

CS FOR HOUSE BILL NO. 33(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

**Offered: 1/30/98
Referred: Finance**

Sponsor(s): REPRESENTATIVE ROKEBERG BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to real estate licensees and to the real estate surety fund; and**
2 **providing for an effective date."**

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

4 *** Section 1.** AS 08.67.010 is amended to read:

5 **Sec. 08.67.010. Registration of mobile home dealers.** A mobile home dealer
6 may not do business in the state unless the dealer is registered with the department.

7 **However, a person licensed under AS 08.88 may, without registering under this**
8 **chapter, perform the same activities with respect to mobile homes as are**
9 **authorized for that person to perform under AS 08.88 with respect to real estate.**

10 *** Sec. 2.** AS 08.88.051(c) is amended to read:

11 (c) The commission shall elect its officers **at the first meeting of each fiscal**
12 **year.**

13 *** Sec. 3.** AS 08.88.061 is amended to read:

14 **Sec. 08.88.061. Assistants. Notwithstanding contrary provisions of**

1 **AS 08.01.050, the** [THE] commission may **assign or designate** [USE] assistants to
 2 (1) **issue licenses to applicants who meet the qualifications for**
 3 **licensure established under this chapter;**
 4 (2) prepare questions on examinations;
 5 (3) **administer and** [(2)] grade examinations;
 6 (4) **certify courses required under this chapter;**
 7 (5) **approve instructors to teach courses required under this**
 8 **chapter; and**
 9 (6) **negotiate terms of payment of fines and other money due under**
 10 **this chapter.**

11 * **Sec. 4.** AS 08.88.071 is amended to read:

12 **Sec. 08.88.071. Duties of the commission.** (a) The commission shall

13 (1) **determine whether** [PASS ON QUALIFICATIONS OF] applicants
 14 **meet requirements** for licenses **under this chapter** and issue licenses to those who
 15 qualify;

16 (2) prepare and grade examinations;

17 (3) after hearing, have the authority to suspend or revoke the license
 18 of a licensee **or impose other disciplinary sanctions authorized under AS 08.01.075**
 19 **on a licensee** who

20 (A) with respect to a real estate transaction

21 (i) made a substantial misrepresentation;

22 (ii) made a false promise likely to influence, persuade,
 23 or induce;

24 (iii) in the case of a real estate broker, pursued a
 25 flagrant course of misrepresentation or made a false promise through
 26 **another** [AN AGENT, ASSOCIATE REAL ESTATE BROKER, OR]
 27 real estate **licensee** [SALESMAN];

28 (iv) has engaged in conduct that is fraudulent or
 29 dishonest;

30 (v) violates AS 08.88.391;

31 (B) procures a license by deceiving the commission, or aids

1 another to do so;

2 (C) has engaged in conduct of [IN] which the commission had
3 no knowledge at the time the licensee was licensed demonstrating the licensee's
4 unfitness to engage in the business for which the licensee is licensed;

5 (D) knowingly authorizes, directs, connives at or aids in
6 publishing, distributing, or circulating a material false statement or
7 misrepresentation concerning the licensee's business or concerning real estate
8 offered for sale, rent, or lease, or managed in the course of the licensee's
9 business in this or any other state or concerning the management of an
10 association in the course of a licensee's business in this or another state;

11 (E) if a real estate broker, wilfully violates AS 08.88.171(d) or
12 08.88.291;

13 (F) if an associate real estate broker, claims to be a real estate
14 broker, or, if a real estate salesperson [SALESMAN], claims to be a real estate
15 broker or associate real estate broker;

16 (G) if a real estate broker, employs an unlicensed person to
17 perform activities for which a real estate license is required [ASSOCIATE
18 REAL ESTATE BROKER OR REAL ESTATE SALESMAN];

19 (H) if an employed real estate licensee of a [ASSOCIATE]
20 real estate broker [OR REAL ESTATE SALESMAN], fails immediately to turn
21 money or other property collected in a real estate transaction over to the
22 employing real estate broker;

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

25 (5) release for publication [PUBLISH, ON THREE CONSECUTIVE
26 WEEKENDS] in a newspaper of general circulation in the locale of the offending
27 person's principal office registered with the commission notice of [LICENSED
28 UNDER THIS CHAPTER,] disciplinary action taken by the commission against a
29 person licensed under this chapter;

30 (6) issue a temporary permit to the personal representative of the estate
31 of a deceased real estate broker or to another [SOME OTHER] person designated by

1 the commission with the approval of the personal representative of the estate in order
 2 to secure proper administration in concluding the affairs of the decedent broker's real
 3 estate business;

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

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

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

13 (10) revoke the license of a broker or associate broker who is
 14 convicted of a felony committed while licensed under this chapter;
 15 notwithstanding AS 08.88.171, a person whose license is revoked under this
 16 paragraph is not qualified for a license under AS 08.88.171(a) or (b) until seven
 17 years have elapsed since the person completed the sentence imposed for the felony
 18 conviction.

19 (b) When an award is made from the real estate surety fund under this chapter
 20 [IN REIMBURSEMENT OF LOSSES SUFFERED BY A CLAIMANT AS A
 21 RESULT OF FRAUD, MISREPRESENTATION, DECEIT, OR CONVERSION OF
 22 TRUST FUNDS ON THE PART OF A LICENSED BROKER, ASSOCIATE
 23 BROKER, OR SALESMAN], the commission may suspend [CONSIDER THE
 24 HEARING ON THE CLAIM TO BE A HEARING ON THE SUSPENSION OF] the
 25 license of the real estate licensee whose actions formed the basis of the award
 26 [BROKER, ASSOCIATE BROKER, OR SALESMAN, AND MAY SUSPEND THE
 27 LICENSE OF THE BROKER, ASSOCIATE BROKER, OR SALESMAN]. A
 28 suspension ordered under this subsection shall be lifted if the licensee [BROKER,
 29 ASSOCIATE BROKER, OR SALESMAN] reaches an agreement with the commission
 30 on terms and conditions for the repayment to the real estate surety fund of the money
 31 awarded to the claimant and the costs of hearing the claim under AS 08.88.465. The

1 suspension shall be reimposed if the **licensee** [BROKER, ASSOCIATE BROKER, OR
2 SALESMAN] violates the terms of a repayment agreement entered into under this
3 subsection.

4 (c) For the purposes of (a)(3) of this section, the conduct of an employee is
5 [NOT] attributable to a real estate broker **if** [UNLESS] the real estate broker has actual
6 knowledge that the employee is going to engage in the conduct and agrees to the
7 conduct, either actively or by remaining silent, or ratifies the conduct after it is
8 engaged in.

9 * **Sec. 5.** AS 08.88.091(d) is amended to read:

10 (d) A person who is licensed under this chapter must complete 20 hours of
11 continuing education approved by the commission before the person's license may be
12 renewed. **The commission may not establish limits that prevent a person from**
13 **satisfying this continuing education requirement within a two-day period.**

14 * **Sec. 6.** AS 08.88.091(e) is amended to read:

15 (e) **Except for a course described in (f)(1), (3), or (4) of this section, in**
16 **order for an educational course to be recognized for credit under this section,**
17 [THE COMMISSION MAY NOT APPROVE AN EDUCATION OR CONTINUING
18 EDUCATION COURSE REQUIRED UNDER THIS SECTION UNLESS THE
19 COMMISSION CERTIFIES] the course outline and [APPROVES] the instructor of the
20 course **must have been approved by the commission or the commission's designee**
21 before the course **was** [IS] conducted. **A course outline or instructor is considered**
22 **approved if the commission or the commission's designee does not disapprove the**
23 **outline or instructor within 30 days after the date on which complete application**
24 **was made for approval. The commission shall approve each submitted contact**
25 **hour of a course outline as one credit hour of continuing education. The fee for**
26 **continuing education course certification under AS 08.88.221 shall be based on the**
27 **hours approved for credit not hours submitted.**

28 * **Sec. 7.** AS 08.88.091 is amended by adding new subsections to read:

29 (f) The commission shall establish by regulation the educational and continuing
30 educational requirements for each type of license issued by the commission. The
31 regulations for continuing education requirements must allow the following types of

1 courses to qualify for the appropriate number of credit hours, as determined by the
2 commission:

3 (1) courses that are developed by national organizations, as identified
4 for the purpose of this paragraph in the commission's regulations, that are delivered by
5 nationally certified instructors and that are required in order to earn professional
6 designations from a national organization in specialized areas of licensed real estate
7 practice; notwithstanding other provisions of this chapter, the commission may not
8 charge a fee for these courses;

9 (2) technology courses directly related to real estate practice that are
10 designed to enhance the skills and performance of a real estate licensee;

11 (3) courses offered by an accredited college or university as part of a
12 real estate curriculum that are available for at least one quarter-hour or one-half
13 semester-hour of academic credit; the commission may not charge a fee for these
14 courses; and

15 (4) courses offered and attended at a national convention for real estate
16 licenses if the courses were approved for continuing education credit by the real estate
17 licensing board of the state in which the convention was held.

