

**HOUSE BILL NO. 357**

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE BY REQUEST

Introduced: 2/6/08

Referred: Labor and Commerce, Finance

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act requiring errors and omissions insurance for real estate licensees; renaming the**  
2 **real estate surety fund as the real estate recovery fund and relating to that fund, and**  
3 **redefining the procedures and criteria used by the Real Estate Commission to make an**  
4 **award from the fund to a person suffering a loss caused by certain misconduct of real**  
5 **estate licensees; requiring a real estate licensee to maintain an office in the state; and**  
6 **providing for an effective date."**

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

8 **\* Section 1.** AS 08.88.071(a) is amended to read:

9 (a) The commission shall

10 (1) determine whether applicants meet requirements for licenses under  
11 this chapter and issue licenses to those who qualify;

12 (2) prepare and grade examinations;

13 (3) after hearing, have the authority to suspend or revoke the license of

1 a licensee or impose other disciplinary sanctions authorized under AS 08.01.075 on a  
2 licensee who

3 (A) with respect to a real estate transaction

4 (i) made a substantial misrepresentation;

5 (ii) made a false promise likely to influence, persuade,  
6 or induce;

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

10 (iv) has engaged in conduct that is fraudulent or  
11 dishonest;

12 (v) violates AS 08.88.391;

13 (vi) violates AS 08.88.396;

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

16 (C) has engaged in conduct of which the commission did not  
17 have knowledge at the time the licensee was licensed demonstrating the  
18 licensee's unfitness to engage in the business for which the licensee is licensed;

19 (D) knowingly authorizes, directs, connives at or aids in  
20 publishing, distributing, or circulating a material false statement or  
21 misrepresentation concerning the licensee's business or concerning real estate  
22 offered for sale, rent, or lease, or managed in the course of the licensee's  
23 business in this or any other state or concerning the management of an  
24 association in the course of a licensee's business in this or another state;

25 (E) if a real estate broker, wilfully violates AS 08.88.171(d) or  
26 08.88.291;

27 (F) if an associate real estate broker, claims to be a real estate  
28 broker, or, if a real estate salesperson, claims to be a real estate broker or  
29 associate real estate broker;

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

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

4 **(I) fails to carry and maintain errors and omissions**  
 5 **insurance under AS 08.88.172;**

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

8 (5) release for publication in a newspaper of general circulation in the  
 9 locale of the offending person's principal office registered with the commission notice  
 10 of disciplinary action taken by the commission against a person licensed under this  
 11 chapter;

12 (6) issue a temporary permit to the personal representative of the estate  
 13 of a deceased real estate broker or to another person designated by the commission  
 14 with the approval of the personal representative of the estate in order to secure proper  
 15 administration in concluding the affairs of the decedent broker's real estate business;

16 (7) issue a temporary permit to the personal representative of a legally  
 17 incompetent real estate broker or to another person designated by the commission with  
 18 the approval of the personal representative of the broker in order to secure proper  
 19 administration in temporarily managing the real estate business of the broker;

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

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

23 (10) revoke the license of a broker or associate broker who is  
 24 convicted of a felony or other crime committed while licensed under this chapter that,  
 25 in the judgment of the commission, affects the ability of that person to practice as a  
 26 broker or associate broker competently and safely or who is convicted of forgery,  
 27 theft, extortion, conspiracy to defraud creditors, or fraud; notwithstanding  
 28 AS 08.88.171, a person whose license is revoked under this paragraph is not qualified  
 29 for a license under AS 08.88.171(a) or (b) until seven years have elapsed since the  
 30 person completed the sentence imposed for the conviction;

31 **(11) establish the minimum terms and conditions of errors and**

1 omissions coverage required by licensees to comply with the insurance  
 2 requirements of AS 08.88.172, including coverage requirements, limits of  
 3 coverage, deductible amounts, and limitations on cancellation terms;

4 (12) procure and make available to a person licensed under this  
 5 chapter an errors and omissions insurance policy that meets the minimum terms  
 6 and conditions established under (11) of this subsection using a competitive,  
 7 sealed bid process under AS 36.30 (State Procurement Code); the commission  
 8 may charge a reasonable administrative fee in addition to the policy premium to  
 9 a licensee who obtains errors and omissions insurance through the policy made  
 10 available by the commission.

