

FOR: Applicants to the Real Estate Education, Research and Recovery Fund
Updated 8/2014

FROM: Emily Kelnberger, Paralegal and Recovery Fund Administrator
(651) 539-1457

SUBJECT: Instructions for application to the Real Estate Education, Research, and Recovery Fund

This packet contains information and forms needed to apply to the Real Estate Education, Research and Recovery Fund. **The recovery fund administrator cannot provide legal advice.** If you have a question about the use of the forms or your legal rights, we strongly recommend you speak with an attorney.

Introduction

The purpose of the Real Estate Education, Research and Recovery Fund (the “Fund”) is to compensate a person who suffered direct out of pocket losses due to a licensed real estate broker, salesperson, or closing agent’s fraudulent, deceptive or dishonest practices, or conversion of trust funds. The action must be an activity that required a license. In addition, the real estate broker, salesperson or closing agent must have been licensed at the time of the fraudulent action.

The Fund is governed by [Minnesota Statutes, Section 82.86](#) and is limited. Specific rules and requirements determine whether or not the applicant qualifies for reimbursement from the Fund. The statute also describes the procedure for filing a claim.

Due to the changing nature of the law and the forms, information contained in this packet may become outdated. Therefore, make sure to review and research the statutes before beginning the application process to ensure this information is accurate, complete and current.

How the Fund Works

The commissioner for the Department of Commerce has the responsibility to maintain the Fund. According to state law, each licensed real estate broker, salesperson and closing agent in Minnesota must pay into the recovery fund each year. This money is held in the state treasury and distributed by the Department of Commerce to reimburse consumers who have lost money due to unscrupulous acts of the real estate broker, salesperson or closing agent. The Department reviews each application to determine if it meets the statutory requirements. **There is no guarantee a claim will be paid. Whether you will receive payment from the Fund depends on the specific facts of your case.**

Two Ways to File a Claim

Claims can be filed through an **accelerated** claims payment procedure or a **standard** claims payment

procedure. The commissioner can pay up to a total of \$250,000 against each licensee. This includes payments from both the accelerated payment process and the standard payment process.

ACCELERATED CLAIMS PAYMENT PROCEDURE

The purpose of the accelerated procedure is to expedite payment to the claimant if the commissioner determines the claimant is entitled to payment from the Fund. The accelerated claim limit is determined by the conciliation court limit – currently at \$15,000. More information about conciliation court can be found on the Minnesota Courts website. In addition, if you are pursuing action in conciliation court, the Attorney General’s Office has a brochure titled, Conciliation Court: A User’s Guide to Small Claims Court, which may be helpful to you. If the claim is \$15,000 or less, the applicant may use the accelerated procedure.

Under the accelerated process, the commissioner may pay up to a total of \$50,000 in small claims against each licensee. If \$50,000 has already been paid out against the licensee, or if the amount an applicant is seeking will exceed the licensee’s \$50,000 limit (because other claims have already been paid against the licensee), the applicant will need to use the standard recovery procedure.

STANDARD CLAIMS PAYMENT PROCEDURE

If the claim is more than \$15,000, the applicant must apply under the standard procedure. This procedure requires an applicant to have a post-judgment hearing where a judge may order the Fund to pay the claim. The standard procedure also requires the applicant to apply by December 1. If payment is ordered by December 31, the applicant will receive payment by July 15th the following year. Under the standard procedure, the commissioner can pay up to a total of \$150,000 of the amount unpaid on the judgment, per claimant per transaction.

Before Applying

Before applying to the fund, please research the following:

- Make sure the correct party is being sued. The lawsuit must be against a licensed individual, not a company. Real estate companies do not pay into the fund.
- Make sure the real estate broker, salesperson, or closing agent was licensed during the time the transaction took place. The fund administrator can look up licensees.
- Make sure money is in the fund. Multiple claims against the same licensee reduces the amount available. The fund administrator can look up the amount available.
- Understand which costs are eligible for reimbursement. Actual and direct out of pocket loss from the transaction may be eligible. Generally, attorney's fees, interest on the loss and interest on any judgment obtained as a result of the loss, are not eligible.
- Make sure the application is no more than one year after the judgment became final, or no more than one year after the termination of any review or appeal of the judgment.