18 (g) The commission shall establish core curricula for continuing education in
19 the following areas: real estate sales, property management, community association
20 management, and commercial sales. A licensee shall complete at least one of the four
21 core curricula during each biennial licensing period as part of the licensee's continuing
22 education.

23 * **Sec. 8.** AS 08.88.161 is amended to read:

24 **Sec. 08.88.161. License required.** Unless licensed as a real estate broker,
25 associate real estate broker, or real estate salesperson [SALESMAN], a [NATURAL]
26 person [, FOREIGN OR DOMESTIC CORPORATION, OR PARTNERSHIP, OR
27 LIMITED PARTNERSHIP, OR OTHER ENTITY] may not

28 (1) sell, exchange, rent, lease, auction, or purchase real estate;

29 (2) list real estate for sale, exchange, rent, lease, auction, or purchase;

30 (3) collect rent for the use of real estate or collect fees for property

31 management;

1 (4) **practice, or negotiate for a contract to practice, property**
 2 **management;**

3 (5) **collect fees for community association management;**

4 (6) **practice, or negotiate for a contract to practice, community**
 5 **association management;**

6 (7) as a business, buy, sell, or deal in

7 (A) options in real estate; or

8 (B) options in improvements to real estate;

9 (8) [(5)] assist in **or communicate with** or direct the procuring of
 10 prospective buyers **and sellers** or the negotiation of a transaction **that** [WHICH]
 11 results or is calculated to result in the sale, exchange, rent, lease, auction, or purchase
 12 of real estate;

13 (9) **accept or pay a fee for the performance of any of the activities**
 14 **listed in this section except as otherwise specifically provided in this chapter;**

15 (10) [(6)] hold out to the public as being engaged in the business of
 16 doing any of the things listed in this section; **or**

17 (11) [(7)] attempt or offer to do any of the things listed in this section
 18 [.

19 (8) REPEALED].

20 * **Sec. 9.** AS 08.88 is amended by adding a new section to read:

21 **Sec. 08.88.167. Civil penalty for unlicensed or unauthorized practice.** (a)

22 In addition to penalties prescribed by any other provision of law, if a person engages
 23 or offers to engage in an activity for which a license is required under AS 08.88.161
 24 without being licensed or authorized to engage in the activity in accordance with the
 25 provisions of this chapter, the commission may enter an order levying a civil penalty.

26 (b) A civil penalty levied under this section may not exceed \$5,000, or the
 27 amount of gain realized plus \$5,000, whichever is greater, for each offense. In levying
 28 a civil penalty, the commission shall set the amount of the penalty imposed under this
 29 section after taking into account the seriousness of the violation, the economic benefit
 30 resulting from the violation, the history of violations, and other facts the commission
 31 considers relevant.

1 (c) Before entering an order under (a) of this section, the commission shall
 2 send the person written notice of the proposed order that grants the person a 30-day
 3 period during which the person may request a hearing on the record.

4 (d) In connection with proceedings under (a) - (c) of this section, the
 5 commission may issue subpoenas to compel the attendance and testimony of witnesses
 6 and the disclosure of evidence and may request the department to bring an action to
 7 enforce a subpoena.

8 (e) A person aggrieved by the levy of a civil penalty under this section may
 9 file an appeal with the superior court for judicial review of the penalty under
 10 AS 44.62.560.

11 (f) If a person fails to pay a civil penalty within 30 days after entry of an order
 12 under (a) of this section, or within 10 days after the court enters a final judgment in
 13 favor of the commission of an order stayed pending an appeal under (e) of this section,
 14 the commission may initiate other action to recover the amount of the penalty.

15 (g) An action to enforce an order under this section may be combined with an
 16 action for an injunction under AS 08.88.037.

17 * **Sec. 10.** AS 08.88.171 is amended to read:

18 **Sec. 08.88.171. Entitlement to license.** (a) A **natural** person **qualifies** [IS
 19 ELIGIBLE] for a real estate broker license if the person passes the [REAL ESTATE]
 20 brokers examination, [IF THE PERSON] applies for a license within six months after
 21 **passing** the [PERSON HAS TAKEN THE REAL ESTATE BROKERS] examination,
 22 [IF THE PERSON] furnishes satisfactory proof of successful completion of the
 23 education requirements of AS 08.88.091, [IF THE PERSON] has had at least 24
 24 months of active and continuous experience as a licensed real estate **salesperson**
 25 **within the 36 months immediately preceding application for the broker license,**
 26 [SALESMAN, IF THE PERSON] is not under indictment for, or seven years have
 27 elapsed since the person has completed a sentence imposed upon conviction of,
 28 forgery, theft, extortion, conspiracy to defraud creditors, or any other felony involving
 29 moral turpitude, and [IF THE PERSON] is an owner of a real estate business or
 30 employed as a real estate broker by a **foreign or domestic** corporation, [OR A]
 31 partnership, **limited partnership, or limited liability company** [AND IF THAT

1 CORPORATION OR PARTNERSHIP DOES NOT HAVE AN EXISTING
 2 LICENSED BROKER. UNLESS THE BROKER FAILS TO PAY THE BIENNIAL
 3 RENEWAL FEE OR UNLESS THE BROKER'S LICENSE IS SUSPENDED OR
 4 REVOKED UNDER AS 08.88.071(a)(3), THE REAL ESTATE BROKER'S LICENSE
 5 CONTINUES IN EFFECT SO LONG AS THE BROKER IS AN OWNER OF A
 6 REAL ESTATE BUSINESS, OR THE BROKER IS EMPLOYED AS A REAL
 7 ESTATE BROKER BY A CORPORATION OR A PARTNERSHIP]. If the broker
 8 stops being an owner of a real estate business [,] or stops being employed as a real
 9 estate broker by a **foreign or domestic** corporation, [OR] partnership, **limited**
 10 **partnership, or limited liability company**, the broker's license is suspended from the
 11 time the broker stops until

12 (1) the broker again becomes an owner of a real estate business or is
 13 again employed as a real estate broker by a **foreign or domestic** corporation, [OR A]
 14 partnership, **limited partnership, or limited liability company**; or

15 (2) the broker is employed by **another** [A LICENSED REAL
 16 ESTATE] broker as an associate [REAL ESTATE] broker, in which case the real
 17 estate broker license **shall be** [IS] returned to the commission **by the broker**, and the
 18 commission **shall issue** [ISSUES] the broker an associate real estate broker license.