11 \* **Sec. 2.** AS 08.88.071(b) is amended to read:

12 (b) When an award is made from the real estate **recovery** [SURETY] fund  
 13 under this chapter, the commission may suspend the license of the real estate licensee  
 14 whose actions formed the basis of the award. A suspension ordered under this  
 15 subsection shall be lifted if the licensee reaches an agreement with the commission on  
 16 terms and conditions for the repayment to the real estate **recovery** [SURETY] fund of  
 17 the money awarded to the claimant [AND THE COSTS OF HEARING THE CLAIM  
 18 UNDER AS 08.88.465] and if the licensee satisfies the requirements of AS 08.88.095.  
 19 The suspension shall be reimposed if the licensee violates the terms of a repayment  
 20 agreement entered into under this subsection.

21 \* **Sec. 3.** AS 08.88.171(b) is amended to read:

22 (b) A natural person qualifies for an associate real estate broker license if the  
 23 person passes the brokers examination, applies for the license within six months after  
 24 passing the examination, submits satisfactory proof of successful completion of the  
 25 education requirements of AS 08.88.091, has had at least 24 months of active and  
 26 continuous experience as a real estate licensee within the 36 months immediately  
 27 preceding application for the license, **furnishes satisfactory proof that errors and**  
 28 **omissions insurance required under AS 08.88.172 has been obtained,** is not under  
 29 indictment for or seven years have elapsed since the person has completed a sentence  
 30 imposed upon conviction of a felony or other crime that, in the judgment of the  
 31 commission, affects the person's ability to practice as an associate real estate broker

1 competently and safely or upon conviction of forgery, theft, extortion, conspiracy to  
 2 defraud creditors, or fraud, and is employed by a licensed real estate broker as an  
 3 associate real estate broker. Unless the associate broker fails to satisfy the educational  
 4 requirements of AS 08.88.095 or renew the license, or the associate broker's license is  
 5 suspended or revoked, the associate broker's license continues in effect as long as the  
 6 associate broker is employed by a licensed real estate broker as an associate broker. If  
 7 the associate broker stops being employed by a licensed real estate broker, the  
 8 associate broker's license is suspended from the time the associate broker stops until  
 9 the associate broker satisfies the educational requirements of AS 08.88.098 and

10 (1) again is employed by a real estate broker as an associate broker; or

11 (2) becomes an owner of a real estate business or is employed as a real  
 12 estate broker by a foreign or domestic corporation, partnership, limited partnership, or  
 13 limited liability company, in which case the associate broker's license shall be returned  
 14 to the commission by the associate broker, and the commission shall issue the licensee  
 15 a broker's license.

16 \* **Sec. 4.** AS 08.88.171(c) is amended to read:

17 (c) A natural person qualifies for a real estate salesperson license if the person  
 18 passes the real estate salesperson examination, applies for the license within six  
 19 months after passing the examination, submits satisfactory proof of successful  
 20 completion of the education requirements of AS 08.88.091, is at least 19 years of age,  
 21 **furnishes satisfactory proof that errors and omissions insurance required under**  
 22 **AS 08.88.172 has been obtained,** is not under indictment for a felony or other crime  
 23 that, in the judgment of the commission, affects the individual's ability to practice as a  
 24 real estate salesperson competently and safely or under indictment for forgery, theft,  
 25 extortion, conspiracy to defraud creditors, or fraud, or, if convicted of such an offense,  
 26 seven years have elapsed since the person completed the sentence imposed upon  
 27 conviction. Unless the salesperson fails to satisfy the educational requirements of  
 28 AS 08.88.095 or renew the license, or the real estate salesperson's license is suspended  
 29 or revoked, a real estate salesperson's license continues in effect.

