How to Obtain an Application for Payment

Applications and forms pertaining to the Recovery Account are available on the DRE website at **www.dre.ca.gov** and may also be obtained by calling Consumer Information at (916) 576-5531 or toll-free at (877) 373-4542 or writing to:

California Department of Real Estate
Real Estate Consumer Recovery Account
1651 Exposition Boulevard
Sacramento, CA 95815

Contact DRE

To contact the California Department of Real Estate, call (877) 373-4542 toll-free for assistance in English or Spanish.

Department of Real Estate District Offices

Sacramento
(Principal Office)
1651 Exposition Boulevard
Sacramento, CA 95815

Fresno
2550 Mariposa Mall,
Suite 3070
Fresno, CA 93721-2273

Los Angeles
320 W. 4th Street, Suite 350
Los Angeles, CA 90013-1105

Oakland
1515 Clay Street, Suite 702
Oakland, CA 94612-1462

San Diego
8620 Spectrum Center Blvd.,
Suite 301
San Diego, CA 92123

CALIFORNIA DRE

DEPARTMENT OF REAL ESTATE
1651 Exposition Blvd.
Sacramento, CA 95815
Public Information Line: (877) 373-4542
Fax: (916) 263-8943
www.dre.ca.gov

PDE 18100

CONSUMER RECOVERY ACCOUNT

Consumer Recovery Account Background

The California Department of Real Estate (DRE) is the agency within California State government that issues real estate broker and salesperson licenses and public reports to subdividers of California real property. DRE also has the authority to revoke or suspend a license for violations of the Real Estate Law (California Business and Professions [B&P] Code section 10000, et seq.). In addition, DRE administers a victim's fund, known as the Consumer Recovery Account (Recovery Account).

The Recovery Account became operative on July 1, 1964, and is funded from a portion of the fees paid by licensees. It enables a person who was defrauded or had trust funds converted by a real estate licensee in a transaction requiring a license and who satisfies specified requirements (B&P Code section 10471, et seq.) to recover all or a portion of his or her out-of-pocket loss when the licensee has insufficient personal assets to pay for that loss.

Requirements

In general, the requirements for payment from the Recovery Account include obtaining a final civil judgment arbitration award or criminal restitution order against one or more licensees. The judgment, award, or order must be based on intentional fraud, intentional misrepresentation, or conversion of trust funds in connection with a transaction requiring a real estate license. The victim must make a reasonable search for the licensee's assets and, if any, a reasonable effort to collect on the judgment, arbitration award, or restitution order from those assets to satisfy the judgment. In addition, the victim must name as a defendant and make a reasonable effort to collect from all other parties involved in the transaction that may be liable to and able to pay.

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Filing an Application for Payment

A Recovery Account application for payment must be submitted to DRE within one year after the judgment, award, or order becomes final. A copy of the application and required notice must be served on the judgment debtor/licensee, who is given an opportunity to respond to the allegations in the application and object to payment of the claim.

Once filed, the application is reviewed by DRE to determine if all required information has been submitted so a decision can be made whether or not to pay. That review normally involves a series of letters between DRE and the applicant, resolving questions and obtaining necessary supporting documentation. The applicant is notified in writing of the initial deficiencies in the application within 15 days of its receipt by DRE.

When the application becomes complete, DRE will issue a decision granting or denying payment. If the application is granted, the applicant is paid an amount for his or her allowable out-of-pocket loss in a transaction, up to a statutory maximum of $50,000 per transaction, with a possible total aggregate maximum of $250,000 per licensee. If an application is denied, the applicant has the right to refile the claim in court. When there is a decision to pay through the Recovery Account, the judgment debtor/licensee has the right to file a writ of mandamus to challenge DRE's decision to pay (payment results in the automatic suspension of his or her real estate license until the amount paid is repaid in full plus 10 percent interest).

In cases where the aggregate amount of multiple claims against a licensee exceeds the $250,000 licensee limit, DRE may file an action to prorate payment among all eligible claimants. Whenever a Recovery Account application matter ends up in court (a refiled application, a writ, or a proration), DRE is represented by the California Attorney General's Office to defend the decision to deny or pay the claim or to properly distribute the funds among multiple applicants.

A True Story: Homebuyers Duped by Dishonesty Receive Monetary Relief

The owners of property located in Southern California entered into an exclusive listing agreement with a broker. The property was advertised as a large five bedroom, three bath home with a garage that had been converted to guest quarters. The ad stated that the property was in good condition and excellent for a large family.

When the buyers, who were looking for a property to accommodate their family of five children, saw the ad, they contacted the broker. The broker introduced the buyers to a real estate salesperson. Upon inspecting the property, the buyers were assured by the salesperson that the roof was new and had no leaks; all additions had been built to code and with the proper permits; the heating, plumbing, and electrical systems were in good working condition; and only one master release was needed to operate security bars on all the windows. Based on these representations, the buyers purchased the property for $155,000.

Throughout negotiations, the buyers had requested from the salesperson a copy of what is known as the transfer disclosure statement. The buyers were not provided with a copy until one day after the close of escrow. Upon reviewing the disclosure statement, the buyers discovered that the roof was actually 10 years old, the garage conversion had been done without the proper permits, and the third bathroom was not properly constructed. After moving into the house, the buyers further discovered that the roof had been leaking to such an extent that it had caused severe damage to the interior of the property, including the collapse of one of the ceilings.

Because the plumbing, heating, and electrical systems had not been installed according to the building codes, the buyers received "red tag" notices from the utility companies, preventing them from operating the heaters. Finally, the buyers were told by building inspectors that the security bars could not remain on the windows without a separate release bar for each window.

The property was inspected by several contractors who verified the unlivable condition of the property. The contractors' estimates were all in excess of $40,000 to repair the property. The buyers executed a Notice of Rescission requesting the purchase of the property be rescinded. After failing to receive satisfaction, the buyers filed a lawsuit against the sellers, the broker, and the salesperson in superior court, alleging fraud, negligence, and breach of fiduciary duty. The buyers settled with the broker for $20,000. Judgments were entered against the sellers and the salesperson in the amount of $80,000. The court found that the defendants defrauded the buyers by intentionally misrepresenting the condition of the property, concealing known defects, and failing to provide a disclosure statement.

The buyers tried unsuccessfully to enforce their judgment against the sellers and the salesperson. They then filed an application for payment from the Recovery Account.

Payment of the application was granted in the amount of $50,000, the statutory maximum allowable for one transaction. The salesperson's real estate license was indefinitely suspended as a result of the payment from the Recovery Account. The suspension of the salesperson's real estate license cannot be lifted until the Recovery Account is reimbursed the amount paid in full plus 10 percent interest. In addition, the salesperson's real estate license was revoked as a result of a disciplinary action filed by DRE.