

Effective 5/10/2016

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