency (GITA) and develop a project to expand their imaging process so that it is faster and more all encompassing. The current imaging process takes too long, keeps files unavailable and is not comprehensive enough.

The public should be able to pull up images of official documents like corrective work orders, citations, hearing date assignments, requests for re-hearings, OAH findings and suggested orders and the final ROC order.

The Office of Administrative Hearings and the Corporations Division of the Corporation Commission are two examples of agencies with extensive imaging systems. These agency sites have modern databases containing images tied to comprehensive lists of documents and events relevant to each case file. Barcode readers coupled with indexing stickers and scanners have been one inexpensive, yet effective method for agencies to image documents.

Recommendation 3G

The Registrar's Office should post case timeframes on their web site. The Registrar's Office should post current information about waiting-time forecasts for initial inspections, hearings and the anticipated time between a Registrar's Recovery Fund Order, to its pay out. Parties to cases should be able to go to the web site and see where their case is in the process.

Recommendation 3H

The Registrar's Office should monitor settlements between homeowners and contractors. They should suggest settlement provisions to require parties to report contract breaches to the Registrar. If the parties reach a settlement agreement, the ROC should verify the contractor keeps to the terms of the agreement or automatically re-open the tabled complaint.

Recommendation 3I

The ROC database should not display the word "settled" until the matter is fully closed and the parties live up to the terms of the settlement. The Registrar's Office should develop some other term or phrase to describe situations where settlement agreements are in play (e.g., "pending settlement").

Recommendation 3J

The Registrar's Office should improve their survey. The survey should identify whether or not the respondent is a contractor or homeowner, whether or not the case went to the recovery fund stage and how long the complaint took to resolve (date complaint was opened to date case was closed).

Recommendations for Issue 4

Recommendation 4A

The Legislature should consider creating statutory criteria to specify situations where the Registrar's office is required to perform expedited inspections (within two working days) when a homeowner credibly alleges a public health, safety or welfare concern exists as the result of faulty acts committed by their contractor.

Recommendation 4B

The Legislature should consider further stipulations describing circumstances where the Registrar's Order confirms a public hazard or active safety issue directly attributable to the contractor, the contractor should be required to fix the hazard within a 24-hour period or some other brief time or deliver specific evidence to counter it being his/her responsibility. The hazard should be grave enough to potentially cause death or serious bodily harm. Failure to comply with both of these provisions should result in a default finding releasing the homeowner from his obligation to continue to work with the initial contractor. However, it should not release the contractor from existing damage claims.

Recommendations for Issue 5

Recommendation 5A

The Registrar's Office should create a rule requiring that residential contractors give homeowners a consumer handbook with all formal construction bids. The Registrar's Office should develop the handbook and seek input from consumers, contractors and expert attorneys who regularly represent both of these groups. Homeowners should receive the booklet or be "pushed" an electronic notice e-mail prior to the signing of any residential remodeling or construction contract.

The booklet should include a warning page for consumers informing them of good and bad practices in the construction industry. It should list elements common to good construction contracts and display a collection of various sample contracts. It should have model contracts that can be adapted for individual use.

It should tell homeowners how to check the record of a contractor and how to document interactions and/or disputes with their contractor. It should tell them how to file a complaint with the Registrar's Office if they cannot resolve a disagreement with their contractor. It should disclose complaint limitations and alternative means of resolving construction disputes.

The web-based pamphlet could be sent electronically to homeowners. Contractors would be responsible for getting a homeowner's signature on the disclosure form indicating receipt of the consumer booklet prior to contract signing.

The Registrar's Office already has a number of elements gathered for the booklet, presented in a variety of different places. On the "Consumer Corner" of web page, the ROC offers

various warnings and suggestions about what to do before a consumer signs a contract, what to include in all construction contracts and how to handle payments. Their "Read this - Ten Tips Brochure" and "Contracting for Residential Construction Consumer Guide" makes other suggestions. The booklet should also include the statutory directions about contracts found in Arizona Revised Statutes §§32-1129 through 32-1129.06.

Similar booklets or disclosures are required in various private industries and government entities. Diverse examples include mortgage lender disclosures, corporate stock prospectuses, banking account practice summaries, escrow forms, vaccine warning forms, residential real estate contracts, HIPAA privacy forms and Child Protective Service's Guide for Parents.

