

CHAPTER 33

PROFESSIONS AND OCCUPATIONS

HOUSE BILL 95-1132

BY REPRESENTATIVES Taylor, May, Sullivant, and Tool;
also SENATORS Schroeder, Feeley, Norton, Pascoe, Perlmutter, and Tebedo.

AN ACT

CONCERNING ADMINISTRATION OF THE REAL ESTATE RECOVERY FUND BY THE REAL ESTATE COMMISSION, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Part 3 of article 61 of title 12, Colorado Revised Statutes, 1991 Repl. Vol., as amended, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

**PART 3
RECOVERY FUND**

12-61-301. Real estate recovery fund - fees. (1) THERE IS CREATED IN THE OFFICE OF THE STATE TREASURER A REAL ESTATE RECOVERY FUND, REFERRED TO IN THIS PART 3 AS THE "FUND", WHICH SHALL BE USED UNDER THE DIRECTION OF THE REAL ESTATE COMMISSION IN THE MANNER PRESCRIBED IN THIS PART 3.

(2) WHEN RENEWING A LICENSE UNDER THIS ARTICLE, EACH LICENSEE SHALL PAY, IN ADDITION TO THE LICENSE RENEWAL FEE, A FEE THAT SHALL BE DETERMINED BY THE COMMISSION, NOT TO EXCEED FORTY DOLLARS, IN ACCORDANCE WITH SUBSECTION (4) OF THIS SECTION AND SHALL BE DEPOSITED IN THE FUND.

(3) (a) ANY INTEREST EARNED ON INVESTMENT OF MONEYS IN THE FUND SHALL BE CREDITED AT LEAST ANNUALLY TO SAID FUND. NO MONEYS SHALL BE APPROPRIATED FROM THE GENERAL FUND FOR PAYMENT OF ANY EXPENSES INCURRED UNDER THIS PART 3, AND NO SUCH EXPENSES SHALL BE CHARGED AGAINST THE STATE.

(b) ALL MONEYS REMAINING IN THE FUND AS OF JUNE 30, 1995, SHALL FIRST BE APPLIED TO PAY FUTURE CLAIMS AS THEY BECOME DUE. NO ADDITIONAL PAYMENTS

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

TO THE FUND FROM LICENSEES PURSUANT TO SUBSECTION (2) OF THIS SECTION SHALL BE REQUIRED UNTIL THE BALANCE REMAINING IN THE FUND IS LESS THAN THREE HUNDRED FIFTY THOUSAND DOLLARS.

(4) (a) IF, ON JANUARY 1 OF ANY YEAR, THE BALANCE REMAINING IN THE FUND IS LESS THAN THREE HUNDRED FIFTY THOUSAND DOLLARS, THE COMMISSION SHALL SET A FEE TO BE COLLECTED FROM LICENSEES UNDER SUBSECTION (2) OF THIS SECTION. THE AMOUNT OF THE FEE SHALL BE SUFFICIENT TO REESTABLISH AND MAINTAIN THE BALANCE OF THE FUND AT A MINIMUM OF THREE HUNDRED FIFTY THOUSAND DOLLARS. THE FEE SHALL BE IMPOSED BEGINNING JULY 1 OF THAT YEAR AND SHALL REMAIN IN EFFECT THROUGH JUNE 30 OF THE THIRD YEAR THEREAFTER.

(b) IF, ON JANUARY 1 OF ANY YEAR, THE BALANCE REMAINING IN THE FUND IS FIVE HUNDRED THOUSAND DOLLARS OR MORE AS A RESULT OF DEPOSITS MADE IN ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION, THE AMOUNT OVER FIVE HUNDRED THOUSAND DOLLARS SHALL BE TRANSFERRED TO THE REAL ESTATE CASH FUND AND DISPOSED OF AS PROVIDED IN SECTIONS 12-61-111 AND 12-61-111.5.

12-61-302. Limitation on payments out of the fund. (1) NO PAYMENT SHALL BE MADE FROM THE FUND UNLESS THE APPLICANT HAS NOTIFIED THE COMMISSION, IN WRITING, OF THE COMMENCEMENT OF A CIVIL ACTION FOR A JUDGMENT THAT MAY RESULT IN AN APPLICATION FOR RECOVERY FROM THE FUND. SUCH WRITTEN NOTICE SHALL BE GIVEN NO LATER THAN 90 DAYS AFTER COMMENCEMENT OF THE CIVIL ACTION.

