

CONSUMER RECOVERY ACCOUNT – INSTRUCTIONS TO CLAIMANTS

RE 807 (Rev. 12/11)

INSTRUCTIONS TO CLAIMANTS

- Note: In order to qualify for payment from the Consumer Recovery Account, the claimant must protect the underlying debt and judgment from discharge in bankruptcy. See Part IX, General Requirements and Restrictions, for further information.
- The Application for Payment (RE 807A) and the enclosed Notice to Judgment Debtor (RE 809) must be served on the judgment debtor before the Application can be made substantially complete.
- As explained below, the Application may be served on the Department either by certified mail or personal delivery at an office of the Department. To expedite handling of the Application and minimize the chances of it being misplaced, it is recommended that the Application be served on the Department by sending it certified mail to:

Department of Real Estate
Consumer Recovery Account Unit
P.O. Box 187007
Sacramento, CA 95818-7007

PART I — GENERAL INFORMATION

- A. Before attempting to fill out the Application, you should read the description of general requirements and restrictions contained in Part IX.
- B. Description of Approaches to Making An Application “Substantially Complete.”

As mentioned in the attached cover letter, the Department will have 90 days from the receipt of a “substantially complete” application in which to evaluate the Application, make a determination as to whether it qualifies for payment, and if so, for how much. It is the applicant’s responsibility to supply sufficient information and documentation for the application to be evaluated, i.e., to make the Application “substantially complete.” Under the Regulations governing Consumer Recovery Account Applications (see attached copies of Regulations 3101 and 3102), there are two ways to make the Application substantially complete:

1. Meet all the requirements of Part I of the Application (this much is required by law), and meet all the requirements of Regulation 3102. If these requirements are met, the Department is required to treat the Application as substantially complete, the 90 days within which the Department must act starts running, and the Department must notify all parties of the date on which the substantially complete application was received. If there are any deficiencies

in what is submitted, the Department must provide the claimant with an itemized list of deficiencies within 15 days after the Application is submitted. However, in recognition of the fact that in less complicated cases, not all the information required by Regulation 3102 may be necessary, the Regulations provide the following alternative approach.

2. Regulation 3101 allows the Department to treat an Application as substantially complete if less than all the information required by Regulation 3102 is submitted, but enough information is provided for the Department to determine whether the Application qualifies for payment. If what is submitted is sufficient, the Department will notify the parties that the application is substantially complete, and the 90 days will start running from the date the substantially complete application was received. If what is submitted is insufficient for the Department to evaluate the application, the Department must provide the claimant with an itemized list of deficiencies within 15 days after submission. Part II of the Application can serve as a guide to what should suffice in most cases.

Note: **Part I of the Application must be completed under either approach.**

PART II — COMPLETING THE APPLICATION

- A. Complete Part I of the Application. This much is required by Section 10471(c) of the Business and Professions Code.
- B. Decide whether to make the Application substantially complete by meeting all the requirements of Regulation 3102, or complete Part II of the Application and submit enough supporting documentation and additional information for the Application to be evaluated.

Note: Be sure to make enough copies of the Application and supporting documents, since you must serve a copy of the Notice and Application with its supporting documentation on the judgment debtor or debtors, and you will want a copy for your own records.

PART III — SERVING THE NOTICE AND APPLICATION

- A. *On the Department of Real Estate.* The original Application and supporting documentation must be served on the Department of Real Estate within one year after the judgment becomes final or the date on which the criminal restitution order was issued. Note that the original Notice to Judgment Debtor (RE 809) (*front and back*) must be

served on the judgment debtor. The law allows service to be by certified mail or by personal delivery to an office of the Department of Real Estate.

1. **Certified Mail.** As noted elsewhere, to expedite handling of the Application it is recommended that it be served by certified mail at the address listed at the beginning of these instructions.
2. **Personal Delivery.** Service can be effected by personal delivery at an office of the Department of Real Estate. If this option is chosen, make sure that the Departmental employee to whom it is handed understands that it is a Consumer Recovery Account application. It is recommended that the claimant bring along his or her copy at the time of delivery and make sure the employee stamps both the original and the copy as "received."

