

Introduced: 3/28/84  
Referred: Labor and Commerce and  
Finance

BY THE LABOR AND COMMERCE  
COMMITTEE BY REQUEST

1 IN THE SENATE

2 SENATE BILL NO. 537

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the real estate surety fund."

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

8 \* Section 1. AS 08.88.455(a) is amended to read:

9 (a) A licensed real estate broker, [OR] associate broker, or  
10 salesman when obtaining or renewing a real estate license, in lieu of  
11 obtaining a corporate surety bond, shall pay to the commission in  
12 addition to the license fee, a surety fund [BOND] fee not to exceed  
13 \$125 [, AND A LICENSED SALESMAN, WHEN OBTAINING OR RENEWING A LICENSE,  
14 IN LIEU OF OBTAINING A CORPORATE SURETY BOND, SHALL PAY TO THE COMMIS-  
15 SION IN ADDITION TO THE LICENSE FEE, A BOND FEE NOT TO EXCEED \$40].  
16 After the fund reaches \$250,000 the commission shall by regulation  
17 adjust the bond fees so that, taking into account anticipated expendi-  
18 tures for claims against the fund and real estate educational pur-  
19 poses, the fund is maintained at a level not less than \$250,000.

20 \* Sec. 2. AS 08.88.460 is repealed and reenacted to read:

21 Sec. 08.88.460. CLAIM FOR PAYMENT. (a) A person who obtains a  
22 final judgment in a court of competent jurisdiction against a person  
23 licensed under this chapter, based on fraud, deceit, intentional  
24 misrepresentation, or conversion of trust funds directly arising from  
25 a transaction for which the judgment debtor is required to be licensed  
26 under this chapter, may file an application in the court that enters  
27 the judgment for an order directing payment out of the real estate  
28 surety fund of an amount equal to the actual loss in the transaction  
29 up to \$10,000 of the amount unpaid on the judgment.

1 (b) If a judgment under (a) of this section is a small claims  
2 judgment, the judgment creditor shall file the surety fund application  
3 in the district court in which the judgment was entered. That court  
4 shall then make written findings to determine whether or not the small  
5 claims judgment is based on facts that support a recovery under this  
6 section. On a favorable determination the court may enter an order  
7 directing payment of the small claims judgment from the real estate  
8 surety fund.

9 (c) A copy of the application required by this section shall be  
10 served on the commission and the judgment debtor by the judgment  
11 creditor and proof of service shall be filed with the court.

12 (d) This section does not authorize payment from the real estate  
13 surety fund based on a transaction or event involving only innocent  
14 misrepresentation on the part of a real estate licensee.

15 (e) An application for payment from the real estate surety fund  
16 must be made within one year after the date that the judgment becomes  
17 final.

18 \* Sec. 3. AS 08.88.465 is repealed and reenacted to read:

19 Sec. 08.88.465. HEARING ON APPLICATION. (a) The court shall  
20 conduct a hearing on an application filed under AS 08.88.460 within 30  
21 days after service of the application on the commission. If the  
22 commission petitions the court and shows good cause, the court may  
23 continue the hearing.

24 (b) At a hearing conducted under this section the applicant is  
25 required to show that the applicant

26 (1) is not the spouse of the judgment debtor, or the  
27 personal representative or agent of the spouse of the debtor;

28 (2) has complied with the requirements of AS 08.88.450 -  
29 08.88.500;

1           (3) has obtained a judgment under AS 08.88.460, stating the  
2 amount of the judgment and the amount owed on the judgment on the date  
3 of the hearing;

4           (4) has made a reasonable attempt to determine whether or  
5 not the judgment debtor has assets that may be used to satisfy the  
6 judgment;

7           (5) has either been unable to locate assets of the judgment  
8 debtor that may be used to satisfy the judgment, or has located assets  
9 and has taken the necessary action to apply the assets to the  
10 judgment, but the amount realized is not sufficient to satisfy the  
11 judgment, stating the amount realized and the outstanding balance on  
12 the judgment; and

13           (6) has diligently pursued other remedies against the  
14 judgment debtor and anyone else who is liable in the transaction for  
15 which recovery from the real estate surety fund is sought.