(2) NO PAYMENT SHALL BE MADE FROM THE FUND UNLESS THE UNDERLYING CIVIL ACTION, ON THE BASIS OF WHICH PAYMENT FROM THE FUND IS SOUGHT, WAS COMMENCED WITHIN THE TIME PERIOD PRESCRIBED IN SECTION 13-80-103, C.R.S.

(3) NO PAYMENT SHALL BE MADE FROM THE FUND UNLESS THE ORDER OF JUDGMENT IN THE UNDERLYING CIVIL ACTION CONTAINS SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW THAT THE LICENSED REAL ESTATE BROKER OR SALESPERSON COMMITTED NEGLIGENCE, FRAUD, WILLFUL MISREPRESENTATION, OR CONVERSION OF TRUST FUNDS.

(4) THE FUND SHALL BE LIABLE TO PAY ONLY FOR REIMBURSEMENT OF ACTUAL AND DIRECT OUT-OF-POCKET LOSSES, COURT COSTS AND REASONABLE ATTORNEY FEES THAT REMAIN UNPAID ON THE JUDGMENT, AND POSTJUDGMENT INTEREST AS PROVIDED BY LAW. THE FUND SHALL NOT BE LIABLE FOR THE PAYMENT OF PREJUDGMENT INTEREST OF ANY KIND.

(5) THE FUND SHALL NOT BE LIABLE FOR LOSSES ATTRIBUTABLE TO PAIN AND SUFFERING OR MENTAL ANGUISH.

(6) ATTORNEY FEES RECOVERABLE PURSUANT TO THIS SECTION SHALL NOT EXCEED TWENTY-FIVE PERCENT OF THE AMOUNT OF ACTUAL AND DIRECT OUT-OF-POCKET LOSSES PAID FROM THE FUND.

(7) THE FUND SHALL BE LIABLE ONLY FOR CLAIMS BASED ON JUDGMENTS AGAINST NATURAL PERSONS.

(8) THE FUND SHALL NOT BE SUBJECT TO A CLAIM BY A LICENSEE INVOLVING A TRANSACTION IN WHICH THE APPLICANT PERFORMED ACTS FOR WHICH A BROKER'S OR SALESPERSON'S LICENSE IS REQUIRED.

(9) NOTWITHSTANDING ANY PROVISION OF THIS PART 3 TO THE CONTRARY, THE LIABILITY OF THE FUND SHALL NOT EXCEED:

(a) FOR APPLICATIONS FILED AFTER JULY 1, 1987, AND BEFORE JULY 1, 1991, FIFTEEN THOUSAND DOLLARS PER CLAIMANT.

(b) FOR APPLICATIONS FILED ON OR AFTER JULY 1, 1991 AND BEFORE JULY 1, 1995, FIFTEEN THOUSAND DOLLARS PER TRANSACTION, REGARDLESS OF THE NUMBER OF PERSONS AGGRIEVED OR THE NUMBER OF REAL ESTATE LICENSEES OR PARCELS OF REAL ESTATE INVOLVED IN SUCH TRANSACTIONS.

(c) FOR APPLICATIONS FILED ON OR AFTER JULY 1, 1995, TWENTY THOUSAND DOLLARS PER TRANSACTION, REGARDLESS OF THE NUMBER OF PERSONS AGGRIEVED, THE NUMBER OF PARCELS, OR THE NUMBER OF REAL ESTATE LICENSEES INVOLVED IN SUCH TRANSACTION.

(d) SIXTY THOUSAND DOLLARS FOR ANY ONE LICENSEE, REGARDLESS OF THE NUMBER OF JUDGMENTS ENTERED AGAINST THE LICENSEE, PARCELS OF REAL ESTATE INVOLVED, NUMBER OF LICENSEES INVOLVED, OR NUMBER OF PERSONS AGGRIEVED IN SUCH TRANSACTIONS.

