

Original sponsor: Commerce Committee

Offered: 4/4/74  
Referred: Rules

1 IN THE HOUSE

BY THE COMMERCE COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 248

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing a real estate surety fund; and  
7 providing for an effective date."

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

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

10 CHAPTER 85. REAL ESTATE SURETY FUND.

11 Sec. 45.85.010. REAL ESTATE SURETY FUND. There is created a special  
12 account in the general fund known as the real estate surety fund to carry  
13 out the purposes of this chapter. The fund shall be composed of payments  
14 made by licensed real estate brokers and salesmen under sec. 20 of this  
15 chapter. The fund may not exceed \$300,000, and amounts in the fund in  
16 excess of \$250,000 may be appropriated for real estate educational  
17 purposes as provided in AS 08.88.091.

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

19 (a) A licensed real estate broker or associate broker, when obtaining  
20 or renewing his real estate license, in lieu of obtaining a corporate  
21 surety bond, shall pay to the commissioner of commerce in addition to  
22 the license fee, a bond fee not to exceed \$75, and a licensed salesman,  
23 when obtaining or renewing his license, in lieu of obtaining a corporate  
24 surety bond, shall pay to the commissioner in addition to the license  
25 fee, a bond fee not to exceed \$20. After the fund initially reaches  
26 \$100,000 the commissioner shall by regulation adjust the bond fees so  
27 that, taking into account anticipated expenditures for real estate  
28 educational purposes, the fund is maintained at a level between \$200,000  
29 and \$300,000.

1 (b) All fees collected under this section shall be paid at least  
2 once a month by the commissioner into the general fund. These payments  
3 shall be credited to the real estate surety fund.

4 Sec. 45.85.030. APPLICATION FOR PAYMENT. (a) When a person  
5 obtains a final judgment in a court against a real estate broker or  
6 salesman licensed under AS 08.88 on grounds of fraud, misrepresentation,  
7 deceit or conversion of trust funds arising directly out of a trans-  
8 action when the judgment debtor was licensed and performed acts for which  
9 a license is required under AS 08.88, the person may file a verified  
10 application in the court in which the judgment was entered for an order  
11 directing payment out of the real estate surety fund of the amount of  
12 actual direct damages up to the sum of \$5,000 of the amount unpaid upon  
13 the judgment. However, not more than \$5,000 may be paid for each  
14 transaction regardless of the number of persons injured or the number  
15 of parcels of real estate involved in the transaction. A copy of the  
16 verified application shall be served upon the commissioner and a  
17 certificate or affidavit of service filed with the court.

18 (b) Applications for payment from the fund shall be made to the  
19 commissioner within one year from the date that the judgment becomes  
20 final.

21 (c) No spouse or personal representative of the spouse of the  
22 judgment debtor may recover damages from the fund.

23 Sec. 45.85.040. PAYMENT. (a) If judgment has not been paid within  
24 30 days after its entry, the court shall order payment out of the real  
25 estate surety fund.

26 (b) The commissioner may, subject to court approval, compromise a  
27 claim based upon the application and judgment. He is not bound by a  
28 prior compromise or stipulation of the judgment debtor.

29 Sec. 45.85.050. COURT ORDER. If the court finds after the hearing

1 that the claim should be levied against the fund allocated for the  
2 purpose of carrying out the provisions of this chapter, it shall enter  
3 an order directed to the commissioner requiring payment from the real  
4 estate surety fund of the sum it finds to be payable on the claim in  
5 accordance with this chapter.

6 Sec. 45.85.060. MAXIMUM LIABILITY. (a) The maximum liability of  
7 the real estate surety fund does not exceed \$10,000 for any one broker  
8 or salesman.

9 (b) If the \$10,000 liability of the fund as provided in (a) of  
10 this section is insufficient to pay in full the valid claims of all  
11 persons who have filed claims against one broker or salesman, the  
12 \$10,000 shall be distributed among the claimants in the ratio that their  
13 individual claims bear to the aggregate of valid claims, or in another  
14 manner that the court considers equitable. Distribution shall be among  
15 the persons entitled to share in the recovery, without regard to the  
16 order of priority in which their judgments were obtained or their claims  
17 filed.

18 Sec. 45.85.070. ORDER OF CLAIM PAYMENT. If the money deposited  
19 in the real estate surety fund is insufficient at a given time to  
20 satisfy a duly authorized claim against the fund, the commissioner shall  
21 when sufficient money has been deposited in the fund and appropriated,  
22 satisfy unpaid claims in the order that the claims were originally filed  
23 plus accumulated interest at the rate of eight per cent a year.

24 Sec. 45.85.080. FALSE CLAIMS OR DOCUMENTS. A person who files  
25 with the commissioner a notice, statement or other document required  
26 under this chapter which is false or untrue or contains a wilful material  
27 misstatement of fact, is guilty of a misdemeanor and is punishable by  
28 imprisonment for a period of not more than one year, or a fine of not  
29 more than \$1,000, or by both.

1           Sec. 45.85.090. RIGHT TO SUBROGATION. When the commissioner has  
2 paid to a judgment creditor from the real estate fund the sum ordered by  
3 the court, the commissioner shall be subrogated to all of the rights of  
4 the judgment creditor and the judgment creditor shall assign all of his  
5 right, title and interest in the judgment to the commissioner. Amounts  
6 subsequently realized by the commissioner on the judgment shall be  
7 deposited to the fund.

8           Sec. 45.85.100. WAIVER OF RIGHTS. The failure of a claimant to  
9 comply with the provisions of this chapter constitutes a waiver of his  
10 rights under the chapter.

11           Sec. 45.85.110. DISCIPLINARY ACTION AGAINST BROKERS AND SALESMEN.  
12 This chapter neither limits the authority of the Real Estate Commission  
13 to take disciplinary action against any person licensed under AS 08.88,  
14 nor does repayment in full of all obligations to the real estate surety  
15 fund nullify or modify the effect of disciplinary proceedings brought  
16 under the provisions of AS 08.88.

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

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

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

23           (b) When a payment is made from the real estate surety fund under  
24 AS 45.85 in settlement of a claim or toward satisfaction of a judgment  
25 against a licensed broker, associate broker or salesman for fraud, mis-  
26 representation, deceit or conversion of trust funds, the commission,  
27 after a proper hearing establishing the misconduct, shall suspend or  
28 revoke the license of the broker, associate broker or salesman. The  
29 broker, associate broker or salesman may not be reinstated until he has

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repaid in full, plus interest at the rate of eight per cent a year, the amount paid from the fund on his account.

\* Sec. 4. AS 08.88.401(c) is amended to read:

(c) No person may

(1) knowingly authorize, direct, or aid in the publication of a false statement or misrepresentation concerning land or a subdivision or other real estate offered for sale or lease;

(2) with knowledge that an advertisement, pamphlet, or letter concerning land or a subdivision or other real estate contains a written statement that is false or fraudulent, issue, circulate, publish, or distribute it or cause it to be issued, circulated, published, or distributed.

\* Sec. 5. This Act takes effect January 1, 1976.