

Original sponsor: Mr. White

Offered: 3/17/64
Referred: Finance

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.

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
6 any 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, with the
15 approval of the commissioner of commerce, may employ
16 assistants to

17 (1) prepare questions on examinations;

18 (2) grade examinations;

19 (3) investigate alleged violations of this chapter.

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

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

24 (2) prepare and grade examinations;

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

27 (A) with respect to a real estate transaction

28 (1) made a substantial misrepresentation;

29 (ii) made a false promise likely to

- 1 influence, persuade, or induce;
- 2 (iii) in the case of a real estate
3 broker, pursued a flagrant course of misrepresenta-
4 tion or made a false promise through an agent,
5 associate real estate broker, or real estate
6 salesman;
- 7 (iv) has engaged in conduct that is
8 fraudulent or dishonest;
- 9 (v) violates sec. 391 of this chapter;
- 10 (B) procures his license by deceiving the
11 commission, or aids another to do so;
- 12 (C) has engaged in conduct, of which the com-
13 mission had no knowledge at the time he was licensed,
14 demonstrating his unfitness to engage in the business
15 for which he is licensed;
- 16 (D) knowingly authorizes, directs, connives
17 at or aids in publishing, distributing, or circulating
18 a material false statement or misrepresentation concern-
19 ing his business or concerning real estate for sale in
20 his business in this or any other state;
- 21 (E) if a real estate broker, wilfully
22 violates sec. 171(d) or sec. 291 of this chapter;
- 23 (F) if an associate real estate broker,
24 claims to be a real estate broker, or, if a real estate
25 salesman claims to be a real estate broker or associate
26 real estate broker;
- 27 (G) if a real estate broker, employs an un-
28 licensed associate real estate broker or real estate
29 salesman;

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(II) if an associate real estate broker or real estate salesman, fails immediately to turn money collected in a real estate transaction over to the employing real estate broker;

(4) prosecute through the Department of Law for a violation of sec. 401 of this chapter.

Sec. 08.88.081. COMMISSION REGULATIONS. The commission shall adopt substantive regulations making more specific the general grounds for revoking or suspending a license.

Sec. 08.88.091. EDUCATION. The commission may conduct and assist in conducting real estate clinics, meetings, courses, or institutes. The commission may assist libraries and educational institutions in sponsoring studies and programs for the purpose of raising the standards of the real estate business and the competency of licensees.

Sec. 08.88.101. ADMINISTRATIVE DUTIES OF DEPARTMENT.

(a) The department shall furnish the commission with administrative services, including collecting fees and issuing receipts; keeping records of receipts and disbursements; distributing and receiving application forms; notifying an applicant whether or not the commission has accepted his application; designating the dates on which examinations are to be held; at least 30 days before an examination is to be held, publishing notice that it is to be held; printing examinations; providing space for holding examinations; proctoring examinations; notifying applicants of the results of the examination; printing and distributing uniform license certificates, duplicate certificates to replace lost ones, and pocket-sized recognition cards; sending notice, before

1 December 1 of each year, that licenses must be renewed; keep-
2 ing a current register of licensees; employing secretarial
3 assistants; replying to routine requests for information;
4 printing and distributing forms and informational bulletins;
5 maintaining records and completed examinations; recording
6 suspensions and revocations of licenses; and recording
7 office registrations.

8 (b) The department shall allow members of the commission
9 free access to its records concerning the commission's activi-
10 ties.

11 Sec. 08.88.111. DEPARTMENT REGULATIONS. The department
12 shall adopt procedural regulations describing

13 (1) how it conducts an examination;

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

16 Sec. 08.88.121. SALE OF REGISTER. The department shall
17 offer for sale to the public, publications containing the
18 names, addresses, license classifications, and business asso-
19 ciations of persons licensed by the commission. The depart-
20 ment shall sell the publications at a price designed to re-
21 cover costs of compilation, publication, and distribution.