(10) (a) IF THE VALIDLY FILED APPLICATIONS EXCEED THE LIMITATION ON LIABILITY SET FORTH IN PARAGRAPHS (a) TO (d) OF SUBSECTION (9) OF THIS SECTION, THEN PAYMENT FROM THE FUND SHALL BE DISTRIBUTED AMONG SUCH APPLICANTS IN THE RATIO THAT THEIR RESPECTIVE CLAIMS BEAR TO THE AGGREGATE OF SUCH VALID CLAIMS OR IN SUCH OTHER MANNER AS A COURT OF RECORD MAY DEEM EQUITABLE. DISTRIBUTION OF SUCH 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 APPLICATIONS MAY HAVE BEEN FILED.

(b) IF THE COMMISSION ISSUES AN ADMINISTRATIVE ORDER WHICH DIRECTS PAYMENT FROM THE FUND IN ACCORDANCE WITH SECTION 12-61-303 AND THIS SUBSECTION (10), ANY PROSPECTIVE APPLICANT AFFECTED BY SUCH ORDER MAY FILE A PETITION WITH THE APPROPRIATE COURT PURSUANT TO SECTION 12-61-304. IN THAT PROCEEDING, THE COMMISSION MAY THEN MOVE THE COURT FOR AN ORDER CONSOLIDATING OR JOINING ALL APPLICANTS AND PROSPECTIVE APPLICANTS WHOSE JUDGMENTS HAVE BEEN ENTERED AGAINST A COMMON LICENSEE JUDGMENT DEBTOR INTO ONE ACTION SO THAT THE RESPECTIVE RIGHTS OF ALL SUCH APPLICANTS MAY BE EQUITABLY ADJUDICATED AND SETTLED.

12-61-303. Simplified procedure - application for administrative order for payment from the fund. (1) A PERSON WHO OBTAINS A FINAL JUDGMENT IN ANY COURT OF COMPETENT JURISDICTION AGAINST A REAL ESTATE BROKER OR SALESPERSON MAY FILE A VERIFIED APPLICATION WITH THE COLORADO REAL ESTATE COMMISSION FOR AN ADMINISTRATIVE ORDER FOR PAYMENT FROM THE FUND OF ANY AMOUNT REMAINING UNPAID ON THE JUDGMENT. THE BURDEN SHALL BE UPON SUCH

APPLICANT TO SHOW THE VALIDITY OF THE APPLICATION UNDER THIS PART 3 AND TO PROVIDE THE COMMISSION WITH SUCH INFORMATION AS THE COMMISSION MAY DEEM NECESSARY TO DETERMINE THE VALIDITY OF THE APPLICATION.

(2) THE APPLICATION SHALL BE MADE ON A FORM PROVIDED BY THE COMMISSION, WHICH FORM SHALL BE SUFFICIENT TO PROVIDE THE APPLICANT WITH A REASONABLE OPPORTUNITY TO SHOW COMPLIANCE WITH THIS PART 3 AND SHALL REQUIRE THAT THE APPLICANT SUBMIT THE FOLLOWING INFORMATION:

(a) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE APPLICANT;

(b) IF THE APPLICANT IS REPRESENTED BY AN ATTORNEY, THE NAME, BUSINESS ADDRESS, TELEPHONE NUMBER, AND COLORADO SUPREME COURT REGISTRATION NUMBER OF THE ATTORNEY;

(c) IDENTIFICATION OF THE UNDERLYING JUDGMENT FORMING THE BASIS OF THE APPLICATION, INCLUDING THE NAMED PARTIES, CASE NUMBER, AND COURT ENTERING JUDGMENT;

(d) THE AMOUNT OF THE CLAIM AND AN EXPLANATION OF THE APPLICANT'S COMPUTATION OF THE CLAIM; AND

(e) ANY OTHER INFORMATION THE COMMISSION REASONABLY DEEMS NECESSARY TO DETERMINE THE VALIDITY OF THE APPLICATION.

(3) THE FORM PROVIDED TO THE APPLICANT BY THE COMMISSION SHALL CONTAIN, IN A PROMINENT PLACE, THE FOLLOWING NOTICE TO THE LICENSEE JUDGMENT DEBTOR:

"NOTICE: BASED ON A JUDGMENT ENTERED AGAINST YOU IN THE ABOVE-CAPTIONED MATTER, AN APPLICATION FOR AN ADMINISTRATIVE ORDER DIRECTING PAYMENT FROM THE REAL ESTATE RECOVERY FUND HAS BEEN FILED WITH THE REAL ESTATE COMMISSION.

