

REFERENCE TITLE: licensed contractors; residential bonds; recovery

State of Arizona  
House of Representatives  
Fifty-first Legislature  
Second Regular Session  
2014

## **HB 2479**

Introduced by  
Representatives Cardenas: Alston, Borrelli, Gabaldón, Gallego, Gonzales,  
Gowan, Mach, Mendez, Miranda, Quezada, Saldate, Sherwood, Shope, Thorpe,  
Wheeler, Senators Farley, Meza

AN ACT

AMENDING SECTION 32-1152, ARIZONA REVISED STATUTES; RELATING TO CONTRACTORS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 32-1152, Arizona Revised Statutes, is amended to  
3 read:

4 32-1152. Bonds

5 A. Before granting an original contractor's license, the registrar  
6 shall require of the applicant a surety bond in a form acceptable to the  
7 registrar or a cash deposit as provided in this section. No contractor's  
8 license may be renewed unless the applicant's surety bond or cash deposit is  
9 in full force and effect.

10 B. The bonds, or the cash deposit as provided in this section, shall  
11 be in the name of the licensee in amounts fixed by the registrar with the  
12 following schedules after giving due consideration to the volume of work and  
13 the classification contemplated by the applicant:

14 1. General commercial building contractors and subclassifications of  
15 general commercial contractors shall furnish a surety bond or cash deposit in  
16 an amount that is determined as follows:

17 (a) If the estimated annual volume of construction work of the  
18 applicant is ten million dollars or more, the applicant shall furnish a  
19 surety bond or cash deposit of not less than fifty thousand dollars or more  
20 than one hundred thousand dollars.

21 (b) If the estimated annual volume of construction work of the  
22 applicant is more than five million dollars and less than ten million  
23 dollars, the applicant shall furnish a surety bond or cash deposit of not  
24 less than thirty-five thousand dollars or more than seventy-five thousand  
25 dollars.

26 (c) If the estimated annual volume of construction work of the  
27 applicant is more than one million dollars and less than five million  
28 dollars, the applicant shall furnish a surety bond or cash deposit of not  
29 less than fifteen thousand dollars or more than fifty thousand dollars.

30 (d) If the estimated annual volume of construction work of the  
31 applicant is more than five hundred thousand dollars and less than one  
32 million dollars, the applicant shall furnish a surety bond or cash deposit of  
33 not less than ten thousand dollars or more than twenty-five thousand dollars.

34 (e) If the estimated annual volume of construction work of the  
35 applicant is more than one hundred fifty thousand dollars and less than five  
36 hundred thousand dollars, the applicant shall furnish a surety bond or cash  
37 deposit of not less than five thousand dollars or more than fifteen thousand  
38 dollars.

39 (f) If the estimated annual volume of construction work of the  
40 applicant is less than one hundred fifty thousand dollars, the applicant  
41 shall furnish a surety bond or cash deposit of five thousand dollars.

42 2. Specialty commercial contractors shall furnish a surety bond or  
43 cash deposit in an amount that is determined as follows:

44 (a) If the estimated annual volume of construction work of the  
45 applicant is ten million dollars or more, the applicant shall furnish a

1 surety bond or cash deposit of not less than thirty-seven thousand five  
2 hundred dollars or more than fifty thousand dollars.

3 (b) If the estimated annual volume of construction work of the  
4 applicant is more than five million dollars and less than ten million  
5 dollars, the applicant shall furnish a surety bond or cash deposit of not  
6 less than seventeen thousand five hundred dollars or more than thirty-seven  
7 thousand five hundred dollars.

8 (c) If the estimated annual volume of construction work of the  
9 applicant is more than one million dollars and less than five million  
10 dollars, the applicant shall furnish a surety bond or cash deposit of not  
11 less than seven thousand five hundred dollars or more than twenty-five  
12 thousand dollars.

13 (d) If the estimated annual volume of construction work of the  
14 applicant is more than five hundred thousand dollars and less than one  
15 million dollars, the applicant shall furnish a surety bond or cash deposit of  
16 not less than five thousand dollars or more than seventeen thousand five  
17 hundred dollars.

18 (e) If the estimated annual volume of construction work of the  
19 applicant is more than one hundred fifty thousand dollars and less than five  
20 hundred thousand dollars, the applicant shall furnish a surety bond or cash  
21 deposit of not less than two thousand five hundred dollars or more than seven  
22 thousand five hundred dollars.

23 (f) If the estimated annual volume of construction work of the  
24 applicant is less than one hundred fifty thousand dollars, the applicant  
25 shall furnish a surety bond or cash deposit of two thousand five hundred  
26 dollars.

27 3. The total amount of the surety bond or cash deposit required of a  
28 licensee who holds more than one license under paragraphs 1 and 2 of this  
29 subsection shall be the sum of the surety bond or cash deposit required for  
30 each license based on the estimated annual volume of construction work of the  
31 applicant allocated to and performed under each license. The applicant at  
32 his option may post a single surety bond or cash deposit that is the sum of  
33 the bonds or deposits determined under this subsection for all such licenses.

