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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 4. REAL ESTATE [10000 - 11506] (*Division 4 added by Stats. 1943, Ch. 127.*)

PART 1. LICENSING OF PERSONS [10000 - 10580] (*Part 1 added by Stats. 1943, Ch. 127.*)

CHAPTER 6.5. Real Estate Recovery Program [10470 - 10481] (*Chapter 6.5 added by Stats. 1985, Ch. 690, Sec. 3.*)

10470. If, on June 30 of any year, the balance remaining in the Consumer Recovery Account in the Real Estate Fund is less than two hundred thousand dollars (\$200,000), every licensed broker, when obtaining or renewing any broker license within four years thereafter, shall pay, in addition to the license fee, a fee of seven dollars (\$7); every licensed salesperson, when obtaining or renewing such license within four years thereafter, shall pay, in addition to the license fee, a fee of four dollars (\$4); and every person holding a prepaid rental listing service license, when obtaining or renewing that license within two years thereafter, shall pay, in addition to the application fee, a fee of one dollar (\$1). The fees from the broker, salesperson, and prepaid rental listing service licensees shall be paid into the State Treasury and credited to the Consumer Recovery Account.

(*Amended by Stats. 2013, Ch. 436, Sec. 6. (SB 269) Effective January 1, 2014.*)

10470.1. (a) In addition to the amount paid into the Consumer Recovery Account as set forth in Section 10450.6, the Real Estate Commissioner may authorize the transfer from the Real Estate Fund to the Consumer Recovery Account of any amounts as are deemed necessary.

(b) If the balance remaining in the Consumer Recovery Account contains more than four hundred thousand dollars (\$400,000), the commissioner may authorize the transfer of all or part of the surplus amount into the Real Estate Fund.

(c) The commissioner may authorize the return to the Consumer Recovery Account of all or any amount previously transferred to the Real Estate Fund under this section.

(*Amended by Stats. 2011, Ch. 712, Sec. 17. (SB 706) Effective January 1, 2012.*)

10471. (a) When an aggrieved person obtains (1) a final judgment in a court of competent jurisdiction, including, but not limited to, a criminal restitution order issued pursuant to subdivision (f) of Section 1202.4 of the Penal Code or Section 3663 of Title 18 of the United States Code, or (2) an arbitration award that includes findings of fact and conclusions of law rendered in accordance with the rules established by the American Arbitration Association or another recognized arbitration body, and in accordance with Sections 1281 to 1294.2, inclusive, of the Code of Civil Procedure when applicable, and when the arbitration award has been confirmed and reduced to judgment pursuant to Section 1287.4 of the Code of Civil Procedure, against a defendant based upon the defendant's fraud, misrepresentation, or deceit, made with intent to defraud, or conversion of trust funds, arising directly out of any transaction in which the defendant, while licensed under this part, performed acts for which a real estate license or a prepaid rental listing service license was required, the aggrieved person may, upon the judgment becoming final, file an application with the Department of Real Estate for payment from the Consumer Recovery Account, within the limitations specified in Section 10474, of the amount unpaid on the judgment that represents an actual and direct loss to the claimant in the transaction. As used in this chapter, "court of competent jurisdiction" includes the federal courts, but does not include the courts of another state.

(b) The application shall be delivered in person, by certified mail, or electronically in a manner prescribed by the department, to an office of the department not later than one year after the judgment has become final.

(c) The application shall be made on a form prescribed by the department, verified by the claimant, and shall include the following:

- (1) The name and address of the claimant.
- (2) If the claimant is represented by an attorney, the name, business address, and telephone number of the attorney.
- (3) The identification of the judgment, the amount of the claim and an explanation of its computation.

(4) A detailed narrative statement of the facts in explanation of the allegations of the complaint upon which the underlying judgment is based.

