

CS FOR HOUSE BILL NO. 33(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 2/20/98

Referred: Rules

Sponsor(s): REPRESENTATIVES ROKEBERG BY REQUEST, Porter

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to real estate licensees and to the real estate surety fund;**
2 **relating to the Real Estate Commission; and 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, except for**
9 **property management, as are authorized for that person to perform under**
10 **AS 08.88 with respect to real estate.**

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

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

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

1 **Sec. 08.88.061. Assistants. Notwithstanding contrary provisions of**
 2 **AS 08.01.050, the** [THE] commission may **assign or designate** [USE] assistants to

3 (1) **issue licenses to applicants who meet the qualifications for**
 4 **licensure established under this chapter;**

5 (2) prepare questions on examinations;

6 (3) **administer and** [(2)] grade examinations;

7 (4) **certify courses required under this chapter;**

8 (5) **approve instructors to teach courses required under this**
 9 **chapter; and**

10 (6) **negotiate terms for payment of fines and other money due**
 11 **under this chapter.**

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

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

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

17 (2) prepare and grade examinations;

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

21 (A) with respect to a real estate transaction

22 (i) made a substantial misrepresentation;

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

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

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

31 (v) violates AS 08.88.391;

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

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

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

12 (E) if a real estate broker, wilfully violates AS 08.88.171(d) or
13 08.88.291;

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

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

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

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

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

31 (6) issue a temporary permit to the personal representative of the estate

1 of a deceased **real estate** broker or to **another** [SOME OTHER] person designated by
 2 the commission with the approval of the personal representative of the estate in order
 3 to secure proper administration in concluding the affairs of the decedent broker's real
 4 estate business;

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

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

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

14 **(10) revoke the license of a broker or associate broker who is**
 15 **convicted of forgery, theft, extortion, conspiracy to defraud creditors, or a felony**
 16 **involving moral turpitude committed while licensed under this chapter;**
 17 **notwithstanding AS 08.88.171, a person whose license is revoked under this**
 18 **paragraph is not qualified for a license under AS 08.88.171(a) or (b) until seven**
 19 **years have elapsed since the person completed the sentence imposed for the**
 20 **conviction.**

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

1 on terms and conditions for the repayment to the real estate surety fund of the money
 2 awarded to the claimant and the costs of hearing the claim under AS 08.88.465. The
 3 suspension shall be reimposed if the **licensee** [BROKER, ASSOCIATE BROKER, OR
 4 SALESMAN] violates the terms of a repayment agreement entered into under this
 5 subsection.

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

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

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

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

17 (e) **Except for a course described in (f)(1) or (3) of this section, in order**
 18 **for an educational course to be recognized for credit under this section,** [THE
 19 COMMISSION MAY NOT APPROVE AN EDUCATION OR CONTINUING
 20 EDUCATION COURSE REQUIRED UNDER THIS SECTION UNLESS THE
 21 COMMISSION CERTIFIES] the course outline and [APPROVES] the instructor of the
 22 course **must have been approved by the commission or the commission's designee**
 23 before the course **was** [IS] conducted. **A course outline or instructor is considered**
 24 **approved if the commission or the commission's designee does not disapprove the**
 25 **outline or instructor within 45 days after the date on which complete application**
 26 **was made for approval. Each approved contact hour of a submitted course**
 27 **outline constitutes one credit hour of continuing education. The fee for continuing**
 28 **education course certification under AS 08.88.221 shall be based on the hours**
 29 **approved for credit not hours submitted.**

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

31 (f) The commission shall establish by regulation the educational and continuing

1 educational requirements for licenses issued by the commission. The regulations for
 2 continuing education requirements must allow the following types of courses to qualify
 3 for the appropriate number of credit hours, as determined by the commission:

