

Original sponsor: Bennett by request

Offered: 5/20/80
Referred: Rules

1 IN THE SENATE

BY THE COMMERCE COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 212

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 08.88.031 is amended to read:

11 Sec. 08.88.031. EXECUTIVE DIRECTOR [SECRETARY] OF COMMISSION. The
12 commission [COMMISSIONER OF COMMERCE AND ECONOMIC DEVELOPMENT] shall
13 appoint a full-time staff administrator and delineate his authority and
14 duties. He shall serve as the executive director [SECRETARY] of the
15 Real Estate Commission.

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, with the approval of the com-
19 mission, a full-time investigator or auditor to assist the board in
20 matters of professional discipline.

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

26 (b) If it appears to the executive director that a person has
27 engaged in or is about to engage in an act or practice in violation of a
28 provision of this chapter or a regulation adopted under it and that
29 action is warranted in the public interest, he shall notify all commis-

1 sion members by telephone or telegraph of a proposed order or action,
2 and, if a majority of the members of the commission approve, he may

3 (1) after reasonable notice of and an opportunity for a
4 hearing is given to the person, issue an order directing the person to
5 stop the act or practice; the executive director may issue a temporary
6 order before a hearing is held; a temporary order remains in effect
7 until a final order affirming, modifying, or reversing the temporary
8 order is issued or until 15 days have elapsed after the person receives
9 the notice and has not requested a hearing; a temporary order becomes
10 final if the person to whom the notice is addressed does not request a
11 hearing within 15 days after receiving the notice; if a hearing is
12 requested, a hearing shall be conducted by a hearing officer within 30
13 days; the commission shall issue a final order within 10 days after the
14 hearing;

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

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

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

24 * Sec. 3. AS 08.88.041(b) is amended to read:

25 (b) Of the five members of the commission who must be real estate
26 brokers or associate brokers, one [ONE] member [OF THE COMMISSION] shall
27 be from the First Judicial District, one shall be from the Second Judi-
28 cial District, one shall be from the Third Judicial District, one shall
29 be from the Fourth Judicial District and one shall be from the state at

1 large. However, if no licensed real estate broker or licensed associate
2 broker [PERSON] is eligible or available for appointment from the Second
3 Judicial District, then two licensed real estate brokers or licensed
4 associate brokers shall be appointed from the state at large.

5 * Sec. 4. AS 08.88.061 is amended to read:

6 Sec. 08.88.061. ASSISTANTS. The commission [, WITH THE APPROVAL
7 OF THE COMMISSIONER OF COMMERCE AND ECONOMIC DEVELOPMENT,] may employ
8 assistants to

- 9 (1) prepare questions on examinations;
10 (2) grade examinations;
11 (3) investigate alleged violations of this chapter.

12 * Sec. 5. AS 08.88.071(a) is amended by adding a new paragraph to read:

13 (6) issue a temporary permit to the personal representative
14 of the estate of a deceased broker or to some other person designated by
15 the commission with the approval of the personal representative of the
16 estate, in order to secure proper administration in concluding the
17 affairs of decedent broker's real estate business.

18 * Sec. 6. AS 08.88.071(b) is repealed and re-enacted to read:

19 (b) When an award is made from the real estate surety fund under
20 AS 45.85 in reimbursement of losses suffered by a claimant as a result
21 of fraud, misrepresentation, deceit or conversion of trust funds on the
22 part of a licensed broker, associate broker, or salesman and the commis-
23 sion, after hearing, has suspended the license of the broker, associate
24 broker or salesman under this section, the broker, associate broker or
25 salesman may not be reinstated until he has repaid the real estate
26 surety fund the amount of an award made under AS 45.85.051 or until the
27 commission has deposited in the real estate surety fund money realized
28 by the commission in an action under AS 45.85.090 in an amount equal to
29 the award.

1 * Sec. 7. AS 08.88.081 is amended to read:

2 Sec. 08.88.081. COMMISSION REGULATIONS. The commission shall
3 adopt [SUBSTANTIVE] regulations pertaining to [MAKING MORE SPECIFIC] the
4 responsibilities of persons licensed under this chapter and the [GENERAL]
5 grounds for revoking or suspending a license.

