

SB3037



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB3037

Introduced 2/15/2018, by Sen. Chuck Weaver

SYNOPSIS AS INTRODUCED:

225 ILCS 454/20-85
225 ILCS 454/20-90
225 ILCS 454/20-100
225 ILCS 454/20-95 rep.

Amends the Real Estate License Act of 2000. Removes specified caps for recovery from the Real Estate Recovery Fund and provides that the caps shall be decided by rule. Provides that the Department of Financial and Professional Regulation may expend moneys from the Fund to procure and pay the premium for a bond, insurance, or other indemnity product in amounts to be determined by the Department in order to compensate an aggrieved person for all or part of his or her loss of money due to a violation of the Act or to fund a program of self-insurance in order to compensate an aggrieved person for all or part of his or her loss of money due to a violation of the Act. Removes provisions permitting an aggrieved party to seek a post-judgment order from the Fund and makes related changes. Replaces references to an aggrieved party seeking a judgment to recover from the Fund with references to an aggrieved party filing a claim to recover from the Fund, and makes similar changes. Makes other changes to provisions concerning collection from the Fund. Repeals a provision concerning the Department's power to defend against actions for collection from the Fund. Effective January 1, 2019.

LRB100 16110 SMS 31229 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Real Estate License Act of 2000 is amended
5 by changing Sections 20-85, 20-90, and 20-100 as follows:

6 (225 ILCS 454/20-85)

7 (Section scheduled to be repealed on January 1, 2020)

8 Sec. 20-85. Recovery from Real Estate Recovery Fund.

9 (a) The Department shall maintain a Real Estate Recovery
10 Fund from which any person aggrieved by an act, representation,
11 transaction, or conduct of a licensee or unlicensed employee of
12 a licensee that is in violation of this Act or the rules
13 promulgated pursuant thereto, constitutes embezzlement of
14 money or property, or results in money or property being
15 unlawfully obtained from any person by false pretenses,
16 artifice, trickery, or forgery or by reason of any fraud,
17 misrepresentation, discrimination, or deceit by or on the part
18 of any such licensee or the unlicensed employee of a licensee
19 and that results in a loss of actual cash money, as opposed to
20 losses in market value, may recover. The aggrieved person may
21 recover, ~~by a post judgment order of the circuit court of the~~
22 ~~county where the violation occurred in a proceeding described~~
23 ~~in Section 20-90 of this Act,~~ an amount of not more than that

1 established by rule ~~\$25,000~~ from the Fund for damages sustained
2 by the act, representation, transaction, or conduct. No ~~7~~
3 ~~together with costs of suit and attorney's fees incurred in~~
4 ~~connection therewith of not to exceed 15% of the amount of the~~
5 ~~recovery ordered paid from the Fund. However, no person may~~
6 recover from the Fund unless ~~the court finds that~~ the person
7 suffered a loss resulting from intentional misconduct. ~~The~~
8 ~~post judgment order shall not include interest on the judgment.~~
9 The maximum liability against the Fund arising out of any one
10 act shall be as provided by rule ~~in this Section, and the~~
11 ~~post judgment order shall spread the award equitably among all~~
12 ~~co-owners or otherwise aggrieved persons, if any.~~ The maximum
13 liability against the Fund arising out of the activities of any
14 one licensee or one unlicensed employee of a licensee, ~~since~~
15 ~~January 1, 1974,~~ shall be as provided by rule ~~\$100,000~~. Nothing
16 in this Section shall be construed to authorize recovery from
17 the Fund unless the loss of the aggrieved person results from
18 an act or omission of a licensee under this Act who was at the
19 time of the act or omission acting in such capacity or was
20 apparently acting in such capacity or their unlicensed employee
21 ~~and unless the aggrieved person has obtained a valid judgment~~
22 ~~and post judgment order of the court as provided for in Section~~
23 ~~20-90 of this Act.~~

24 (b) The Department may expend moneys from the Fund to
25 procure and pay the premium for a bond, insurance, or other
26 indemnity product in amounts to be determined by the Department

1 in order to compensate an aggrieved person for all or part of
2 his or her loss of money as set forth in subsection (a) or to
3 fund a program of self-insurance in order to compensate an
4 aggrieved person for all or part of his or her loss of money as
5 set forth in subsection (a). The Department may cooperate with
6 an insurance agency, carrier, entity, or provider, or its
7 agents in the insurance agency, carrier, entity or provider's
8 investigation, administration, and payment of claims, or to
9 procure one or more private vendors to administer a program of
10 self-insurance and to expend moneys from the Fund for any other
11 purpose necessary to effectuate the purposes of this Section.
12 The Fund shall not pay attorney's fees or costs incurred or
13 claimed to have been incurred by an aggrieved person in
14 connection with a claim against the Fund.

15 (Source: P.A. 99-227, eff. 8-3-15; 100-534, eff. 9-22-17.)