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

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

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

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

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

22 **Sec. 08.88.161. License required.** Unless licensed as a real estate broker,
 23 associate real estate broker, or real estate **salesperson in this state** [SALESMAN], a
 24 [NATURAL] person [, FOREIGN OR DOMESTIC CORPORATION, OR
 25 PARTNERSHIP, OR LIMITED PARTNERSHIP, OR OTHER ENTITY] may not,
 26 **except as otherwise provided in this chapter,**

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

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

29 (3) collect rent for the use of real estate **or collect fees for property**
 30 **management;**

31 (4) **practice, or negotiate for a contract to practice, property**

management;**(5) collect fees for community association management;****(6) practice, or negotiate for a contract to practice, community association management;****(7)** as a business, buy, sell, or deal in

(A) options in real estate; or

(B) options in improvements to real estate;

(8) [(5)] assist in or direct the procuring of prospective buyers and sellers of real estate, communicate with prospective buyers and sellers of real estate, or assist in the negotiation of a transaction **that** [WHICH] results or is calculated to result in the sale, exchange, rent, lease, auction, or purchase of real estate;**(9) accept or pay a fee for the performance of any of the activities listed in this section except as otherwise specifically provided in this chapter;****(10) [(6)]** hold out to the public as being engaged in the business of doing any of the things listed in this section; **or****(11) [(7)]** attempt or offer to do any of the things listed in this section [.

(8) REPEALED].

* **Sec. 9.** AS 08.88 is amended by adding a new section to read:**Sec. 08.88.167. Civil penalty for unlicensed or unauthorized practice.** (a)

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

(b) A civil penalty levied under this section may not exceed \$5,000, or the amount of gain realized plus \$5,000, whichever is greater, for each offense. In levying a civil penalty, the commission shall set the amount of the penalty imposed under this section after taking into account the seriousness of the violation, the economic benefit resulting from the violation, the history of violations, and other facts the commission 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 **renew the license** [PAY THE
 3 BIENNIAL RENEWAL FEE] or unless the broker's license is suspended or revoked
 4 [UNDER AS 08.88.071(a)(3)], the [REAL ESTATE] broker's license continues in
 5 effect **as** [SO] long as the **broker's license is active or inactive** [BROKER IS AN
 6 OWNER OF A REAL ESTATE BUSINESS, OR THE BROKER IS EMPLOYED
 7 AS A REAL ESTATE BROKER BY A CORPORATION OR A PARTNERSHIP].
 8 If the broker stops being an owner of a real estate business [,] or stops being employed
 9 as a real 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 unless
 31 the person is also licensed appropriately under other provisions of this chapter.

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

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

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

21 **Sec. 08.88.175. Limitations on community association managers.** A
22 licensee may not, within the practice of community association management, exercise
23 control over the

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

25 (2) operating account of a community association unless

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

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

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

1 (a) The real estate **examinations** [EXAMINATION] may include [, BUT IS
 2 NOT NECESSARILY LIMITED TO,] questions on **real estate** business ethics **and**
 3 **standards**; arithmetic **and accounting**; elementary principles of land economics and
 4 appraisal; the general principles in state statutes relating to deeds, mortgages, real
 5 estate contracts, subdivisions, **common interest communities**, legal descriptions,
 6 building restrictions, agency, [AND] brokerage, **disclosure requirements, trust**
 7 **accounting requirements, and landlord and tenant law; property management**
 8 **ethics and standards; community association management operations, ethics, and**
 9 **standards**; and the general provisions of this chapter and of the regulations of the
 10 commission.

