

## Recovery Fund Claim Eligibility Checklist

Consumers may use the following checklist to determine whether or not they may have a valid claim against the Recovery Fund. This checklist is for informational purposes only and should not be construed as an advisory opinion or advance determination of a potential claim. However, if you answer **NO** to any of the following questions, you may not be entitled to recover from the Recovery Fund.

<p><u>Residential Mortgage Loan</u></p> <p>Recovery for a claim against the Recovery Fund is limited to a transaction concerning a “residential mortgage loan,” defined by Texas Finance Code Section 180.002 to mean “a loan primarily for personal, family, or household use that is secured [or designed to be secured] by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real estate.” The term “residential mortgage loan” is further defined by the Department’s administrative rules at 7 Tex. Admin. Code § 81.2 to include “new loans and renewals, extensions, modifications, and rearrangements of such loans” and “does not include a loan which is secured by a structure that is suitable for occupancy as a dwelling, but is used for a commercial purpose such as a professional office, salon, or other non-residential use, and is not used as a residence.” A commercial loan, including a mortgage loan concerning a dwelling or residential real estate for investment purposes does not constitute a residential mortgage loan.</p> <p><u>Question 1:</u>  <i>Does the transaction concerning your claim involve a “residential mortgage loan?”</i></p>	<p style="text-align: center;">Yes      No</p>
<p><u>Licensed Originator</u></p> <p>A claim against the Recovery Fund may only be made for alleged acts committed by an individual licensed by the Department as an originator. A licensee is assigned a unique numerical identifier (ID number) by the Nationwide Mortgage Licensing System &amp; Registry (NMLS), the licensing database system utilized by the Department. A licensee is generally required to disclose his or her NMLS when communicating with consumers, and the consumer may utilize this NMLS ID number to verify an individual’s license status (a name search is also available). A consumer may verify the license status of an individual by visiting the NMLS Consumer Access website, located at <a href="http://nmlsconsumeraccess.org">nmlsconsumeraccess.org</a>.</p>	

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<p><u>Question 2:</u> <i>Is the person against whom you seek to make a claim licensed by the Department as an originator (or was he or she licensed at the time of the alleged acts)?</i></p>	<p style="text-align: center;">Yes      No</p>
<p><u>Monetary Damages</u></p> <p>A claimant may only make a claim against the Recovery Fund for actual, out-of-pocket, monetary damages (money losses). A claimant may not recover future damages that have not actually occurred. A claimant may also not recover noneconomic damages such as compensation for physical pain and suffering, mental or emotional pain or anguish, loss of consortium, disfigurement, physical impairment, loss of companionship and society, inconvenience, loss of enjoyment of life, injury to reputation, or any damages other than actual, out-of-pocket, monetary damages.</p> <p><u>Question 3:</u> <i>Did you incur actual, out-of-pocket, monetary damages (money losses)?</i></p>	<p style="text-align: center;">Yes      No</p>
<p><u>Causation</u></p> <p>In order to recover from the Recovery Fund, the consumer’s monetary damages must have been caused by the acts of the licensee. A consumer generally may not recover monetary damages caused by or attributable to a person other than the licensee (including the licensee’s sponsoring entity (mortgage company or mortgage banker)).</p> <p><u>Question 4:</u> <i>Were your monetary damages caused by the acts of the licensee?</i></p>	<p style="text-align: center;">Yes      No</p>
<p><u>Eligibility</u></p> <p>In order to recover from the Recovery Fund, a claimant must be qualified and not disqualified from making a claim. Pursuant to Texas Finance Code Section 156.504, a claimant may not be: (i) a spouse of the licensee; (ii) a child, parent, grandchild, grandparent, or sibling of the licensee; (iii) a person sharing living quarters with the licensee; (iv) a current or former employer, employee, or associate of the licensee; (v) a person who has aided, abetted, or participated other than as a victim with the licensee in the acts forming the claim; or (vi) a licensee who is seeking to recover compensation in the transaction or transactions on which the claim is based.</p> <p><u>Question 5:</u> <i>After reviewing the above list, are you a person qualified to make a claim?</i></p>	<p style="text-align: center;">Yes      No</p>

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Violation

Pursuant to Texas Finance Code Section 156.501(b), the alleged acts of the licensee must constitute a violation by the licensee of specific, enumerated provisions of the Texas Finance Code – specifically, Texas Finance Code Section 157.024(a)(2), (3), (5), (7), (8), (9), (10), (13), (16), (17), (18) or Section 156.304(b).

List of violations:

1. 157.024(a)(2) – the licensee published or caused to be published an advertisement that: (i) was misleading; (ii) was likely to deceive the public; (iii) in any manner tended to create a misleading impression; (iv) failed to identify as a residential mortgage loan originator the person causing the advertisement to be published; or (v) violated federal or state law.
2. 157.024(a)(3) – the licensee engaged in conduct that constitutes improper, fraudulent, or dishonest dealings (including, potentially, as provided by the Department’s rules contained in 7 TAC Section 81.202).
3. 157.024(5) – the licensee failed to use a fee collected in advance of closing for a purpose for which the fee was paid.
4. 157.024(7) – the licensee induced or attempted to induce a party to a contract to breach the contract so the licensee could make the loan.
5. 157.024(8) – the licensee published or circulated an unjustified or unwarranted threat of legal proceedings in matters related to the licensee’s actions or services.
6. 157.024(9) – the licensee aided, abetted, or conspired with a person to circumvent the requirements of Texas Finance Code Chapters 156 or Chapter 157 (primarily, the requirement to be licensed or registered to conduct residential mortgage loan activities).
7. 157.024(10) – the licensee acted in the dual capacity of an originator and real estate broker, salesperson, or attorney in a transaction without the knowledge and written consent of the mortgage applicant or in violation of applicable requirements under federal law.
8. 157.024(13) – the licensee failed without just cause to surrender, on demand, a copy of a document or other instrument coming into the licensee’s possession that was provided to the licensee by

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<p>another person making the demand or that the person making the demand is under law entitled to receive.</p> <p>9. 157.024(16) – the licensee paid compensation to a person who is not licensed or exempt from licensure under Texas Finance Code Chapters 156 or 157.</p> <p>10. 157.024(17) – the licensee established an association, by employment or otherwise, with a person who was expected or required to act as an originator or a mortgage company but was not licensed or exempt from licensure requirements.</p> <p>11. 157.024(18) – the licensee charged or received, directly or indirectly, a fee for assisting a mortgage applicant in obtaining a residential mortgage loan before all of the services that the licensee agreed to perform for the mortgage applicant were completed, and the proceeds of the residential mortgage loan were disbursed (other than a fee to lock a loan as provided by Texas Finance Code Section 156.304(b)).</p> <p>12. 156.304(b) – the licensee charged for or received a fee for locking in an interest rate absent a written agreement signed by the mortgage applicant that contains a statement of whether the fee to lock in the interest rate is refundable and, if so, the terms and conditions necessary to obtain the refund</p> <p><u>Question 6:</u>  <i>After reviewing the list above, did the licensee’s conduct constitute a violation on the list?</i></p>	<p>Yes      No</p>
<p><u>Time Limitations</u></p> <p>Pursuant to Texas Finance Code Section 156.503, a Recovery Fund Claim Application may not be filed after the fourth anniversary of the date of the alleged act or omission causing the actual damages or the date the act or omission should reasonably have been discovered.</p> <p><u>Question 7:</u>  <i>Has it been less than four years since the act or omissions occurred; or, alternatively, has it been less than four years since you discovered the act or omission giving rise to your claim?</i></p>	<p>Yes      No</p>