

Guide to making a claim against the Property Services Compensation Fund under Section 173 of the *Property and Stock Agents Act 2002*.

Introduction

A claim against the Property Services Compensation Fund ("the Compensation Fund") may be made by a person ("the Claimant") if the claim involves each of the following:

- (a) the Claimant has suffered a **pecuniary loss**;
- (b) because of a **failure to account**;
- (c) by a **licensee** for money or other valuable property;
- (d) entrusted to the licensee (or an associate of the licensee);
- (e) in the course of the carrying on of the licensee's business as a licensee.

A "**pecuniary loss**" may include:

- (a) the value of the money or other valuable property misappropriated by the licensee;
- (b) costs, charges and expenses that the Claimant has suffered or incurred as a direct consequence of the failure to account (including the legal costs and disbursements of making and proving a claim); and
- (c) interest on the money or other valuable property that the Claimant would have received but for the licensee's failure to account.

A "**failure to account**" is a reference to a failure by a licensee to account for money or other valuable property entrusted to the licensee (or an associate of the licensee) in the course of the carrying on of the licensee's business as a licensee.

A "**licensee**" means the holder of a licence under the:

- (a) *Property and Stock Agents Act 2002*; or
- (b) *Conveyancers Licensing Act 2003*.

A claim against the Compensation Fund may also be made in circumstances where the Claimant entrusts money or other valuable property to another person reasonably believing that:

- (a) the other person is a licensee or an associate of a licensee (under the *Property and Stock Agents Act 2002* or *Conveyancers Licensing Act 2003*); and
- (b) the money or other valuable property was entrusted in the course of the carrying on of the other person's business as a licensee.

A licensee cannot make a claim against the Compensation Fund for any pecuniary loss suffered in connection with the licensee's business as a licensee because of a failure to account.

The Commissioner for Fair Trading maintains the Compensation Fund.

How long do I have to make a claim?

A claim against the Compensation Fund must be made **within whichever of the following periods ends first**:

- (a) 1 year after the Claimant has become aware of the failure to account; or
- (b) 2 years after the date of the failure to account.

What do I need to do before making a claim?

A person must take all reasonable steps to exercise legal remedies and other rights of action available in respect of the loss incurred before making a claim against the Compensation Fund. Depending on the circumstances, reasonable steps may include taking action in a Court or Tribunal, enforcing a judgment given by a Court or Tribunal.

However, a claim caused by the failure of a licensee (or an employee or agent of a licensee) to lodge a rental bond with the Rental Bond Board may also be made at any time within 1 year after the termination of the tenancy agreement.

If NSW Fair Trading receives a claim from a person outside of the applicable period, the person will be advised that the claim cannot be made.

How much can I claim?

The maximum amount that a Claimant may recover from the Compensation Fund is currently \$500,000.

The amount of the Claimant's pecuniary loss may be reduced by any fees and charges that the licensee could have imposed in the circumstances including, for example, sales commissions or property management fees.

In some cases, a claim may be disallowed to the extent that pecuniary loss was suffered as a result of a failure to mitigate loss or was occasioned by unreasonable delay in making a claim.

How do I make a claim?

A claim against the Compensation Fund must be made in writing. A claim may be made by:

- completing the appropriate claim form prepared by NSW Fair Trading; and
- sending it, together with all relevant documents in support of the claim:

email to:

compensationfunds@customerservice.nsw.gov.au

or post to:

NSW Fair Trading
(Attention: Compensation Funds Unit)
PO Box 972
Parramatta NSW 2124

Which claim form do I use?

Claim Form A may be used for most claims – **except** claims caused by the failure of a licensee (or an employee or agent of a licensee) to lodge a rental bond with the Rental Bond Board.

Claim Form B – Please use this claim form if the claim was caused by the failure of a licensee (or an employee or agent of a licensee) to lodge a rental bond with the Rental Bond Board.

What other documents do I need to attach to my claim form?

The Claimant must provide copies of all relevant documents in support of a claim. The relevant documents to be attached to, and lodged with, the claim form will vary according to the type of claim being made. Examples of the documents that should be lodged with the claim form, according to the type of claim being made, are shown on the next page.

The examples shown on the next page are not intended to be a complete list of the types of claims that may be made against the Compensation Fund or a complete list of the documents that might be relevant to support any particular claim. In each case, the Claimant must provide sufficient documentation to demonstrate that the Claimant has suffered a loss as a result of the licensee's failure to account for money or other valuable property entrusted to the licensee **and** that the Claimant is entitled to the amount being claimed against the Compensation Fund.

