

Part 5
Residential Mortgage Loan Education, Research, and Recovery Fund

61-2c-501 Fund created.

- (1) There is created an expendable special revenue fund known as the "Residential Mortgage Loan Education, Research, and Recovery Fund."
- (2) The interest earned on the fund shall be deposited into the fund.
- (3) At the beginning of each fiscal year, the division shall make available \$100,000 in the fund to satisfy final judgments rendered against a person licensed under this chapter.

Amended by Chapter 400, 2013 General Session

61-2c-501.5 Definitions.

As used in this part:

- (1) "Civil judgment" means a judgment in a civil action that:
 - (a) is awarded in an action brought against a person licensed under this chapter on the basis of fraud, misrepresentation, or deceit in a residential mortgage loan transaction; and
 - (b) awards actual damages.
- (2) "Criminal restitution judgment" means a judgment that, in accordance with the Utah Code of Criminal Procedure, orders criminal restitution to a person and against a person licensed under this chapter for a criminal offense involving fraud, misrepresentation, or deceit in a residential mortgage loan transaction.
- (3) "Final judgment" means one of the following judgments upon termination of the proceedings related to the judgment, including appeals:
 - (a) a civil judgment; or
 - (b) a criminal restitution judgment.
- (4) "Fund" means the Residential Mortgage Loan Education, Research, and Recovery Fund created in Section 61-2c-501.

Amended by Chapter 289, 2011 General Session

61-2c-502 Additional license fee.

- (1) An individual who applies for or renews a license shall pay, in addition to any other fee required under this chapter, a reasonable annual fee:
 - (a) determined by the division with the concurrence of the commission; and
 - (b) not to exceed \$18.
- (2)
 - (a) An entity that applies for or renews an entity license shall pay, in addition to any other fee required under this chapter, a reasonable annual fee:
 - (i) determined by the division with the concurrence of the commission; and
 - (ii) not to exceed \$25.
 - (b) This Subsection (2) applies:
 - (i) notwithstanding that an entity is operating under an assumed name registered with the division as required by Subsection 61-2c-201(5); and
 - (ii) to each branch office of an entity that is licensed under this chapter.

- (3) Notwithstanding Section 13-1-2, the following shall be paid into the fund to be used as provided in this part:
- (a) a fee provided in this section;
 - (b) a fee for certifying:
 - (i) a school as a certified education provider;
 - (ii) a prelicensing or continuing education course; or
 - (iii) a prelicensing or continuing education provider as an instructor; and
 - (c) a civil penalty imposed under this chapter.
- (4) If the balance in the fund that is available to satisfy a judgment against a licensee decreases to less than \$100,000, the division may make an additional assessment to a licensee to maintain the balance available at \$100,000 to satisfy judgments.

Amended by Chapter 258, 2015 General Session

61-2c-503 Notice to division -- Judgment against mortgage licensee -- Fraud, misrepresentation, or deceit -- Verified petition for order directing payment from fund -- Limitations and procedure.

- (1) A person may bring a claim against the fund if:
- (a) the person obtains a final judgment;
 - (b) the person complies with the requirements under this part;
 - (c) the person is not complicit in the fraud, misrepresentation, or deceit that is the basis of the claim; and
 - (d) the final judgment that is the basis for the claim:
 - (i) has not been discharged in bankruptcy; and
 - (ii) when a bankruptcy proceeding is open or commenced during the pendency of the claim, the person obtains an order from the bankruptcy court declaring the final judgment and related debt to be nondischargeable.
- (2)
- (a) A person may not bring a claim against the fund for money owed under a civil judgment unless, within 10 business days of the day on which the person brings the civil action that results in the civil judgment, the person sends to the division a signed notification alleging fraud, misrepresentation, or deceit.
 - (b) Within 30 calendar days of the day on which the division receives a notice under Subsection (1), the division may intervene in the action.
- (3)
- (a) After obtaining a final judgment, to file a claim against the fund, a person shall:
 - (i) file a verified petition in the court where the final judgment is entered seeking an order directing payment from the fund of an amount equal to the uncollected actual damages owed under the final judgment that are unpaid;
 - (ii) serve a copy of the verified petition described in Subsection (3)(a)(i) on the division; and
 - (iii) file a copy of the affidavit of service of the verified petition with the court.
 - (b) A recovery from the fund may not include:
 - (i) punitive damages;
 - (ii) attorney fees;
 - (iii) interest; or
 - (iv) court costs.
 - (c) Regardless of the number of claimants or number of loans involved in a transaction, the liability of the fund may not exceed:

- (i) \$15,000 for a single transaction;
 - (ii) \$45,000 for an individual licensee; or
 - (iii) \$45,000 for an entity.
- (4) A court shall conduct a hearing on a petition filed under Subsection (3) as scheduled by the court.
- (5) Subject to Subsection (6), a court may order payment from the fund under this section only if the person who files the petition shows that the person:
- (a) is not:
 - (i) in the case of a civil judgment, the spouse of the judgment debtor;
 - (ii) in the case of a criminal judgment, the spouse of the criminal defendant; or
 - (iii) a personal representative of an individual described in Subsection (5)(a)(i) or (ii);
 - (b) has complied with this chapter;
 - (c) is owed damages under a final judgment that:
 - (i) is issued by the court in the manner prescribed under this section; and
 - (ii) indicates the amount of the final judgment awarded;
 - (d) has proved the amount still owing on the final judgment on the day on which the petition is filed;
 - (e)
 - (i)
 - (A) has a writ of execution issued upon the final judgment; and
 - (B) has received a return made by the officer executing the writ showing that no property subject to execution in satisfaction of the final judgment could be found; or
 - (ii) if execution is levied against the property of the judgment debtor or criminal defendant:
 - (A) has not realized an amount sufficient to satisfy the final judgment; and
 - (B) is owed a balance on the final judgment after application of the amount realized;
 - (f) has made reasonable searches and inquiries to ascertain whether the judgment debtor or criminal defendant has any interest in property, real or personal, that may satisfy the final judgment; and
 - (g) has exercised reasonable diligence to secure payment of the final judgment from the assets of the judgment debtor or criminal defendant.
- (6) If a person satisfies the court that it is not practicable for the person to comply with one or more of the requirements in Subsections (5)(e) through (g), the court may waive those requirements.

Amended by Chapter 379, 2010 General Session

61-2c-504 Authority to act on receipt of petition.

- (1) Upon receipt of a petition meeting the requirements of Section 61-2c-503, the division may answer, initiate review proceedings, or appear in a proceeding:
- (a) in the name of the defendant to the action; or
 - (b) on behalf of the fund.
- (2) The division may settle a claim subject to:
- (a) the application of a petitioner; and
 - (b) court approval.

Enacted by Chapter 297, 2004 General Session

61-2c-505 Court determination and order.

If the court determines that a claim should be levied against the portion of the fund allocated to carry out this chapter, the court shall enter an order requiring the division to pay from the fund the portion of a final judgment that is payable from the fund under Section 61-2c-503.

Amended by Chapter 379, 2010 General Session

61-2c-506 Insufficient funds to satisfy judgment -- Procedure and interest.

If the money deposited in the fund and allotted for satisfying judgments against licensees is insufficient to satisfy an authorized claim for payment, the division shall, when sufficient money has been deposited in the fund, satisfy the unpaid claims in the order they originally were filed, together with accumulated interest at the rate allowable on judgments under Section 15-1-4.

Enacted by Chapter 297, 2004 General Session

61-2c-507 Division subrogated -- Authority to suspend license.

- (1) If the division pays a person from the fund in accordance with this part:
 - (a) the division is subrogated to the rights of that person for the amounts paid out of the fund; and
 - (b) any amount and interest recovered by the division shall be deposited in the fund.
- (2)
 - (a) Subject to Subsection (2)(b), the license of a licensee for whom payment from the fund is made under this part is automatically suspended as of the earlier of the day on which:
 - (i) the division is ordered by a court to pay from the fund; or
 - (ii) the division pays from the fund.
 - (b)
 - (i) A person whose license is suspended under Subsection (2)(a) may appeal the suspension in a de novo hearing conducted by the commission:
 - (A) after the suspension; and
 - (B) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
 - (ii) The commission may delegate:
 - (A) to the division or an administrative law judge the authority to conduct a hearing described in Subsection (2)(b)(i); or
 - (B) to the division the authority to make a decision on whether relief from a suspension should be granted.
- (3) Unless the suspension is not upheld after a hearing described in Subsection (2)(b), a licensee whose license is suspended pursuant to Subsection (2) may not apply to renew a license nor apply for a new license until the licensee:
 - (a) pays into the fund:
 - (i) the amount paid out of the fund on behalf of the licensee; and
 - (ii) interest at a rate determined by the division with the concurrence of the commission; and
 - (b) participates in a hearing before the commission and is approved by the commission, with the concurrence of the director, for licensure or activation of the suspended license.

Amended by Chapter 384, 2016 General Session

61-2c-508 Failure to comply.

The failure of a person to comply with this part is a waiver of any right provided under this part.

Enacted by Chapter 297, 2004 General Session

61-2c-509 Disciplinary actions.

- (1) This part does not limit the authority of the director or commission to take disciplinary action against a licensee for a violation of:
 - (a) this chapter; or
 - (b) rules made by the division under this chapter.
- (2) The repayment in full of all obligations to the fund by a licensee does not nullify or modify the effect of a disciplinary proceeding brought under:
 - (a) this chapter; or
 - (b) rules made by the division under this chapter.

Amended by Chapter 372, 2009 General Session

61-2c-510 Money accumulated -- Purpose.

- (1) The division may use money accumulated in the fund in excess of the amount necessary to satisfy claims to:
 - (a) investigate violations of this chapter related to fraud; and
 - (b) advance education and research in the field of residential mortgage loans.
- (2) The division may use the excess money described in Subsection (1) only in a manner consistent with Subsection (1), including for:
 - (a) courses sponsored by the division;
 - (b) courses offered by the division in conjunction with a university or college in Utah;
 - (c) contracting for a research project for the state in the field of residential mortgage loans;
 - (d) funding the salaries and training expenses of division staff members who are employed in positions related to the education of mortgage licensees;
 - (e) funding the training expenses of division staff members who are employed in positions conducting investigations of complaints under this chapter; and
 - (f) publishing and distributing educational materials to:
 - (i) licensees; and
 - (ii) applicants for licensure.

Amended by Chapter 325, 2007 General Session