

Introduced: 1/19/87
Referred: Labor and Commerce
and Judiciary

5-0008A

1 IN THE SENATE BY ZHAROFF
2 SENATE BILL NO. 39
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - FIRST SESSION
5 A BILL
6 For an Act entitled: "An Act relating to real estate brokers and salesper-
7 sons and to the Real Estate Commission; and providing
8 for an effective date."
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
10 * Section 1. AS 08.03.010(c)(18) is amended to read:
11 (18) Real Estate Commission (AS 08.88.011) -- June 30, 1990
12 [1987].
13 * Sec. 2. AS 08.88.071(a) is amended to read:
14 (a) The commission shall
15 (1) pass on qualifications of applicants for licenses and
16 issue licenses to those who qualify;
17 (2) prepare and grade examinations;
18 (3) after hearing, have the authority to suspend or revoke
19 the license of a licensee who
20 (A) with respect to a real estate transaction
21 (i) made a substantial misrepresentation;
22 (ii) made a false promise likely to influence,
23 persuade, or induce;
24 (iii) in the case of a real estate broker, pursued
25 a flagrant course of misrepresentation or made a false
26 promise through an agent, associate real estate broker, or
27 real estate salesperson [SALESMAN];
28 (iv) has engaged in conduct that is fraudulent or
29 dishonest;

- 1 (v) violates AS 08.88.391;
- 2 (B) procures a license by deceiving the commission, or
3 aids another to do so;
- 4 (C) has engaged in conduct in which the commission had
5 no knowledge at the time the licensee was licensed demonstrating
6 the licensee's unfitness to engage in the business for which the
7 licensee is licensed;
- 8 (D) knowingly authorizes, directs, connives at, or
9 aids in publishing, distributing, or circulating a material false
10 statement or misrepresentation concerning the licensee's business
11 or concerning real estate for sale in the licensee's business in
12 this or any other state;
- 13 (E) if a real estate broker, wilfully violates AS 08.-
14 88.171(d) or 08.88.291;
- 15 (F) if an associate real estate broker, claims to be a
16 real estate broker, or, if a real estate salesperson [SALESMAN],
17 claims to be a real estate broker or associate real estate brok-
18 er;
- 19 (G) if a real estate broker, employs an unlicensed
20 associate real estate broker or real estate salesperson [SALES-
21 MAN];
- 22 (H) if an associate real estate broker or real estate
23 salesperson [SALESMAN], fails immediately to turn money collected
24 in a real estate transaction over to the employing real estate
25 broker;
- 26 (I) represents that the licensee is an independent
27 contractor for the purpose of avoiding compliance with AS 23.30
28 without having a written contract;
- 29 (4) prosecute, through the Department of Law, violations of

1 the provisions of this chapter or lawful regulations promulgated under
2 this chapter;

3 (5) publish, on three consecutive weekends in a newspaper
4 of general circulation in the locale of the offending person's princi-
5 pal office licensed under this chapter, any disciplinary action taken
6 by the commission against a person licensed under this chapter;

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

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

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

17 (9) establish procedures to settle earnest money disputes
18 by binding arbitration.

19 * Sec. 3. AS 08.88.081 is repealed and reenacted to read:

20 Sec. 08.88.081. COMMISSION REGULATIONS. The commission shall
21 adopt regulations necessary to carry out the purposes of this chapter
22 including regulations

23 (1) pertaining to the responsibilities of persons licensed
24 under this chapter;

25 (2) defining the grounds for revoking or suspending a
26 license;

27 (3) establishing procedures for the conduct of examinations
28 administered under this chapter; and

29 (4) establishing application procedures for examination,

1 for licensing, and for registration of principal and branch offices.

2 * Sec. 4. AS 08.88.091 is amended to read:

3 Sec. 08.88.091. EDUCATION. The commission may conduct and
4 assist in conducting real estate clinics, meetings, courses, or insti-
5 tutes. The commission may

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

8 (2) publish informational materials for the purpose of
9 raising the standards of the real estate business and the competency
10 of licensees; and

11 (3) publish bulletins, pamphlets, radio and television
12 announcements, and other information that will protect and serve the
13 public.