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

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

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

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

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

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

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

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

29 (1) examination;

30 (2) [RECIPROCITY;

31 (3)] initial license;

- 1 (3) [(4)] renewal of an active license;
 2 (4) [(5)] renewal of an inactive license;
 3 (5) [(6)] amending or transferring a license;
 4 (6) [(7)] publications offered by the commission;
 5 (7) [(8)] seminars offered by the commission;
 6 (8) **reinstatement of a lapsed license;**
 7 (9) **changes to registered office information;**
 8 (10) **course certification and recertification; and**
 9 (11) **instructor approval and renewal of approval.**

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

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

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

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

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

28 (b) An inactive licensee may not attempt or offer to do any of the activities
 29 listed in AS 08.88.161, **but may receive commissions or other payments from the**
 30 **broker who previously contracted with or employed the licensee for services**
 31 **performed while actively licensed** [EXCEPT AS OTHERWISE ALLOWED FOR

1 UNLICENSED PERSONS UNDER AS 08.88.165].

2 (c) A person who **has an** [IS] inactive **license certificate under (a) of this**
 3 **section** may **reactivate the license** [BECOME ACTIVE] by applying for an active
 4 license and paying the required fees. [IN THE APPLICATION FORM THE PERSON
 5 SHALL STATE THE DATE ON WHICH THE PERSON INTENDS TO BECOME
 6 ACTIVE. THE PERSON'S ACTIVE STATUS BEGINS ON THE DATE STATED.
 7 THE COMMISSION SHALL SEND THE PERSON A LICENSE CERTIFICATE.]
 8 A person is eligible for change from an inactive to an active status **under this**
 9 **subsection only** [WITHOUT EXAMINATION] if the person has [NOT] been **in**
 10 inactive **status for less** [MORE] than **24 months** [TWO YEARS]. If the person has
 11 been **in** inactive **status for 24 months or for** more than **24 months** [TWO YEARS],
 12 the person is required to **meet the requirements for initial licensure in order to be**
 13 **licensed under this chapter again** [TAKE AN EXAMINATION].

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

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

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

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

1 JURISDICTION AT THE LOCATION ARE] grounds for the suspension or revocation
2 of the broker's license.

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

4 **Sec. 08.88.301. Change of location.** Before [IF] a real estate broker changes
5 the location of the broker's principal office or of a branch office, the broker shall
6 [IMMEDIATELY] notify the commission of the new address and any other office
7 changes on a form provided by the commission and pay the applicable fees.

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

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

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

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

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

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

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

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

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

30 **Sec. 08.88.331. Making of transactions.** An active [A] real estate
31 salesperson [SALESMAN] or associate real estate broker may perform activities for

1 **which a real estate license is required** [MAKE A REAL ESTATE TRANSACTION]
 2 only through the real estate broker who employs **or contracts with** the **licensee**
 3 [REAL ESTATE SALESMAN OR ASSOCIATE REAL ESTATE BROKER]. All
 4 money **or other proceeds** collected **in trust and related to a real estate transaction**
 5 [ON BEHALF OF THE BROKER] shall immediately be turned over to the broker or
 6 the broker's **authorized representative** [AGENT. ALL TRANSACTIONS IN REAL
 7 ESTATE BY A REAL ESTATE SALESMAN OR ASSOCIATE REAL ESTATE
 8 BROKER SHALL BE PROCESSED THROUGH THE REAL ESTATE
 9 SALESMAN'S OR THE ASSOCIATE REAL ESTATE BROKER'S EMPLOYING
 10 REAL ESTATE BROKER'S OFFICE, WHETHER THE TRANSACTIONS ARE FOR
 11 THE REAL ESTATE SALESMAN'S OR ASSOCIATE REAL ESTATE BROKER'S
 12 OWN USE OR THE USE OF A CLIENT].

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

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

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

23 **Sec. 08.88.351. Accounts; records of transactions** [RECORD OF
 24 TRANSACTION]. A real estate broker shall

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

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

1 transaction;

2 (3) keep a separate trust account in a bank [,] into which the broker
3 shall deposit all earnest money deposits, [AND] purchase money, **security deposits,**
4 **contingency funds, collected rental money, rental receipts, or other money**
5 **collected in trust** until it is **appropriate** [PROPER] for the broker to distribute the
6 money to the proper persons;

7 (4) **if authorized by the board of directors of a community**
8 **association to collect, control, or disburse association funds, keep a separate**
9 **account in a financial institution for the funds;**