(5) (A) Except as provided in subparagraph (B), a statement by the claimant, signed under penalty of perjury, that the complaint upon which the underlying judgment is based was prosecuted conscientiously and in good faith. As used in this section, "conscientiously and in good faith" means that no party potentially liable to the claimant in the underlying transaction was intentionally and without good cause omitted from the complaint, that no party named in the complaint who otherwise reasonably appeared capable of responding in damages was dismissed from the complaint intentionally and without good cause, and that the claimant employed no other procedural means contrary to the diligent prosecution of the complaint in order to seek to qualify for the Consumer Recovery Account.

(B) For the purpose of an application based on a criminal restitution order, all of the following statements by the claimant:

(i) The claimant has not intentionally and without good cause failed to pursue any person potentially liable to the claimant in the underlying transaction other than a defendant who is the subject of a criminal restitution order.

(ii) The claimant has not intentionally and without good cause failed to pursue in a civil action for damages all persons potentially liable to the claimant in the underlying transaction who otherwise reasonably appeared capable of responding in damages other than a defendant who is the subject of a criminal restitution order.

(iii) The claimant employed no other procedural means contrary to the diligent prosecution of the complaint in order to seek to qualify for the Consumer Recovery Account.

(6) The name and address of the judgment debtor or, if not known, the names and addresses of persons who may know the judgment debtor's present whereabouts.

(7) The following representations and information from the claimant:

(A) That the claimant is not a spouse of the judgment debtor nor a personal representative of the spouse.

(B) That the claimant has complied with all of the requirements of this chapter.

(C) That the judgment underlying the claim meets the requirements of subdivision (a).

(D) A description of searches and inquiries conducted by or on behalf of the claimant with respect to the judgment debtor's assets liable to be sold or applied to satisfaction of the judgment, an itemized valuation of the assets discovered, and the results of actions by the claimant to have the assets applied to satisfaction of the judgment.

(E) That the claimant has diligently pursued collection efforts against all judgment debtors and all other persons liable to the claimant in the transaction that is the basis for the underlying judgment.

(F) That the underlying judgment and debt have not been discharged in bankruptcy, or, in the case of a bankruptcy proceeding that is open at or after the time of the filing of the application, that the judgment and debt have been declared to be nondischargeable.

(G) That the application was submitted to the department, as prescribed in subdivision (b), no later than one year after the underlying judgment became final.

(d) If the claimant is basing the application upon a judgment against a salesperson, and the claimant has not obtained a judgment against that salesperson's employing broker, if any, or has not diligently pursued the assets of that broker, the application shall be denied for failure to diligently pursue the assets of all other persons liable to the claimant in the transaction unless the claimant can demonstrate, by clear and convincing evidence, either that the salesperson was not employed by a broker at the time of the transaction, or that the salesperson's employing broker would not have been liable to the claimant because the salesperson was acting outside the scope of their employment by the broker in the transaction.

(e) The application form shall include detailed instructions with respect to documentary evidence, pleadings, court rulings, the products of discovery in the underlying litigation, and a notice to the applicant of their obligation to protect the underlying judgment from discharge in bankruptcy, to be appended to the application.

(f) An application for payment from the Consumer Recovery Account that is based on a criminal restitution order shall comply with all of the requirements of this chapter. For the purpose of an application based on a criminal restitution order, the following terms have the following meanings:

(1) "Judgment" means the criminal restitution order.

(2) "Complaint" means the facts of the underlying transaction upon which the criminal restitution order is based.

(3) "Judgment debtor" means any defendant who is the subject of the criminal restitution order.

(Amended by Stats. 2023, Ch. 510, Sec. 90. (SB 887) Effective January 1, 2024.)

10471.1. (a) The claimant shall serve a copy of the notice prescribed in subdivision (e) together with a copy of the application upon the judgment debtor by personal service, by certified mail, or by publication, as set forth in subdivision (b).

(b) If the judgment debtor holds an unexpired and unrevoked license issued by the department, service of the notice and a copy of the application may be made by certified mail addressed to the judgment debtor at the latest business or residence address on file with the department. If the judgment debtor does not hold an unexpired and unrevoked license issued by the department and personal service cannot be effected through the exercise of reasonable diligence, the claimant shall serve the judgment debtor by one publication of the notice in each of two successive weeks in a newspaper of general circulation published in the county in which the judgment debtor was last known to reside.