19 (b) A **natural** person **qualifies** [IS ELIGIBLE] for an associate real estate
 20 broker license if the person passes the [REAL ESTATE] brokers examination, [IF THE
 21 PERSON] applies for **the** [A] license within six months after **passing** [THE PERSON
 22 HAS TAKEN] the examination, [IF THE PERSON] submits satisfactory proof of
 23 successful completion of the education requirements of AS 08.88.091, [IF THE
 24 PERSON] has had at least 24 months of active and continuous experience as a licensed
 25 real estate **salesperson within the 36 months immediately preceding application for**
 26 **the license**, [SALESMAN, IF THE PERSON] is not under indictment for, or five
 27 years have elapsed since the person has completed a sentence imposed upon conviction
 28 of, forgery, theft, extortion, conspiracy to defraud creditors, or any other felony
 29 involving moral turpitude, and [IF THE PERSON] is employed by a licensed real
 30 estate broker as an associate real estate broker. Unless the associate broker fails to
 31 **renew the license** [PAY THE BIENNIAL RENEWAL FEE] or unless the associate

1 broker's license is suspended or revoked [UNDER AS 08.88.071(a)(3)], the associate
 2 [REAL ESTATE] broker's license continues in effect as [SO] long as the associate
 3 broker is employed by a licensed real estate broker as an associate broker. If the
 4 associate broker stops being employed by a licensed real estate broker, the associate
 5 broker's license is suspended from the time the associate broker stops until

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

8 (2) the associate broker becomes an owner of a real estate business or
 9 is employed as a real estate broker by a foreign or domestic corporation,
 10 partnership, limited partnership, or limited liability company, in which case the
 11 associate broker's [ASSOCIATE REAL ESTATE BROKER] license shall be [IS]
 12 returned to the commission by the associate broker, and the commission shall issue
 13 [ISSUES] the licensee [ASSOCIATE BROKER] a broker's [REAL ESTATE
 14 BROKER] license.

15 (c) A natural person qualifies [IS ELIGIBLE] for a real estate salesperson
 16 [SALESMAN] license if the person passes the real estate salesperson [SALESMAN]
 17 examination, [IF THE PERSON] applies for the [A] license within six months after
 18 passing [THE PERSON HAS TAKEN] the examination, [IF THE PERSON] submits
 19 satisfactory proof of successful completion of the education requirements of
 20 AS 08.88.091, [IF THE PERSON] is at least 19 years old, [IF THE PERSON] is not
 21 under indictment for forgery, theft, extortion, conspiracy to defraud creditors, or any
 22 other felony involving moral turpitude, or, if convicted of such an offense, the person
 23 has completed the sentence imposed upon conviction, and [IF THE PERSON] is
 24 employed by a real estate broker. Unless the salesperson [SALESMAN] fails to
 25 renew the license [PAY THE BIENNIAL RENEWAL FEE] or unless the real estate
 26 salesperson's [SALESMAN'S] license is suspended or revoked [UNDER
 27 AS 08.88.071(A)(3)], a real estate salesperson's [SALESMAN'S] license continues in
 28 effect as [SO] long as the salesperson [SALESMAN] is employed as a salesperson
 29 [SALESMAN] by a licensed real estate broker. If the salesperson [SALESMAN]
 30 stops being employed as a real estate salesperson [SALESMAN], the real estate
 31 salesperson's [SALESMAN'S] license is suspended from the time the salesperson

1 [SALESMAN] stops until the salesperson [SALESMAN] again is employed as a real
 2 estate salesperson [SALESMAN] by a licensed real estate broker.

3 (d) A real estate licensee shall promptly inform the commission of a change
 4 in business association that affects the status of the licensee's license under this
 5 section.

6 * **Sec. 11.** AS 08.88.171 is amended by adding new subsections to read:

7 (e) Notwithstanding (a) - (d) of this section, a natural person qualifies for a
 8 limited license to practice community association management under (f) of this section
 9 if the person

10 (1) applies by January 1, 1999;

11 (2) pays the required fees;

12 (3) demonstrates to the commission's satisfaction that the person has
 13 engaged in the practice of community association management for at least 24 months
 14 before January 1, 1999; and

15 (4) meets other requirements that may be established by the
 16 commission in its regulations for issuance of a license under this subsection.

17 (f) A person who qualifies under (e) of this section shall be issued an associate
 18 broker license if, at the time of issuance, the person is employed by a broker. A
 19 person who qualifies under (e) of this section shall be issued a broker license if, at the
 20 time of issuance, the person is the owner of a community association management
 21 business or is employed as a community association manager by a foreign or domestic
 22 corporation, partnership, limited partnership, or limited liability company. After initial
 23 issuance of a license to a person under this subsection, the person is subject to the
 24 same requirements that exist for other brokers and associate brokers licensed under this
 25 chapter. However, notwithstanding other provisions of this chapter, under a license
 26 issued under this subsection, a person may practice only community association
 27 management and does not qualify as a broker or associate broker for purposes of
 28 AS 08.88.161(1) - (4), (7), or (8) or 08.88.165(2). A person issued a limited license
 29 to practice community association management under this section may not use the
 30 terms "salesperson," "broker," or "associate broker" for any business purpose.

31 * **Sec. 12.** AS 08.88 is amended by adding new sections to read:

1 **Sec. 08.88.173. Fidelity bond for community association managers.** (a) If
 2 the board of directors of a community association allows a broker to exercise some
 3 control over community association fees or other community association funds, the
 4 broker must provide evidence to the commission that the broker is covered by a
 5 blanket fidelity insurance bond. The bond may be in the name of the broker with the
 6 association as an additional insured or in the name of the association with the broker
 7 as an additional insured. The bond must cover the maximum funds that will be within
 8 the control of the community association manager at any time while the bond is in
 9 force. The commission may adopt regulations to implement this subsection, including
 10 regulations concerning the minimum coverage and terms of coverage that are required
 11 and proof of bond and the granting of exemptions.

12 (b) If a loss covered by the fidelity bond required under this section is also
 13 reimbursable from the real estate surety fund, the owners' association that suffered the
 14 loss may not recover under the bond until the association has filed a claim for
 15 reimbursement under AS 08.88.460 and proceedings relating to the claim are
 16 concluded.

17 **Sec. 08.88.175. Limitations on community association managers.** A
 18 licensee may not, within the practice of community association management, exercise
 19 control over the

20 (1) reserves or investment accounts of a community association;

21 (2) operating account of a community association unless

22 (A) allowed under a contract that has been approved by the
 23 association's board of directors; and

24 (B) duplicate financial statements concerning the account are
 25 sent by the institution holding the account to the licensee and the association's
 26 board of directors at separate addresses.

27 * **Sec. 13.** AS 08.88.181(a) is amended to read:

28 (a) The real estate **examinations** [EXAMINATION] may include [, BUT IS
 29 NOT NECESSARILY LIMITED TO,] questions on **real estate** business ethics **and**
 30 **standards**; arithmetic; elementary principles of land economics and appraisal; the
 31 general principles in state statutes relating to deeds, mortgages, real estate contracts,

1 subdivisions, legal descriptions, building restrictions, agency, **disclosure requirements,**
 2 **trust accounting requirements, landlord and tenant law, property management**
 3 **ethics and standards, accounting, community association management operations**
 4 **and ethics and standards, nonprofit corporation creation and operation,** and
 5 brokerage; and the general provisions of this chapter and of the regulations of the
 6 commission.

7 * **Sec. 14.** AS 08.88.191(b) is amended to read:

8 (b) If the commission authorizes the department to contract with a national
 9 testing service to prepare, administer, and grade examinations,

10 (1) the commission **or its designee** shall review the examination and
 11 approve its contents;

12 (2) application for **an** [THE] examination [, ACCOMPANIED BY THE
 13 PROPER FILING FEE,] may be transmitted by the applicant directly to the national
 14 testing service; **payment of an examination fee shall be made by the applicant**
 15 **directly to the national testing service's designated representative before the**
 16 **examination is taken by the applicant.**

17 * **Sec. 15.** AS 08.88.201 is amended to read:

18 **Sec. 08.88.201. Reexamination.** A person who fails an examination may
 19 apply for a subsequent examination, but shall pay the application fee **with** [FOR] each
 20 application.

21 * **Sec. 16.** AS 08.88.221 is amended to read:

22 **Sec. 08.88.221. Fees.** The Department of Commerce and Economic
 23 Development shall set fees under AS 08.01.065 for a real estate broker, associate
 24 broker, or **salesperson** [SALESMAN] licensee or applicant for the following:

25 (1) examination;

26 (2) [RECIPROCITY;

27 (3)] initial license;

28 **(3)** [(4)] renewal of an active license;

29 **(4)** [(5)] renewal of an inactive license;

30 **(5)** [(6)] amending or transferring a license;

31 **(6)** [(7)] publications offered by the commission;

- 1 (7) [(8)] seminars offered by the commission;
- 2 (8) reinstatement of a lapsed license;
- 3 (9) changes to registered office information;
- 4 (10) course certification and recertification; and
- 5 (11) instructor approval and renewal of approval.

