

REAL ESTATE COUNCIL OF ALBERTA: CONSUMER COMPENSATION FUND (ASSURANCE FUND)

Making a Claim Where an Industry Member or Former Industry Member Has Failed to Disburse or Account for Money Held in Trust in accordance with s. 25 of the *Real Estate Act*

DISCLAIMER

This guide is intended to assist those considering making an application for compensation from the Assurance Fund with respect to an industry member's failure to disburse or account for money held in trust while the industry member was transacting in the business of an industry member. It is not intended to cover all possible situations and should not be considered legal advice. Legal advice is recommended.

BACKGROUND

By way of a 2007 amendment to the *Real Estate Act* (Act), section 60.3 of the Act provides an option for the public to make a claim against the Assurance Fund where an industry member has failed to disburse or account for money held in trust in accordance with s. 25 of the Act in respect of a transaction in the business of an industry member. The claim must be made within one year of the date on which the alleged loss or damages occurred. In this situation, a claim may be made directly to Council with no necessity of a Court judgment.

MAKING A CLAIM

In order to make a claim where an industry member has failed to disburse or account for money held in trust in accordance with the Act in respect of a transaction in the business of an industry member, the claimant must provide the Real Estate Council of Alberta (RECA) with a statutory declaration that contains:

- (a) particulars of the basis of the claim; and
- (b) a statement that the applicant did not participate in and was not willfully blind to the actions of the industry member in respect of which the claim is made.

A form for the statutory declaration may be obtained from RECA.

NOTIFICATION OF CLAIM TO INDUSTRY MEMBER OR FORMER INDUSTRY MEMBER

Once a claim has been received from a claimant, RECA will notify the industry member or former industry member of the claim and will provide them with a copy of the claimant's statutory declaration.

INFORMATION GATHERING

The industry member or former industry member will be given an opportunity to comment or respond to the claim in a statutory declaration.

A copy of the industry member's or former industry member's statutory declaration will be provided to the claimant by RECA. The claimant may comment or respond to the information in the industry member's or former industry member's statutory declaration.

The claimant and the industry member or former industry member may be contacted by RECA for the purpose of RECA gathering other information relating to the Assurance Fund claim and/or for other purposes, including Part Three conduct proceedings.

Apart from the claimant and industry member's statutory declarations, because other information gathered may also be used in conduct proceedings against the industry member or former industry member, other information gathered will not be shared with either the claimant or the industry member or former industry member in Assurance Fund processes.

ASSURANCE FUND CLAIM DECISION

Once RECA's director of legal services has determined that adequate information has been gathered for the purposes of assisting Council in its responsibilities pursuant to s.60.3 of the Act, the Assurance Fund claim will be forwarded to Council. A quorum of Council members (seven members of Council) will be convened to consider the s.60.3 Act Assurance Fund claim. (five members of Council will be held in reserve for the purposes of any conduct hearing or appeal.)

The Council will either approve or reject the claim, and the claimant and industry member or former industry member will be advised of Council's decision.

If Council pays the claim, repayment will be sought from the industry member or former industry member. Further, the industry member will not be eligible for industry member licensing until the Assurance Fund claim repayment has been made in full.

Contact Us

If you have additional questions, please call the Real Estate Council of Alberta (RECA) at (403) 228-2954. If you prefer, you can call toll-free from anywhere in Alberta at 1-888-425-2754. You can also write to RECA at:

Attention: Legal Services Administrator
Real Estate Council of Alberta
Suite 350, 4954 Richard Road SW
Calgary, AB T3E 6L1

You can email a question to RECA at info@reca.ca. Be sure to direct your question to Legal Services and include in your heading "Assurance Fund".