

# Recovery Fund Actual Damages and 3<sup>rd</sup> Party Payments

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## Notice Required by A.R.S. § 41-1091

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## **Applicable Laws**

- A.R.S. § 32-1132.01(B)
- A.R.S. § 32-1132.01(H)

## **Substantive Policy Statement**

Under A.R.S. § 32-1132.01(B), an award from the residential contractors' recovery fund may not exceed the actual damages suffered by the claimant as a direct result of a contractor's violation. "Actual damages" is defined as "the reasonable cost of completing the contract and repairing the contractor's defective performance, minus the part of the contract price still unpaid." A.R.S. § 32-1132.01(H).

The statutory definition of actual damages does not require the homeowner to personally make payments to the contractor. Rather, the statute requires an award to be reduced by any amount that was not paid to the contractor. Therefore, the Registrar may issue an award from the recovery fund to cover damages incurred by a homeowner who contracts with a licensed contractor, even if the homeowner did not personally pay the contractor.

### **Example 1—LLCs**

John Doe is the sole member of Doe's LLC, and John Doe owns a home in his own name. If Doe's LLC makes payment to a contractor, and that contractor performs poor work resulting in damage to the home, the Fund may properly issue an award to cover those damages (assuming all other eligibility criteria are met).

### **Example 2—Family Members**

Jane Does owns a home in her name. Jane Doe's parents pay a contractor to remodel the home. If the contractor performs poor work resulting in damage to the home, the Fund may properly issue an award to cover those damages (assuming all other eligibility criteria are met).