6 * **Sec. 17.** AS 08.88.241 is repealed and reenacted to read:

7 **Sec. 08.88.241. Reinstatement of lapsed license.** (a) A person whose real
8 estate license has lapsed less than 24 months is eligible for reinstatement of the license
9 if the person provides the required application, license fees, proof of continuing
10 education as required by AS 08.88.091 for licensing periods during which the license
11 was inactive or lapsed.

12 (b) A real estate licensee whose license has been lapsed for more than 24
13 months is not eligible for reinstatement of the license and is eligible for the license
14 only by meeting the qualifications applicable to initial licensure under AS 08.88.171.

15 * **Sec. 18.** AS 08.88.251 is amended to read:

16 **Sec. 08.88.251. Inactive license.** (a) A real estate licensee who intends to
17 [PERSON LICENSED BY THE COMMISSION MAY] become inactive **shall return**
18 [BY RETURNING] to the commission the person's license certificate and a **completed**
19 **inactivation** form provided by the commission **along with any applicable fees.** [IN
20 THE FORM, THE PERSON SHALL STATE THE DATE ON WHICH THE PERSON
21 INTENDS TO BECOME INACTIVE. THE PERSON'S INACTIVE STATUS
22 BEGINS ON THE DATE STATED.] The commission shall issue the person an
23 inactive license certificate.

24 (b) An inactive licensee may not attempt or offer to do any of the activities
25 listed in AS 08.88.161, **but may receive commissions or other payments from the**
26 **broker who previously contracted with or employed the licensee for services**
27 **performed while actively licensed** [EXCEPT AS OTHERWISE ALLOWED FOR
28 UNLICENSED PERSONS UNDER AS 08.88.165].

29 (c) A person who **has an** [IS] inactive **license certificate under (a) of this**
30 **section** may **reactivate the license** [BECOME ACTIVE] by applying for an active
31 license and paying the required fees. [IN THE APPLICATION FORM THE PERSON

1 SHALL STATE THE DATE ON WHICH THE PERSON INTENDS TO BECOME
 2 ACTIVE. THE PERSON'S ACTIVE STATUS BEGINS ON THE DATE STATED.
 3 THE COMMISSION SHALL SEND THE PERSON A LICENSE CERTIFICATE.]
 4 A person is eligible for change from an inactive to an active status under this
 5 subsection only [WITHOUT EXAMINATION] if the person has [NOT] been in
 6 inactive status for less [MORE] than 24 months [TWO YEARS]. If the person has
 7 been in inactive status for 24 months or for more than 24 months [TWO YEARS],
 8 the person is required to meet the requirements for initial licensure in order to be
 9 licensed under this chapter again [TAKE AN EXAMINATION].

10 * **Sec. 19.** AS 08.88.281 is amended to read:

11 **Sec. 08.88.281. Real estate surety fund.** Before issuing a license to an
 12 applicant under this chapter, the commission shall ensure [DETERMINE] that the
 13 applicant has complied with the provisions of AS 08.88.455 and is covered by the real
 14 estate surety fund established in AS 08.88.450.

15 * **Sec. 20.** AS 08.88.291 is amended to read:

16 **Sec. 08.88.291. Location.** A person licensed as a real estate broker shall, by
 17 registering with the commission, inform the commission of the person's
 18 [BROKER'S] principal office and of any branch offices of the person's real estate
 19 business and include in the information the names of the real estate licensees who
 20 are employed at each office. A [BROKER HAS. THE BROKER AND THE
 21 ASSOCIATE] real estate licensee [BROKERS AND REAL ESTATE SALESMEN
 22 THE BROKER EMPLOYS] may do real estate business only through a [IN OR OUT
 23 OF THE BROKER'S] principal office or from a [AND THE BROKER'S] branch
 24 office registered by the broker by whom the licensee is employed [OFFICES].
 25 Failure of a real estate broker to maintain a place of business or to inform the
 26 commission of its location and the names and addresses of all real estate licensees
 27 employed at each location by the broker is [UNDER THE BROKER'S
 28 JURISDICTION AT THE LOCATION ARE] grounds for the suspension or revocation
 29 of the broker's license.

30 * **Sec. 21.** AS 08.88.301 is amended to read:

31 **Sec. 08.88.301. Change of location.** Before [IF] a real estate broker changes

1 the location of the broker's principal office or of a branch office, the broker shall
 2 [IMMEDIATELY] notify the commission of the new address and any other office
 3 changes on a form provided by the commission and pay the applicable fees.

4 * **Sec. 22.** AS 08.88.311 is amended to read:

5 **Sec. 08.88.311. Branch offices.** (a) A branch office shall be under the direct
 6 supervision of a real estate associate broker whose principal place of business is that
 7 office and who is licensed under this chapter. An associate [REAL ESTATE] broker
 8 may serve in the capacity of direct supervisor at only one office [ONLY].

9 (b) A [ALL] branch office [OFFICES] shall bear and be advertised only in the
 10 name of the principal office but may also indicate that it is a [THEY ARE] branch
 11 [OFFICES OF THE PRINCIPAL] office.

12 * **Sec. 23.** AS 08.88.321 is repealed and reenacted to read:

13 **Sec. 08.88.321. Possession and display of license certificates.** (a) The
 14 license certificate of a real estate broker shall be displayed in the broker's principal
 15 office.

16 (b) The license certificate of each licensee working in the broker's principal
 17 office shall be displayed in that office.

18 (c) The license certificate of the designated associate broker who is in charge
 19 of a branch office and the certificate of each licensee working in a branch office shall
 20 be displayed in the branch office indicated as the office of the licensees' employment
 21 in the registration required under AS 08.88.291.

22 (d) Certificates displayed under this section must be displayed where they are
 23 available for public clients and customers to verify the current active status of licensees
 24 working in the office.

25 * **Sec. 24.** AS 08.88.331 is amended to read:

26 **Sec. 08.88.331. Making of transactions.** An active [A] real estate
 27 salesperson [SALESMAN] or associate real estate broker may perform activities for
 28 which a real estate license is required [MAKE A REAL ESTATE TRANSACTION]
 29 only through the real estate broker who employs or contracts with the licensee
 30 [REAL ESTATE SALESMAN OR ASSOCIATE REAL ESTATE BROKER]. All
 31 money or other proceeds collected in trust and related to a real estate transaction

1 [ON BEHALF OF THE BROKER] shall immediately be turned over to the broker or
 2 the broker's **authorized** agent. [ALL TRANSACTIONS IN REAL ESTATE BY A
 3 REAL ESTATE SALESMAN OR ASSOCIATE REAL ESTATE BROKER SHALL
 4 BE PROCESSED THROUGH THE REAL ESTATE SALESMAN'S OR THE
 5 ASSOCIATE REAL ESTATE BROKER'S EMPLOYING REAL ESTATE
 6 BROKER'S OFFICE, WHETHER THE TRANSACTIONS ARE FOR THE REAL
 7 ESTATE SALESMAN'S OR ASSOCIATE REAL ESTATE BROKER'S OWN USE
 8 OR THE USE OF A CLIENT.]