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

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

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

20 (b) A real estate licensee

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

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

26 (3) shall make available to the commission, on request, records and
27 other documents that the commission may require to conduct an investigation;

28 (4) shall promptly deposit community association funds or proceeds
29 from periodic community association assessments into either a community association
30 reserve account or a community association operating account; if, at any time, the
31 community association operating account contains more money than is estimated to be

1 needed for budgeted expenditures for the subsequent three months, the licensee shall
 2 transfer the excess funds to the community association reserve account as soon as
 3 practicable;

4 (5) may not commingle funds of a community association with funds
 5 of another community association or with the licensee's funds.

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

9 (1) a listing agreement ends;

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

11 (3) a management contract ends; or

12 (4) another contractual or fiduciary obligation ends.

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

14 **Sec. 08.88.361. When a commission or other fee is earned. An obligation**
 15 **to pay a [A] commission, management fee, or other compensation to a real estate**
 16 **broker must be based on [IS EARNED WHEN THE REAL ESTATE BROKER**
 17 **FULFILLS] the terms of a written listings or management [PERSONAL SERVICES]**
 18 **contract. Other than through enforcement of the terms of a written listings or**
 19 **management contract, a licensee has no right under law to enforce collection of**
 20 **a commission or other fee for a service that requires a real estate license.**

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

22 **Sec. 08.88.381. Signs.** A [LICENSED] real estate broker shall maintain a sign
 23 at each of the [REAL ESTATE] broker's **registered real estate** offices [,] prominently
 24 showing the name of the real estate [BROKER'S] business **as registered with the**
 25 **commission. The required size, content, and location of signs under this section**
 26 **may be determined by the commission under regulations. The regulations must**
 27 **allow signs in offices located on premises with more restrictive sign requirements**
 28 **than would otherwise be applicable under the commission's regulations to be**
 29 **considered to be in compliance with the regulations if the signs meet the**
 30 **requirements of the premises and the licensee submits a copy of the sign**
 31 **requirements of the premises to the commission.**

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

2 **Sec. 08.88.391. Conflict of interest.** A [LICENSED] real estate licensee
 3 [BROKER, ASSOCIATE REAL ESTATE BROKER, OR REAL ESTATE
 4 SALESMAN] who has a conflict of interest relating to [PERSONAL FINANCIAL
 5 INTEREST IN] a real estate transaction shall disclose that conflict of interest at the
 6 time of initial substantive contact with the principals or agents of the principals
 7 and confirm the conflict of interest in writing to the principals or agents of the
 8 principals [EVERY PERSON] involved in the transaction as soon as possible after
 9 the initial substantive contact.

10 * **Sec. 31.** AS 08.88.391 is amended by adding new subsections to read:

11 (b) The failure of a licensee to disclose a conflict of interest as required under
 12 this section does not give rise to a cause of action by a private person. However, the
 13 commission may, under AS 08.88.071, impose a disciplinary sanction for violation of
 14 this section, and a claim may be filed by a private person under AS 08.88.460 if the
 15 violation constituted fraud, misrepresentation, or deceit and the person suffered a loss
 16 as a result of the violation.

17 (c) In this section, "conflict of interest" is when a licensee

18 (1) has a present ownership or leasehold interest in the property that
 19 is the subject of a transaction;

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

22 (3) represents a relative, as defined in AS 08.88.900(19), or a person
 23 with whom the licensee has a financial relationship if the relative or person has a
 24 present financial interest in the property being marketed or considered for purchase or
 25 lease;

26 (4) receives compensation from someone other than a party to the
 27 contract or another party having a financial interest in the transaction; or

28 (5) receives compensation for community association management
 29 while simultaneously engaged as a property manager for a unit within the community
 30 association.

