

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 29(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 2/26/04

Referred: Rules

Sponsor(s): REPRESENTATIVES ROKEBERG, Lynn

A BILL

FOR AN ACT ENTITLED

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

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

4 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 LEGISLATIVE FINDINGS AND INTENT. (a) The legislature finds that

7 (1) the application of the common law of agency to the relationships between
8 real estate licensees and persons who are sellers, lessors, buyers, or lessees of real property
9 has resulted in misunderstandings and consequences that are contrary to the best interests of
10 the public;

11 (2) the real estate industry has a significant effect on the economy of the state;
12 and

13 (3) it is in the best interest of the public to codify in statute the relationships
14 between real estate licensees and persons who are sellers, lessors, buyers, or lessees of real

1 property.

2 (b) It is the intent of the legislature for this Act to govern the relationships between
3 real estate licensees and sellers, lessors, buyers, and lessees in real property transactions.

4 * **Sec. 2.** AS 08.88.071 is amended by adding a new subsection to read:

5 (d) The commission may investigate a violation of a provision of
6 AS 08.88.600 - 08.88.695 by a real estate licensee and take administrative action
7 under (a)(3) of this section if the commission has reason to believe that a violation has
8 occurred.

9 * **Sec. 3.** AS 08.88.391(a) is amended to read:

10 (a) A real estate licensee who has a conflict of interest relating to a real estate
11 transaction shall disclose that conflict of interest **to** [AT THE TIME OF INITIAL
12 SUBSTANTIVE CONTACT WITH] the **persons adversely affected by the conflict**
13 [PRINCIPALS] or **their real estate licensees** [AGENTS OF THE PRINCIPALS] and
14 confirm the conflict of interest in writing to the **persons adversely affected by the**
15 **conflict** [PRINCIPALS] or **their real estate licensees** [AGENTS OF THE
16 PRINCIPALS] involved in the transaction as soon as possible after the **conflict is**
17 **identified** [INITIAL SUBSTANTIVE CONTACT].

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

19 (f) This section applies only to acts that occur before the effective date of this
20 subsection.

21 * **Sec. 5.** AS 08.88.401(g) is amended to read:

22 (g) A person who violates this section **or** [,] AS 08.88.161 [, OR 08.88.396] is
23 guilty of a class A misdemeanor.

24 * **Sec. 6.** AS 08.88 is amended by adding new sections to read:

25 **Article 4A. Licensee Relationships and Duties.**

26 **Sec. 08.88.600. Licensee relationships.** (a) A real estate licensee who
27 provides real estate services to one party in a real estate transaction represents only
28 that party unless the parties to the transaction agree otherwise in writing.

29 (b) A real estate licensee may not provide real estate services to more than one
30 party in the same real estate transaction, except that

31 (1) a licensee may represent one party to the transaction while

1 providing specific assistance to an unrepresented party to the transaction;

2 (2) a licensee may act as a neutral licensee under (c) of this section;

3 (3) a licensee may also, with the written consent of the parties, be a
4 party to the transaction; or

5 (4) the parties to the transaction may agree otherwise in writing, except
6 as provided by AS 08.88.625.

7 (c) A real estate licensee may provide specific assistance to both the seller and
8 buyer, or both the lessor and lessee, in the same real estate transaction as a neutral
9 licensee if the licensee complies with AS 08.88.610.

10 (d) A real estate licensee who works for a real estate broker may represent or
11 provide specific assistance to a person in a real estate transaction even if the broker or
12 another licensee who is working for the broker represents or provides specific
13 assistance to another person in the same transaction. The broker shall designate which
14 licensee, including the broker, is the designated licensee for the seller or lessor and
15 which licensee, including the broker, is the designated licensee for the buyer or lessee.

16 **Sec. 08.88.605. Additional licensee relationship provisions.** (a) A real
17 estate licensee may provide real estate services to a party in separate real estate
18 transactions under different licensee relationships if the licensee complies with
19 AS 08.88.600 - 08.88.695 when establishing the relationship for each transaction.