16 \* Sec. 4. AS 08.88.470 is repealed and reenacted to read:

17           Sec. 08.88.470. FINDINGS OF THE COURT AND ADDITIONAL PROOF. (a)  
18 When a court considers an application under AS 08.88.460 it may not  
19 order payment out of the real estate surety fund unless a determina-  
20 tion is made that the applicant has a valid claim under AS 08.88.460  
21 and has complied with AS 08.88.465(b).

22           (b) If the judgment in favor of the applicant was obtained by  
23 default, stipulation, or consent, or if the action was defended by a  
24 trustee in bankruptcy, the applicant shall produce sufficient evidence  
25 in the hearing on the application to prove that the cause of action  
26 against the licensee was for fraud, intentional misrepresentation,  
27 deceit, or conversion of trust funds.

28 \* Sec. 5. AS 08.88 is amended by adding a new section to read:

29           Sec. 08.88.471. MOTION TO DISMISS APPLICATION. The commission

1           may move the court to dismiss the application if it appears that the  
2           petition is without merit. A motion made under this subsection may be  
3           supported by affidavits. The commission shall give written notice to  
4           the applicant at least 10 days before a hearing on a motion made under  
5           this section.

6           \* Sec. 6. AS 08.88 is amended by adding new sections to read:

7                   Sec. 08.88.473. ORDER DIRECTING PAYMENT OUT OF FUND. If a court  
8           finds after the hearing required by AS 08.88.465 that the real estate  
9           surety fund should pay the claim, it shall enter an order directing  
10          the commission to pay the claim from the real estate surety fund  
11          subject to the limitations contained in AS 08.88.450 - 08.88.500.

12                  Sec. 08.88.474. PRORATION OF AWARD. If a judgment under AS 08.-  
13          88.460 is against more than one person licensed under this chapter and  
14          the court does not prorate the judgment among the judgment debtors,  
15          the commission shall prorate the award among the judgment debtors.

16          \* Sec. 7. AS 08.88.475(b) is repealed and reenacted to read:

17                  (b) The liability of the real estate surety fund does not exceed  
18          \$10,000 for one transaction, regardless of the number of persons  
19          injured, the number of licensees involved, or the number of parcels of  
20          real estate involved in the transaction.

21          \* Sec. 8. AS 08.88.490 is amended to read:

22                  Sec. 08.88.490. RIGHT TO SUBROGATION. When the commission has  
23          paid a judgment creditor [TO A CLAIMANT] from the real estate surety  
24          fund [THE SUM AWARDED BY THE COMMISSION,] the commission shall be  
25          subrogated to all of the rights of the judgment creditor [CLAIMANT] to  
26          the amount paid and the judgment creditor [CLAIMANT] shall assign all  
27          right, title and interest in that portion of the judgment [CLAIM] to  
28          the commission. Amounts subsequently realized by the commission on  
29          the judgment [CLAIM] shall be deposited to the real estate surety

1 fund.

2 \* Sec. 9. AS 08.88.495 is repealed and reenacted to read:

3 Sec. 08.88.495. DISCIPLINARY ACTION AGAINST BROKERS AND SALES-  
4 MEN. The provisions of AS 08.88.450 - 08.88.500 do not limit the  
5 authority of the commission to take disciplinary action against a  
6 licensee for a violation of the provisions of this chapter or of a  
7 regulation adopted by the commission. Repayment in full of all obli-  
8 gations to the real estate surety fund does not nullify or modify the  
9 effect of a disciplinary proceeding brought under the provisions of  
10 this chapter.

11 \* Sec. 10. AS 08.88.500 is amended to read:

12 Sec. 08.88.500. DEFINITIONS [DEFINITION]. In this chapter,

13 (1) "commission" means the Real Estate Commission estab-  
14 lished under this chapter;

15 (2) "final judgment" means a judgment that is not subject  
16 to further judicial review.

17 \* Sec. 11. AS 08.88.472 is repealed.