

CONTRACTOR'S LICENSE CODE BOND - WHAT YOU SHOULD KNOW

The code-compliance bond repays a consumer for costs to correct code violations that the original contractor either refused to correct or was unable to correct.

HIGHLIGHTS OF THE CODE BOND:

- Claims may be filed by your customers if they feel you have committed a building code violation.
- Construction Industries Division (CID) will determine if a violation of a building code has occurred.
- According to CID, contractors will be given a "reasonable opportunity" to correct a code violation before the bond pays out.
- The surety company may pay no more than \$10,000 directly to the building owner.
- Claims must be made within two years following final inspection or issuance of a Certificate of Occupancy (whichever is earlier) for the project.
- Claims may be only for actual cost to repair the code violation (no legal fees).
- Contractor must repay the surety company if the surety has paid out on a bond.

There are lots of questions about how the investigation of the code violation allegation will proceed, but CID has made public statements including the following:

- An individual looking to collect monies from the bond must participate in CID's investigation complaint process.
- CID will issue a certification of uncorrected code violation to the contractor, bonding company, and the homeowner.
- The surety companies will likely require the homeowner to submit three estimates limited to the cost of repairing the violation.
- The homeowner must notify CID in writing that a claim has been filed.
- CID has promised the surety companies that the PSI website will contain information that will publicly show a contractor's license has been the subject of a claim of uncorrected code violation.

Once a contractor's license code bond has paid out on a claim, if the surety company has not been repaid it is unlikely they will renew a bond for that contractor. With the information publicly available for any other surety company to check a contractor's payout status, it will be harder for a contractor to get a bond from another surety company. If a new bond is not acquired, CID will cancel the contractor's license for failure to maintain the proof of responsibility required by the Construction Industries Licensing Act.

If you have questions about the contractor's license code bond, call the New Mexico Home Builders Association's bonding subsidiary, New Mexico License Bonding, at 505-344-7277. For further information about the complaint process that could lead to a fine, call the Construction Industries Division in Santa Fe at 505-476-4700. For general information on the licensing process contact PSI at 877-663-9267.

This article is provided with the understanding that New Mexico Home Builders Association does not intend this information to be viewed as rendering legal advice or service. If legal advice is desired, the services of a competent professional should be sought. New Mexico Home Builders Association shall not be responsible for any damages resulting from any error, inaccuracy or omission contained in this article.

CONSTRUCTION INDUSTRIES LICENSING ACT

60-13-49. Proof of responsibility. (Effective July 1, 2009.)

- A. No applicant for a contractor's license or for renewal of a contractor's license shall be issued a license until the director determines that the applicant furnishes proof of responsibility pursuant to Subsection B of this section.
- B. Proof of responsibility shall be a bond of ten thousand dollars (\$10,000) acceptable to the director and underwritten by a corporate surety authorized to transact business in New Mexico. Such bond shall meet the following conditions:
- (1) payments from a bond required pursuant to this section shall only be used to cure code violations caused by a licensee, certified by the division and not corrected by the licensee. Claims against the bond shall be made within two years following final inspection by the governmental entity having jurisdiction over code enforcement or within two years of issuance of a certificate of occupancy for the construction project, whichever is earlier;
 - (2) the total aggregate liability of the surety for all claims shall be limited to the face amount of the bond;
 - (3) the bond carrier shall provide to the division and to the licensee thirty days' prior written notice of intent to cancel a bond required pursuant to this section. The surety for such a bond shall remain liable under the provisions of the bond for all obligations of the principal pertaining to bond terms that occur before the bond is canceled, expires or otherwise becomes ineffective;
 - (4) failure to maintain the bond for the period required by law is cause for revocation of the license; and
 - (5) if the bond is canceled, expires or otherwise becomes ineffective during the period of a license, the division shall notify the licensee that a new bond is required. If the licensee has not provided proof of a new bond before the fortieth day after the date on which the bond was canceled, expired or otherwise became ineffective, the license shall be subject to revocation for failure of proof of responsibility.



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