31 * **Sec. 32.** AS 08.88.396 is amended to read:

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

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

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

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

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

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

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

23 (3) if the prospective seller has an unexpired exclusive listing contract
24 for a property, present **all offers** [AN OFFER] to purchase that property **through** [TO]
25 the seller's agent; and

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

29 (c) A person licensed under this chapter may [NOT] act as an agent for both
30 a prospective seller and a prospective buyer of real estate **only after** [UNLESS] the
31 **licensee** [PERSON] informs both the seller and the buyer **of the dual agency** and

1 obtains written consent to the **dual** [JOINT] agency from both **principals**.

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

8 * **Sec. 33.** AS 08.88 is amended by adding new sections to read:

9 **Sec. 08.88.397. No duty to disclose nearby sex offenders.** A real estate
10 licensee does not have a duty to notify a client that a person who has been convicted
11 of a sex offense, as defined in AS 12.63.100, resides in the vicinity of the property that
12 is the subject of a potential transaction involving the licensee and the client.

13 **Sec. 08.88.398. Licensed assistants.** A licensed real estate salesperson or
14 licensed associate real estate broker may act as a licensed assistant to a real estate
15 licensee other than the broker who employs the salesperson or associate broker if

16 (1) the employment arrangement between the licensed assistant and the
17 other licensee is in writing and conforms to the applicable state and federal regulations
18 regarding employment;

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

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

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

26 * **Sec. 34.** AS 08.88.401 is amended to read:

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

29 (1) have been awarded a degree or other designation;

30 (2) [OR TO] be a member or an affiliate of a professional organization;

31 **or**

1 chapter.

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

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

6 (2) payments from a real estate licensee to a principal as part of the
7 resolution of a dispute regarding the terms of a transaction or regarding the property
8 transferred.

9 (g) A person may not

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

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

14 (3) impersonate an applicant under this chapter;

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

17 (5) falsely claim to be licensed and authorized to practice under this
18 chapter.

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

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

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

28 **Sec. 08.88.455. Payments by real estate licensees [BROKERS AND**
29 **SALESMEN].** (a) A [LICENSED] real estate licensee, [BROKER, ASSOCIATE
30 BROKER, OR SALESMAN] when applying for [OBTAINING] or renewing a real
31 estate license, in lieu of obtaining a corporate surety bond, shall pay to the commission

1 in addition to the license fee, a surety fund fee not to exceed \$125. After the fund
 2 reaches \$250,000, the commission shall by regulation adjust the surety fund fees so
 3 that, taking into account anticipated expenditures for claims against the fund and real
 4 estate educational purposes, the fund is maintained at a level not less than \$250,000.

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

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

9 **Sec. 08.88.460. Claim for payment.** (a) **Subject to (e) of this section, a** [A]
 10 person seeking reimbursement for a loss suffered in a **real estate** transaction as a result
 11 of fraud, misrepresentation, deceit, or the conversion of trust funds **or the conversion**
 12 **of community association accounts under the control of a community association**
 13 **manager** on the part of a **licensee** [REAL ESTATE BROKER, ASSOCIATE REAL
 14 ESTATE BROKER, OR REAL ESTATE SALESMAN] licensed under this chapter
 15 shall make a claim to the commission for reimbursement on a form furnished by the
 16 commission. **In order to be eligible for reimbursement by the commission, the**
 17 **claim form must be filed within two years after the occurrence of the fraud,**
 18 **misrepresentation, deceit, or conversion of trust funds or the conversion of**
 19 **community association accounts under the control of a community association**
 20 **manager claimed as the basis for the reimbursement.** The form shall be executed
 21 under penalty of unsworn falsification [,] and must include the following:

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

25 (2) the amount of the alleged loss;

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

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

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

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

30 (b) A copy of a claim filed with the commission under (a) of this section shall
 31 be sent to **each** [THE] real estate **licensee** [BROKER, ASSOCIATE REAL ESTATE

1 BROKER, OR REAL ESTATE SALESMAN] alleged to have committed the
 2 misconduct resulting in losses, **to the principal** [AS WELL AS A] real estate broker
 3 employing **a licensee** [AN ASSOCIATE REAL ESTATE BROKER OR REAL
 4 ESTATE SALESMAN] alleged to have committed the conduct resulting in losses, **and**
 5 **to any other real estate licensee involved in the transaction** at least 20 days before
 6 any hearing held on the claim by the commission.