20 (b) The authorization under (a) of this section includes acting as a real estate
21 licensee for a party in one real estate transaction and at the same time not representing
22 that party in a different real estate transaction involving that party.

23 **Sec. 08.88.610. Authorization of neutral licensee relationship.** (a) Before
24 a real estate licensee begins acting as a neutral licensee, the real estate licensee may
25 obtain preauthorization from a person to act as a neutral licensee in the person's real
26 estate transaction by obtaining the written consent of the person.

27 (b) If preauthorization is not obtained under (a) of this section, when a buyer
28 or lessee expresses an interest to the licensee in acquiring or leasing real estate and the
29 licensee is representing the seller or lessor of the property, the licensee shall obtain
30 written consent to act as a neutral licensee before the licensee shows the real estate.

31 (c) A written consent under this section must be provided on a separate form,

1 may not be contained in another writing, and must be entitled "Waiver of Right To Be
2 Represented."

3 **Sec. 08.88.615. Duties owed by licensee in all licensee relationships. (a)**

4 Unless additional duties are agreed to in a written document signed by the person, and
5 regardless of the type of licensee relationship in which the real estate licensee is
6 acting, a real estate licensee owes the following duties to each person to whom the
7 licensee provides specific assistance:

8 (1) the exercise of reasonable skill and care;

9 (2) honest and good faith dealing;

10 (3) the presentation of all written offers, written notices, and other
11 written communications to and from the person in a timely manner regardless of
12 whether the real estate is subject to an existing contract for sale or lease or the person
13 is already a party to an existing contract to buy or lease real estate;

14 (4) except as provided in (b) and (c) of this section, the disclosure of
15 all material information known by the licensee and not apparent or readily
16 ascertainable to the person regarding the physical condition of real estate if the
17 information substantially adversely affects the real estate or a person's ability to
18 perform the person's obligations in the real estate transaction or if the information
19 would materially impair or defeat the purpose of the real estate transaction;

20 (5) accounting in a timely manner for all money and other property
21 received from or on behalf of the person;

22 (6) before the licensee provides specific assistance to the person, or
23 when entering into a contract with the person to provide specific assistance, providing
24 a copy of the pamphlet established under AS 08.88.685(b)(2) and produced under
25 AS 08.88.685(c) that outlines the duties of the types of licensee relationships
26 identified under AS 08.88.600;

27 (7) before the licensee provides specific assistance to the person,
28 obtaining from the person a document signed by the person that discloses the
29 licensee's relationship with the person;

30 (8) in addition to the document provided under (7) of this subsection,
31 providing to the person when the person signs an offer in a real estate transaction

1 handled by the licensee a written statement that states whether the licensee represents
 2 the buyer, represents the seller, represents the lessee, represents the lessor, or provides
 3 specific assistance to both the buyer and the seller or both the lessee and the lessor as a
 4 neutral licensee; the statement must be contained in a separate paragraph entitled
 5 "Licensee Relationships" in the contract between the buyer and seller or the lessee and
 6 lessor, or in a separate document entitled "Licensee Relationships."

7 (b) The disclosure requirements of (a)(4) of this section do not require the real
 8 estate licensee to disclose a fact or suspicion that the real estate or neighboring real
 9 estate is or was the site of a murder, suicide, or other death, rape or other sexual crime,
 10 assault or other violent crime, robbery, burglary, illegal drug activity, gang-related
 11 activity, political activity, religious activity, anticipated development, alleged
 12 supernatural activity, or another act, occurrence, or use that does not adversely affect
 13 the physical condition of or title to the real estate.

14 (c) The disclosure requirements of (a)(4) of this section may not be construed
 15 to imply a duty to investigate a matter that the licensee has not agreed to investigate.

