



# LAWS OF ALASKA

2008

**Source**  
CSHB 357(L&C)

**Chapter No.**  
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## AN ACT

Requiring errors and omissions insurance for real estate licensees; renaming the real estate surety fund as the real estate recovery fund and relating to that fund, and redefining the procedures and criteria used by the Real Estate Commission to make an award from the fund to a person suffering a loss caused by certain misconduct of real estate licensees; requiring a real estate licensee to maintain an office in the state; 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 surety fund as the real estate recovery fund and relating to that fund, and redefining the  
3 procedures and criteria used by the Real Estate Commission to make an award from the fund  
4 to a person suffering a loss caused by certain misconduct of real estate licensees; requiring a  
5 real estate licensee to maintain an office in the state; and providing for an effective date.

6  
7 \* **Section 1.** AS 08.88.071(a) is amended to read:

8 (a) The commission shall

9 (1) determine whether applicants meet requirements for licenses under  
10 this chapter and issue licenses to those who qualify;

11 (2) prepare and grade examinations;

12 (3) after hearing, have the authority to suspend or revoke the license of

1 a licensee or impose other disciplinary sanctions authorized under AS 08.01.075 on a  
2 licensee who

3 (A) with respect to a real estate transaction

4 (i) made a substantial misrepresentation;

5 (ii) made a false promise likely to influence, persuade,  
6 or induce;

7 (iii) in the case of a real estate broker, pursued a  
8 flagrant course of misrepresentation or made a false promise through  
9 another real estate licensee;

10 (iv) has engaged in conduct that is fraudulent or  
11 dishonest;

12 (v) violates AS 08.88.391;

13 (vi) violates AS 08.88.396;

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

16 (C) has engaged in conduct of which the commission did not  
17 have knowledge at the time the licensee was licensed demonstrating the  
18 licensee's unfitness to engage in the business for which the licensee is licensed;

19 (D) knowingly authorizes, directs, connives at or aids in  
20 publishing, distributing, or circulating a material false statement or  
21 misrepresentation concerning the licensee's business or concerning real estate  
22 offered for sale, rent, or lease, or managed in the course of the licensee's  
23 business in this or any other state or concerning the management of an  
24 association in the course of a licensee's business in this or another state;

25 (E) if a real estate broker, wilfully violates AS 08.88.171(d) or  
26 08.88.291;

27 (F) if an associate real estate broker, claims to be a real estate  
28 broker, or, if a real estate salesperson, claims to be a real estate broker or  
29 associate real estate broker;

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

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

4 **(I) fails to carry and maintain errors and omissions**  
5 **insurance with terms and conditions established by the commission under**  
6 **AS 08.88.172;**

7 (4) prosecute, through the Department of Law, violations of the  
8 provisions of this chapter or lawful regulations adopted under this chapter;

9 (5) release for publication in a newspaper of general circulation in the  
10 locale of the offending person's principal office registered with the commission notice  
11 of disciplinary action taken by the commission against a person licensed under this  
12 chapter;

13 (6) issue a temporary permit to the personal representative of the estate  
14 of a deceased real estate broker or to another person designated by the commission  
15 with the approval of the personal representative of the estate in order to secure proper  
16 administration in concluding the affairs of the decedent broker's real estate business;

17 (7) issue a temporary permit to the personal representative of a legally  
18 incompetent real estate broker or to another person designated by the commission with  
19 the approval of the personal representative of the broker in order to secure proper  
20 administration in temporarily managing the real estate business of the broker;

21 (8) establish and periodically revise the form of the seller's property  
22 disclosure statement required by AS 34.70.010;

23 (9) have the authority to levy civil fines as established in this chapter;

24 (10) revoke the license of a broker or associate broker who is  
25 convicted of a felony or other crime committed while licensed under this chapter that,  
26 in the judgment of the commission, affects the ability of that person to practice as a  
27 broker or associate broker competently and safely or who is convicted of forgery,  
28 theft, extortion, conspiracy to defraud creditors, or fraud; notwithstanding  
29 AS 08.88.171, a person whose license is revoked under this paragraph is not qualified  
30 for a license under AS 08.88.171(a) or (b) until seven years have elapsed since the  
31 person completed the sentence imposed for the conviction.

