

Introduced: 4/11/80
Referred: Commerce

1 IN THE HOUSE

BY THE COMMERCE COMMITTEE

2 HOUSE BILL NO. 1004

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act continuing the existence of the Real Estate
7 Commission and amending its powers and duties; and
8 providing for an effective date."

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

10 * Section 1. AS 08.88.011 is amended to read:

11 Sec. 08.88.011. CREATION AND MEMBERSHIP OF COMMISSION. There is
12 created a Real Estate Commission. It consists of seven members. The
13 commission is in the Department of Commerce and Economic Development,
14 but only for the purpose of receiving the administrative services speci-
15 fied in AS 08.88.101.

16 * Sec. 2. AS 08.88 is amended by adding new sections to read:

17 Sec. 08.88.034. INVESTIGATOR OF THE COMMISSION. The executive
18 director of the commission shall appoint a full-time investigator or
19 auditor to assist the board in matters of professional discipline.

20 Sec. 08.88.037. INVESTIGATION AND INJUNCTION. (a) The commission
21 may, upon its own motion, conduct investigations to determine whether a
22 person has violated a provision of this chapter or a regulation adopted
23 under it, or to secure information useful in the administration of this
24 chapter.

25 (b) If it appears to the executive director that a person has
26 engaged in or is about to engage in an act or practice in violation of a
27 provision of this chapter or a regulation adopted under it, he may, if
28 he considers it in the public interest, and after notification to all
29 commission members by telephone or telegraph of a proposed order or

1 action unless a majority of the members of the commission object within
2 the 10 days,

3 (1) issue an order directing the person to stop the act or
4 practice; however, reasonable notice of and an opportunity for a hearing
5 must first be given to the person except that the executive director may
6 issue a temporary order before a hearing is held; a temporary order
7 remains in effect until a final order affirming, modifying, or reversing
8 the temporary order is issued or until 15 days have elapsed after the
9 person receives the notice and has not requested a hearing; a temporary
10 order becomes final if the person to whom the notice is addressed does
11 not request a hearing within 15 days after receiving the notice; the
12 executive director or his designee shall be the hearing officer at the
13 hearing and shall issue a final order within 10 days after the hearing;

14 (2) bring an action in superior court to enjoin the act or
15 practice and to enforce compliance with this chapter, a regulation
16 adopted under it, or an order issued under it;

17 (3) examine or have examined the books and records of a
18 person whose business activities require licensure under this chapter
19 and he may require the person to pay the reasonable costs of the exami-
20 nation; and

21 (4) issue subpoenas for the attendance of witnesses, and the
22 production of books, records and other documents.

23 * Sec. 3. AS 08.88.071(b) is repealed and re-enacted to read:

24 (b) When an award is made from the real estate surety fund under
25 AS 45.85 in reimbursement of losses suffered by a claimant as a result
26 of fraud, misrepresentation, deceit or conversion of trust funds on the
27 part of a licensed broker, associate broker, or salesman, the commis-
28 sion, after the misconduct is established in a proper hearing, shall
29 suspend or revoke the license of the broker, associate broker or sales-

1 man. The broker, associate broker or salesman may not be reinstated
2 until he has repaid the real estate surety fund the amount of an award
3 made under AS 45.85.030 or until the commission has deposited in the
4 real estate surety fund money realized by the commission in an action
5 under AS 45.85.010 in an amount equal to the award.

6 * Sec. 4. AS 45.85 is amended by adding new sections to read:

7 Sec. 45.85.031. CLAIM FOR PAYMENT. (a) A person seeking reim-
8 bursement for a loss suffered in a transaction as a result of fraud,
9 misrepresentation, deceit, or the conversion of trust funds on the part
10 of a real estate broker, associate real estate broker, or real estate
11 salesman licensed under AS 08.88 shall make a claim to the commission
12 for reimbursement on a form furnished by the commission. The form shall
13 be executed under penalty of perjury, and information required to be
14 supplied shall include the following:

15 (1) the name and address of the real estate broker, associate
16 real estate broker, or real estate salesman;

17 (2) the amount of the alleged loss;

18 (3) the date or period of time during which the alleged loss
19 occurred;

20 (4) the date upon which the alleged loss was discovered;

21 (5) the name and address of the claimant; or

22 (6) the general statement of facts relative to the claimant.

