

## CHAPTER 177

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**PROFESSIONS AND OCCUPATIONS**


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**HOUSE BILL 05-1264**

BY REPRESENTATIVE(S) Buescher, Hall, Plant, Marshall, Massey, Schultheis, Vigil, Berens, Kerr, Knoedler, Stafford, and Todd;  
also SENATOR(S) Tapia, Keller, Owen, McElhany, Taylor, Teck, and Veiga.

**AN ACT**

**CONCERNING THE REPEAL OF THE REAL ESTATE RECOVERY FUND, AND MAKING AN APPROPRIATION THEREFOR.**

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

**SECTION 1. Repeal.** 12-61-301, Colorado Revised Statutes, is repealed as follows:

**12-61-301. Real estate recovery fund - fees - repeal.** ~~(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) (i) 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.~~

~~(H) (A) Notwithstanding subparagraph (i) of this paragraph (a), moneys from the general fund may be appropriated to the real estate recovery fund in order to maintain the three-hundred-fifty-thousand-dollar balance in the fund pursuant to this section.~~

~~(B) This subparagraph (H) is repealed, effective July 1, 2005.~~

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

~~(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 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.~~

~~(c) Notwithstanding any provision of paragraph (b) of this subsection (4) to the contrary, on March 5, 2003, the state treasurer shall deduct three million two hundred thousand dollars from the fund and transfer such sum to the general fund.~~

**SECTION 2.** 12-61-302 (1) and (2), Colorado Revised Statutes, are amended, and the said 12-61-302 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**12-61-302. Limitation on payments out of the real estate cash fund - repeal.**

(1) No payment shall be made from the GENERAL fund PURSUANT TO THIS PART 3 unless:

(a) 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 ninety days after commencement of the civil action.

(b) THE REVENUES, IF ANY, TRANSFERRED TO THE DIVISION OF REAL ESTATE CASH FUND PURSUANT TO SUBSECTION (11) OF THIS SECTION HAVE FIRST BEEN EXHAUSTED. AS USED IN THIS PART 3, "FUND" SHALL MEAN IN THE FIRST INSTANCE SUCH REVENUES TRANSFERRED PURSUANT TO SUBSECTION (11) OF THIS SECTION AND THEN, IF SUCH REVENUES HAVE BEEN EXHAUSTED, THE GENERAL FUND.

(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., AND BY THIRTY DAYS AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (2) AS AMENDED.

(11) (a) THE UNEXPENDED AND UNENCUMBERED BALANCE OF THE REAL ESTATE RECOVERY FUND, AS SUCH FUND EXISTED PRIOR TO ITS REPEAL, SHALL BE TRANSFERRED TO THE DIVISION OF REAL ESTATE CASH FUND.

(b) THIS PART 3 IS REPEALED, EFFECTIVE WHEN THE LAST FINAL JUDGMENT FROM ANY OF THE CIVIL ACTIONS ALLOWED PURSUANT TO SUBSECTION (2) OF THIS SECTION BECOMES EFFECTIVE AND ANY RESULTING CLAIM HAS BEEN PAID ACCORDING TO LAW. THE DIRECTOR OF THE DIVISION OF REAL ESTATE SHALL NOTIFY THE REVISOR OF STATUTES WHEN THE CONDITION SPECIFIED IN THIS PARAGRAPH (b) HAS BEEN SATISFIED.

**SECTION 3.** 12-61-303 (3), Colorado Revised Statutes, is amended to read:

**12-61-303. Simplified procedure - application for administrative order for payment from the fund - repeal.** (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 HAS BEEN REIMBURSED, plus interest at the statutory rate, and the passage of one year from the date of revocation.**

**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."**

**SECTION 4.** 12-61-304 (2), Colorado Revised Statutes, is amended to read:

**12-61-304. Procedure upon objection to payment or denial of application.** (2) When a petition is filed with the court pursuant to subsection (1) of this section, the petition shall be accompanied by a notice that 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 HAS BEEN REIMBURSED, plus interest at the statutory rate, and the passage of one year from the date of revocation.**

**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."**

**SECTION 5.** 12-61-405 (3), Colorado Revised Statutes, is amended to read:

**12-61-405. Refusal, revocation, or suspension of registration - letter of admonition - probation.** (3) All administrative fines collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the DIVISION OF real estate ~~recovery~~ CASH fund. ~~established in section 12-61-301.~~

**SECTION 6.** 12-61-110 (4) (c), Colorado Revised Statutes, is amended to read:

**12-61-110. License fees - partnership, limited liability company, and corporation licenses.** (4) (c) All reinstatement fees shall be transmitted to the state treasurer, who shall credit same to the DIVISION OF real estate ~~recovery~~ CASH fund, as established by section ~~12-61-301~~ 12-61-111.5.

**SECTION 7.** 12-61-113 (1) (s) and (7), Colorado Revised Statutes, are amended to read:

**12-61-113. Investigation - revocation - actions against licensee - repeal.** (1) The commission, upon its own motion, may, and, upon the complaint in writing of any person, shall, investigate the activities of any licensee or any person who assumes to act in such capacity within the state, and the commission, after the holding of a hearing pursuant to section 12-61-114, has the power to impose an administrative fine not to exceed two thousand five hundred dollars for each separate offense and to censure a licensee, to place the licensee on probation and to set the terms of probation, or to temporarily suspend or permanently revoke a license when the licensee has performed, is performing, or is attempting to perform any of the following acts and is guilty of:

(s) (I) Fraud, misrepresentation, deceit, or conversion of trust funds ~~which~~ THAT results in the payment of any claim ~~from the real estate recovery fund,~~ pursuant to part 3 of this article. THIS SUBPARAGRAPH (I) IS REPEALED, EFFECTIVE WHEN THE LAST FINAL JUDGMENT FROM ANY OF THE CIVIL ACTIONS ALLOWED PURSUANT TO SECTION 12-61-302 (2) BECOMES EFFECTIVE AND ANY RESULTING CLAIM HAS BEEN PAID ACCORDING TO LAW. THE DIRECTOR OF THE DIVISION OF REAL ESTATE SHALL NOTIFY THE REVISOR OF STATUTES, IN WRITING, WHEN THE CONDITION SPECIFIED IN THIS PARAGRAPH (s) HAS BEEN SATISFIED.

(II) EFFECTIVE ON AND AFTER THE REPEAL OF PART 3 OF THIS ARTICLE, FRAUD, MISREPRESENTATION, DECEIT, OR CONVERSION OF TRUST FUNDS THAT RESULTS IN THE ENTRY OF A CIVIL JUDGMENT FOR DAMAGES.

(7) All administrative fines collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the DIVISION OF real estate ~~recovery~~ CASH fund. ~~established in section 12-61-301.~~

**SECTION 8. Appropriation - adjustment to the 2005 long bill.** (1) In addition

to any other appropriation, there is hereby appropriated, out of any moneys in the division of real estate cash fund created in section 12-61-111.5 (2) (b), Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for allocation to the division of real estate, for the fiscal year beginning July 1, 2005, the sum of two hundred three thousand six hundred forty-three dollars (\$203,643), or so much thereof as may be necessary, for the implementation of this act.

(2) For the implementation of this act, appropriations made in the annual general appropriation act for the fiscal year beginning July 1, 2005, shall be adjusted as follows: the appropriation to the department of regulatory agencies, division of real estate, payments from the real estate recovery fund, is decreased by two hundred fourteen thousand nine hundred sixty-one dollars (\$214,961).

**SECTION 9. Applicability.** This act shall apply to real estate recovery claims filed or pending on or after the effective date of this act.

**SECTION 10. 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: May 27, 2005