Before applying to the fund, the applicant **must** complete the following steps.

1. **Obtain a court judgment.** The judgment:

- is the result of filing and winning a lawsuit;
 - legally verifies the offense committed by the real estate broker, salesperson or closing agent and the dollar value of the loss;
 - may be obtained in conciliation court, district court, bankruptcy court or another court of competent jurisdiction;
 - must be against the party holding the license – a real estate broker, salesperson or closing agent; and
 - must be based on a claim of fraudulent, dishonest or deceptive practices, or conversion of funds arising directly out of the licensee’s activities during the time the licensee was licensed.
2. The judgment must be formally “entered” and “docketed” in court. Once entered and docketed, the judgment is a legal collectable document. For further instructions, contact the Clerk of the District Court (also called the Court Administrator) of the county the judgment was obtained. Different counties have different requirements. **An application will not be accepted if it is not accompanied by a copy of the court’s Notice of Docketing.**
3. The applicant must make an honest effort to collect on the judgment from all judgment debtors. The applicant is required to provide evidence that all potentially liable parties have been pursued unsuccessfully. **Note:** The fund will not accept an “asset search” as an effort to collect.

ACCELERATED PROCEDURE – INSTRUCTIONS FOR APPLYING TO THE FUND

The accelerated procedure is for individuals with claims of \$15,000 or less.

Before completing an accelerated application, (1) a judgment must be obtained against the licensed individual, and (2) the judgment must be entered and docketed.

To apply under the accelerated procedure, the applicant must assemble and label **all** of the following documents.

- The original completed verified Application for Accelerated Payment out of the Real Estate Education Research and Recovery Fund. **To verify, the applicant must sign the application before a notary public.**
- A copy of the Statement of Claim and Summons, if the judgment was obtained in conciliation court, or a copy of the Summons and Complaint, if the judgment was obtained in district court.
- A copy of the Judgment Notice, if obtained in conciliation court, or a copy of the Findings of Fact, Conclusions of Law, Order for Judgment, and Judgment, if obtained in district court.
- A copy of the clerk’s notice of docketing the judgment in district court.
- A copy of the contract(s) or other agreement(s) between you and the real estate licensee.
- Proof of the out of pocket loss must be provided. It is the applicant’s responsibility to provide all documentation and calculations supporting the claimed amount. In some cases, this is the same evidence previously presented to the court.
- Provide an explanation of the situation (if not outlined in the Statement of Claim/Summons and Complaint).

Send the verified application and all supporting documents directly to the fund administrator:

Emily Kelnberger
Department of Commerce
Real Estate Recovery Fund Administrator
85 7th Place East, Suite 500
St. Paul, MN 55101

If the commissioner grants payment to the claimant, the Fund will attempt to collect this money from the real estate licensee. In order for the Fund to collect the money, you need to assign to the Commissioner your rights to collect from the licensee the amount of money you have received from the Recovery Fund. You will receive an assignment form from the Department that you will need to sign and have notarized. If your judgment was for an amount greater than the payment you received from the Fund, you may attempt to collect the balance of the judgment directly from the real estate licensee.

STANDARD PROCEDURE – INSTRUCTIONS FOR APPLYING TO THE FUND

The standard claims procedure is for applicants with claims over \$15,000 or applicants who cannot use the accelerated process. The commissioner may pay up to \$150,000 per claimant. In addition, the commissioner can pay up to a total of \$250,000 to all claimants against each licensee.

Before completing a standard application, (1) a post-judgment hearing must be scheduled with the court, and (2) the **Notice of Hearing** for Order Directing Payment out of the Real Estate Education, Research and Recovery Fund form must be completed.