34 4. General dual licensed contractors and subclassifications of general  
35 dual licensed contractors shall furnish a single surety bond or cash deposit  
36 with amounts for each classification of license that are determined based on  
37 the volume of commercial work as determined under paragraph 1 of this  
38 subsection and the volume of residential work as determined under paragraph 5  
39 of this subsection. Liability under the bond or cash deposit shall be  
40 limited to the amount established for each commercial or residential license  
41 and is subject to the limitations and requirements set forth in subsection E  
42 of this section.

43 5. General residential contractors and subclassifications of general  
44 residential contractors shall furnish a surety bond or cash deposit in an

1 amount of not more than fifteen thousand dollars and not less than five  
2 thousand dollars.

3 6. Specialty dual licensed contractors shall furnish a single surety  
4 bond or cash deposit with amounts for each classification of license that are  
5 determined based on the volume of commercial work as determined under  
6 paragraph 2 of this subsection and the volume of residential work as  
7 determined under paragraph 7 of this subsection. Liability under the bond or  
8 cash deposit shall be limited to the amount established for each commercial  
9 or residential license and is subject to the limitations and requirements set  
10 forth in subsection E of this section.

11 7. Specialty residential contractors shall furnish a surety bond or  
12 cash deposit in an amount of not more than seven thousand five hundred  
13 dollars and not less than one thousand dollars.

14 8. Dual licensed swimming pool contractors and residential swimming  
15 pool general contractors shall furnish a surety bond or cash deposit in the  
16 same amounts based on the volume of work as determined under paragraph 1 of  
17 this subsection for a general commercial contractor.

18 C. Dual licensed contractors and residential contractors shall also  
19 either:

20 1. Furnish an additional surety bond or cash deposit in the amount of  
21 two hundred thousand dollars solely for actual damages suffered by persons  
22 injured as described in section 32-1131. This bond shall be subject to the  
23 limitations on the amounts that may be awarded to individual claimants as  
24 established in section 32-1132.

25 2. Participate in the residential contractors' recovery fund and pay  
26 the assessment prescribed by section 32-1132.

27 D. The surety bonds shall be executed by the contractor as principal  
28 with a corporation duly authorized to transact surety business in this state.  
29 Evidence of a surety bond shall be submitted to the registrar in a form  
30 acceptable to the registrar. The contractor in the alternative may establish  
31 a cash deposit in the amount of the bond with the state treasurer in  
32 accordance with rules adopted by the registrar. Such cash bond monies shall  
33 be deposited, pursuant to sections 35-146 and 35-147, in the contractors'  
34 cash bond fund. The state treasurer shall invest and divest monies in the  
35 fund as provided by section 35-313, and monies earned from investment shall  
36 be credited to the state general fund. Such cash deposits may be withdrawn,  
37 if there are no outstanding claims against them, two years after the  
38 termination of the license in connection with which the cash is deposited.  
39 The cash deposit may be withdrawn two years after the filing of a commercial  
40 surety bond as a replacement to the cash deposit.

41 E. The bonds or deposit required by subsection B of this section shall  
42 be for the benefit of and shall be subject to claims by the registrar of  
43 contractors for failure to pay any sum required pursuant to this chapter.  
44 The **COMMERCIAL** bond or deposit required by subsection B, paragraphs 1, 2 and  
45 3 of this section is for the benefit of and subject to claims by a licensee

