

CHAPTER 43-23.2

REAL ESTATE EDUCATION FUND

43-23.2-01. Real estate education, research, and recovery fund - Purposes - Administration. There is hereby created a real estate education, research, and recovery fund, which must be used to provide a fund whereby aggrieved persons may make application for the payment of unsatisfied judgments, and for the furnishing of education and research in the field of real estate for the benefit of licensees, all in accordance with the provisions and limitations contained within this chapter. The fund must be administered by the state real estate commission as provided within this chapter.

43-23.2-02. Fees paid into fund.

1. In addition to the appropriate licensing fees paid by real estate brokers and salespersons, each person licensed for the calendar year 1976 as a real estate broker or salesperson shall pay, at the time of application for such license, a separate fee in the amount of twenty dollars which must be credited into the education, research, and recovery fund. Each person so licensed for the calendar year 1977 shall pay a like fee in the amount of twenty dollars which must be credited into the fund. Thereafter, any person who is licensed as a real estate broker or salesperson for the first time, either for the calendar year 1978 or for a subsequent calendar year, shall pay a fee of twenty dollars at the time of obtaining such license which must be credited into the fund. Except for assessments paid into the fund as provided in subsection 2, any person obtaining a broker's or salesperson's license for the first time which becomes effective for the calendar year 1978 or for a subsequent calendar year, shall pay the fee of twenty dollars into the fund only once.
2. If, on June thirtieth of any year, following the establishment of the real estate education, research, and recovery fund, the amount remaining in the fund is less than sixty thousand dollars, every licensed real estate broker and salesperson, when renewing that individual's license, shall pay, in addition to the annual renewal fee, a sum not to exceed twenty dollars, which must have been determined by the commission to be sufficient to restore the balance in the fund to at least sixty thousand dollars.
3. The commission shall maintain a minimum of sixty thousand dollars in the fund for recovery purposes. Such funds must be invested and reinvested by the commission and interest from said investments must be deposited to the credit of the fund. Sufficient liquidity must be maintained so that moneys are available to satisfy all claims which are processed through the commission by means of the procedures established in this chapter.
4. The commission, in its discretion, may use any moneys in the fund in excess of sixty thousand dollars, regardless of whether it is from education, research, and recovery fund fees or accrued interest thereon, for the following purposes:
 - a. To promote the advancement of education and research in the field of real estate for the benefit of those licensed under chapter 43-23.
 - b. To underwrite educational seminars and other forms of educational projects for the benefit of real estate licensees.
 - c. To establish a real estate chair or courses at North Dakota institutions of higher learning for the purpose of making such courses available to licensees and the general public.
 - d. To contract for a particular educational or research project in the field of real estate to further the purposes of chapter 43-23.

5. The executive director of the commission shall furnish a bond in the amount of sixty thousand dollars, upon such conditions as the commission may prescribe.

43-23.2-03. Claims against fund - Orders for payment. When any aggrieved person obtains a final judgment in any court of competent jurisdiction against any person licensed under chapter 43-23, on grounds of fraudulent, deceptive, or dishonest practices, or conversion of trust funds arising directly out of any act or transaction when the judgment debtor was licensed and performed acts for which a license is required under chapter 43-23, and which act or transaction occurred on or after July 1, 1975, the aggrieved person may, upon obtaining such final judgment, file an application in the court in which the judgment was entered for an order directing payment out of the fund in the amount of the actual and direct loss up to the sum of fifteen thousand dollars, unpaid on the judgment, provided that nothing contained within this chapter may be construed to obligate the fund for more than fifteen thousand dollars per transaction regardless of the number of persons aggrieved or parcels of real estate involved in the transaction. The application must be verified and must be served on the commission and upon the judgment debtor and an affidavit of service filed with the court.

43-23.2-04. Hearings. The court shall conduct a hearing upon the filing of the application, which may be continued, within the discretion of the court, for such period as the court may deem appropriate. At such hearing the aggrieved person must be required to show that:

1. The person is not the spouse of the debtor, or the personal representative of such spouse.
2. The person has complied with all the requirements of this chapter.
3. The person has obtained a judgment as set out in section 43-23.2-03, stating the amount thereof and the amount owing thereon at the date of the application.
4. The person has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets which may be sold or applied in satisfaction of the judgment.
5. By such search, the person has discovered no personal or real property or other assets liable to be sold or applied, or that the person has discovered certain of them, describing them, owned by the judgment debtor and liable to be so applied, and that the person has taken all necessary action and proceedings for the realization thereof, and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized.
6. The person has diligently pursued available remedies against all the judgment debtors and all other persons liable to the person in the transaction for which recovery is sought from the real estate education, research, and recovery fund.
7. The person is making the application not more than one year after the judgment becomes final.

