

**CS FOR HOUSE BILL NO. 398 (JUDICIARY) am**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**SEVENTEENTH LEGISLATURE - SECOND SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

**Amended: 4/10/92**

**Offered: 3/30/92**

**Sponsor(s): REPRESENTATIVES PARNELL, Gruenberg, B.Davis**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to certain disclosures in residential real property transfers; and providing  
 2 for an effective date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 \* **Section 1. AS 34 is amended by adding a new chapter to read:**

5 **CHAPTER 70. DISCLOSURES IN RESIDENTIAL REAL PROPERTY TRANSFERS.**

6 **Sec. 34.70.010. DISCLOSURES REQUIRED.** Before the transferee of an interest in  
 7 residential real property makes a written offer, the transferor shall deliver by mail or in person  
 8 a completed written disclosure statement in the form established under AS 34.70.050. Delivery  
 9 to the spouse of the transferee constitutes delivery to the transferee unless the transferor and the  
 10 transferee agree otherwise before the delivery.

11 **Sec. 34.70.020. TERMINATION OF OFFER.** If a disclosure statement or material  
 12 amendment is delivered to the transferee after the transferee has made a written offer, the  
 13 transferee may terminate the offer by delivering a written notice of termination to the transferor  
 14 or the transferor's agent within three days after the disclosure statement or amendment is

1 delivered in person or within six days after the disclosure statement or amendment is delivered  
2 by deposit in the mail.

3 Sec. 34.70.030. DISCLOSURE LIABILITY. (a) A transferor is not liable for a defect  
4 or other condition in the real property or the real property interest being transferred if the  
5 transferor discloses the existence of the defect or condition in the disclosure statement.

6 (b) The agent of a transferor is not liable for an error, inaccuracy, or omission in the  
7 information provided in the disclosure statement if the agent did not have personal knowledge  
8 of the error, inaccuracy, or omission, and the agent exercised due diligence in obtaining and  
9 transmitting the information.

10 Sec. 34.70.040. SUBSEQUENT EVENTS AND APPROXIMATIONS. (a) If  
11 information in a disclosure statement becomes inaccurate as a result of an act or agreement after  
12 the disclosure statement is delivered to the transferee, the resulting inaccuracy does not violate  
13 this chapter and the transferor is required to deliver an amendment for the disclosure statement  
14 to the transferee.

15 (b) If an item that is required in the disclosure statement is unknown or is unavailable  
16 to the transferor, and if the transferor or the transferor's agent has made a reasonable effort to  
17 ascertain the information, the transferor may insert an approximation of the information. The  
18 approximation must be reasonable, clearly identified as an approximation, based on the best  
19 information available to the transferor or the transferor's agent, and not used to avoid the  
20 requirements of this chapter.

21 Sec. 34.70.050. FORM OF DISCLOSURE STATEMENT. The Real Estate  
22 Commission established under AS 08.88.011 shall adopt regulations under AS 44.62  
23 (Administrative Procedure Act) establishing the form of the disclosure statement required  
24 by AS 34.70.010.

25 Sec. 34.70.060. GOOD FAITH. A person who makes a disclosure or performs an act  
26 under this chapter shall do so in good faith.

27 Sec. 34.70.070. EFFECT ON OTHER REQUIRED DISCLOSURES. The requirements  
28 of this chapter do not affect other obligations for disclosure required by law.

29 Sec. 34.70.080. WRITTEN AMENDMENT. An amendment to a disclosure statement  
30 must be in writing.

31 Sec. 34.70.100. DUTIES OF BROKER. (a) If one or more licensed real estate brokers

1 are acting as agents in a transfer subject to this chapter, the broker who has obtained the offer  
2 made by the transferee shall, except as otherwise provided in this chapter, deliver the disclosure  
3 statement required by this chapter to the transferee unless the transferor gives other written  
4 instructions for delivery.

5 (b) If a real estate broker who is responsible for delivering the disclosure statement under  
6 this chapter cannot obtain the disclosure document from the transferor and does not have written  
7 assurance from the transferee that the disclosure statement has been received, the broker shall  
8 advise the transferee in writing that the transferee has the right to receive the disclosure  
9 statement.