30 \* **Sec. 5.** AS 08.88 is amended by adding a new section to read:

31 **Sec. 08.88.172. Errors and omissions insurance.** (a) A person licensed as a

1 real estate broker, associate real estate broker, or real estate salesperson shall, as a  
 2 condition of licensing, carry and maintain errors and omissions insurance to cover all  
 3 activities for which licensing is required under AS 08.88.161.

4 (b) The commission shall establish under AS 08.88.071(a)(11) the terms and  
 5 conditions of the errors and omissions insurance required under (a) of this section.

6 (c) A licensee may obtain the errors and omissions insurance required by (a)  
 7 of this section through the insurance policy procured and made available to licensees  
 8 under AS 08.88.071(a)(12), or may independently obtain errors and omissions  
 9 insurance that complies with the requirements established by the commission under  
 10 AS 08.88.071(a)(11).

11 (d) A licensee seeking to obtain or renew a license shall certify to the  
 12 commission that errors and omissions insurance has been obtained. A licensee who  
 13 elects to independently obtain errors and omissions insurance shall provide a  
 14 certificate of coverage with the application to obtain or renew a license.

15 \* **Sec. 6.** AS 08.88.173(b) is amended to read:

16 (b) If a loss covered by the fidelity bond required under this section is also  
 17 reimbursable from the real estate **recovery** [SURETY] fund, the owners' association  
 18 that suffered the loss may not recover under the bond until the association has  
 19 **obtained a judgment and** filed a claim for **an award** [REIMBURSEMENT] under  
 20 AS 08.88.460 [AND PROCEEDINGS RELATING TO THE CLAIM ARE  
 21 CONCLUDED].

22 \* **Sec. 7.** AS 08.88.281 is amended to read:

23 **Sec. 08.88.281. Real estate recovery [SURETY] fund.** Before issuing a  
 24 license to an applicant under this chapter, the commission shall ensure that the  
 25 applicant has complied with the provisions of AS 08.88.455 and is covered by the real  
 26 estate **recovery** [SURETY] fund established in AS 08.88.450.

27 \* **Sec. 8.** AS 08.88.291(a) is amended to read:

28 (a) A person licensed as a real estate broker shall, by registering with the  
 29 commission, inform the commission of the person's principal office and of any branch  
 30 offices of the person's real estate business and include in the information the names of  
 31 the real estate licensees who are employed at each office. A real estate licensee may

1 do real estate business only through a principal office in the state or from a branch  
 2 office in the state registered by the broker by whom the licensee is employed. Failure  
 3 of a real estate broker to maintain a place of business in the state or to inform the  
 4 commission of its location and the names and addresses of all real estate licensees  
 5 employed at each location by the broker is grounds for the suspension or revocation of  
 6 the broker's license.

7 \* **Sec. 9.** AS 08.88.291(d) is amended to read:

8 (d) The commission shall mail all notices pertaining to a license or recovery  
 9 [SURETY] fund action taken under this chapter or a regulation adopted under this  
 10 chapter to the current address or addresses of a licensee obtained under this section.  
 11 Proof of notice provided under this subsection satisfies due process notice  
 12 requirements.

13 \* **Sec. 10.** AS 08.88.391(b) is amended to read:

14 (b) The failure of a licensee to disclose a conflict of interest as required under  
 15 this section does not give rise to a cause of action by a private person. However, the  
 16 commission may, under AS 08.88.071, impose a disciplinary sanction for violation of  
 17 this section [, AND A CLAIM MAY BE FILED BY A PRIVATE PERSON UNDER  
 18 AS 08.88.460 IF THE VIOLATION CONSTITUTED FRAUD,  
 19 MISREPRESENTATION, OR DECEIT AND THE PERSON SUFFERED A LOSS  
 20 AS A RESULT OF THE VIOLATION].