Examples of relevant documents in support of a claim

A claim by a landlord caused by the failure of a licensee to lodge a rental bond with the Rental Bond Board:

- the managing agency agreement
- the lease or tenancy agreement
- receipts, statements, tax invoices or correspondence issued by the licensee (or other written confirmation) showing that the rental bond was paid to the licensee
- correspondence or other documents showing that the tenancy agreement has ended **and** that the landlord is entitled to all or part of the rental bond paid to the licensee

A claim by a tenant caused by the failure of a licensee to lodge a rental bond with the Rental Bond Board:

- the lease or tenancy agreement
- receipts, statements, tax invoices or correspondence issued by the licensee (or other written confirmation) showing that the rental bond was paid to the licensee
- correspondence or other documents showing that the tenancy agreement has ended **and** that the tenant is entitled to all or part of the rental bond paid to the licensee

A claim by a landlord caused by a licensee's failure to account for rent paid by a tenant

- the managing agency agreement
- the lease or tenancy agreement
- receipts, statements, tax invoices or correspondence issued by the licensee (or other written confirmation) showing that the rent was paid to the licensee
- correspondence or other documents showing that the rent paid to the licensee has not been forwarded to the landlord

A claim by a vendor of real estate caused by a licensee's failure to account for the deposit paid by the purchaser on exchange of contracts

- the agency agreement
- the contract for the sale of land
- receipts, statements, tax invoices or correspondence issued by the licensee (or other written confirmation) showing that the deposit was paid to the licensee
- correspondence or other documents showing that the contract has been completed or terminated (as applicable) **and** that the vendor is entitled to the deposit
- copies of all written authorities, directions or instructions (or order on the agent) given to the licensee to account to the vendor for the deposit

A claim by a purchaser of real estate caused by a licensee's failure to account for the deposit paid by the purchaser on exchange of contracts

- the contract for the sale of land
- receipts, statements, tax invoices or correspondence issued by the licensee (or other written confirmation) showing that the deposit was paid to the licensee
- correspondence or other documents showing that the contract has been terminated **and** that the purchaser is entitled to the deposit
- copies of all written communications given to the licensee to account to the purchaser for the deposit

A claim by an Owners Corporation caused by a licensee's failure to account for strata levies paid by individual lot owners

- lot owner's bank statements showing strata levies paid to the licensee
- receipts, statements, tax invoices or correspondence issued by the licensee showing strata levies paid to the licensee
- annual audit or bank statements confirming that strata levies paid to the licensee were not credited to the account of the Owners Corporation

For further information about claims that may be made against the Compensation Fund, or the relevant documents to be provided in support of a claim, please contact **Fair Trading on 13 32 20**.

Claim Form A

Property Services Compensation Fund

Notes:

1. This form may be used for most claims against the Property Services Compensation Fund under Section 173 of the *Property and Stock Agents Act 2002*. However, if the claim has been caused by the failure of a licensee (or an employee or agent of the licensee) to lodge a rental bond with the Rental Bond Board, please use **Claim Form B**.
2. This form should be completed by the person making the claim ("**the Claimant**") or by a person authorised to make the claim on behalf of the Claimant.

Claimant's Details

Claimant's Full Name (or Company Name and ACN)

Claimant's Address (for correspondence)

Claimant's Contact Details (by telephone)

Home:

Work:

Mobile:

Claimant's Email Address

Licensee's Details

Licensee's Full Name (or Company Name and ACN)

Licensee's Business Address (for correspondence)

Licensee's Contact Details

Telephone Number:

Email Address:

Licensee's Licence Number (if known)

Statutory Declaration

Oaths Act 1900

I,

(Insert the full name of the person making this Declaration)

of

(Insert the address of the person making this Declaration)

do solemnly and sincerely declare that:

(Please TICK the box that applies to you)

1. I am the Claimant;

or

I am authorised to make this claim on behalf of the Claimant.

2. **The Claimant has suffered or incurred a pecuniary loss as a direct consequence of the licensee's failure to account for money or other valuable property entrusted to the licensee (or an employee or agent of the licensee) in the course of the licensee's business as a licensee. An outline of the circumstances in which the Claimant's loss was suffered or incurred is as follows:**

(Please provide details of the relevant transaction – attach additional pages if there is insufficient space below)

3. **Further information concerning the money or other valuable property entrusted to the licensee is as follows:**

(Please provide as much information as possible – attach additional pages if there is insufficient space below)

(a) On what date (or dates) was the money or other valuable property entrusted to the licensee?

