



Ohio Revised Code

Section 4763.16 Real estate appraiser recovery fund.

Effective: December 21, 2007

Legislation: House Bill 24 - 127th General Assembly

(A) The real estate appraiser recovery fund is hereby created in the state treasury, to be administered by the superintendent of real estate. The treasurer of state shall credit to the fund amounts collected by the superintendent as prescribed in this section and interest earned on the assets of the fund. The superintendent shall ascertain the balance of the fund as of the first day of October of each year. If that balance is less than five hundred thousand dollars, the director of budget and management, upon the request of the superintendent, may transfer from the real estate appraiser operating fund to the real estate appraiser recovery fund a sum as will bring the real estate appraiser recovery fund to that amount.

(B) When any person obtains a final judgment in any court of competent jurisdiction against a certificate holder, registrant, or licensee, based upon conduct that is in violation of this chapter or the rules adopted under it, which conduct occurred on or after the date of their certification, registration, or licensure, and that is associated with an act or transaction of a certificate holder, registrant, or licensee specified in this chapter, that person may file a verified complaint, as described in this division, in the Franklin county court of common pleas for an order directing payment out of the real estate appraiser recovery fund of the portion of the judgment that remains unpaid and that represents the actual and direct loss of the person for the act or transaction upon which the underlying judgment was based, and court costs, if awarded in the underlying judgment, provided that no person shall receive more than ten thousand dollars from the fund for any one judgment. A bonding or insurance company or any partnership, corporation, or association that uses any tool to develop a valuation of real property for purposes of a loan or that employs, retains, or engages as an independent contractor a person licensed, registered, or certified as a real estate appraiser in its usual or occasional operations may not seek an order directing, and is not eligible for, payment out of the fund. Punitive or exemplary damages are not recoverable from the fund.

The complaint shall specify the nature of the act or transaction upon which the underlying judgment was based, the activities of the applicant in pursuit of remedies available under law for the collection of judgments, and the amount of the fee paid by the applicant to the certificate holder, registrant, or



licensee. The applicant shall attach to the complaint a copy of each pleading and order in the underlying court action.

The Franklin county court of common pleas shall order the superintendent to make payments out of the fund when the person seeking the order has shown all of the following:

- (1) The person has obtained a judgment, as provided in this division;
- (2) All appeals from the judgment have been exhausted and the person has given notice to the superintendent, as required by division (C) of this section;
- (3) The person is not a spouse of the certificate holder, registrant, or licensee, or the personal representative of the spouse;
- (4) The person has diligently pursued the person's remedies against all the certificate holders, registrants, licensees, and all other persons liable to the person in the transaction for which the person seeks recovery from the fund;
- (5) The person is making a complaint not more than one year after termination of all proceedings, including appeals, in connection with the judgment.

(C) A person who applies to the Franklin county court of common pleas for an order directing payment out of the fund shall file notice of the complaint with the superintendent. The superintendent shall send notice to the affected certificate holder, registrant, or licensee, where possible. The superintendent may defend the action on behalf of the fund and shall have recourse to all appropriate means of defense and review, including examination of witnesses. The superintendent may move the court at any time to dismiss the complaint when it appears there are no triable issues and the complaint is without merit. The motion may be supported by affidavit of any person having knowledge of the facts and may be made on the basis that the complaint, including the judgment referred to in the complaint, does not form the basis for a meritorious recovery claim. The superintendent may, subject to court approval, compromise a claim based upon the complaint of an aggrieved party. The superintendent is not bound by any prior compromise or stipulation of the certificate holder, registrant, or licensee. Upon petition of the superintendent,



the court may require all claimants and prospective claimants against one certificate holder, registrant, or 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.

(D) If the superintendent pays from the fund any amount in settlement of a claim or toward satisfaction of a judgment against a certificate holder, registrant, or licensee, the certificate, registration, or license of the certificate holder, registrant, or licensee automatically is suspended upon the date of payment from the fund. No certificate, registration, or license that has been suspended pursuant to this division shall be reinstated until the certificate holder, registrant, or licensee has repaid in full, plus interest per annum at the rate specified in division (A) of section 1343.03 of the Revised Code, the amount paid from the fund on the certificate holder's, registrant's, or licensee's account. A discharge in bankruptcy does not relieve a person from the suspension and requirements for reinstatement provided in this section.

(E) If, at any time, the money deposited in the fund is insufficient to satisfy any duly authorized claim or portion of a claim, the superintendent shall, when sufficient money has been deposited in the fund, satisfy the unpaid claims or portions, in the order that the claims or portions were originally filed, plus accumulated interest per annum at the rate specified in division (A) of section 1343.03 of the Revised Code.

(F) When, upon the order of the court, the superintendent has paid from the fund any sum to the judgment creditor, the superintendent 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 of the judgment creditor's right, title, and interest in the judgment to the superintendent to the extent of the amount so paid. The superintendent shall deposit in the fund any amount and interest so recovered by the superintendent on the judgment.

(G) Nothing contained in this section shall limit the authority of the real estate appraiser board to take disciplinary action against a certificate holder, registrant, or licensee under other provisions of this chapter. The repayment in full of all obligations to the fund by a certificate holder, registrant, or licensee does not nullify or modify the effect of any other disciplinary proceeding brought pursuant to this chapter, unless repayment is imposed as a condition in that proceeding.



(H) The superintendent shall collect from the fund a service fee in an amount equivalent to the interest rate specified in division (A) of section 1343.03 of the Revised Code multiplied by the annual interest earned on the assets of the fund, to defray the expenses incurred in the administration of the fund.