(c) If the application is served upon the judgment debtor by certified mail, service is complete five days after mailing if the place of address is within the State of California, 10 days after mailing if the place of address is outside the State of California but within the United States, and 20 days after mailing if the place of address is outside the United States. Personal service is complete on the date of service. Service by publication is complete upon completion of the second week of publication.

(d) If a judgment debtor wishes to contest payment of an application by the commissioner, the debtor shall mail or deliver a written response to the application addressed to the department at its headquarters office within 30 days after service of the notice and application, and shall mail or deliver a copy of the response to the claimant. If a judgment debtor fails to mail or deliver a timely response, the debtor shall have waived their right to present objections to payment.

(e) The notice served upon the judgment debtor shall include the following statement:

"NOTICE: Based upon a judgment entered against you in favor of (name of claimant), application for payment from the Consumer Recovery Account of the Real Estate Fund is being made to the Department of Real Estate.

"If payment is made from the Consumer Recovery Account, all licenses and license rights that you have under the Real Estate Law will be automatically suspended on the date of payment and cannot be reinstated until the Consumer Recovery Account has been reimbursed for the amount paid plus interest at the prevailing rate.

"If you wish to contest payment by the Real Estate Commissioner, you must file a written response to the application addressed to the Department of Real Estate at _____ within 30 days after mailing, delivery, or publication of this notice and mail or deliver a copy of that response to the claimant. If you fail to do so, you will have waived your right to present your objections to payment."

(f) If a judgment debtor fails to mail or deliver a written response to the application with the department within 30 days after personal service, mailing, or final publication of the notice, the judgment debtor shall not thereafter be entitled to notice of any action taken or proposed to be taken by the commissioner with respect to the application.

(Amended by Stats. 2021, Ch. 431, Sec. 29. (SB 800) Effective January 1, 2022.)

10471.2. (a) If the commissioner determines that the application as submitted by the claimant fails to comply substantially with the requirements of Section 10471 or with the requirements of a regulation adopted by the commissioner under authority of Section 10080, the commissioner shall, within 15 days after receipt of the application, mail an itemized list of deficiencies to the claimant.

(b) The time within which the commissioner is required to act under Section 10471.3 shall be measured from the date of receipt by the department of an application that is substantially complete. In the event of an irreconcilable dispute between the claimant and the commissioner on the question of whether the application is substantially complete, the claimant may immediately file the claim with the court pursuant to Section 10472.

(Added by Stats. 1985, Ch. 690, Sec. 3. Operative January 1, 1987, by Sec. 5 of Ch. 690.)

10471.3. (a) The commissioner shall render a final written decision on the application within 90 days after a completed application has been received unless the claimant agrees in writing to extend the time within which the commissioner may render a decision.

(b) The commissioner may deny or grant the application or may enter into a compromise with the claimant to pay less in settlement than the full amount of the claim. If the claimant refuses to accept a settlement of the claim offered by the commissioner, the written decision of the commissioner shall be to deny the claim or it shall be deemed denied if a written decision is not rendered within the

time specified in subdivision (a). Evidence of settlement offers and discussions between the commissioner and the claimant shall not be competent evidence in judicial proceedings undertaken by the claimant pursuant to Section 10472.

(Amended by Stats. 2011, Ch. 712, Sec. 20. (SB 706) Effective January 1, 2012.)

10471.4. In its consideration and investigation of an application, the department shall have recourse to all appropriate means of investigation and discovery available to it under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(Added by Stats. 1985, Ch. 690, Sec. 3. Operative January 1, 1987, by Sec. 5 of Ch. 690.)

10471.5. (a) The commissioner shall give notice of a decision rendered with respect to the application to the claimant and to a judgment debtor who has filed a timely response to the application in accordance with Section 10471.1.

