

# 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, and are reprinted below:

54-2069. REAL ESTATE RECOVERY FUND ESTABLISHED. There is hereby created in the state treasury the real estate recovery fund. A balance of not more than twenty thousand dollars (\$20,000) shall be maintained in the fund, to be used for satisfying claims against persons licensed under this chapter, as provided in sections 54-2069 through 54-2078, Idaho Code. Any balance over twenty thousand dollars (\$20,000) shall be deposited in the special real estate fund and be subject to appropriation by the legislature for the use of the commission to carry out the provisions of this chapter.

54-2070. AUGMENTATION OF FUND. Upon the original application or renewal of every real estate broker's, associate broker's and salesperson's license for a two-year period, the licensee shall pay, in addition to the original or renewal license fee, a fee of twenty dollars (\$20.00). Such additional fees and all education fees charged and collected for tuition or registration, course materials and such other fees involved with the commission education programs shall be paid into the state treasury and credited to the special real estate fund as provided in section 54-2021, Idaho Code, except for such funds as are required to maintain a balance of twenty thousand dollars (\$20,000) in the real estate recovery fund as provided for in section 54-2069, Idaho Code.

54-2071. RECOVERY FROM FUND -- PROCEDURE -- GROUNDS -- AMOUNT -- HEARING.

(1) When any person obtains a final judgment in any court of competent jurisdiction against any licensee under this chapter, upon grounds of fraud, misrepresentation or deceit with reference to any transaction for which a license is required under this chapter, such person may, upon termination of all proceedings, including appeals in connection with any judgment, file a verified petition in the court in which the judgment was entered for an order directing payment out of the real estate recovery fund in the amount of actual damages included in the judgment and unpaid, but not more than ten thousand dollars (\$10,000) per licensee per calendar year. The recovery fund's liability for all claims arising from the acts or omissions of any one (1) licensee in any calendar year shall be limited to a payment of not more than ten thousand dollars (\$10,000), regardless of the number of persons damaged by the acts or omissions of a licensee, or the total amount of damage caused by such licensee, in any one (1) calendar year. If a claim is made against the fund and the commission has actual knowledge of any other claims against the recovery fund which have been filed or asserted against the same licensee and arise from acts or omissions of the licensee in the same calendar year, then the commission shall file an interpleader action in accordance with the applicable statutes and the Idaho rules of civil procedure against

all known parties who may claim a right to payment from the fund. Unless the commission has actual knowledge of other potential claims, as stated above, and so files the interpleader action, the first person who obtains a final judgment against a licensee shall be entitled to the payment of that amount equal to the lesser of the judgment or ten thousand dollars (\$10,000), providing the claimant meets the other criteria set forth herein.

- (2) A copy of the petition shall be served upon the commission and an affidavit of such service shall be filed with the court.
- (3) The court shall act upon such petition within thirty (30) days after such service and, upon the hearing thereof, the petitioner shall be required to show that :
  - (a) He is not the spouse of the debtor, or the personal representative of such spouse;
  - (b) He has complied with all the requirements of sections 54-2069 through 54-2078, Idaho Code;
  - (c) He has obtained a judgment of the kind described in subsection (1) of this section, stating the amount thereof and the amount owing thereon at the date of the petition;
  - (d) He has caused to be issued a writ of execution upon the judgment and the officer executing the same has made a return showing that no personal or real property of the judgment debtor liable to be levied upon in satisfaction of the judgment could be found, or that the amount realized on the sale of them or of such of them as were found, under the execution, was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application thereon of the amount realized;
  - (e) He has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets liable to be sold or applied in satisfaction of the judgment; and
  - (f) That by such search he has discovered no personal or real property or other assets liable to be sold or applied, or that he has discovered certain of them, describing them, owned by the judgment debtor and liable to be so applied, and that he has taken all necessary action and proceedings for the realization thereof, and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized.
- (4) Whenever the aggrieved person satisfies the court that it is not practicable to comply with one (1) or more of the requirements enumerated in subsections (3)(d), (e) and (f) of this section, and that the aggrieved person has taken all reasonable steps to collect that amount of the judgment or the unsatisfied part thereof and has been unable to collect the same, the court may in its discretion dispense with the necessity for complying with such requirements.

#### 54-2072. COMMISSION MAY ANSWER PETITION -- COMPROMISE OF CLAIMS.

- (1) Whenever the court proceeds upon a petition as provided in section 54-2071, Idaho Code, the commission may answer and defend any such action against the recovery fund on behalf of the recovery fund and in the name of the defendant and may use any appropriate method of review on behalf of the recovery account.

- (2) The judgment set forth in the petition shall be considered as prima facie evidence only, and the findings of fact therein shall not be conclusive for the purposes of sections 54-2069 through 54-2078, Idaho Code.
- (3) The commission may, subject to court approval, compromise a claim based upon the application of a petitioner.

54-2073. COURT ORDER REQUIRING PAYMENT FROM RECOVERY FUND. If the court finds, after hearing that the claim should be levied against the portion of the recovery fund allocated for the purpose of carrying out the provisions of sections 54-2069 through 54-2078, Idaho Code, the court shall enter an order directed to the commission requiring payment from the recovery fund of whatever sum it finds to be payable upon the claim pursuant to the provisions of and in accordance with the limitations contained in section 54-2071, Idaho Code.

54-2074. AUTOMATIC SUSPENSION OF BROKER'S, ASSOCIATE BROKER'S OR SALESPERSON'S LICENSE ON PAYMENT BY COMMISSION -- CONDITION FOR LICENSE REINSTATEMENT. If, pursuant to court order, the commission pays from the recovery fund any amount in settlement of a claim or towards satisfaction of a judgment against a licensed broker, associate broker or salesperson, the license of such broker, associate broker or salesperson shall be automatically suspended without further order of the commission upon the effective date of any order by the court as set forth herein authorizing payment from the recovery fund. No such broker, associate broker or salesperson shall be granted reinstatement until he has repaid in full, the amount so paid from the recovery fund plus interest at the legal rate of interest allowable by law for judgments.

54-2075. ORDER OF PAYMENT OF CLAIMS IF RECOVERY FUND BALANCE INSUFFICIENT -- INTEREST. If, at any time, the money deposited in the recovery fund and allotted for satisfying claims against licensees is insufficient to satisfy any authorized claim or portion thereof, the commission shall, when sufficient money has been deposited in the recovery fund, satisfy such unpaid claims or portions thereof, in the order that such claims or portions thereof were originally filed, plus accumulated interest at the rate of eleven percent (11%) per annum.

54-2076. COMMISSION'S RIGHT TO SUBROGATION. When the commission has paid from the recovery fund any sum to the judgment creditor, the commission has subrogated all other rights of the judgment creditor and the judgment creditor shall assign all his right, title and interest in the judgment to the commission and any amount and interest so recovered by the commission on the judgment shall be deposited to the recovery fund.

54-2077. WAIVER OF RIGHTS. The failure of a person to comply with all of the provisions of sections 54-2069 through 54-2071, Idaho Code, shall constitute a waiver of any rights hereunder.