Under the standard application procedure, once a judgment is obtained, the applicant is required to docket the judgment in district court **and** schedule a post-judgment hearing. Once the post-judgment hearing is scheduled, complete the **Notice of Hearing** for Order Directing Payment out of the Real Estate Education, Research and Recovery Fund form (this form is attached). The post-judgment hearing is where a judge will direct payment from the fund by issuing a court order, if appropriate. The Department of Commerce cannot issue payment from the fund under the standard procedure without the court order. It is important this court hearing be scheduled well before the end of the calendar year.

The Fund must be given a 30 day notice prior to the scheduled date of the hearing. The last day applications are accepted using the standard process is December 1st. If a decision is rendered to pay the claim and the judge signs the order on or before December 31st, the claimant will receive payment by July 15th of the following year.

Applications will not be accepted without a copy of the court's Notice of Docketing.

Under the standard procedure, once the post-judgment hearing date is set, the claimant must notify the licensee, the fund administrator and the courts.

1. Send a copy of your Application for Order Directing Payment and the Notice of Hearing (these forms are attached) to the real estate licensee at his/her last known address by certified mail. **To verify, the applicant must sign the application before a notary public.**
2. Send a copy of the verified standard application for Order Directing Payment and the Notice of Hearing (these forms are attached) to the fund administrator at the address below. The applicant must assemble and label **all** of the following documents:

- a. A copy of the verified Application for Order Directing Payment Out of Real Estate Education, Research and Recovery Fund as described above.
- b. A copy of the Notice of Hearing for Order Directing Payment out of Real Estate Education, Research and Recovery Fund.
- c. A copy of the Affidavit of Compliance you completed along with a copy of the white receipt (this is the receipt that shows the address it was sent to via certified mail).
- d. A copy of the Summons and Complaint.
- e. A copy of the Findings of Fact, Conclusions of Law, Order for Judgment, and Judgment, if the judgment was obtained in district court, or a copy of the Judgment Notice, if obtained in conciliation court.
- f. A copy of the clerk's notice of docketing of judgment in district court.
- g. A copy of the contract(s) or other agreement(s) between you and the real estate licensee.
- h. Proof of the out-of-pocket loss must be provided. It is the applicant's responsibility to provide all documentation and calculation supporting the claimed amount. In many cases, this is the same evidence previously presented to the court.
- i. You **must** make an honest effort to collect the judgment from the licensee. You may contact the County Clerk's Office for instructions on getting your judgment executed (Writ of Execution). Then, contact your Sheriff's office and request a Demand for Payment (also called a Sheriff's Return). The sheriff will go to the last known address of the licensee and attempt to deliver the demand for payment. The Fund **will not** accept an asset search as an effort to collect. If the real estate licensee has filed for bankruptcy, provide information that the licensee is in bankruptcy.
- j. Proof the claimant has diligently pursued all potentially liable parties.
- k. Provide an explanation of the situation (if not clearly outlined in the Summons and Complaint).

3. Fill out an Affidavit of Compliance for the courts (the form is attached).

Failure to provide all of the required information will delay review and possible approval of the application.

Send the verified application and all supporting documents directly to the fund administrator:

Emily Kelnberger
Department of Commerce
Real Estate Recovery Fund Administrator
85 7th Place East, Suite 500
St. Paul, MN 55101

When we have reviewed your claim, we will contact you and request additional information, if needed. If you do not hear from us prior to one week before the post-judgment hearing, please contact us immediately.

The commissioner maintains the right to defend the fund. The commissioner may also petition the court to dismiss the claim, if the claim is without merit. Under these circumstances, it is ultimately up to a judge whether the Fund is required to pay the claimant.

When the court orders payment from the Fund, the Department of Commerce will attempt to collect this money from the real estate licensee. In order for us to collect the money, you need to assign to the commissioner your rights to collect from the licensee the amount of money you have received from the Fund. You will receive an assignment form from the Department that you will need to sign and have notarized. If your judgment was for an amount greater than the payment you received from the Fund, you may attempt to collect the balance of the judgment directly from the real estate licensee.