6 * Sec. 8. AS 08.88.091 is amended to read:

7 Sec. 08.88.091. EDUCATION. The commission may conduct and assist
8 in conducting real estate clinics, meetings, courses, or institutes.
9 The commission may

10 (1) assist libraries and educational institutions in sponsor-
11 ing studies and programs; and

12 (2) publish informational materials for the purpose of raising
13 the standards of the real estate business and the competency of licen-
14 sees.

15 * Sec. 9. AS 08.88.101 is repealed and re-enacted to read:

16 Sec. 08.88.101. ADMINISTRATIVE DUTIES OF THE COMMISSION. The
17 commission shall

18 (1) collect fees and issue receipts;

19 (2) keep records of receipts and disbursements;

20 (3) distribute and receive application forms;

21 (4) notify an applicant whether the commission has accepted

22 his application;

23 (5) designate the dates on which examinations are to be held;

24 (6) publish notice that an examination is to be held at least

25 30 days before an examination is held;

26 (7) print examinations;

27 (8) provide space for holding examinations;

28 (9) proctor examinations;

29 (10) notify applicants of the results of an examination;

1 (11) print and distribute uniform license certificates and
2 pocket-sized recognition cards, and duplicate license certificates to
3 replace lost certificates;

4 (12) send notice, before December 1 of each year, that li-
5 censes must be renewed;

6 (13) keep a current register of licenses;

7 (14) employ secretarial assistants;

8 (15) reply to routine requests for information;

9 (16) print and distribute forms and informational bulletins;

10 (17) maintain records and completed examinations;

11 (18) record suspensions and revocations of licenses; and

12 (19) record office registrations.

13 * Sec. 10. AS 08.88.111 is amended to read:

14 Sec. 08.88.111. COMMISSION [DEPARTMENT] REGULATIONS. The commis-
15 sion [DEPARTMENT] shall adopt procedural regulations describing

16 (1) how it conducts an examination;

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

19 * Sec. 11. AS 08.88.121 is amended to read:

20 Sec. 08.88.121. SALE OF REGISTER. The commission [DEPARTMENT]
21 shall offer for sale to the public publications containing the names,
22 addresses, license classifications, and business associations of persons
23 licensed by the commission. The commission [DEPARTMENT] shall sell the
24 publications at a price designed to recover costs of compilation, publi-
25 cation, and distribution.

26 * Sec. 12. AS 08.88.171(a) is amended to read:

27 (a) A person is entitled to a real estate broker license if he is
28 [HAS BEEN] a resident of the state, if he passes the real estate brokers
29 examination, [FOR 90 DAYS AND] if he applies for his license within

1 six months after [RECEIPT OF NOTICE THAT] he has taken [PASSED] the real
2 estate brokers examination, if he has had at least 24 months of active
3 and continuous experience as a licensed real estate salesman, if he is
4 not under indictment for, or seven years have elapsed since he has
5 completed a sentence imposed upon conviction of, forgery, theft, ex-
6 tortion, conspiracy to defraud creditors, or any other felony involving
7 moral turpitude, and if he [, FILES THE REQUIRED BOND, AND] is an owner
8 of a real estate business or employed as a real estate broker by a
9 corporation or a partnership, and if that [THE] corporation or partner-
10 ship does not have an existing licensed broker. Unless the broker [HE]
11 fails to pay the biennial renewal fee or unless his license is suspended
12 or revoked under AS 08.88.071(a)(3), the [A] real estate broker's
13 license continues in effect so long as he is an owner of a real estate
14 business, or he is employed as a real estate broker by a corporation or
15 a partnership. If he stops being an owner of a real estate business, or
16 stops being employed as a real estate broker by a corporation or
17 partnership, his license is suspended from the time he stops until

18 (1) he again becomes an owner of a real estate business or is
19 again employed as a real estate broker by a corporation or a partner-
20 ship; or

21 (2) he is employed by a licensed real estate broker as an
22 associate real estate broker, in which case his real estate broker
23 license is returned to the commission [DEPARTMENT], and the commission
24 [DEPARTMENT] issues him an associate real estate broker license.

25 * Sec. 13. AS 08.88.171(b) is amended to read:

26 (b) A person is entitled to an associate real estate broker li-
27 cense if he is [HAS BEEN] a resident of the state, [FOR 90 DAYS AND] if
28 he passes the real estate brokers examination, if he applies for his
29 license within six months after [RECEIPT OF NOTICE THAT] he has taken

1 national testing service.