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

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

28 ARTICLE 2. LICENSING.

29 Sec. 08.88.161. LICENSE REQUIRED. Unless he is licensed

- 1 as a real estate broker, associate real estate broker, or
2 real estate salesman, no person may
- 3 (1) sell, exchange, rent, lease, auction, or pur-
4 chase real estate;
- 5 (2) list real estate for sale, exchange, rent,
6 lease, auction, or purchase;
- 7 (3) collect rent for the use of real estate;
- 8 (4) as a business, buy, sell, or deal in
9 (A) options in real estate; or
10 (B) options in improvements to real estate;
- 11 (5) assist in or direct the procuring of prospec-
12 tive buyers or the negotiation of a transaction which results
13 or is calculated to result in the sale, exchange, rent, lease,
14 auction, or purchase of real estate;
- 15 (6) hold himself out to the public as being en-
16 gaged in the business of doing any of the things listed in
17 this section;
- 18 (7) attempt or offer to do any of the things
19 listed in this section.

20 Sec. 08.88.171. ENTITLEMENT TO LICENSE. (a) A person
21 is entitled to a real estate broker license who passes the
22 real estate examination and who is an owner of his real estate
23 business or who is employed as a real estate broker by a cor-
24 poration or a partnership. Unless he fails to pay the annual
25 renewal fee or his license is suspended or revoked under sec.
26 71(3) of this chapter, a real estate broker's license continu-
27 es in effect so long as he is an owner of his real estate
28 business or he is employed as a real estate broker by a cor-
29 poration or a partnership. If he stops being an owner of his

1 real estate business, or stops being employed as a real
2 estate broker by a corporation or partnership, his license
3 is suspended from the time he stops until

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

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

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

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

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

26 (c) A person is entitled to a real estate salesman
27 license who passes the real estate salesman examination and
28 who is employed by a real estate broker. Unless he fails to
29 pay the annual renewal fee or his license is suspended or

1 revoked under sec. 71(3) of this chapter, a real estate sales-
2 man's license continues in effect so long as he is employed
3 by a licensed real estate broker. If he stops being employed
4 by a licensed real estate broker, his license is suspended
5 from the time he stops until he again is employed by a
6 licensed real estate broker.

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

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

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

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

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

23 (3) is at least 21 years old;

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

26 (5) is a United States citizen;

27 (6) files the required bond.

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

- 1 (1) is at least 19 years old;
2 (2) has been a resident of the state for 90 days;
3 (3) has not engaged in conduct that demonstrates
4 that he is unfit to be a real estate salesman;
5 (4) is a United States citizen;
6 (5) files the required bond.

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

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

14 Sec. 08.88.221. FEES. The application fee for a real
15 estate broker is \$50. The application fee for an associate
16 real estate broker and for a real estate salesman is \$25.
17 The renewal fee for an active real estate broker is \$50. The
18 renewal fee for an active associate real estate broker and
19 for an active real estate salesman is \$25. The renewal fee
20 for an inactive real estate broker, an inactive associate
21 real estate broker, and an inactive real estate salesman is
22 \$12.50. The fee for a duplicate license is \$1.00.

23 Sec. 08.88.231. DEPOSIT IN GENERAL FUND. The depart-
24 ment shall deposit money collected under this chapter in the
25 general fund.

26 Sec. 08.88.241. ANNUAL RENEWAL. A person who passes
27 the examination is licensed without payment of further fee.
28 To remain licensed, a person must pay the renewal fee before
29 February 1 of each year. The commission shall renew a lapsed

1 license when the licensee applies for renewal and pays
2 accrued renewal fees. He is entitled to have it renewed
3 without taking an examination unless his license has lapsed
4 more than five years, in which case he is required to take
5 an examination if the commission finds that additional
6 evidence of his continued fitness to practice is required.

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

14 (b) An inactive licensee may not do any of the things
15 sec. 161 of this chapter authorizes an active licensee to do,
16 nor is he required to have a bond.

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

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

7 ARTICLE 3. MISCELLANEOUS PROVISIONS.

8 Sec. 08.88.281. BONDS. Before issuing a license to
9 an applicant under this chapter, the board shall determine
10 that the applicant has a corporate surety bond acceptable to
11 the commission. If the applicant is applying for a real
12 estate broker license, the bond is for \$5,000; if he is apply-
13 ing for any other license, the bond is for \$1,000. The bond
14 is made payable to the state, and is breached if the licensee
15 injures another by a wrongful act or default in the conduct
16 of the business for which his license is issued. A person
17 injured by a wrongful act or default may sue in his own name.
18 The aggregate liability of the surety to all persons insured
19 by the bond does not exceed the amount of the bond. If the
20 surety on the bond desires to cancel the bond he may do so
21 by giving the commission written notice of his intention to
22 cancel. The cancellation is effective 30 days after the
23 notice is delivered to the commission. The surety is not
24 liable for any breach of condition occurring after the bond
25 is cancelled. The bond covers the principal office and all
26 branch offices of a real estate broker.