16 (225 ILCS 454/20-90)

17 (Section scheduled to be repealed on January 1, 2020)

18 Sec. 20-90. Collection from Real Estate Recovery Fund;
19 procedure.

20 (a) No claim for payment ~~action for a judgment that~~
21 ~~subsequently results in a post judgment order for collection~~
22 from the Real Estate Recovery Fund shall be made ~~started~~ later
23 than 2 years after the date on which the aggrieved person knew,
24 or through the use of reasonable diligence should have known,
25 of the acts or omissions giving rise to a right of recovery

1 from the Real Estate Recovery Fund.

2 (b) When any ~~aggrieved person commences action for a~~
3 ~~judgment that may result in collection from the Real Estate~~
4 ~~Recovery Fund, the~~ aggrieved person files a claim that may
5 result in collection from the Real Estate Recovery Fund, the
6 aggrieved person must identify ~~name as parties defendant to~~
7 ~~that action any~~ and all licensees, their employees, or
8 independent contractors who allegedly committed or are
9 responsible for acts or omissions giving rise to a right of
10 recovery from the Real Estate Recovery Fund. Failure to
11 identify ~~name as parties defendant~~ such licensees, their
12 employees, or independent contractors shall preclude recovery
13 from the Real Estate Recovery Fund ~~of any portion of any~~
14 ~~judgment received in such an action~~. These parties ~~defendant~~
15 shall also include any corporations, limited liability
16 companies, partnerships, registered limited liability
17 partnership, or other business associations licensed under
18 this Act that may be responsible for acts giving rise to a
19 right of recovery from the Real Estate Recovery Fund.

20 (c) (Blank).

21 (d) (Blank). ~~When any aggrieved person commences action for~~
22 ~~a judgment that may result in collection from the Real Estate~~
23 ~~Recovery Fund, and the aggrieved person is unable to obtain~~
24 ~~legal and proper service upon the parties defendant licensed~~
25 ~~under this Act under the provisions of Illinois law concerning~~
26 ~~service of process in civil actions, the aggrieved person may~~

1 ~~petition the court where the action to obtain judgment was~~
2 ~~begun for an order to allow service of legal process on the~~
3 ~~Secretary. Service of process on the Secretary shall be taken~~
4 ~~and held in that court to be as valid and binding as if due~~
5 ~~service had been made upon the parties defendant licensed under~~
6 ~~this Act. In case any process mentioned in this Section is~~
7 ~~served upon the Secretary, the Secretary shall forward a copy~~
8 ~~of the process by certified mail to the licensee's last address~~
9 ~~on record with the Department. Any judgment obtained after~~
10 ~~service of process on the Secretary under this Act shall apply~~
11 ~~to and be enforceable against the Real Estate Recovery Fund~~
12 ~~only. The Department may intervene in and defend any such~~
13 ~~action.~~

14 (e) (Blank).

15 (f) The aggrieved person shall give written notice to the
16 Department within 30 days of the entry of any judgment that is
17 based on the facts giving rise to a Real Estate Recovery Fund
18 claim ~~may result in collection from the Real Estate Recovery~~
19 ~~Fund.~~ The aggrieved person shall provide the Department with 30
20 ~~20~~ days prior written notice of all supplementary proceedings
21 based on the facts giving rise to the Real Estate Recovery Fund
22 claim, so as to allow the Department to intervene and
23 participate in all efforts to collect on the judgment in the
24 same manner as any party.

25 (g) When any aggrieved person files a claim ~~recovers a~~
26 ~~valid judgment in any court of competent jurisdiction against~~

1 any licensee or an unlicensed employee of any licensee in
2 accordance with this Section, ~~upon the grounds of fraud,~~
3 ~~misrepresentation, discrimination, or deceit,~~ the aggrieved
4 person shall ~~may, upon the termination of all proceedings,~~
5 ~~including review and appeals in connection with the judgment,~~
6 ~~file a verified claim in the court in which the judgment was~~
7 ~~entered and, upon 30 days' written notice to the Department,~~
8 ~~and to the person against whom the judgment was obtained,~~ may
9 apply to the court for a post judgment order directing payment
10 out of the Real Estate Recovery Fund of the amount unpaid upon
11 the judgment, not including interest on the judgment, and
12 subject to the limitations stated in Section 20-85 of this Act.
13 ~~The aggrieved person must~~ set out in that ~~verified~~ claim and
14 prove ~~at an evidentiary hearing to be held by the court upon~~
15 ~~the application~~ that the claim meets all requirements of
16 Section 20-85 and this Section to be eligible for payment from
17 the Real Estate Recovery Fund and the aggrieved party shall be
18 required to show that the aggrieved person:

19 (1) Is not a spouse of the debtor or debtors or the
20 personal representative of such spouse.