1     \* **Sec. 2.** AS 08.88.071(b) is amended to read:

2             (b) When an award is made from the real estate **recovery** [SURETY] fund  
3             under this chapter, the commission may suspend the license of the real estate licensee  
4             whose actions formed the basis of the award. A suspension ordered under this  
5             subsection shall be lifted if the licensee reaches an agreement with the commission on  
6             terms and conditions for the repayment to the real estate **recovery** [SURETY] fund of  
7             the money awarded to the claimant [AND THE COSTS OF HEARING THE CLAIM  
8             UNDER AS 08.88.465] and if the licensee satisfies the requirements of AS 08.88.095.  
9             The suspension shall be reimposed if the licensee violates the terms of a repayment  
10            agreement entered into under this subsection.

11    \* **Sec. 3.** AS 08.88.171(b) is amended to read:

12            (b) A natural person qualifies for an associate real estate broker license if the  
13            person passes the brokers examination, applies for the license within six months after  
14            passing the examination, submits satisfactory proof of successful completion of the  
15            education requirements of AS 08.88.091, has had at least 24 months of active and  
16            continuous experience as a real estate licensee within the 36 months immediately  
17            preceding application for the license, **furnishes satisfactory proof that errors and**  
18            **omissions insurance required under AS 08.88.172 has been obtained,** is not under  
19            indictment for or seven years have elapsed since the person has completed a sentence  
20            imposed upon conviction of a felony or other crime that, in the judgment of the  
21            commission, affects the person's ability to practice as an associate real estate broker  
22            competently and safely or upon conviction of forgery, theft, extortion, conspiracy to  
23            defraud creditors, or fraud, and is employed by a licensed real estate broker as an  
24            associate real estate broker. Unless the associate broker fails to satisfy the educational  
25            requirements of AS 08.88.095 or renew the license, or the associate broker's license is  
26            suspended or revoked, the associate broker's license continues in effect as long as the  
27            associate broker is employed by a licensed real estate broker as an associate broker. If  
28            the associate broker stops being employed by a licensed real estate broker, the  
29            associate broker's license is suspended from the time the associate broker stops until  
30            the associate broker satisfies the educational requirements of AS 08.88.098 and

31                    (1) again is employed by a real estate broker as an associate broker; or

1 (2) becomes an owner of a real estate business or is employed as a real  
2 estate broker by a foreign or domestic corporation, partnership, limited partnership, or  
3 limited liability company, in which case the associate broker's license shall be returned  
4 to the commission by the associate broker, and the commission shall issue the licensee  
5 a broker's license.

6 \* **Sec. 4.** AS 08.88.171(c) is amended to read:

7 (c) A natural person qualifies for a real estate salesperson license if the person  
8 passes the real estate salesperson examination, applies for the license within six  
9 months after passing the examination, submits satisfactory proof of successful  
10 completion of the education requirements of AS 08.88.091, is at least 19 years of age,  
11 **furnishes satisfactory proof that errors and omissions insurance required under**  
12 **AS 08.88.172 has been obtained,** is not under indictment for a felony or other crime  
13 that, in the judgment of the commission, affects the individual's ability to practice as a  
14 real estate salesperson competently and safely or under indictment for forgery, theft,  
15 extortion, conspiracy to defraud creditors, or fraud, or, if convicted of such an offense,  
16 seven years have elapsed since the person completed the sentence imposed upon  
17 conviction. Unless the salesperson fails to satisfy the educational requirements of  
18 AS 08.88.095 or renew the license, or the real estate salesperson's license is suspended  
19 or revoked, a real estate salesperson's license continues in effect.

20 \* **Sec. 5.** AS 08.88 is amended by adding a new section to read:

21 **Sec. 08.88.172. Errors and omissions insurance.** (a) A person licensed as a  
22 real estate broker, associate real estate broker, or real estate salesperson shall, as a  
23 condition of licensing, carry and maintain errors and omissions insurance to cover  
24 activities for which licensing is required under AS 08.88.161.

