

Office of Fair Trading

Making a claim

The claim fund is established under the *Agents Financial Administration Act 2014* (the Act). This factsheet explains how to seek compensation from the claim fund. Please read this information carefully before lodging a claim.

The claim fund may help you recover from a financial loss in some situations. It protects consumers who lose money due to certain types of action (or failures to act) by:

- real estate agents
- resident letting agents
- motor dealers
- auctioneers
- chattel auctioneers
- debt collectors or process servers
- employees of any of the above.

Always try to settle the claim with the agent or dealer first. Go through their complaint process. If this doesn't resolve the dispute, then you can lodge a written claim with us. Don't leave it too long to claim, as time limits do apply.

When you can make a claim

You can make a claim if the agent or dealer:

- ✓ does not deal with trust account money properly (for example, steals or otherwise misuses your rental money)
- ✓ makes false or misleading statements (for example, lies about a vehicle's year of manufacture or distance travelled)
- ✓ does not disclose a beneficial interest
- ✓ does not return your money, deposit or trade-in vehicle to you if you cancel during your cooling-off period or because they didn't provide the appropriate legal notices to you and you cancel the contract in writing within 7 days.
- ✓ steals or misapplies money or property you give them to pass on to someone else (such as transfer duty).

You can also make a claim if the agent:

- ✓ does not forward bond money to the Residential Tenancies Authority (www.rta.qld.gov.au)
- ✓ does not clearly identify the lot you are buying
- ✓ does not give notice if you can't use vacant land for residential purposes.

You can also make a claim if you do not obtain clear title on the second-hand vehicle you buy.

When you can't make a claim

You can't make a claim if:



- ✗ the agent or dealer doesn't honour your statutory warranty on a used vehicle (you will need to apply to the Queensland Civil and Administrative Tribunal (QCAT))
- ✗ the agent or dealer steals or misuses trust account money after you have agreed that they could invest it
- ✗ you didn't get all the information you needed from the agent or dealer
- ✗ you're dealing with a property developer (or their employees)
- ✗ the agent or dealer didn't tell you of their relationship with a service provider they recommended you use (for example, a solicitor)
- ✗ you are also a licensee, and were dealing with another agent as part of your job
- ✗ you made a financial investment in the agent or dealer's business
- ✗ you experienced poor service or the agent or dealer was negligent.

Timeframes

You must lodge a claim within the earlier of either::

- 1 year of becoming aware of your loss; or
- no more than 3 years after the event.

We will assess if you made your claim in time. If you need more time, you can ask for an extension from QCAT.

The claim process, like a court process, may take some time to resolve, particularly when:

- there is a lot of information or there is more than one respondent or claimant
- the matter is complex
- new information or allegations are raised and we need to allow parties to respond (following principles of natural justice)
- a matter needs to be investigated.

Legal proceedings

If you commence legal proceedings to recover your loss, you can lodge a claim at the end of those proceedings.

This only applies:

- for regular claims
- if the proceedings began during the above timeframes for making a claim
- for 3 months after the end of the proceedings.

Claim process

Step 1 - Complete and lodge the claim form

Complete the *Form 1 - Claim against the claim fund* attached to this factsheet. Please include as much detail as possible.

Include the corporation or the owner's name, and the business name they trade under. For example:

- ABC Pty Ltd trading as XYZ Realty
- John Citizen trading as XYZ Realty.

Nominate a dollar value for your claim, and itemise this amount (if applicable). Provide copies of supporting tax invoices and receipts. Your alleged financial loss must be a realised or actual loss, rather than a potential loss calculated using quotes or estimates.

You must provide details of your claim and include all the facts on which your claim is based. Failure to do so may result in your claim being assessed as invalid. Provide as much evidence as possible to support



the allegations e.g. copies of advertising, appointment to act, receipts, photographs, relevant written correspondence etc.

Lodge your claim via:

Post:
Claims and Recoveries
Office of Fair Trading
GPO Box 3111
BRISBANE QLD 4001

Email:
claimsandrecoveries@justice.qld.gov.au

Step 2 – Respondent(s) notified

If your claim is valid, we send the agent or dealer (the respondent) a Claim Notice and a copy of your claim.

The agent or dealer has 14 days to give us their version of events. The agent or dealer has access to a settlement period of 28 days. During this time, they may try to contact you directly to negotiate a settlement.

If you accept a settlement, you and the agent or dealer must notify us. If you don't settle your claim during the settlement period, you must ask us in writing to proceed with your claim.

You must write to us within 30 days of the end of the settlement period. Otherwise, we may not be able to proceed with your claim.

Step 3 – Investigating

Not every claim requires investigation. If we do investigate:

- we will assign an inspector to gather evidence
- we will send a copy of the completed inspector's report to you, the agent or dealer and any other parties
- you then have 14 days to respond to the report with more evidence or documents
- we send any responses to all parties, who then have another 14 days to respond.

Step 4 – Decision

We decide any claim that we believe is simple or straightforward. We may refer a complex claim to QCAT.

We decide simple claims without a hearing.

We will determine the most likely scenario (the 'balance of probabilities') to decide:

- whether the alleged event happened
- if you suffered a financial loss as a direct result
- which person or company is liable for your loss
- whether you contributed to your loss (this may affect the final payment).

We will send all parties a copy of the decision. You will receive this in writing within 14 days.

The decision notice:

- will be signed and dated
- may outline our reasons for the decision
- will tell you how to ask for written reasons (if we don't provide the reasons).

We will include information about applying for a review.

