

**FOR:** Applicants to the Real Estate Education, Research and Recovery Fund  
*Updated September 2019*

**By:** Emily Kelnberger, Legal Analyst & Recovery Fund Administrator  
(651) 539-1454  
[Emily.Kelnberger@state.mn.us](mailto:Emily.Kelnberger@state.mn.us)

**SUBJECT:** Instructions for the Real Estate Education, Research, and Recovery Fund applicants

**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 is to compensate a person who suffered 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.

[Minnesota Statute section 82.86](#) is applicable to the recovery fund. The recovery fund 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.

## How the Fund Works

---

The Commissioner of Commerce has the responsibility to maintain the Real Estate Education, Research and Recovery Fund. According to state law, each licensed real estate broker, salesperson, and closing agent in Minnesota must pay into the recovery fund each year. The Department reviews each application to determine if it meets the statutory requirements. **There is no guarantee a claim will be paid.**

## 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. [Look up licensees yourself using this link](#) or the fund administrator can look up licensees.
- Make sure money is in the fund. Multiple claims against the same agent reduce 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. However, attorney's fees, interest on the loss and on any judgment obtained as a result of the loss, are not eligible.

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 fraud or conversion of funds arising directly out of the licensee’s activities during the time the licensee was licensed.

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.** [Link to County District Courts](#)

2. 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.

## 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 PROCEDURE – INSTRUCTIONS FOR APPLYING TO THE FUND

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

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

- The original completed Application for Accelerated Payment out of the Real Estate Education Research and Recovery Fund. **The applicant must sign the application before a notary public.** [Accelerated Application Form](#) (.pdf)

- 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 or other agreement between you and the real estate licensee.
- Proof of the out-of-pocket lost money must be provided. It is the applicant's responsibility to provide all documentation 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 application and all supporting documents directly to the fund administrator:

Emily Kelnberger  
 Department of Commerce  
 Real Estate Recovery Fund Administrator  
 85 7<sup>th</sup> Place East, Suite 280  
 St. Paul, MN 55101

If the commissioner grants payment to the claimant, before that payment, the claimant is required to assign to the commissioner of commerce the claimant's rights to collect from the licensee the amount of money the claimant receives from the fund.

Payment from the fund may be limited if other claims have been paid against the licensee. Call the fund administrator to determine whether money is available under the accelerated claims procedure. If not, the applicant will need to use the standard recovery procedure.

## **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 standard procedure requires the applicant to apply by December 1. If the court awards payment by December 31, the applicant will receive payment by the following July 15. The commissioner may pay up to \$150,000 per claimant. In addition, the commissioner can pay up to a total of \$250,000 against each licensee.

Additional steps to complete before completing a standard application:

1. schedule a post-judgment hearing, and
2. complete the **Notice of Hearing** for Order Directing Payment out of the Real Estate Education, Research and Recovery Fund form. [Notice of Hearing Form](#) (.pdf)

Under the standard application procedure, once 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 (link above). 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

without the court order. It is important this court hearing be scheduled well before the end of the calendar year.

**The application must be received within one year after the judgment becomes final. The last day applications are accepted using the standard process is December 1<sup>st</sup> in order to receive an awarded payment by the following July 15<sup>th</sup> date. 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 file the paperwork with the licensee, the fund administrator, and the court by following these steps.

1. Notify the licensee by sending **verified** copies of the following completed forms to the real estate licensee at his/her last known address by certified mail.
  - a. A copy of the Application for Order Directing Payment Out of Real Estate Education, Research and Recovery Fund.
  - b. A copy of the Notice of Hearing for Order Directing Payment out of Real Estate Education, Research and Recovery Fund. [Notice of Hearing Form](#) (.pdf)
2. The applicant must assemble and label **all** of the following documents for the fund administrator:
  - a. A copy of the Application for Order Directing Payment Out of Real Estate Education, Research and Recovery Fund. **The applicant must sign the application before a notary public.** Notice of Hearing Form (.pdf)
  - b. A copy of the Notice of Hearing for Order Directing Payment out of Real Estate Education, Research and Recovery Fund. Notice of Hearing Form (.pdf)
  - c. A copy of the Summons and Complaint.
  - d. 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 bankruptcy court.
  - e. A copy of the clerk's notice of docketing of judgment in district court. - (as discussed in the "Before Applying" section above).
  - f. A copy of the contract or other agreement between you and the real estate licensee.
  - g. Proof of the out-of-pocket lost money must be provided. It is the applicant's responsibility to provide all documentation supporting the claimed amount. In many cases, this is the same evidence previously presented to the court.
  - h. Provide an explanation of the situation (if not clearly outlined in the Summons and Complaint).
  - i. Proof the claimant has diligently pursued all potentially liable parties. - (as discussed in the "Before Applying" section above).
  - j. If the real estate licensee filed for bankruptcy, provide documentation.

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

Send all labeled information and copies by **certified mail or personal service** to:

Emily Kelnberger  
Department of Commerce  
Real Estate Recovery Fund Administrator  
85 7<sup>th</sup> Place East, Suite 280  
St. Paul, MN 55101

3. Complete the Affidavit of Compliance and file with the court. [Affidavit of Compliance Form](#) (.pdf)

If the commissioner grants payment to the claimant, the claimant is required to assign to the commissioner of commerce the claimant's rights to collect from the licensee the amount of money the claimant receives from the fund. The claimant will receive an assignment form from the Department. [Standard Application Form](#) (.pdf)

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.

**Serving the Notice of the Hearing.** If the applicant is unable to locate the licensee, service can be accomplished by complying with [Minnesota Statute 45.028](#), subdivision 2 (see below). Bring a copy of this statute with you to court to ensure the court is satisfied with this method of service.

The materials and information available at this web site 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 in this website 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).