2 (c) An applicant who fails the written examination may request that
3 his examination be reevaluated. The commission shall provide by regula-
4 tion for a system of reevaluating examinations on request of an applicant
5 who fails the examination. The system provided by the commission may
6 provide for reevaluation by the testing service or by any other person.

7 * Sec. 18. AS 08.88.221(c) is amended to read:

8 (c) The fee for amending or transferring a license is \$5 [\$2].

9 * Sec. 19. AS 08.88.221 is amended by adding a new subsection to read:

10 (d) If the commission contracts with a national testing service to
11 prepare, administer and grade examinations, the examination fee charged
12 under (a)(1) or (b)(1) of this section which the applicant is required
13 to pay to the commission shall be reduced by the amount of the fee
14 charged the applicant by the national testing service for the examina-
15 tion.

16 * Sec. 20. AS 08.88.231 is amended to read:

17 Sec. 08.88.231. DEPOSIT IN GENERAL FUND. The commission [DEPART-
18 MENT] shall deposit money collected under this chapter in the general
19 fund.

20 * Sec. 21. AS 08.88.241 is amended to read:

21 Sec. 08.88.241. REINSTATEMENT OF LAPSED LICENSE. A licensee who
22 was required to take an examination before receiving a license and whose
23 license has lapsed for more than two [THREE] years shall be re-examined
24 before reinstatement.

25 * Sec. 22. AS 08.88.251(a) is amended to read:

26 (a) A person licensed by the commission may become inactive by
27 returning to the commission [DEPARTMENT] his license certificate and a
28 form provided by the commission [DEPARTMENT]. In the form, he shall
29 state the date on which he intends to become inactive. His inactive

1 status begins on the date stated. The commission [DEPARTMENT] shall
2 issue him an inactive license certificate.

3 * Sec. 23. AS 08.88.251(b) is repealed and re-enacted to read:

4 (b) An inactive licensee may not attempt or offer to do any of the
5 activities listed in AS 08.88.161.

6 * Sec. 24. AS 08.88.251(c) is amended to read:

7 (c) A person who is inactive may become active by applying for an
8 active license and paying the required fees [BY RETURNING TO THE DEPART-
9 MENT HIS INACTIVE LICENSE CERTIFICATE, THE ACTIVE LICENSE BIENNIAL
10 RENEWAL FEE, IF HE BECOMES ACTIVE MORE THAN FIVE MONTHS BEFORE JANUARY 1
11 FOLLOWING, AND A COMPLETED FORM PROVIDED BY THE DEPARTMENT]. In the
12 application form he shall state the date on which he intends to become
13 active. His active status begins on the date stated. The commission
14 [DEPARTMENT] shall send him a license certificate. A person is entitled
15 to change from an inactive to an active status without examination if he
16 has not been inactive more than three years. If he has been inactive
17 more than three years, he is required to take an examination.

18 * Sec. 25. AS 08.88 is amended by adding a new section to read:

19 Sec. 08.88.263. LICENSE BY ENDORSEMENT. A person who holds a
20 valid active real estate license issued by another state shall be granted
21 an equivalent Alaska real estate license if he

22 (1) passes the portion of the real estate examination which
23 examines on Alaska law; and

24 (2) meets the requirements of AS 08.88.171 and 08.88.211.

25 * Sec. 26. AS 08.88.291 is amended to read:

26 Sec. 08.88.291. LOCATION. A licensed real estate broker shall
27 inform the commission of his principal office and of any branch offices
28 he has. He and the associate real estate brokers and real estate sales-
29 men he employs may do business only in or out of his principal office

1 and his branch offices. Failure of a real estate broker to maintain a
2 place of business or inform the commission [DEPARTMENT] of its location
3 and the names and addresses of all licensees under his jurisdiction at
4 the location are grounds for the suspension or revocation of his broker
5 license.

6 * Sec. 27. AS 08.88.301 is amended to read:

7 Sec. 08.88.301. CHANGE OF LOCATION. If a real estate broker
8 changes the location of his principal office or of a branch office, he
9 shall immediately notify the commission [DEPARTMENT].

