



Ohio Revised Code

Section 4735.12 Real estate recovery fund.

Effective: October 16, 2009

Legislation: House Bill 1 - 128th General Assembly

(A) The real estate recovery fund is hereby created in the state treasury, to be administered by the superintendent of real estate. Amounts collected by the superintendent as prescribed in this section and interest earned on the assets of the fund shall be credited by the treasurer of state to the fund. The amount of money in the fund shall be ascertained by the superintendent as of the first day of July of each year.

The commission, in accordance with rules adopted under division (A)(2)(g) of section 4735.10 of the Revised Code, shall impose a special assessment not to exceed ten dollars per year for each year of a licensing period on each licensee filing a notice of renewal under section 4735.14 of the Revised Code if the amount available in the fund is less than five hundred thousand dollars on the first day of July preceding that filing. The commission may impose a special assessment not to exceed five dollars per year for each year of a licensing period if the amount available in the fund is greater than one million dollars, but less than two million dollars on the first day of July preceding that filing. The commission shall not impose a special assessment if the amount available in the fund exceeds two million dollars on the first day of July preceding that filing.

(B)(1) Any person who obtains a final judgment in any court of competent jurisdiction against any broker or salesperson licensed under this chapter, on the grounds of conduct that is in violation of this chapter or the rules adopted under it, and that is associated with an act or transaction that only a licensed real estate broker or licensed real estate salesperson is authorized to perform as specified in division (A) or (C) of section 4735.01 of the Revised Code, may file a verified application, as described in division (B)(3) of this section, in the court of common pleas of Franklin county for an order directing payment out of the real estate recovery fund of the portion of the judgment that remains unpaid and that represents the actual and direct loss sustained by the applicant.

(2) Punitive damages, attorney's fees, and interest on a judgment are not recoverable from the fund. In the discretion of the superintendent of real estate, court costs may be recovered from the fund, and, if the superintendent authorizes the recovery of court costs, the order of the court of common



pleas then may direct their payment from the fund.

(3) The application shall specify the nature of the act or transaction upon which the underlying judgment was based, the activities of the applicant in pursuit of remedies available under law for the collection of judgments, and the actual and direct losses, attorney's fees, and the court costs sustained or incurred by the applicant. The applicant shall attach to the application a copy of each pleading and order in the underlying court action.

(4) The court shall order the superintendent to make such payments out of the fund when the person seeking the order has shown all of the following:

(a) The person has obtained a judgment, as provided in this division;

(b) All appeals from the judgment have been exhausted and the person has given notice to the superintendent, as required by division (C) of this section;

(c) The person is not a spouse of the judgment debtor, or the personal representative of such spouse;

(d) The person has diligently pursued the person's remedies against all the judgment debtors and all other persons liable to the person in the transaction for which the person seeks recovery from the fund;

(e) The person is making the person's application not more than one year after termination of all proceedings, including appeals, in connection with the judgment.

(5) Divisions (B)(1) to (4) of this section do not apply to any of the following:

(a) Actions arising from property management accounts maintained in the name of the property owner;

(b) A bonding company when it is not a principal in a real estate transaction;

(c) A person in an action for the payment of a commission or fee for the performance of an act or



transaction specified or comprehended in division (A) or (C) of section 4735.01 of the Revised Code;

(d) Losses incurred by investors in real estate if the applicant and the licensee are principals in the investment.

(C) A person who applies to a court of common pleas for an order directing payment out of the fund shall file notice of the application with the superintendent. The superintendent may defend any such action on behalf of the fund and shall have recourse to all appropriate means of defense and review, including examination of witnesses, verification of actual and direct losses, and challenges to the underlying judgment required in division (B)(4)(a) of this section to determine whether the underlying judgment is based on activity only a licensed broker or licensed salesperson is permitted to perform. The superintendent may move the court at any time to dismiss the application when it appears there are no triable issues and the application is without merit. The motion may be supported by affidavit of any person having knowledge of the facts and may be made on the basis that the application, including the judgment referred to in it, does not form the basis for a meritorious recovery claim; provided, that the superintendent shall give written notice to the applicant at least ten days before such motion. The superintendent may, subject to court approval, compromise a claim based upon the application of an aggrieved party. The superintendent shall not be bound by any prior compromise or stipulation of the judgment debtor.

(D) Notwithstanding any other provision of this section, the liability of the fund shall not exceed forty thousand dollars for any one licensee. If a licensee's license is reactivated as provided in division (E) of this section, the liability of the fund for the licensee under this section shall again be forty thousand dollars, but only for transactions that occur subsequent to the time of reactivation.

If the forty-thousand-dollar liability of the fund is insufficient to pay in full the valid claims of all aggrieved persons by whom claims have been filed against any one licensee, the forty thousand dollars shall be distributed among them in the ratio that their respective claims bear to the aggregate of valid claims or in such other manner as the court finds equitable. Distribution of moneys shall be among the persons entitled to share in it, without regard to the order of priority in which their respective judgments may have been obtained or their claims have been filed. Upon petition of the superintendent, the court may require all claimants and prospective claimants against one licensee to



be joined in one action, to the end that the respective rights of all such claimants to the fund may be equitably adjudicated and settled.

(E) If the superintendent pays from the fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensed broker or salesperson, the license of the broker or salesperson shall be automatically suspended upon the date of payment from the fund. The superintendent shall not reactivate the suspended license of that broker or salesperson until the broker or salesperson has repaid in full, plus interest per annum at the rate specified in division (A) of section 1343.03 of the Revised Code, the amount paid from the fund on the broker's or salesperson's account. A discharge in bankruptcy does not relieve a person from the suspension and requirements for reactivation provided in this section unless the underlying judgment has been included in the discharge and has not been reaffirmed by the debtor.

(F) If, at any time, the money deposited in the fund is insufficient to satisfy any duly authorized claim or portion of a claim, the superintendent shall, when sufficient money has been deposited in the fund, satisfy such unpaid claims or portions, in the order that such claims or portions were originally filed, plus accumulated interest per annum at the rate specified in division (A) of section 1343.03 of the Revised Code.

(G) When, upon the order of the court, the superintendent has paid from the fund any sum to the judgment creditor, the superintendent shall be subrogated to all of the rights of the judgment creditor to the extent of the amount so paid, and the judgment creditor shall assign all the judgment creditor's right, title, and interest in the judgment to the superintendent to the extent of the amount so paid. Any amount and interest so recovered by the superintendent on the judgment shall be deposited in the fund.

(H) Nothing contained in this section shall limit the authority of the superintendent to take disciplinary action against any licensee under other provisions of this chapter; nor shall the repayment in full of all obligations to the fund by any licensee nullify or modify the effect of any other disciplinary proceeding brought pursuant to this chapter.

(I) The superintendent shall collect from the fund a service fee in an amount equivalent to the interest rate specified in division (A) of section 1343.03 of the Revised Code multiplied by the annual



interest earned on the assets of the fund, to defray the expenses incurred in the administration of the fund.