

Introduced: 4/25/86
Referred: Labor and Commerce

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE SENATE

2 SENATE BILL NO. 487

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to real estate brokers and salesper-
7 sons; and providing for an effective date."

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

9 * Section 1. AS 08.88.071(a) is amended to read:

10 (a) The commission shall

11 (1) pass on qualifications of applicants for licenses and
12 issue licenses to those who qualify;

13 (2) prepare and grade examinations;

14 (3) after hearing, have the authority to suspend or revoke
15 the license of a licensee who

16 (A) with respect to a real estate transaction

17 (i) made a substantial misrepresentation;

18 (ii) made a false promise likely to influence,
19 persuade, or induce;

20 (iii) in the case of a real estate broker, pursued
21 a flagrant course of misrepresentation or made a false
22 promise through an agent, associate real estate broker, or
23 real estate salesperson [SALESMAN];

24 (iv) has engaged in conduct that is fraudulent or
25 dishonest;

26 (v) violates AS 08.88.391;

27 (B) procures a license by deceiving the commission, or
28 aids another to do so;

29 (C) has engaged in conduct in which the commission had

1 no knowledge at the time the licensee was licensed demonstrating
2 the licensee's unfitness to engage in the business for which the
3 licensee is licensed;

4 (D) knowingly authorizes, directs, connives at, or
5 aids in publishing, distributing, or circulating a material false
6 statement or misrepresentation concerning the licensee's business
7 or concerning real estate for sale in the licensee's business in
8 this or any other state;

9 (E) if a real estate broker, wilfully violates AS 08.-
10 88.171(d) or 08.88.291;

11 (F) if an associate real estate broker, claims to be a
12 real estate broker, or, if a real estate salesperson [SALESMAN],
13 claims to be a real estate broker or associate real estate brok-
14 er;

15 (G) if a real estate broker, employs an unlicensed
16 associate real estate broker or real estate salesperson [SALES-
17 MAN];

18 (H) if an associate real estate broker or real estate
19 salesperson [SALESMAN], fails immediately to turn money collected
20 in a real estate transaction over to the employing real estate
21 broker;

22 (I) represents that the licensee is an independent
23 contractor for the purpose of avoiding compliance with AS 23.30
24 without having a written contract;

25 (4) prosecute, through the Department of Law, violations of
26 the provisions of this chapter or lawful regulations promulgated under
27 this chapter;

28 (5) publish, on three consecutive weekends in a newspaper
29 of general circulation in the locale of the offending person's

1 principal office licensed under this chapter, any disciplinary action
2 taken by the commission against a person licensed under this chapter;

3 (6) issue a temporary permit to the personal representative
4 of the estate of a deceased broker or to some other person designated
5 by the commission with the approval of the personal representative of
6 the estate, in order to secure proper administration in concluding the
7 affairs of the decedent broker's real estate business;

8 (7) maintain the confidentiality of complaints, claims, and
9 investigations until the commission takes final action on the com-
10 plaint, claim, or investigation unless disclosure of information is
11 necessary to conduct an official investigation;

12 (8) allow public access to license files of the commission;

13 (9) establish procedures to settle earnest money disputes
14 by binding arbitration.

15 * Sec. 2. AS 08.88.091 is amended to read:

16 Sec. 08.88.091. EDUCATION. The commission may conduct and
17 assist in conducting real estate clinics, meetings, courses, or insti-
18 tutes. The commission may

19 (1) assist libraries and educational institutions in spon-
20 soring studies and programs; [AND]

21 (2) publish informational materials for the purpose of
22 raising the standards of the real estate business and the competency
23 of licensees; and

24 (3) publish bulletins, pamphlets, radio and television
25 announcements, and other information that will protect and serve the
26 public.

27 * Sec. 3. AS 08.88.091 is amended by adding a new subsection to read:

28 (b) The commission may charge a fee sufficient to pay for the
29 materials used in producing the educational materials. Fees received

1 for educational materials funded by the surety fund shall be paid to
2 the surety fund.