IF THE REAL ESTATE COMMISSION ISSUES AN ADMINISTRATIVE ORDER FOR PAYMENT FROM THE FUND, YOUR REAL ESTATE LICENSE WILL AUTOMATICALLY BE REVOKED WHEN THE ORDER IS ISSUED AND PAYMENT IS MADE TO THE APPLICANT. ANY SUBSEQUENT APPLICATION FOR A LICENSE SHALL NOT BE GRANTED UNTIL THE FUND IS REIMBURSED FOR THE AMOUNT PAID, PLUS INTEREST AT THE STATUTORY RATE.

IF YOU WISH TO OBJECT TO THE APPLICATION, YOU MUST FILE A WRITTEN OBJECTION, SETTING FORTH THE SPECIFIC GROUNDS FOR SUCH OBJECTION, WITH THE COMMISSION WITHIN THIRTY DAYS AFTER HAVING BEEN SERVED WITH A COPY OF THE APPLICATION. IF YOU DO NOT FILE A WRITTEN OBJECTION, YOU WAIVE YOUR RIGHT TO DEFEND AGAINST THE CLAIM."

(4) THE APPLICANT SHALL ALSO BE REQUIRED TO SHOW THAT:

(a) THERE IS NO COLLUSION BETWEEN THE APPLICANT AND THE JUDGMENT DEBTOR

OR ANY OTHER PERSON LIABLE TO THE APPLICANT IN THE TRANSACTION FOR WHICH THE APPLICANT SEEKS PAYMENT FROM THE FUND;

(b) THE JUDGMENT DEBTOR WAS LICENSED AS A REAL ESTATE BROKER OR SALESPERSON AT THE TIME OF THE TRANSACTION;

(c) THE JUDGMENT DEBTOR WAS ACTING IN A REAL ESTATE TRANSACTION AS A REAL ESTATE BROKER OR SALESPERSON, PERFORMING ACTS FOR WHICH A REAL ESTATE BROKER'S OR SALESPERSON'S LICENSE IS REQUIRED UNDER THIS ARTICLE, OR THAT THE TRANSACTION INVOLVED ACTS FOR WHICH A REAL ESTATE LICENSE WAS REQUIRED AND THE JUDGMENT DEBTOR WAS ACTING AS A PRINCIPAL, NOT AN AGENT, IN THAT TRANSACTION;

(d) THE JUDGMENT DEBTOR COMMITTED NEGLIGENCE, FRAUD, WILLFUL MISREPRESENTATION, OR CONVERSION OF TRUST FUNDS;

(e) THE APPLICATION WAS NOT FILED MORE THAN ONE YEAR AFTER FINALITY OF THE JUDGMENT AGAINST THE JUDGMENT DEBTOR, INCLUDING APPEALS;

(f) THE APPLICANT HAS REASONABLY SOUGHT TO OBTAIN A JUDGMENT AGAINST ALL PERSONS AND ENTITIES THAT ARE LIABLE TO THE APPLICANT FOR LOSSES SUFFERED IN THE TRANSACTION UPON WHICH THE FUND CLAIM IS BASED;

(g) THE APPLICANT HAS MADE REASONABLE SEARCHES AND INQUIRIES TO ASCERTAIN WHETHER THERE EXISTS REAL OR PERSONAL PROPERTY OR OTHER ASSETS AVAILABLE TO SATISFY THE JUDGMENT IN THE UNDERLYING CIVIL ACTION AND HAS UNDERTAKEN REASONABLE LEGAL MEANS TO REACH SUCH ASSETS OR OTHER PROPERTY IN SATISFACTION OF THE JUDGMENT.

(h) THE JUDGMENT DEBTOR HAS BEEN SERVED WITH A COPY OF THE APPLICATION AS REQUIRED BY SUBSECTION (5) OF THIS SECTION.