10 (c) A real estate broker who is responsible for delivering the disclosure statement under  
11 this chapter shall maintain a record of the action taken by the broker to comply with this chapter.

12 (d) In this section, "real estate broker" includes a listing agent.

13 Sec. 34.70.120. FAILURE TO COMPLY. (a) A transfer that is subject to this chapter  
14 is not invalidated solely because a person fails to comply with this chapter.

15 (b) A person who negligently violates this chapter or fails to perform a duty required by  
16 this chapter is liable to the transferee for the amount of the actual damages suffered by the  
17 transferee as a result of the violation or failure.

18 (c) A person who wilfully violates this chapter or fails to perform a duty required by this  
19 chapter is liable to the transferee for up to three times the actual damages suffered by the  
20 transferee as a result of the violation or failure.

21 (d) In addition to the damages allowed under (b) or (c) of this section, a court may also  
22 award the transferee costs and attorney fees to the extent allowed under the rules of court.

23 Sec. 34.70.200. DEFINITIONS. In this chapter,

24 (1) "disclosure statement" means the disclosure statement required by  
25 AS 34.70.010;

26 (2) "real property" includes a unit in real property subject to AS 34.07 or  
27 AS 34.08;

28 (3) "residential real property" means real property whose primary purpose is to  
29 provide a single-family dwelling;

30 (4) "transfer" means transfers by sale, exchange, installment land sale contract,  
31 lease with an option to purchase, other option to purchase, or a ground lease coupled with

1 improvements.

2 \* Sec. 2. AS 08.88.071(a) is amended to read:

3 (a) The commission shall

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

6 (2) prepare and grade examinations;

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

9 (A) with respect to a real estate transaction

10 (i) made a substantial misrepresentation;

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

12 (iii) in the case of a real estate broker, pursued a flagrant course  
13 of misrepresentation or made a false promise through an agent, associate real  
14 estate broker, or real estate salesman;

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

16 (v) violates AS 08.88.391;

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

19 (C) has engaged in conduct in which the commission had no knowledge  
20 at the time the licensee was licensed demonstrating the licensee's unfitness to engage in  
21 the business for which the licensee is licensed;

22 (D) knowingly authorizes, directs, connives at or aids in publishing,  
23 distributing, or circulating a material false statement or misrepresentation concerning the  
24 licensee's business or concerning real estate for sale in the licensee's business in this or  
25 any other state;

26 (E) if a real estate broker, wilfully violates AS 08.88.171(d) or 08.88.291;

27 (F) if an associate real estate broker, claims to be a real estate broker, or,  
28 if a real estate salesman, claims to be a real estate broker or associate real estate broker;

29 (G) if a real estate broker, employs an unlicensed associate real estate  
30 broker or real estate salesman;

31 (H) if an associate real estate broker or real estate salesman, fails

1 immediately to turn money collected in a real estate transaction over to the employing  
2 real estate broker;

3 (D) violates the licensee's obligations under AS 34.70.100 and the  
4 violation occurs under circumstances that the commission determines by regulation  
5 justify the suspension or revocation of the license;

6 (4) prosecute, through the Department of Law, violations of the provisions of this  
7 chapter or lawful regulations adopted under this chapter;

8 (5) publish, on three consecutive weekends in a newspaper of general circulation  
9 in the locale of the offending person's principal office licensed under this chapter, [ANY]  
10 disciplinary action taken by the commission against a person licensed under this chapter;

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

15 (7) adopt regulations establishing the form of the disclosure statement  
16 required by AS 34.70.010.

17 \* Sec. 3. The Real Estate Commission shall adopt the regulations required by AS 34.70.050, enacted  
18 by sec. 1 of this Act, by July 1, 1993.

19 \* Sec. 4. This Act applies to transfers of interests in residential real property that occur on or after  
20 July 1, 1993.

21 \* Sec. 5. Section 3 of this Act and AS 34.70.050, enacted by sec. 1 of this Act, take effect January  
22 1, 1993.

23 \* Sec. 6. Except as provided in sec. 5 of this Act, this Act takes effect July 1, 1993.