3 * Sec. 4. AS 08.88.171 is amended to read:

4 Sec. 08.88.171.. ELIGIBILITY FOR [ENTITLEMENT TO] LICENSE. (a)

5 A person is entitled to a real estate broker license if the person
6 passes the real estate brokers examination, if the person applies for
7 a license within six months after taking [THE PERSON HAS TAKEN] the
8 real estate brokers examination, if the person has had at least 60
9 [24] months of active and continuous experience as a licensed real
10 estate salesperson [SALESMAN], if the person is not under indictment
11 for, or seven years have elapsed since the person has completed a
12 sentence imposed upon conviction of, forgery, theft, extortion, con-
13 spiracy to defraud creditors, or any other felony involving moral
14 turpitude, and if the person is an owner of a real estate business or
15 employed as a real estate broker by a corporation or a partnership,
16 and if that corporation or partnership does not have an existing
17 licensed broker. Unless the broker fails to pay the biennial renewal
18 fee or unless the broker's license is suspended or revoked under
19 AS 08.88.071(a)(3), the real estate broker's license continues in
20 effect so long as the broker is registered with the commission as the
21 [AN] owner of a real estate business, or [THE BROKER IS EMPLOYED] as a
22 real estate broker employed by a corporation or a partnership. If the
23 broker stops being an owner of a real estate business, or stops being
24 employed as a real estate broker by a corporation or partnership, the
25 broker's license is suspended [FROM THE TIME THE BROKER STOPS] until

26 (1) the broker again becomes an owner of a real estate
27 business or is again employed as a real estate broker by a corporation
28 or a partnership; or

29 (2) the broker is employed by a licensed real estate broker

1 as an associate real estate broker, in which case the real estate
2 broker license is returned to the commission, and the commission
3 issues the broker an associate real estate broker license.

4 (b) A person is eligible for [ENTITLED TO] an associate real
5 estate broker license if the person passes the real estate brokers
6 examination, if the person applies for a license within six months
7 after the person has taken the examination, if the person has had at
8 least 24 months of active and continuous experience as a licensed real
9 estate salesperson [SALESMAN], if the person is not under indictment
10 for, or five years have elapsed since the person has completed a
11 sentence imposed upon conviction of, forgery, theft, extortion, con-
12 spiracy to defraud creditors, or any other felony involving moral
13 turpitude, and if the person is employed by a licensed real estate
14 broker as an associate real estate broker. Unless the associate
15 broker fails to pay the biennial renewal fee or unless the associate
16 broker's license is suspended or revoked under AS 08.88.071(a)(3), the
17 associate real estate broker's license continues in effect so long as
18 the associate broker is employed by a licensed real estate broker as
19 an associate broker. If the associate broker stops being employed by
20 a licensed real estate broker, the associate broker's license is
21 suspended from the time the associate broker stops until

22 (1) the associate broker again is employed by a real estate
23 broker as an associate broker; or

24 (2) the associate broker becomes an owner of a real estate
25 business, in which case the associate broker's associate real estate
26 broker license is returned to the commission, and the commission
27 issues the associate broker a real estate broker license.

28 (c) A person is eligible for [ENTITLED TO] a real estate sales-
29 person [SALESMAN] license if the person passes the real estate

1 salesperson [SALESMAN] examination, if the person applies for a li-
2 cense within six months after taking [THE PERSON HAS TAKEN] the ex-
3 amination, if the person is at least 19 years old, if the person is
4 not under indictment for forgery, theft, extortion, conspiracy to
5 defraud creditors, or any other felony involving moral turpitude, or,
6 if convicted of such an offense, the person has completed the sentence
7 imposed upon conviction, and if the person is employed by a real
8 estate broker. Unless the salesperson [SALESMAN] fails to pay the
9 biennial renewal fee or unless the real estate salesperson's [SALES-
10 MAN'S] license is suspended or revoked under AS 08.88.071(a)(3), a
11 real estate salesperson's [SALESMAN'S] license continues in effect so
12 long as the salesperson [SALESMAN] is employed as a salesperson
13 [SALESMAN] by a licensed real estate broker. If the salesperson
14 [SALESMAN] stops being employed as a real estate salesperson [SALES-
15 MAN], the real estate salesperson's [SALESMAN'S] license is suspended
16 from the time the salesperson [SALESMAN] stops until the salesperson
17 [SALESMAN] again is employed as a salesperson [SALESMAN] by a licensed
18 real estate broker.

19 (d) A licensee shall [PROMPTLY] inform the commission within 48
20 hours of a change in business association that affects the status of
21 the licensee's license under this section.

22 * Sec. 5. AS 08.88.171 is amended by adding new subsections to read:

23 (e) An applicant for a real estate broker, associate broker, or
24 salesperson license whose license has been suspended in this state or
25 in another licensing jurisdiction is not eligible for a license or
26 reinstatement or issuance of a real estate license until all condi-
27 tions of the suspension have been satisfied.

28 (f) An applicant for a real estate broker, associate broker, or
29 salesperson license whose license has been revoked in this state or in

1 another licensing jurisdiction is not eligible for a license or rein-
2 statement or issuance of a real estate license until the commission
3 finds the applicant to be fit. An applicant found not to be fit for
4 licensure without a hearing shall receive a statement of issues and
5 shall be provided an opportunity for a hearing.

