

“THE REALITIES of RESTITUTION FOR VICTIMS of FEDERAL CRIMES”

Most crime victims are very concerned about how they can recover from their financial loss suffered as a result of a crime. This information is provided to you by the U.S. Attorney’s Office for the District of Nevada. The following is meant to provide a brief overview for federal crime victims and restitution ordered by the court, the legal process involved, and the realities of actually receiving full restitution.

The Justice for All Act of 2004 provides that “identified” federal crime victims are entitled to full and timely restitution as provided by law for certain losses suffered as a result of the commission of an offense as part of the criminal sentence imposed on the defendant, or as part of a plea agreement. Federal crime victims may be either individuals, businesses, or corporations.

Definition of a Federal Crime Victim

A federal crime victim is “a person directly or proximately harmed as a result of the commission of a federal offense, or an offense within the District of Columbia 18 U.S.C. ss 3771(e).

The issue of receiving restitution is important to all victims, to include victims of financial crimes. It is often not possible to immediately project or determine the exact amount of loss that a defendant has caused which can be applicable to court-ordered restitution. Cases that have a large number of victims and that are complex in nature, such as scams, often take a very long time to reach a final court disposition. Unfortunately, the amount of total restitution ultimately received by a victim in many cases ranges from zero percent to only a very small percent of the total amount a victim has lost. If any proceeds are identified by the court which can be applied toward restitution, payments to victims may be made by a defendant or defendants over a period of several years. The U.S. Attorney’s Office pursues restitution payments for up to twenty years after a defendant is sentenced. Therefore, it is important that victims keep the U.S. Attorney’s Office or the Court Clerk’s office informed of any name and/or address changes.

What you can do as a crime victim?

Provide all receipts or other verification of your loss where ever possible. It is important to obtain all records of all expenses or loss incurred as a result of the crime. This information will be used in determining what costs may be court ordered in the form of restitution to the victim if a defendant is convicted.

Ordering vs. Receiving Restitution

Under federal law, it is mandatory for a defendant to pay restitution when there is a loss to the victim. Unfortunately, as a practical matter, a defendant who has no money or potential to make money in the future, may be unlikely to ever make meaningful restitution to the victims of a crime.

Court-ordered restitution is limited to specific losses and may not allow any monetary compensation for a victim’s pain and suffering.

Restitution for Financial Loss

In most fraud cases, restitution may be ordered where victims of the convicted federal offense have suffered the loss of money, in such crimes as investor fraud, mortgage fraud, telemarketing scams, or offenses involving the misuse of bank accounts or credit cards. The court may order a defendant to pay an amount equal to each victim's actual loss, which is commonly the value of the principle or property which was fraudulently obtained.

How Does a Victim Begin Receiving Restitution?

The U. S. Attorney's Office, Financial Litigation Unit (FLU) is charged with enforcing orders of restitution, and monitors efforts in enforcing a Judgment if defendant's assets or income are identified.

The Financial Litigation Unit will pursue various means to enforce restitution, as its resources permit, on behalf of identified victims, for a time period of up to 20 years from the filing date of the defendant's Sentencing Judgment, which includes the time period of the defendant's actual incarceration, or until the death of the defendant. In addition, once a defendant/inmate is released from prison, and is then under the supervision of the U.S. Probation Office, restitution will be monitored to insure appropriate restitution is paid, where possible.

Can Victims File a Lien Against the Defendant?

A victim may also choose to request the U. S. Clerk of the Court to issue an Abstract of Judgment certifying that a judgment has been entered in a victim's favor in the amount specified in the Judgment. A victim may then file this with the Recorder's Office for any county in which it is believed the defendant had assets, in the state in which a defendant was convicted in federal court. Upon its recording, the Abstract of Judgment becomes a lien upon the property of the defendant in that county/state in the same manner as a state court judgment. Victims should consult with a private attorney for specific information on this option.

Additional Restitution Provisions

An order of restitution is not dischargeable in bankruptcy. It also is not a guarantee that a crime victim will actually receive the money ordered by the court.

After a Judge has imposed a restitution order, the U. S. Attorney or an identified victim may later make a motion to the court if they discover a material change in the defendant's economic circumstances that affect his or her ability to pay restitution. Victims with such information should contact the U. S. Attorney's Office's Financial Litigation Unit.

Other Available Remedies

A federal crime victim may wish to file a civil action or file in small claims court against a defendant to recoup losses caused by the crime. The U.S. Attorney's Office cannot provide legal advice or services in that matter, however, the crime victim may choose to consult with a private attorney, or the Small Claims Court in the county in which the crime occurred. There is usually a statute of limitations which limits the time in which a civil suit can be filed.

What If I Expect Damages from a Civil Suit, or Receive Compensation from Other Sources?

If a victim has received compensation from insurance, disability, the state Crime Victims' Compensation Fund, or any other source with respect to a loss, the court shall order that restitution be paid to the person/company who provided or is obligated to provide the compensation. However, the restitution order shall provide that all restitution is payable to actual victims first.

Common Emotional and Physical Aspects Resulting from Financial Victimization

More often than not, a victim of financial fraud, investment scam, or embezzlement will experience many emotions. A crime victim often experiences anger due to the betrayal of someone or some thing they put their trust and judgement in, along with their lost finances. Victims often feel frustration as a common response to their financial loss. Additional experiences a victim may have include :

guilt for not being more skeptical of the concept or promises of the investment

disbelief that they were drawn into and fooled by such a sham

difficulty accepting the fact that their financial loss has radically changed their life plan, especially when they are retired and their life plans have been dramatically altered

health problems related to stress, such as insomnia, inability to eat or concentrate, develop low self-esteem or depression

Over time, many crime victims work through these difficulties on their own, or seek outside resources or counseling for assistance.