



# Security Claims

## How to make a claim against a business operator's security

This publication is intended to provide general information only and is not a substitute for legal advice

### Introduction

Many licensees under the *Consumer Protection Act* are required to provide a security. Consumers who have suffered a loss because of the actions of a licensee may be able to submit a claim for compensation out of the security.

### What is a security?

A security is a financial instrument that has monetary value that must be provided by a business operator in order to receive a licence from Service Alberta. Business operators provide a security as part of their business licence to ensure money is available in the event the consumer suffers a financial loss.

### What licence types may be required to provide a security?

**Auction sales business**

**Fund-raising business**

**Payday loan business**

**Collection Agency**

**High-cost Credit business**

**Prepaid contracting business**

**Debt Repayment Agency**

**Home Inspection business**

**Retail homes sales business**

**Direct selling business**

**Marketing of electricity business**

**Time share business**

**Employment Agency business**

**Marketing of natural gas business**

### How to check if a business operator is licensed and has a security

You can check to see if a business is licensed by Service Alberta by using the Business Licence search feature on our website at <https://www.servicealberta.ca/find-if-business-is-licensed.cfm>.

The following information is available:

- whether a business is currently licensed by Service Alberta
- the legal business company name
- the trade names they are licensed to operate under
- the Alberta address for service of the business
- the provincial licence type
- whether the business has posted a security (identified as Bonded in the search results)

If the business or individual is not listed, call the Consumer Contact Centre (CCC) toll-free in Alberta at 1-877-427-4088 for more information. An information officer will advise if the business or individual is currently licensed or held a licence previously.

For more information visit [Complaints and Unfair practices at https://www.alberta.ca/consumer-business-tips.aspx](https://www.alberta.ca/consumer-business-tips.aspx)

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## Who can make a claim against a security?

You can make a claim against a security if:

- the business operator was licensed by Service Alberta
- the business operator failed to comply with the law or terms of a contract
- you suffered a financial loss because of the regulated activities of the business operator

## Making a claim against a business operator's security

There are one of two ways for a consumer to make a security claim through Service Alberta:

### Either

- a) submitting a declaration without a court judgment

### OR

- b) submitting a declaration with a court judgment

## Submitting a claim without a court judgment

- A consumer who believes a claim against a business operator exists may apply to the Director of Fair Trading (Director) for a payment from the proceeds of the business operator's security.
- A consumer may not make a claim against the business operator if the consumer has started a court action against the business operator that is based on the grounds of the claim, unless the court action was discontinued.
- If a consumer is making a claim against a business operator, the consumer must submit a statutory declaration stating:
  - details of the basis for the claim
  - amount of the claim
  - a statement that the consumer has not started a court action against the business operator that is based on the grounds of the claim or, if the consumer has begun such an action, a statement that the action was stopped
  - a copy of the relevant contract(s) to the claim
  - proof of payment if payment is part of the claim (for example cheque or bank withdrawal).

The statutory declaration of a consumer whose claim is based on the business operator's failure to comply with the cancellation requirements of a direct sales, energy marketing or travel club contract in addition to the items above, must also contain:

- statutory declaration
- any contracts that are relevant to the claim
- evidence of payment
- if related to cancellation rights, the date a copy of the contract was received by the consumer
- the date the cancellation notice was given and the method of giving cancellation, and
- a copy of the cancellation notice

## What happens if the value of the loss is greater than the amount of the security posted by the business operator?

If the amount of the security is insufficient to compensate all of the valid unpaid claims, the Director will pay out the money on a pro-rated/percentage basis to all valid claims.

The most a consumer could get from the security is the posted amount. Any additional money requires a court judgment. Using the court judgment, you would collect your damages directly from the business operator.

### Submitting a claim with a court judgment

A consumer who has obtained a court judgment against a business operator must submit a statutory declaration to the Director for payment from the security.

The statutory declaration must contain:

- a) particulars of the claim
- b) a copy of the judgment, and
- c) a statement the judgment has become final due to lapse of time or being confirmed by the highest court in which it may be appealed and has not been satisfied within 30 days after it became final.