14 * Sec. 5. AS 08.88.091 is amended by adding a new subsection to read:

15 (b) The commission may charge a fee sufficient to pay for the
16 materials used in producing the educational materials. Fees received
17 for educational materials funded by the real estate surety fund shall
18 be paid to the real estate surety fund.

19 * Sec. 6. AS 08.88.171 is amended to read:

20 Sec. 08.88.171. ELIGIBILITY FOR [ENTITLEMENT TO] LICENSE. (a)
21 A person is entitled to a real estate broker license if the person
22 passes the real estate brokers examination, if the person applies for
23 a license within six months after taking [THE PERSON HAS TAKEN] the
24 real estate brokers examination, if the person has had at least 60
25 [24] months of active and continuous experience as a licensed real
26 estate salesperson [SALESMAN], if the person is not under indictment
27 for, or seven years have elapsed since the person has completed a
28 sentence imposed upon conviction of, forgery, theft, extortion, con-
29 spiracy to defraud creditors, or any other felony involving moral

1 turpitude, and if the person is an owner of a real estate business or
2 employed as a real estate broker by a corporation or a partnership,
3 and if that corporation or partnership does not have an existing
4 licensed broker. Unless the broker fails to pay the biennial renewal
5 fee or unless the broker's license is suspended or revoked under
6 AS 08.88.071(a)(3), the real estate broker's license continues in
7 effect so long as the broker is registered with the commission as the
8 [AN] owner of a real estate business, or [THE BROKER IS EMPLOYED] as a
9 real estate broker employed by a corporation or a partnership. If the
10 broker stops being an owner of a real estate business, or stops being
11 employed as a real estate broker by a corporation or partnership, the
12 broker's license is suspended [FROM THE TIME THE BROKER STOPS] until

13 (1) the broker again becomes an owner of a real estate
14 business or is again employed as a real estate broker by a corporation
15 or a partnership; or

16 (2) the broker is employed by a licensed real estate broker
17 as an associate real estate broker, in which case the real estate
18 broker license is returned to the commission, and the commission
19 issues the broker an associate real estate broker license.

20 (b) A person is eligible for [ENTITLED TO] an associate real
21 estate broker license if the person passes the real estate brokers
22 examination, if the person applies for a license within six months
23 after the person has taken the examination, if the person has had at
24 least 24 months of active and continuous experience as a licensed real
25 estate salesperson [SALESMAN], if the person is not under indictment
26 for, or five years have elapsed since the person has completed a
27 sentence imposed upon conviction of, forgery, theft, extortion, con-
28 spiracy to defraud creditors, or any other felony involving moral
29 turpitude, and if the person is employed by a licensed real estate

1 broker as an associate real estate broker. Unless the associate
2 broker fails to pay the biennial renewal fee or unless the associate
3 broker's license is suspended or revoked under AS 08.88.071(a)(3), the
4 associate real estate broker's license continues in effect so long as
5 the associate broker is employed by a licensed real estate broker as
6 an associate broker. If the associate broker stops being employed by
7 a licensed real estate broker, the associate broker's license is
8 suspended from the time the associate broker stops until

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

11 (2) the associate broker becomes an owner of a real estate
12 business, in which case the associate broker's associate real estate
13 broker license is returned to the commission, and the commission
14 issues the associate broker a real estate broker license.

15 (c) A person is eligible for [ENTITLED TO] a real estate sales-
16 person [SALESMAN] license if the person passes the real estate sales-
17 person [SALESMAN] examination, if the person applies for a license
18 within six months after taking [THE PERSON HAS TAKEN] the examination,
19 if the person is at least 19 years old, if the person is not under
20 indictment for forgery, theft, extortion, conspiracy to defraud credi-
21 tors, or any other felony involving moral turpitude, or, if convicted
22 of such an offense, the person has completed the sentence imposed upon
23 conviction, and if the person is employed by a real estate broker.
24 Unless the salesperson [SALESMAN] fails to pay the biennial renewal
25 fee or unless the real estate salesperson's [SALESMAN'S] license is
26 suspended or revoked under AS 08.88.071(a)(3), a real estate salesper-
27 son's [SALESMAN'S] license continues in effect so long as the sales-
28 person [SALESMAN] is employed as a salesperson [SALESMAN] by a li-
29 censed real estate broker. If the salesperson [SALESMAN] stops being

1 employed as a real estate salesperson [SALESMAN], the real estate
2 salesperson's [SALESMAN'S] license is suspended from the time the
3 salesperson [SALESMAN] stops until the salesperson [SALESMAN] again is
4 employed as a salesperson [SALESMAN] by a licensed real estate broker.

