

Introduced: 2/21/73
Referred: Commerce and
Judiciary

1 IN THE HOUSE

BY THE COMMERCE COMMITTEE

2 *SCS CS* HOUSE BILL NO. 248 *Jud*

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing a real estate surety fund."

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

8 * Section 1. AS 45 is amended by adding a new chapter to read:

9 CHAPTER 85. REAL ESTATE SURETY FUND.

10 Sec. 45.85.010. REAL ESTATE SURETY FUND. There is created a
11 special fund known as the real estate surety fund to carry out the
12 purposes of this chapter. The fund shall be composed of payments made
13 by licensed real estate brokers and salesmen under sec. 20 of this
14 chapter. Amounts in the fund in excess of \$100,000 shall be used for
15 real estate educational purposes.

16 Sec. 45.85.020. PAYMENTS BY REAL ESTATE BROKERS AND SALESMEN.

17 (a) A licensed real estate broker or associate broker, when obtaining
18 or renewing his real estate license, in lieu of a corporate surety bond,
19 shall pay to the commissioner of commerce in addition to the license
20 fee, a bond fee of \$75, and a licensed salesman, when obtaining or
21 renewing his license, in lieu of a corporate surety bond, shall pay to
22 the commissioner in addition to the license fee, a bond fee of \$20.

23 (b) All fees collected under this section shall be paid by the
24 commissioner into the real estate surety fund at least once a month.

25 Sec. 45.85.030. APPLICATION FOR PAYMENT. (a) When a person
26 obtains a final judgment in a court against a real estate broker or
27 salesman licensed under AS 08.88 on grounds of fraud, misrepresentation,
28 deceit or conversion of trust funds arising directly out of a transac-
29 tion when the judgment debtor was licensed and performed acts for which

1 a license is required under AS 08.88, the person may file a verified
2 application in the court in which the judgment was entered for an order
3 directing payment out of the real estate surety fund of the amount of
4 actual direct damages up to the sum of \$5,000 of the amount unpaid upon
5 the judgment. However, not more than \$5,000 may be paid for each
6 transaction regardless of the number of persons injured or the number
7 of parcels of real estate involved in the transaction. A copy of the
8 verified application shall be served upon the commissioner and a
9 certificate or affidavit of service filed with the court.

10 (b) Applications for payment from the fund shall be made within
11 one year from the date that the judgment becomes final.

12 Sec. 45.85.040. BOND FOR COSTS. (a) A person making an applica-
13 tion for payment from the fund shall post a bond at least 20 days
14 before the hearing upon his application to guarantee court costs,
15 including reasonable attorney fees, should his application be denied,
16 in the amount of 10 per cent of the recovery he seeks from the fund.
17 The bond shall be issued by an admitted corporate surety insurer
18 approved by the commissioner and running to the commissioner and the
19 real estate surety fund, or a cash bond or bonds issued by the United
20 States or this state deposited with the court.

21 (b) Recovery against the bond is authorized by the court if, after
22 proceeding on the application, the court finds in favor of the commis-
23 sioner on behalf of the real estate surety fund.

24 Sec. 45.85.050. HEARING ON APPLICATION. The court shall conduct
25 a hearing on the application after service of the application upon the
26 commissioner. At the hearing the applicant is required to show that:

27 (1) he is not a spouse of the judgment debtor or a personal
28 representative of the spouse;

29 (2) he has obtained a judgment under sec. 30 of this chapter

1 stating the amount of the judgment and the amount owing at the date of
2 the application;

3 (3) he has made all reasonable searches and inquiries to
4 ascertain whether the judgment debtor owns real or personal property
5 or other assets liable to be sold or applied in satisfaction of the
6 judgment;

7 (4) he has discovered no personal or real property or
8 other assets liable to be sold or applied, or that he has discovered
9 certain of them, owned by the judgment debtor and liable to be applied,
10 and that he has taken all necessary steps for their realization, and
11 that the amount realized was insufficient to satisfy the judgment,
12 stating the amount realized and the balance remaining due on the
13 judgment; and

14 (5) he has diligently pursued his remedies against all
15 judgment debtors and all other persons liable to him in the transaction
16 for which he seeks relief from the commissioner.

17 Sec. 45.85.060. COMMISSIONER'S RIGHT TO DEFEND. (a) The court,
18 after a hearing upon the application, shall order payment out of the
19 real estate surety fund upon a determination that the applicant has
20 a valid cause of action against the judgment debtor and has complied
21 with the provisions of this chapter. The judgment is prima facie
22 evidence of a valid cause of action. However if an applicant's judg-
23 ment is by default, stipulation, or consent, or if the action against
24 the licensee was defended by a trustee in bankruptcy, the applicant
25 has the burden of proving his cause of action for fraud, misrepresenta-
26 tion, deceit or conversion of trust funds.