B. **On the Judgment Debtor(s).** You must serve *both* the original Notice to the Judgment Debtor (RE 809), *front and back*, (enclosed after page 9 of the application) **and** a copy of the Application and its supporting documentation on all judgment debtors whose activity as real estate licensees is the basis for the Consumer Recovery Account claim. Service may be accomplished in three ways:

1. **By Certified Mail.** A judgment debtor may be served by certified mail if the judgment debtor holds an unexpired and unrevoked license issued by the Department. Service is accomplished by mailing the Notice, Application, and supporting documentation by certified mail addressed to the judgment debtor at the latest business or residence address on file with the Department. Current licensing information can be obtained by calling the Department at 877-373-4542, writing to the Department, or accessing the Department's Web site at www.dre.ca.gov. If you write for the information, be sure to give the judgment debtor's full name, license identification number (if known), and the city where the judgment debtor was last known to reside or do business and address the inquiry to: Department of Real Estate, Licensing Information, P.O. Box 187000, Sacramento, CA 95818-7000.

Note: Service by certified mail is effective only if the judgment debtor holds an unexpired and unrevoked license issued by the Department.

Proof of Service: Proof of service by this means may be accomplished by completing the attached Proof of Service – Registered Mail (RE 811).

2. **By Personal Service.** A judgment debtor may be served with the Notice and Application by personally delivering a copy of each to the judgment debtor. Personal service may be effected by any person who is at least 18 years of age and not a party to the application proceeding.

Proof of service: Proof of service by this means may be accomplished by completing the attached Proof of Service – Personal (RE 810).

3. **Service by Publication.** If the judgment debtor does not hold an unexpired and unrevoked license issued by the Department and personal service cannot be effected through the exercise of reasonable diligence, the claimant can serve the judgment debtor by publication of the Notice (first page of RE 809 only)* in each of two successive weeks in a newspaper of general circulation published in the county in which the judgment debtor was last known to reside. Note that this form of service is effective only if service by the other two means listed above is not possible. Service by publication is deemed complete on the date of last publication.

* Be sure to include the names of all licensed judgment debtors against whom application is being made.

Proof of service: Proof of service by this means may be accomplished by following the instructions on the attached Proof of Service – Publication (RE 812).

PART IV — RESPONSE BY THE JUDGMENT DEBTOR

The judgment debtor has 30 days after personal service, mailing, or final publication of the Notice is complete within which to file a written response contesting the Application. Any such response must be served on both the claimant and the Department. If the judgment debtor does not file a timely response, he or she will have waived his or her right to present objections to payment and will not be entitled to any further notice of any action taken or proposed to be taken with respect to the Application.

If the judgment debtor does file a timely response to the Application, both the judgment debtor and the claimant will be given the opportunity to submit written argument. The Department will notify all parties of the appropriate time to submit argument.

PART V — DETERMINATION WHETHER APPLICATION IS SUBSTANTIALLY COMPLETE

The Department will notify the claimant within 15 days after service of the Application on the Department of any deficiencies in the application. If there are no deficiencies, or any deficiencies previously noted are corrected, the claimant, and any judgment debtor who has filed a timely response, will be notified of the date when the substantially complete Application was received. That date is the date from which the 90 days is computed within which the Department must act on the Application.

If the Department notifies the claimant of any deficiencies in the Application, and the claimant does not respond within a reasonable period of time (which is not less than six months),

the Department will notify the claimant that the Application must be made substantially complete within a specified period of time (at least 30 days after mailing of the notice) or the Application will be denied.

Any documentation submitted in response to a list of deficiencies must be accompanied by:

1. The certification as to the authenticity of the documents as specified in Regulation 3102(s); and
2. Proof that the documentation was also served on any judgment debtor who filed a timely response.