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

8 * Sec. 7. AS 08.88.171 is amended by adding new subsections to read:

9 (e) An applicant for a real estate broker license, associate
10 real estate broker license, or real estate salesperson license whose
11 license has been suspended in this state or in another licensing
12 jurisdiction is not eligible for a license or reinstatement or
13 issuance of a license until all conditions of the suspension have been
14 satisfied.

15 (f) An applicant for a real estate broker license, associate
16 real estate broker license, or real estate salesperson license whose
17 license has been revoked in this state or in another licensing
18 jurisdiction is not eligible for a license or reinstatement or
19 issuance of a license until the commission finds the applicant to be
20 fit. An applicant found not to be fit for licensure without a hearing
21 shall receive a statement of issues and shall be provided an
22 opportunity for a hearing.

23 (g) An act that is grounds for revocation of a license is suffi-
24 cient for denial of a license.

25 * Sec. 8. 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 the person's license certificate and a
28 form provided by the commission. In the form, the person shall state
29 the date on which the person intends to become inactive. The person's

1 inactive status begins on the date stated. [THE COMMISSION SHALL
2 ISSUE THE PERSON AN INACTIVE LICENSE CERTIFICATE.]

3 * Sec. 9. AS 08.88.251(c) is amended to read:

4 (c) A person who is inactive may become active by applying for
5 an active license and paying the required fees. In the application
6 form the person shall state the date on which the person intends to
7 become active. The person's active status begins on the date stated.
8 [THE COMMISSION SHALL SEND THE PERSON A LICENSE CERTIFICATE.] A
9 person is entitled to change from an inactive to an active status
10 without examination if the person has not been inactive more than
11 three years. If the person has been inactive more than three years,
12 the person is required to take an examination.

13 * Sec. 10. AS 08.88 is amended by adding a new section to read:

14 Sec. 08.88.326. INDEPENDENT CONTRACTOR. When an associate real
15 estate broker or real estate salesperson has entered into a written
16 contract as an independent contractor, the associate real estate
17 broker or the real estate salesperson is not covered by AS 23.30
18 (Alaska Workers' Compensation Act).

19 * Sec. 11. AS 08.88.361 is amended to read:

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

25 * Sec. 12. AS 08.88.391 is amended to read:

26 Sec. 08.88.391. CONFLICT OF INTEREST. A licensed real estate
27 broker, associate real estate broker, or real estate salesperson
28 [SALESMAN] who has a personal financial interest in a real estate
29 transaction shall disclose that interest to every person involved in

1 the transaction before transmitting an offer to purchase to a seller.

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

3 (b) The licensee shall obtain the written consent of all parties
4 to a transaction before the licensee represents more than one party to
5 a transaction.

6 * Sec. 14. AS 08.88 is amended by adding a new section to read:

7 Sec. 08.88.395. INNOCENT MISREPRESENTATION. A person licensed
8 under this chapter is not liable to another person for innocent mis-
9 representations of fact.

10 * Sec. 15. AS 08.88 is amended by adding a new section to read:

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

16 (b) If the parties do not reach a mutual agreement within 15
17 days after mailing of the notice in (a) of this section, the broker
18 shall submit the dispute to the commission for binding arbitration.
19 The broker shall retain the earnest money deposit in the broker's
20 trust account until the arbitrator issues instructions regarding the
21 distribution of the earnest money deposit.