Recommendation 5B

In situations where licensed contractors are administratively suspended, the Legislature should consider authorizing automatic criteria in statute, that make contracts voidable, thus giving homeowners a release option. Statutes currently mandate that contractors who are administratively suspended cannot perform work on any construction project until they solve their administrative problem. Contractors should have a reasonable time to remedy the problem, such as ten to twenty working days, but after that, the homeowner should have the option to cancel the contract. We recommend the criteria stipulate that homeowners not be released until they pay the contractor for already performed work and purchased materials.

Recommendation 5C

The Registrar's Office official public record posting about each contractor licensee should display the number of times the Registrar's Office verified a complaint against a contractor and the nature of each complaint. It should also indicate the filing date of the complaint, how the complaint was handled and at what stage it was resolved/closed (e.g., before inspection, after corrective work order, after citation, after hearing, after official order, after re-hearing).

Recommendation 5D

The Registrar's Office official public record posting about each contractor licensee should display the number of times the Registrar's Office issued corrective work orders and citations against the license.

Recommendation 5E

The Legislature should consider authorizing automatic trigger points in statute that prohibit contractors, who have too many open complaints, from taking on more work until they resolve the complaints or they fall back to a lower number. If a contractor has a defined number of open, confirmed complaints filed against him in a certain period, he should not take on new business until the number of such complaints fall back below the trigger number. SB 1417 addressed the issue of contractors with excessive complaints, but it focused only on contractors who abandon five or more jobs. Contractors who garner numerous complaints due to poor workmanship are no better than those who abandon jobs. In a sense, they are worse because such job sites are sometimes left in worse shape than before the work began.

The natural trigger to limit contractors with an elevated level of confirmed complaints would be the Recovery Fund maximum value. In other words, once confirmed claims against a contractor exceed the total possible Recovery Fund limit, it would block the contractor from taking on new business until the complaints are resolved to the point the Recovery Fund limit is not in jeopardy. With current fund limits, this would mean a contractor could face six full claims before they would be hit the trigger point and have to stop accepting new work.

Recommendations for Issue 6

Recommendation 6A

The Legislature should consider having fewer bond levels and set the bond amounts to \$15,000 for a single license and \$30,000 for a dual license if a contractor does \$500,000 or less in annual work. The estimated cost would be less than \$750 annually for a \$15,000 bond. For contractors with annual contracts exceeding \$500,000, the bonds should be \$25,000 for a single license and \$50,000 for contractors with dual licenses. The Registrar should use financial statements to set each contractor's bond amount [See Recommendation 6C].

Recommendation 6B

The Legislature should consider requiring contractors to have liability insurance. They should have professional liability coverage including coverage for errors and omissions caused by Contractor's negligence in the performance of its duties his agreement. They should also have general liability coverage or commercial general liability insurance for bodily injury, property damage, and personal injury liability. They could benchmark to the average amount of coverage required in the eighteen states that mandate liability insurance. We found estimates for \$500,000 aggregate coverage running \$1,300, while \$1 million in coverage ran just a bit more at \$1,500.

Recommendation 6C

The Legislature should consider amending contracting statutes to require the Registrar's Office to obtain more financial information on prospective contractors. A component of this could be requiring contractors to demonstrate proof of financial accountability when submitting applications or renewals. The Legislature could look at what states such as Alabama, Arkansas, California, Florida, Hawaii, Idaho, Louisiana, Maryland, Michigan, Mississippi, Nevada, New Hampshire, North Carolina, South Carolina, Tennessee, Utah, Virginia and Wisconsin require of their contractors to prove financial accountability. Professional accountants should review and attest to these statements prior to their submittal to the Registrar's Office to prevent contractors from submitting untruthful statements. The Registrar should use the financial statements to set each contractor's bond amount. Arizona legislators could examine Florida, Utah, Nevada or California methodologies as examples of jurisdictions with stronger contractor applicant requirements.

Recommendation 6D

The Legislature should consider amending statutes relating to contractor bonds and complaints to require the ROC to notify every complainant, upon the filing of their complaint, whether or not the contractor's bond is available or has been claimed. The ROC already sends a notification to both parties acknowledging the complaint and announcing the date of property inspection. They should note the bond amount and status on the notification form and explain the bond claiming process too. The form would then serve three purposes - - as a receipt to confirm the ROC received the complaint and notice to the contractor, as a notice about the date of the property inspection and as notification of the bond amount and availability.

Recommendations for Issue 7

Recommendation 7A

The Registrar's Strategic Plan should have a performance measure to track and report penalties assigned and collected each year.