The decision is legally binding, unless you or the agent or dealer apply for a review. This must happen within 28 days of receiving our decision. After this time, our decision is final.



If your claim is referred to QCAT

QCAT are an independent body with the power to make legally binding decisions. QCAT will have access to the claim form and inspector's report (if applicable).

QCAT will schedule a hearing to make a decision. They encourage you to represent yourself at the hearing, but may allow you to appoint a lawyer in a more complex case. We cannot represent you.

They will invite the agent or dealer to take part in the hearing. If they don't attend, QCAT can make a decision in their absence.

Once QCAT has made a decision, they will send you and the agent or dealer a notice explaining their decision.

QCAT may order that you or the agent or dealer pay costs. This means that you might have to reimburse them for any money they spent on defending against your claim. QCAT may decide costs based on:

- what decision they reached
- how you or the agent or dealer behaved through the hearing
- whether the claim was complex
- whether your claim was strong or weak
- anything else they consider to be relevant.

The decision is legally binding unless you or the agent or dealer apply for a review.

Step 5 – Payment of claim

If a decision is made in your favour, either by us, QCAT or on appeal, we can make the payment to you from the claim fund. However, we will not pay your claim before the 28 day appeal period ends.

Once this time passes, we will usually pay within 21 days.

Seeking review or lodging an appeal

If you are unhappy with one of our decisions, you can apply to QCAT to review the claim. This must be within 28 days of receiving our decision.

We will include information about applying for a review when we give you our decision.

You have options if you aren't satisfied with a QCAT decision. You must appeal within 28 days. After this time, QCAT's decision is final. You can appeal to the:

- QCAT Internal Appeal Tribunal
- Court of Appeal (but only for an error of law or jurisdiction).

You can learn more about appealing to QCAT by visiting their website. Seek independent legal advice before you launch an appeal.

For more information

OFT website: www.qld.gov.au/fairtrading and search for [Claim for financial loss](#)

Phone: 13 QGOV (13 74 68)

For QCAT related enquiries, phone 1300 QLD CAT (1300 753 228) or visit www.qcat.qld.gov.au.

Disclaimer

This is an overview of the claims provisions only and is not intended to be a substitute for the Act, which should be referred to for more precise information about making a claim.

This information is provided for your general information and does not profess to offer legal, professional or commercial advice. If you are unsure as to what course of action you should take, you should obtain independent professional legal advice.



Agents financial administration Form 1



Queensland
Government

Claim against the claim fund

Agents Financial Administration Act 2014

This form is effective from 1 July 2023

ABN: 13 846 673 994

OFFICE USE ONLY

Date received

No fee is payable

WARNING

Please read the following information carefully before completing the claim form.

Privacy statement—please read

The Office of Fair Trading collects information, including personal information, on this form and in the supporting material as required by the *Agents and Financial Administration Act 2014* to assess your claim. In accordance with the Act, some personal information will be passed to the persons identified as respondent/s and to their representatives, appointed Receivers, appointed Special Investigators and the Queensland Civil and Administration Tribunal (where applicable). Additionally, information on this form can be disclosed without your consent where authorised or required by law. Under the *Fair Trading Act 1989* information may also be shared on a confidential basis with other Australian fair trading agencies.

If you give the OFT an email address to communicate with you, the personal information in these communications will be stored on your email service provider's servers. These servers may be outside of Australia. By giving us your email address, you are consenting to the personal information contained within the emails to and from the OFT to be transferred outside Australia.

Part 1—Claimant details

Claimant 1 details

Party making the claim, usually yourself.

A post office box is not acceptable.

Please note: if the property was purchased by more than one person, please state all names as only one claim can be made.

Preferred title Mr Mrs Ms Miss Other (specify)

Surname

Given names

Company/Trading name (if applicable)

ACN/ABN

Address

Suburb State Postcode

Business phone Home phone

Fax number..... Mobile

Email address

Claimant 2 details

A post office box is not acceptable.

Preferred title Mr Mrs Ms Miss Other (specify)

Surname

Given names

Company/Trading name (if applicable)

ACN/ABN

Address

Suburb State Postcode

Business phone Home phone

Fax number..... Mobile

Email address

Part 1—Claimant details continued

Solicitor or legal representative

If you appoint a solicitor or legal representative to act on your behalf, all correspondence will be sent to your solicitor or legal representative unless advised otherwise.

Firm name

Contact name

Address

Suburb State Postcode

Business phone Home phone

Fax number..... Mobile

Email address

Part 2—Respondent details

Respondent details

Person who you are claiming caused your loss.

Please provide as much information about the respondent as possible to assist the office to process your claim.

Address to which all documents/notices are to be sent.

A post office box is not acceptable.

Preferred title Mr Mrs Ms Miss Other (specify)

Surname

Given names

Company/Trading name (if applicable)

ACN/ABN

Address

Suburb State Postcode

Business phone Home phone

Fax number..... Mobile

Email address

Name of person-in-charge

Name of person you dealt with.....

Position

Part 3—Event details

To be completed by claimant

* An 'event' as defined in section 82 of the *Agents Financial Administration Act 2014*.

(Attach all relevant invoices to help substantiate your estimate. Please note that quotes are not sufficient as they only evidence your potential loss. You are required by the Act to provide evidence of the loss you have actually suffered.)

Date of event (eg when you allege a false statement was made) / /

Date that you became aware you suffered the loss (eg. when you realised you were not going to get the money you are entitled to) / /

Date you commenced proceedings in a court or tribunal to recover your loss (if applicable) / /

Date the above proceedings were finalised (eg. order reference if applicable) / /

Please state your estimated financial loss \$

