

Part 5
Real Estate Education, Research, and Recovery Fund Act

61-2f-501 Title.

This part is known as the "Real Estate Education, Research, and Recovery Fund Act."

Renumbered and Amended by Chapter 379, 2010 General Session

61-2f-502 Definitions.

For purposes of this part:

- (1) "Civil judgment" means a judgment in a civil action that:
 - (a) is awarded in an action brought against a real estate licensee on the basis of fraud, misrepresentation, or deceit in a real estate 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 real estate licensee for a criminal offense involving fraud, misrepresentation, or deceit in a real estate 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 Real Estate Education, Research, and Recovery Fund created in Section 61-2f-503.

Renumbered and Amended by Chapter 379, 2010 General Session

61-2f-503 Real Estate Education, Research, and Recovery Fund.

- (1)
 - (a) There is created an expendable special revenue fund known as the "Real Estate Education, Research, and Recovery Fund."
 - (b) The actual interest earned on the fund shall be deposited into the fund.
- (2) The money in the fund includes:
 - (a) a fee imposed under Section 61-2f-505; and
 - (b) interest described in Subsection (1)(b).
- (3) The division shall administer the fund to:
 - (a) reimburse the public for damages caused in a real estate transaction by an individual licensed under this chapter; and
 - (b) in accordance with Section 61-2f-504:
 - (i) investigate violations of this chapter related to fraud, misrepresentation, or deceit; or
 - (ii) provide revenue for improving the real estate profession through education and research with the goal of making licensees more responsible to the public.
- (4) This part applies to damages caused by an individual licensee. Reimbursement may not be made for a final judgment against an entity.
- (5) 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

61-2f-504 Use of money.

- (1) Money accumulated in the fund in excess of \$100,000 shall be set aside and segregated to be used by the division to:
 - (a) investigate violations of this chapter related to fraud, misrepresentation, or deceit; and
 - (b) advance education and research in the field of real estate.
- (2) The division may use the money described in Subsection (1) only in a manner consistent with Subsection (1), including for a course:
 - (a) sponsored by the division;
 - (b) offered by the division in conjunction with any university or college in the state; or
 - (c) provided for by contracting for a particular research project in the field of real estate for the state.

Renumbered and Amended by Chapter 379, 2010 General Session

61-2f-505 Additional license fee.

- (1) An individual who applies for or renews a principal broker or associate broker license shall pay, in addition to the application or renewal fee, a reasonable annual fee of up to \$18, as determined by the division with the concurrence of the commission.
- (2) An individual who applies for or renews a sales agent license shall pay in addition to the application or renewal fee a reasonable annual fee of up to \$12, as determined by the division with the concurrence of the commission.
- (3) Notwithstanding Section 13-1-2, the additional fees under this section shall be paid into the fund.

Renumbered and Amended by Chapter 379, 2010 General Session

61-2f-506 Procedure to make a claim against the fund.

- (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 by a real estate licensee.
 - (b) Within 30 days of the day on which the division receives a notice under Subsection (1), the division has an unconditional right to intervene in the civil 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) 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 parcels of real estate involved in a real estate transaction, the liability of the fund may not exceed:
- (i) \$15,000 for a single transaction; and
 - (ii) \$50,000 for one licensee.
- (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) is in compliance 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 date the petition is filed;
 - (e)
 - (i)
 - (A) has had 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 specific balance remaining 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 under Subsection (5) that it is not practicable for the petitioner to comply with one or more of the requirements enumerated in Subsections (5)(e) through (g), the court may waive those requirements.

Renumbered and Amended by Chapter 379, 2010 General Session

61-2f-507 Division authority to act upon receipt of petition.

- (1) When the division is served a petition under Section 61-2f-506, the division may:
 - (a) file an answer to the petition in the court;
 - (b) initiate a review proceeding conducted by the division; or
 - (c) appear in any proceeding in the name of the defendant to the action or on behalf of the fund.
- (2) The division may settle a claim against the fund if:
 - (a) the person who brings the claim requests a settlement; and
 - (b) the court in which the petition is filed approves the settlement.

Renumbered and Amended by Chapter 379, 2010 General Session

61-2f-508 Court determination and order.

If a court determines that the fund should pay a claim under this part, in its order the court shall direct the division to pay from the fund that portion of the final judgment that is payable from the fund in accordance with Section 61-2f-506.

Renumbered and Amended by Chapter 379, 2010 General Session

61-2f-509 Insufficient funds to satisfy judgments -- Procedure and interest.

If money deposited in the fund and allotted for satisfying a final judgment against a real estate licensee is insufficient to satisfy an order issued in accordance with Section 61-2f-508, when sufficient money is deposited in the fund, the division shall:

- (1) satisfy the unpaid claims in the order that the unpaid claims are originally filed; and
- (2) pay with the claim accumulated interest at the rate of 8% per annum.

Renumbered and Amended by Chapter 379, 2010 General Session

61-2f-510 Division subrogated to claimant -- Authority to revoke license.

- (1)
 - (a) If the division pays a claim against the fund in accordance with this chapter, the division is subrogated to the rights of the person who is paid the claim for the amounts paid out of the fund.
 - (b) The division shall deposit in the fund any amount and interest recovered by the division under this part.
- (2)
 - (a) The license of a real estate licensee for whom payment from the fund is made under this chapter shall be automatically revoked.
 - (b) A person whose real estate license is revoked under Subsection (2)(a) may not apply for a new license under this chapter until the person pays in full:
 - (i) the amount paid by the fund for a claim that is based on a final judgment against the person; and
 - (ii) interest at a rate determined by the division with the concurrence of the commission.

Renumbered and Amended by Chapter 379, 2010 General Session

61-2f-511 Authority to take disciplinary action.

- (1) This part does not limit the authority of the director of the division to take disciplinary action against a real estate licensee for a violation of this chapter or of the rules of the commission and division.

- (2) A real estate licensee's payment of all the obligations of the real estate licensee to the fund does not nullify or modify the effect of any other disciplinary proceeding brought pursuant to this chapter or the rules of the commission.

Renumbered and Amended by Chapter 379, 2010 General Session

61-2f-512 Failure to comply with provisions constitutes a waiver.

A person's failure to comply with this part constitutes a waiver of any right under this part.

Renumbered and Amended by Chapter 379, 2010 General Session