21 \* **Sec. 11.** AS 08.88.450 is amended to read:

22 **Sec. 08.88.450. Real estate recovery [SURETY] fund.** (a) The real estate  
 23 recovery [SURETY] fund is established in the general fund to carry out the purposes  
 24 of AS 08.88.450 - 08.88.495. The fund is composed of payments made by real estate  
 25 licensees under AS 08.88.455, filing fees retained under AS 08.88.460, income earned  
 26 on investment of the money in the fund, and money deposited in the fund under (c) of  
 27 this section. Money in [APPROPRIATED TO] the fund does not lapse. The  
 28 commission may make payments from the fund for awards from the fund under  
 29 AS 08.88.450 - 08.88.495 [AMOUNTS IN THE FUND MAY BE APPROPRIATED  
 30 FOR CLAIMS AGAINST THE FUND], for hearing and legal expenses directly  
 31 related to fund operations and claims, and for real estate educational purposes.

1 (b) The Department of Commerce, Community, and Economic Development  
 2 shall provide the commission every three months with a statement of the activities of,  
 3 balances in, interest earned on, and interest returned to the real estate **recovery**  
 4 [SURETY] fund.

5 (c) If money from the real estate **recovery** [SURETY] fund is expended to  
 6 prepare, print, manufacture, sponsor, produce, or otherwise provide an item or a  
 7 service to a member of the public, to a real estate licensee, to a potential real estate  
 8 licensee, or to another person, any money paid by the person to the commission, either  
 9 directly or through an agent or contractor of the commission, to receive the item or  
 10 service shall be deposited in the fund. In this subsection, "an item or a service"  
 11 includes an information pamphlet, an examination preparation packet, an educational  
 12 course, the certification of a real estate education course, and the approval of a real  
 13 estate education instructor.

14 \* **Sec. 12.** AS 08.88.455 is amended to read:

15 **Sec. 08.88.455. Payments by real estate licensees.** (a) A real estate licensee,  
 16 when applying for or renewing a real estate license, in lieu of obtaining a corporate  
 17 surety bond, shall pay to the commission, in addition to the license fee, a **recovery**  
 18 [SURETY] fund fee not to exceed \$125. After each two-year licensing cycle, if the  
 19 commission finds that the average balance in the **recovery** [SURETY] fund during the  
 20 two-year licensing cycle was less than \$250,000 or more than \$500,000, the  
 21 commission shall by regulation adjust the **recovery** [SURETY] fund fees so that the  
 22 average balance of the **recovery** [SURETY] fund during the next two-year licensing  
 23 cycle is anticipated to be an amount that is not less than \$250,000 or more than  
 24 \$500,000. In this subsection, "average balance" means the average balance after taking  
 25 into account anticipated expenditures for **awards from** [CLAIMS AGAINST] the  
 26 fund [, FOR HEARING] and legal expenses directly related to fund operations [AND  
 27 CLAIMS], and for real estate educational purposes.

28 (b) All fees collected under this section shall be paid at least once a month by  
 29 the department into the general fund. These payments shall be credited to the real  
 30 estate **recovery** [SURETY] fund.

31 \* **Sec. 13.** AS 08.88.460(a) is amended to read:

1 (a) Subject to (e) of this section, a person seeking **an award from the**  
 2 **recovery fund** [REIMBURSEMENT] for a loss suffered in a real estate transaction as  
 3 a result of fraud, misrepresentation, deceit, or the conversion of trust funds or the  
 4 conversion of community association accounts under the control of a community  
 5 association manager on the part of a **person** [LICENSEE] licensed under this chapter  
 6 shall

7 **(1) obtain a judgment from a court of competent jurisdiction**  
 8 **against the person committing fraud, misrepresentation, deceit, the conversion of**  
 9 **trust funds, or the conversion of community association accounts;**