(b) If the application is denied, the notice to the claimant and judgment debtor shall include the following:

"Claimant's application has been denied. If the claimant wishes to pursue the application in court, the claimant must file the application as follows in a superior court of this state not later than six months after receipt of this notice, pursuant to Section 10472 of the Business and Professions Code. If the underlying judgment is a California state court judgment, the application shall be filed in the court in which the underlying judgment was entered. If the underlying judgment is a federal court judgment, the application shall be filed in the superior court of any county within California that would have been a proper venue if the underlying lawsuit had been filed in a California state court, or in the Superior Court of the County of Sacramento."

(c) If the decision of the commissioner is to make a payment to the claimant out of the Consumer Recovery Account, the following notice shall be given to the judgment debtor along with a copy of the decision of the commissioner:

"The decision of the Real Estate Commissioner on the application of _____ is to pay \$_____ from the Consumer Recovery Account. A copy of that decision is enclosed.

"Pursuant to Section 10475 of the Business and Professions Code, all of your licenses and license rights under the Real Estate Law will be suspended effective on the date of the payment, and you will not be eligible for reinstatement of any license issued under authority of the Real Estate Law until you have reimbursed the Consumer Recovery Account for this payment plus interest at the prevailing legal rate."

"If you desire a judicial review of the suspension of your licenses and license rights, you may petition the superior court for a writ of mandamus. If the underlying judgment is a California state court judgment, the petition shall be filed in the court in which the judgment was entered. If the underlying judgment is a federal court judgment, the petition shall be filed in the superior court of any county within California that would have been a proper venue if the underlying lawsuit had been filed in a California state court, or in the Superior Court of the County of Sacramento. To be timely, the petition must be filed with the court within 30 days of receipt of this notice."

(Amended by Stats. 2011, Ch. 712, Sec. 21. (SB 706) Effective January 1, 2012.)

10471.6. If, at any time prior to the rendering of a decision on an application, the commissioner makes a preliminary determination that the aggregate valid applications of all aggrieved persons against that licensee are likely to exceed the limits of liability in Section 10474, the commissioner shall, in lieu of further administrative proceedings, initiate a proration proceeding pursuant to Section 10474.5 in a superior court of any county in this state that would be a proper court for the filing of a denied application or writ of mandamus pursuant to Section 10471.5.

(Amended by Stats. 2001, Ch. 389, Sec. 7. Effective January 1, 2002.)

10472. (a) A claimant against whom the commissioner has rendered a decision denying an application pursuant to Section 10471 may, within six months after the mailing of the notice of the denial, file a verified application in superior court for an Order Directing Payment Out of the Consumer Recovery Account based upon the grounds set forth in the application to the commissioner. If the underlying judgment is a California state court judgment, the application shall be filed in the court in which the underlying judgment was entered. If the underlying judgment is a federal court judgment, the application shall be filed in the superior court of any county within California that would have been a proper venue if the underlying lawsuit had been filed in a California state court, or in the Superior Court of the County of Sacramento.

(b) A copy of the verified application shall be served upon the commissioner and upon the judgment debtor. A certificate or affidavit of service shall be filed by the claimant with the court. Service on the commissioner may be made by certified mail addressed to the headquarters office of the bureau. Service upon a judgment debtor may be made in accordance with Section 10471.1. The notice served upon the judgment debtor shall read as follows:

"NOTICE: An application has been filed with the court for a payment from the Consumer Recovery Account that was previously denied by the Real Estate Commissioner.

"If the Bureau of Real Estate makes a payment from the Consumer Recovery Account pursuant to court order, all of your licenses and license rights under the Real Estate Law will be automatically suspended until the Consumer Recovery Account has been reimbursed for the amount paid plus interest at the prevailing rate.

"If you wish to defend in court against this application, you must file a written response with the court within 30 days after having been served with a copy of the application. If you do not file a written response, you will have waived your right to defend against the application."

(Amended by Stats. 2013, Ch. 352, Sec. 34. (AB 1317) Effective September 26, 2013. Operative July 1, 2013, by Sec. 543 of Ch. 352.)