25 (b) The department shall establish by regulation the terms and conditions of  
26 the errors and omissions insurance required by this section, including

- 27 (1) coverage requirements;  
28 (2) limits of coverage;  
29 (3) the maximum amount of premium to be charged licensees under a  
30 master errors and omissions policy under (d) of this section; and  
31 (4) the method for adjusting these amounts based on the Consumer

1 Price Index.

2 (c) A licensee may obtain the errors and omissions insurance required by (a)  
3 of this section by

4 (1) obtaining a master insurance policy that may be made available to  
5 licensees by the commission; or

6 (2) independently obtaining errors and omissions insurance that  
7 complies with the requirements established under (b) of this section.

8 (d) The commission may

9 (1) solicit bids for a master errors and omissions insurance policy for  
10 licensees that meets the minimum terms and conditions established under (b) of this  
11 section using a competitive sealed bid process under AS 36.30 (State Procurement  
12 Code); and

13 (2) charge a licensee a reasonable administration fee to recover costs  
14 incurred in connection with the solicitation made under (1) of this subsection.

15 (e) If the commission is unable to obtain a master errors and omissions  
16 insurance policy to insure licensees that meets the terms and conditions established  
17 under (b) of this section, the requirement that a real estate licensee carry and maintain  
18 errors and omissions insurance under AS 08.88.172 is void during the period that the  
19 commission is unable to obtain the insurance.

20 (f) A licensee seeking to obtain or renew a license shall certify to the  
21 commission that errors and omissions insurance has been obtained. A licensee who  
22 elects to independently obtain errors and omissions insurance shall provide a  
23 certificate of coverage with the application to obtain or renew a license.

24 \* **Sec. 6.** AS 08.88.173(b) is amended to read:

25 (b) If a loss covered by the fidelity bond required under this section is also  
26 reimbursable from the real estate **recovery** [SURETY] fund, the owners' association  
27 that suffered the loss may not recover under the bond until the association has  
28 **obtained a final judgment, final arbitration award, or settlement agreement and**  
29 filed a claim for **an award** [REIMBURSEMENT] under AS 08.88.460 [AND  
30 PROCEEDINGS RELATING TO THE CLAIM ARE CONCLUDED].

31 \* **Sec. 7.** AS 08.88.281 is amended to read:



1                   **Sec. 08.88.281. Real estate recovery [SURETY] fund.** Before issuing a  
2 license to an applicant under this chapter, the commission shall ensure that the  
3 applicant has complied with the provisions of AS 08.88.455 and is covered by the real  
4 estate recovery [SURETY] fund established in AS 08.88.450.

5   \* **Sec. 8.** AS 08.88.291(a) is amended to read:

6                   (a) A person licensed as a real estate broker shall, by registering with the  
7 commission, inform the commission of the person's principal office and of any branch  
8 offices of the person's real estate business and include in the information the names of  
9 the real estate licensees who are employed at each office. A real estate licensee may  
10 do real estate business only through a principal office or from a branch office  
11 registered by the broker by whom the licensee is employed. Failure of a real estate  
12 broker to maintain a place of business in the state or to inform the commission of its  
13 location and the names and addresses of all real estate licensees employed at each  
14 location by the broker is grounds for the suspension or revocation of the broker's  
15 license.

16   \* **Sec. 9.** AS 08.88.291(d) is amended to read:

17                   (d) The commission shall mail all notices pertaining to a license or recovery  
18 [SURETY] fund action taken under this chapter or a regulation adopted under this  
19 chapter to the current address or addresses of a licensee obtained under this section.  
20 Proof of notice provided under this subsection satisfies due process notice  
21 requirements.

22   \* **Sec. 10.** AS 08.88.391(b) is amended to read:

23                   (b) The failure of a licensee to disclose a conflict of interest as required under  
24 this section does not give rise to a cause of action by a private person. However, the  
25 commission may, under AS 08.88.071, impose a disciplinary sanction for violation of  
26 this section [, AND A CLAIM MAY BE FILED BY A PRIVATE PERSON UNDER  
27 AS 08.88.460 IF THE VIOLATION CONSTITUTED FRAUD,  
28 MISREPRESENTATION, OR DECEIT AND THE PERSON SUFFERED A LOSS  
29 AS A RESULT OF THE VIOLATION].

