

CHAPTER 98

(HB 425)

AN ACT relating to recovery funds and making an appropriation therefor.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 324.410 is amended to read as follows:

The purposes of the real estate education, research, and recovery fund shall be as follows:

- (1) If a licensee, acting in the capacity of a licensee, has been duly found guilty of fraud in the violation of one (1) or more of the provisions of KRS 324.160, and upon the conclusion of a final order entered by the commission, or by the courts, if appealed, the commission may pay to the aggrieved person or persons an aggregate amount not to exceed twenty thousand dollars (\$20,000) per claimant with combined payments to all claimants against any one (1) licensee not to exceed fifty thousand dollars (\$50,000), if the licensee has refused to pay the claim within a period of twenty (20) days of entry of a final order and if the amount or amounts of money in question are certain and liquidated.
- (2) The commission shall maintain a minimum level of four hundred thousand dollars (\$400,000) for recovery and guaranty purposes. These funds may be invested and reinvested in the same manner as funds of the state employees' retirement system and the interest from the investments shall be deposited to the credit of the real estate education, research, and recovery fund. Sufficient liquidity shall be maintained so that there shall be money available to satisfy any and all claims which may be processed through the commission through the means of formal administrative hearing as outlined in this chapter.
- (3) The commission, in its discretion, may use any and all funds in excess of the four hundred thousand dollars (\$400,000) level, regardless of whether it is from the real estate education, research, and recovery fund fees or accrued interest thereon, for the following purposes:
 - (a) To carry out the advancement of education and research in the field of real estate for the benefit of those *seeking a real estate license, and those* licensed under the provisions of this chapter and the improvement and making more efficient the real estate industry;
 - (b) To underwrite educational seminars, caravans, and other forms of educational projects for the use and benefit generally of real estate licensees;
 - (c) To establish a real estate chair or courses at Kentucky state institutions of higher learning for the purpose of making the courses available to licensees and the general public who may seek them on a college or university level;
 - (d) To contract for a particular research project in the field of real estate for the Commonwealth of Kentucky;
 - (e) To sponsor, contract for, and to underwrite other educational and research projects of a similar nature having to do with the advancement of the real estate field in Kentucky;~~and~~
 - (f) To receive recommendations and to cooperate and work with the Kentucky Association of Realtors and other real estate groups for the enlightenment and advancement of the real estate licensees of Kentucky; *and*
 - (g) *To augment the trust and agency account for purposes of addressing cash flow shortfalls, budget deficits, and for reimbursement of personnel, administrative, operational, and capital expenses incurred by the trust and agency account pursuant to the purposes of the education, research, and recovery fund as provided in this section, an amount not to exceed two hundred fifty thousand dollars (\$250,000) annually.*
- (4) Within one hundred twenty (120) days after the end of each fiscal year, the commission shall make public, through its Web site or other public media, a statement of income and expenses of the real estate education, research, and recovery fund, the details of which *are in accordance with state financial reporting requirements*~~[have been approved by the secretary of the Finance and Administration Cabinet].~~

➔Section 2. KRS 330.192 is amended to read as follows:

- (1) (a) There is hereby created and established in the State Treasury the auctioneer's education, research, and recovery fund.
- (b) In addition to the license fees established in KRS 330.070, and KRS 330.095, the board may assess each licensee a renewal recovery fee established by administrative regulations promulgated by the board in accordance with KRS Chapter 13A. Each initial applicant shall pay an initial recovery fee established by administrative regulations promulgated by the board in accordance with KRS Chapter 13A.
- (2) The purposes of the auctioneer's education, research, and recovery fund shall be as follows:
- (a) When a licensee has been duly found guilty of violating one (1) or more of the provisions of this chapter, or one (1) or more of the administrative regulations duly promulgated by the board, and upon the conclusion of a final order entered by the board or by the courts, if appealed, the board is authorized to pay to the aggrieved party an amount not to exceed fifty thousand dollars (\$50,000) against any one (1) licensee, if the licensee has refused to pay the claim within twenty (20) days of entry of a final order and provided further that the amount or amounts of money in question are certain and liquidated.
- (b) The board shall maintain a minimum of five hundred thousand dollars (\$500,000) for recovery and guaranty purposes. These funds may be invested and reinvested in the same manner as funds of the State Employees' Retirement System and the interest from said investments shall be deposited to the credit of the research and recovery fund, or, in the discretion of the board, to the agency fund account as set out in KRS 330.050(6). Sufficient liquidity, however, shall be maintained so that money is available to satisfy all claims which may be processed through the board by means of administrative hearing as outlined in this chapter.
- (c) The board may use funds in excess of five hundred thousand dollars (\$500,000), whether from the auctioneer's education, research, and recovery fund fees or accrued interest thereon, for any of the following purposes:
1. To advance education and research in the auction field for the benefit of those *seeking an auctioneer license, those* licensed under the provisions of this chapter and to improve and make more efficient the auction industry;
 2. To underwrite educational seminars, caravans, and other forms of educational projects for the general benefit of licensees;
 3. To establish an auction chair or courses at Kentucky state institutions of higher learning for the purpose of making college or university level courses available to licensees and the general public;
 4. To contract for a particular research project in the auction field for the Commonwealth of Kentucky;
 5. To sponsor, contract for, and to underwrite all other educational and research projects that contribute to the advancement of the auction field in Kentucky;
 6. To cooperate with associations of auctioneers and any other groups for the enlightenment and advancement of Kentucky licensees;
 7. To increase the level of the auctioneer's education, research, and recovery fund above five hundred thousand dollars (\$500,000); and
 8. To augment the regular trust and agency account of the board *for purposes of addressing cash flow shortfalls, budget deficits, and for reimbursement of personnel, administrative, operational, and capital expenses incurred by the trust and agency account pursuant to the purposes of the education, research, and recovery fund as provided in this section, an amount not to exceed two hundred fifty thousand dollars (\$250,000) annually.*
- (d) *Within one hundred twenty (120) days after the end of each fiscal year, the board shall make public, through its Web site or other public media, a statement of income and expenses of the auctioneer's education, research, and recovery fund, the details of which are in accordance with state financial reporting requirements.*
- (3) (a) If a licensee is found guilty of one (1) or more provisions of this chapter or of violating one (1) or more of the administrative regulations of the board, and if the amount of the money lost by the aggrieved

party or parties is in dispute or cannot be determined accurately, then the amount of damages shall be determined by the Circuit Court in the county where the alleged violation took place, provided that the board has previously determined that a violation of the license laws or of the administrative regulations has occurred and a final order has been entered.

- (b) If an order has been entered and the license rights of the licensee have been finally adjudicated, then the local Circuit Court shall determine the monetary damages due from the aforesaid violation or violations.
 - (c) When a final order has been entered by the Circuit Court, Court of Appeals, or Supreme Court, and upon certification to the board, the aggrieved party or parties shall be paid an amount not to exceed fifty thousand dollars (\$50,000) by the board, and the license held by the licensee against whom the claim was made by the aggrieved party shall be suspended at least until the licensee has reimbursed the auctioneer's education, research, and recovery fund for all amounts paid to the aggrieved party due to the violation of the licensee.
 - (d) When, upon the final order of the court, the board has paid from the auctioneer's education, research, and recovery fund any sum to the aggrieved party, the board shall be subrogated to all of the rights of the aggrieved party to the extent of the payment and the aggrieved party shall, to the extent of the payment, assign his right, title, and interest in the judgment to the board.
 - (e) All claims for monetary damages or relief from the auctioneer's education, research, and recovery fund shall be made in writing and submitted to the board within twelve (12) months of the act of the auctioneer giving rise to the loss. Failure to file a claim within the twelve (12) month period shall bar the claim. Additional evidence shall be submitted by the claimant if required by the board.
 - (f) Notwithstanding any other provisions of this chapter, no unreimbursed amount greater than fifty thousand dollars (\$50,000) shall be paid by the board on account of any one (1) licensee, no matter over how long a time, or for how many claims, and no matter what the number of claimants be or the size of such claims, individually or in the aggregate. Should the licensee reimburse the fund for all amounts paid, then future claims timely filed with the board concerning different matters may be received pursuant to this section.
 - (g) No claims shall be approved under this section for amounts which, in the aggregate, exceed the maximum payable on account of any one (1) licensee in effect at the time of the act or acts of the licensee giving rise to the claims, except to the extent of said maximum. Statutory increases in the maximum set out in this section do not apply retroactively.
- (4) All categories of licensees under this chapter are covered under the provisions of this section for the benefit and protection of the public.
 - (5) This section is not intended to substitute for, circumvent, or duplicate other remedies existing at law or otherwise for claimants or potential claimants, but constitutes a last resort for aggrieved persons who would not, but for the provisions of this section, be able to recover their losses by any other means available. The board shall have full discretion to require that claimants exhaust all other remedies prior to proceeding under this section, including, but not limited to, the remedy of obtaining a judgment by all diligent and appropriate means.

Signed by Governor April 11, 2012.