Recommendation 7B

The assessment of penalties should be made automatic in certain cases in order to streamline the process. A.R.S. §§32-1154(D) and 32-1154(E) would need to be amended. The Legislature should consider amending these statutes and setting statutory criteria for instances where automatic penalties are triggered in specific circumstances. For example, the ROC could assess automatic penalties at the deadline date for citations if the contractor:

- Fails to respond,
- Otherwise fails to demonstrate any attempt to remedy the deficiency or
- Fails to ask for a compliance hearing.

Citations could state at their issuance that certain failures by a contractor would likely result in "automatic" penalties. The contractor could contest these penalties and ask for a hearing or accept the penalty determination. Existing statute stipulates that penalties must be paid within thirty days or the contractor's license is revoked.

Recommendation 7C

The Legislature should consider requiring contractors to forward inspection reports to the Registrar's Office when local government building inspectors cite the contractor for failing to build to code and the contractor fails to make the necessary repairs within twenty-one working days. The statutory change should then require the contractor follow-up with a notice to the Registrar's Office once they have fixed the items listed as problems in the inspection. Open violations should appear in the contractor's public file. The Registrar should develop a process to verify the contractor corrected the deficiencies and received local inspection approval within a pre-set period or face automatic penalties.

Recommendation 7D

The Legislature should consider refining the statutory criteria to define more precisely when the Registrar must pursue disciplinary action against contractors, independent of complainants' individual settlements.

Recommendations for Issue 8

Recommendation 8A

The Legislature should consider going beyond the changes they made via Senate Bill 1417 relating to summary suspensions and define statutory criteria to have expedited inspections and corrective work orders in limited situations where the Registrar's Office confirms the original contractor's error, negligence or abandonment created an acute hazard. Acute hazards could be listed in statute. Example of acute hazards are:

- Faulty electrical work threatening an immediate fire or electrocution danger.
- Disconnected essential services such as electric/gas/water (disconnected for longer than three days).
- Inoperable cooling or heating apparatus when ambient temperature reaches higher than 90 degrees or lower than 45 degrees Fahrenheit and alternative heating or cooling mechanisms are not available for the structure. (disconnected for longer than three days)
- Poorly engineered roofs, walls or bearing beams, which threaten collapse.

Homeowners should be allowed to petition for quick relief in such scenarios. Petitions to expedite should have at least three components. The homeowners would need to demonstrate to the satisfaction of the Registrar's Office that the problem poses a threat of serious bodily injury, violates health codes or otherwise make the house uninhabitable until fixed. Furthermore, the property owner would need to show that the problem was the result of negligence or error committed by the contractor's company and not a planned event (e.g., a pre-agreement where both parties, know and agree that repairs will be so extensive, the property owner must vacate the property). Lastly, the contractor must have been given at least three days to make repairs.

Upon receiving such a petition and finding it credible, the Registrar's Office should be required to expedite the inspection and issue an inspection report within three working days. Should the report confirm the acute hazard, the Registrar would require the contractor to perform necessary corrections within 15 days or thereafter lose the right to correct their own work. From that date on, the homeowner should be free to hire a different contractor to resolve the problem unless the contractor can provide credible evidence the homeowner barred him from accessing the job in violation of ROC directives. If the contractor produces credible evidence, then the matter must proceed through regular due process channels. However, if the contractor is silent or provides no rationale to the Registrar to explain how the property owner prevented work, then the Registrar can permit the property owner to hire a different contractor.

The contractor would still have the right to contest whether or not they are at fault through the regular course of due process, however, the matter would then just be about the fault determination and possible Recovery Fund or other reparations. This recommendation should be addressed when Recommendation 4A and 4B, relating to summary suspension, are addressed.

Recommendation 8B

The Legislature should consider defining statutory criteria to allow homeowners to hire a new contractor when a contractor abandons and does not attempt to finish a job. No homeowner should have to wait past the repair time stipulated by the Registrar's Office in the corrective work order. From that date on, the homeowner should be free to hire a different contractor to resolve the problem unless the contractor can provide credible evidence the homeowner barred him from accessing the job in violation of ROC directives. If the contractor produces credible evidence, then the matter must proceed through regular due process channels. However, if the contractor is silent or provides no rationale to the Registrar to explain how the property owner prevented work, then the Registrar can permit the property owner to hire a different contractor.