(5) WHEN ANY PERSON FILES AN APPLICATION WITH THE COMMISSION REQUESTING THE ISSUANCE OF AN ADMINISTRATIVE ORDER FOR PAYMENT FROM THE FUND, A COPY OF THE VERIFIED APPLICATION INCLUDING THE NOTICE REQUIRED BY SUBSECTION (3) OF THIS SECTION AND ANY OTHER DOCUMENTS FILED WITH THE APPLICATION SHALL BE SERVED UPON THE LICENSEE JUDGMENT DEBTOR BY THE APPLICANT WITHIN TWENTY DAYS AFTER THE DATE UPON WHICH THE APPLICATION IS FILED. A CERTIFICATE OR AFFIDAVIT OF SUCH SERVICE SHALL BE FILED WITH THE COMMISSION. SERVICE UPON A LICENSEE JUDGMENT DEBTOR SHALL BE MADE ACCORDING TO THE COLORADO RULES OF CIVIL PROCEDURE AND SUBSECTION (6) OF THIS SECTION.

(6) ANY REAL ESTATE BROKER OR REAL ESTATE SALESPERSON WHO IS LICENSED OR WHO RENEWS A LICENSE UNDER PART 1 OF THIS ARTICLE ON OR AFTER JANUARY 1, 1972, AND UPON WHOM PERSONAL SERVICE CANNOT BE MADE WITH REASONABLE DILIGENCE SHALL BE DEEMED TO HAVE APPOINTED THE SECRETARY OF STATE AS AGENT FOR SERVICE OF PROCESS FOR PURPOSES OF ACTIONS AND APPLICATIONS FILED AGAINST SAID BROKER OR SALESPERSON PURSUANT TO THIS PART 3. SERVICE OF PROCESS UPON SUCH PERSONS SHALL BE MADE AS NEARLY AS PRACTICABLE IN THE MANNER PRESCRIBED BY SECTION 7-105-104, C.R.S. THE BURDEN SHALL BE UPON THE APPLICANT TO SHOW THAT PERSONAL SERVICE CANNOT BE MADE WITH

REASONABLE DILIGENCE.

(7) THE JUDGMENT DEBTOR SHALL HAVE THIRTY DAYS AFTER BEING SERVED WITH THE APPLICATION WITHIN WHICH TO FILE A WRITTEN OBJECTION TO PAYMENT FROM THE FUND BY THE COMMISSION. SUCH OBJECTION SHALL BE SERVED UPON THE COMMISSION IN ACCORDANCE WITH THE COLORADO RULES OF CIVIL PROCEDURE AND SHALL CLEARLY SET FORTH THE GROUNDS UPON WHICH THE OBJECTION IS MADE. FAILURE TO FILE SUCH AN OBJECTION SHALL CONSTITUTE WAIVER OF ANY RIGHT TO PROCEED UNDER SECTION 12-61-304.

(8) (a) IF THE COMMISSION DETERMINES THAT AN APPLICATION IS COMPLETE AND VALID, THE COMMISSION MAY, BY ADMINISTRATIVE ORDER:

(I) PAY THE REQUESTED AMOUNT OR SUCH LESSER AMOUNT AS THE COMMISSION MAY DEEM APPROPRIATE;

(II) SETTLE THE CLAIM WITH THE APPLICANT FOR AN APPROPRIATE AGREED AMOUNT; OR

(III) DENY THE APPLICATION ON THE GROUNDS THAT THE APPLICATION DOES NOT DEMONSTRATE COMPLIANCE WITH THIS PART 3.

(b) SUCH ADMINISTRATIVE DETERMINATION SHALL BE PROMPTLY MADE BY THE COMMISSION OR ITS DESIGNEE IN WRITING IN THE FORM OF AN ADMINISTRATIVE ORDER AND, IF THE APPLICATION IS DENIED, SETTING FORTH THE GENERAL GROUNDS THEREFOR.

(c) SUCH ADMINISTRATIVE ORDER SHALL BE SENT BY REGULAR MAIL TO THE APPLICANT AND THE JUDGMENT DEBTOR AT THEIR LAST KNOWN ADDRESSES ACCORDING TO RECORDS OF THE COMMISSION.

(9) THE COMMISSION MAY ADOPT RULES IMPLEMENTING THIS PART 3 IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S.

12-61-304. Procedure upon objection to payment or denial of application.

