

Original Sponsor: Mr. White

1 IN THE HOUSE . BY THE COMMERCE COMMITTEE

2 CS FOR 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 real estate broker who has been a licensed
3 real estate broker in Alaska for at least five years before
4 his 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 broker,
2 pursued a flagrant course of misrepresentation or
3 made a false promise through an agent, associate
4 real estate broker, or real estate salesman;
5 (iv) has engaged in conduct that is
6 fraudulent or dishonest;
7 (v) violates sec. 391 of this chapter;
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 estate
23 salesman claims to be a real estate broker or associate
24 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. 401 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, meeting,
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 dates on which examinations
21 are to be held; at least 30 days before an examination is to
22 be held, publishing notice that it is to be held; printing
23 examinations; providing space for holding examinations;
24 proctoring examinations; notifying applicants of the results
25 of the examination; printing and distributing uniform license
26 certificates, duplicate certificates to replace lost ones,
27 and pocket-sized recognition cards; sending notice, before
28 December 1 of each year, that licenses must be renewed;
29 keeping a current register of licensees; employing secretarial

1 assistants; replying to routine requests for information;
2 printing and distributing forms and informational bulletins;
3 maintaining records and completed examinations; recording
4 suspensions and revocations of licenses; and recording
5 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 Sed. 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 or who is employed as a real estate broker by
23 a corporation or a partnership. Unless he fails to pay the
24 annual renewal fee or his license is suspended or revoked
25 under sec. 71(3) of this chapter, a real estate broker's
26 license continues in effect so long as he is an owner of his
27 real estate business or he is employed as a real estate broker
28 by a corporation or a partnership. If he stops being an owner
29 of his real estate business, or stops being employed as a real

1 estate broker by a corporation or partnership, his license
2 is suspended from the time he stops until

3 (1) he again becomes an owner of his real estate
4 business or is again employed as a real estate broker by a
5 corporation or a partnership; or

6 (2) he is employed by a licensed real estate
7 broker, in which case his real estate broker license is re-
8 voked, and the department issues him an associate real estate
9 broker license.

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

19 (1) he again is employed by a licensed real estate
20 broker; or

21 (2) he becomes an owner of a real estate business,
22 in which case his associate real estate broker license is
23 revoked, and the department issues him a real estate broker
24 license.

25 (c) A person is entitled to a real estate salesman
26 license who passes the real estate salesman examination and
27 who is employed by a real estate broker. Unless he fails to
28 pay the annual renewal fee or his license is suspended or
29 revoked under sec. 71(3) of this chapter, a real estate sales-

1 man's license continues in effect so long as he is employed
2 by a licensed real estate broker. If he stops being employed
3 by a licensed real estate broker, his license is suspended
4 from the time he stops until he again is employed by a
5 licensed real estate broker.

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

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

17 (b) The real estate salesman examination covers the
18 same subjects as the real estate examination, but is less
19 difficult.

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

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

29 (b) Examinations shall be so administered that one who

1 grades an examination does not know whose paper he is
2 grading.

3 (c) The department shall maintain files of examination
4 papers. A person, at any reasonable time within six months
5 of the date he is notified of the results of the examination,
6 is entitled to inspect his examination paper for the purpose
7 of challenging the propriety of its questions, the method of
8 grading, or the accuracy of grading.

9 (d) If a person fails to take an examination after he
10 has paid the application fee, the department shall refund the
11 fee.

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

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

20 (1) has had at least 24 months of active and con-
21 tinuous experience as a real estate salesman;

22 (2) has been a resident of the state for at least
23 90 days;

24 (3) is at least 21 years old;

25 (4) has not engaged in conduct that demonstrates
26 that he is unfit to be a real estate broker;

27 (5) is a United States citizen;

28 (6) files the required bond.

29 (b) A person is entitled to take a real estate sales-

1 man examination if he

2 (1) is at least 19 years old;

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

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

6 (4) is a United States citizen;

7 (5) files the required bond.

8 (c) In addition to the requirements of (a) or (b) of
9 this section, to be qualified to take an examination a person
10 must

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

14 (2) pay the application fee.

15 Sec. 08.88.221. FEES. The application fee is \$25.
16 The renewal fee is \$25. The fee for a duplicate license
17 is \$1.

18 Sec. 08.88.231. DEPOSIT IN GENERAL FUND. The depart-
19 ment shall deposit money collected under this chapter in the
20 general fund.

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

1 evidence of his continued fitness to practice is required.