10 **(2) submit an affidavit describing the efforts made to collect the**  
 11 **judgment, stating that the person has used due diligence to collect the judgment,**  
 12 **stating that the judgment, or a portion of the judgment, is uncollectable using**  
 13 **reasonable efforts, and that the conduct that is the subject of the judgment**  
 14 **involved an activity for which a person must obtain a license under AS 08.88.161;**

15 **(3) make a claim to the commission for an award from the recovery**  
 16 **fund** [REIMBURSEMENT] on a form furnished by the commission; **in** [. IN] order to  
 17 be eligible for **an award** [REIMBURSEMENT] by the commission, the claim form  
 18 must be filed within two years after the occurrence of the fraud, misrepresentation,  
 19 deceit, or conversion of trust funds or the conversion of community association  
 20 accounts under the control of a community association manager claimed as the basis  
 21 for the **award from the recovery fund; the** [REIMBURSEMENT. THE] form **must**  
 22 [SHALL] be executed under penalty of unsworn falsification in the second degree and  
 23 must include

24 **(A)** [THE FOLLOWING: (1)] the name and address of each  
 25 real estate licensee involved;

26 **(B) a copy of the judgment;**

27 **(C) a copy of the affidavit asserting due diligence but lack**  
 28 **of success in collecting the entire judgment;**

29 **(D)** [(2)] the amount of the **judgment that remains unpaid**  
 30 [ALLEGED LOSS;

31 (3) THE DATE OR PERIOD OF TIME DURING WHICH THE

1 ALLEGED LOSS OCCURRED;

2 (4) THE DATE UPON WHICH THE ALLEGED LOSS WAS  
3 DISCOVERED];

4 (E) [(5)] the name and address of the claimant; and

5 (F) [(6)] a general statement of facts relative to the claim.

6 \* **Sec. 14.** AS 08.88.460(b) is amended to read:

7 (b) **The commission shall send a** [A] copy of a claim filed [WITH THE  
8 COMMISSION] under (a) of this section [SHALL BE SENT] to each real estate  
9 licensee **against whom a judgment was awarded for a reason set out in (a) of this**  
10 **section** [ALLEGED TO HAVE COMMITTED THE MISCONDUCT RESULTING  
11 IN LOSSES, TO THE PRINCIPAL REAL ESTATE BROKER EMPLOYING A  
12 LICENSEE ALLEGED TO HAVE COMMITTED THE CONDUCT RESULTING  
13 IN LOSSES, AND TO ANY OTHER REAL ESTATE LICENSEE INVOLVED IN  
14 THE TRANSACTION AT LEAST 20 DAYS BEFORE ANY HEARING HELD ON  
15 THE CLAIM BY THE OFFICE OF ADMINISTRATIVE HEARINGS  
16 (AS 44.64.010)].

17 \* **Sec. 15.** AS 08.88.460(d) is amended to read:

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 if the

20 (1) commission makes an award to the claimant from the real estate  
21 **recovery** [SURETY] fund; **or**

22 (2) **claimant withdraws the claim** [CLAIM IS DISMISSED UNDER  
23 (c) OF THIS SECTION; OR

24 (3) CLAIM IS WITHDRAWN BY THE CLAIMANT BEFORE THE  
25 OFFICE OF ADMINISTRATIVE HEARINGS (AS 44.64.010) HOLDS A  
26 HEARING ON THE CLAIM].

27 \* **Sec. 16.** AS 08.88.465(a) is repealed and reenacted to read:

28 (a) If the commission receives a claim for an award from the recovery fund  
29 that complies with the requirements of AS 08.88.450 - 08.88.495, the commission  
30 shall make an award from the recovery fund in an amount not to exceed \$15,000. Not  
31 more than \$15,000 may be paid for each transaction, regardless of the number of

1 persons injured or the number of parcels of real estate involved in the transaction.

