



# LAWS OF ALASKA

2003

**Source**

SCS CSHB 257(L&C)

**Chapter No.**

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**AN ACT**

Relating to the disclosure requirements for real estate licensees, to disciplinary action against real estate licensees, to private actions and remedies against real estate licensees, and to real estate licensee agency, relationships, and duties; and providing for an effective date.

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**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

THE ACT FOLLOWS ON PAGE 1



## AN ACT

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2 real estate licensees, to private actions and remedies against real estate licensees, and to real  
3 estate licensee agency, relationships, and duties; and providing for an effective date.

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5 \* **Section 1.** AS 08.88.071(a)(3) is amended to read:

6 (3) after hearing, have the authority to suspend or revoke the license of  
7 a licensee or impose other disciplinary sanctions authorized under AS 08.01.075 on a  
8 licensee who

9 (A) with respect to a real estate transaction

10 (i) made a substantial misrepresentation;

11 (ii) made a false promise likely to influence, persuade,

12 or induce;

13 (iii) in the case of a real estate broker, pursued a

1                   flagrant course of misrepresentation or made a false promise through  
2                   another real estate licensee;

3                   (iv) has engaged in conduct that is fraudulent or  
4                   dishonest;

5                   (v) violates AS 08.88.391;

6                   **(vi) violates AS 08.88.396;**

7                   (B) procures a license by deceiving the commission, or aids  
8                   another to do so;

9                   (C) has engaged in conduct of which the commission **did not**  
10                  **have** [HAD NO] knowledge at the time the licensee was licensed  
11                  demonstrating the licensee's unfitness to engage in the business for which the  
12                  licensee is licensed;

13                  (D) knowingly authorizes, directs, connives at, or aids in  
14                  publishing, distributing, or circulating a material false statement or  
15                  misrepresentation concerning the licensee's business or concerning real estate  
16                  offered for sale, rent, or lease, or managed in the course of the licensee's  
17                  business in this or any other state or concerning the management of an  
18                  association in the course of a licensee's business in this or another state;

19                  (E) if a real estate broker, wilfully violates AS 08.88.171(d) or  
20                  08.88.291;

21                  (F) if an associate real estate broker, claims to be a real estate  
22                  broker, or, if a real estate salesperson, claims to be a real estate broker or **an**  
23                  associate real estate broker;

24                  (G) if a real estate broker, employs an unlicensed person to  
25                  perform activities for which a real estate license is required;

26                  (H) if an employed real estate licensee of a real estate broker,  
27                  fails immediately to turn money or other property collected in a real estate  
28                  transaction over to the employing real estate broker;

29       \* **Sec. 2.** AS 08.88.181(a) is amended to read:

30                  (a) The real estate examinations may include questions on real estate business  
31                  ethics and standards; arithmetic and accounting; elementary principles of land

1 economics and appraisal; the general principles in state statutes relating to deeds,  
2 mortgages, real estate contracts, subdivisions, common interest communities, legal  
3 descriptions, building restrictions, real estate licensee relationships, agency law,  
4 brokerage, disclosure requirements, trust accounting requirements, and landlord and  
5 tenant law; property management ethics and standards; community association  
6 management operations, ethics, and standards; and the general provisions of this  
7 chapter and of the regulations of the commission.

8 \* **Sec. 3.** AS 08.88.396 is amended to read:

9 **Sec. 08.88.396. Licensee relationships, disclosures, and activity**  
10 **[DISCLOSURE OF AGENCY TO PROSPECTIVE BUYERS AND SELLERS].**

11 (a) A person licensed under this chapter shall, when acting as a real estate licensee  
12 [AN AGENT] for a prospective seller or lessor of real estate,

13 (1) disclose in writing the licensee's agency relationship with the seller  
14 or lessor to each prospective buyer or lessee at the time that the licensee begins to  
15 provide specific assistance to locate or acquire real estate for the buyer or lessee, and  
16 obtain from each prospective buyer or lessee a signed acknowledgment  
17 [ACKNOWLEDGEMENT] that the buyer or lessee is aware of the agency  
18 relationship between the licensee and the seller or lessor; and

19 (2) include in the purchase agreement a statement of the agency  
20 relationship between the licensee and the seller or lessor.

21 (b) A person licensed under this chapter shall, when acting as a real estate  
22 licensee [AN AGENT] for a prospective buyer or lessee of real estate,

23 (1) disclose the licensee's relationship with the buyer or lessee to a  
24 prospective seller or lessor of real estate, or to the seller's or lessor's real estate  
25 licensee [AGENT], at the time of the initial contact between the licensee and the  
26 prospective seller or lessor, or the seller's or lessor's real estate licensee [AGENT],  
27 and confirm the relationship in writing as soon as possible after the initial contact;

28 (2) include in the purchase agreement a statement of the agency  
29 relationship between the licensee and the buyer or lessee;

30 (3) if the prospective seller or lessor has an unexpired exclusive listing  
31 contract for a property, present all offers to purchase that property through the seller's

1        **or lessor's real estate licensee** [AGENT]; and

2                    (4) disclose in writing to all parties to a transaction when the licensee's  
3        compensation as **real estate licensee** [AGENT] for the buyer **or lessee** is to be paid by  
4        anyone other than the buyer **or lessee** being represented by the licensee.

5                    (c) A person licensed under this chapter may act as **a real estate licensee** [AN  
6        AGENT] for both a prospective seller **or lessor** and a prospective buyer **or lessee** of  
7        real estate only after the licensee informs both the seller **or lessor** and the buyer **or**  
8        **lessee** of the dual **agency representation** [AGENCY] and obtains written consent to  
9        the dual **agency representation** [AGENCY] from both principals.

10                    (d) When a change occurs during a transaction that makes a prior written  
11        disclosure required by this section incomplete, misleading, or inaccurate, the licensee  
12        shall make a revised disclosure, in writing, to all parties to the transaction as soon as  
13        possible. The revised disclosure must include the date of the revision and shall be  
14        acknowledged in writing by all the parties. **However, until the nature of the**  
15        **licensee's relationship with a party is completely established, a revised disclosure**  
16        **is not required under this subsection if the licensee obtains from the party a**  
17        **written preauthorized consent to changes before the changes occur.**

18        \* **Sec. 4.** AS 08.88.396 is amended by adding a new subsection to read:

19                    (e) In a civil action for the failure of a licensee to comply with the provisions  
20        of this section, the plaintiff's remedy is limited to the recovery of actual damages.  
21        This subsection does not limit a person's ability to take any other action or pursue any  
22        other remedy to which the person may be entitled under other law.

23        \* **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to  
24        read:

25                    **APPLICABILITY AND RETROSPECTIVITY.** (a) The provisions of this Act apply  
26        to a real estate transaction that occurs before, on, or after the effective date of this Act and, to  
27        that extent, are retrospective under AS 01.10.090. In this subsection, "real estate transaction"  
28        has the meaning given in AS 08.88.990.

29                    (b) In addition to the application of AS 08.88.396(e), enacted by sec. 4 of this Act,  
30        under (a) of this section, AS 08.88.396(e) applies to an action pending in a court in the state in  
31        which a final judgment has not been rendered before the effective date of this Act and, to that

1 extent, is retrospective under AS 01.10.090.

2 \* **Sec. 6.** This Act takes effect immediately under AS 01.10.070(c).