

REAL ESTATE RECOVERY FUND

This Real Estate Recovery Fund was established by the Legislature to make funds available to victims of fraud, misrepresentation and deceit committed by a real estate licensee, where the victims are otherwise unable to recover on a court judgment. The statutory provisions are contained in the Real Estate License Law, at Sections 54-2069 through 54-2077, Idaho Code.

ACCESSING THE RECOVERY FUND

The following is a brief description of how consumers may access the Recovery Fund.

Are you eligible to receive payment from the Recovery Fund? To be eligible to receive payment from the Recovery Fund, you already must have obtained a civil judgment against an Idaho real estate licensee for committing fraud, misrepresentation or deceit in a real estate transaction. All proceedings in the underlying lawsuit must be complete, including any appeal. Finally, you must be able to show that you have tried, but failed, to collect on the judgment.

How do you file a claim against the Recovery Fund?

If you are eligible for payment, (e.g., you have obtained a court judgment for fraud and you have attempted, unsuccessfully, to collect on it), you may file a **Verified Petition in the court in which the judgment was entered**, requesting that the court order the Commission to pay your claim.

What are the limits on the amounts you can receive from the Recovery Fund? The Recovery Fund will pay only the *actual* damages (e.g., no punitive or exemplary damages) included in the civil judgment. The most the Recovery Fund will pay is \$10,000 per licensee per year. This is so regardless of the number of persons damaged by the conduct of the licensee, or the total amount of damages caused by the licensee. So, if others have claims against the Recovery Fund based upon judgments against the same licensee in the same year, and the total amount claimed exceeds the \$10,000 limit, you might not be able to receive the entire amount for which you would otherwise be eligible.

Do you have to try to collect from the licensee/judgment debtor *before* seeking payment from the Recovery Fund?

Yes. The statute provides a detailed description of the steps you must take to collect from the defendant licensee *before* seeking payment from the Recovery Fund. These actions include pursuing a writ of execution on the judgment, and a reasonable search to locate assets to satisfy the judgment.

What happens when there is not enough money in the Recovery Fund to pay your claim? Because the Fund's balance is capped at \$20,000, it is possible for the Fund to temporarily "run out" of money with which to pay otherwise eligible claims. (E.g., the court orders payment of three claims, each for \$10,000, arising from actual damages awarded from three different licensees). Should that occur, the statute provides that the claims will be paid out as future deposits by

licensees become available, e.g., as new and renewing licensees pay their required fees into the Fund. The statute also provides for interest at the rate of eleven percent (11%) per year.

Assigning your Judgment to the Commission. Upon the Commission's payment of your claim from the Recovery Fund, you are required to assign your right, title and interest in the judgment to the Commission. The Commission then has the right to try to collect on the judgment, and any amount it succeeds in recovering it then deposits into the Recovery Fund.

Again, this is merely a brief description on accessing the Recovery Fund. If you have a judgment against a licensee and are unable to collect the full amount, please review the statutory provisions governing that Fund, set forth at Sections 54-2069 through 54-2074, Idaho Code, and contact the Enforcement Department of the Real Estate Commission. You may wish to consult legal counsel concerning your eligibility for payment from the Recovery Fund.