43-23.2-05. Motion for dismissal - Commission may defend action. Whenever the court proceeds upon an application as set forth in this chapter, it shall order payment out of the real estate education, research, and recovery fund only upon a determination that the aggrieved party has a valid claim for relief within the purview of this chapter and has complied with the provisions of this chapter. The judgment is only prima facie evidence of such claim for relief and for the purposes of this chapter is not conclusive. The commission may defend any such action on behalf of the fund and has recourse to all appropriate means of defense and review including examination of witnesses. The commission may move the court at any time to dismiss the application when it appears there are no triable issues and the petition is without merit. The motion may be supported by affidavit of any person or persons having knowledge of the facts,

and may be made on the basis that the petition, and the judgment referred to therein, does not form the basis for a meritorious recovery claim within the purview of this chapter; provided, however, the commission shall give written notice at least ten days before such motion. The commission may, subject to court approval, compromise a claim based upon the application of an aggrieved party. It is not bound by any prior compromise or stipulation of the judgment debtor.

43-23.2-06. Judgment debtor may defend - Default judgments. The judgment debtor may defend any such action on the judgment debtor's own behalf and has recourse to all appropriate means of defense and review, including examination of witnesses. Whenever an applicant's judgment is by default, stipulation, or consent, or whenever the action against the licensee was defended by a trustee in bankruptcy, the applicant has the burden of proving any claim for relief for fraudulent, deceptive, or dishonest practices, or conversion of trust funds. Otherwise, the judgment creates a rebuttable presumption of the fraudulent, deceptive, or dishonest practices, or conversion of trust funds. This presumption is a presumption affecting the burden of producing evidence.

43-23.2-07. Order for payment. If the court finds after the hearing that said claim should be levied against the portion of the fund allocated for the purpose of carrying out the provisions of this chapter, the court shall enter an order directed to the commission requiring payment from the fund of whatever sum it shall find to be payable upon the claim pursuant to the provisions of and in accordance with the limitations contained in this chapter.

43-23.2-08. Limitation of payment - Pro rata distribution. Notwithstanding any other provision of this chapter, the liability of that portion of the fund allocated for the purposes of this chapter may not exceed fifteen thousand dollars for any one licensee. If the fifteen thousand dollar liability of the fund is insufficient to pay in full the valid claims of all aggrieved persons by whom claims have been filed against any one licensee, such fifteen thousand dollars must be distributed among them in the ratio that their respective claims bear to the aggregate of such valid claims or in such other manner as the court deems equitable. Distribution of such moneys must be among the persons entitled to share therein, without regard to the order or priority in which their respective judgments may have been obtained or their claims have been filed. Upon petition of the commission the court may require all claimants and prospective claimants against one licensee to be joined in one action, to the end that the respective rights of all such claimants to the fund may be equitably adjudicated and settled.

43-23.2-09. Repayment to fund. Should the commission pay from the fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensed broker or salesperson, the license of the broker or salesperson must be automatically suspended upon the effective date of an order by the court as set forth herein authorizing payment from the fund. No such broker or salesperson may be granted reinstatement until having repaid in full, plus interest at the rate of four percent a year, the amount paid from the fund on that person's account. A discharge in bankruptcy does not relieve a person from the penalties and disabilities provided in this chapter.

43-23.2-10. Claims satisfied in order of filing. If, at any time, the money deposited in the fund and allocated for purposes other than real estate education and research is insufficient to satisfy any duly authorized claim or portion thereof, the commission shall, when sufficient money has been deposited in the fund, satisfy such unpaid claims or portions thereof, in the order that such claims or portions thereof were originally filed, plus accumulated interest at the rate of four percent a year.

43-23.2-11. Deposits by commission. Any sums received by the commission pursuant to any provision of this chapter must be deposited in a federally insured depository in this state, and credited to the real estate education, research, and recovery fund, and said sums must be allocated exclusively for the purposes provided in this chapter.

43-23.2-12. Subrogation rights of commission. When, upon the order of the court, the commission has paid from the fund any sum to the judgment creditor, the commission is

subrogated to all of the rights of the judgment creditor to the extent of the amount so paid and the judgment creditor shall assign all the judgment creditor's right, title, and interest in the judgment to the extent of the amount so paid to the commission and any amount and interest so recovered by the commission on the judgment must be deposited in the fund.

43-23.2-13. Disciplinary action by commission. Nothing contained in this chapter limits the authority of the commission to take disciplinary action against any licensee under other provisions of chapter 43-23, nor does the repayment in full of all obligations to the fund by any licensee nullify or modify the effect of any other disciplinary proceeding brought pursuant to the provisions of chapter 43-23.