9 * **Sec. 25.** AS 08.88.341 is amended to read:

10 **Sec. 08.88.341. Listings and management contracts.** All real estate listings
 11 **and management contracts** must be in writing and must be signed by the **broker**
 12 [SELLER] or **associated licensee** [BY AN AGENT] of the **broker and by the client**
 13 **or an authorized representative of the client for whose benefit the real estate**
 14 **licensee will act** [SELLER]. All **real estate** exclusive listings **and management**
 15 **contracts** must have a definite expiration date **that may be renewed or extended**
 16 **only by a written agreement signed by the client or the client's authorized**
 17 **representative.**

18 * **Sec. 26.** AS 08.88.351 is amended to read:

19 **Sec. 08.88.351. Record of transaction.** A real estate broker shall

20 (1) keep a complete record, [OF ALL REAL ESTATE
 21 TRANSACTIONS MADE BY THE BROKER OR EMPLOYEES OF THE BROKER]
 22 for [AT LEAST] three years, **of all real estate transactions in which the broker or**
 23 **employed licensees of the broker engaged;**

24 (2) **provide upon request to any principal in a transaction an**
 25 [MAKE A CLOSING STATEMENT SHOWING DISBURSEMENTS AND]
 26 accounting for all money **or other property collected or held** in the **course of each**
 27 transaction;

28 (3) keep a separate trust account in a bank [,] into which the broker
 29 shall deposit all earnest money deposits, [AND] purchase money, **security deposits,**
 30 **contingency funds, collected rental money, rental receipts, or other money**
 31 **collected in trust** until it is **appropriate** [PROPER] for the broker to distribute the

1 money to the proper persons;

2 (4) if authorized by the board of directors of a community
 3 association to collect, control, or disburse association funds, keep a separate
 4 account in a bank for the funds;

5 (5) make available to the commission, on request, account records and
 6 all other documents [RELATING TO TRANSACTIONS UNDER (3) OF THIS
 7 SECTION] that the commission may require in order to conduct an investigation or
 8 to [A COMPLETE] audit an account required under this section;

9 (6) if records are delivered to a partnership, corporation, or
 10 business entity other than another licensed broker upon termination of
 11 employment, ensure by contract the maintenance and availability of those records
 12 for a minimum of three years in accordance with this section [OF TRUST
 13 ACCOUNTS].

14 * **Sec. 27.** AS 08.88.351 is amended by adding new subsections to read:

15 (b) A real estate licensee

16 (1) shall keep, for a minimum of three years, a complete record of all
 17 real estate transactions in which the licensee was a principal;

18 (2) who maintains records concerning management or sale of the
 19 licensee's own properties or the licensee's client properties separate from the broker's
 20 file, shall retain those records for a minimum of three years;

21 (3) shall make available to the commission, on request, records and
 22 other documents that the commission may require to conduct an investigation.

23 (c) For the purposes of this section, the three-year requirement for records
 24 maintenance begins at the initiation of a transaction and continues, as applicable, until
 25 three years after the date

26 (1) a listing agreement ends;

27 (2) a sales transaction closes or otherwise ends;

28 (3) a management contract ends; or

29 (4) another contractual or fiduciary obligation ends.

30 * **Sec. 28.** AS 08.88.361 is amended to read:

31 **Sec. 08.88.361.** When commission or other fee is earned. An obligation to

1 pay a [A] commission, management fee, or other compensation to a real estate
 2 broker must be based on [IS EARNED WHEN THE REAL ESTATE BROKER
 3 FULFILLS] the terms of a written listings and management [PERSONAL
 4 SERVICES] contract. Other than through enforcement of the terms of a written
 5 listings and management contract, a licensee has no right under law to enforce
 6 collection of a commission or other fee for a service that requires a real estate
 7 license.

8 * Sec. 29. AS 08.88.381 is amended to read:

9 **Sec. 08.88.381. Signs.** A [LICENSED] real estate broker shall maintain a sign
 10 at each of the [REAL ESTATE] broker's registered real estate offices [,] prominently
 11 showing the name of the real estate [BROKER'S] business as registered with the
 12 commission. The required size, content, and location of signs under this section
 13 may be determined by the commission under regulations. The regulations must
 14 allow signs in offices located on premises with more restrictive sign requirements
 15 than would otherwise be applicable under the commission's regulations to be
 16 considered to be in compliance with the regulations if the signs meet the
 17 requirements of the premises and the licensee submits a copy of the sign
 18 requirements of the premises to the commission.

19 * Sec. 30. AS 08.88.391 is amended to read:

20 **Sec. 08.88.391. Conflict of interest.** A [LICENSED] real estate licensee
 21 [BROKER, ASSOCIATE REAL ESTATE BROKER, OR REAL ESTATE
 22 SALESMAN] who has a personal financial interest or other conflict of interest
 23 relating to [IN] a real estate transaction shall, at the time of initial substantive
 24 contact with the principals or agents of the principals, disclose that interest in
 25 writing to the principals and agents of the principals [EVERY PERSON] involved
 26 in the transaction. In this section, "conflict of interest" is when a licensee

27 (1) has a present personal interest in the property that is the
 28 subject of a transaction;

29 (2) is whole or part owner of a business interest in the property
 30 being marketed or considered for purchase or lease;

31 (3) represents a person with whom the licensee has a financial

1 relationship or who has a present financial interest in the property being
 2 marketed or considered for purchase or lease;

3 (4) represents more than one party in a transaction without giving
 4 disclosure notification as required by law;

5 (5) receives compensation from someone other than a party to the
 6 contract or another party having a financial interest in the transaction.

7 * **Sec. 31.** AS 08.88.396 is amended to read:

8 **Sec. 08.88.396. Disclosure of agency to prospective buyers and sellers.** (a)

9 A person **licensed** [HOLDING A LICENSE] under this chapter shall, when acting as
 10 an agent for a prospective seller of real estate,

11 (1) disclose in writing the **licensee's** [PERSON'S] agency relationship
 12 with the seller to each prospective buyer at the time that the **licensee** [PERSON]
 13 begins to provide specific assistance to locate or acquire real estate for the buyer, and
 14 obtain from each prospective buyer a signed acknowledgement that the buyer is aware
 15 of the agency relationship between the **licensee** [PERSON LICENSED UNDER THIS
 16 CHAPTER] and the seller; and

17 (2) include in the purchase agreement a statement of the agency
 18 relationship between the **licensee** [PERSON LICENSED UNDER THIS CHAPTER]
 19 and the seller.

20 (b) A person **licensed** [HOLDING A LICENSE] under this chapter shall, when
 21 acting as an agent for a prospective buyer of real estate,

22 (1) disclose the **licensee's** [PERSON'S] relationship with the buyer to
 23 a prospective seller of real estate, or to the seller's agent, at the time of the initial
 24 contact between the **licensee** [PERSON LICENSED UNDER THIS CHAPTER] and
 25 the prospective seller or the seller's agent, and confirm the relationship in writing as
 26 soon as possible after the initial contact;

27 (2) include in the purchase agreement a statement of the agency
 28 relationship between the **licensee** [PERSON LICENSED UNDER THIS CHAPTER]
 29 and the buyer;

30 (3) if the prospective seller has an unexpired exclusive listing contract
 31 for a property, present **all offers** [AN OFFER] to purchase that property **through** [TO]

1 the seller's agent; and

2 (4) disclose in writing to all parties to a transaction when the licensee's
3 [PERSON'S] compensation as agent for the buyer is to be paid by anyone other than
4 the buyer being represented by the licensee [PERSON].

5 (c) A person licensed under this chapter may [NOT] act as an agent for both
6 a prospective seller and a prospective buyer of real estate only after [UNLESS] the
7 licensee [PERSON] informs both the seller and the buyer of the dual agency and
8 obtains written consent to the dual [JOINT] agency from both principals.

9 (d) When a change occurs during a transaction that makes a prior written
10 disclosure required by this section incomplete, misleading, or inaccurate, the licensee
11 [PERSON LICENSED UNDER THIS CHAPTER] shall make a revised disclosure, in
12 writing, to all parties to the transaction as soon as possible. The revised disclosure
13 must include the date of the revision and shall be acknowledged in writing by all the
14 parties.

15 * **Sec. 32.** AS 08.88 is amended by adding a new section to read:

16 **Sec. 08.88.397. Licensed assistants.** A licensed real estate salesperson or
17 licensed associate real estate broker may act as a licensed assistant to a real estate
18 licensee other than the broker who employs the salesperson or associate broker if

19 (1) the employment arrangement between the licensed assistant and the
20 other licensee is in writing and conforms to the applicable state and federal regulations
21 regarding employment;

22 (2) the employment of the licensed assistant is approved in writing by
23 the broker of the licensee who employs the assistant;

24 (3) the licensee who employs the assistant agrees to be responsible for
25 paying the licensed assistant's wages and appropriate taxes and completing the
26 appropriate state and federal tax forms;

27 (4) the broker of the licensee who employs the assistant agrees to be
28 liable for the actions of the licensed assistant.