16 **Sec. 08.88.620. Duties owed by licensee representing a person.** Unless
 17 additional duties are agreed to in a written document signed by the person represented
 18 by the licensee, a real estate licensee who represents the person owes the person the
 19 following duties in addition to the other duties imposed by AS 08.88.615:

20 (1) not taking action that the licensee knows is adverse or detrimental
 21 to the interest of the represented person in a real estate transaction;

22 (2) disclosure of a conflict of interest to the represented person in a
 23 timely manner;

24 (3) advising the represented person to obtain expert advice on a matter
 25 that relates to the real estate transaction that is beyond the licensee's expertise;

26 (4) not disclosing confidential information from or about the
 27 represented person without written consent, except under a subpoena or another court
 28 order, even after termination of the licensee's relationship with the represented person;

29 (5) if the represented person is a seller or a lessor, unless otherwise
 30 agreed to in writing, making a good faith and continuous effort to find a buyer or
 31 lessee for the real estate of the seller or lessor, except that a licensee is not required to

1 seek additional offers to buy or lease the real estate while the real estate is subject to
 2 an existing contract for sale or lease; and

3 (6) if the represented party is a buyer or a lessee, unless otherwise
 4 agreed to in writing, making a good faith and continuous effort to find real estate for
 5 the buyer or lessee, except that a licensee is not obligated to

6 (A) seek additional real estate to buy or lease for the buyer or
 7 lessee while the buyer or lessee is a party to an existing contract to buy or lease
 8 real estate; or

9 (B) show to the buyer or lessee real estate for which there is not
 10 a written agreement to pay compensation to the licensee.

11 **Sec. 08.88.625. Waiver of duties.** A real estate licensee or a person to whom
 12 a licensee provides specific assistance may not waive the duties identified under
 13 AS 08.88.615 and 08.88.620, except as otherwise allowed under AS 08.88.620(5) and
 14 (6).

15 **Sec. 08.88.630. Duties not owed by licensee.** Unless agreed otherwise, a real
 16 estate licensee does not owe a duty to a person with whom the licensee has established
 17 a licensee relationship to

18 (1) conduct an independent inspection of the real estate that is the
 19 subject of the licensee relationship;

20 (2) conduct an independent investigation of a person's financial
 21 condition; or

22 (3) independently verify the accuracy or completeness of a statement
 23 made by a party to a real estate transaction or by a person reasonably believed by the
 24 licensee to be reliable.

25 **Sec. 08.88.635. Acts not amounting to adverse or detrimental acts or**
 26 **conflicts of interest.** (a) If a licensee shows real estate not owned or leased by the
 27 seller or lessor to prospective buyers or lessees or lists competing properties for sale or
 28 lease, this activity does not by itself constitute action that is adverse or detrimental to
 29 the seller or lessor or create a conflict of interest under AS 08.88.391.

30 (b) The representation of more than one seller or lessor by the same licensee
 31 or by different licensees working for the same real estate broker in competing

1 transactions involving the same buyer or lessee does not by itself constitute action that
2 is adverse or detrimental to the sellers or lessors or create a conflict of interest under
3 AS 08.88.391.

4 (c) If a licensee shows real estate in which the buyer or lessee is interested to
5 other prospective buyers or lessees, this activity does not by itself constitute action
6 that is adverse or detrimental to the buyer or lessee or create a conflict of interest
7 under AS 08.88.391.

8 (d) The representation of more than one buyer or lessee by the same licensee
9 or by different licensees working for the same real estate broker in competing
10 transactions involving the same seller or lessor does not by itself constitute action that
11 is adverse or detrimental to the sellers or lessors or create a conflict of interest under
12 AS 08.88.391.

13 (e) Acting as a neutral licensee in compliance with AS 08.88.600 - 08.88.695
14 does not by itself constitute action that is adverse or detrimental to a seller, lessor,
15 buyer, or lessee or create a conflict of interest under AS 08.88.391.

16 (f) A real estate licensee who discloses confidential information to the
17 licensee's broker for the purpose of seeking advice or assistance for the benefit of the
18 person to whom the licensee is providing specific assistance does not breach the
19 licensee's duty of confidentiality to the person, if the licensee's broker maintains
20 confidentiality of the information.

21 **Sec. 08.88.640. Designated licensee relationship.** (a) Unless the broker is
22 the designated licensee, the relationship, including the duties, obligations, and
23 responsibilities of the relationship, established between a person and a designated real
24 estate licensee does not extend to the real estate broker for whom the designated
25 licensee is working, to another real estate licensee who works for the same real estate
26 broker, or to an owner of the business that employs the real estate broker. The extent
27 or limitations of the relationship between the broker with the designated licensee shall
28 be disclosed to the parties to a real estate transaction.