PART VI — ACTION ON THE APPLICATION

The Department will notify the claimant, and any judgment debtor who has filed a timely response, of the decision on the Application.

- A. **Decision to Make Payment.** If the decision is to make a payment to the claimant out of the Consumer Recovery Account, a judgment debtor who filed a response will have 30 days following receipt of the notice of the decision to file a writ of mandamus for judicial review of the suspension of his or her license(s) and license rights which would result from a payment.
- B. **Decision to Deny the Application.** If the decision is to deny payment on the Application, the claimant may pursue the Application in court. To do so, the claimant must file the application with the court not later than six months after mailing of the notice of denial of the Application. If the underlying judgment is a California state court judgment, the application shall be filed in the court in which the underlying judgment was entered. If the underlying judgment is a federal court judgment, the application shall be filed in the superior court of any county within California that would have been a proper venue if the underlying lawsuit had been filed in a California state court, or in the Superior Court of the County of Sacramento.

PART VII — SUBSEQUENT SERVICE OF CORRESPONDENCE AND NOTICES

After initial service of the Application on the Department and of the Notice and Application on the judgment debtor, the parties must be served with subsequent correspondence and notices by first class mail as follows:

- A. The Department must be served at:
Department of Real Estate
Consumer Recovery Account Unit
P.O. Box 187007
Sacramento, CA 95818-7007.
- B. The claimant must be served at his or her address as specified in the Application, or if represented by an attorney, at the address of the attorney as specified in the Application.

- C. A judgment debtor who has filed a timely response must be served at his or her address as specified in the response, or if represented by an attorney, at the address of the attorney as specified in the response.

Note: Any party having a change of address should notify the other parties of the new address. Failure to do so will result in correspondence and notices being legally served at the old address.

PART VIII — PRORATION

As noted in the following part, the maximum liability of the Consumer Recovery Account for any one licensee is limited. At any time prior to the rendering of a decision on a claim, if the Department makes a preliminary determination that the aggregate valid claims of all aggrieved persons against that licensee are likely to exceed that limit, in lieu of further administrative proceedings, the Department will terminate the application procedure and initiate a proceeding in court to prorate the funds available among the claimants.

Applications received by the Department relating to a particular judgment debtor subsequent to the filing of a proration action as to that judgment debtor will be returned to the claimant with a notification that the Application must be filed in the proration proceeding.

PART IX — GENERAL REQUIREMENTS AND RESTRICTIONS

The rules governing applications for payment from the Consumer Recovery Account, both those filed with the Department and applications denied by the Department and re-filed in court, are set forth in Sections 10470-10481 of the Business and Professions Code and in Sections 3100-3109 of the Regulations of the Real Estate Commissioner. They include the following:

- A. The cause of action must have occurred after July 1, 1964.
- B. The claimant must have obtained a final judgment or criminal restitution order (CRO) against a real estate licensee based upon that person's fraud, misrepresentation, deceit, made with intent to defraud; or conversion of trust funds.
- C. The fraud, etc., must have arisen directly out of a transaction in which the judgment debtor:
 1. Was licensed at the time; and
 2. Was performing acts for which a real estate license was required.
- D. Applications must be filed on the form prescribed by the Department and must be filed not later than one year after the underlying judgment became final or criminal restitution order was issued.

Applications filed with the court following a denial of an application by the Department must be filed with the appropriate court within six months after mailing of the notice of denial of the Application by the Department.

E. The judgment debtor must be served with the Application, its supporting documentation, both sides of the Notice (RE 809), and proper proof of service must be supplied to the Department.

F. The claimant must have diligently pursued collection efforts against the judgment debtor and all other persons liable to the claimant in the transaction that is the basis for the underlying judgment.

G. For any one **transaction** the liability of the Consumer Recovery Account is limited to \$20,000.00 per transaction for causes of action occurring on or after January 1, 1980.