10 * Sec. 28. AS 08.88.361 is amended to read:

11 Sec. 08.88.361. WHEN COMMISSION IS EARNED. A commission is earned
12 when the real estate broker fulfills the terms of a written personal
13 services contract [FINDS A BUYER WILLING AND ABLE TO PURCHASE AT A PRICE
14 AND ON TERMS SET BY THE SELLER, PROVIDING NEGOTIATIONS WITH THE BUYER
15 WERE INITIATED DURING THE TERM OF A VALID LISTING AGREEMENT AND WITHIN
16 THE TIME LIMIT OF THE LISTING].

17 * Sec. 29. AS 08.88.421(1) is amended to read:

18 (1) a person who is not licensed under this chapter who makes
19 [MAKING] a real estate transaction with respect to real estate he owns
20 or on his own behalf, unless the transaction involves land defined in
21 AS 34.55.044(6) which is not in Alaska;

22 * Sec. 30. AS 08.88.421(9) is amended to read:

23 (9) each of the following:

24 (A) a domestic or foreign corporation, or a general or
25 limited partnership; [,] or

26 (B) a partner or regular employee of a domestic or
27 foreign corporation or a general or limited partnership [ONE OF
28 THESE], when performing an act [ACTS] described in AS 08.88.161 in
29 the regular course, or as an incident to, the management, sale or

1 other disposition of real estate owned by the corporation or part-
2 nership; [HOWEVER,] the exemption provided in this subparagraph
3 does not apply to a person who performs an act described in AS 08.-
4 88.161 either [MAY NOT PERFORM THESE ACTS] as a vocation or for
5 compensation if the amount of the compensation is dependent upon or
6 directly related to the value of the real estate with respect to
7 which the act is [ACTS ARE] performed.

8 * Sec. 31. AS 08.88.421 is amended by adding a new paragraph to read:

9 (10) a resident manager of rented real estate if his duties
10 are limited to the negotiation of leases and rental agreements and the
11 collection of rent for the use of the real estate and if he is

12 (A) employed by the owner of the real estate; or

13 (B) employed by, or engaged under contract with, a

14 licensed real estate broker.

15 * Sec. 32. AS 08.88.431 is amended by adding a new paragraph to read:

16 (5) "resident manager" means a person who resides on real
17 property and manages it for the benefit of another person.

18 * Sec. 33. AS 45.85.010 is amended to read:

19 Sec. 45.85.010. REAL ESTATE SURETY FUND. There is created a
20 special account in the general fund known as the real estate surety fund
21 to carry out the purposes of this chapter. The fund shall be composed
22 of payments made by licensed real estate brokers and salesmen under
23 AS 45.85.020. The fund may not exceed \$500,000 [\$300,000] and amounts
24 in the fund in excess of \$250,000 may be appropriated for real estate
25 educational purposes as provided in AS 08.88.091.

26 * Sec. 34. AS 45.85.020 is amended to read:

27 Sec. 45.85.020. PAYMENTS BY REAL ESTATE BROKERS AND SALESMEN. (a)
28 A licensed real estate broker or associate broker, when obtaining or
29 renewing his real estate license, in lieu of obtaining a corporate

1 surety bond, shall pay to the commission [COMMISSIONER OF COMMERCE] in
2 addition to the license fee, a bond fee not to exceed \$125, and a li-
3 censed salesman, when obtaining or renewing his license, in lieu of
4 obtaining a corporate surety bond, shall pay to the commission [COMMIS-
5 SIONER] in addition to the license fee, a bond fee not to exceed \$40.
6 After the fund reaches \$250,000 the commission [COMMISSIONER] shall by
7 regulation adjust the bond fees so that, taking into account anticipated
8 expenditures for claims against the fund and real estate educational
9 purposes, the fund is maintained at a level not less than \$250,000.

10 (b) All fees collected under this section shall be paid at least
11 once a month by the commission [COMMISSIONER] into the general fund.
12 These payments shall be credited to the real estate surety fund.

13 * Sec. 35. AS 45.85 is amended by adding new sections to read:

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

- 22 (1) the name and address of the real estate broker, associate
23 real estate broker, or real estate salesman;
24 (2) the amount of the alleged loss;
25 (3) the date or period of time during which the alleged loss
26 occurred;
27 (4) the date upon which the alleged loss was discovered;
28 (5) the name and address of the claimant; or
29 (6) the general statement of facts relative to the claimant.

