

1 IN THE HOUSE

BY MR. WHITE

2 HOUSE BILL NO. 313

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRD LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to licensing real estate
7 brokers, associate real estate brokers, and
8 real estate salesmen; and providing for an
9 effective date."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. AS 08.88 is amended by adding new sections to
12 read:

13 ARTICLE 1. REAL ESTATE COMMISSION.

14 Sec. 08.88.011. CREATION AND MEMBERSHIP OF COMMISSION.

15 There is created a Real Estate Commission. It consists of
16 five members.

17 Sec. 08.88.021. APPOINTMENT AND TERMS OF OFFICE. The

18 governor shall appoint the members of the commission, with
19 the confirmation of the legislature, for staggered terms of
20 four years. A member serves at the pleasure of the governor.
21 The governor shall fill a vacancy by appointment for the un-
22 expired term. A member serves until his successor is
23 appointed.

24 Sec. 08.88.031. EXECUTIVE SECRETARY OF COMMISSION. The

25 commissioner of commerce is the executive secretary of the
26 commission. He may vote only to break a tie.

27 Sec. 08.88.041. QUALIFICATIONS OF COMMISSION MEMBERS.

28 (a) To be eligible for appointment as a member of the com-
29 mission a person must be

1 (1) at least 26 years of age;

2 (2) a licensed real estate broker who has been a
3 real estate broker for at least three years before his
4 appointment.

5 (b) Not more than two members may be appointed from any
6 one judicial district.

7 Sec. 08.88.051. COMMISSION MEETINGS AND OFFICERS. (a)
8 The commission shall hold a regular annual meeting. It may
9 hold a special meeting at the call of the chairman or at the
10 request of three commission members.

11 (b) A majority of the commission is a quorum for con-
12 ducting business.

13 (c) The commission shall elect its officers.

14 Sec. 08.88.061. ASSISTANTS. The commission may employ
15 assistants to

16 (1) prepare questions on examinations;

17 (2) grade examinations;

18 (3) investigate alleged violations of this chapter.

19 Sec. 08.88.071. DUTIES OF THE COMMISSION. The commis-
20 sion shall

21 (1) pass on qualifications of applicants for
22 licenses and issue licenses to those who qualify;

23 (2) prepare and grade examinations;

24 (3) after hearing, have the authority to suspend
25 or revoke the license of a licensee who

26 (A) with respect to a real estate transaction

27 (1) made a substantial misrepresentation;

28 (11) made a false promise likely to in-
29 fluence, persuade, or induce;

1 (iii) in the case of a real estate
2 broker, pursued a flagrant course of misrepresenta-
3 tion or made a false promise through an agent,
4 associate real estate broker, or real estate sales-
5 man;

6 (iv) has engaged in conduct that is
7 fraudulent or dishonest;

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

10 (C) has engaged in conduct, of which the com-
11 mission had no knowledge at the time he was licensed,
12 demonstrating his unfitness to engage in the business
13 for which he is licensed;

14 (D) knowingly authorizes, directs, connives
15 at or aids in publishing, distributing, or circulating
16 a material false statement or misrepresentation concern-
17 ing his business or concerning real estate for sale in
18 his business in this or any other state;

19 (E) if a real estate broker, wilfully violates
20 sec. 171(d) or sec. 291 of this chapter;

21 (F) if an associate real estate broker,
22 claims to be a real estate broker, or, if a real es-
23 tate salesman claims to be a real estate broker or as-
24 sociate real estate broker;

25 (G) if a real estate broker, employs an un-
26 licensed associate real estate broker or real estate
27 salesman;

28 (H) if an associate real estate broker or
29 real estate salesman, fails immediately to turn money

1 collected in a real estate transaction over to the
2 employing real estate broker;

3 (4) prosecute through the Department of Law for a
4 violation of sec. 391 of this chapter.

5 Sec. 08.88.081. COMMISSION REGULATIONS. The commis-
6 sion shall adopt substantive regulations making more specific
7 the general grounds for revoking or suspending a license.

8 Sec. 08.88.091. EDUCATION. The commission may conduct
9 and assist in conducting real estate clinics, meetings,
10 courses, or institutes. The commission may assist libraries
11 and educational institutions in sponsoring studies and pro-
12 grams for the purpose of raising the standards of the real
13 estate business and the competency of licensees.