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

26 * Sec. 16. AS 08.88.421 is amended to read:

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

28 (1) a person who is not licensed under this chapter who
29 makes a real estate transaction with respect to real estate the person

1 owns or on the person's own behalf, unless the transaction involves a
2 subdivision or subdivided land as defined in AS 34.55.044 that
3 [AS 34.55.044(6) WHICH] is not in the state [ALASKA]; this exemption
4 does not apply to a corporation that is engaged in the business of
5 selling real estate or that maintains and sells real estate in an
6 inventory;

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

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

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

13 (5) a person acting as receiver, trustee, administrator,
14 executor, or guardian;

15 (6) a person acting under court order;

16 (7) a person acting under the authority of a will or trust
17 instrument;

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

19 (9) [A DOMESTIC OR FOREIGN CORPORATION, A GENERAL OR
20 LIMITED PARTNERSHIP, OR A PARTNER OR REGULAR EMPLOYEE OF A DOMESTIC OR
21 FOREIGN CORPORATION OR A GENERAL OR LIMITED PARTNERSHIP, WHEN
22 PERFORMING AN ACT DESCRIBED IN AS 08.88.161 IN THE REGULAR COURSE, OR
23 AS AN INCIDENT TO, THE MANAGEMENT, SALE, OR OTHER DISPOSITION OF REAL
24 ESTATE OWNED BY THE CORPORATION OR PARTNERSHIP; THE EXEMPTION PROVIDED
25 IN THIS PARAGRAPH DOES NOT APPLY TO A PERSON WHO PERFORMS AN ACT
26 DESCRIBED IN AS 08.88.161 EITHER AS A VOCATION OR FOR COMPENSATION IF
27 THE AMOUNT OF THE COMPENSATION IS DEPENDENT UPON OR DIRECTLY RELATED
28 TO THE VALUE OF THE REAL ESTATE WITH RESPECT TO WHICH THE ACT IS
29 PERFORMED;

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

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

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

8 * Sec. 17. AS 08.88.431(4) is amended to read:

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

13 * Sec. 18. AS 08.88.450 is amended to read:

14 Sec. 08.88.450. REAL ESTATE SURETY FUND. The real estate surety
15 fund is established in the general fund to carry out the purposes of
16 AS 08.88.450 - 08.88.500. The fund is composed of payments made by
17 licensed real estate brokers, associate real estate brokers, and real
18 estate salespersons [SALESMEN] under AS 08.88.455 and filing fees
19 retained in accordance with AS 08.88.460. Amounts [THE FUND MAY NOT
20 EXCEED \$500,000 AND AMOUNTS] in the fund in excess of \$250,000 may be
21 appropriated for real estate educational purposes as provided in
22 AS 08.88.091.

23 * Sec. 19. AS 08.88.460(a) is amended to read:

24 (a) A person seeking reimbursement for a loss suffered in a
25 transaction as a result of fraud, negligent or intentional misrep-
26 resentation, deceit, or the conversion of trust funds on the part of a
27 real estate broker, associate real estate broker, or real estate
28 salesperson [SALESMAN] licensed under this chapter shall make a claim
29 to the commission for reimbursement on a form furnished by the

1 commission. The form shall be executed under penalty of perjury, and
2 information required to be supplied shall include the following:

3 (1) the name and address of the real estate broker, associ-
4 ate real estate broker, or real estate salesperson [SALESMAN];

5 (2) the amount of the alleged loss;

6 (3) the date or period of time during which the alleged
7 loss occurred;

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

9 (5) the name and address of the claimant; and [OR]

10 (6) the general statement of facts relative to the claim-
11 ant.

12 * Sec. 20. AS 08.88.460(d) is amended to read:

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

16 (1) the commission makes an award to the claimant from the
17 real estate surety fund; or

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

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

21 * Sec. 21. AS 08.88.465(d) is amended to read:

22 (d) The claimant bears the burden of proof of establishing that
23 the claimant suffered losses in a transaction as a result of fraud,
24 negligent or intentional misrepresentation, deceit, or the conversion
25 of trust funds on the part of a real estate broker, associate real
26 estate broker, or real estate salesperson [SALESMAN] and the extent of
27 those losses. All facts shall be established by a preponderance of the
28 evidence.

