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 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 the victim.

How to Obtain an Application for Payment

Applications and forms pertaining to the Recovery Account are available on the CalBRE Web site at www.bre.ca.gov and may also be obtained by writing to:

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

Real Estate MATTERS
Filing an Application for Payment

An application for payment must be submitted to the Bureau 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 to determine if all required information has been submitted so that a decision can be made whether or not to pay. That review normally involves a series of letters between the Bureau 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 the Bureau.

Once the application becomes complete, the Bureau 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 re-file the claim or to properly distribute the funds among multiple applicants.

A TRUE STORY: BUYERS DUPED BY DISHONESTY RECEIVE MONETARY RELIEF

Following is an example of one of the many ways one can be victimized by a dishonest licensee. This is a true story taken from an application filed with the Recovery Account that resulted in payment to the victims.

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 advertisement 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 advertisement, 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, that all additions had been built to code and with the proper permits, that the heating, plumbing and electrical systems were in good working condition, and that only one master release was needed to operate security bars on all the windows. Based upon these representations, the buyers purchased the property for $155,000.

Throughout negotiations, the buyers had requested a copy of what is known as the transfer disclosure statement from the salesperson. 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 ten years old, that the garage conversion had been done without the proper permits, and that 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 Consumer Recovery Account. The suspension of the salesperson's real estate license cannot be lifted until the Consumer Recovery Account is reimbursed the amount paid in full plus 10% interest. In addition, the salesperson's real estate license was revoked as a result of a disciplinary action filed by the Bureau.