

RECOVERY FUND

Sec. 08.88.450. Real estate recovery fund. (a) The real estate recovery fund is established in the general fund to carry out the purposes of AS 08.88.450 - 08.88.495. The fund is composed of payments made by real estate licensees under AS 08.88.455, filing fees retained under AS 08.88.460, income earned on investment of the money in the fund, and money deposited in the fund under (c) of this section. Money in the fund does not lapse. The commission may make payments from the fund for awards from the fund under AS 08.88.450 - 08.88.495, for hearing and legal expenses directly related to fund operations and claims, and for real estate educational purposes.

Sec. 08.88.455. Payments by real estate licensees. (a) A real estate licensee, when applying for or renewing a real estate license, in lieu of obtaining a corporate surety bond, shall pay to the commission, in addition to the license fee, a recovery fund fee not to exceed \$125. After each two-year licensing cycle, if the commission finds that the average balance in the recovery fund during the two-year licensing cycle was less than \$250,000 or more than \$500,000, the commission shall by regulation adjust the recovery fund fees so that the average balance of the recovery fund during the next two-year licensing cycle is anticipated to be an amount that is not less than \$250,000 or more than \$500,000. In this subsection, "average balance" means the average balance after taking into account anticipated expenditures for awards from the fund and legal expenses directly related to fund operations, and for real estate educational purposes.

(b) All fees collected under this section shall be paid at least once a month by the department into the general fund. These payments shall be credited to the real estate recovery fund.

Sec. 08.88.460. Claim for payment. (a) Subject to (e) of this section, a person seeking an award from the recovery fund for a loss suffered in a real estate transaction as a result of fraud, an intentional tort, deceit, or the conversion of trust funds or the conversion of community association accounts under the control of a community association manager on the part of a person licensed under this chapter shall

(1) obtain a final judgment from a court of competent jurisdiction, a final arbitration award, or a settlement agreement with a licensee that involves a person committing fraud, an intentional tort, deceit, the conversion of trust funds, or the conversion of community association accounts;

(2) submit an affidavit describing the efforts made to collect the final judgment, final arbitration award, or settlement agreement stating that the person has used due diligence to collect the amount due, stating that the judgment, arbitration award, or settlement agreement is uncollectable using reasonable efforts, and that the conduct that is the subject of the judgment, arbitration award, or settlement agreement involved an activity for which a person must obtain a license under AS 08.88.161;

(3) make a claim to the commission for an award from the recovery fund on a form furnished by the commission; in order to be eligible for an award by the commission, the claim form must be filed within two years after the date a judgment, arbitration award, or settlement agreement that is the basis for the award from the recovery fund is no longer subject to appeal; the form must be executed under penalty of unsworn falsification in the second degree and must include

(A) the name and address of each real estate licensee involved;

(B) a copy of the final judgment, final arbitration award, or settlement agreement;

(C) a copy of the affidavit asserting due diligence but lack of success in collecting the entire amount due;

(D) the amount of the final judgment, final arbitration award, or settlement agreement that remains unpaid;

(E) the name and address of the claimant; and

(F) a general statement of facts relative to the claim.

(b) The commission shall send a copy of a claim filed under (a) of this section to each real estate licensee named in (a)(3) of this section.

(c) [Repealed, § 24 ch 113 SLA 2008.]

(d) A claimant under this section shall pay a filing fee of \$250 to the commission at the time the claim is filed. The filing fee shall be refunded if the

(1) commission makes an award to the claimant from the real estate recovery fund; or

(2) claimant withdraws the claim.

(e) If the claim is for a loss incurred as a result of acts or omissions occurring in the course of the licensee's practice of community association management, only the owners' association for which the real estate licensee practices community association management may file a claim under this section.

Sec. 08.88.465. Consideration of application. (a) If the commission receives a claim for an award from the recovery fund that complies with the requirements of AS 08.88.450 - 08.88.495, the commission shall make an award from the recovery fund in

an amount not to exceed \$15,000. Not more than \$15,000 may be paid for each transaction, regardless of the number of persons injured or the number of parcels of real estate involved in the transaction.

(b) [Repealed, § 24 ch 113 SLA 2008.]

(c) [Repealed, § 24 ch 113 SLA 2008.]

(d) [Repealed, § 24 ch 113 SLA 2008.]

(e) [Repealed, § 24 ch 113 SLA 2008.]

(f) [Repealed, § 24 ch 113 SLA 2008.]

Sec. 08.88.470. Findings and payment. [Repealed, § 24 ch 113 SLA 2008.]

Sec. 08.88.472. Fund operations; charges against fund. (a) The commission may charge the real estate recovery fund for expenses related to fund operations. The commission shall deposit into the real estate recovery fund amounts recovered for these expenses from the licensee under AS 08.88.071(b) or from other parties under AS 08.88.490.

(b) [Repealed, § 24 ch 113 SLA 2008.]

(c) [Repealed, § 24 ch 113 SLA 2008.]

(d) If the salary of an employee is entirely or partially paid for from money in the real estate recovery fund, the employee may perform administrative duties for the commission in addition to any duties the employee performs that are related to the real estate recovery fund. AS 08.88.910 does not apply to this subsection.

Sec. 08.88.474. Payment of small claims judgment. [Repealed, § 24 ch 113 SLA 2008.]

Sec. 08.88.475. Maximum liability. (a) The maximum liability of the real estate recovery fund may not exceed \$50,000 for any one real estate licensee.

(b) If the \$50,000 liability of the fund as provided in (a) of this section is insufficient to pay in full the valid claims of all persons who have obtained a final judgment, final arbitration award, or settlement agreement involving an individual licensee and have filed claims for an award from the recovery fund, the \$50,000 shall be distributed among the claimants in the ratio that their individual claims bear to the aggregate of valid claims, or in another manner that the commission considers equitable. Distribution shall be among the persons entitled to share in the recovery without regard to the order in which their claims were filed.

Sec. 08.88.480. Order of claim payment. If the money deposited in the real estate recovery fund is insufficient at a given time to satisfy a legally authorized claim against the fund, the commission shall, when sufficient money has been deposited in the fund and appropriated, satisfy unpaid claims in the order that the claims were originally filed, plus accumulated interest at the rate of eight percent a year.

Sec. 08.88.485. False claims or documents. A person who files with the commission a notice, statement, or other document required under this chapter that contains a willful material misstatement of fact, is guilty of a misdemeanor and is punishable by imprisonment for a period of not more than one year, or a fine of not more than \$1,000, or by both.

Sec. 08.88.490. Right to subrogation. When the commission has paid to a claimant from the real estate recovery fund the sum awarded by the commission, the commission shall be subrogated to all of the rights of the claimant to the amount paid, and the claimant shall assign all right, title, and interest in that portion of the claim to the commission. Money collected by the commission on the claim shall be deposited to the real estate recovery fund.

Sec. 08.88.495. Disciplinary action. Repayment in full of all obligations to the real estate recovery fund does not nullify or modify the effect of disciplinary proceedings brought under the provisions of this chapter.