

The Recovery Fund
Can reimburse a member of the public up to **\$15,000**



What it is. The main purpose of the Fund is to compensate members of the public who have been damaged by a lending Agent's **fraud, misrepresentation or deceit** in a mortgage transaction, and when the Agent cannot pay. You may be compensated by the Fund if the Agent used fraud, misrepresentation or deceit to take advantage of you.

How much can you get. If you comply with the process and a court awards you compensation, you can expect to receive from the Fund **up to \$15,000**. Regardless of the number of people seeking compensation ("claimants"), the liability of the fund may not exceed \$15,000 for a single transaction and \$45,000 for any one Agent.

How it works. In order to receive a payment, you **must meet the requirements outlined in Utah Code Ann. 61-2c**. This pamphlet offers an overview, but for details talk to an attorney or read Title 61 Section 2a of the Utah Code at <http://le.utah.gov/~code/code.htm>.

Finding help. The Division cannot help you with legal advice. You may hire an attorney or ask for free legal help at www.andjusticeforall.org (801) 924-3183.

DISCLAIMER

This pamphlet provides information about the law designed to help the public recover damages. But legal information is not the same as legal advice -- the application of law to an individual's specific circumstances. Although we go to great lengths to make sure our information is accurate and useful, we recommend you consult a lawyer if you want professional assurance that this information, and your interpretation of it, is appropriate to your particular situation.

NOTE: for purposes of this pamphlet only,

"Fund" refers to the Residential Mortgage Loan Education, Research and Recovery Fund.

"Agent" refers to a mortgage licensee, that is a mortgage officer, an associate lending manager, a principal lending manager, or an entity licensed by the Division. To find out if the person was licensed by the Division you can visit <https://secure.utah.gov/rer/relv>

If the lending agent is not a licensee of the UDRE, i.e. was an employee of a bank, or another financial institution, you will have to contact the Department of Financial Institutions.



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Marilyn Francis, research, 05.28.2009

images from: www.freemages.co.uk

Damaged by a lending agent?

(mortgage officer)



Some compensation may be available to you through the

Residential Mortgage Loan Education, Research, and

Recovery Fund

To do list

1. Sue in Court

If you were “damaged,” and the amount of the damage, is determined by a court of competent jurisdiction, and not by the Utah Division of Real Estate. Therefore, if you want to be compensated from the Fund, you first have to sue the Agent in court.

2. Make sure your claim is against a licensee

Compensation can be made for damages caused by an individual or entity having a license (the Agent). You cannot be the spouse or representative of the Agent.

3. Include a claim for fraud, misrepresentation, or deceit as part of the original complaint

The complaint must be based in whole or in part on fraud, misrepresentation, or deceit.

4. Notify the Utah Division of Real Estate at the time you file the court action, and keep proof of receipt

Send a signed notification with your claim to the Division of Real Estate at the time you file an action against the Agent. Include a copy of the complaint. Within 30 days of receipt of the notice, the Division may intervene in the action.

5. Obtain final judgment in your favor

The judgment must be based on fraud, misrepresentation, or deceit.

6. Find out if the Agent can pay you

Make reasonable searches and inquiries yourself to know for sure if the Agent has money or property that can be used to pay you. Then exercise reasonable diligence to get paid. You will have to prove you did so in a court hearing before the Fund can pay you (unless you convince the court to waive that requirement because it is not practical for you based on the circumstances).

7. Have a writ of execution issued upon the judgment

After you win your case, and if the Agent cannot pay you, you must get a “writ of execution” to show that the Agent who damaged you does not have money or property which could be used to pay the judgment. In order for the Fund to pay, the judgment cannot have been discharged in bankruptcy.

8. File a verified petition to the court requesting that the Recovery Fund pays you

Upon termination of all proceedings, including appeals, you can file a verified petition in the court where the judgment was entered for an order directing payment from the Residential Mortgage Loan Education, Research, and Recovery Fund for the uncollected actual damages included in the judgment and still unpaid. A recovery from the fund may not include punitive damages, interest, or court costs. Serve a copy of the petition upon the Division of Real Estate and file an affidavit of service with the court.



9. Show at the court hearing that you have complied with the requirements to be paid from the Fund

After the case against the Agent is over, the court will hold a hearing just to determine if you should be paid from the Fund. Payment will depend on compliance with the requirements of the Mortgage Recovery Fund Act. This pamphlet offers a simplified overview of those requirements for information purposes. Do not solely rely upon it. For details talk to an attorney or read Title 61 Section 2c of the Utah Code at <http://le.utah.gov/~code/code.htm>.

10. Get paid

If the court determines that you should be paid from the Fund, it will enter an order directed to the Division requiring payment. The Fund will pay within a reasonable time, usually 30 days.

The Agent's license will be revoked. The Division of Real Estate may impose other discipline.

If the Division makes payment from the Fund it will have the right to collect the money from the Agent. The license of the Agent shall be automatically revoked. The Agent may not apply for a new license until the amount paid, plus interest, has been repaid in full to the Fund.

The repayment in full of all obligations to the Fund by any Agent does not nullify or modify the effect of any other disciplinary proceeding.