29 * **Sec. 33.** AS 08.88.401 is amended to read:

30 **Sec. 08.88.401. Prohibited conduct.** (a) A person licensed under this chapter
31 may not falsely represent to

- 1 (1) have been awarded a degree or other designation;
- 2 (2) [OR TO] be a member or an affiliate of a professional organization;
- 3 or
- 4 (3) be a member of a franchise or other business association.

5 (b) A person **licensed under this chapter**

6 (1) [WHO IS NOT A REAL ESTATE BROKER LICENSED IN THIS
7 STATE] may not **pay** [ACCEPT] a fee or a commission for performance of an act for
8 which a license is required by this chapter **to a person unless the person is licensed**
9 **under this chapter**, except that a real estate broker **may pay to a person** validly
10 licensed **as a broker** in another state [MAY ACCEPT] a fee or commission [OR A
11 PORTION OF A FEE OR COMMISSION] for assisting [A REAL ESTATE BROKER
12 LICENSED IN THIS STATE] in the performance of an act for which a license is
13 required by this chapter;

14 (2) **as an associate broker or** [WHO IS A] real estate **salesperson**
15 [SALESMAN LICENSED IN THIS STATE] may [NOT] accept a fee or commission
16 for performance of an act for which a license is required by this chapter **only from**
17 [UNLESS ACCEPTANCE IS AUTHORIZED BY] the **licensee's employing** broker,
18 **except that the wages of a person who is engaged as a licensed assistant under**
19 **AS 08.88.397 may be accepted by the person from the assistant's employer** [WHO
20 EMPLOYS THE SALESMAN].

21 (c) A person **licensed under this chapter** may not knowingly make, authorize,
22 direct, or aid in the publication of a false statement or misrepresentation concerning
23 land or a subdivision or other real estate offered for sale, [OR] lease, **or rent or**
24 **concerning an association being managed.**

25 (d) A person who violates [A PROVISION OF] this section, AS 08.88.161,
26 or 08.88.396 is guilty of a class A misdemeanor.

27 * **Sec. 34.** AS 08.88.401 is amended by adding new subsections to read:

28 (e) A person licensed under this chapter may not knowingly pay any part of
29 a fee, commission, or other compensation received by the licensee in buying, selling,
30 exchanging, leasing, auctioning, or renting real estate to

31 (1) a person who is not licensed under this chapter, except as provided

1 in (f) of this section;

2 (2) another licensee, except through the licensee's responsible broker;
3 or

4 (3) another licensee knowing that the other licensee intends to pay all
5 or a portion of that which is received to a person who is not licensed under this
6 chapter.

7 (f) The prohibition of (e)(1) of this section does not prohibit

8 (1) payments by a licensee to a person licensed to perform real estate
9 activities in another jurisdiction if the other person has assisted the licensee in the
10 performance of an act for which a license is required by this chapter;

11 (2) negotiations between a licensee and a principal in a real estate
12 transaction concerning the amount of a commission or other compensation; or

13 (3) payments from a real estate licensee to a principal as part of the
14 resolution of a dispute regarding the terms of a transaction or regarding the property
15 transferred.

16 (g) A person may not

17 (1) use or attempt to use a license issued under this chapter that was
18 issued to another person;

19 (2) give false or forged evidence to the commission or to a
20 representative of the commission in an attempt to obtain a license;

21 (3) impersonate an applicant under this chapter;

22 (4) knowingly use or attempt to use an expired, suspended, revoked,
23 or nonexistent license; or

24 (5) falsely claim to be licensed and authorized to practice under this
25 chapter.

26 * **Sec. 35.** AS 08.88.405 is amended to read:

27 **Sec. 08.88.405. Preparation of documents.** Notwithstanding AS 08.08, a
28 person licensed as a real estate broker, associate real estate broker, or real estate
29 salesperson under this chapter may prepare real property contracts, **mobile home**
30 **contracts**, earnest money agreements, leases, and other documents related to real
31 property **or mobile homes** if the documents are prepared by the person in the course

1 of the person's work as a licensed real estate broker, associate real estate broker, or
 2 real estate salesperson under this chapter.

3 * **Sec. 36.** AS 08.88.450 is amended to read:

4 **Sec. 08.88.450. Real estate surety fund.** The real estate surety fund is
 5 established in the general fund to carry out the purposes of AS 08.88.450 - 08.88.500.
 6 The fund is composed of payments made by [LICENSED] real estate **licensees**
 7 [BROKERS AND SALESMEN] under AS 08.88.455 and filing fees retained **under**
 8 [IN ACCORDANCE WITH] AS 08.88.460. The fund may not exceed \$500,000 and
 9 amounts in the fund in excess of \$250,000 may be appropriated for real estate
 10 educational purposes as provided in AS 08.88.091.

11 * **Sec. 37.** AS 08.88.455 is amended to read:

12 **Sec. 08.88.455. Payments by real estate licensees [BROKERS AND**
 13 **SALESMEN].** (a) A [LICENSED] real estate **licensee**, [BROKER, ASSOCIATE
 14 BROKER, OR SALESMAN] when **applying for** [OBTAINING] or renewing a real
 15 estate license, in lieu of obtaining a corporate surety bond, shall pay to the commission
 16 in addition to the license fee, a surety fund fee not to exceed \$125. After the fund
 17 reaches \$250,000, the commission shall by regulation adjust the surety fund fees so
 18 that, taking into account anticipated expenditures for claims against the fund and real
 19 estate educational purposes, the fund is maintained at a level not less than \$250,000.

20 (b) All fees collected under this section shall be paid at least once a month by
 21 the **department** [COMMISSION] into the general fund. These payments shall be
 22 credited to the real estate surety fund.

23 * **Sec. 38.** AS 08.88.460 is amended to read:

24 **Sec. 08.88.460. Claim for payment.** (a) **Subject to (e) of this section, a** [A]
 25 person seeking reimbursement for a loss suffered in a **real estate** transaction as a result
 26 of fraud, misrepresentation, deceit, or the conversion of trust funds **or community**
 27 **association accounts under the control of a community association manager** on the
 28 part of a real estate **licensee** [BROKER, ASSOCIATE REAL ESTATE BROKER, OR
 29 REAL ESTATE SALESMAN LICENSED UNDER THIS CHAPTER] shall make a
 30 claim to the commission for reimbursement on a form furnished by the commission.
 31 **In order to be eligible for reimbursement by the commission, the claim form must**

1 **be filed within two years after the occurrence of the fraud, misrepresentation,**
 2 **deceit, or conversion of trust funds or community association accounts under the**
 3 **control of a community association manager claimed as the basis for the**
 4 **reimbursement.** The form shall be executed under penalty of unsworn falsification
 5 [.] and must include the following:

6 (1) the name and address of **each** [THE] real estate **licensee involved**
 7 [BROKER, ASSOCIATE REAL ESTATE BROKER, OR REAL ESTATE
 8 SALESMAN];

9 (2) the amount of the alleged loss;

10 (3) the date or period of time during which the alleged loss occurred;

11 (4) the date upon which the alleged loss was discovered;

12 (5) the name and address of the claimant; and

13 (6) a general statement of facts relative to the claim.

14 (b) A copy of a claim filed with the commission under (a) of this section shall
 15 be sent to **each** [THE] real estate **licensee** [BROKER, ASSOCIATE REAL ESTATE
 16 BROKER, OR REAL ESTATE SALESMAN] alleged to have committed the
 17 misconduct resulting in losses, **to the principal** [AS WELL AS A] real estate broker
 18 employing **a licensee** [AN ASSOCIATE REAL ESTATE BROKER OR REAL
 19 ESTATE SALESMAN] alleged to have committed the conduct resulting in losses, **and**
 20 **to any other real estate licensee involved in the transaction** at least 20 days before
 21 any hearing held on the claim by the commission.

