



Ohio Revised Code Section 4707.28 Order directing payment.

Effective: July 1, 2003

Legislation: Senate Bill 262 - 124th General Assembly

(A) After receipt of an application that is filed under section 4707.261 of the Revised Code and that satisfies the requirements established under that section, a court of common pleas shall issue an order directing the director of agriculture to make payment from the auction recovery fund to an applicant who satisfies the criteria established under this section. The payment shall consist of an amount that is equal to the portion of the final judgment that was obtained by the applicant against a person licensed under this chapter and that remains unpaid. The amount of the payment is subject to the dollar limitations established in section 4707.29 of the Revised Code.

The court shall issue an order directing payment to the applicant from the fund when the applicant has shown all of the following:

- (1) The applicant has obtained a judgment in a court of competent jurisdiction against a person licensed under this chapter on the grounds of conduct that is described in section 4707.15 of the Revised Code or that otherwise violates this chapter or rules adopted under it and that is associated with an act or transaction that only a licensee lawfully may perform.
- (2) All appeals from the judgment have been exhausted, and the applicant has filed notice with the director in accordance with section 4707.27 of the Revised Code and has otherwise complied with that section.
- (3) The applicant is not either the spouse of the licensee who is the judgment debtor or the personal representative of the spouse.
- (4) The applicant has diligently pursued the applicant's remedies against all judgment debtors and all other persons who are liable to the applicant in the underlying auction transaction for which the applicant seeks recovery from the fund.
- (5) The applicant filed the application not later than six months following the termination of all



proceedings, including appeals, in connection with the judgment.

(6) If the judgment debtor either provided an irrevocable letter of credit or gave bond in accordance with section 4707.11 of the Revised Code, the applicant first sought recovery under the irrevocable letter of credit or the bond before applying for payment from the fund.

(B) All of the following are prohibited from receiving payment under section 4707.26 or 4707.261 of the Revised Code from the auction recovery fund:

(1) A bonding company that was not a party in the underlying auction transaction;

(2) A person holding a valid license issued under either this chapter or Chapter 4735. of the Revised Code;

(3) A person who, under division (B)(5) of section 4735.12 of the Revised Code, would be ineligible to receive payment from the real estate recovery fund;

(4) A person who obtained a final judgment that arose from an act or transaction that only a licensed real estate broker or real estate salesperson is authorized to perform under Chapter 4735. of the Revised Code and that did not involve a violation of this chapter or rules adopted under it.

(C) Punitive damages, attorney's fees, court costs, and interest on a judgment are not recoverable from the auction recovery fund.