Effective January 1, 2009, the liability of the Consumer Recovery Account is limited to \$50,000 per transaction for **applications filed** on and after January 1, 2009. Note: An application must still be filed no later than one year from the date the judgment becomes final.

H. For any one **licensee** the liability of the Consumer Recovery Account is limited to \$100,000.00 per licensee for causes of action occurring on and after January 1, 1980.

Effective January 1, 2009, the liability of the Consumer Recovery Account will be limited to \$250,000 per licensee for **applications filed** on and after January 1, 2009. Note: An application must still be filed no later than one year from the date the judgment becomes final.

I. The judgment or restitution order must be protected from discharge in bankruptcy. That means that the underlying debt and judgment or restitution order must not have been discharged in a completed bankruptcy; or in the case of a bankruptcy open at the time of filing the Application or at any time while the application is pending, the claimant must demonstrate that the judgment or restitution order and debt have been declared to be nondischargeable.

J. The claimant must provide a statement, signed under penalty of perjury, that the complaint upon which the underlying judgment is based was prosecuted conscientiously and in good faith. "Conscientiously and in good faith" means that no party potentially liable to the claimant in the underlying transaction was intentionally and without good cause omitted from the complaint, that no party named in the complaint who otherwise reasonably appeared capable of responding in damages was dismissed from the complaint intentionally and without good cause, and that the claimant employed no other procedural tactics contrary to the diligent prosecution of the complaint in order to provide access to the Consumer Recovery Account.

For a claim based on a criminal restitution order, claimant must provide a statement, signed under penalty of perjury, that:

- The claimant has not intentionally and without good cause failed to pursue any person potentially liable to the claimant in the underlying transaction other than a defendant who is the subject of a criminal restitution order.
- The claimant has not intentionally and without good

cause failed to pursue in a civil action for damages all persons potentially liable to the claimant in the underlying transaction who otherwise reasonably appeared capable of responding in damages other than a defendant who is the subject of a criminal restitution order.

- The claimant employed no other procedural means contrary to the diligent prosecution of the complaint in order to seek to qualify for the Consumer Recovery Account.

REGULATIONS OF THE REAL ESTATE COMMISSIONER

TITLE 10, CALIFORNIA ADMINISTRATIVE CODE

Regulation 3101. Application for payment from Consumer Recovery Account.

(a) An application for payment from the Consumer Recovery Account shall be made on a form prescribed by the Department, shall contain the items specified by Section 10471(c) of the Code, and shall contain all of the information specified in Section 3102, except as provided in subdivision (b) of this section. The application shall be verified by the claimant in the manner specified in Section 446 of the Code of Civil Procedure for the verification of a pleading. If executed outside of California, the information in the application and accompanying documents shall be verified before a person qualified to administer oaths within the jurisdiction where executed or certified under penalty of perjury in accordance with the provisions of subdivision (b) of Section 2015.5 of the Code of Civil Procedure.

(b) The claimant may submit with the application less than all of the information defined by Section 3102 of these regulations as constituting a substantially complete application if the claimant believes that the information submitted with the application is sufficient for the Department to determine whether the application qualifies under Sections 10470 through 10481 of the Code for payment from the Consumer Recovery Account. However, an application will not be deemed substantially complete within the meaning of Section 3102 of these regulations unless:

(1) The Department determines that what has been submitted is sufficient for it to make a determination whether the application qualifies for payment from the Consumer Recovery Account and so notifies the claimant as provided in Section 3105 of these regulations; or

(2) The application and supporting information meet all the requirements specified in Section 3102 of these regulations.

(c) If any documents or other attachments are submitted with the application, the application shall contain a verification by the claimant that the documents are true and correct copies of the originals, and if such documents purport to

be copies of documents filed in court that they are true and correct copies of the originals filed with the court.