(1) IF THE COMMISSION ISSUES AN ADMINISTRATIVE ORDER THAT DENIES AN APPLICATION FOR PAYMENT FROM THE FUND IN WHOLE OR IN PART, THE APPLICANT MAY FILE A VERIFIED PETITION FOR PAYMENT FROM THE FUND IN THE COURT THAT ENTERED THE JUDGMENT ON WHICH THE APPLICATION IS BASED. WHEN AN APPLICANT FILES SUCH A PETITION, THE APPLICANT SHALL SERVE A COPY OF THE VERIFIED PETITION, INCLUDING THE NOTICE REQUIRED BY SUBSECTION (2) OF THIS SECTION UPON THE REAL ESTATE COMMISSION AND UPON THE LICENSEE JUDGMENT DEBTOR IN ACCORDANCE WITH THE COLORADO RULES OF CIVIL PROCEDURE AND SECTION 12-61-303 (6). A CERTIFICATE OR AFFIDAVIT OF SUCH SERVICE SHALL BE FILED WITH THE COURT.

(2) WHEN A PETITION IS FILED WITH THE COURT PURSUANT TO SUBSECTION (1) OF THIS SECTION, THE PETITION SHALL BE ACCOMPANIED BY A NOTICE WHICH SHALL STATE AS FOLLOWS:

"NOTICE: BASED ON A JUDGMENT ENTERED AGAINST YOU IN THE

ABOVE-CAPTIONED MATTER, A PETITION FOR AN ORDER DIRECTING PAYMENT FROM THE RECOVERY FUND OF THE REAL ESTATE COMMISSION HAS BEEN FILED WITH THE COURT.

IF THE REAL ESTATE COMMISSION MAKES A PAYMENT FROM THE FUND PURSUANT TO A COURT ORDER BASED UPON THIS PETITION, YOUR REAL ESTATE LICENSE WILL AUTOMATICALLY BE REVOKED WHEN THE COURT ORDER BECOMES FINAL AND PAYMENT IS MADE. ANY SUBSEQUENT APPLICATION FOR A LICENSE SHALL NOT BE GRANTED UNTIL THE FUND IS REIMBURSED FOR THE AMOUNT PAID, PLUS INTEREST AT THE STATUTORY RATE.

IF YOU WISH TO DEFEND AGAINST THIS CLAIM, YOU MUST FILE A WRITTEN RESPONSE WITH THE COURT AND MAIL A COPY TO THE PARTY FILING THE PETITION AND TO THE REAL ESTATE COMMISSION WITHIN THIRTY DAYS AFTER HAVING BEEN SERVED WITH THIS NOTICE. IF YOU DO NOT FILE A WRITTEN RESPONSE, YOU WAIVE YOUR RIGHT TO DEFEND AGAINST THE CLAIM."

(3) IF THE JUDGMENT DEBTOR FILES AN OBJECTION TO THE ISSUANCE OF AN ADMINISTRATIVE ORDER FOR PAYMENT FROM THE FUND IN ACCORDANCE WITH SECTION 12-61-303 (7) AND THE COMMISSION ISSUES AN ADMINISTRATIVE ORDER DIRECTING PAYMENT FROM THE FUND, THE JUDGMENT DEBTOR MAY FILE A VERIFIED PETITION OBJECTING TO PAYMENT FROM THE FUND IN THE COURT THAT ENTERED THE JUDGMENT ON WHICH THE APPLICATION WAS BASED. WHEN A JUDGMENT DEBTOR FILES SUCH A PETITION, THE JUDGMENT DEBTOR SHALL SERVE A COPY OF THE PETITION UPON THE REAL ESTATE COMMISSION AND THE APPLICANT IN ACCORDANCE WITH THE COLORADO RULES OF CIVIL PROCEDURE. A CERTIFICATE OR AFFIDAVIT OF SUCH SERVICE SHALL BE FILED WITH THE COURT.

(4) A PETITION FILED WITH A COURT PURSUANT TO SUBSECTION (1) OR (2) OF THIS SECTION SHALL BE IN THE FORM OF A PLEADING AND SHALL COMPLY WITH THE RULES OF PROCEDURE APPLICABLE TO THE COURT IN WHICH IT IS FILED. SUCH PETITION SHALL BE FILED IN THE APPROPRIATE COURT NO LATER THAN THIRTY DAYS FROM THE DATE UPON WHICH THE ADMINISTRATIVE ORDER IS MAILED BY THE COMMISSION PURSUANT TO SECTION 12-61-303 (8). THE PETITION SHALL BE ACCOMPANIED BY A VERIFIED COPY OF THE APPLICATION FORM AND ANY ATTACHED DOCUMENTS THAT WERE FILED WITH THE COMMISSION.

