

MANUFACTURED HOME RECOVERY FUND

- FACT SHEET -

The Manufactured Home Recovery Fund (MHRF) administered by the Department of Housing and Community Development (HCD) is a source of **last resort recovery** for purchasers, sellers, and investors of a mobilehome/manufactured home/multi-unit manufactured housing (hereafter simply referred to as manufactured home) who have lost money as the result of failure to honor warranties or guarantees, fraud, willful misrepresentation, or conversion; willful violations of the Mobilehome-Manufactured Housing Act of 1980 including adopted regulations; and violations of new manufactured home warranty laws. "Conversion" means the unlawful appropriation of the property of another. Eligible victims may recover their actual and direct losses up to a maximum of \$75,000. The MHRF is financed from one-time fees collected from manufactured home salespersons and dealers and a fee collected on each sale of a mobilehome or manufactured home.

WHO CAN FILE A CLAIM AGAINST THE MHRF?

- The buyer or seller of a manufactured home to be used for as a personal or family residence, or for investment purposes, bought or sold on or after January 1, 1985, **and**
 - Who has sued the alleged wrongdoer and obtained a final civil judgment ; **or**
 - Who has a unpaid criminal restitution order from a final criminal judgment; **or**
 - Who has an unpaid administrative law restitution order from a final administrative decision; **or**
 - Whose claim is against an alleged wrongdoer, person or entity, which is or has been subject to bankruptcy proceedings or otherwise "judgment proof" (a person who lacks the financial resources necessary to satisfy a judgment for damages or whose wages or property is protected from judicial attachment by law). Note: the claimant must provide evidence acceptable to HCD to prove a person or entity is judgment proof.

ADDITIONAL REQUIREMENTS FOR PAYMENT OF A CLAIM:

1. A claim based on a civil judgment (which may be against any person or business who is a buyer or seller of a manufactured home, not just an HCD licensee) may be filed if the following additional requirements are met:
 - a. The claim must be filed within two (2) years from the date of the final judgment;
 - b. The judgment must be based on at least one of the following wrongful acts:
 - Failure to honor warranties or guarantees;
 - Fraud or willful misrepresentation related to any financial provision;
 - Fraud or willful misrepresentation of the kind or quality of the product sold or purchased;
 - Conversion;
 - Any willful violation of Health and Safety Code, Division 13, Part 2, the Mobilehome-Manufactured Housing Act of 1980 and any regulations adopted;
 - Any violation of Chapter 3, Title 17, beginning with Section 1797 of the Civil Code (new manufactured home warranties).
 - c. The claimant must have executed on the final judgment or present evidence that claimant has "diligently pursued collection efforts against all assets of the judgment debtor and found the defendant to be judgment proof (i.e., bankrupt, unemployed, incarcerated, whereabouts unknown, etc.). Note: If you are unable to locate the judgment debtor you may want to send a

certified letter to their last known address and request the Postal Service to provide verification of the last known address used by the addressee.

2. A claim based on a sale or a purchase from a person or entity who has filed for bankruptcy may be filed if the following additional requirements are met:
 - a. The claim must be filed with HCD within two (2) years from whichever of the following events that occurs later:
 - (1) The termination of bankruptcy proceedings;
 - (2) The date of sale (i.e., close of escrow for dealer sales; or payment of the sales price, or execution of a sales contract and delivery). If clarification is needed see Health and Safety Code 18070.2;
 - (3) The date of discovery of the violation(s) causing direct and actual loss, but no longer than five (5) years from the date of sale.
 - b. The claim must be based on the same wrongful acts as listed in 1.b., above.

HOW MUCH CAN BE RECOVERED? The maximum payment allowed with respect to one sale transaction on a new or used manufactured home is the lesser of **\$75,000** or the amount of "actual and direct loss." "Actual and direct loss" means out-of-pocket losses as a result of the transaction and may include court costs and interest at the statutory interest rate (see California Code of Civil Procedure Section 685.010) from the date of loss; and if the claim is based on a judgment reasonable attorney fees and court costs.

If the claim is not based on a civil judgment, attorney's fees shall not to exceed **15%** of the amount of the claim and court costs. If the claim is based on a final civil judgment, attorney's fees and court costs shall not to exceed **25%** of the judgment amount. Government attorneys may claim up **35%** of the amount of the judgment for civil, criminal with restitution order, or administrative order with restitution order obtained.

