

Recovery Fund Claim (Unlicensed Activity) Eligibility Checklist

Consumers may use the following checklist to determine whether or not they may have a valid recovery claim against the Mortgage Grant Fund to recover out-of-pocket monetary damages (money losses) incurred because of fraud committed by an individual who acted in the capacity of a residential mortgage loan originator (originator) and was required to be licensed by the Department as an originator, but did not hold such license (unlicensed originator). This checklist is for informational purposes only and should not be construed as an advisory opinion or advance determination by the Department of a potential claim. However, if you answer **NO** to any of the following questions, you may not be entitled to recover from the Mortgage Grant Fund.

<p><u>Residential Mortgage Loan</u></p> <p>Recovery for a claim against the Mortgage Grant 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>Yes No</p>
<p><u>Unlicensed Originator</u></p> <p>A recovery claim against the Mortgage Grant Fund may only be made for alleged acts committed by an individual who acted in the capacity of a residential mortgage loan originator and was required to be licensed by the Department as such, but did not hold such license. A “residential mortgage loan originator” is defined by Texas Finance Code Section 180.002 to mean “an individual who for compensation or gain or in the expectation of compensation or gain: (i) takes a residential mortgage loan application; or (ii) offers or negotiates the terms of a residential mortgage loan.” The term “application,” as used in the phrase “residential mortgage loan application,” is defined by the Department’s administrative rules at 7 Texas</p>	

DEPARTMENT OF
SAVINGS AND MORTGAGE LENDING

<p>Administrative Code Section 81.2 to mean “a request, in any form, for an offer (or a response to a solicitation for an offer) of residential mortgage loan terms, and the information about the mortgage applicant that is customary or necessary in a decision on whether to make such an offer, including, but not limited to, a mortgage applicant’s name, income, social security number to obtain a credit report, property address, an estimate of the value of the real estate, and/or the mortgage loan amount.” The phrase “offers or negotiates the terms of a residential mortgage loan” is defined by the Department’s administrative rules at 7 Texas Administrative Code Section 81.2 to mean, among other things, when an individual: (i) “arranges or assists a mortgage applicant or prospective mortgage applicant in obtaining or applying to obtain, or otherwise secures an extension of consumer credit for another person, in connection with obtaining or applying to obtain a residential mortgage loan;” (ii) “presents for consideration by a mortgage applicant or prospective mortgage applicant particular residential mortgage loan terms (including rates, fees and other costs);” or (iii) “communicates directly or indirectly with a mortgage applicant or prospective mortgage applicant for the purpose of reaching a mutual understanding about particular residential mortgage loan terms.” An originator licensed by the Department (licensee) is assigned a unique numerical identifier (ID number) by the Nationwide Mortgage Licensing System & 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 (or lack thereof) by visiting the NMLS Consumer Access website, located at nmlsconsumeraccess.org.</p> <p><u>Question 2:</u> <i>Is the person against whom you seek to make a recovery claim an individual who acted in the capacity of a residential mortgage loan originator but did not hold a license issued by the Department to act as such?</i></p>	<p>Yes No</p>
<p><u>Monetary Damages</u></p> <p>A claimant may only make a recovery claim against the Mortgage Grant 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</p>	

DEPARTMENT OF
SAVINGS AND MORTGAGE LENDING

<p>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>Yes No</p>
<p><u>Causation</u></p> <p>In order to recover on a claim against the Mortgage Grant Fund, the consumer’s monetary damages must have been caused by the acts of the unlicensed originator. A consumer generally may not recover monetary damages caused by or attributable to a person other than an unlicensed originator (including the company or business for which the unlicensed originator worked)).</p> <p><u>Question 4:</u> <i>Were your monetary damages caused by the acts of the unlicensed originator?</i></p>	<p>Yes No</p>
<p><u>Eligibility</u></p> <p>In order to recover from the Mortgage Grant Fund, a claimant must be qualified and not disqualified from making a claim. Pursuant to Texas Finance Code Section 156.504 (by application of Texas Finance Code Section 156.555), a claimant may not be: (i) a spouse of the unlicensed originator; (ii) a child, parent, grandchild, grandparent, or sibling of the unlicensed originator; (iii) a person sharing living quarters with the unlicensed originator; (iv) a current or former employer, employee, or associate of the unlicensed originator; (v) a person who has aided, abetted, or participated other than as a victim with the unlicensed originator in the acts forming the claim; or (vi) an individual licensed by the Department as an originator 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>Yes No</p>
<p><u>Acts of Fraud; Violation for Fraudulent Dealings</u></p> <p>In accordance with Texas Finance Code Sections 156.555 and 156.501(b), and pursuant to 7 Texas Administrative Code Section 52.305(c), a claimant “must establish that the acts of the unlicensed originator, had he or she been licensed as a residential mortgage loan originator at the time of such acts, would have constituted fraudulent dealings for purposes of [Texas Finance Code Section] 157.024(a)(3).”</p>	

DEPARTMENT OF
SAVINGS AND MORTGAGE LENDING

<p><u>Question 6:</u> <i>Did the unlicensed originator commit acts of fraud that would constitute fraudulent dealings had he or she been licensed by the Department as a residential mortgage loan originator at the time such acts were committed?</i></p>	<p>Yes No</p>
<p><u>Time Limitations</u></p> <p>Pursuant to Texas Finance Code Section 156.503 (by application of Texas Finance Code Section 156.555), a Mortgage Grand Fund Recovery Claim Application may not be filed after the fourth anniversary of the date of the alleged fraudulent acts 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 fraudulent acts occurred; or, alternatively, has it been less than four years since you discovered the fraudulent acts giving rise to your claim?</i></p>	<p>Yes No</p>