29 (b) A real estate broker may have a different designated licensee working for a
30 seller or lessor and for the buyer or lessee in the same real estate transaction. Having a
31 different designated licensee working for a seller or lessor and for the buyer or lessee

1 in the same real estate transaction does not create dual agency or a conflict of interest
2 for the real estate broker or for a licensee employed by the same real estate broker.

3 (c) A designated real estate licensee may represent or provide specific
4 assistance to a person who is a seller or lessor in one real estate transaction while
5 representing or providing specific assistance to the person as a buyer or lessee in
6 another real estate transaction.

7 (d) Unless the broker is the designated licensee, when a designated licensee
8 represents or provides specific assistance as a designated licensee to a person in a real
9 estate transaction, the knowledge received by the designated licensee while
10 representing or providing specific assistance to the person is not imputed to the real
11 estate broker for whom the designated licensee works, to another real estate licensee
12 employed by or under contract to the broker, or to an owner of the business that
13 employs the real estate broker.

14 (e) This section may not be construed to limit the responsibility of a real estate
15 broker, or of an owner of a business that employs the real estate broker, to supervise
16 designated licensees who work for the broker or who work for the business that
17 employs the broker, or to shield the broker or business from vicarious liability for the
18 acts of the designated licensees.

19 **Sec. 08.88.645. Duties of neutral licensee.** (a) Unless additional duties are
20 agreed to in a written document signed by the neutral licensee and the seller, buyer,
21 lessor, or lessee, the duties of a neutral licensee are limited to the duties established for
22 real estate licensees under AS 08.88.615 and the following duties:

23 (1) not to take action that the neutral licensee knows is adverse or
24 detrimental to the interest of the persons to whom the neutral licensee provides
25 services in the real estate transaction;

26 (2) to disclose a conflict of interest in a timely manner to all parties to
27 whom the licensee provides specific assistance;

28 (3) to advise all parties to whom the licensee provides specific
29 assistance for the transaction to obtain expert advice on a matter relating to the
30 transaction that is beyond the expertise of the neutral licensee;

31 (4) not to disclose without written consent confidential information

1 from or about any of the parties to whom the licensee is providing specific assistance
 2 to another party to whom the licensee is providing specific assistance in the
 3 transaction, except under a subpoena or another court order, even after the relationship
 4 with the party terminates;

5 (5) not to disclose without the consent of the person to whom the
 6 information relates

7 (A) that the buyer or lessee is willing to pay more than the
 8 price offered for the real estate;

9 (B) that the seller or lessor is willing to accept less than the
 10 asking price for the real estate; or

11 (C) that the seller, buyer, lessor, or lessee will agree to
 12 financing terms other than those terms offered.

13 (b) A neutral licensee does not violate the duties of a neutral licensee if, with
 14 written consent, the neutral licensee engages in the following conduct in a good faith
 15 effort to assist in reaching final agreement in a real estate transaction:

16 (1) analyzing, providing information on, or reporting on the merits of
 17 the transaction to each party;

18 (2) discussing the price, terms, or conditions that each party would or
 19 should offer or accept; or

20 (3) suggesting compromises in the parties' respective bargaining
 21 positions.

22 **Sec. 08.88.650. No imputation of knowledge resulting from neutral**
 23 **licensee relationship.** In a neutral licensee relationship, the knowledge or information
 24 of the licensee about one client is not imputed to other clients or to other licensees
 25 who work for the same real estate broker.

26 **Sec. 08.88.655. Compensation.** (a) A real estate broker may be compensated
 27 by any party to a real estate transaction, by a third party, or by one or more of the
 28 parties to the transaction splitting or sharing the compensation.

29 (b) The payment of compensation to a real estate broker may not be construed
 30 to establish a relationship between the broker and the party who pays the
 31 compensation.