(5) THE REAL ESTATE COMMISSION AND ANY PERSON SERVED WITH A PETITION PURSUANT TO THIS SECTION SHALL HAVE THIRTY DAYS AFTER SERVICE OF THE PETITION WITHIN WHICH TO FILE A WRITTEN ANSWER. THE COURT SHALL THEREAFTER SET THE MATTER FOR HEARING.

(6) AT A HEARING UNDER SUBSECTION (5) OF THIS SECTION, THE PARTY FILING THE PETITION SHALL BE REQUIRED TO SHOW COMPLIANCE, OR LACK THEREOF, WITH SECTIONS 12-61-302 TO 12-61-304. SUCH HEARING SHALL BE ON THE MERITS OF THE APPLICATION AND SHALL NOT BE IN THE NATURE OF JUDICIAL REVIEW OF THE ADMINISTRATIVE ORDER ISSUED BY THE COMMISSION OR OF THE PROCEDURE EMPLOYED IN ISSUING SUCH ORDER.

12-61-305. Commission may defend against petition - burden of proof - presumption - compromise of claims. THE REAL ESTATE COMMISSION MAY, ON BEHALF OF THE FUND, DEFEND AGAINST A PETITION FILED PURSUANT TO SECTION 12-61-304 AND SHALL HAVE RECOURSE TO ALL APPROPRIATE MEANS OF DEFENSE AND APPEAL, INCLUDING EXAMINATION OF WITNESSES AND THE RIGHT TO RELITIGATE ANY ISSUES THAT WERE MATERIAL AND RELEVANT TO THE PROCEEDING AGAINST THE FUND AND THAT WERE FINALLY ADJUDICATED IN THE UNDERLYING ACTION ON WHICH THE JUDGMENT IN FAVOR OF THE APPLICANT WAS BASED. IF SUCH JUDGMENT WAS BY DEFAULT, STIPULATION, OR CONSENT, OR WHENEVER THE ACTION AGAINST THE LICENSEE JUDGMENT DEBTOR WAS DEFENDED BY A TRUSTEE IN BANKRUPTCY, THE APPLICANT SHALL HAVE THE BURDEN OF PRODUCING EVIDENCE OF, AND THE BURDEN OF PROVING, THE NEGLIGENCE, FRAUD, WILLFUL MISREPRESENTATION, OR CONVERSION OF TRUST FUNDS BY THE LICENSEE JUDGMENT DEBTOR; OTHERWISE, THE JUDGMENT SHALL CREATE A REBUTTABLE PRESUMPTION OF THE NEGLIGENCE, FRAUD, WILLFUL MISREPRESENTATION, OR CONVERSION OF TRUST FUNDS BY THE LICENSEE, AND SUCH PRESUMPTION SHALL AFFECT THE BURDEN OF PRODUCING EVIDENCE. THE REAL ESTATE COMMISSION MAY, SUBJECT TO COURT APPROVAL, SETTLE A CLAIM BASED UPON THE PETITION OF AN APPLICANT AND SHALL NOT BE BOUND BY ANY PRIOR COMPROMISE OF THE JUDGMENT DEBTOR.

12-61-306. Defense against petition - conclusive adjudication of issues. THE JUDGMENT DEBTOR MAY DEFEND AN ACTION AGAINST THE FUND AND SHALL HAVE RECOURSE TO ALL APPROPRIATE MEANS OF DEFENSE AND APPEAL, INCLUDING EXAMINATION OF WITNESSES; EXCEPT THAT MATTERS FINALLY ADJUDICATED IN THE UNDERLYING ACTION, INCLUDING, BUT NOT LIMITED TO, THE ISSUES OF NEGLIGENCE, FRAUD, WILLFUL MISREPRESENTATION, OR CONVERSION OF TRUST FUNDS, ARE CONCLUSIVE AGAINST BOTH THE LICENSEE JUDGMENT DEBTOR AND THE APPLICANT AND MAY NOT BE RELITIGATED.