DD / MM / YYYY

(b) On what date (or dates) was the licensee required to account to the Claimant for the money or other valuable property?

DD / MM / YYYY

(c) On what date (or dates) did the Claimant first become aware of the licensee's failure to account for the money or other valuable property?

DD / MM / YYYY

(d) How did the Claimant first become aware of the licensee's failure to account for the money or other valuable property?

(e) Has the Claimant contacted the licensee in relation to the licensee's failure to account Yes No
and, if so:

(i) When was that contact made;

(ii) How was that contact made; and

(iii) What was the licensee's response, if any?

(f) Has the Claimant taken any other action in relation to the licensee's failure to account to the Claimant for the money or other valuable property?

(g) What was the outcome, or what is the current status, of any other action taken by the Claimant (if any) in relation to the licensee's failure to account?

4. **Further details concerning the amount of money or other valuable property entrusted to the licensee and the amount of the Claimant's loss are as follows:**

(Please provide as much information as possible – attach additional pages if there is insufficient space below)

- (a) What was the total amount of money (or description and estimated market value of the other valuable property) entrusted to the licensee for which the licensee failed to account?

- (b) What amount, if any, was due or payable by the Claimant to the licensee in respect of all costs, charges, commissions, disbursements, expenses, fees or the like (which the licensee was otherwise entitled to deduct from the money entrusted to the licensee) for services rendered by the licensee?

- (c) What is the total amount of money and value of other benefits, if any, received or recovered by the Claimant from the licensee (or any other source – eg. under an insurance policy, etc) in reduction of the amount for which the licensee failed to account?

- (d) What is the amount of the Claimant's loss that was caused by the licensee's failure to account?

5. **Additional information in connection with the Claimant's loss is as follows:**

(Please provide as much information as possible – attach additional pages if there is insufficient space below)

- (a) Did the Claimant give the licensee permission to use the money or other valuable property for any purpose before the failure to account occurred? Yes No

If Yes, please provide further details of the authority or permission given to the licensee, including the purpose for which the money or other valuable property was to be used.

- (b) What would the Claimant have done with the money or other valuable property (if the licensee had accounted to the Claimant for it when required to do so) upon receiving that money or property?

(For example: Bought a car, property, etc or used it to reduce other debts, etc.)

- (c) If (but for the licensee's failure to account) the Claimant would have invested the money or other valuable property and received interest on it, please provide details of the manner in which it would have been invested, including the rate(s) and amount of interest which would have been received by the Claimant.

(Note: Please provide supporting documentation confirming the interest rate(s) that would have been received on that investment, if applicable, from the date of the licensee's failure to account.)

6. The Claimant provides the following additional information in support of the claim:

(Please provide any additional relevant information to assist in the consideration and determination of the claim – attach additional pages if there is insufficient space below.)

7. The Claimant provides the following additional information in support of the claim:

(Please identify, and attach copies of, all relevant documents in support of the claim)

- Agency Agreement dated:
- Lease Agreement dated:
- Contract for the Sale of Land dated:
- Receipts issued by the licensee dated:
- Statements issued by the licensee dated:
- Tax Invoices issued by the licensee dated:
- Claimant's bank account statements (or EFT/Internet Payments/Direct Deposit receipts) showing details of payments made to the licensee dated:
- Copies of all written authorities, directions or instructions given to the licensee to account for money or other valuable property dated:
- Other: (Please describe any other documents provided in support of the claim)

8. The Claimant authorises NSW Fair Trading to undertake any enquiries and carry out any searches to consider and determine the claim.
9. The Claimant consents to the use and disclosure of any information provided in or attached to this declaration for the purposes of determining the claim or the enforcement of any rights or remedies to which the Director-General is subrogated.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1900*.

Declared at: on

(Place)

in the presence of:

Signature of Authorised Witness

Signature of Declarant

Name of Authorised Witness

Qualification of Authorised Witness
(Justice of the Peace, Australian legal practitioner)

Certificate under Section 34(1)(c)

Oaths Act 1900

I,

(Name of Authorised Witness)

a

(Qualification of Authorised Witness)

certify the following matters concerning the making of this statutory declaration by the person who made it:

(Please TICK the box that applies to you)

1. I saw the face of the person

or

I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering, and

2. I have known the person for at least 12 months

or

I have confirmed the person's identity using an identification document and the document I relied on was:

(Describe identification document relied on)

Signature of Authorised Witness

Date