1 (c) If a real estate licensee provides specific assistance or enters into a
 2 personal service contract to act as a real estate licensee for a person, or if a seller and
 3 buyer, or a lessor and lessee, enter into a contract to sell, buy, or lease real estate, the
 4 real estate licensee shall disclose which party the licensee anticipates will be paying
 5 compensation to the real estate brokers in the real estate transaction.

6 (d) A real estate licensee shall include in a contract to sell, buy, or lease real
 7 estate a statement indicating which party is paying compensation to the real estate
 8 brokers in the real estate transaction.

9 **Sec. 08.88.660. Duration of relationship.** (a) A licensee relationship with a
 10 buyer, lessee, seller, or lessor begins when the licensee represents or provides specific
 11 assistance to the buyer, lessee, seller, or lessor and continues until the earliest of the
 12 following events occurs:

13 (1) the licensee completes the representation or specific assistance;

14 (2) the relationship term agreed on by the buyer, lessee, seller, or
 15 lessor terminates;

16 (3) the licensee and the parties to the relationship terminate the
 17 relationship by mutual agreement; or

18 (4) a party to the relationship terminates the relationship by giving
 19 notice to the other party.

20 (b) The termination of a relationship under (a)(3) or (4) of this section only
 21 terminates the licensee relationship and does not affect other contractual rights of the
 22 parties to the licensee relationship.

23 (c) Except as otherwise agreed to in writing, a licensee does not owe a further
 24 duty to a buyer, lessee, seller, or lessor after termination of the licensee relationship,
 25 except for the duties of accounting for all money and other property received during
 26 the relationship and not disclosing confidential information.

27 **Sec. 08.88.665. Vicarious liability.** A seller, buyer, lessor, or lessee is not
 28 liable for an act, error, or omission of a real estate licensee that arises out of the
 29 licensee relationship,

30 (1) unless the seller, buyer, lessor, or lessee participated in or
 31 authorized the act, error, or omission and then only to the extent of the participation or

1 authorization; or

2 (2) except to the extent that the seller, buyer, lessor, or lessee benefited
3 from the act, error, or omission, and a court determines that it is highly probable that
4 the person claiming damages for the act, error, or omission would be unable to enforce
5 a judgment against the licensee.

6 **Sec. 08.88.670. Imputed knowledge and notice.** (a) Unless otherwise
7 agreed to in writing, a seller, buyer, lessor, or lessee is not considered to have
8 knowledge or notice of a fact known by a real estate licensee of the seller, buyer,
9 lessor, or lessee unless the fact is actually known by the seller, buyer, lessor, or lessee.

10 (b) Unless otherwise agreed to in writing, a real estate licensee does not have
11 knowledge or notice of a fact that is not actually known by the licensee.

12 **Sec. 08.88.675. Common law abrogated.** The common law of agency
13 related to real estate licensee relationships in real estate transactions is expressly
14 abrogated to the extent inconsistent with AS 08.88.600 - 08.88.695.

15 **Sec. 08.88.680. Causes of action.** (a) A person may not bring an action
16 against a neutral licensee for making a disclosure that is required or permitted under
17 this chapter.

18 (b) In a civil action for the failure of a licensee to comply with the provisions
19 of AS 08.88.600 - 08.88.695, the plaintiff's remedy is limited to the recovery of actual
20 damages. This subsection does not limit a person's ability to take any other action or
21 pursue any other remedy to which the person may be entitled under other law.

22 **Sec. 08.88.685. Policies, guidelines, and requirements.** (a) A broker shall
23 adopt a written policy that identifies and describes the relationships in which the
24 broker and the real estate licensees who work for the broker may engage with a seller,
25 buyer, lessor, or lessee. The broker shall make the written policy available to the
26 commission and to members of the public on request.

27 (b) The commission shall adopt regulations that establish

28 (1) guidelines to assist a broker to adopt the written policy required by
29 (a) of this section;

30 (2) the contents and format of the pamphlet to be provided by a
31 licensee under AS 08.88.615(a)(6); and

1 (3) requirements for a broker's supervision of the real estate licensees
2 who work for the broker.

3 (c) Based on the content and format for the pamphlets established under (b)(2)
4 of this section, a real estate broker shall produce and pay the costs to produce the
5 actual pamphlets to be provided by licensees in the broker's business under
6 AS 08.88.615(a)(6).