22 (c) Within seven days after receipt of notice of a claim under (b) of this
 23 section, **each** [THE] real estate **licensee** [BROKER, ASSOCIATE REAL ESTATE
 24 BROKER, OR REAL ESTATE SALESMAN] against whom the claim is made may
 25 elect to defend the claim as a small claims action in district court under District Court
 26 Civil Rules 8 - 22 [.] if the claim does not exceed the small claims jurisdictional limit.
 27 An election to defend a claim in district court under the small claims rules may not
 28 be revoked by the **real estate licensee** [BROKER, ASSOCIATE BROKER, OR
 29 SALESMAN] without the consent of the claimant. Upon receipt of a valid written
 30 election under this subsection, the commission shall dismiss the claim filed with the
 31 commission and notify the claimant that the claim must be brought as a small claims

1 action in the appropriate state court.

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

5 (1) the commission makes an award to the claimant from the real estate
6 surety fund;

7 (2) the claim is dismissed under (c) of this section; or

8 (3) the claim is withdrawn by the claimant before the commission holds
9 a hearing on the claim.

10 * **Sec. 39.** AS 08.88.460 is amended by adding a new subsection to read:

11 (e) If the claim is for a loss incurred as a result of acts or omissions occurring
12 in the course of the licensee's practice of community association management, only the
13 owners' association for which the real estate licensee practices community association
14 management may file a claim under this section.

15 * **Sec. 40.** AS 08.88.465(b) is amended to read:

16 (b) A certified or authenticated copy of a record, including a transcript of
17 testimony, of a hearing held under AS 08.88.071(a)(3) in which fraud,
18 misrepresentation, deceit, or conversion of **trust funds or community association**
19 **accounts under the control of a community association manager** on the part of a
20 [LICENSED BROKER, ASSOCIATE BROKER, OR] real estate **licensee**
21 [SALESMAN] is established [,] may constitute sufficient evidence to support a finding
22 **that a claim should be paid.**

23 * **Sec. 41.** AS 08.88.465(c) is amended to read:

24 (c) Before the commission finds that payment should be made from the real
25 estate surety fund, **each** [THE] real estate **licensee against whom the claim is made**
26 [BROKER, ASSOCIATE BROKER, OR REAL ESTATE SALESMAN] shall be
27 afforded an opportunity to file with the commission, within 10 days after receipt of
28 notification of the claim under AS 08.88.460(b), either a written statement in
29 opposition to the claim or an application for the presentation of additional evidence.

30 * **Sec. 42.** AS 08.88.465(d) is amended to read:

31 (d) The claimant bears the burden of proof of establishing that the claimant

1 suffered losses in a **real estate** transaction as a result of fraud, misrepresentation,
 2 deceit, or the conversion of trust funds **or community association accounts under the**
 3 **control of a community association manager** on the part of a real estate **licensee**
 4 [BROKER, ASSOCIATE REAL ESTATE BROKER, OR REAL ESTATE
 5 SALESMAN] and the extent of those losses. All facts shall be established by a
 6 preponderance of the evidence.

7 * **Sec. 43.** AS 08.88.470 is amended to read:

8 **Sec. 08.88.470. Findings and payment.** At the conclusion of the
 9 commission's consideration of a claim made under AS 08.88.460, it shall make written
 10 findings and conclusions on the evidence. If the commission finds that the claimant
 11 has suffered a loss in a **real estate** transaction as a result of fraud, misrepresentation,
 12 deceit, or the conversion of trust funds **or community association accounts under the**
 13 **control of a community association manager** on the part of a real estate **licensee**
 14 [BROKER, ASSOCIATE BROKER, OR SALESMAN], the commission may award
 15 a claimant reimbursement **from** [OUT OF] the real estate surety fund for the
 16 claimant's loss up to \$10,000. **Not** [HOWEVER, NOT] more than \$10,000 may be
 17 paid for each transaction regardless of the number of persons injured or the number
 18 of parcels of real estate involved in the transaction.

19 * **Sec. 44.** AS 08.88.472(a) is amended to read:

20 (a) **The** [WHEN AN AWARD IS MADE FROM THE REAL ESTATE
 21 SURETY FUND UNDER AS 08.88.470, THE] commission may charge to the **real**
 22 **estate surety** fund the costs of a hearing **on a claim for reimbursement** held under
 23 **AS 08.88.465. The commission shall deposit into the real estate surety fund**
 24 **amounts** [AS 08.88.071 OR 08.88.465. AMOUNTS SUBSEQUENTLY] recovered
 25 [BY THE COMMISSION] for these costs from the licensee under AS 08.88.071(b) or
 26 from other parties under AS 08.88.490 [SHALL BE DEPOSITED TO THE REAL
 27 ESTATE SURETY FUND].

28 * **Sec. 45.** AS 08.88.474 is amended to read:

29 **Sec. 08.88.474. Payment of small claims judgment.** If a claim originally
 30 filed with the commission is dismissed and is heard as a small claims action under
 31 AS 08.88.460(c) and the claimant prevails in the small claims action against **a** [THE]

1 real estate **licensee** [BROKER, ASSOCIATE REAL ESTATE BROKER, OR
 2 SALESMAN], the commission shall make an award from the fund of any outstanding
 3 portion of the small claims judgment on receipt of a copy of the final judgment and
 4 an affidavit from the claimant stating that more than 30 days have elapsed since the
 5 judgment became final and that the **judgment has not yet been satisfied by the**
 6 **licensee determined responsible** [BROKER, ASSOCIATE BROKER, OR
 7 SALESMAN HAS NOT SATISFIED THE JUDGMENT DURING THAT TIME].
 8 After payment of a small claims judgment, the commission is subrogated to the
 9 claimant's rights in the judgment under AS 08.88.490.

10 * **Sec. 46.** AS 08.88.475 is amended to read:

11 **Sec. 08.88.475. Maximum liability.** (a) The maximum liability of the real
 12 estate surety fund may not exceed \$50,000 for any one **real estate licensee** [BROKER
 13 OR SALESMAN].

14 (b) If the \$50,000 liability of the fund as provided in (a) of this section is
 15 insufficient to pay in full the valid claims of all persons who have filed claims against
 16 **an individual licensee** [ONE BROKER OR SALESMAN], the \$50,000 shall be
 17 distributed among the claimants in the ratio that their individual claims bear to the
 18 aggregate of valid claims, or in another manner that the commission considers
 19 equitable. Distribution shall be among the persons entitled to share in the recovery [,]
 20 without regard to the order [OF PRIORITY] in which their claims were filed.

21 * **Sec. 47.** AS 08.88.490 is amended to read:

22 **Sec. 08.88.490. Right to subrogation.** When the commission has paid to a
 23 claimant from the real estate surety fund the sum awarded by the commission, the
 24 commission shall be subrogated to all of the rights of the claimant to the amount paid,
 25 and the claimant shall assign all right, title, and interest in that portion of the claim to
 26 the commission. **Money collected** [AMOUNTS SUBSEQUENTLY REALIZED] by
 27 the commission on the claim shall be deposited to the real estate surety fund.

28 * **Sec. 48.** AS 08.88.900 is amended to read:

29 **Sec. 08.88.900. Exceptions.** This chapter does not apply to

30 (1) a person who is not licensed under this chapter who **manages or**
 31 makes a real estate transaction with respect to real estate the person owns or **is seeking**

1 **to own so long as the compensation the person receives does not include any**
 2 **portion of the commission or other compensation paid to a real estate licensee in**
 3 **the transaction** [ON THE PERSON'S OWN BEHALF, UNLESS THE
 4 TRANSACTION INVOLVES LAND DEFINED IN AS 34.55.044(7) THAT IS NOT
 5 IN ALASKA];

6 (2) an attorney in fact under a power of attorney authorizing the
 7 consummation of a specific real estate transaction; an attorney in fact may not act as
 8 such **under this paragraph** for more than two transactions in a calendar year;

9 (3) a lawyer performing duties as a lawyer;

10 (4) a public official in the conduct of official duties;

11 (5) a person acting as receiver, trustee, administrator, executor, or
 12 guardian;

13 (6) a person acting under court order;

14 (7) a person acting under the authority of a will or trust instrument;

15 (8) a person dealing in mineral rights transactions;