6 (g) Any act that is grounds for revocation of a license is
7 sufficient for denial of a license.

8 * Sec. 6. AS 08.88.251(a) is amended to read:

9 (a) A person licensed by the commission may become inactive by
10 returning to the commission the person's license certificate and a
11 form provided by the commission. In the form, the person shall state
12 the date on which the person intends to become inactive. The person's
13 inactive status begins on the date stated. [THE COMMISSION SHALL
14 ISSUE THE PERSON AN INACTIVE LICENSE CERTIFICATE.]

15 * Sec. 7. AS 08.88.251(c) is amended to read:

16 (c) A person who is inactive may become active by applying for
17 an active license and paying the required fees. In the application
18 form the person shall state the date on which the person intends to
19 become active. The person's active status begins on the date stated.
20 [THE COMMISSION SHALL SEND THE PERSON A LICENSE CERTIFICATE.] A
21 person is entitled to change from an inactive to an active status
22 without examination if the person has not been inactive more than
23 three years. If the person has been inactive more than three years,
24 the person is required to take an examination.

25 * Sec. 8. AS 08.88 is amended by adding a new section to read:

26 Sec. 08.88.326. INDEPENDENT CONTRACTOR. When an associate
27 broker or salesperson has entered into a written contract as an in-
28 dependent contractor, the associate broker or the salesperson is not
29 covered by AS 23.30 (the Workers' Compensation Act).

1 * Sec. 9. AS 08.88.361 is amended to read:

2 Sec. 08.88.361. WHEN COMMISSION IS EARNED. A commission is
3 earned when the real estate broker fulfills the terms of a written
4 [PERSONAL SERVICES] contract with the party or parties from whom the
5 commission is due and discloses to all parties the broker's relation-
6 ship in the transaction.

7 * Sec. 10. AS 08.88.391 is amended to read:

8 Sec. 08.88.391. CONFLICT OF INTEREST. A licensed real estate
9 broker, associate real estate broker, or real estate salesperson
10 [SALESMAN] who has a personal financial interest in a real estate
11 transaction shall disclose that interest to every person involved in
12 the transaction before transmitting an offer to purchase to a seller.

13 * Sec. 11. AS 08.88.391 is amended by adding a new subsection to read:

14 (b) The licensee shall obtain the written consent of all parties
15 to a transaction before the licensee represents more than one party to
16 a transaction.

17 * Sec. 12. AS 08.88 is amended by adding a new section to read:

18 Sec. 08.88.395. INNOCENT MISREPRESENTATION. A person licensed
19 under this chapter is not liable to another person for innocent mis-
20 representations of fact.

21 * Sec. 13. AS 08.88 is amended by adding a new section to read:

22 Sec. 08.88.406. EARNEST MONEY DISPUTES. (a) A broker may hold
23 an earnest money deposit that is the subject of a dispute in the
24 broker's trust account if the broker notifies all parties of the
25 dispute by certified mail and requests all parties to reach a mutual
26 agreement as to the disposition of the earnest money deposit.

27 (b) If the parties do not reach a mutual agreement within 15
28 days after mailing of the notice in (a) of this section, the broker
29 shall submit the dispute to the commission for binding arbitration.

1 The broker shall retain the earnest money deposit in the broker's
2 trust account until the arbitrator issues instructions regarding the
3 distribution of the earnest money deposit.

4 (c) If a party to the dispute files a civil action to recover
5 the earnest money before the completion of arbitration, the broker
6 shall hold the earnest money deposit in the broker's trust account
7 until instructed to do otherwise by the court.

8 * Sec. 14. AS 08.88.421 is amended to read:

9 Sec. 08.88.421. EXCEPTIONS. This chapter does not apply to

10 (1) a person who is not licensed under this chapter who
11 makes a real estate transaction with respect to real estate the person
12 owns or on the person's own behalf, unless the transaction involves a
13 subdivision or subdivided land as defined in AS 34.55.044 that
14 [AS 34.55.044(6) WHICH] is not in the state [ALASKA]; this exemption
15 does not apply to a corporation that is engaged in the business of
16 selling real estate or that maintains and sells real estate in an
17 inventory;

18 (2) an attorney in fact under a power of attorney authoriz-
19 ing the consummation of a specific real estate transaction; an attor-
20 ney in fact may not act as such for more than two transactions in a
21 calendar year;

22 (3) a lawyer performing duties as a lawyer;