14 Sec. 08.88.101. ADMINISTRATIVE DUTIES OF DEPARTMENT.

15 (a) The department shall furnish the commission with admin-
16 istrative services, including collecting fees and issuing
17 receipts; keeping records of receipts and disbursements; dis-
18 tributing and receiving application forms; notifying an
19 applicant whether or not the commission has accepted his
20 application; designating the date on which annual examina-
21 tions are to be held; at least 30 days before an examination
22 is to be held, publishing notice that it is to be held;
23 printing examinations; providing space for holding examina-
24 tions; proctoring examinations; notifying applicants of the
25 results of the examination; printing and distributing uni-
26 form license certificates, duplicate certificates to replace
27 lost ones, and pocket-sized recognition cards; sending
28 notice, before December 1 of each year, that licenses must
29 be renewed; keeping a current register of licensees; employ-

1 ing secretarial assistants; replying to routine requests for
2 information; printing and distributing forms and informa-
3 tional bulletins; maintaining records and completed examina-
4 tions; recording suspensions and revocations of licenses;
5 and recording office registrations.

6 (b) The department shall allow members of the commis-
7 sion free access to its records concerning the commission's
8 activities.

9 Sec. 08.88.111. DEPARTMENT REGULATIONS. The department
10 shall adopt procedural regulations describing

11 (1) how it conducts an examination;

12 (2) how a person applies to take an examination,
13 applies for a license, and registers his office.

14 Sec. 08.88.121. SALE OF REGISTER. The department shall
15 offer for sale to the public, publications containing the
16 names, addresses, license classifications, and business
17 associations of persons licensed by the commission. The
18 department shall sell the publications at a price designed
19 to recover costs of compilation, publication, and distribu-
20 tion.

21 Sec. 08.88.131. APPLICABILITY OF THE ADMINISTRATIVE
22 PROCEDURE ACT. The Administrative Procedure Act (AS 44.62)
23 applies to regulations and proceedings under this chapter.

24 Sec. 08.88.141. COMPENSATION. A commission member is
25 entitled to transportation expenses and per diem allowances
26 specified in AS 39.20.180.

27 ARTICLE 2. LICENSING

28 Sec. 08.88.161. LICENSE REQUIRED. Unless he is licens-
29 ed as a real estate broker, associate real estate broker, or

- 1 real estate salesman, no person may
- 2 (1) sell, exchange, rent, lease, auction, or pur-
- 3 chase real estate;
- 4 (2) list real estate for sale, exchange, rent,
- 5 lease, auction, or purchase;
- 6 (3) collect rent for the use of real estate;
- 7 (4) as a business, buy, sell, or deal in
- 8 (A) options in real estate; or
- 9 (B) options in improvements to real estate;
- 10 (5) assist in or direct the procuring of prospective
- 11 buyers or the negotiation of a transaction which results or
- 12 is calculated to result in the sale, exchange, rent, lease,
- 13 auction, or purchase of real estate;
- 14 (6) hold himself out to the public as being en-
- 15 gaged in the business of doing any of the things listed in
- 16 this section;
- 17 (7) attempt or offer to do any of the things list-
- 18 ed in this section.
- 19 Sec. 08.88.171. ENTITLEMENT TO LICENSE. (a) A person
- 20 is entitled to a real estate broker license who passes the
- 21 real estate examination and who is an owner of his real
- 22 estate business. Unless he fails to pay the annual renewal
- 23 fee or his license is suspended or revoked under sec. 71(3)
- 24 of this chapter, a real estate broker's license continues
- 25 in effect so long as he is an owner of his real estate busi-
- 26 ness. If he stops being an owner of his real estate business,
- 27 his license is suspended from the time he stops until
- 28 (1) he again becomes an owner of his real estate
- 29 business; or

1 (2) he is employed by a licensed real estate
2 broker, in which case his real estate broker license is
3 revoked, and the department issues him an associate real
4 estate broker license.