30   \* **Sec. 11.** AS 08.88.450 is amended to read:

31                   **Sec. 08.88.450. Real estate recovery [SURETY] fund.** (a) The real estate

1        **recovery** [SURETY] fund is established in the general fund to carry out the purposes  
2        of AS 08.88.450 - 08.88.495. The fund is composed of payments made by real estate  
3        licensees under AS 08.88.455, filing fees retained under AS 08.88.460, income earned  
4        on investment of the money in the fund, and money deposited in the fund under (c) of  
5        this section. Money **in** [APPROPRIATED TO] the fund does not lapse. **The**  
6        **commission may make payments from the fund for awards from the fund under**  
7        **AS 08.88.450 - 08.88.495** [AMOUNTS IN THE FUND MAY BE APPROPRIATED  
8        FOR CLAIMS AGAINST THE FUND], for hearing and legal expenses directly  
9        related to fund operations and claims, and for real estate educational purposes.

10        (b) The Department of Commerce, Community, and Economic Development  
11        shall provide the commission every three months with a statement of the activities of,  
12        balances in, interest earned on, and interest returned to the real estate **recovery**  
13        [SURETY] fund.

14        (c) If money from the real estate **recovery** [SURETY] fund is expended to  
15        prepare, print, manufacture, sponsor, produce, or otherwise provide an item or a  
16        service to a member of the public, to a real estate licensee, to a potential real estate  
17        licensee, or to another person, any money paid by the person to the commission, either  
18        directly or through an agent or contractor of the commission, to receive the item or  
19        service shall be deposited in the fund. In this subsection, "an item or a service"  
20        includes an information pamphlet, an examination preparation packet, an educational  
21        course, the certification of a real estate education course, and the approval of a real  
22        estate education instructor.

23        \* **Sec. 12.** AS 08.88.455 is amended to read:

24        **Sec. 08.88.455. Payments by real estate licensees.** (a) A real estate licensee,  
25        when applying for or renewing a real estate license, in lieu of obtaining a corporate  
26        surety bond, shall pay to the commission, in addition to the license fee, a **recovery**  
27        [SURETY] fund fee not to exceed \$125. After each two-year licensing cycle, if the  
28        commission finds that the average balance in the **recovery** [SURETY] fund during the  
29        two-year licensing cycle was less than \$250,000 or more than \$500,000, the  
30        commission shall by regulation adjust the **recovery** [SURETY] fund fees so that the  
31        average balance of the **recovery** [SURETY] fund during the next two-year licensing

1 cycle is anticipated to be an amount that is not less than \$250,000 or more than  
2 \$500,000. In this subsection, "average balance" means the average balance after taking  
3 into account anticipated expenditures for **awards from** [CLAIMS AGAINST] the  
4 fund [, FOR HEARING] and legal expenses directly related to fund operations [AND  
5 CLAIMS], and for real estate educational purposes.

6 (b) All fees collected under this section shall be paid at least once a month by  
7 the department into the general fund. These payments shall be credited to the real  
8 estate **recovery** [SURETY] fund.

9 \* **Sec. 13.** AS 08.88.460(a) is amended to read:

10 (a) Subject to (e) of this section, a person seeking **an award from the**  
11 **recovery fund** [REIMBURSEMENT] for a loss suffered in a real estate transaction as  
12 a result of fraud, **an intentional tort** [MISREPRESENTATION], deceit, or the  
13 conversion of trust funds or the conversion of community association accounts under  
14 the control of a community association manager on the part of a **person** [LICENSEE]  
15 licensed under this chapter shall

16 **(1) obtain a final judgment from a court of competent jurisdiction,**  
17 **a final arbitration award, or a settlement agreement with a licensee that involves**  
18 **a person committing fraud, an intentional tort, deceit, the conversion of trust**  
19 **funds, or the conversion of community association accounts;**

