

**A TRUE STORY:  
BUYERS DUPED BY DISHONESTY  
RECEIVE MONETARY RELIEF**

Following is an example of one of the many ways one can be victimized by a dishonest licensee. This is a true story taken from an application filed with the Recovery Account that resulted in payment to the victims.

The owners of property located in Southern California entered into an exclusive listing agreement with a broker. The property was advertised as a large five bedroom three bath home with a garage that had been converted to guest quarters. The advertisement stated that the property was in good condition and excellent for a large family.

When the buyers, who were looking for a property to accommodate their family of five children, saw the advertisement, they contacted the broker. The broker introduced the buyers to a real estate salesperson. Upon inspecting the property, the buyers were assured by the salesperson that the roof was new and had no leaks, that all additions had been built to code and with the proper permits, that the heating, plumbing and electrical systems were in good working condition, and that only one master release bar was needed to operate security bars on all the windows. Based upon these representations, the buyers purchased the property for \$155,000.

Throughout negotiations, the buyers had requested a copy of what is known as the transfer disclosure statement from the salesperson. The buyers were not provided with a copy until one day after the close of escrow. Upon reviewing the disclosure statement, the buyers discovered that the roof was actually ten years old, that the garage conversion had been done without the proper permits, and that the third bathroom was not properly constructed. After moving into the house, the buyers further discovered that the roof had been leaking to such an extent that it had caused severe damage to the interior of the property including the

**A TRUE STORY continued**

collapse of one of the ceilings. Because the plumbing, heating and electrical systems had not been installed according to the building codes, the buyers received "red tag" notices from the utility companies preventing them from operating the heaters. Finally, the buyers were told by building inspectors that the security bars could not remain on the windows without a separate release bar for each window.

The property was inspected by several contractors who verified the unlivable condition of the property. The contractors' estimates were all in excess of \$40,000 to repair the property. The buyers executed a Notice of Rescission requesting the purchase of the property be rescinded. After failing to receive any satisfaction, the buyers filed a lawsuit against the sellers, the Broker and the salesperson in superior court alleging fraud, negligence and breach of fiduciary duty. The buyers settled with the broker. Judgments were entered against the sellers and the salesperson in the amount of \$50,000. The court found that the defendants defrauded the buyers by intentionally misrepresenting the condition of the property, concealing known defects, and failing to provide a disclosure statement.

The buyers tried unsuccessfully to enforce their judgment against the sellers and the salesperson. They then filed an application for payment from the Recovery Account. Payment of the application was granted in the amount of \$20,000, the statutory maximum allowable for one transaction. The salesperson's real estate license was indefinitely suspended as a result of the payment from the Recovery Account. The suspension of the salesperson's real estate license cannot be lifted until the Recovery Account is reimbursed the amount paid in full plus 10% interest. In addition, the salesperson's real estate license has been revoked as a result of a disciplinary enforcement action filed by the Department. 🐾

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**REAL  
ESTATE  
RECOVERY  
ACCOUNT**



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**JEFF DAVI**  
Commissioner  
Department of Real Estate

# REAL ESTATE RECOVERY ACCOUNT

The California Department of Real Estate is the agency within California state government that issues real estate broker and salesperson licenses and public reports to subdividers of California real property. The Department also has the authority to revoke or suspend a license for violations of the Real Estate Law (Section 10000 et seq., of the Business and Professions Code). In addition, the Department administers a victim's fund, known as the Real Estate Recovery Account.

The Recovery Account became operative on July 1, 1964 and is funded from a portion of the fees paid by licensees. It enables a person who has been defrauded or had trust funds converted by a real estate licensee in a transaction requiring that license, and who satisfies specified requirements (California Business and Professions Code Section 10471 et seq.) to recover at least some of his or her actual loss when the licensee has insufficient personal assets to pay for that loss.

Since its inception in 1964, the number of applications filed and paid from the Recovery Account has fluctuated. A total of approximately 3,927 applications have been filed between July 1964 and June 2003 and over 54% of all claims filed have been paid, in full or in part. The annual aggregate amount of claims paid has increased from \$215,000 at the end of fiscal year 1977-78 to a high of \$2,277,661 at the end of fiscal year 1996-97. Since 1964, the Department has paid approximately \$34,160,000 to members of the public from the Recovery Account.

In general, the requirements for payment from the Recovery Account include obtaining a final civil judgment or arbitration award, or a criminal restitution order against the licensee. The judgment, award or

order must be based on intentional fraud or conversion of trust funds in connection with a transaction requiring a real estate license. The victim must make a reasonable search for the licensee's assets, and, if any, a reasonable effort to collect on the judgment, arbitration award or restitution order from those assets to satisfy the judgment. In addition, the victim must name as a defendant and make a reasonable effort to collect from all other parties involved in the transaction that may be liable to and able to pay the victim.

An application for payment must be submitted to the Department within one year after the judgment, award or order becomes final. A copy of the application and required notice must be served on the judgment debtor/licensee, who is given an opportunity to respond to the allegations in the application and object to payment of the claim.

Once filed, the application is reviewed to determine if all required information has been submitted so that a decision can be made whether or not to pay. That review normally involves a series of letters between the Department and the applicant, resolving questions and obtaining necessary supporting documentation. The applicant will be notified in writing of the initial deficiencies in the application within 15 days of its receipt by the Department.

Once the application becomes complete, the Department must issue a decision granting or denying payment within 90 days. If the application is granted, the applicant will be paid an amount for his or her actual and direct loss in a transaction, up to a statutory maximum of \$20,000 per transaction, with a possible total aggregate maximum of \$100,000 per licensee.

If an application is denied, the applicant has the right to refile the claim in court. When there is a decision to pay, the judgment debtor/licensee has the right to file a writ of mandamus to challenge the Department of Real Estate's decision to pay (payment results in the automatic suspension of his or her real estate license until the amount paid is repaid in full plus 10% interest).

In cases where the aggregate amount of multiple claims against a licensee exceeds the \$100,000 licensee limit, the Department must file an action in court to prorate payment among all eligible claimants. Whenever a Recovery Account application matter ends up in court (a refiled application, a writ or a proration), the Department is represented by the California Attorney General's office to defend the decision to deny or pay the claim or to properly distribute the funds among multiple applicants.

## HOW TO OBTAIN AN APPLICATION FOR PAYMENT

Applications and forms pertaining to the Recovery Account are available on the DRE Web site at [www.dre.ca.gov](http://www.dre.ca.gov) and may also be obtained by writing to:

Department of Real Estate  
Real Estate Recovery Account  
P.O. Box 187007  
Sacramento, CA 95818