29 * Sec. 22. AS 08.88.470 is amended by adding new subsections to read:

1 (b) When an award is made from the real estate surety fund under
2 this chapter in reimbursement of losses suffered by a claimant as a
3 result of fraud, negligent or intentional misrepresentation, deceit,
4 or conversion of trust funds on the part of a licensed real estate
5 broker, associate real estate broker, or real estate salesperson, the
6 commission may consider the hearing on the claim to be a hearing on
7 the suspension of the license of the broker, associate broker, or
8 salesperson, and may suspend the license of the broker, associate
9 broker, or salesperson. A suspension ordered under this subsection
10 shall be lifted if the broker, associate broker, or salesperson
11 reaches an agreement with the commission on terms and conditions for
12 the repayment to the real estate surety fund of the money awarded to
13 the claimant and the costs of hearing the claim under AS 08.88.465.
14 The suspension shall be reimposed if the broker, associate broker, or
15 salesperson violates the terms of a repayment agreement entered into
16 under this subsection.

17 (c) Repayment of an amount paid out of the real estate surety
18 fund does not affect a license suspension, revocation, or other
19 penalty imposed by the commission after a hearing and a finding that
20 the licensee violated this chapter or a regulation adopted under this
21 chapter. A penalty imposed for a violation of this chapter or a
22 regulation adopted under this chapter is separate and in addition to a
23 suspension imposed as a result of surety fund claim proceedings.

24 * Sec. 23. AS 08.88.472(a) is amended to read:

25 (a) When an award is made from the real estate surety fund under
26 AS 08.88.470, the commission may charge to the fund the costs of a
27 hearing held under AS 08.88.071, [OR] 08.88.465, or 08.88.470(b).
28 Amounts subsequently recovered by the commission for these costs from
29 the licensee under AS 08.88.470(b) [AS 08.88.071(b)] or from other

1 parties under AS 08.88.490 shall be deposited to the real estate
2 surety fund.

3 * Sec. 24. AS 08.88.472 is amended by adding a new subsection to read:

4 (c) A licensee found to have committed fraud, deceit,
5 misrepresentation, or conversion of funds for which an award is made
6 from the surety fund shall reimburse the real estate surety fund the
7 amount awarded plus all costs of the hearing that have been charged to
8 the surety fund.

9 * Sec. 25. AS 08.88.474 is amended to read:

10 Sec. 08.88.474. PAYMENT OF [SMALL CLAIMS] JUDGMENT. If a [CLAIM
11 ORIGINALLY FILED WITH THE COMMISSION IS DISMISSED AND IS HEARD AS A
12 SMALL CLAIMS ACTION UNDER AS 08.88.460(c) AND THE] claimant prevails
13 in a court [THE SMALL CLAIMS] action against a [THE] real estate
14 broker, associate real estate broker, or real estate salesperson, and
15 the action was based on conduct substantially similar to that set out
16 in AS 08.88.460(a) [SALESMAN], the commission shall make an award from
17 the fund of any outstanding portion of the [SMALL CLAIMS] judgment.
18 The commission shall make the award after [ON] receipt of a copy of
19 the final judgment and an affidavit from the claimant stating that
20 more than 30 days have elapsed since the judgment became final and
21 that the broker, associate broker, or salesperson [SALESMAN] has not
22 satisfied the judgment during that time. After payment of a [SMALL
23 CLAIMS] judgment the commission is subrogated to the claimant's rights
24 in the judgment under AS 08.88.490.

25 * Sec. 26. Section 14 of this Act applies to causes of action arising
26 on or after the effective date of this Act.

27 * Sec. 27. Sections 19, 20, 21, and 26 of this Act do not apply to a
28 claim that a real estate broker, associate real estate broker, or real
29 estate salesperson has elected to remove to small claims court under

- 1 AS 08.88.460(c) before the effective date of this Act.
- 2 * Sec. 28. The commission shall refund \$225 of the filing fee paid
3 under AS 08.88.460(d) to a claimant whose case is pending on the effective
4 date of this Act.
- 5 * Sec. 29. The revisor of statutes shall change "salesman" to
6 "salesperson", as appropriate, in AS 08.88 when AS 08 is scheduled for
7 reprinting.
- 8 * Sec. 30. AS 08.88.071(b), 08.88.111, 08.88.460(c), and 08.88.465(f)
9 are repealed.
- 10 * Sec. 31. This Act takes effect immediately under AS 01.10.070(c).