1 under this chapter or a lessee, owner or co-owner of nonresidential real  
2 property including, ~~but not limited to,~~ a tenant in common or joint tenant,  
3 or their successors in interest, who has a direct contract with the licensee  
4 against whose bond or deposit the claim is made and who is damaged by the  
5 failure of the licensee to build or improve a structure or appurtenance on  
6 that real property at the time the work was performed in a manner not in  
7 compliance with the requirements of any building or construction code  
8 applicable to the construction work under the laws of this state or any  
9 political subdivision, or if no such code was applicable, in accordance with  
10 the standards of construction work approved by the registrar. The  
11 residential bond or deposit required by subsection B, paragraphs 4 through 8  
12 of this section is for the benefit of and subject to claims by ~~any person~~ A  
13 LICENSEE UNDER THIS CHAPTER furnishing labor, materials or construction  
14 equipment on a rental basis used in the direct performance of a construction  
15 contract involving a residential structure or by persons injured as defined  
16 in section 32-1131. The bond or deposit required by subsection C, paragraph  
17 1 of this section is for the benefit of and is subject to claims only by  
18 persons injured as described in section 32-1131. The person seeking recovery  
19 from the bond or cash deposit shall maintain an action at law against the  
20 contractor if claiming against the cash deposit or against the contractor and  
21 surety if claiming against the surety bond. ~~If the person~~ A LICENSEE UNDER  
22 THIS CHAPTER seeking recovery ~~is required to~~ AGAINST THE RESIDENTIAL BOND  
23 SHALL give the notice REQUIRED pursuant to section 33-992.01, ~~he~~ AND is  
24 entitled to seek recovery only if ~~he~~ THE LICENSEE has given such notice and  
25 has made proof of service. The surety bond or cash deposit shall be subject  
26 to claims until the full amount ~~thereof~~ OF THE BOND OR DEPOSIT is exhausted.  
27 The court may award reasonable attorney fees in a judgment against a  
28 contractor's surety bond or cash deposit. No suit may be commenced on the  
29 bond or for satisfaction from the cash deposit after the expiration of two  
30 years following the commission of the act or delivery of goods or rendering  
31 of services on which the suit is based, except that time for purposes of  
32 claims for fraud shall be measured as provided in section 12-543. The surety  
33 bond or cash deposit shall be continuous in form and shall be conditioned so  
34 that the total aggregate liability of the surety or cash deposit for all  
35 claims, including reasonable attorney fees, shall be limited to the face  
36 amount of the surety bond or cash deposit irrespective of the number of years  
37 the bond or cash deposit is in force. If the corporate surety desires to  
38 make payment without awaiting court or registrar action, the amount of any  
39 bond filed in compliance with this chapter shall be reduced to the extent of  
40 any payment or payments made by the corporate surety in good faith  
41 thereunder. Any such payments shall be based on priority of written claims  
42 received by the corporate surety before court or registrar action. If more  
43 than one cash deposit exists, the judgment against the contractor shall state  
44 which cash deposit shall be used to satisfy the judgment. A certified copy  
45 of the judgment shall then be filed with the registrar, and such judgment

1 shall specify that it may be satisfied from the contractor's cash deposit.  
2 Priority for payment shall be based on the time of filing with the registrar.  
3 On receipt of a certified copy of the judgment or on a final disciplinary  
4 order of the registrar, the registrar may authorize payment from the cash  
5 deposit of the amount claimed or of whatever lesser amount remains on file.  
6 In any action against a cash deposit, the claimant, at the time of filing  
7 suit, may notify the registrar in writing of the action against the cash  
8 deposit, but shall not name as a defendant in the action the registrar, the  
9 treasurer or the state. Failure to so notify the registrar at the time of  
10 filing suit may result in the cash deposit being withdrawn by the licensee  
11 before judgment pursuant to subsection D of this section.

12 F. When a corporate surety cancels a bond, the surety, not less than  
13 thirty days before the effective date of the cancellation, shall give the  
14 principal and the registrar a written notice of the cancellation. Notice to  
15 the principal shall be by certified mail in a sealed envelope with postage  
16 fully prepaid. Proof of notice to the principal shall be made available to  
17 the registrar on request. On reduction or depletion of the cash deposit, the  
18 registrar shall immediately notify the licensee of said reduction or  
19 depletion and that the licensee must replenish the cash deposit or furnish a  
20 surety bond on or before thirty days from the date of said reduction or  
21 depletion or the contractor's license shall be suspended on the thirtieth day  
22 without further notice or hearing. Notice to the contractor shall be by  
23 certified mail in a sealed envelope with postage fully prepaid thereon,  
24 addressed to the contractor's latest address of record in the registrar's  
25 office. The contractor's license shall be suspended by operation of law on  
26 the date the bond is canceled or thirty days from the date of reduction or  
27 depletion of the cash deposit unless a replacement bond or cash deposit is on  
28 file with the registrar.

29 G. The registrar and the state treasurer shall have no personal  
30 liability for the performance of duties relating to the bonds, cash deposits,  
31 certificates of deposit, investment certificates or share accounts required  
32 or permitted by this chapter as long as such duties are performed in good  
33 faith.

34 H. In the following instances the registrar, after a hearing, may  
35 require, as a condition precedent to issuance, renewal, continuation or  
36 removal of suspension of a license, a surety bond or cash deposit in an  
37 amount and duration to be fixed by the registrar based on the seriousness of  
38 the violations, which shall be not more than ten times the amount required by  
39 subsection B of this section:

40 1. When a license of either the applicant or the qualifying party has  
41 been suspended or revoked or a surety bond or cash deposit requirement has  
42 been increased under section 32-1154 previously as the result of disciplinary  
43 action for a violation of this chapter.

44 2. When either the applicant or qualifying party was an officer,  
45 member, partner or qualifying party for a licensee at any time during which

1 cause for disciplinary action occurred resulting in suspension or revocation  
2 of such licensee's license and such applicant or qualifying party had  
3 knowledge of or participated in the act or omission that was the cause of  
4 such disciplinary action for a violation of this chapter.

5 3. The bonds required by this subsection shall be in addition to any  
6 other bond or cash deposit required by this chapter or any other bond  
7 required of a contractor by an owner or any other contracting party on any  
8 contract undertaken by him pursuant to the authority of such license.