16 (9) **an** [A DOMESTIC OR FOREIGN CORPORATION, A GENERAL
 17 OR LIMITED PARTNERSHIP, OR A PARTNER OR REGULAR] employee of a
 18 domestic or foreign corporation, [OR A] general or limited partnership, **or limited**
 19 **liability company** when performing an act described in AS 08.88.161 **incidental to**
 20 [IN] the regular course **of business** [, OR AS AN INCIDENT TO, THE
 21 MANAGEMENT, SALE, OR OTHER DISPOSITION OF REAL ESTATE OWNED
 22 BY THE CORPORATION OR PARTNERSHIP]; the exemption **under** [PROVIDED
 23 IN] this paragraph does not apply to a person **employed by a foreign or domestic**
 24 **corporation, partnership, limited partnership, or limited liability company** who
 25 performs an act described in AS 08.88.161 [, UNLESS ALLOWED FOR
 26 UNLICENSED PERSONS UNDER AS 08.88.165,] either

27 (A) as a vocation; or

28 (B) for compensation if the amount of the compensation is
 29 dependent upon or directly related to the value of the real estate with respect
 30 to which the act is performed;

31 (10) a resident manager;

1 (11) a bookkeeper or accountant performing bookkeeping or
2 accounting functions;

3 (12) a secretary or receptionist in a real estate office who accepts
4 rent or association fees and provides a written receipt for the rent or fees when
5 a tenant or community association member delivers the rent or fees to the real
6 estate office;

7 (13) tradesmen or vendors of services performing maintenance and
8 repair functions;

9 (14) an employee of a real estate firm or of a property owner who
10 delivers or accepts a real estate contract or application, or a related amendment,
11 to or from another person;

12 (15) an individual assisting in the performance of real estate
13 activities only by carrying out administrative, clerical, or maintenance tasks;

14 (16) a person who manages a total of four or fewer residential units
15 for other persons;

16 (17) a resident owner of a unit in property organized under
17 AS 34.07 or AS 34.08 who is a member of a self-managed community association;

18 (18) a developer of a community association during the period that
19 the developer retains control of at least 51 percent of the association;

20 (19) an attorney in fact who, for a relative, acts under a power of
21 attorney that authorizes the consummation of a specific real estate transaction;
22 in this paragraph, "relative" means a spouse or a great grandparent,
23 grandparent, parent, uncle, aunt, sibling, child, nephew, niece, grandchild, or
24 great grandchild by the whole or half blood or by marriage but does not include
25 a relative who is only related through a step relationship, such as a stepbrother
26 or the child of a stepbrother, except that "relative" includes a stepchild; or

27 (20) a mobile home dealer licensed under AS 08.67 performing
28 within the scope of the dealer's license [OF RENTED REAL ESTATE IF THE
29 RESIDENT MANAGER'S DUTIES ARE LIMITED TO THE NEGOTIATION OF
30 LEASES AND RENTAL AGREEMENTS AND THE COLLECTION OF RENT FOR
31 THE USE OF THE REAL ESTATE AND IF THE RESIDENT MANAGER IS

- 1 (A) EMPLOYED BY THE OWNER OF THE REAL ESTATE;
 2 OR
 3 (B) EMPLOYED BY, OR ENGAGED UNDER CONTRACT
 4 WITH, A LICENSED REAL ESTATE BROKER].

5 * **Sec. 49.** AS 08.88.900 is amended by adding a new subsection to read:

6 (b) Notwithstanding that a person is exempt from licensure under this section,
 7 the prohibition in AS 08.88.401(e)(1) is applicable to that person.

8 * **Sec. 50.** AS 08.88.990(1) is amended to read:

9 (1) "commission" means the Real Estate Commission **except where the**
 10 **context indicates that "commission" refers to a fee paid for personal services;**

11 * **Sec. 51.** AS 08.88.990(3) is amended to read:

12 (3) "real estate" means **an interest in a mobile home or** an interest or
 13 estate in land, corporeal or incorporeal, **except that it does not include a unit in a**
 14 **hotel, motel, boarding house, rooming house, or other transient lodging facility,**
 15 **or a unit in a warehouse, mini-storage facility, or other facility the function of**
 16 **which is limited to warehousing purposes;**

17 * **Sec. 52.** AS 08.88.990(4) is amended to read:

18 (4) "resident manager" means a person who resides on **rented or leased**
 19 real property **or on contiguous property owned by the same owner,** [AND] manages
 20 **the property** [IT] for the benefit of another person, **and is either employed by the**
 21 **owner of the real estate or employed by, or under contract with, a real estate**
 22 **licensee.**

23 * **Sec. 53.** AS 08.88.990 is amended by adding new paragraphs to read:

24 (5) "community association management" means an activity undertaken
 25 for an owners' association with regard to property organized under either AS 34.07 or
 26 AS 34.08 under an agreement in exchange for a fee, commission, or other valuable
 27 consideration, including the following activities: preparing budgets and other financial
 28 documents, collecting, controlling, or disbursing funds, obtaining insurance for the
 29 association, contracting for maintenance and repair to association property, and
 30 supervising the day-to-day operations of the association under the direction of the
 31 association's board of directors;

1 (6) "employ," "employing," "employs," "employed," "employee,"
2 "employees," and "employment" include being an independent contractor with an
3 employer;

4 (7) "knowingly" has the meaning given in AS 11.81.900(a);

5 (8) "mobile home" has the meaning given in AS 08.67.080;

6 (9) "property management" is an activity undertaken for another with
7 regard to a mobile home or real property under an agreement in exchange for a fee,
8 commission, or other valuable consideration, including the following activities:
9 marketing, leasing, contracting for physical, administrative, or financial maintenance,
10 performance of overall management of mobile homes or real property, and the
11 supervision of these actions;

12 (10) "real estate licensee" is a person who holds a license under this
13 chapter; the term includes a broker unless the context clearly excludes brokers;

14 (11) "real estate transaction"

15 (A) in sales, means the transfer or attempted transfer of an
16 interest in a mobile home or a unit of real property, an act conducted as a
17 result of or in pursuit of a contract to transfer an interest in a mobile home or
18 a unit of real property, or an act conducted in an attempt to obtain a contract
19 to market a mobile home or real property;

20 (B) in property management, means the lease or rental of a unit
21 of real property or a mobile home, including collection of rent from a tenant
22 of a unit of rented or leased real property or a mobile home, an attempt to rent
23 or lease a unit of real property or a mobile home, an attempt to collect rent
24 from a tenant of rented or leased real property or a mobile home, or an act
25 conducted as a result of or in pursuit of a contract to manage a unit of leased
26 or rented real property or a mobile home;

27 (C) in community association management, means the collection
28 or attempted collection of dues from a unit owner or an activity conducted as
29 a result of or in pursuit of a contract with a community association to manage
30 the affairs of a community association.

31 * **Sec. 54.** AS 08.88.111 is repealed.

1 * **Sec. 55.** TRANSITIONAL PROVISION. Notwithstanding AS 08.88.161(5) and (6), a
2 person may practice, or negotiate a contract to practice, community association management
3 and may collect fees for community association management without a license issued under
4 AS 08.88 until January 1, 1999.

5 * **Sec. 56.** REGULATIONS. Notwithstanding sec. 58 of this Act, the Real Estate
6 Commission may proceed to adopt regulations necessary to implement AS 08.88.091(f) and
7 (g), added by this Act. The regulations take effect under AS 44.62 (Administrative Procedure
8 Act), but not before January 31, 1999.

9 * **Sec. 57.** REVISOR'S INSTRUCTION. Wherever in the Alaska Statutes and the Alaska
10 Administrative Code the term "salesman" is used in a context relating to real estate salesmen
11 licensed under AS 08.88, it shall be read as "salesperson" when to do so would be consistent
12 with changes made by this Act. Under AS 01.05.031, the revisor of statutes shall implement
13 this section in the statutes, and, under AS 44.62.125, the regulations attorney shall implement
14 this section in the administrative code.

15 * **Sec. 58.** AS 08.88.091(f) and (g), added by sec. 7 of this Act, take effect January 31,
16 1999.

17 * **Sec. 59.** Except as provided in sec. 58 of this Act, this Act takes effect immediately
18 under AS 01.10.070(c).