12-61-307. Automatic revocation of license - reinstatement. SHOULD THE REAL ESTATE COMMISSION PAY FROM THE FUND ANY AMOUNT IN SETTLEMENT OF A CLAIM OR TOWARD SATISFACTION OF A JUDGMENT AGAINST A LICENSED BROKER OR SALESPERSON, EITHER BY ADMINISTRATIVE ORDER OR BY ORDER OF THE COURT, THE LICENSE OF THE BROKER OR SALESPERSON SHALL BE AUTOMATICALLY REVOKED UPON THE FINAL DATE OF SUCH ORDER. NO SUCH BROKER OR SALESPERSON SHALL BE ELIGIBLE TO BE LICENSED AGAIN UNTIL SUCH BROKER OR SALESPERSON HAS REPAYED IN FULL, PLUS INTEREST AT THE STATUTORY RATE, THE AMOUNT PAID FROM THE FUND ON THE BROKER OR SALESPERSON'S ACCOUNT.

12-61-308. Distribution from fund - fund insufficient to pay claims - delayed distribution authorized. (1) UPON THE ISSUANCE BY THE COMMISSION OF AN ADMINISTRATIVE ORDER DIRECTING THAT PAYMENT BE MADE OUT OF THE FUND, OR UPON THE ENTRY OF SUCH AN ORDER BY A COURT OF COMPETENT JURISDICTION, THE CONTROLLER IS AUTHORIZED TO DRAW A WARRANT FOR THE PAYMENT OF THE SAME UPON A VOUCHER APPROVED BY THE REAL ESTATE COMMISSION, AND THE STATE TREASURER IS AUTHORIZED TO PAY THE SAME OUT OF THE FUND.

(2) IF AT ANY TIME THE BALANCE REMAINING IN THE FUND IS INSUFFICIENT TO SATISFY ANY DULY AUTHORIZED CLAIM OR PORTION THEREOF, THE REAL ESTATE COMMISSION, WHEN SUFFICIENT MONEY HAS BEEN DEPOSITED IN THE FUND, SHALL 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 PER YEAR.

(3) AFTER AN ADMINISTRATIVE ORDER FOR PAYMENT FROM THE FUND HAS BEEN ISSUED BY THE COMMISSION, THE COMMISSION MAY DELAY PAYMENT IN ORDER TO ALLOW THE FILING PERIODS IN SECTION 12-61-304 TO EXPIRE. IN THE EVENT THAT A PETITION IS FILED PURSUANT TO SECTION 12-61-304, PAYMENT PURSUANT TO THE ADMINISTRATIVE ORDER SHALL BE WITHHELD PENDING THE OUTCOME OF THE COURT PROCEEDING ON THE PETITION.

12-61-309. Subrogation of rights. (1) WHEN, UPON ADMINISTRATIVE ORDER OF THE REAL ESTATE COMMISSION OR OF ANY COURT, THE REAL ESTATE COMMISSION HAS MADE PAYMENT FROM THE FUND TO AN APPLICANT, THE REAL ESTATE COMMISSION SHALL BE SUBROGATED TO THE RIGHTS OF THE APPLICANT WITH RESPECT TO THE AMOUNT SO PAID.

(2) UP TO AN AMOUNT EQUAL TO FIVE PERCENT OF THE PAYMENT TO AN APPLICANT MAY BE DRAWN FROM THE FUND AND EXPENDED BY THE REAL ESTATE COMMISSION FOR THE PURPOSE OF ENFORCING THE RIGHTS OF A PARTICULAR APPLICANT TO WHICH THE COMMISSION IS SUBROGATED PURSUANT TO THIS SECTION.

SECTION 2. Appropriations - adjustments to the 1995 long bill. For the implementation of this act, appropriations made in the annual general appropriation act for the fiscal year beginning July 1, 1995, shall be adjusted as follows:

(a) In the appropriation to the department of regulatory agencies, for the purchase of legal services, the amount appropriated from the division of real estate cash fund is decreased by twelve thousand three hundred dollars (\$12,300).

(b) In the appropriation to the department of law, the exempt cash fund appropriation for the department of regulatory agencies shall be decreased by twelve thousand three hundred dollars (\$12,300).

SECTION 3. Effective date - applicability. This act shall take effect July 1, 1995, and shall apply to applications for license renewal and applications for payment from the real estate recovery fund filed on or after said date.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: March 30, 1995