2 Sec. 08.88.251. INACTIVE LICENSE. A person licensed
3 by the commission may become inactive by returning to the
4 department his license certificate and a form provided by the
5 department. In the form, he shall state the date on which he
6 intends to become inactive. His inactive status begins on
7 the date stated. The department shall issue him an inactive
8 license certificate.

9 (b) An inactive licensee may not do any of the things
10 sec. 161 of this chapter authorizes an active licensee to
11 do, nor is he required to have a bond or pay a fee.

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

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

1 comprehensive as the Alaska examination.

2 ARTICLE 3. MISCELLANEOUS PROVISIONS

3 Sec. 08.88.281. BONDS. Before issuing a license to
4 an applicant under this chapter, the board shall determine
5 that the applicant has a corporate surety bond acceptable to
6 the commission. If the applicant is applying for a real
7 estate broker license, the bond is for \$2,000; if he is apply-
8 ing for any other license, the bond is for \$1,000. The bond
9 is made payable to the state, and is breached if the licensee
10 injures another by a wrongful act or default in the conduct
11 of the business for which his license is issued. A person
12 injured by a wrongful act or default may sue in his own name.
13 The bond covers the principal office and all branch offices
14 of a real estate broker.

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

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

28 Sec. 08.88.311. BRANCH OFFICES. If a branch office is
29 not in the same election district as the principal office,

1 or if it is beyond the real estate broker's immediate super-
2 vision, the real estate broker shall employ an associate
3 real estate broker to be in charge of it. No real estate
4 broker may place a real estate salesman in charge of a
5 principal or branch office.

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

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

23 Sec. 08.88.341. LISTINGS. All real estate listings
24 must be in writing and must be signed by the seller or by an
25 agent of the seller. All exclusive listings must have a
26 definite expiration date.

27 Sec. 08.88.351. RECORD OF TRANSACTION. A real estate
28 broker shall

29 (1) keep a complete record of all real estate

1 transactions made by himself or persons in his employ for at
2 least three years;

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

5 (3) keep a separate trust account in a bank, into
6 which he shall deposit all earnest money deposits and purchase
7 money in the trust account until it is proper for him to
8 distribute the money to the proper persons.

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

15 Sec. 08.88.371. CONDUCT BY EMPLOYEE. For the purposes
16 of sec. 71(3) of this chapter, the conduct of an employee is
17 not attributable to a real estate broker unless the real
18 estate broker has actual knowledge that the employee is going
19 to engage in the conduct and agrees to the conduct, either
20 actively or by remaining silent, or ratifies the conduct
21 after it is engaged in.

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

25 Sec. 08.88.391. CONFLICT OF INTEREST. A licensed real
26 estate broker, associate real estate broker, or real estate
27 salesman who has a personal financial interest in a real
28 estate transaction shall disclose that interest to every
29 person involved in the transaction.

1 Sec. 08.88.401. PROHIBITED CONDUCT. (a) No licensee
2 may use the term "REALTOR" unless he is entitled to use it.

3 (b) No person, even though he be an obligor or escrow
4 holder, may pay or deliver compensation to a person who is
5 not licensed under this chapter for doing work for which a
6 license is required under this chapter. A current license
7 certificate or pocket recognition card issued by the commis-
8 sion is sufficient proof to relieve the person from criminal
9 responsibility under this section.

10 (c) No person may

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

14 (2) with knowledge that an advertisement, pamphlet,
15 or letter concerning land or a subdivision contains a written
16 statement that is false or fraudulent, issue, circulate,
17 publish, or distribute it or cause it to be issued, circu-
18 lated, published, or distributed.

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

21 ARTICLE 4. GENERAL PROVISIONS

22 Sec. 08.88.421. EXCEPTIONS. This chapter does not
23 apply to

24 (1) a person making a real estate transaction with
25 respect to real estate he owns or on his own behalf;

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

- 1 (3) a lawyer performing his duties as a lawyer;
2 (4) a public official in the conduct of his offi-
3 cial duties;
4 (5) a person acting as receiver, trustee, adminis-
5 trator, executor, or guardian;
6 (6) a person acting under court order;
7 (7) a person acting under the authority of a will
8 or trust instrument;
9 (8) a person dealing in mineral-rights transactions.

10 Sec. 08.88.431. DEFINITIONS. In this chapter

- 11 (1) "real estate" means an interest or estate in
12 land, corporeal or incorporeal;
13 (2) "commission" means the Real Estate Commission;
14 (3) "department" means the Department of Commerce;
15 (4) "lease" includes a lease that is a part of
16 another transaction.

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

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

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