21 (2) (Blank). ~~Has complied with all the requirements of~~
22 ~~this Section.~~

23 (3) Has not recovered any funds arising out of a civil
24 action based on the facts giving rise to his or her Real
25 Estate Recovery Fund claim ~~obtained a judgment stating the~~
26 ~~amount thereof and the amount owing thereon, not including~~

1 ~~interest thereon, at the date of the application.~~

2 (4) Has not previously settled or compromised the claim
3 sought to be filed against the Real Estate Recovery Fund
4 ~~made all reasonable searches and inquiries to ascertain~~
5 ~~whether the judgment debtor or debtors is possessed of real~~
6 ~~or personal property or other assets, liable to be sold or~~
7 ~~applied in satisfaction of the judgment.~~

8 (5) (Blank). ~~By such search has discovered no personal~~
9 ~~or real property or other assets liable to be sold or~~
10 ~~applied, or has discovered certain of them, describing them~~
11 ~~as owned by the judgment debtor or debtors and liable to be~~
12 ~~so applied and has taken all necessary action and~~
13 ~~proceedings for the realization thereof, and the amount~~
14 ~~thereby realized was insufficient to satisfy the judgment,~~
15 ~~stating the amount so realized and the balance remaining~~
16 ~~due on the judgment after application of the amount~~
17 ~~realized.~~

18 (6) (Blank). ~~Has diligently pursued all remedies~~
19 ~~against all the judgment debtors and all other persons~~
20 ~~liable to the aggrieved person in the transaction for which~~
21 ~~recovery is sought from the Real Estate Recovery Fund,~~
22 ~~including the filing of an adversary action to have the~~
23 ~~debts declared non-dischargeable in any bankruptcy~~
24 ~~petition matter filed by any judgment debtor or person~~
25 ~~liable to the aggrieved person.~~

26 ~~The aggrieved person shall also be required to prove the~~

1 ~~amount of attorney's fees sought to be recovered and the~~
2 ~~reasonableness of those fees up to the maximum allowed pursuant~~
3 ~~to Section 20-85 of this Act.~~

4 (h) (Blank). ~~After conducting the evidentiary hearing~~
5 ~~required under this Section, the court, in a post judgment~~
6 ~~order directed to the Department, shall indicate whether~~
7 ~~requiring payment from the Real Estate Recovery Fund is~~
8 ~~appropriate and, if so, the amount it finds to be payable upon~~
9 ~~the claim, pursuant to and in accordance with the limitations~~
10 ~~contained in Section 20-85 of this Act, if the court is~~
11 ~~satisfied, based upon the hearing, of the truth of all matters~~
12 ~~required to be shown by the aggrieved person under subsection~~
13 ~~(g) of this Section and that the aggrieved person has fully~~
14 ~~pursued and exhausted all remedies available for recovering the~~
15 ~~amount awarded by the judgment of the court.~~

16 (i) Should the Department pay from the Real Estate Recovery
17 Fund any amount in settlement of a claim ~~or toward satisfaction~~
18 ~~of a judgment~~ against any licensee or an unlicensed employee of
19 a licensee, the licensee's license shall be automatically
20 revoked upon the issuance of a determination ~~post judgment~~
21 ~~order~~ authorizing payment from the Real Estate Recovery Fund.
22 No petition for restoration of a license shall be heard until
23 repayment has been made in full, plus interest at the rate
24 prescribed in Section 12-109 of the Code of Civil Procedure of
25 the amount paid from the Real Estate Recovery Fund on their
26 account, notwithstanding any provision to the contrary in

1 Section 2105-15 of the Department of Professional Regulation
2 Law of the Civil Administrative Code of Illinois. A discharge
3 in bankruptcy shall not relieve a person from the penalties and
4 disabilities provided in this subsection (i).

5 (j) If, at any time, the money deposited in the Real Estate
6 Recovery Fund is insufficient to satisfy any duly authorized
7 claim or portion thereof, the Department shall, when sufficient
8 money has been deposited in the Real Estate Recovery Fund,
9 satisfy such unpaid claims or portions thereof, in the order
10 that such claims or portions thereof were originally filed,
11 plus accumulated interest at the rate prescribed in Section
12 12-109 of the Code of Civil Procedure, provided that the
13 amounts do not exceed the limits set forth in rules adopted by
14 the Department.

15 (Source: P.A. 96-856, eff. 12-31-09; 97-1002, eff. 8-17-12.)

16 (225 ILCS 454/20-100)

17 (Section scheduled to be repealed on January 1, 2020)

18 Sec. 20-100. Subrogation of the Department to rights of
19 claimant ~~judgment creditor~~. When, ~~upon the order of the court,~~
20 the Department has paid from the Real Estate Recovery Fund any
21 sum to a claimant ~~the judgment creditor~~, the Department shall
22 be subrogated to all of the rights of the claimant and the
23 claimant ~~judgment creditor and the judgment creditor~~ shall
24 assign all rights, title, and interest in the claim ~~judgment~~ to
25 the Department and any amount ~~and interest~~ so recovered by the

1 Department ~~on the judgment~~ shall be deposited in the Real
2 Estate Recovery Fund.

3 (Source: P.A. 96-856, eff. 12-31-09.)

4 (225 ILCS 454/20-95 rep.)

5 Section 10. The Real Estate License Act of 2000 is amended
6 by repealing Section 20-95.

7 Section 99. Effective date. This Act takes effect January
8 1, 2019.