10472.1. (a) The commissioner and the judgment debtor shall each have 30 days after being served with the application in which to file a written response. The court shall thereafter set the matter for hearing upon the petition of the claimant. The court shall grant a request of the commissioner for a continuance of as much as 30 days and may, upon a showing of good cause by any party, continue the hearing as the court deems appropriate.

(b) The claimant shall have the burden of proving compliance with the requirements of Section 10471 by competent evidence at an evidentiary hearing. The claimant shall be entitled to a de novo review of the merits of the application as contained in the administrative record.

(c) If the judgment debtor fails to file a written response to the application, the application may be compromised or settled by the commissioner at any time during the court proceedings and the court shall, upon joint petition of the claimant and the commissioner, issue an order directing payment out of the Consumer Recovery Account.

(Amended by Stats. 2011, Ch. 712, Sec. 23. (SB 706) Effective January 1, 2012.)

10473. Whenever the court proceeds upon an application under Section 10472, it shall order payment out of the Consumer Recovery Account only upon a determination that the aggrieved party has a valid cause of action within the purview of Section 10471, and has complied with Section 10472.

The commissioner may defend any such action on behalf of the Consumer Recovery Account and shall have recourse to all appropriate means of defense and review, including examination of witnesses and the right to relitigate any issues material and relevant in the proceeding against the Consumer Recovery Account which were determined in the underlying action on which the judgment in favor of the applicant was based. If the judgment in favor of the applicant was by default, stipulation, consent, or pursuant to Section 594 of the Code of Civil Procedure, or whenever the action against the licensee was defended by a trustee in bankruptcy, the applicant shall have the burden of proving that the cause of action against the licensee was for fraud, misrepresentation, deceit, or conversion of trust funds. Otherwise, the judgment shall create a rebuttable presumption of the fraud, misrepresentation, deceit, or conversion of trust funds by the licensee, which presumption shall affect the burden of producing evidence.

The commissioner 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 Section 10471; provided, however, the commissioner shall give written notice at least 10 days before the motion.

The commissioner may, subject to court approval, compromise a claim based upon the application of an aggrieved party. The commissioner shall not be bound by any compromise or stipulation of the judgment debtor.

(Amended by Stats. 2011, Ch. 712, Sec. 24. (SB 706) Effective January 1, 2012.)

10473.1. The judgment debtor may defend an action against the Consumer Recovery Account on his or her own behalf and shall have recourse to all appropriate means of defense and review, including examination of witnesses. All matters, including, but not limited to, the issues of fraud, misrepresentation, deceit, or conversion of trust funds, finally adjudicated in the underlying action are conclusive as to the judgment debtor and the applicant in the proceeding against the Consumer Recovery Account.

(Amended by Stats. 2011, Ch. 712, Sec. 25. (SB 706) Effective January 1, 2012.)

10474. Notwithstanding any other provision of this chapter and regardless of the number of persons aggrieved or parcels of real estate involved in a transaction or the number of judgments against a licensee, the liability of the Consumer Recovery Account shall not exceed the following amounts:

(a) Except as provided in subdivision (b), causes of action which occurred on or after January 1, 1980, twenty thousand dollars (\$20,000) for any one transaction and one hundred thousand dollars (\$100,000) for any one licensee.

(b) For applications for payment from the Consumer Recovery Account filed on or after January 1, 2009, fifty thousand dollars (\$50,000) for any one transaction and two hundred fifty thousand dollars (\$250,000) for any one licensee.

(c) When multiple licensed real estate personnel are involved in a transaction and the individual conduct of two or more of the licensees results in a judgment meeting the requirements of subdivision (a) of Section 10471, the claimant may seek recovery from the Consumer Recovery Account based on the judgment against any of the licensed real estate personnel, subject to the limitations of this section and subparagraph (E) of paragraph (7) of subdivision (c) of Section 10471.