20 **(2) submit an affidavit describing the efforts made to collect the**  
21 **final judgment, final arbitration award, or settlement agreement stating that the**  
22 **person has used due diligence to collect the amount due, stating that the**  
23 **judgment, arbitration award, or settlement agreement is uncollectable using**  
24 **reasonable efforts, and that the conduct that is the subject of the judgment,**  
25 **arbitration award, or settlement agreement involved an activity for which a**  
26 **person must obtain a license under AS 08.88.161;**

27 **(3) make a claim to the commission for an award from the recovery**  
28 **fund** [REIMBURSEMENT] on a form furnished by the commission; **in** [. IN] order to  
29 be eligible for **an award** [REIMBURSEMENT] by the commission, the claim form  
30 must be filed within two years after **the date a judgment, arbitration award, or**  
31 **settlement agreement that is** [THE OCCURRENCE OF THE FRAUD,

1 MISREPRESENTATION, DECEIT, OR CONVERSION OF TRUST FUNDS OR  
2 THE CONVERSION OF COMMUNITY ASSOCIATION ACCOUNTS UNDER  
3 THE CONTROL OF A COMMUNITY ASSOCIATION MANAGER CLAIMED  
4 AS] the basis for the **award from the recovery fund is no longer subject to appeal;**  
5 **the** [REIMBURSEMENT. THE] form **must** [SHALL] be executed under penalty of  
6 unsworn falsification in the second degree and must include

7 (A) [THE FOLLOWING: (1)] the name and address of each  
8 real estate licensee involved;

9 (B) **a copy of the final judgment, final arbitration award, or**  
10 **settlement agreement;**

11 (C) **a copy of the affidavit asserting due diligence but lack**  
12 **of success in collecting the entire amount due;**

13 (D) [(2)] the amount of the **final judgment, final arbitration**  
14 **award, or settlement agreement that remains unpaid** [ALLEGED LOSS;

15 (3) THE DATE OR PERIOD OF TIME DURING WHICH THE  
16 ALLEGED LOSS OCCURRED;

17 (4) THE DATE UPON WHICH THE ALLEGED LOSS WAS  
18 DISCOVERED];

19 (E) [(5)] the name and address of the claimant; and

20 (F) [(6)] a general statement of facts relative to the claim.

21 \* **Sec. 14.** AS 08.88.460(b) is amended to read:

22 (b) **The commission shall send a** [A] copy of a claim filed [WITH THE  
23 COMMISSION] under (a) of this section [SHALL BE SENT] to each real estate  
24 licensee **named in (a)(3) of this section** [ALLEGED TO HAVE COMMITTED THE  
25 MISCONDUCT RESULTING IN LOSSES, TO THE PRINCIPAL REAL ESTATE  
26 BROKER EMPLOYING A LICENSEE ALLEGED TO HAVE COMMITTED THE  
27 CONDUCT RESULTING IN LOSSES, AND TO ANY OTHER REAL ESTATE  
28 LICENSEE INVOLVED IN THE TRANSACTION AT LEAST 20 DAYS BEFORE  
29 ANY HEARING HELD ON THE CLAIM BY THE OFFICE OF  
30 ADMINISTRATIVE HEARINGS (AS 44.64.010)].

31 \* **Sec. 15.** AS 08.88.460(d) is amended to read:

(d) A claimant under this section shall pay a filing fee of \$250 to the commission at the time the claim is filed. The filing fee shall be refunded if the

(1) commission makes an award to the claimant from the real estate recovery [SURETY] fund; or

(2) claimant withdraws the claim [CLAIM IS DISMISSED UNDER (c) OF THIS SECTION; OR

(3) CLAIM IS WITHDRAWN BY THE CLAIMANT BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS (AS 44.64.010) HOLDS A HEARING ON THE CLAIM].

\* **Sec. 16.** AS 08.88.465(a) is repealed and reenacted to read:

(a) If the commission receives a claim for an award from the recovery fund that complies with the requirements of AS 08.88.450 - 08.88.495, the commission shall make an award from the recovery fund in an amount not to exceed \$15,000. Not more than \$15,000 may be paid for each transaction, regardless of the number of persons injured or the number of parcels of real estate involved in the transaction.