Senate Bill 1417 focuses on stopping contractors who have five or more claims of abandonment from taking on more work, but it does not help homeowners who are already the victim of abandoned projects. Something should be done for these types of cases too. Enacting the recommendation would still give the contractor the right to contest whether or not they are at fault through the regular course of due process, however, the matter would then just be about the fault determination and possible Recovery Fund reparations.

Recommendations for Issue 9**Recommendation 9A**

The Legislature should consider amending the five identified statutes relating to contracting (A.R.S. §§32-1101, 32-1122, 32-1151, 32-1156 and 32-1166), to clearly reflect that they apply to limited liability companies too.

Recommendation 9B

The Registrar's Office should correct their application form to use the proper legal terminology for limited liability company leadership (members, managers, member-managers).

Recommendation 9C

The Registrar's Office should correct their application form to specify the proper legal terminology relating to the original organization of limited liability companies. Limited liability companies file "Articles of Organization" with the Corporation Commission, not "Operating Agreements."

Recommendations for Issue 10**Recommendation 10A**

The Registrar's Office should develop formal mechanisms (e.g., an interagency agreement) to receive and deliver information related to workers compensation violations with the Industrial Commission.

For example:

- Upon the ROC receiving information or otherwise determining a contractor may not have adhered to workers compensation laws, the ROC should be obliged to inform the Industrial Commission of the allegation
- Similarly, the Industrial Commission should inform the Registrar's Office when they substantiate a contractor has failed to adhere to workers compensation laws.

Recommendation 10B

The Legislature ordered the Registrar to develop rules to implement SB1417. These rules should automatically trigger a summary suspension of a licensed contractor upon the Industrial Commission substantiating the contractor's failure to adhere to workers compensation payment laws. The finding should trigger A.R.S. §32-1171(A) and summarily suspend the contractor's license. This would be similar to the Registrar's process when the Corporation Commission notifies the Registrar that a contractor's corporation or limited liability company has been dissolved.

Recommendation 10C

The Registrar's Office should develop a performance measure to reflect their activity and enforcement of Arizona Revised Statutes §§32-1122(B)(1)(i) and 32-1154 (A)(4) relating to workers compensation laws requirements for licensed contractors.

Recommendations for Issue 11

Recommendation 11A

The Registrar's Office should collaborate with the Department of Economic Security to develop formal mechanisms to receive information related to unemployment insurance violations from the Department of Economic Security.

Recommendation 11B

The Legislature should consider adjusting Title 32, concerning licensed contractors, to automatically trigger an administrative suspension of a contractor's license at the ROC once DES substantiates the contractor failed to adhere to unemployment insurance laws. This would be similar to the provision in SB 1417 summarily suspending contractors who fail to pay their workers compensation debts.

Recommendation 11C

The Legislature should consider adjusting Title 32 concerning licensed contractors to require the Registrar's Office to collect updated unemployment insurance payment information from all contractors. Essentially, it would be a declaration by contractors (with employees) that unemployment insurance provisions were met. It could be a component of the biennial licensing process.

Recommendation 11D

The Registrar's Office should develop a performance measure to reflect their activity and enforcement of A.R.S. §32-1154(A) (4) relating to unemployment insurance requirements of licensed contractors.

Recommendations for Issue 12**Recommendation 12A**

The Registrar's Office should develop formal mechanisms to notify the Internal Revenue Service when the ROC receives or develops information indicating a contractor may have violated social security allegations. The ROC should be obliged to inform the Internal Revenue Service of the allegation and facts.

Recommendation 12B

The Legislature should consider adjusting Title 32 concerning licensed contractors to require the Registrar's Office to collect updated social security payment information from all contractors. Essentially, it would be a declaration by the contractor that his business has met its social security obligations. It could become a component of the existing biennial licensing process.

Recommendation for Issue 13**Recommendation 13A:**

The Registrar's Office should develop formal mechanisms (e.g., an interagency agreement) to receive and deliver information related to tax violations with the Department of Revenue.

For example:

- Upon the ROC receiving information or otherwise determining a contractor may not have adhered to workers compensation laws, the ROC should be obliged to inform the Department of Revenue of the allegation.
- Similarly, the Department of Revenue should inform the Registrar's Office when they substantiate a contractor has failed to adhere to workers compensation laws.

Recommendation 13B

The Legislature should consider clarifying A.R.S. §32-1154(A)(5) regarding licensed contractors obligation to pay income taxes to require the Registrar's Office to collect a declaration by the contractor that required transaction and income taxes were paid by the contractor. This would be similar to the tax declaration made by corporations in their annual reports filed with the Corporation Commission. It could become a component of the existing biennial licensing process.