5 (b) A person is entitled to an associate real estate
6 broker license who passes the real estate examination and
7 who is employed by a licensed real estate broker. Unless he
8 fails to pay the annual renewal fee or his license is sus-
9 pended or revoked under sec. 71(3) of this chapter, an
10 associate real estate broker's license continues in effect so
11 long as he is employed by a licensed real estate broker. If
12 he stops being employed by a licensed real estate broker,
13 his license is suspended from the time he stops until

14 (1) he again is employed by a licensed real estate
15 broker; or

16 (2) he becomes an owner of a real estate business,
17 in which case his associate real estate broker license is
18 revoked, and the department issues him a real estate broker
19 license.

20 (c) A person is entitled to a real estate salesman
21 license who passes the real estate salesman examination and
22 who is employed by a real estate broker. Unless he fails to
23 pay the annual renewal fee or his license is suspended or
24 revoked under sec. 71(3) of this chapter, a real estate sales-
25 man's license continues in effect so long as he is employed
26 by a licensed real estate broker. If he stops being employed
27 by a licensed real estate broker, his license is suspended
28 from the time he stops until he again is employed by a
29 licensed real estate broker.

1 (d) A licensee shall promptly inform the department of
2 a change in his business association that affects the status
3 of his license under this section.

4 Sec. 08.88.181. CONTENT OF EXAMINATION. (a) The real
5 estate examination includes questions on business ethics;
6 arithmetic; elementary principles of land economics and
7 appraisal; the general principles in state statutes relating
8 to deeds, mortgages, real estate contracts, subdivisions,
9 legal descriptions, building restrictions, agency and broker-
10 age; and the general provisions in this chapter and in regu-
11 lations of the commission.

12 (b) The real estate salesman examination covers the
13 same subjects as the real estate examination, but is less
14 difficult.

15 (c) The only purpose of an examination under this chap-
16 ter is to disqualify those whose lack of ability to partici-
17 pate in real estate transactions would create a serious risk
18 of serious financial loss to members of the public.

19 Sec. 08.88.191. ADMINISTRATION OF EXAMINATION. (a)
20 The department shall offer examinations prepared by the com-
21 mission at least once a year and more frequently if more
22 than two persons who are qualified to take an examination
23 petition the department for an additional examination.

24 (b) Examinations shall be so administered that one who
25 grades an examination does not know whose paper he is grading.

26 (c) The department shall maintain files of examination
27 papers. A person is entitled to inspect his examination
28 paper for the purpose of challenging the propriety of its
29 questions, the method of grading, or the accuracy of grading.

1 (d) Every two years the department shall have publish-
2 ed and sell at cost copies of examinations for the preceding
3 two years. The commission shall prepare a new examination
4 at least every two years.

5 (e) If a person fails to take an examination after he
6 has paid the application fee, the department shall refund the
7 fee.

8 Sec. 08.88.201. RE-EXAMINATION. A person who fails an
9 examination may apply for a subsequent examination, but shall
10 pay the application fee each time he applies. He may not
11 petition for an additional examination under sec. 191(a) of
12 this chapter, but may take one if it is offered.

13 Sec. 08.88.211. QUALIFICATION FOR EXAMINATION. (a) A
14 person is entitled to take a real estate examination if he

15 (1) has a high school education or has completed
16 a course of study in real estate approved by the commission;

17 (2) has had at least 24 months of active and
18 continuous experience as a real estate salesman;

19 (3) has been a resident of the state for at least
20 90 days;

21 (4) is at least 21 years old;

22 (5) has not engaged in conduct that demonstrates
23 that he is unfit to be a real estate broker;

24 (6) is a United States citizen;

25 (7) files the required bond.

26 (b) A person is entitled to take a real estate sales-
27 man examination if he

28 (1) is at least 19 years old;

29 (2) has been a resident of the state for 90 days;

1 (3) has not engaged in conduct that demonstrates
2 that he is unfit to be a real estate salesman;

3 (4) is a United States citizen;

4 (5) files the required bond.

5 (c) In addition to the requirements of (a) or (b) of
6 this section, to be qualified to take an examination a per-
7 son must

8 (1) within the time specified by a department regu-
9 lation, return application forms to the department showing
10 information specified in a regulation of the commission;

11 (2) pay the application fee.

12 Sec. 08.88.221. FEES. The application fee is \$15.
13 The renewal fee is \$15. The out-of-state license fee is \$15.
14 The fee for a duplicate license is \$2.