23 (4) a public official in the conduct of official duties;

24 (5) a person acting as receiver, trustee, administrator,
25 executor, or guardian;

26 (6) a person acting under court order;

27 (7) a person acting under the authority of a will or trust
28 instrument;

29 (8) a person dealing in mineral rights transactions;

1 (9) [EACH OF THE FOLLOWING:

2 (A) A DOMESTIC OR FOREIGN CORPORATION, OR A GENERAL OR
3 LIMITED PARTNERSHIP; OR

4 (B) A PARTNER OR REGULAR EMPLOYEE OF A DOMESTIC OR
5 FOREIGN CORPORATION OR A GENERAL OR LIMITED PARTNERSHIP, WHEN
6 PERFORMING AN ACT DESCRIBED IN AS 08.88.161 IN THE REGULAR
7 COURSE, OR AS AN INCIDENT TO, THE MANAGEMENT, SALE OR OTHER
8 DISPOSITION OF REAL ESTATE OWNED BY THE CORPORATION OR PARTNER-
9 SHIP; THE EXEMPTION PROVIDED IN THIS SUBPARAGRAPH DOES NOT APPLY
10 TO A PERSON WHO PERFORMS AN ACT DESCRIBED IN AS 08.88.161 EITHER
11 AS A VOCATION OR FOR COMPENSATION IF THE AMOUNT OF THE COMPEN-
12 SATION IS DEPENDENT UPON OR DIRECTLY RELATED TO THE VALUE OF THE
13 REAL ESTATE WITH RESPECT TO WHICH THE ACT IS PERFORMED.

14 (10)] a resident manager of rented real estate if the resi-
15 dent manager's duties are limited to the negotiation of leases and
16 rental agreements and the collection of rent for the use of the real
17 estate and if the resident manager is

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

19 (B) employed by, or engaged under contract with, a
20 licensed real estate broker.

21 * Sec. 15. AS 08.88.431(4) is amended to read:

22 (4) "lease" includes a lease that is a part of another
23 transaction except when the lease is incidental to the transaction, as
24 in a sale of a business, and the lease is not created, substantially
25 amended, or renegotiated as part of the transaction; [.]

26 * Sec. 16. AS 08.88.450 is amended to read:

27 Sec. 08.88.450. REAL ESTATE SURETY FUND. The real estate surety
28 fund is established in the general fund to carry out the purposes of
29 AS 08.88.450 - 08.88.500. The fund is composed of payments made by

1 licensed real estate brokers, associate real estate brokers, and
2 salespersons [SALESMEN] under AS 08.88.455 and filing fees retained in
3 accordance with AS 08.88.460. Amounts [THE FUND MAY NOT EXCEED
4 \$500,000 AND AMOUNTS] in the fund in excess of \$250,000 may be appro-
5 priated for real estate educational purposes as provided in AS 08.-
6 88.091.

7 * Sec. 17. AS 08.88.460(a) is amended to read:

8 (a) A person seeking reimbursement for a loss suffered in a
9 transaction as a result of fraud, negligent or intentional misrep-
10 resentation, deceit, or the conversion of trust funds on the part of a
11 real estate broker, associate real estate broker, or real estate
12 salesperson [SALESMAN] licensed under this chapter shall make a claim
13 to the commission for reimbursement on a form furnished by the commis-
14 sion. The form shall be executed under penalty of perjury, and infor-
15 mation required to be supplied shall include the following:

- 16 (1) the name and address of the real estate broker, associ-
17 ate real estate broker, or real estate salesperson [SALESMAN];
18 (2) the amount of the alleged loss;
19 (3) the date or period of time during which the alleged
20 loss occurred;
21 (4) the date upon which the alleged loss was discovered;
22 (5) the name and address of the claimant; or
23 (6) the general statement of facts relative to the claim-
24 ant.

25 * Sec. 18. AS 08.88.460(d) is amended to read:

26 (d) A claimant under this section shall pay a filing fee of \$250
27 to the commission at the time the claim is filed. The filing fee
28 shall be refunded only if

- 29 (1) the commission makes an award to the claimant from the

1 real estate surety fund; or

2 (2) [THE CLAIM IS DISMISSED UNDER (c) OF THIS SECTION; OR

3 (3)] the claim is withdrawn by the claimant before the
4 commission holds a hearing on the claim.

5 * Sec. 19. AS 08.88.465(d) is amended to read:

6 (d) The claimant bears the burden of proof of establishing that
7 the claimant suffered losses in a transaction as a result of fraud,
8 negligent or intentional misrepresentation, deceit, or the conversion
9 of trust funds on the part of a real estate broker, associate real
10 estate broker, or real estate salesperson [SALESMAN] and the extent of
11 those losses. All facts shall be established by a preponderance of the
12 evidence.

