

FREQUENTLY ASKED QUESTIONS ABOUT THE REAL ESTATE INSPECTION RECOVERY FUND

NOTE: This information is provided as a public service. The information is general in nature and may not be applicable to a given claim. Each claim is separately evaluated. Please consult your own attorney for specific advice regarding your claim. The Texas Real Estate Commission (TREC) cannot represent you in filing a claim against the Real Estate Inspection Recovery Fund.

1. What is the Real Estate Inspection Recovery Fund (Fund)?

TREC collects fees from its license holders and maintains the money in the Fund. The Fund is used to pay final judgments against persons who were licensed as real estate or professional inspectors at the time of the inspection for a real estate transaction.

2. Can any judgment against a license holder be paid from the Fund?

No. The judgments must be based on conduct in violation of Sections 1102.301 -.305 of Chapter 1102, Texas Occupations Code (Subchapter G). A claim may also be denied if other statutory requirements under Subchapter H of Chapter 1102 are not satisfied.

3. Must I hire an attorney to handle my claim?

No. However, the Fund will pay reasonable attorney's fees if a claim is paid. Most claimants employ an attorney to file the claim, obtain legal documents required for a payment, and represent the claimant if a court hearing is necessary.

4. How does a claimant obtain a payment from the Fund?

The procedures are set out in Subchapter H of Chapter 1102, Texas Occupations Code. Basically, the claimant:

- a. files an Application for Order Directing Payment from the Real Estate Inspector Recovery Fund (Application) with the same court that rendered the judgment after the judgment has become final, a writ of execution has been returned *nulla bona*, and an abstract of judgment has been recorded with the County Clerk;
- b. sends written notice of filing of the Application to the defendant; and
- c. sends a copy of the following documents to TREC:
 - the Application
 - the notice to the defendant
 - the original petition and any amended petitions (file-stamped by the court)
 - the judgment (file-stamped by the court)
 - the writ of execution with the officer's return *nulla bona*; and
 - the recorded abstract of judgment

5. Where do I get an Application?

A model application is available from the TREC website at <http://www.trec.state.tx.us/pdf/faq/insprf-application.pdf>

The model application must be modified to fit the facts of each claim.

6. Do I need to sign the Application in presence of a notary?

Yes.

7. What is a writ of execution?

A writ is an order from the court to any sheriff or constable to attempt to find property of the defendant which may be sold to satisfy the judgment. The clerk of the court that issued the judgment can assist in having a writ issued. For a payment to be made from the Fund, the law requires the writ to be returned *nulla bona*, meaning there is no property to be sold. The officer serving the writ will complete it before returning it to the court.

8. What is an abstract of judgment?

An abstract of judgment is a document prepared by the clerk of the court that rendered the judgment. It summarizes the amount of damages, attorney's fees and costs awarded by the court, as well as any amounts paid or recovered on the judgment. The abstract must be recorded with the County Clerk's office.

9. What kind of conduct is in violation of Subchapter G?

Violations by an inspector include, but are not limited to, acting dishonestly or fraudulently, performing an inspection in a negligent or incompetent manner, or violating TREC rules such as the Standards of Practice for licensed inspectors.

10. How would it be determined that the conduct was in violation of Subchapter G?

The petition in the suit and the judgment awarded by the court must indicate the nature of the license holder's conduct. TREC will review the petition, judgment and other documents requested and determine if the conduct was in violation of Subchapter G.

11. What kind of conduct is not in violation of Subchapter G?

Generally, any conduct that *does not involve* license holders *acting as an inspector for the sale or purchase of real property* will not be a violation of Subchapter G. Examples of conduct that is not considered a violation of Subchapter G would be breach of a contractual obligation, such as a failure to pay a note, or a failed investment joint venture.

12. Is a hearing in court required in order to get paid after filing an Application?

No, some claims are paid without going to court once TREC has had an opportunity to evaluate them to fully understand the transaction and related issues. TREC requests that claimants do not set the application claim for a hearing before the court until TREC notifies the claimant that a hearing will be necessary. A hearing will only be necessary if TREC decides to oppose the claim because the claimant has not satisfied the statutory requirements for payment or if the defendant requests a hearing.

13. What happens once TREC is notified of the claim?

TREC will review the claim and may request additional documents. Following review of all documentation, if the statutory requirements for payment appear to have been met, the claim will be submitted to the Commission for consideration. The Commission may authorize a payment without contest or may instruct the staff to settle or oppose the claim.

14. How is a claim paid if approved?

If the claim is paid without contest, TREC staff will prepare an assignment of judgment and an order directing payment out of the Fund. The claimant or claimant's attorney will be responsible for presenting the order to the court and returning a copy of the signed order and the original assignment of judgment to the Office of the Attorney General, who will forward the documents to TREC.

15. What is the most I can be paid?

The maximum payment is \$12,500 for a single transaction and \$30,000 for all claims against a single license holder.

16. Can the Fund reimburse my attorney fees and court costs?

Yes, as long as the total amount of actual damages, interest, court costs, and reasonable attorney fees paid from the Fund does not exceed the limits outlined in question 15. TREC may request copies of attorney billing statements to review fees for reasonableness and applicability to actual damages allowed to be paid under Subchapter H of Chapter 1102.

17. What if the defendant files a bankruptcy proceeding?

If a bankruptcy proceeding is filed by the defendant, the claimant should make a good faith effort to protect the judgment from being discharged. This means the claimant should seek an order from the bankruptcy court that the judgment is non-dischargeable. Additional attorney fees may be paid from the Fund for the expenses incurred in keeping the judgment from being discharged, up to the payment limits set out in question 15 above. Failure to obtain a non-discharge order does not prevent the Commission from paying a claim.

FOR ADDITIONAL INFORMATION, CONTACT TREC, P.O. BOX 12188,
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