

**HOUSE BILL NO. 257**

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - FIRST SESSION

**BY REPRESENTATIVES ROKEBERG, Foster**

**Introduced: 4/10/03**

**Referred: Labor and Commerce, Judiciary**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the disclosure requirements for real estate licensees, to disciplinary**  
2 **action against real estate licensees, to private actions against real estate licensees, and to**  
3 **real estate licensee agency relationships, fiduciary duties, and other duties; and**  
4 **providing for an effective date."**

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

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

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

9 (1) the purpose of the requirement that a real estate licensee make certain  
10 disclosures about the licensee's representation is to provide consumer protection to those  
11 people who may not be familiar with their legal responsibilities and rely in part on real estate  
12 licensees for advice when buying, selling, and leasing real estate;

13 (2) the parties to commercial transactions do not need the protection that the  
14 required disclosures provide;

1 (3) the disclosure requirements do not reflect the standard of practice in the  
2 commercial real estate field.

3 (b) It is the intent of the legislature that commercial real estate licensees be exempt  
4 from agency and disclosure requirements in large commercial real estate transactions because  
5 of the level of sophistication and knowledge that is typical of the parties to large commercial  
6 real estate transactions.

7 \* **Sec. 2.** AS 08.88.071(a)(3) is amended to read:

8 (3) after hearing, have the authority to suspend or revoke the license of  
9 a licensee or impose other disciplinary sanctions authorized under AS 08.01.075 on a  
10 licensee who

11 (A) with respect to a real estate transaction

12 (i) made a substantial misrepresentation;

13 (ii) made a false promise likely to influence, persuade,  
14 or induce;

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

18 (iv) has engaged in conduct that is fraudulent or  
19 dishonest;

20 (v) violates AS 08.88.391;

21 **(vi) violates AS 08.88.396;**

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

24 (C) has engaged in conduct of which the commission **did not**  
25 **have** [HAD NO] knowledge at the time the licensee was licensed  
26 demonstrating the licensee's unfitness to engage in the business for which the  
27 licensee is licensed;

28 (D) knowingly authorizes, directs, connives at, or aids in  
29 publishing, distributing, or circulating a material false statement or  
30 misrepresentation concerning the licensee's business or concerning real estate  
31 offered for sale, rent, or lease, or managed in the course of the licensee's

1 business in this or any other state or concerning the management of an  
2 association in the course of a licensee's business in this or another state;

3 (E) if a real estate broker, wilfully violates AS 08.88.171(d) or  
4 08.88.291;

5 (F) if an associate real estate broker, claims to be a real estate  
6 broker, or, if a real estate salesperson, claims to be a real estate broker or **an**  
7 associate real estate broker;

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

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

13 \* **Sec. 3.** AS 08.88.396(a) is amended to read:

14 (a) A person licensed under this chapter shall, when acting as **a real estate**  
15 **licensee** [AN AGENT] for a prospective seller **or lessor** of real estate,

16 (1) disclose in writing the licensee's agency relationship with the seller  
17 **or lessor** to each prospective buyer **or lessee** at the time that the licensee begins to  
18 provide specific assistance to locate or acquire real estate for the buyer **or lessee**, and  
19 obtain from each prospective buyer **or lessee** a signed **acknowledgment**  
20 [ACKNOWLEDGEMENT] that the buyer **or lessee** is aware of the agency  
21 relationship between the licensee and the seller **or lessor**; and

22 (2) include in the purchase agreement a statement of the agency  
23 relationship between the licensee and the seller **or lessor**.

24 \* **Sec. 4.** AS 08.88.396(b) is amended to read:

25 (b) A person licensed under this chapter shall, when acting as **a real estate**  
26 **licensee** [AN AGENT] for a prospective buyer **or lessee** of real estate,

27 (1) disclose the licensee's relationship with the buyer **or lessee** to a  
28 prospective seller **or lessor** of real estate, or to the seller's **or lessor's real estate**  
29 **licensee** [AGENT], at the time of the initial contact between the licensee and the  
30 prospective seller **or lessor**, or the seller's **or lessor's real estate licensee** [AGENT],  
31 and confirm the relationship in writing as soon as possible after the initial contact;

1 (2) include in the purchase agreement a statement of the agency  
2 relationship between the licensee and the buyer **or lessee**;

3 (3) if the prospective seller **or lessor** has an unexpired exclusive listing  
4 contract for a property, present all offers to purchase that property through the seller's  
5 **or lessor's real estate licensee** [AGENT]; and

6 (4) disclose in writing to all parties to a transaction when the licensee's  
7 compensation as **real estate licensee** [AGENT] for the buyer **or lessee** is to be paid by  
8 anyone other than the buyer **or lessee** being represented by the licensee.

9 \* **Sec. 5.** AS 08.88.396(c) is amended to read:

10 (c) A person licensed under this chapter may act as **a real estate licensee** [AN  
11 AGENT] for both a prospective seller **or lessor** and a prospective buyer **or lessee** of  
12 real estate only after the licensee informs both the seller **or lessor** and the buyer **or**  
13 **lessee** of the dual agency and obtains written consent to the dual agency from both  
14 principals.

15 \* **Sec. 6.** AS 08.88.396 is amended by adding new subsections to read:

16 (e) This section does not apply to a commercial real estate transaction that  
17 involves

18 (1) the sale or lease of real estate that contains a building having four  
19 or more separate living units;

20 (2) the sale of real estate that has a purchase price of \$100,000 or more  
21 in value for nonresidential use; or

22 (3) the sale or lease of real estate having a gross lease revenue that  
23 exceeds \$12,000 a year.

24 (f) In a commercial real estate transaction under (e) of this section, when the  
25 licensee is representing both the buyer and seller or both the lessor and lessee,

26 (1) the common law principles of agency do not apply to the licensee's  
27 representation; and

28 (2) the licensee does not have a fiduciary duty to either the buyer or  
29 seller if representing both the buyer and seller, or to either the lessor and lessee if  
30 representing both the lessor and lessee, but shall act with honesty, fairness, and good  
31 faith when representing these persons.

1           (g) The failure of a licensee to make a disclosure required by this section or to  
2 obtain a written consent required by this section does not give a person a cause of  
3 action against the licensee for the failure. However, a person may file a claim under  
4 AS 08.88.460 for a violation of this section if the violation constitutes fraud,  
5 misrepresentation, or deceit, and the person suffered a loss as a result of the violation.

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

8           **APPLICABILITY AND RETROSPECTIVITY.** (a) The provisions of this Act apply  
9 to a real estate transaction that occurs before, on, or after the effective date of this Act, and to  
10 that extent, are retrospective under AS 01.10.090. In this subsection, "real estate transaction"  
11 has the meaning given in AS 08.88.990.

12           (b) In addition to the application of AS 08.88.396(g), enacted by sec. 6 of this Act,  
13 under (a) of this section, AS 08.88.396(g) applies to an action pending in a court in the state in  
14 which a final judgment has not been rendered before the effective date of this Act and, to that  
15 extent, is retrospective under AS 01.10.090.

16       \* **Sec. 8.** This Act takes effect immediately under AS 01.10.070(c).