Recommendation 13C

The Registrar's Office should develop a performance measure to reflect their activity and enforcement of A.R.S. §32-1154(A)(5) relating to tax requirements of licensed contractors.

Recommendation for Issue 14

Recommendation 14A

The Registrar's Office should improve their vetting process for contractors. Their background checks should be more thorough and ask more questions like the Utah and Florida contractor applications or the Arizona Department of Insurance application. The applications and biennial renewal forms should require Arizona contractors to disclose, excepting vehicular matters, whether the contractor was ever convicted of a misdemeanor or felony in any state. Contractors answering "yes" should be required to provide the subject matter, date, court and sentence.

Recommendation 14B

The Legislature should consider developing legislation requiring contractors be fingerprinted with their initial application. Realtors, medical professionals, insurance agents, teachers and others in a position of trust are required to have fingerprint clearance.

Recommendation 14C

The Legislature should consider developing legislation to require contractors to provide, as a component of contractor application or biennial license renewal, a summary of past and current litigation including case number, date, courts, all parties, subject matter and disposition. Contractors should be asked if all judgments, liens or taxes were paid as required. The Utah application and a number of other Arizona agency applications (e.g., Medical Board, Securities, Gaming, Liquor and Real Estate) ask applicants to provide information about judicial actions involving themselves.

Recommendation 14D

The Legislature should consider adjusting Title 32 concerning licensed contractors to require contractors to biennially report their known place of business, their statutory agent and answer the question, "If on is a corporation, limited liability company or any form of partnership, is the address/known place of business information identical to the respective Corporation Commission or Secretary of State record?"

Additionally, these adjustments to Title 32 relating to business addresses should require the ROC to post undeliverable business and statutory agent address information on the ROC contractor web database upon receipt from the Corporation Commission or Secretary of State.

The ROC should promptly test undeliverable address information they receive from other sources (via a notice letter). Upon confirming the address is undeliverable, the ROC should post the information to their web database and suspend the license until the entity corrects its address problem.

Recommendations for Issue 15

Recommendation 15A:

The Legislature should consider developing legislation prohibiting the issuance of new licenses to contractors while they have open complaints. Instead, legislators could create a new category of contingent or provisional licenses. Contractors with open complaints could file for contingent or provisional licenses that would automatically convert to licenses with full rights if the contractor were exonerated from the complaint. On the other hand, if the contractor were found guilty and disciplined, the conditional license would suffer the same fate as the license in question. A suspension or revocation of the one license would automatically impart the same consequence on the new, conditional license. In this way, time and expense would be saved in dealing with guilty contractors, yet innocent contractors would not be impeded from commerce unfairly.

Recommendation 15B:

The Legislature should consider developing legislation authorizing the Registrar to revoke remaining licenses or rescind places where the contractor is listed as a qualifying party simultaneously in instances when the Registrar orders the revocation of one of the contractor's licenses. The initial hearings, findings and order should address the contractor's other licenses and listings as a qualified party to avoid the redundancy required with the existing system. The scope of discipline affecting contractors' remaining licenses should be declared and debated in the original charges and hearing process. A completely new set of hearings should not be necessary.

Recommendations for Issue 16

Recommendation 16A

The Legislature should consider developing legislation to require contractors to obtain the license number and initially verify the good status of each sub-contractor they use. In turn, sub-contractors should then be required to deliver notice of any change of license status to the general contractors they work for within thirty days of any change.

Recommendation 16B

The Legislature should consider revising the statute relating to handymen. A.R.S. §32-1121 places a \$1,000 limit on the *total* repair cost of a job, not just a \$1,000 limit on what work can be done by a handyman. It does not apply to contractors, only homeowners. Thus, an inequity occurs. A handyman should be allowed to perform up to a \$1,000 in labor that does not require licensure. The total job cost should not be tied to the handyman.

Recommendation 16C

The Legislature should consider requiring site superintendents be licensed. This requirement will require the creation of a new category of license.

Recommendations for Issue 17

Recommendation 17

The Registrar's Office should change their oral instructions, pamphlets and web site information so they note that parties who utilize a lawyer in contested cases usually improve their position, but a party does not have to use an attorney if they cannot afford one. The instructions could then state a party/layman may represent himself, if he cannot afford an attorney.

EXHIBIT T --

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