

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 1073
Economic Matters

(Delegate Haddaway-Riccio)

Real Estate Brokers - Guaranty Fund - Claims and Repayment

This bill increases the amount that may be recovered for any claim against the Real Estate Guaranty Fund, and it establishes a fund repayment plan and related suspension and settlement provisions.

Fiscal Summary

State Effect: Potential minimal increase in nonbudgeted expenditures by the Real Estate Guaranty Fund within the Department of Labor, Licensing, and Regulation (DLLR), due to the increased statutory award cap for claims against the fund. Potential minimal increase or decrease in Guaranty Fund revenue due to the repayment plan.

Local Effect: None.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The bill increases the amount that may be recovered for any claim against the Real Estate Guaranty Fund from \$25,000 to \$35,000. Interest payments on the amount to be repaid to the fund begin accruing only if the fund is not repaid within three months. At the request of the licensee required to reimburse the fund, the commission must allow the licensee to enter into a repayment plan to reimburse the fund over a reasonable period, not to exceed four years. If the licensee enters into a repayment plan, the interest rate on the amount owed is 6%. The commission may not reinstate a license that is suspended as a result of a claim paid by the fund unless (1) the previously licensed individual repays the entire amount paid by the fund, plus interest due, or enters

into a payment plan with the commission; and (2) applies to the commission for reinstatement of the license. If the commission offers a licensee a settlement to reduce a penalty imposed for specified violations relating to the fund, the settlement may not include a provision requiring the licensee to waive his or her rights to contest a guaranty fund claim.

Current Law: A person may recover compensation from the fund for an actual loss, based on an act or omission that occurs in the provision of real estate brokerage services by an individual licensed by the commission or an unlicensed employee of a real estate broker. The amount recovered for any claim against the fund may not exceed \$25,000 for each claim. A person may not recover from the fund for specified purposes relating to investment in real estate. A claim must be submitted within three years after the claimant discovers or should have discovered the loss or damage.

If the commission orders a payment by the fund, the commission must immediately and without further proceedings suspend the license of the licensee. The licensee may not be reinstated until the suspended licensee repays the amount paid by the fund in full, plus interest due, which must be at least 10% annually, and applies to the commission for reinstatement of the license. There is no provision for a repayment plan. There is no provision prohibiting the commission from requiring a licensee to waive his or her right to contest a guaranty fund claim if the commission offers the licensee a settlement to reduce a penalty imposed for violations relating to the fund.

Background:

State Real Estate Commission

The commission grants licenses to qualified real estate brokers, associate brokers, and salespersons. The downturn in the residential real estate market resulted in a decrease in the number of licensees over the past several years; the decrease was especially marked among new salesperson licensees. There were 41,465 total licensees in June 2011, which is a significant reduction from the 54,460 individuals licensed with the commission in June 2008.

Real Estate Guaranty Fund

Created by Chapter 649 of 1971, the fund is administered by the commission to compensate consumers suffering financial loss as a result of licensee misconduct. All new licensees pay a fee of \$20 toward the fund. Prior to 1984, claims were limited to the actual loss of the complainant. However, Chapter 589 of 1984 specified that consumers were only entitled to the first \$25,000 of actual loss. The fund paid 19 claims in fiscal 2010. Three of those claims reached the \$25,000 cap, and only six claims have

reached the cap over the proceeding five years. The number and total amount of fund awards for fiscal 2006 through 2010 are included in **Exhibit 1**.

Exhibit 1
Guaranty Fund Data
Fiscal 2006-2010

	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>
Total Amount Claimed	\$3,779,518	\$6,332,117	\$10,898,007	\$9,310,964	\$5,340,800
Amount Paid	\$110,163	\$58,766	\$42,942	\$114,839	\$153,388
Total Awards	14	8	9	9	19
<i>For Less than \$3,000</i>	4	4	4	2	8
<i>Between \$3,000 and \$24,999</i>	9	3	5	6	8
<i>For \$25,000</i>	1	1	0	1	3
Ending Fund Balance	\$1,770,910	\$2,025,901	\$2,209,690	\$2,339,061	\$2,296,501

Source: Department of Labor, Licensing, and Regulation

Of the six \$25,000 awards from fiscal 2006 through 2010, two of the claims were for \$25,000. The remaining four claims were for \$35,000, \$38,000, \$150,000, and \$170,000, reflecting a total of \$293,000 of claimed damages that were not eligible for compensation. While it is unknown whether these figures reflect uncompensated amounts eligible for reimbursement under the current statutory structure, it is likely that claimants could have received some additional restitution were the statutory cap not in place. The balance of the fund at the beginning of fiscal 2012 was approximately \$2.3 million.

State Fiscal Effect: The bill raises the statutory cap on fund claims from \$25,000 to \$35,000. As depicted in Exhibit 1, DLLR advises that the number of claims that have reached the maximum statutory cap of the fund is very low. To the extent that claims may be paid up to \$35,000 under the bill, nonbudgeted expenditures from the Real Estate Guaranty Fund increase as some claims total an amount higher than allowable under current law. Assuming a continued balance of over \$2.0 million in the fund and no major increase in the number of claims or the amount included in the average claim, Legislative Services advises that the impact of raising the cap on the fund is minimal.

The revenue change due to the payment plan provisions on the fund is unclear, though Legislative Services advises that the net impact of the repayment plan on nonbudgeted revenue is expected to be minimal. To the extent that licensees who would not otherwise reimburse the fund choose to enter and successfully complete a payment plan, fund revenues increase. Similarly, to the extent that licensees who would otherwise reimburse the fund at an interest rate of at least 10% choose to enter into a payment plan at the lower interest rate of 6% and over a longer repayment period, fund revenues decrease.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Labor, Licensing, and Regulation; Department of Legislative Services

Fiscal Note History: First Reader - March 12, 2012
ncs/mcr

Analysis by: Stephen M. Ross

Direct Inquiries to:
(410) 946-5510
(301) 970-5510