- (d) The application shall contain the name and address of the claimant, and if the claimant is not being represented by an attorney in the filing of the application, a telephone number where the claimant can be reached during regular business hours. If the claimant is represented by an attorney in filing of the application, the application shall contain the name, business address, and telephone number of the attorney.

Regulation 3102. Substantially Complete Application.

Except as provided in Section 3101 of these regulations, an application for payment from the Consumer Recovery Account is “substantially complete” within the meaning of Section 10471.2(b) of the Code if it contains all of the documents and information enumerated below:

- (a) Proof that the judgment debtor was served with the Notice and Application.
- (b) A copy of the judgment or criminal restitution order showing it to be a final judgment as defined in this Article, and any findings of facts, conclusions of law, jury verdicts, jury special verdicts, statements of decisions, memorandum decisions, or any other indication by the court or jury, as the case may be, of its decision and the reasons for the decision. If the original judgment was appealed, copies of the appellate decision and remittitur.
- (c) Copies of the original civil complaint, answer, cross-complaints, answers to cross-complaints, and all amendments or other subsequent versions of any of those documents; or copies of the criminal indictment or information, and amendments thereto.
- (d) Copies of any pre-trial or post-trial briefs or settlement conference statements.
- (e) A listing of all depositions and interrogatories taken in the underlying action, describing the party or parties taking the deposition or propounding the interrogatories, the deponent or person responding to interrogatories, and all persons present at any deposition.
- (f) Copies of any demurrers or motions for summary judgment, supporting documents, and rulings thereon.
- (g) Copies of all documents reflecting the terms of the underlying transaction, including for example offers, counteroffers, escrow instructions, closing statements, deeds, notes and deeds of trust.
- (h) A detailed narrative description by the claimant under penalty of perjury of all the facts of the underlying transaction, including how he or she was damaged by the judgment debtors, and the roles of all other persons involved in the transaction (such as other brokers or salespersons, sellers and buyers).
- (i) A description by the claimant of the basis for each element of damages.
- (j) If the only judgment debtor was a salesperson, a statement as to why the employing broker was not either sued or taken to judgment.
- (k) If any codefendants were dismissed from the underlying lawsuit, a statement of the reason for dismissal as to each such defendant.
- (l) A list of the names of any witnesses who testified at the underlying trial and the present or last known addresses of the witnesses to the extent known by the claimant.
- (m) A description of searches and inquiries conducted by or on behalf of the claimant with respect to the assets of the judgment debtor and the assets of all other persons liable to the claimant in the transaction which assets may be liable to be sold or applied to the losses suffered by the claimants, an itemized valuation of the assets discovered, and the results of actions by the claimant to have the assets applied to the losses suffered by the claimant.
- (n) If the claimant claimed any loss related to the transaction as a deduction on his or her tax return or returns, a description of the amount of the tax benefit derived therefrom.
- (o) A statement whether the judgment debtor is known to have filed bankruptcy. If so, a statement whether the claimant was named as a creditor in the bankruptcy, filed a claim in the bankruptcy, and pursued an adversary complaint to have the debt determined to be nondischargeable. If the judgment debtor filed bankruptcy and the claimant failed to take any of the foregoing actions, a statement as to why the claimant failed to take such actions.
- (p) Abstracts of judgment bearing evidence of having been recorded in the county or counties in which the judgment debtor may possibly have assets.
- (q) If any of the above items are not included in the initial application, or are requested in a deficiency letter and not supplied, a statement under penalty of perjury that the claimant has made a diligent effort to locate and produce the items but has been unable to locate them or has found that they do not exist.
- (r) All documents or copies of documents submitted to meet the requirements of this section must be clear and legible.
- (s) Certification by the claimant that all documents submitted are true and correct copies of the originals, and if such documents purport to be copies of documents filed in court, that they are true and correct copies of the originals filed with the court.
- (t) For a claim based on a criminal restitution order, a copy of any probation report prepared and submitted to the court.