27 (b) The commissioner may defend an action on behalf of the fund
28 and shall have recourse to all appropriate means of defense and
29 review, including examination of witnesses. The commissioner may move

1 the court at any time to dismiss the application if it appears there
2 are no triable issues and the petition is without merit. The motion
3 may be supported by affidavit of a person having knowledge of the
4 facts, and may be made on the basis that the petition, and the judg-
5 ment, does not form the basis for a meritorious recovery claim within
6 the provisions of sec. 30 of this chapter.

7 (c) The commissioner may, subject to court approval, compromise
8 a claim based upon the application and judgment. He is not bound by
9 a prior compromise or stipulation of the judgment debtor.

10 Sec. 45.85.070. COURT ORDER. If the court finds after the hearing
11 that the claim should be levied against the fund allocated for the
12 purpose of carrying out the provisions of this chapter, it shall enter
13 an order directed to the commissioner requiring payment from the real
14 estate surety fund of the sum it finds to be payable on the claim in
15 accordance with this chapter.

16 Sec. 45.85.080. MAXIMUM LIABILITY. (a) The maximum liability of
17 the real estate surety fund does not exceed \$10,000 for any one broker
18 or salesman.

19 (b) If the \$10,000 liability of the fund as provided in (a) of
20 this section is insufficient to pay in full the valid claims of all
21 persons who have filed claims against one broker or salesman, the
22 \$10,000 shall be distributed among the claimants in the ratio that
23 their individual claims bear to the aggregate of valid claims, or in
24 another manner that the court considers equitable. Distribution shall
25 be among the persons entitled to share in the recovery, without regard
26 to the order of priority in which their judgments were obtained or
27 their claims filed.

28 Sec. 45.85.090. ORDER OF CLAIM PAYMENT. If the money deposited
29 in the real estate surety fund is insufficient at a given time to

1 satisfy a duly authorized claim against the fund, the commissioner
2 shall, when sufficient money has been deposited in the fund, satisfy
3 unpaid claims in the order that the claims were originally filed,
4 plus accumulated interest at the rate of eight per cent a year.

5 Sec. 45.85.100. FALSE CLAIMS OR DOCUMENTS. A person who files
6 with the commissioner a notice, statement or other document required
7 under this chapter which is false or untrue or contains a wilful
8 material misstatement of fact, is guilty of a misdemeanor and is
9 punishable by imprisonment for a period of not more than one year, or
10 a fine not more than \$1,000, or by both.

11 Sec. 45.85.110. RIGHT TO SUBROGATION. When the commissioner has
12 paid to a judgment creditor from the real estate fund the sum ordered
13 by the court, the commissioner shall be subrogated to all of the rights
14 of the judgment creditor and the judgment creditor shall assign all
15 of his right, title and interest in the judgment to the commissioner.
16 Amounts subsequently realized by the commissioner on the judgment
17 shall be deposited to the fund.

18 Sec. 45.85.120. WAIVER OF RIGHTS. The failure of a claimant to
19 comply with the provisions of this chapter constitutes a waiver of
20 his rights under the chapter.

21 Sec. 45.85.130. DISCIPLINARY ACTION AGAINST BROKERS AND SALESMEN.
22 This chapter neither limits the authority of the Real Estate Commission
23 to take disciplinary action against any person licensed under AS 08.88,
24 nor does repayment in full of all obligations to the real estate
25 surety fund nullify or modify the effect of disciplinary proceedings
26 brought under the provisions of AS 08.88.

27 * Sec. 2. AS 08.88.281 is repealed and re-enacted to read:

28 Sec. 08.88.281. REAL ESTATE SURETY FUND. Before issuing a
29 license to an applicant under this chapter, the board shall determine

1 that the applicant has complied with the provisions of AS 45.85.020
2 and is covered by the real estate surety fund established in AS 45.85.

3 * Sec. 3. AS 08.88.071 is amended by adding a new subsection to read:

4 (b) When a payment is made from the real estate surety fund
5 under AS 45.85 in settlement of a claim or toward satisfaction of a
6 judgment against a licensed broker, associate broker or salesman for
7 fraud, misrepresentation, deceit or conversion of trust funds, the commis-
8 sion, after a proper hearing establishing the misconduct, shall suspend
9 or revoke the license of the broker, associate broker or salesman.
10 The broker, associate broker or salesman may not be reinstated until
11 he has repaid in full, plus interest at the rate of eight per cent a
12 year, the amount paid from the fund on his account.
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