27 Sec. 08.88.291. LOCATION. A licensed real estate
28 broker shall inform the commission of his principal office
29 and of any branch offices he has. He and the associate real

1 estate brokers and real estate salesmen he employs may do
2 business only in or out of his principal office and his branch
3 offices. The department shall print the location of the
4 principal office and branch offices at which a person may do
5 business in the person's license certificate.

6 Sec. 08.88.301. CHANGE OF LOCATION. If a real estate
7 broker changes the location of his principal office or of a
8 branch office, he shall immediately notify the department and
9 send to the department his and his employees' licenses. The
10 department shall issue new licenses reflecting the change.

11 Sec. 08.88.311. BRANCH OFFICES. If a branch office is
12 not in the same election district as the principal office,
13 or if it is beyond the real estate broker's immediate super-
14 vision, the real estate broker shall employ an associate
15 real estate broker to be in charge of it. No real estate
16 broker may place a real estate salesman in charge of a
17 principal or branch office.

18 Sec. 08.88.321. POSSESSION AND DISPLAY OF LICENSE
19 CERTIFICATES. A real estate salesman or an associate real
20 estate broker shall turn his license certificate over to the
21 real estate broker who employs him. The employing real
22 estate broker shall display his license certificate in his
23 principal office and the license certificates of those he
24 employs in the office where they do most of their work..

25 Sec. 08.88.331. MAKING OF TRANSACTIONS. A real estate
26 salesman or associate real estate broker may make a real
27 estate transaction only through the real estate broker who
28 employs him. All money collected on behalf of the broker
29 shall immediately be turned over to the broker or his agent.

1 All transactions in real estate by a real estate salesman or
2 associate real estate broker shall be processed through his
3 employing real estate broker's office, whether the transac-
4 tions are for the real estate salesman's or associate real
5 estate broker's own use or the use of a client.

6 Sec. 08.88.341. LISTINGS. All real estate listings
7 must be in writing and must be signed by the seller or by an
8 agent of the seller. All exclusive listings must have a
9 definite expiration date.

10 Sec. 08.88.351. RECORD OF TRANSACTION. A real estate
11 broker shall

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

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

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

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

27 Sec. 08.88.371. CONDUCT BY EMPLOYEE. For the purposes
28 of sec. 71(3) of this chapter, the conduct of an employee is
29 not attributable to a real estate broker unless the real

1 estate broker has actual knowledge that the employee is going
2 to engage in the conduct and agrees to the conduct, either
3 actively or by remaining silent, or ratifies the conduct
4 after it is engaged in.

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

8 Sec. 08.88.391. CONFLICT OF INTEREST. A licensed real
9 estate broker, associate real estate broker, or real estate
10 salesman who has a personal financial interest in a real
11 estate transaction shall disclose that interest to every
12 person involved in the transaction.

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

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

22 (c) No person may

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

26 (2) with knowledge that an advertisement, pamphlet,
27 or letter concerning land or a subdivision contains a written
28 statement that is false or fraudulent, issue, circulate,
29 publish, or distribute it or cause it to be issued, circu-

1 lated, published, or distributed.

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

4 ARTICLE 4. GENERAL PROVISIONS.

5 Sec. 08.88.421. EXCEPTIONS. This chapter does not
6 apply to

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

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

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

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

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

18 (6) a person acting under court order;

19 (7) a person acting under the authority of a will
20 or trust instrument;

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

22 Sec. 08.88.431. DEFINITIONS. In this chapter

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

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

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

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

29 * Sec. 2. A person who was licensed to make a real estate

1 transaction before the effective date of this Act is entitled to
2 a license under AS 08.88 corresponding to the one he held before
3 the effective date of this Act without examination and without
4 meeting the other qualifications.

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

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

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