

SENATE CS FOR CS FOR HOUSE BILL NO. 398 (JUDICIARY)**IN THE LEGISLATURE OF THE STATE OF ALASKA****SEVENTEENTH LEGISLATURE - SECOND SESSION****BY THE SENATE JUDICIARY COMMITTEE****Offered: 5/9/92****Referred: Rules****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. LIABILITY AFTER DISCLOSURE. A transferor is not liable for a
4 defect 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 Sec. 34.70.040. SUBSEQUENT EVENTS AND APPROXIMATIONS. (a) If
7 information in a disclosure statement becomes inaccurate as a result of an act or agreement after
8 the disclosure statement is delivered to the transferee, the resulting inaccuracy does not violate
9 this chapter and the transferor is required to deliver an amendment for the disclosure statement
10 to the transferee.

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

17 Sec. 34.70.050. FORM OF DISCLOSURE STATEMENT. The Real Estate Commission
18 established under AS 08.88.011 shall establish the form of the disclosure statement required by
19 AS 34.70.010.

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

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

24 Sec. 34.70.080. WRITTEN AMENDMENT. An amendment to a disclosure statement
25 must be in writing.

26 Sec. 34.70.090. FAILURE TO COMPLY. (a) A transfer that is subject to this chapter
27 is not invalidated solely because a person fails to comply with this chapter.

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

31 (c) A person who wilfully violates this chapter or fails to perform a duty required by this

1 chapter is liable to the transferee for up to three times the actual damages suffered by the
2 transferee as a result of the violation or failure.

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

5 Sec. 34.70.110. WAIVER BY AGREEMENT. This chapter does not apply to the
6 transfer of an interest in residential real property if the transferor and transferee agree in writing
7 that the transfer will not be covered under this chapter.

8 Sec. 34.70.120. EXEMPTION FOR FIRST SALES. This chapter does not apply to the
9 transfer of an interest in residential real property if the transfer is the first transfer of the property
10 and if the property has never been occupied.

11 Sec. 34.70.200. DEFINITIONS. In this chapter,

12 (1) "disclosure statement" means the disclosure statement required by
13 AS 34.70.010;

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

16 (3) "residential real property" means real property whose primary purpose is to
17 provide a single-family dwelling, or two single-family dwellings in one building;

18 (4) "transfer" means transfers by sale, exchange, installment land sale contract,
19 lease with an option to purchase, other option to purchase, or a ground lease coupled with
20 improvements.

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

22 (a) The commission shall

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

25 (2) prepare and grade examinations;

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

28 (A) with respect to a real estate transaction

29 (i) made a substantial misrepresentation;

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

31 (iii) in the case of a real estate broker, pursued a flagrant course

- 1 of misrepresentation or made a false promise through an agent, associate real
2 estate broker, or real estate salesman;
- 3 (iv) has engaged in conduct that is fraudulent or dishonest;
4 (v) violates AS 08.88.391;
- 5 (B) procures a license by deceiving the commission, or aids another to do
6 so;
- 7 (C) has engaged in conduct in which the commission had no knowledge
8 at the time the licensee was licensed demonstrating the licensee's unfitness to engage in
9 the business for which the licensee is licensed;
- 10 (D) knowingly authorizes, directs, connives at or aids in publishing,
11 distributing, or circulating a material false statement or misrepresentation concerning the
12 licensee's business or concerning real estate for sale in the licensee's business in this or
13 any other state;
- 14 (E) if a real estate broker, wilfully violates AS 08.88.171(d) or 08.88.291;
- 15 (F) if an associate real estate broker, claims to be a real estate broker, or,
16 if a real estate salesman, claims to be a real estate broker or associate real estate broker;
- 17 (G) if a real estate broker, employs an unlicensed associate real estate
18 broker or real estate salesman;
- 19 (H) if an associate real estate broker or real estate salesman, fails
20 immediately to turn money collected in a real estate transaction over to the employing
21 real estate broker;
- 22 (4) prosecute, through the Department of Law, violations of the provisions of this
23 chapter or lawful regulations adopted under this chapter;
- 24 (5) publish, on three consecutive weekends in a newspaper of general circulation
25 in the locale of the offending person's principal office licensed under this chapter, [ANY]
26 disciplinary action taken by the commission against a person licensed under this chapter;
- 27 (6) issue a temporary permit to the personal representative of the estate of a
28 deceased broker or to some other person designated by the commission with the approval of the
29 personal representative of the estate [,] in order to secure proper administration in concluding the
30 affairs of the decedent broker's real estate business;
- 31 (7) establish the form of the disclosure statement required by AS 34.70.010.

1 * **Sec. 3.** The Real Estate Commission shall establish the form of the disclosure statement required
2 by AS 34.70.050, enacted by sec. 1 of this Act, by July 1, 1993.

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

5 * **Sec. 5.** Section 3 of this Act and AS 34.70.050, enacted by sec. 1 of this Act, take effect January 1,
6 1993.

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