**A statutory declaration is a signed statement under section 18 of the *Evidence Act*, which is a legal document. Any person authorized to administer Oaths may accept the declaration of any person making the declaration. Once signed, a statutory declaration has the same force and effect as if you made a statement under Oath.**

### Adjudication Process

If a business operator denies a claim, the Director has the authority to determine if a claim is valid providing the amount of the claim is less than \$10,000, or is based on allowable cancellation rights under a direct sales, travel club or timeshare contract. If the claim amount exceeds \$10,000, and is **not** based on allowable cancellation rights under a direct sale, travel club or timeshare contract, then the disputed claims go to binding arbitration.

If the facts of a claim under \$10,000 are not clearly supported by the evidence, the Director may require a claimant to secure a judgement before proceeding.

### Timing of Claims

In most cases, claims must be received within two years of when a business operator was licensed. Approved claims can take up to 3 years to be paid out, as no payments are made until the claims period has ended for all potential claimants.

When your claim is prepared, you can submit it to:

Director of Fair Trading  
3rd Floor, 10155 – 102 Street NW  
Edmonton AB T5J 4L4

### Submitting a Complaint

To lodge a complaint about the business you can contact the Consumer Investigations Unit (CIU). CIU can help walk you through the claim submission process.

Consumer Investigations Unit  
North office: 3rd Floor, 10155-102 Street  
Edmonton AB T5J4L4

South office: Suite 301, 7015 Macleod Trail SW  
Calgary, AB T2H 2K6

The *Filing a Consumer Complaint* tipsheet explains how to file a complaint with Consumer Services and when an investigation may be opened, as well as other options available to consumers: [Filing a complaint : Consumer Protection Act - Open Government \(alberta.ca\)](#).

**This information package contains four checklists:**

1. **Information for the Consumer** about the security claim process.
2. **Basics for Making a Claim** lists the requirements of a valid claim against a security.
3. The **Statutory Declaration Checklist** explains some of the ways a claim can be made against a security.
4. The **Judgment Process Checklist** addresses the other way a claim can be made against a security.

**Before making a consumer claim be aware:**

1. If claims against a security total more than the security, payments are made on a pro-rata basis.
2. Claims made after a security is cancelled can be paid at the end of the period in which the security is held. In other words it could be (up to three years after forfeiture) before a claim is paid.
3. If your claim is through a statutory declaration, any court action you take will end the process. (Only one claim can be potentially paid – through the court or through the department).
4. Claims over \$10,000 are subject to arbitration.

**Basics for making a Claim**

The following are the basic requirements for a valid claim under the *Consumer Protection Act*:

- Consumer has suffered a financial loss.
- Business operator's security was in force.
- Consumer had a business relationship with the business operator.
- Consumer entered into a contract with the business operator during the course of business.
- Consumer paid money to or deposited money with the business operator. **OR**
- Business operator did or omitted to do something that led or contributed to the financial loss identified in (1).

**Financial loss must be due to one or more of the following:**

- Failure to comply with provisions of the *Consumer Protection Act*, regulations that apply to a business, or a term or condition of a business licence.
- Failure to comply with a contract between the consumer and contractor entered into.
- Business operator's fraud, breach of trust, misrepresentation, theft, conversion, negligence, or default with respect to goods or services sold or money collected.
- The business fails to account for money collected for or on behalf of the consumer.
- The business fails to comply with a condition of the businesses security.

For more information visit [Complaints and Unfair practices at https://www.alberta.ca/consumer-business-tips.aspx](https://www.alberta.ca/consumer-business-tips.aspx)

## Application by Consumer - Statutory Declaration Process

You can make a claim against a business operator by applying to the Director for a payment from the security. The necessary steps and information to consider for registering a valid claim against the security is a statutory declaration.

### Statutory Declaration

- includes the particulars of the claim
- includes the amount of the claim
- affirms you have not started a court action against the business operator
- contains copies of relevant contracts
- provides proof of any payments that are part of the claim
- includes a copy of the contract with date received if the claim is based on cancellation (as defined in the *Consumer Protection Act*)
- if the claim is based on cancellation, the date notice of cancellation was given
- includes a copy of the notice of cancellation (if any) if the claim is based on cancellation

## Making a claim with a Court Judgment – Judgment Process

The following must be submitted:

- The statutory declaration including the particulars of the basis of the claim.
- The statutory declaration including a copy of the judgment.
- The statutory declaration including a statement affirming the judgment is final due to a lapse of time or the end of appeals.
- The standard pre-requisites of a claim (s. 15 meaning of a claim).