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

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

- 21 (1) the commission makes an award to the claimant from the real estate
 22 surety fund;
- 23 (2) the claim is dismissed under (c) of this section; or
- 24 (3) the claim is withdrawn by the claimant before the commission holds
 25 a hearing on the claim.

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

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

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

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

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

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

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

16 (d) The claimant bears the burden of proof of establishing that the claimant
 17 suffered losses in a real estate transaction as a result of fraud, misrepresentation,
 18 deceit, or the conversion of trust funds or the conversion of community association
 19 accounts under the control of a community association manager on the part of a
 20 real estate licensee [BROKER, ASSOCIATE REAL ESTATE BROKER, OR REAL
 21 ESTATE SALESMAN] and the extent of those losses. All facts shall be established
 22 by a preponderance of the evidence.

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

24 **Sec. 08.88.470. Findings and payment.** At the conclusion of the
 25 commission's consideration of a claim made under AS 08.88.460, it shall make written
 26 findings and conclusions on the evidence. If the commission finds that the claimant
 27 has suffered a loss in a real estate transaction as a result of fraud, misrepresentation,
 28 deceit, or the conversion of trust funds or the conversion of community association
 29 accounts under the control of a community association manager on the part of a
 30 real estate licensee [BROKER, ASSOCIATE BROKER, OR SALESMAN], the
 31 commission may award a claimant reimbursement from [OUT OF] the real estate

1 surety fund for the claimant's loss up to \$10,000. Not [HOWEVER, NOT] more than
 2 \$10,000 may be paid for each transaction regardless of the number of persons injured
 3 or the number of parcels of real estate involved in the transaction.

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

5 (a) The [WHEN AN AWARD IS MADE FROM THE REAL ESTATE
 6 SURETY FUND UNDER AS 08.88.470, THE] commission may charge to the real
 7 estate surety fund the costs of a hearing on a claim for reimbursement held under
 8 AS 08.88.465. The commission shall deposit into the real estate surety fund
 9 amounts [AS 08.88.071 OR 08.88.465. AMOUNTS SUBSEQUENTLY] recovered
 10 [BY THE COMMISSION] for these costs from the licensee under AS 08.88.071(b) or
 11 from other parties under AS 08.88.490 [SHALL BE DEPOSITED TO THE REAL
 12 ESTATE SURETY FUND].

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

14 **Sec. 08.88.474. Payment of small claims judgment.** If a claim originally
 15 filed with the commission is dismissed and is heard as a small claims action under
 16 AS 08.88.460(c) and the claimant prevails in the small claims action against a [THE]
 17 real estate licensee [BROKER, ASSOCIATE REAL ESTATE BROKER, OR
 18 SALESMAN], the commission shall make an award from the fund of any outstanding
 19 portion of the small claims judgment on receipt of a copy of the final judgment and
 20 an affidavit from the claimant stating that more than 30 days have elapsed since the
 21 judgment became final and that the judgment has not yet been satisfied by the
 22 licensee determined responsible [BROKER, ASSOCIATE BROKER, OR
 23 SALESMAN HAS NOT SATISFIED THE JUDGMENT DURING THAT TIME].
 24 After payment of a small claims judgment, the commission is subrogated to the
 25 claimant's rights in the judgment under AS 08.88.490.

