

58-3068. Recovery revolving fund; use of moneys, limitations. (a) Except as provided in subsection (d), moneys in the real estate recovery revolving fund shall be used in the manner provided by this act to reimburse persons who suffer monetary damages by reason of any of the following acts committed in connection with any transaction involving the sale of real estate in this state by any broker or salesperson who was licensed under the laws of this state at the time the act was committed or by any unlicensed employee of such broker or salesperson:

(1) Violation of any of the following provisions of this act:

(A) K.S.A. 58-3061, and amendments thereto; or

(B) subsection (a)(1), (2), (13), (18), (19) or (25) or subsection (b)(2) of K.S.A. 58-3062, and amendments thereto; or

(2) violation of any provision of the brokerage relationships in real estate transactions act; or

(3) obtaining money or property by any act which would constitute any crime defined by K.S.A. 21-3701, 21-3704, 21-3705, 21-3707, 21-3710, 21-3711 or 21-3712, prior to their repeal, or K.S.A. 2016 Supp. 21-5801, 21-5803, 21-5821, 21-5823, 21-5824 or 21-5826, and amendments thereto.

(b) Any person may seek recovery from the real estate recovery revolving fund under the following conditions:

(1) Such person has received final judgment in a court of competent jurisdiction of this state in any action wherein the cause of action was based on any of the acts described in subsection (a);

(2) the claim is made within two years after the date that final judgment is entered;

(3) such person has caused to be issued a writ of execution upon such judgment, and the officer executing the same has made a return showing that no personal or real property of the judgment debtor liable to be levied upon in satisfaction of the judgment could be found, or that the amount realized on the sale of the judgment debtor's property pursuant to such execution was insufficient to satisfy the judgment;

(4) such person has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets, subject to being sold or applied in satisfaction of the judgment, and by such search such person has discovered no such property or assets, or that such person has discovered such property and assets and that such person has taken all necessary action and proceedings for the application thereof to the judgment and that the amount thereby realized was insufficient to satisfy the judgment;

(5) any amounts recovered by such person from the judgment debtor, or from any other source, has been applied to the damages awarded by the court; and

(6) such person is not a person who is precluded by subsection (c) from making a claim for recovery.

(c) A person shall not be qualified to make a claim for recovery from the real estate recovery revolving fund, if:

(1) The person is the spouse of the judgment debtor or a personal representative of such spouse;

(2) the person acted as principal or agent in the real estate transaction which is the subject of the claim and is a licensed broker or salesperson or is an association, corporation, limited liability company, limited liability partnership, partnership or professional corporation whose partners, members, officers and employees are licensed as provided by subsection (b) of K.S.A. 58-3042, and amendments thereto; or

(3) such person's claim is based upon a real estate transaction in which the licensed broker or salesperson was acting on the broker's or salesperson's own behalf with respect to property owned or controlled by such broker or salesperson.

(d) At any time that the balance remaining in the real estate recovery revolving fund is greater than \$250,000, any amount over \$250,000 may be used by the commission for the following purposes:

(1) Production and distribution of an agency newsletter;

(2) monitoring education courses;

(3) expansion of materials available for consumers; and

(4) education grants to high schools and universities for course materials on money management and home ownership.

History: L. 1980, ch. 164, § 35; L. 1981, ch. 304, § 4; L. 1986, ch. 210, § 3; L. 1986, ch. 209, § 18; L. 1989, ch. 167, § 8; L. 1992, ch. 120, § 2; L. 1995, ch. 252, § 23; L. 1996, ch. 212, § 10; Revived, L. 1997, ch. 65, § 20; L. 1997, ch. 65, § 21; L. 2008, ch. 155, § 8; L. 2010, ch. 104, § 11; L. 2011, ch. 30, § 206; July 1.