2 \* **Sec. 17.** AS 08.88.472(a) is amended to read:

3 (a) The commission may charge [TO] the real estate **recovery** [SURETY]  
 4 fund **for** [HEARING AND LEGAL] expenses related to fund operations [AND  
 5 CLAIMS]. The commission shall deposit into the real estate **recovery** [SURETY]  
 6 fund amounts recovered for these expenses from the licensee under AS 08.88.071(b)  
 7 or from other parties under AS 08.88.490.

8 \* **Sec. 18.** AS 08.88.472(d) is amended to read:

9 (d) If the salary of an employee is entirely or partially paid for from money in  
 10 the real estate **recovery** [SURETY] fund, the employee may perform administrative  
 11 duties for the commission in addition to any duties the employee performs that are  
 12 related to the real estate **recovery** [SURETY] fund. AS 08.88.910 does not apply to  
 13 this subsection.

14 \* **Sec. 19.** AS 08.88.475 is amended to read:

15 **Sec. 08.88.475. Maximum liability.** (a) The maximum liability of the real  
 16 estate **recovery** [SURETY] fund may not exceed \$50,000 for any one real estate  
 17 licensee.

18 (b) If the \$50,000 liability of the fund as provided in (a) of this section is  
 19 insufficient to pay in full the valid claims of all persons who have **obtained**  
 20 **judgments** [FILED CLAIMS] against an individual licensee **and have filed claims**  
 21 **for an award from the recovery fund**, the \$50,000 shall be distributed among the  
 22 claimants in the ratio that their individual claims bear to the aggregate of valid claims,  
 23 or in another manner that the commission considers equitable. Distribution shall be  
 24 among the persons entitled to share in the recovery without regard to the order in  
 25 which their claims were filed.

26 \* **Sec. 20.** AS 08.88.480 is amended to read:

27 **Sec. 08.88.480. Order of claim payment.** If the money deposited in the real  
 28 estate **recovery** [SURETY] fund is insufficient at a given time to satisfy a duly  
 29 authorized claim against the fund, the commission shall, when sufficient money has  
 30 been deposited in the fund and appropriated, satisfy unpaid claims in the order that the  
 31 claims were originally filed, plus accumulated interest at the rate of eight percent a

1 year.

2 \* **Sec. 21.** AS 08.88.490 is amended to read:

3 **Sec. 08.88.490. Right to subrogation.** When the commission has paid to a  
4 claimant from the real estate recovery [SURETY] fund the sum awarded by the  
5 commission, the commission shall be subrogated to all of the rights of the claimant to  
6 the amount paid, and the claimant shall assign all right, title, and interest in that  
7 portion of the claim to the commission. Money collected by the commission on the  
8 claim shall be deposited to the real estate recovery [SURETY] fund.

9 \* **Sec. 22.** AS 08.88.495 is amended to read:

10 **Sec. 08.88.495. Disciplinary action [AGAINST BROKERS AND**  
11 **SALESMEN].** Repayment in full of all obligations to the real estate recovery  
12 [SURETY] fund does not nullify or modify the effect of disciplinary proceedings  
13 brought under the provisions of this chapter.

14 \* **Sec. 23.** AS 08.88.460(c), 08.88.465(b), 08.88.465(c), 08.88.465(d), 08.88.465(e),  
15 08.88.465(f), 08.88.470, 08.88.472(b), 08.88.472(c), and 08.88.474 are repealed.

16 \* **Sec. 24.** The uncodified law of the State of Alaska is amended by adding a new section to  
17 read:

18 TRANSITIONAL PROVISIONS: REGULATIONS. The commission may proceed to  
19 adopt regulations necessary to implement this Act. The regulations take effect under AS 44.62  
20 (Administrative Procedure Act), but not before March 1, 2010.

21 \* **Sec. 25.** Section 24 of this Act takes effect immediately under AS 01.10.070(c).

22 \* **Sec. 26.** Except as provided in sec. 25 of this Act, this Act takes effect March 1, 2010.