7 **Sec. 08.88.690. Exemptions.** A real estate licensee is exempt from the
8 signature requirements of AS 08.88.600 - 08.88.695 when the licensee provides
9 specific assistance to

10 (1) a corporation that issues publicly traded securities;

11 (2) a business that has a net worth in the previous calendar year of
12 \$2,000,000 or more, if the business requests the exemption from the licensee; or

13 (3) a governmental agency; in this paragraph, "governmental agency"
14 means a department, division, public agency, political subdivision, or other public
15 instrumentality of the state or federal government, including the University of Alaska,
16 the Alaska Railroad Corporation, the Alaska Housing Finance Corporation, the Alaska
17 Industrial Development and Export Authority, and other public corporations.

18 **Sec. 08.88.695. Definitions.** In AS 08.88.600 - 08.88.695,

19 (1) "compensation" includes a commission;

20 (2) "confidential information" means information from or concerning a
21 person that

22 (A) the licensee acquired during the course of the licensee's
23 relationship as a licensee with the person;

24 (B) the person reasonably expects to be kept confidential;

25 (C) the person has not disclosed or authorized to be disclosed
26 to a third party;

27 (D) would, if disclosed, operate to the detriment of the person;

28 and

29 (E) the person is not obligated to disclose to the other party in a
30 real estate transaction;

31 (3) "designated licensee" means

1 (A) a real estate licensee who works for a real estate broker and
 2 represents or provides specific assistance to a person in a real estate transaction
 3 when another licensee who is working for the same broker represents or
 4 provides specific assistance to an unrepresented person in the same transaction;
 5 or

6 (B) a real estate broker who represents or provides specific
 7 assistance to a person in a real estate transaction when another licensee who is
 8 working for the broker represents or provides specific assistance to another
 9 person in the same transaction;

10 (4) "neutral licensee" means a real estate licensee who

11 (A) provides specific assistance to both the buyer and the
 12 seller, or both the lessor and the lessee in a real estate transaction; and

13 (B) does not represent either party;

14 (5) "personal services contract" includes a listing, a fee agreement
 15 between brokers and sellers, buyers, lessors, or lessees, a management contract with
 16 property owners, or any other agreement by which a broker agrees to perform a duty
 17 with respect to real estate for an agreed upon fee or commission;

18 (6) "real estate services" means services related to a real estate
 19 transaction;

20 (7) "represent" means to provide real estate services to a person if the
 21 services are not limited to specific assistance;

22 (8) "specific assistance"

23 (A) means

24 (i) asking questions regarding confidential information
 25 for a real estate transaction;

26 (ii) showing pieces of real estate selected for a buyer's
 27 or lessee's specific needs or desires;

28 (iii) preparing a written offer for a real estate
 29 transaction; or

30 (iv) entering into a personal services contract;

31 (B) does not include

- 1 (i) hosting an open house;
 2 (ii) casual conversation regarding real estate;
 3 (iii) receiving calls or electronic inquiries from the
 4 licensee's signs, advertisements, or Internet site;
 5 (iv) providing information regarding a piece of real
 6 estate;
 7 (v) setting an initial appointment to show a piece of real
 8 estate;
 9 (vi) receiving unsolicited information from a buyer or
 10 lessee before or after disclosure of a real estate relationship.

11 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to
 12 read:

13 TRANSITIONAL PROVISIONS: PAMPHLET; REGULATIONS. The Real Estate
 14 Commission shall proceed to adopt the regulations required by AS 08.88.685(b), enacted by
 15 sec. 6 of this Act. The Real Estate Commission may proceed to adopt other regulations
 16 necessary to implement this Act. A regulation adopted under this section takes effect under
 17 AS 44.62 (Administrative Procedure Act) but not before the effective date of the law
 18 implemented by the regulation.

19 * **Sec. 8.** Sections 1 - 6 of this Act take effect January 1, 2005.

20 * **Sec. 9.** Section 7 of this Act takes effect immediately under AS 01.10.070(c).