23 (b) A copy of a claim filed with the commission under (a) of this
24 section shall be sent to the real estate broker, associate real estate
25 broker, or real estate salesman alleged to have committed the misconduct
26 resulting in losses at least 20 days before any hearing held on the
27 claim by the commission.

28 Sec. 45.85.041. CONSIDERATION OF APPLICATION. (a) Upon receipt
29 of a claim for reimbursement, the commission may, in considering whether

1 a claim should be granted,

2 (1) take and hear evidence pertaining to the claim;

3 (2) administer oaths and affirmations;

4 (3) compel, by subpoena, the attendance of witnesses and the
5 production of books, papers and documents pertaining to the claim;

6 (4) engage the services of an investigator, accountant, or
7 other expert necessary to process the claim.

8 (b) In proceedings under this section, any relevant evidence shall
9 be admitted if it is the sort of evidence on which responsible persons
10 are accustomed to rely in the conduct of serious affairs, regardless of
11 the existence of a common law or statutory rule which might make im-
12 proper the admission of the evidence in civil actions. Hearsay evidence
13 may be used for the purpose of supplementing or explaining other evi-
14 dence but is not sufficient in itself to support a finding unless it
15 would be admissible over objection in civil actions. However, a cer-
16 tified or authenticated copy of a record, including a transcript of
17 testimony, of a hearing held under AS 08.88.071(a)(3) in which fraud,
18 misrepresentation, deceit, or conversion of funds on the part of a
19 licensed broker, associate broker, or real estate salesman is estab-
20 lished, may constitute sufficient evidence to support a finding.

21 (c) Before the commission finds that payment should be made from
22 the real estate surety fund, the real estate broker, associate broker,
23 or real estate salesman shall be afforded an opportunity to file with
24 the commission, within 10 days after the sending of the claim under
25 AS 45.85.031(b), either a written statement in opposition to the claim
26 or an application for the presentation of additional evidence.

27 (d) The claimant bears the burden of proof of establishing that he
28 suffered losses in a transaction as a result of fraud, misrepresenta-
29 tion, deceit, or the conversion of trust funds on the part of a real

1 estate broker, associate real estate broker, or real estate salesman and
2 the extent of those losses. All facts shall be established by a pre-
3 ponderance of the evidence.

4 (e) The commission may postpone consideration of a claim until
5 after a hearing under AS 08.88.071(a)(3) or until after a pending or
6 contemplated court proceeding is completed.

7 Sec. 45.85.051. FINDINGS AND PAYMENT. At the conclusion of the
8 commission's consideration of a claim made under AS 45.85.031, it shall
9 make in writing findings and conclusions on the evidence. If the com-
10 mission finds that the claimant has suffered a loss in a transaction as
11 a result of fraud, misrepresentation, deceit, or the conversion of trust
12 funds on the part of a real estate broker, associate broker, or sales-
13 man, the commission may award a claimant reimbursement out of the real
14 estate surety fund for his loss up to \$10,000. However, not more than
15 \$10,000 may be paid for each transaction regardless of the number of
16 persons injured or the number of parcels of real estate involved in the
17 transaction.

18 * Sec. 5. AS 45.85.090 is amended to read:

19 Sec. 45.85.090. RIGHT TO SUBROGATION. When the commission [COM-
20 MISSIONER] has paid to a claimant [JUDGMENT CREDITOR] from the real
21 estate surety fund the sum awarded [ORDERED] by the commission [COURT],
22 the commission [COMMISSIONER] shall be subrogated to all of the rights
23 of the claimant [JUDGMENT CREDITOR] to the amount paid and the claimant
24 [JUDGMENT CREDITOR] shall assign all of his right, title and interest in
25 that portion of the claim [JUDGMENT] to the commission [COMMISSIONER].
26 Amounts subsequently realized by the commission [COMMISSIONER] on the
27 claim [JUDGMENT] shall be deposited to the real estate surety fund.

28 * Sec. 6. AS 45.85 is amended by adding a new section to read:

29 Sec. 45.85.120. DEFINITION. In this chapter, "commission" means

1 the Real Estate Commission established under AS 08.88.

2 * Sec. 7. AS 08.03.010(c) is amended by adding a new paragraph to read:

3 (2) Real Estate Commission (AS 08.88.010) -- June 30, 1974.

4 * Sec. 8. AS 08.01.010(13); AS 08.03.010(b)(9); AS 45.85.030, 45.85.040,
5 and 45.85.050 are repealed.

6 * Sec. 9. This Act takes effect June 30, 1980.

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