15 Sec. 08.88.231. DEPOSIT IN GENERAL FUND. The depart-
16 ment shall deposit money collected under this chapter in the
17 general fund.

18 Sec. 08.88.241. ANNUAL RENEWAL. A person who passes
19 the examination is licensed without payment of further fee.
20 To remain licensed, a person must pay the renewal fee before
21 February 1 of each year. The commission shall renew a lapsed
22 license when the licensee applies for renewal and pays
23 accrued renewal fees. He is entitled to have it renewed
24 without taking an examination unless his license has lapsed
25 more than five years, in which case he is required to take
26 an examination if the commission finds that additional evi-
27 dence of his continued fitness to practice is required.

28 Sec. 08.88.251. INACTIVE LICENSE. A person licensed
29 by the commission may become inactive by returning to the

1 department his license certificate and a form provided by the
2 department. In the form, he shall state the date on which he
3 intends to become inactive. His inactive status begins on
4 the date stated. The department shall issue him an inactive
5 license certificate.

6 (b) An inactive licensee may not do any of the things
7 sec. 161 of this chapter authorizes an active licensee to
8 do.

9 (c) A person who is inactive may become active by re-
10 turning to the department his inactive license certificate,
11 the renewal fee for the year, if he becomes active more than
12 five months before February 1 following, and a form provided
13 by the department. In the form he shall state the date on
14 which he intends to become active. His active status begins
15 on the date stated. The department shall send him a license
16 certificate. A person is entitled to change from an inactive
17 to an active status without examination if he has not been
18 inactive more than five years. If he has been inactive more
19 than five years he is required to take an examination if the
20 commission finds that additional evidence of his continued
21 fitness to practice is required.

22 Sec. 08.88.261. OUT-OF-STATE LICENSEES. A person who
23 holds a valid, active license from another state is entitled
24 to a license of the kind he holds there without examination
25 if he (1) meets the requirements of sec. 211 of this chapter;
26 and (2) passed an examination in the other state at least as
27 comprehensive as the Alaska examination.

28 ARTICLE 3. MISCELLANEOUS PROVISIONS

29 Sec. 08.88.281. BONDS. Before issuing a license to

1 an applicant under this chapter, the board shall determine
2 that the applicant has a corporate surety bond acceptable to
3 the commission. If the applicant is applying for a real
4 estate broker license, the bond is for \$2,000; if he is apply-
5 ing for any other license, the bond is for \$1,000. The bond
6 is made payable to the state, and is breached if the licensee
7 injures another by a wrongful act or default in the conduct
8 of the business for which his license is issued. A person
9 injured by a wrongful act or default may sue in his own name.
10 The bond covers the principal office and all branch offices
11 of a real estate broker.

12 Sec. 08.88.291. LOCATION. A licensed real estate
13 broker shall inform the commission of his principal office
14 and of any branch offices he has. He and the associate real
15 estate brokers and real estate salesmen he employs may do
16 business only at his principal office and his branch offices.
17 The department shall print the location of the principal
18 office and branch offices at which a person may do business
19 in the person's license certificate.

20 Sec. 08.88.301. CHANGE OF LOCATION. If a real estate
21 broker changes the location of his principal office or of a
22 branch office, he shall immediately notify the department and
23 send to the department his and his employees' licenses. The
24 department shall issue new licenses reflecting the change.

25 Sec. 08.88.311. BRANCH OFFICES. If a branch office is
26 not in the same election district as the principal office,
27 or if it is beyond the real estate broker's immediate super-
28 vision, the real estate broker shall employ an associate
29 real estate broker to be in charge of it.

1 Sec. 08.88.321. POSSESSION AND DISPLAY OF LICENSE
2 CERTIFICATES. A real estate salesman or an associate real
3 estate broker shall turn his license certificate over to the
4 real estate broker who employs him. The employing real
5 estate broker shall display his license certificate in his
6 principal office and the license certificates of those he
7 employs in the office where they do most of their work.