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

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

30 (b) If the \$50,000 liability of the fund as provided in (a) of this section is
 31 insufficient to pay in full the valid claims of all persons who have filed claims against

1 **an individual licensee** [ONE BROKER OR SALESMAN], the \$50,000 shall be
 2 distributed among the claimants in the ratio that their individual claims bear to the
 3 aggregate of valid claims, or in another manner that the commission considers
 4 equitable. Distribution shall be among the persons entitled to share in the recovery [,]
 5 without regard to the order [OF PRIORITY] in which their claims were filed.

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

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

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

14 **Sec. 08.88.900. Exceptions. (a) Except as provided in (b) of this section,**
 15 **this** [THIS] chapter does not apply to

16 (1) a person who is not licensed under this chapter who **manages or**
 17 makes a real estate transaction with respect to real estate the person owns or **is seeking**
 18 **to own so long as the compensation the person receives does not include any**
 19 **portion of the commission or other compensation paid to a real estate licensee in**
 20 **the transaction** [ON THE PERSON'S OWN BEHALF, UNLESS THE
 21 TRANSACTION INVOLVES LAND DEFINED IN AS 34.55.044(7) THAT IS NOT
 22 IN ALASKA];

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

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

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

28 (5) a person acting as receiver, trustee, administrator, executor, or
 29 guardian;

30 (6) a person acting under court order;

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

- 1 (8) a person dealing in mineral rights transactions;
- 2 (9) **an** [A DOMESTIC OR FOREIGN CORPORATION, A GENERAL
3 OR LIMITED PARTNERSHIP, OR A PARTNER OR REGULAR] employee of a
4 domestic or foreign corporation, [OR A] general or limited partnership, **or limited**
5 **liability company** when performing an act described in AS 08.88.161 **incidental to**
6 [IN] the regular course **of business when the act relates** [, OR AS AN INCIDENT]
7 to [,] the management, sale, or other disposition of real estate owned by the **foreign**
8 **or domestic** corporation, **general** or **limited** partnership **or limited liability company**;
9 the exemption **under** [PROVIDED IN] this paragraph does not apply to a person
10 **employed by a foreign or domestic corporation, partnership, limited partnership,**
11 **or limited liability company** who performs an act described in AS 08.88.161 [,
12 UNLESS ALLOWED FOR UNLICENSED PERSONS UNDER AS 08.88.165,] either
- 13 (A) as a vocation; or
- 14 (B) for compensation if the amount of the compensation is
15 dependent upon or directly related to the value of the real estate with respect
16 to which the act is performed;
- 17 (10) a **person performing duties as a** resident manager;
- 18 (11) **a bookkeeper or accountant performing bookkeeping or**
19 **accounting functions**;
- 20 (12) **a secretary or receptionist in a real estate office accepting rent**
21 **or association fees and providing a written receipt for the rent or fees when a**
22 **tenant or community association member delivers the rent or fees to the real**
23 **estate office**;
- 24 (13) **tradesmen or vendors of services performing maintenance and**
25 **repair functions**;
- 26 (14) **an employee of a real estate firm or of a property owner**
27 **delivering or accepting a real estate contract or application, or a related**
28 **amendment, to or from another person**;
- 29 (15) **an individual assisting in the performance of real estate**
30 **activities only by carrying out administrative, clerical, or maintenance tasks**;
- 31 (16) **the management of a total of four or fewer residential units by**

1 a natural person for other persons;

2 (17) community association management for property organized
3 under AS 34.07 or AS 34.08 by a resident owner of a unit in the property if the
4 owner is a member of a self-managed community association for the property;

5 (18) community association management by a developer of property
6 organized under AS 34.07 or AS 34.08 during the period that the developer
7 retains control of at least 51 percent of the property;

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

15 (20) a mobile home dealer licensed under AS 08.67 performing
16 within the scope of the dealer's license; or

17 (21) the management by a natural person of property for another
18 person without a fee other than the reimbursement of expenses [OF RENTED
19 REAL ESTATE IF THE RESIDENT MANAGER’S DUTIES ARE LIMITED TO
20 THE NEGOTIATION OF LEASES AND RENTAL AGREEMENTS AND THE
21 COLLECTION OF RENT FOR THE USE OF THE REAL ESTATE AND IF THE
22 RESIDENT MANAGER IS

23 (A) EMPLOYED BY THE OWNER OF THE REAL ESTATE;

24 OR

25 (B) EMPLOYED BY, OR ENGAGED UNDER CONTRACT
26 WITH, A LICENSED REAL ESTATE BROKER].