1 (b) A copy of a claim filed with the commission under (a) of this
2 section shall be sent to the real estate broker, associate real estate
3 broker, or real estate salesman alleged to have committed the misconduct
4 resulting in losses, as well as a real estate broker employing an
5 associate real estate broker or real estate salesman alleged to have
6 committed the conduct resulting in losses, at least 20 days before any
7 hearing held on the claim by the commission.

8 Sec. 45.85.041. CONSIDERATION OF APPLICATION. (a) Upon receipt
9 of a claim for reimbursement, the commission may, in considering whether
10 a claim should be granted,

- 11 (1) take and hear evidence pertaining to the claim;
- 12 (2) administer oaths and affirmations;
- 13 (3) compel, by subpoena, the attendance of witnesses and the
14 production of books, papers and documents pertaining to the claim;
- 15 (4) engage the services of an investigator, accountant, or
16 other expert necessary to process the claim.

17 (b) A certified or authenticated copy of a record, including a
18 transcript of testimony, of a hearing held under AS 08.88.071(a)(3) in
19 which fraud, misrepresentation, deceit, or conversion of funds on the
20 part of a licensed broker, associate broker, or real estate salesman is
21 established, may constitute sufficient evidence to support a finding.

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

28 (d) The claimant bears the burden of proof of establishing that he
29 suffered losses in a transaction as a result of fraud, misrepresenta-

1 tion, deceit, or the conversion of trust funds on the part of a real
2 estate broker, associate real estate broker, or real estate salesman and
3 the extent of those losses. All facts shall be established by a pre-
4 ponderance of the evidence.

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

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

19 * Sec. 36. AS 45.85.070 is amended to read:

20 Sec. 45.85.070. ORDER OF CLAIM PAYMENT. If the money deposited in
21 the real estate surety fund is insufficient at a given time to satisfy a
22 duly authorized claim against the fund, the commission [COMMISSIONER]
23 shall, when sufficient money has been deposited in the fund and appro-
24 priated, satisfy unpaid claims in the order that the claims were ori-
25 ginally filed, plus accumulated interest at the rate of eight percent a
26 year.

27 * Sec. 37. AS 45.85.080 is amended to read:

28 Sec. 45.85.080. FALSE CLAIMS OR DOCUMENTS. A person who files
29 with the commission [COMMISSIONER] a notice, statement or other document

1 required under this chapter which contains a wilful material misstate-
2 ment of fact, is guilty of a misdemeanor and is punishable by imprison-
3 ment for a period of not more than one year, or a fine of not more than
4 \$1,000, or by both.

5 * Sec. 38. AS 45.85.090 is amended to read:

6 Sec. 45.85.090. RIGHT TO SUBROGATION. When the commission [COM-
7 MISSIONER] has paid to a claimant [JUDGMENT CREDITOR] from the real
8 estate surety fund the sum awarded [ORDERED] by the commission [COURT],
9 the commission [COMMISSIONER] shall be subrogated to all of the rights
10 of the claimant [JUDGMENT CREDITOR] to the amount paid and the claimant
11 [JUDGMENT CREDITOR] shall assign all of his right, title and interest in
12 that portion of the claim [JUDGMENT] to the commission [COMMISSIONER].
13 Amounts subsequently realized by the commission [COMMISSIONER] on the
14 claim [JUDGMENT] shall be deposited to the real estate surety fund.

15 * Sec. 39. AS 45.85 is amended by adding a new section to read:

16 Sec. 45.85.120. DEFINITION. In this chapter, "commission" means
17 the Real Estate Commission established under AS 08.88.

18 * Sec. 40. AS 08.03.010(c) is amended by adding a new paragraph to read:

19 (2) Real Estate Commission (AS 08.88.010) -- June 30, 1982.

20 * Sec. 41. AS 08.01.010(13); AS 08.03.010(b)(9); AS 08.88.211, 08.88.-
21 431(3); AS 45.85.030, 45.85.040, and 45.85.050 are repealed.

22 * Sec. 42. This Act takes effect June 30, 1980.

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