

Original sponsor: Commerce Committee

Offered: 3/7/73  
Referred: Judiciary

1 IN THE HOUSE

BY THE COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 248

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 account in the general fund known as the real estate surety  
12 fund to carry out the purposes of this chapter. The fund shall be  
13 composed of payments made by licensed real estate brokers and salesmen  
14 under sec. 20 of this chapter. The fund may not exceed \$150,000 and  
15 amounts in the fund in excess of \$100,000 may be appropriated for real  
16 estate educational purposes.

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

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

24 (b) All fees collected under this section shall be paid at least  
25 once a month by the commissioner into the general fund. These payments  
26 shall be credited to the real estate surety fund so long as that fund  
27 does not exceed \$150,000.

28 Sec. 45.85.030. APPLICATION FOR PAYMENT. (a) When a person  
29 obtains a final judgment in a court against a real estate broker or

1 salesman licensed under AS 08.88 on grounds of fraud, misrepresentation,  
2 deceit or conversion of trust funds arising directly out of a trans-  
3 action when the judgment debtor was licensed and performed acts for which  
4 a license is required under AS 08.88, the person may file a verified  
5 application in the court in which the judgment was entered for an order  
6 directing payment out of the real estate surety fund of the amount of  
7 actual direct damages up to the sum of \$5,000 of the amount unpaid upon  
8 the judgment. However, not more than \$5,000 may be paid for each  
9 transaction regardless of the number of persons injured or the number  
10 of parcels of real estate involved in the transaction. A copy of the  
11 verified application shall be served upon the commissioner and a  
12 certificate or affidavit of service filed with the court.

13 (b) Applications for payment from the fund shall be made to the  
14 legislature within one year from the date that the judgment becomes  
15 final.

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

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

28 Sec. 45.85.050. HEARING ON APPLICATION. The court shall conduct  
29 a hearing on the application after service of the application upon the

1 commissioner. At the hearing the applicant is required to show that:

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

4 (2) he has obtained a judgment under sec. 30 of this chapter  
5 stating the amount of the judgment and the amount owing at the date of  
6 the application;

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

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

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

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

1 misrepresentation, deceit or conversion of trust funds.

2 (b) The commissioner may defend an action on behalf of the fund  
3 and shall have recourse to all appropriate means of defense and  
4 review, including examination of witnesses. The commissioner may move  
5 the court at any time to dismiss the application if it appears there  
6 are no triable issues and the petition is without merit. The motion  
7 may be supported by affidavit of a person having knowledge of the  
8 facts, and may be made on the basis that the petition, and the judg-  
9 ment, does not form the basis for a meritorious recovery claim within  
10 the provisions of sec. 30 of this chapter.

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

14 Sec. 45.85.070. COURT ORDER. If the court finds after the hearing  
15 that the claim should be levied against the fund allocated for the  
16 purpose of carrying out the provisions of this chapter, it shall enter  
17 an order directed to the commissioner requiring payment from the real  
18 estate surety fund of the sum it finds to be payable on the claim in  
19 accordance with this chapter. The legislature is authorized to  
20 appropriate payments from the fund to satisfy the claim.

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

24 (b) If the \$10,000 liability of the fund as provided in (a) of  
25 this section is insufficient to pay in full the valid claims of all  
26 persons who have filed claims against one broker or salesman, the  
27 \$10,000 shall be distributed among the claimants in the ratio that  
28 their individual claims bear to the aggregate of valid claims, or in  
29 another manner that the court considers equitable. Distribution shall

1 be among the persons entitled to share in the recovery, without regard  
2 to the order of priority in which their judgments were obtained or  
3 their claims filed.

4 Sec. 45.85.090. ORDER OF CLAIM PAYMENT. If the money deposited  
5 in the real estate surety fund is insufficient at a given time to  
6 satisfy a duly authorized claim against the fund, the commissioner  
7 shall, when sufficient money has been deposited in the fund and  
8 appropriated, satisfy unpaid claims in the order that the claims were  
9 originally filed, plus accumulated interest at the rate of eight per  
10 cent a year.

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

17 Sec. 45.85.110. RIGHT TO SUBROGATION. When the commissioner has  
18 paid to a judgment creditor from the real estate fund the sum ordered  
19 by the court, the commissioner shall be subrogated to all of the rights  
20 of the judgment creditor and the judgment creditor shall assign all  
21 of his right, title and interest in the judgment to the commissioner.  
22 Amounts subsequently realized by the commissioner on the judgment  
23 shall be deposited to the fund.

24 Sec. 45.85.120. WAIVER OF RIGHTS. The failure of a claimant to  
25 comply with the provisions of this chapter constitutes a waiver of  
26 his rights under the chapter.

27 Sec. 45.85.130. DISCIPLINARY ACTION AGAINST BROKERS AND SALESMEN.  
28 This chapter neither limits the authority of the Real Estate Commission  
29 to take disciplinary action against any person licensed under AS 08.88,

1 nor does repayment in full of all obligations to the real estate  
2 surety fund nullify or modify the effect of disciplinary proceedings  
3 brought under the provisions of AS 08.88.

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

5 Sec. 08.88.281. REAL ESTATE SURETY FUND. Before issuing a  
6 license to an applicant under this chapter, the board shall determine  
7 that the applicant has complied with the provisions of AS 45.85.020  
8 and is covered by the real estate surety fund established in AS 45.85.

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

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