

### **Part 3 Claims on Fund**

#### **31A-41-301 Procedure for making a claim against the fund.**

- (1) To recover from the fund, a person shall:
  - (a) obtain a final judgment against a title insurance licensee establishing that fraud, misrepresentation, or deceit by the licensee in a real estate transaction proximately caused economic harm to the person; and
  - (b) apply to the department to receive compensation for the economic harm from the fund.
- (2) An application under Subsection (1)(b) shall establish all of the following:
  - (a) the applicant is not a spouse of the judgment debtor or the personal representative of the spouse;
  - (b) the applicant has obtained a final judgment in accordance with Subsections (1)(a) and (3);
  - (c) an amount is still owed on the judgment at the date of the application;
  - (d) the applicant has had a writ of execution issued under the judgment, and the officer executing the writ has returned showing that:
    - (i) no property subject to execution in satisfaction of the judgment could be found; or
    - (ii) the amount realized upon the execution levied against the property of the judgment debtor is insufficient to satisfy the judgment;
  - (e) the applicant has made reasonable searches and inquiries to ascertain whether the judgment debtor has any interest in property, real or personal, that may satisfy the judgment; and
  - (f) the applicant has exercised reasonable diligence to secure payment of the judgment from the assets of the judgment debtor.
- (3)
  - (a) A final judgment under Subsection (1)(a) does not include a default judgment entered against a title insurance licensee. If grounds exist for a default judgment against a title insurance licensee, the requirement of a final judgment may be satisfied by complying with Section 31A-41-302.
  - (b) A final judgment under Subsection (1)(a) does not include a judgment that is discharged in bankruptcy. If a bankruptcy proceeding is open or is commenced during the pendency of an application under Subsection (1)(b) before the department or the court, the applicant shall obtain an order from the bankruptcy court declaring the judgment and debt to be non-dischargeable.
- (4) The department may hold a hearing on the application filed pursuant to Subsection (2). The hearing shall be an informal adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, with rights of appeal as provided in Title 63G, Chapter 4, Administrative Procedures Act.

Amended by Chapter 138, 2016 General Session

#### **31A-41-302 Department may defend action in which title insurance licensee does not appear or defend.**

- (1) In a lawsuit alleging that fraud, misrepresentation, or deceit by a title insurance licensee in a real estate transaction proximately caused economic harm, if grounds arise for the entry of a default judgment against the title insurance licensee, the plaintiff may petition the court to join the department as a defendant in the lawsuit.

- (2) After being served, the department may appear, conduct discovery, and otherwise defend against any claim asserted against the title insurance licensee for which the fund may be liable under this part. A judgment under this Subsection (2) may not be issued against the department.

Repealed and Re-enacted by Chapter 138, 2016 General Session

**31A-41-303 Determination and amount of fund liability.**

- (1) Subject to the requirements of this part, if the department determines that a claim should be levied against the fund, the department shall enter an order that the fund pay that portion of the petitioner's judgment that is eligible for payment from the fund.
- (2) A payment from the fund may not compensate for punitive damages, attorney fees, interest, or court costs.
- (3) Regardless of the number of claimants or parcels of real estate involved in a single transaction, the liability of the fund may not exceed:
  - (a) \$15,000 for a single real estate transaction; or
  - (b) \$50,000 for all transactions of a title insurance licensee.

Amended by Chapter 138, 2016 General Session

**31A-41-304 Insufficient funds to satisfy judgment.**

If the money in the fund is insufficient to satisfy a claim ordered to be paid under Section 31A-41-303, when sufficient money is in the fund, the department shall pay a person with an unpaid claim:

- (1) in the order that petitions related to unpaid claims are originally served on the department; and
- (2) an amount equal to the sum of:
  - (a) the unpaid claim; and
  - (b) interest on the unpaid claim at a rate of 5% per annum from the date the court orders payment from the fund until the day on which the claim is paid.

Amended by Chapter 342, 2011 General Session

**31A-41-305 Department subrogated -- Authority to revoke license.**

- (1)
  - (a) If the department makes payment from the fund, the department is subrogated to all the rights of the person who received money from the fund for the amounts paid out of the fund.
  - (b) Any amounts recovered by the department under the subrogated rights shall be deposited in the fund.
- (2)
  - (a) The license of a title insurance licensee for whom payment from the fund is made under this chapter is automatically revoked.
  - (b) Before a title insurance licensee whose license is revoked under this section may apply for a new license under this title, the title insurance licensee shall pay to the department for deposit in the fund:
    - (i) the amounts paid by the fund because of an action brought against the title insurance licensee; and
    - (ii) interest at a rate determined by the commissioner with the concurrence of the commission.

Enacted by Chapter 220, 2008 General Session

**31A-41-306 Failure to comply constitutes a waiver.**

The failure of a person to comply with this chapter constitutes a waiver of any right provided under this chapter.

Enacted by Chapter 220, 2008 General Session