

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Amended: 3/3/04

Offered: 2/26/04

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]. **The licensee must also verbally**
18 **advise the person of the conflict, and begin any written statement of the conflict**
19 **of interest with these words, underlined and written in bold: "Disclosure of**
20 **Conflict of Interest."**

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

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

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

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

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

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

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

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

3 (1) a licensee may represent one party to the transaction while
4 providing specific assistance to an unrepresented party to the transaction;

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

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

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

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

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

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

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

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

30 (b) If preauthorization is not obtained under (a) of this section, when a buyer
31 or lessee expresses an interest to the licensee in acquiring or leasing real estate and the

1 licensee is representing the seller or lessor of the property, the licensee shall obtain
2 written consent to act as a neutral licensee before the licensee shows the real estate.

3 (c) A written consent under this section must be provided on a separate form,
4 may not be contained in another writing, and must be entitled "Waiver of Right To Be
5 Represented."

6 **Sec. 08.88.615. Duties owed by licensee in all licensee relationships.** (a)
7 Unless additional duties are agreed to in a written document signed by the person, and
8 regardless of the type of licensee relationship in which the real estate licensee is
9 acting, a real estate licensee owes the following duties to each person to whom the
10 licensee provides specific assistance:

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

12 (2) honest and good faith dealing;

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

17 (4) except as provided in (b) of this section, the disclosure of all
18 material information known by the licensee regarding the physical condition of real
19 estate if the information substantially adversely affects the real estate or a person's
20 ability to perform the person's obligations in the real estate transaction or if the
21 information would materially impair or defeat the purpose of the real estate
22 transaction;

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

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

30 (7) before the licensee provides specific assistance to the person,
31 obtaining from the person a document signed by the person that discloses the

1 licensee's relationship with the person;

2 (8) in addition to the document provided under (7) of this subsection,
 3 providing to the person when the person signs an offer in a real estate transaction
 4 handled by the licensee a written statement that states whether the licensee represents
 5 the buyer, represents the seller, represents the lessee, represents the lessor, or provides
 6 specific assistance to both the buyer and the seller or both the lessee and the lessor as a
 7 neutral licensee; the statement must be contained in a separate paragraph entitled
 8 "Licensee Relationships" in the contract between the buyer and seller or the lessee and
 9 lessor, or in a separate document entitled "Licensee Relationships."

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

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

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

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

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

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

25 (5) if the represented person is a seller or a lessor, unless otherwise
 26 agreed to in writing, making a good faith and continuous effort to find a buyer or
 27 lessee for the real estate of the seller or lessor, except that a licensee is not required to
 28 seek additional offers to buy or lease the real estate while the real estate is subject to
 29 an existing contract for sale or lease; and

30 (6) if the represented party is a buyer or a lessee, unless otherwise
 31 agreed to in writing, making a good faith and continuous effort to find real estate for

1 the buyer or lessee, except that a licensee is not obligated to

2 (A) seek additional real estate to buy or lease for the buyer or
3 lessee while the buyer or lessee is a party to an existing contract to buy or lease
4 real estate; or

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

7 **Sec. 08.88.625. Waiver of duties.** A real estate licensee or a person to whom
8 a licensee provides specific assistance may not waive the duties identified under
9 AS 08.88.615 and 08.88.620, except as otherwise allowed under AS 08.88.620(5) and
10 (6).

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

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

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

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

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

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

31 (c) If a licensee shows real estate in which the buyer or lessee is interested to

1 other prospective buyers or lessees, this activity does not by itself constitute action
 2 that is adverse or detrimental to the buyer or lessee or create a conflict of interest
 3 under AS 08.88.391.

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

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

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

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

25 (b) A real estate broker may have a different designated licensee working for a
 26 seller or lessor and for the buyer or lessee in the same real estate transaction. Having a
 27 different designated licensee working for a seller or lessor and for the buyer or lessee
 28 in the same real estate transaction does not create dual agency or a conflict of interest
 29 for the real estate broker or for a licensee employed by the same real estate broker.

30 (c) A designated real estate licensee may represent or provide specific
 31 assistance to a person who is a seller or lessor in one real estate transaction while

1 representing or providing specific assistance to the person as a buyer or lessee in
2 another real estate transaction.

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

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

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

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

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

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

27 (4) not to disclose without written consent confidential information
28 from or about any of the parties to whom the licensee is providing specific assistance
29 to another party to whom the licensee is providing specific assistance in the
30 transaction, except under a subpoena or another court order, even after the relationship
31 with the party terminates;

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

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

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

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

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

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

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

16 (3) suggesting compromises in the parties' respective bargaining
17 positions.

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

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

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

28 (c) If a real estate licensee provides specific assistance or enters into a
29 personal service contract to act as a real estate licensee for a person, or if a seller and
30 buyer, or a lessor and lessee, enter into a contract to sell, buy, or lease real estate, the
31 real estate licensee shall disclose which party the licensee anticipates will be paying

1 compensation to the real estate brokers in the real estate transaction.

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

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

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

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

12 (3) the licensee and the parties to the relationship terminate the
13 relationship by mutual agreement; or

14 (4) a party to the relationship terminates the relationship by giving
15 notice to the other party.

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

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

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

26 (1) unless the seller, buyer, lessor, or lessee participated in or
27 authorized the act, error, or omission and then only to the extent of the participation or
28 authorization; or

29 (2) except to the extent that the seller, buyer, lessor, or lessee benefited
30 from the act, error, or omission, and a court determines that it is highly probable that
31 the person claiming damages for the act, error, or omission would be unable to enforce

1 a judgment against the licensee.

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

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

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

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

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

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

23 (b) The commission shall adopt regulations that establish

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

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

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

30 (c) Based on the content and format for the pamphlets established under (b)(2)
31 of this section, a real estate broker shall produce and pay the costs to produce the

1 actual pamphlets to be provided by licensees in the broker's business under
2 AS 08.88.615(a)(6).

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

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

7 (2) a business that has a net worth in the previous calendar year of
8 \$2,000,000 or more, if the business requests the exemption from the licensee; or

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

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

15 (1) "compensation" includes a commission;

16 (2) "confidential information" means information from or concerning a
17 person that

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

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

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

23 (D) would, if disclosed, operate to the detriment of the person;
24 and

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

27 (3) "designated licensee" means

28 (A) a real estate licensee who works for a real estate broker and
29 represents or provides specific assistance to a person in a real estate transaction
30 when another licensee who is working for the same broker represents or
31 provides specific assistance to an unrepresented person in the same transaction;

1 or

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

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

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

9 (B) does not represent either party;

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

14 (6) "real estate services" means services related to a real estate
15 transaction;

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

18 (8) "specific assistance"

19 (A) means

20 (i) asking questions regarding confidential information
21 for a real estate transaction;

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

24 (iii) preparing a written offer for a real estate
25 transaction; or

26 (iv) entering into a personal services contract;

27 (B) does not include

28 (i) hosting an open house;

29 (ii) casual conversation regarding real estate;

30 (iii) receiving calls or electronic inquiries from the
31 licensee's signs, advertisements, or Internet site;

- 1 (iv) providing information regarding a piece of real
2 estate;
3 (v) setting an initial appointment to show a piece of real
4 estate;
5 (vi) receiving unsolicited information from a buyer or
6 lessee before or after disclosure of a real estate relationship.

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

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

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

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