

Making a claim against the Fidelity Fund

This fact sheet explains how to make a claim against the Fidelity Fund. You should read this before completing the Fidelity Fund claim form.

INFORMATION FOR CONSUMERS

What is the Fidelity Fund?

The Fidelity Fund is a statutory compensation scheme maintained by the Victorian Legal Services Board. Its purpose is to provide compensation to clients who have lost money or property due to the dishonest or fraudulent behaviour of a lawyer, law clerk, approved barrister's clerk or law practice.

Who can make a claim against the Fidelity Fund?

Anyone who has entrusted money or property to a lawyer, law clerk, approved barrister's clerk or law practice, and believes they have lost that money or property as a result of dishonest or fraudulent behaviour, may be entitled to make a claim against the Fidelity Fund.

How do I lodge a claim?

To make a claim against the Fidelity Fund, you must complete a claim form. The claim form can be sent to you on request by first speaking to a Fidelity Fund Officer at the Board by calling 1300 796 344.

The claim form is designed to collect information that will assist the Board in making a decision in relation to your claim. After making your claim you may be required to provide additional evidence of your loss, for example, documents or statements which help support your claim. The Board may disallow your claim if you do not provide the required information.

What claims cannot be made?

The following claims are not covered by the Fidelity Fund:

- claims which relate to money or property held in trust for financial services where an Australian Financial Service Licence would have been required

- similar services provided by a legal practice on behalf of others who are financial services
- claims which relate to money connected with managed investment schemes and mortgage financing
- losses of money or property held by a law practice for investment purposes that is not received by the law practice in the course of the provision of legal services, and
- disputes about legal costs charged by a lawyer. (these disputes are dealt with by the Victorian Legal Services Commissioner – Tel: 1300 796 344 or visit www.lsb.vic.gov.au)

Can a claim be made if the loss did not occur in Victoria?

Yes, depending on the circumstances. If the Board believes your claim should be made in another Australian jurisdiction it will forward your claim to that jurisdiction.

Recovery of loss through other sources

The Board may decide that you should attempt to pursue the recovery of your loss through other sources before making a claim against the Fidelity Fund. This will depend on the circumstances of your loss. You will be advised of this as soon as possible.

Do I need to engage a lawyer to make a claim?

You may wish to engage the services of a lawyer to help make your claim, however it is not compulsory. The Board may pay your legal costs for engaging a lawyer in relation to your claim. For more information, please refer to the information sheet *Payment of legal costs when making a claim against the Fidelity Fund* available on the Board's website at www.lsb.vic.gov.au

What time limits apply for lodging a claim?

You must lodge your claim with the Board within six months of becoming aware of the loss of money or property. In some cases the Board may publish a notice calling for claims to be made in relation to a lawyer, law clerk, approved barrister's clerk or law practice. The notice will specify a date by which claims must be received. If you are lodging your claim late, you will need to provide a detailed explanation of why it is late. The Board can investigate a late claim if satisfied with the reasons provided as to why the claim is late.

If you receive a notification from the Board of your entitlement to make a claim that notice will specify a date by which your claim must be made. If you receive a notification from the Board and do not make a claim by the specified date, then according to law you **cannot** make a claim and the Board **cannot** extend your time for making a claim.

What happens once I have lodged my claim?

When the Board receives your claim it will be carefully assessed. Further information may be required from you. Your claim may also be referred for investigation by specialist investigators at the Law Institute of Victoria (LIV). The Board has an agreement with the LIV to investigate claims, or parts of claims, on its behalf. You may be contacted by Board staff and LIV investigators in relation to your claim.

The Board will consider the evidence and make a decision about whether your claim should be allowed, partly allowed or disallowed.

What determination will the Board make?

The Board may allow, partly allow or wholly disallow a claim. There are several reasons why your claim might be partly allowed or wholly disallowed, these include:

- you were involved in the act or omission which gave rise to the claim
- your negligence contributed to the loss
- the conduct of the lawyer, law clerk, approved barrister's clerk or law practice was illegal and you were aware that the activity was illegal
- thorough or detailed records of the transaction were not maintained or were destroyed, or
- you have unreasonably refused to disclose information or to cooperate with the investigation.

How much can I expect to be paid?

The Board must determine how much trust money has not been paid to you, or the value of trust property that you have lost. You may also be paid interest on your loss calculated from the time that you make your claim against the Fidelity Fund to the time that you are notified that the Board has determined your claim.

Are there any costs involved?

There are no fees payable to the Board to make your claim or during the process of investigating and determining your claim. If you engage the services of a lawyer to help make your claim, the Board may make a payment for your legal costs. For more information, please refer to the information sheet *Payment of legal costs when making a claim against the Fidelity Fund* available on the Board's website at www.lsbcc.vic.gov.au

Will the Board advise me of any delays in investigating my claim?

Claims are generally finalised within six to twelve months, however the Board will advise you in writing if it appears your claim will take more than twelve months to finalise.

Can I appeal the Board's decision if I am not happy with the outcome?

Yes, if your claim is not successful you will receive a notice from the Board setting out the reasons for the decision and how you may appeal the decision.

Further information

Contact the Assistant Investigator, Fidelity Fund at the Victorian Legal Services Board + Commissioner:

Tel: 1300 796 344 (cost of a local call)

Email: admin@lsbc.vic.gov.au