MHRF claim forms and instructions are available at HCD's website <http://www.hcd.ca.gov/codes/ol/mhrfmenu.htm>
You can also receive a claim application by contacting us at:

California Department of Housing and Community Development
Division of Codes and Standards
Manufactured Home Recovery Fund
P. O. BOX 31
Sacramento, CA 95812-0031
(916) 323-9803 or TOLL FREE 1-800-952-5275
E-mail: ol@hcd.ca.gov

FACTS TO BEAR IN MIND WHEN FILING A CLAIM WITH THE MHRF:

1. A claimant does not include a person holding a lien on a manufactured home or person with a secondary interest (second lienholders) in a manufactured home.
2. Except in the case of bankruptcy or if a person or entity is deemed judgment proof, a final civil judgment, final criminal judgment (with restitution), or administrative decision (with restitution) must be obtained even if the buyer or seller is out of business or their whereabouts is unknown.
3. If the buyer or seller has filed bankruptcy, you must file a Proof of Claim with the United States Bankruptcy Court unless instructed not to file a Proof of Claim by the Bankruptcy Court. In California you can obtain bankruptcy information at the following websites: for Northern California <http://www.canb.uscourts.gov/> or for Southern California <http://www.casb.uscourts.gov/> or for Central California <http://www.cacb.uscourts.gov/>

4. The total amount of a claim cannot exceed the amount of "actual and direct loss" which remains unpaid from any source.
5. "Actual and direct losses" does not include punitive damages or intentional infliction of emotional distress damages.
6. MHRF claims do not need to be prepared by an attorney. Legal representation is permitted but is not necessary or required to file a claim. The MHRF will not pay attorney fees in connection with the preparation of a claim.
7. As a condition of any payment from the MHRF, you will be required to assign to HCD your judgment or any rights you have to collect from the bankrupt seller/buyer.
8. A person who purchases or sells a manufactured home for an investment purpose may receive payment from the MHRF only once.

WHAT TO DO IF YOU HAVEN'T YET OBTAINED A JUDGMENT AGAINST THE BUYER OR SELLER OF YOUR MANUFACTURED HOME.

If the seller/buyer is not the subject of bankruptcy proceedings, you will need to obtain a civil judgment against them. If your out-of-pocket losses are less than \$5,000, or you are willing to limit your potential collection to \$5,000, you may file a Small Claims Court action. If the buyer/seller is a licensed mobilehome/manufactured home licensee (salesperson, dealer, or manufacturer) you may sue even if they are no longer in business.

Small Claims Court is an easy procedure, and the parties may NOT use an attorney. Many counties have clinics available to help parties use Small Claims Court. You can visit the following website for self-help information on court processes: <http://www.courtinfo.ca.gov/selfhelp/>

You may also engage an attorney. Because many attorneys may not know of the existence of the MHRF, please show this fact sheet to them. Knowing that there may be a monetary source to recover from may be a deciding factor as to whether it is economically feasible for the attorney to pursue your claim in court.

An attorney will be able to advise you if you have a viable claim, as you must sue someone within the statute of limitations (a deadline set by law) for the particular cause of action.

You or your attorney can view the applicable laws at the following website: <http://www.leginfo.ca.gov/calaw.html> . From this website check the box for "Health and Safety Code" then insert into the keyword the code section "18070". This should take you to the beginning of the MHRF codes (Health and Safety Code sections 18070-18070.7).

You can also request assistance from your local District Attorney to pursue a criminal case against the wrongdoer. If the District Attorney obtains a final judgment and the judgment includes restitution for you based on the wrongful acts listed above, then you are eligible to file a claim if the District Attorney is unable to obtain the restitution on your behalf.

You can also request assistance from HCD to pursue an administrative legal case against the wrongdoer, if they are licensed as a manufactured home salesperson, dealer, or manufacturer. If HCD obtains a final judgment and the judgment includes restitution for you based on the wrongful acts listed above, then you are eligible to file a claim if HCD is unable to obtain the restitution on your behalf.

The information contained on this document does not contain all the provisions or details of the laws affecting the MHRF. The claimant should review the statutes at the website listed above or at a local law library.