(Amended by Stats. 2011, Ch. 712, Sec. 26. (SB 706) Effective January 1, 2012.)

10474.5. If the amount of liability of the Consumer Recovery Account as provided for in Section 10474 is insufficient to pay in full the valid claims of all aggrieved persons by whom claims have been filed against any one licensee, the amount shall be distributed among them in the ratio that their respective claims bear to the aggregate of the valid claims, or in any other manner as the court deems equitable. Distribution of any moneys shall be among the persons entitled to share therein, without regard to the order of priority in which their respective judgments may have been obtained or their claims have been filed. Upon petition of the commissioner, 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 claimants to the Consumer Recovery Account may be equitably adjudicated and settled.

(Amended by Stats. 2011, Ch. 712, Sec. 27. (SB 706) Effective January 1, 2012.)

10475. Should the commissioner pay from the Consumer Recovery Account any amount in settlement of a claim or toward satisfaction of a judgment against a licensed broker or salesperson or a person holding a prepaid rental listing service license, the license of the broker or salesperson or prepaid rental listing service licensee shall be automatically suspended upon the date of payment from the Consumer Recovery Account. No broker or salesperson or prepaid rental listing service licensee shall be granted reinstatement until he or she has repaid in full, plus interest at the prevailing legal rate applicable to a judgment rendered in any court of this state, the amount paid from the Consumer Recovery Account on his or her account. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this chapter.

(Amended by Stats. 2013, Ch. 436, Sec. 8. (SB 269) Effective January 1, 2014.)

10476. If, at any time, the money deposited in the Consumer Recovery Account is insufficient to satisfy any duly authorized claim or portion thereof, the commissioner shall, when sufficient money has been deposited in the Consumer Recovery Account, satisfy the unpaid claims or portions thereof, in the order that the claims or portions thereof were originally filed, plus accumulated interest at the rate of 4 percent a year.

(Amended by Stats. 2011, Ch. 712, Sec. 29. (SB 706) Effective January 1, 2012.)

10477. Any sums received by the commissioner pursuant to any provisions of this chapter shall be deposited in the State Treasury and credited to the Consumer Recovery Account.

(Amended by Stats. 2011, Ch. 712, Sec. 30. (SB 706) Effective January 1, 2012.)

10478. It shall be unlawful for any person or the agent of any person to file with the commissioner any notice, statement, or other document required under the provisions of this chapter which is false or untrue or contains any willful, material misstatement of fact. Such conduct shall constitute a public offense punishable by imprisonment in the county jail for a period of not more than one year or a fine of not more than one thousand dollars (\$1,000), or both.

(Repealed and added by Stats. 1985, Ch. 690, Sec. 3. Operative January 1, 1987, by Sec. 5 of Ch. 690.)

10479. When, the commissioner has paid from the Consumer Recovery Account any sum to the judgment creditor, the commissioner shall be subrogated to all of the rights of the judgment creditor and the judgment creditor shall assign all of his or her right, title, and interest in the judgment to the commissioner and any amount and interest so recovered by the commissioner on the judgment shall be deposited to the Consumer Recovery Account.

(Amended by Stats. 2011, Ch. 712, Sec. 31. (SB 706) Effective January 1, 2012.)

10480. The failure of an aggrieved person to comply with all of the provisions of this chapter shall constitute a waiver of any rights hereunder.

(Repealed and added by Stats. 1985, Ch. 690, Sec. 3. Operative January 1, 1987, by Sec. 5 of Ch. 690.)

10481. Nothing in this chapter limits the authority of the commissioner to take disciplinary action against any licensee for a violation of the Real Estate Law, or of Chapter 1 (commencing with Section 11000) of Part 2, or of the rules and regulations of the commissioner; nor shall the repayment in full of all obligations to the Consumer Recovery Account by any licensee nullify or modify the effect of any other disciplinary proceeding brought pursuant to the Real Estate Law.

(Amended by Stats. 2011, Ch. 712, Sec. 32. (SB 706) Effective January 1, 2012.)

