



[DPOR Must Consider Full Record When Considering Homeowner Claim](#)



One issue for homeowners who seek to recover for poor residential construction is the issue of whether a judgment will be collectible should they get one through the litigation process in Virginia. Lack of the ability to collect can be particularly damaging to a homeowner when a particularly dishonest, or more likely cash strapped, contractor takes a deposit or a payment and then takes off for parts unknown. Such a situation can lead to a homeowner having a partially

constructed home and no way to recoup the money based upon this dishonest conduct, even in the instance where the homeowner gets a default judgment for fraud.

As a hedge against such an issue, the Virginia General Assembly and the Virginia Department of Professional and Occupational Regulation (DPOR) created the contractor recovery fund from which a homeowner who is the subject of dishonest conduct by a contractor can recovery up to \$20,000.00. This is a great thing, right?

The issue, and one that I've run into, is that some courts, particularly the General District Courts here in Virginia, do not always put the basis of the judgment in the order. Couple this with a recent trend whereby DPOR made an unwritten policy decision to only pay out of the fund when the order itself has the magic words "improper or dishonest conduct." DPOR seems to have made this decision despite the lack of any regulation or Virginia statute that states that such a policy is acceptable.

Thankfully, the Norfolk, Virginia Circuit Court has stepped in and determined that such a strict policy cannot be sustained. In [Hill v. DPOR](#), the Court considered the appeal of a denial of a fund claim that was based solely upon the Motion for Judgment and a default judgment order. It also considered the fact that the homeowner, Hill, had testified before DPOR regarding the conduct of the contractor. In reviewing DPOR's actions, the Court was fairly straightforward in its response to the Board's failure to consider all of the evidence before it, stating:

The first sentence of Code § 54.1-1120(A)(7) provides that a claimant will not be denied recovery if the judgment does not contain a specific finding of “improper or dishonest conduct.” That, however, is exactly what the board did in this case. . . . By what authority does the board limit the other evidence to a claimant’s pleading in the action against a regulant? None that the court can discern.

In short, the Court ordered DPOR to consider the entire record before it, and not just the complaint and order.

Hopefully more courts in Virginia will follow Norfolk's lead and force DPOR to act as it should under Virginia statute. The Norfolk court's action is particularly helpful given the fact that the jurisdictional limit in General District Court. A Warrant in Debt (the most common method for bringing an action in these courts) does not have much room for any analysis whatsoever and likely will have no analysis or reasoning for a default judgment. Without more courts enforcing the letter of the law, most General District Court judgments will not have enough reasoning to allow homeowners to recover.

Of course, consultation with a [Virginia construction attorney](#) will be of great help.

What are your thoughts? Do you have any experiences to share in the comments below?

Image via [Wikipedia](#).

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