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

28 (b) Notwithstanding that, under this section, a person is exempt from this
29 chapter, AS 08.88.401(e)(1) prohibits a licensee from knowingly paying to that person
30 any part of a fee, commission, or other compensation received by the licensee in
31 buying, selling, exchanging, leasing, auctioning, or renting real estate.

1 * **Sec. 50.** AS 08.88 is amended by adding a new section to read:

2 **Sec. 08.88.910. Application to independent contractors.** The provisions of
3 this chapter that apply to employment relationships and employees also apply to
4 contracting relationships and independent contractors.

5 * **Sec. 51.** AS 08.88.990(1) is amended to read:

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

8 * **Sec. 52.** AS 08.88.990(3) is amended to read:

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

14 * **Sec. 53.** AS 08.88.990(4) is amended to read:

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

20 * **Sec. 54.** AS 08.88.990 is amended by adding new paragraphs to read:

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

29 (6) "community association operating account" means an account in a
30 financial institution maintained in the name of a specific community association that
31 contains money used for day-to-day operation and not for other uses;

1 (7) "community association reserve account" means an account in a
 2 financial institution maintained in the name of a specific community association that
 3 contains money reserved for the expected replacement cost of improvements within the
 4 community association or for other future uses;

5 (8) "knowingly" has the meaning given in AS 11.81.900(a);

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

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

13 (11) "real estate transaction"

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

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

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

28 * **Sec. 55.** AS 34.70.050 is amended to read:

29 **Sec. 34.70.050. Form of disclosure statement.** The Real Estate Commission
 30 established under AS 08.88.011 shall establish the form of the disclosure statement
 31 required by AS 34.70.010. **The disclosure statement must include a provision that**

1 **notifies transferees**

2 **(1) that they are responsible for determining whether a person who**
3 **has been convicted of a sex offense resides in the vicinity of the property that is**
4 **the subject of the transferee's potential real estate transaction; and**

5 **(2) where information about the location of convicted sex offenders**
6 **can be obtained.**

7 * **Sec. 56.** AS 08.88.111 is repealed.

8 * **Sec. 57.** TRANSITIONAL PROVISION. Notwithstanding AS 08.88.161(5) and (6),
9 added by sec. 8 of this Act, a person may practice, or negotiate a contract to practice,
10 community association management and may collect fees for community association
11 management without a license issued under AS 08.88 until January 1, 1999.

12 * **Sec. 58.** REGULATIONS. Notwithstanding sec. 60 of this Act, the Real Estate
13 Commission may proceed to adopt regulations necessary to implement AS 08.88.091(f) and
14 (g), added by this Act. The regulations take effect under AS 44.62 (Administrative Procedure
15 Act), but not before January 31, 1999.

16 * **Sec. 59.** REVISOR'S INSTRUCTION. Wherever in the Alaska Statutes and the Alaska
17 Administrative Code the term "salesman" is used in a context relating to real estate salesmen
18 licensed under AS 08.88, it shall be read as "salesperson" when to do so would be consistent
19 with changes made by this Act. Under AS 01.05.031, the revisor of statutes shall implement
20 this section in the statutes, and, under AS 44.62.125, the regulations attorney shall implement
21 this section in the administrative code.

22 * **Sec. 60.** AS 08.88.091(f) and (g), added by sec. 7 of this Act, take effect January 31,
23 1999.

24 * **Sec. 61.** Except as provided in sec. 60 of this Act, this Act takes effect immediately
25 under AS 01.10.070(c).