13 * Sec. 20. AS 08.88.470 is amended by adding new subsections to read:

14 (b) When an award is made from the real estate surety fund under
15 this chapter in reimbursement of losses suffered by a claimant as a
16 result of fraud, negligent or intentional misrepresentation, deceit,
17 or conversion of trust funds on the part of a licensed broker, associ-
18 ate broker, or salesperson, the commission may consider the hearing on
19 the claim to be a hearing on the suspension of the license of the
20 broker, associate broker, or salesperson, and may suspend the license
21 of the broker, associate broker, or salesperson. A suspension ordered
22 under this subsection shall be lifted if the broker, associate broker,
23 or salesperson reaches an agreement with the commission on terms and
24 conditions for the repayment to the real estate surety fund of the
25 money awarded to the claimant and the costs of hearing the claim under
26 AS 08.88.465. The suspension shall be reimposed if the broker, asso-
27 ciate broker, or salesperson violates the terms of a repayment agree-
28 ment entered into under this subsection.

29 (c) Repayment of an amount paid out of the surety fund does not

1 affect a license suspension, revocation, or other penalty imposed by
2 the commission after a hearing and a finding that the licensee vio-
3 lated this chapter or a regulation adopted under this chapter. A
4 penalty imposed for a violation of this chapter or a regulation
5 adopted under this chapter is separate and in addition to a suspension
6 imposed as a result of surety fund claim proceedings.

7 * Sec. 21. AS 08.88.472(a) is amended to read:

8 (a) When an award is made from the real estate surety fund under
9 AS 08.88.470, the commission may charge to the fund the costs of a
10 hearing held under AS 08.88.071, [OR] 08.88.463, or 08.88.470(b).
11 Amounts subsequently recovered by the commission for these costs from
12 the licensee under AS 08.88.470(b) [AS 08.88.071(b)] or from other
13 parties under AS 08.88.490 shall be deposited to the real estate
14 surety fund.

15 * Sec. 22. AS 08.88.472 is amended by adding a new subsection to read:

16 (c) The commission shall order the licensee found to have com-
17 mitted fraud, deceit, misrepresentation, or conversion of funds for
18 which an award is made from the surety fund to reimburse the surety
19 fund the amount awarded plus all costs of the hearing which have been
20 charged to the surety fund.

21 * Sec. 23. AS 08.88.474 is amended to read:

22 Sec. 08.88.474. PAYMENT OF [SMALL CLAIMS] JUDGMENT. If a [CLAIM
23 ORIGINALLY FILED WITH THE COMMISSION IS DISMISSED AND IS HEARD AS A
24 SMALL CLAIMS ACTION UNDER AS 08.88.460(c) AND THE] claimant prevails
25 in a court [THE SMALL CLAIMS] action against a [THE] real estate
26 broker, associate real estate broker, or salesperson, and the action
27 was based on conduct substantially similar to that set out in AS 08.-
28 88.460(a) [SALESMAN], the commission shall make an award from the fund
29 of any outstanding portion of the [SMALL CLAIMS] judgment. The

1 commission shall make the award after [ON] receipt of a copy of the
2 final judgment and an affidavit from the claimant stating that more
3 than 30 days have elapsed since the judgment became final and that the
4 broker, associate broker, or salesperson [SALESMAN] has not satisfied
5 the judgment during that time. After payment of a [SMALL CLAIMS]
6 judgment the commission is subrogated to the claimant's rights in the
7 judgment under AS 08.88.490.

8 * Sec. 24. Section 12 of this Act applies to causes of action arising
9 on or after the effective date of this Act.

10 * Sec. 25. Sections 17, 18, 19, and 24 of this Act do not apply to a
11 claim that a real estate broker, associate real estate broker, or real
12 estate salesperson has elected to remove to small claims court under
13 AS 08.88.460(c) before the effective date of this Act.

14 * Sec. 26. The commission shall refund \$225 of the filing fee paid
15 under AS 08.88.460(d) to a claimant whose case is pending on the effective
16 date of this Act.

17 * Sec. 27. The revisor of statutes shall change "salesman" to "salesper-
18 son", as appropriate, in AS 08.88 when AS 08 is scheduled for reprinting.

19 * Sec. 28. AS 08.88.071(b), 08.88.460(c), and 08.88.465(f) are re-
20 pealed.

21 * Sec. 29. This Act takes effect immediately in accordance with AS 01.-
22 10.070(c).