Note: If at the end of the calendar year the total amount of approved claims against one contractor exceeds \$250,000 (the total that can be paid in connection with one real estate licensee), the Commissioner will prorate the available funds among the claimants pursuant to Minnesota Statutes, Section 82.86, subdivision 14.

ADDITIONAL INFORMATION

Your real estate broker, salesperson or closing agent has filed for bankruptcy.

You may still be able to file a lawsuit solely for the purpose of recovering your loss from the Fund. You will need to petition the Judge of bankruptcy court to lift the Automatic Stay and explain that your lawsuit is solely for the purpose of obtaining restitution from the Fund and you understand that you will not be able to collect the judgment from the real estate agent directly. You may want to consult an attorney for more details on how to get the Stay lifted, as the Fund cannot offer any legal advice.

You cannot find the real estate broker, salesperson or closing agent.

If the applicant is unable to locate the licensee, service can be accomplished by complying with Minnesota Statutes, Section 45.028, subdivision 2. The person you are suing has a legal right to be notified of the process and the court date. If you cannot find the licensee, you can serve notice to the Commissioner of Commerce instead. Follow the directions described in the Service of Process statute (below) and complete the form titled Affidavit of Compliance (attached). Make sure to have the form notarized before taking it to court. You may also want to bring a copy of this statute with you to court to ensure the court is satisfied with this method of service.

45.028 SERVICE OF PROCESS.

Subdivision 1. Requirement.

(a) When a person, including any nonresident of this state, engages in conduct prohibited or made actionable by chapters 45 to 83, 155A, 309, and 332, and section [326B.802](#), or any rule or order under those chapters, and the person has not filed a consent to service of process under chapters 45 to 83, 155A, 309, and 332, and section [326B.802](#), that conduct is equivalent to an appointment of the commissioner as the person's attorney to receive service of process in any noncriminal suit, action, or proceeding against the person which is based on that conduct and is brought under chapters 45 to 83, 155A, 309, and 332, and section [326B.802](#), or any rule or order under those chapters.

(b) Subdivision 2 applies in all other cases under chapters 45 to 83, 155A, 309, and 332, and section [326B.802](#), or any rule or order under those chapters, in which a person, including a nonresident of

this state, has filed a consent to service of process. This paragraph supersedes any inconsistent provision of law.

(c) Subdivision 2 applies in all cases in which service of process is allowed to be made on the commissioner of commerce.

Subd. 2. How made.

Service of process under this section may be made by leaving a copy of the process in the office of the commissioner, or by sending a copy of the process to the commissioner by certified mail, and is not effective unless: (1) the plaintiff, who may be the commissioner in an action or proceeding instituted by the commissioner, sends notice of the service and a copy of the process by certified mail to the defendant or respondent at the last known address; and (2) the plaintiff's affidavit of compliance is filed in the action or proceeding on or before the return day of the process, if any, or within further time as the court allows.

The materials and information available in this packet are for informational purposes only and not for the purpose of providing legal advice. Legal advice is dependent upon the specific circumstances of each situation. Therefore, the information contained herein does not replace the advice of competent legal counsel. We cannot guarantee this information is up to date. Please review Minnesota Statute §82.86 (current year).

TENNESSEN WARNING

The Commissioner of Commerce is requesting that you supply data about yourself which may be classified as private or confidential under the Minnesota Government Data Practices Act and before asking you to supply private or confidential data about yourself, the Commissioner is required to give you the following notice.