8 Sec. 08.88.331. MAKING OF TRANSACTIONS. A real estate
9 salesman or associate real estate broker may make a real
10 estate transaction only through the real estate broker who
11 employs him. All money collected on behalf of the broker
12 shall immediately be turned over to the broker or his agent.
13 All transactions in real estate by a real estate salesman or
14 associate real estate broker shall be processed through his
15 employing real estate broker's office, whether the transactions
16 are for the real estate salesman's or associate real estate
17 broker's own use or the use of a client.

18 Sec. 08.88.341. LISTINGS. All real estate listings
19 must be in writing and must be signed by the seller or by an
20 agent of the seller. All exclusive listings must have a
21 definite expiration date.

22 Sec. 08.88.351. RECORD OF TRANSACTION. A real estate
23 broker shall

24 (1) keep a complete record of all real estate
25 transactions made by himself or persons in his employ for at
26 least three years;

27 (2) make a closing statement showing disbursements
28 and accounting for all money in the transaction;

29 (3) keep a separate trust account in a bank.

1 Sec. 08.88.361. WHEN COMMISSION IS EARNED. A commis-
2 sion is earned when the real estate broker finds a buyer will-
3 ing and able to purchase at a price and on terms set by the
4 seller, providing negotiations with the buyer were initiated
5 during the term of a valid listing agreement and within the
6 time limit of the listing.

7 Sec. 08.88.371. CONDUCT BY EMPLOYEE. For the purposes
8 of sec. 71(3) of this chapter, the conduct of an employee is
9 not attributable to a real estate broker unless the real
10 estate broker has actual knowledge that the employee is going
11 to engage in the conduct and agrees to the conduct, either
12 actively or by remaining silent, or ratifies the conduct
13 after it is engaged in.

14 Sec. 08.88.381. SIGNS. A licensed real estate broker
15 shall maintain a sign at each of his offices, prominently
16 showing the name of his business.

17 Sec. 08.88.391. PROHIBITED CONDUCT. (a) No licensee
18 may use the term "REALTOR" unless he is entitled to use it.

19 (b) No person, even though he be an obligor or escrow
20 holder, may pay or deliver compensation to a person who is
21 not licensed under this chapter for doing work for which a
22 license is required under this chapter. A current license
23 certificate or pocket recognition card issued by the commis-
24 sion is sufficient proof to relieve the person from criminal
25 responsibility under this section.

26 (c) No person may

27 (1) knowingly authorize, direct, or aid in the
28 publication of a false statement or misrepresentation con-
29 cerning land or a subdivision offered for sale or lease;

1 (2) with knowledge that an advertisement, pamphlet,
2 or letter concerning land or a subdivision contains a written
3 statement that is false or fraudulent, issue, circulate,
4 publish, or distribute it or cause it to be issued, circulat-
5 ed, published, or distributed.

6 (d) A person who violates a provision of this section
7 or sec. 161 of this chapter is guilty of a misdemeanor.

8 ARTICLE 4. GENERAL PROVISIONS

9 Sec. 08.88.411. EXCEPTIONS. This chapter does not
10 apply to

11 (1) a person making a real estate transaction with
12 respect to real estate he owns;

13 (2) an attorney-in-fact under a power of attorney
14 authorizing the consummation of a specific real estate trans-
15 action; an attorney-in-fact may not act as such for more
16 than two transactions in a calendar year;

17 (3) a lawyer performing his duties as a lawyer;

18 (4) a public official in the conduct of his offi-
19 cial duties;

20 (5) a person acting as receiver, trustee, adminis-
21 trator, executor, or guardian;

22 (6) a person acting under court order;

23 (7) a person acting under the authority of a will
24 or trust instrument;

25 (8) a person dealing in mineral-rights transactions.

26 Sec. 08.88.421. DEFINITIONS. In this chapter

27 (1) "real estate" means an interest or estate in
28 land, corporeal or incorporeal;

29 (2) "commission" means the Real Estate Commission;

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(3) "department" means the Department of Commerce;

(4) "lease" includes a lease that is a part of another transaction.

* Sec. 2. A person who was licensed to make a real estate transaction before the effective date of this Act is entitled to a license under AS 08.88 corresponding to the one he held before the effective date of this Act without examination and without meeting the other qualifications.

* Sec. 3. AS 08.88.010 - 08.88.520 are repealed.

* Sec. 4. This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.