§ 70. Definition of trusts. 1. The funds described in this section received by an owner for or in connection with an improvement of real property in this state, including a home improvement loan, or received by a contractor under or in connection with a contract for an improvement of real property, or home improvement, or a contract for a public improvement in this state, or received by a subcontractor under or in connection with a subcontract made with the contractor for such improvement of real property including a home improvement contract or public improvement or made with any subcontractor under any such contract, and any right of action for any such funds due or earned or to become due or earned, shall constitute assets of a trust for the purposes provided in section seventy-one of this chapter.

For the purposes of this section: (a) any right to receive payment at a future time shall be deemed a right of action therefor and an asset of the trust even though it is contingent upon performance or upon some other event, but the fact that the right is a trust asset does not enlarge the right or excuse any performance or condition upon which it depends; (b) "contract" and "subcontract" shall include any modification of the contract or subcontract to which reference is made; and (c) funds due or earned under a contract or subcontract shall include any funds payable to the contractor or subcontractor in addition to the contract price by reason of any transaction, event or circumstance in the making or in the performance of the contract or subcontract.

2. The funds received by an owner and the rights of action with respect thereto, for or in connection with each improvement, shall be a separate trust and the owner shall be the trustee thereof. The funds received by a contractor or subcontractor and the rights of action with respect thereto, under or in connection with each contract or subcontract, shall be a separate trust and the contractor or subcontractor shall be the trustee thereof.

3. Every such trust shall commence at the time when any asset thereof comes into existence, whether or not there shall be at that time any beneficiary of the trust. The trust of which the owner is trustee shall continue with respect to every asset of the trust until every trust

claim arising at any time during the improvement has been paid or discharged, or until all such assets have been applied for the purposes of the trust. The trust of which a contractor or subcontractor is trustee shall continue with respect to every asset of the trust until every trust claim arising at any time prior to the completion of the contract or subcontract has been paid or discharged, or until all such assets have been applied for the purposes of the trust. Upon termination of the trust by payment or discharge of all the trust claims, the beneficial interest in any remaining assets shall vest in the owner, contractor or subcontractor, as the case may be.

4. The trusts described in this section shall arise whether or not a covenant declaring or acknowledging the trust, as required in article two of this chapter, has been executed.

5. The assets of the trust of which the owner is trustee are the funds received by him and his rights of action for payment thereof

(a) under a building loan contract;

(b) under a building loan mortgage or a home improvement loan;

(c) under a mortgage recorded subsequent to the commencement of the improvement and before the expiration of four months after completion of the improvement;

(d) as consideration for a conveyance recorded subsequent to the commencement of the improvement and before the expiration of four months after the completion thereof;

(e) as consideration for, or advances secured by, an assignment of rents due or to become due under an existing or future lease or tenancy of the premises that are the subject of the improvement, or of any part of such premises, if the assignment is executed subsequent to the commencement of the improvement and before the expiration of four months after the completion of the improvement or if it is executed before the commencement of the improvement and an express promise to make an improvement, or an express representation that an improvement will be made, is contained in the assignment or given in the transaction in which the assignment is made;

(f) as proceeds of any insurance payable because of the destruction of the improvement or its removal by fire or other casualty, except that

the amount thereof required to reimburse the owner for premiums paid by him out of funds other than trust funds shall not be deemed part of the trust assets;

(g) under an executory contract for the sale of real property and the improvement thereof by the construction of a building thereon.

6. The assets of the trust of which a contractor is trustee are the funds received by him and his rights of action for payment thereof

(a) under the contract for the improvement of real property, or home improvement or the public improvement;

(b) under an assignment of funds due or earned or to become due or earned under the contract;

(c) as proceeds of any insurance payable because of destruction of the improvement of real property including a home improvement or public improvement or its removal by fire or other casualty, except that the amount thereof required to reimburse the contractor for premiums paid by him out of funds other than trust funds shall not be deemed part of the trust assets.

7. The assets of the trust of which a subcontractor is trustee are the funds received by him and his rights of action for payment thereof

(a) under the subcontract;

(b) under an assignment or order for the payment of moneys due or earned or to become due or earned under the subcontract;

(c) as proceeds of any insurance payable because of the destruction of the improvement of real property or public improvement or its removal by fire or other casualty, except that the amount thereof required to reimburse the subcontractor for premiums paid by him out of funds other than trust funds shall not be deemed part of the trust assets.

8. For the purposes of this article, the term "home improvement contract" shall have the meaning ascribed to it by section seven hundred seventy of the general business law, and the term "home improvement loan" shall mean any loan obtained for the purpose of financing a home improvement. The term "home improvement" shall mean the repairing, remodeling, altering, converting, or modernizing of, or adding to residential property, including but not limited to the construction,

erection, replacement, or improvement of driveways, swimming pools, siding, insulation, roofing and windows, terraces, patios, landscaping, fences, porches, garages, solar energy systems, flooring, basements, and other improvements of the residential property and all structures or land adjacent to it.