1. The Commissioner is asking you to provide data about yourself as part of your application to the Real Estate Education, Research and Recovery Fund (Recovery Fund) administered by the Commissioner of Commerce. The data you are being asked to supply will be used to determine whether you may be entitled to a payment from the Recovery Fund under MINNESOTA STATUTE § 82.86.
2. MINNESOTA STATUTE § 45.027 requires that you provide the data the Commissioner is requesting about you unless you claim the privilege against self-incrimination as grounds for refusing to supply the requested data. If you supply the data requested the data may be used in a disciplinary proceeding or other legal action.
3. If you refuse to supply the data requested:
 - i. The Commissioner may compel you to supply the data requested under the authority granted to the Commissioner in MINNESOTA STATUTE § 45.027.
 - ii. If you claimed the privilege against self-incrimination as the grounds for refusing to supply the requested data, the Commissioner may compel you to supply the data requested.
 - iii. The court may find after a hearing that you have not met your burden of proof to establish ground for payment to you from the Recovery Fund.
4. The data you supply may be released to:
 - a. personnel employed or under contract by the Department of Commerce or the Attorney General's Office who will investigate whether any statute, rule, or order administered or enforced by the Commissioner has been, is being, or is about to be violated;
 - b. any appropriate person or agency, if the Commissioner of Commerce determines that failure to make the data accessible is likely to create a clear and present danger to public health or safety;
 - c. the Legislative Auditor pursuant to MINNESOTA STATUTE § 3.978;
 - d. any person authorized by a court order; or
 - e. any other person including another law enforcement agency authorized by state or federal law.

State of Minnesota

_____ Court

County of _____

_____ Judicial District

Case No. _____

Plaintiff

AFFIDAVIT OF COMPLIANCE

v.

Defendant

I _____, being first duly sworn, state as follows:
(your name)

1. That on the _____ day of _____, 20____, I/Courts (*circle one*) served the attached Notice of Hearing or Statement of Claim and Summons (*circle one*) on _____ by sending notice and a copy of the process of certified mail (Licensee) to the defendant or respondent at the last known address of _____;

2. That on the _____ day of _____, 20____, I served the attached Notice of Hearing or Statement of Claim and Summons (*circle one*) by leaving a copy of the process in the office of the Commissioner of Commerce, **or**, sending by certified mail a copy of the process to the office of the Commissioner of Commerce, and;

3. That I am filing this Affidavit of Compliance with the Court on or before the return day of the process, if any, or within further time as the court allows.

This Affidavit of Compliance is being completed according to the requirements of Minn. Stat. §45.028, subd. 2 (2012), Service of Process.

Date: _____

Signature

Subscribed and sworn to before me this _____ day of _____, 20____

Notary/Court Clerk

You must file a copy of this form along with a copy of your Notice of Hearing with the Court.

State of Minnesota

_____ Court

County of _____

_____ Judicial District

Case No. _____

Plaintiff,

v.

Defendant.

**NOTICE OF HEARING FOR ORDER
DIRECTING PAYMENT OUT OF REAL ESTATE
EDUCATION, RESEARCH AND RECOVERY FUND**

The above entitled matter is set for hearing on the _____ day of _____,
20____, at _____ a.m./p.m. (circle) before Referee/Judge _____ in
Room _____ of the _____ (building).

This hearing is on the Application for Order Directing Payment out of the Real Estate
Education, Research and Recovery Fund pursuant to Minnesota Statutes, Section 82.34 subd. 8.

Dated this ____ day of _____, 20_____.

PLAINTIFF

(Note: this form is for applicants filing under the Standard procedure only)

**STATE OF MINNESOTA
COMMISSIONER OF COMMERCE**

In the Matter of Real Estate

License of _____

License No. _____

**APPLICATION FOR ACCELERATED PAYMENT
OUT OF THE REAL ESTATE EDUCATION,
RESEARCH AND RECOVERY FUND**

THE APPLICANT, _____, for his/her Application for Accelerated
(your name)
Payment Out of the Real Estate Education, Research and Recovery Fund pursuant to Minn. Stat. 82.86,
states as follows:

1. Applicant obtained judgment in _____ court, _____
(conciliation or district) (county name)
County against licensee, _____, the terms of which appear
(licensee's name)
in the Notice of Judgment/Judgment and Decree dated _____.
(date of judgment)
 2. For purposes of this Application, the above-mentioned Judgment is based on fraudulent,
deceptive, or dishonest practices, or conversion of funds.
 3. Licensee _____ was duly licensed under Minn. Stat. Ch. 82 at the
(licensee's name)
time (s)he engaged in the above practices.
 4. Licensee's fraudulent conduct arose directly out of a real estate transaction for
which such a license is required.
 4. Judgment against licensee was entered on _____, and the amount of
(date)
judgment on the date entered was \$ _____, which is less than the jurisdiction
(amount)
limit for Conciliation Court matters.
 6. There are no reviews or appeals of the above-mentioned judgment in any court.
 7. Applicant knows of no other party who would be liable to him/her in the transaction for
which (s)he seeks recovery from the Real Estate Education, Research and Recovery Fund.
 8. Applicant has complied with all the requirements of Minn. Stat. 82.86, Sub. 8 (2012).
- Applicant requests payment from the Real Estate Education, Research and Recovery Fund in
the amount of \$ _____, said amount being equal to Applicant's judgment
(amount)
against licensee _____, but excluding attorney's fees, any costs and
(licensee's name)

disbursements incurred in obtaining the judgment and applying to the Real Estate Education, Research and Recovery Fund, costs awarded under Minn. Stat. 549.02, and any pre and post judgment interest.

Date: _____

By: _____
Attorney for Applicant (if no attorney, write "none")

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

_____, being first duly sworn on oath, states that (s)he has read the foregoing application and the same is true and correct to the best of his knowledge and belief.

Applicant

(Daytime telephone number)

Subscribed and sworn to before me
this _____ day of _____, 20_____.

Notary Public

STATE OF MINNESOTA
COUNTY OF _____

COURT
JUDICIAL DISTRICT
Case Type: Other Civil
Court File No.: _____

Plaintiff,
v.

Defendant.

**APPLICATION FOR ORDER
DIRECTING PAYMENT OUT OF
THE REAL ESTATE EDUCATION,
RESEARCH AND RECOVERY FUND**

COMES NOW THE PLAINTIFF, _____
and for the Application for Order Directing Payment Out of the real Estate Education, Research, and
Recovery Fund pursuant to Minn. Stat. § 82.86, states and alleges as follows:

1. Plaintiff obtained a judgment against Defendant _____
(hereinafter, "Defendant"), the exact terms of which appear in the Judgment and Decree
dated _____, in this Court's file and incorporated herein by reference;
2. For purposes of this Application, the above-mentioned Judgment and Decree contains
findings that Defendant engaged in fraudulent, deceptive, and dishonest practices or the
conversion of trust funds;
3. Defendant was duly licensed under Minn. Stat. Ch. 82 at the time (s)he engaged in the
above fraudulent, deceptive, and dishonest practices;
4. Defendant's fraudulent conduct arose directly out of a real estate transaction for which a
license is required;
5. Final judgment against Defendant was docketed on _____
and the amount of judgment as of that date was \$ _____;
6. There are no reviews or appeals of the above-mentioned judgment pending in any court;
7. Plaintiff has made an extensive search for assets of Defendant in an attempt to satisfy the
above judgment, but has been unable to locate any such assets;
8. Plaintiff knows of no other party who would be liable to him in the transaction for which he
seeks recovery from the Real Estate Education, Research, and Recovery Fund;
9. Plaintiff has properly served Defendant with verified copy of this application;
10. Plaintiff is not a spouse of the debtor, or the personal representative of such spouse; and
11. Plaintiff has complied with all the requirements of Minn. Stat. § 82.86 (2012).

NOW, THEREFORE, Plaintiff prays this Court for the following relief:

For an Order directing payment from the Real Estate Education, Research, and Recovery Fund to Plaintiff herein in the amount of \$ _____, said amount being equal to Plaintiff's judgment against Defendant, plus reasonable costs and disbursements, but excluding attorney's fees and pre- and post-judgment interest.

Dated: _____

By: _____
Attorney for Plaintiff

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

VERIFICATION

_____, being first duly sworn on oath, states that he has read the foregoing application, and the same is true and correct to the best of his knowledge and belief.

(Signature)

(Print Name Clearly)

(Day Time Telephone)

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

Subscribed and sworn to before me
this _____ day of _____, 20____.

Notary Public