\* **Sec. 17.** AS 08.88.472(a) is amended to read:

(a) The commission may charge [TO] the real estate recovery [SURETY] fund for [HEARING AND LEGAL] expenses related to fund operations [AND CLAIMS]. The commission shall deposit into the real estate recovery [SURETY] fund amounts recovered for these expenses from the licensee under AS 08.88.071(b) or from other parties under AS 08.88.490.

\* **Sec. 18.** AS 08.88.472(d) is amended to read:

(d) If the salary of an employee is entirely or partially paid for from money in the real estate recovery [SURETY] fund, the employee may perform administrative duties for the commission in addition to any duties the employee performs that are related to the real estate recovery [SURETY] fund. AS 08.88.910 does not apply to this subsection.

\* **Sec. 19.** AS 08.88.475 is amended to read:

**Sec. 08.88.475. Maximum liability.** (a) The maximum liability of the real estate recovery [SURETY] fund may not exceed \$50,000 for any one real estate licensee.

(b) If the \$50,000 liability of the fund as provided in (a) of this section is insufficient to pay in full the valid claims of all persons who have **obtained a final judgment, final arbitration award, or settlement agreement involving** [FILED CLAIMS AGAINST] an individual licensee **and have filed claims for an award from the recovery fund**, the \$50,000 shall be distributed among the claimants in the ratio that their individual claims bear to the aggregate of valid claims, or in another manner that the commission considers equitable. Distribution shall be among the persons entitled to share in the recovery without regard to the order in which their claims were filed.

\* **Sec. 20.** AS 08.88.480 is amended to read:

**Sec. 08.88.480. Order of claim payment.** If the money deposited in the real estate **recovery** [SURETY] fund is insufficient at a given time to satisfy a **legally** [DULY] authorized claim against the fund, the commission shall, when sufficient money has been deposited in the fund and appropriated, satisfy unpaid claims in the order that the claims were originally filed, plus accumulated interest at the rate of eight percent a year.

\* **Sec. 21.** AS 08.88.490 is amended to read:

**Sec. 08.88.490. Right to subrogation.** When the commission has paid to a claimant from the real estate **recovery** [SURETY] fund the sum awarded by the commission, the commission shall be subrogated to all of the rights of the claimant to the amount paid, and the claimant shall assign all right, title, and interest in that portion of the claim to the commission. Money collected by the commission on the claim shall be deposited to the real estate **recovery** [SURETY] fund.

\* **Sec. 22.** AS 08.88.495 is amended to read:

**Sec. 08.88.495. Disciplinary action [AGAINST BROKERS AND SALESMEN].** Repayment in full of all obligations to the real estate **recovery** [SURETY] fund does not nullify or modify the effect of disciplinary proceedings brought under the provisions of this chapter.

\* **Sec. 23.** AS 08.88.990 is amended by adding new paragraphs to read:

(13) "final arbitration award" means an arbitration award for which there is no further right to appeal;

1 (14) "final judgment" means a judgment for which there is no further  
2 right to appeal.

3 \* **Sec. 24.** AS 08.88.460(c), 08.88.465(b), 08.88.465(c), 08.88.465(d), 08.88.465(e),  
4 08.88.465(f), 08.88.470, 08.88.472(b), 08.88.472(c), and 08.88.474 are repealed.

5 \* **Sec. 25.** The uncoded law of the State of Alaska is amended by adding a new section to  
6 read:

7 TRANSITIONAL PROVISIONS: REGULATIONS. The Real Estate Commission  
8 may proceed to adopt regulations necessary to implement this Act. The regulations take effect  
9 under AS 44.62 (Administrative Procedure Act), but not before the effective date of the  
10 amendments made by secs. 1 - 24 of this Act.

11 \* **Sec. 26.** Section 25 of this Act takes effect immediately under AS 01.10.070(c).

12 \* **Sec. 27.** Except as provided in sec. 26 of this Act, this Act takes effect March 1, 2010.