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Agents Indemnity Fund Claim for Compensation

Land Agents Act 1994 Conveyancers Act 1994

The Agents Indemnity Fund can provide financial compensation for people who lose money through the wrongful actions of a registered land agent or conveyancer (or an employee of a licensed land agent or conveyancer).

The Agents Indemnity Fund is established under the *Land Agents Act 1994* and the *Conveyancers Act 1994*. Income for the fund comes primarily from interest generated from real estate agent and conveyancer trust accounts. The fund is administered by the Commissioner for Consumer Affairs. The Commissioner decides whether claims against the fund are eligible and how much compensation is payable.

Who can be compensated?

Compensation can be claimed by persons or companies who suffer monetary (pecuniary) loss because of a fiduciary default of trust money by a:

- currently or previously registered land agent or conveyancer; or
- an employee of that estate agent or conveyancer.

To clarify, a fiduciary default is when:

- money is not accounted for properly or is wrongfully deficient owing to a breach of trust (defalcation);
- money is stolen (misappropriation); or
- money is put to a different purpose than that which it is entrusted (misapplication).

The fiduciary default must occur while the money is in the possession or control of the land agent or conveyancer ("on trust").

Some examples:

- An agent decamps with your deposit;
- Rent money paid by the tenant is not paid to you as a landlord from the land agent;
- Your money is stolen while being held on trust;
- A conveyancer does not undertake work you have already paid for;
- A land agent does not forward the GST on a property sale to the Australian Tax Office and you are responsible for payment.

While these examples may give you some ideas of when a claim can be made, every case is different and you should contact a claims assessment officer to discuss your situation further if you have any queries.

All references in this document to an agent or conveyancer includes a former agent or conveyancer.

What can be claimed?

You can claim the full amount of your monetary loss. However, you must deduct any amount you have recovered as this reduces your loss. Additionally, you can claim any reasonable legal expenses you have obtained through taking legal action to recover the money lost from the agent or conveyancer in making a claim to the Fund.

If using a lawyer, your lawyer should consult with the Commissioner at an early stage as to what reasonable costs and expenses may be.



When can you claim?

Before making a claim you must be able to demonstrate that you have no reasonable prospect of recovering the full amount of the loss other than by claiming on the fund.

This may mean you have to wait until dividends from the liquidation of the company are finalised and/or pursue legal action against the agent or conveyancer.

It may also mean that you may have to take legal action against the agent or conveyancer to attempt to recover the money you have lost.

However, if legal action is not likely to bring you any real benefits we would not ask you to pursue the agent or conveyancer. For example, where:

- The cost of the case will outweigh the benefits; or
- The agent or conveyancer will not be able to pay you any money (for example if they are bankrupt); or
- There is no real likelihood of success

You will not be required to take legal action against the agent. You should contact the office to discuss these requirements further.

Is there a time limit for applying?

No. You can make a claim anytime after suffering the monetary loss. However, it may be in your best interests to submit a claim as soon as you are aware that you have suffered a loss that you will not be able to recover.

What happens when you make a claim?

1. A claims assessment officer is assigned to the claim. This person is the contact person for all enquires in relation to the claim.
2. Both the claimant and the agent or conveyancer are advised of the receipt of the claim.
3. The agent or conveyancer is given reasonable opportunity to respond to the claim.
4. An investigation is undertaken of the validity of the claim.
5. The Commissioner of Consumer Affairs makes a determination of the claim.
6. Both the claimant and the agent or conveyancer are advised of the Commissioner's determination.

How long does it take to finalise a claim?

All attempts are made to finalise claims within 30 days.

Where the claim cannot be dealt with within 30 days, you will be advised of the reasons for this and the estimated time for processing the claim.

Should the claim take an extended period to finalise the Office will communicate with you every 30 days to update on the progress of the claim.

How to make a claim

An application must be in writing, Claim for Compensation - Real Estate Agent Indemnity Fund forms are available on www.cbs.sa.gov.au or by contacting the office.

If you are not happy with the decision

You can appeal to the District Court within 3 months of receiving the Commissioner's decision.



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Details of Claimant/Investor details

Company (if your investment was made in the name of a company, enter the names of the company directors below)

Mr/Mrs/Ms Given name(s) Surname

Address State Postcode

Mr/Mrs/Ms Given name(s) Surname

Address State Postcode

Mr/Mrs/Ms Given name(s) Surname

Address State Postcode

Person lodging this form on behalf of investor (if applicable)

Mr/Mrs/Ms Given name(s) Surname

Relationship to investor Company

Address State Postcode

Details of estate agent or conveyancer you are making this claim against

Name of individual estate agent or conveyancer or employee of estate agent or conveyancer

Name of estate agency or conveyancer

Address of estate agency or conveyancer

Details of claim

How much money is being claimed from the fund?

\$

How much money was actually lost?

\$

How much money have you recovered?

\$

What have you done to attempt to recover the money

Please explain what action you have taken to try and recover your loss (give details of who you contacted, date and outcomes of contact)

What happened

Please describe the events that have led you to make this claim (attach a separate signed and dated sheet if you need more space)

Supporting documentation

Do you have any supporting documents to support your claim (e.g receipts, accounts, contracts, invoices)

No

Yes (Attach photocopies of all documents to this claim form)

Signed:.....Date:.....

Signed:.....Date:.....

Signed:.....Date:.....