

CS FOR HOUSE BILL NO. 257(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 5/5/03

Referred: Rules

Sponsor(s): REPRESENTATIVES ROKEBERG, Foster

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 and remedies against real estate**
3 **licensees, and to real estate licensee agency, relationships, and duties; and providing for**
4 **an effective date."**

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

6 * **Section 1.** AS 08.88.071(a)(3) is amended to read:

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

10 (A) with respect to a real estate transaction

11 (i) made a substantial misrepresentation;

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

14 (iii) in the case of a real estate broker, pursued a

1 flagrant course of misrepresentation or made a false promise through
2 another real estate licensee;

3 (iv) has engaged in conduct that is fraudulent or
4 dishonest;

5 (v) violates AS 08.88.391;

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

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

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

13 (D) knowingly authorizes, directs, connives at, or aids in
14 publishing, distributing, or circulating a material false statement or
15 misrepresentation concerning the licensee's business or concerning real estate
16 offered for sale, rent, or lease, or managed in the course of the licensee's
17 business in this or any other state or concerning the management of an
18 association in the course of a licensee's business in this or another state;

19 (E) if a real estate broker, wilfully violates AS 08.88.171(d) or
20 08.88.291;

21 (F) if an associate real estate broker, claims to be a real estate
22 broker, or, if a real estate salesperson, claims to be a real estate broker or **an**
23 associate real estate broker;

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

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

29 * **Sec. 2.** AS 08.88.181(a) is amended to read:

30 (a) The real estate examinations may include questions on real estate business
31 ethics and standards; arithmetic and accounting; elementary principles of land

1 economics and appraisal; the general principles in state statutes relating to deeds,
 2 mortgages, real estate contracts, subdivisions, common interest communities, legal
 3 descriptions, building restrictions, **real estate licensee relationships**, agency **law**,
 4 brokerage, disclosure requirements, trust accounting requirements, and landlord and
 5 tenant law; property management ethics and standards; community association
 6 management operations, ethics, and standards; and the general provisions of this
 7 chapter and of the regulations of the commission.

8 * **Sec. 3.** AS 08.88.396 is amended to read:

9 **Sec. 08.88.396. Licensee relationships, disclosures, and activity**
 10 **[DISCLOSURE OF AGENCY TO PROSPECTIVE BUYERS AND SELLERS].**

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

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

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

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

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

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

30 (3) if the prospective seller **or lessor** has an unexpired exclusive listing
 31 contract for a property, present all offers to purchase that property through the seller's

1 **or lessor's real estate licensee** [AGENT]; and

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

5 (c) A person licensed under this chapter may act as **a real estate licensee** [AN
6 AGENT] for both a prospective seller **or lessor** and a prospective buyer **or lessee** of
7 real estate only after the licensee informs both the seller **or lessor** and the buyer **or**
8 **lessee** of the dual **agency representation** [AGENCY] and obtains written consent to
9 the dual **agency representation** [AGENCY] from both principals.

10 (d) When a change occurs during a transaction that makes a prior written
11 disclosure required by this section incomplete, misleading, or inaccurate, the licensee
12 shall make a revised disclosure, in writing, to all parties to the transaction as soon as
13 possible. The revised disclosure must include the date of the revision and shall be
14 acknowledged in writing by all the parties. **However, until the nature of the**
15 **licensee's relationship with a party is completely established, a revised disclosure**
16 **is not required under this subsection if the licensee obtains from the party a**
17 **written preauthorized consent to changes before the changes occur.**

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

19 (e) The failure of a licensee to make a written disclosure as required by this
20 section or to obtain a written acknowledgment or consent as required by this section
21 does not give a person a cause of action against the licensee for the failure. However,
22 this subsection does not limit a person's ability to take any other action or pursue any
23 other remedy to which the person may be entitled under other law to recover for
24 damages or losses suffered.

25 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

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

31 (b) In addition to the application of AS 08.88.396(e), enacted by sec. 4 of this Act,

1 under (a) of this section, AS 08.88.396(e) applies to an action pending in a court in the state in
2 which a final judgment has not been rendered before the effective date of this Act and, to that
3 extent, is retrospective under AS 01.10.090.

4 * **Sec. 6.** This Act takes effect immediately under AS 01.10.070(c).