

REAL
ESTATE
Comm.

**Alaska Statutes and
Regulations**

Relating to

**REAL ESTATE BROKERS
AND SALESMEN**

Issued by

**DIVISION OF OCCUPATIONAL LICENSING
DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT**

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the 1976 Cumulative Supplement**

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real estate

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Christian,

I have enclosed the summary you requested. It is not final typed but I assume it for your use and not publication.

I also enclosed a copy of the explanations for the original SB212 prepared by Jim Magown our executive secretary. You may already have a copy of this document and it can be used to ~~for~~ explain some of the incorporated paragraphs and sections.

Also enclosed is a copy of his explanation of our budget request. I know that you are not involved with this aspect but should someone ask, it may be of assistance.

EXPLANATORY COMMENTS REGARDING CSSB 212

March 28, 1980

Prepared by James L. Magowan

Executive Secretary Alaska Real Estate Commission

Overview Comments: This bill: (1) clears up or clarifies much of the language of the present statutes making them clearer and more understandable; (2) eliminates ambiguities and/or contradictions in the current statutes that arose as certain sections were amended or repealed without appropriate changes being made in related sections or which arose through related changes in other chapters or titles being made without appropriate changes in the real estate licensing statutes; (3) sets forth new procedures for examination and issuance of licenses which eliminate duplication of effort and cost in these processes and should improve the service to the applicant; (4) eliminates the present anomaly in the statute that permits a licensee to operate even when claims against the licensee have been paid from the surety fund and the public no longer has the full protection of the surety fund; (5) eliminates the technical requirement that resident property managers be licensed - this requirement is currently very difficult to enforce and is probably not in the public interest; (6) clarifies and broadens within the intent of the statute the regulation making authority of the Commission; (7) replaces an outmoded section for license reciprocity with other states with an effective means of licensure by endorsement.

In the following commentary, I will at times refer to the above numbers with respect to specific sections in CSSB 212.

Section 1. AS 8.88.041(b). This is a clean-up section related to items (1) and (2) above and brings the statute in line with changes which occurred when public members were added to the board.

Section 2. AS 8.88.071(a). The law currently is silent with regard to how a broker's affairs should be wound up when the broker/proprietor of a real estate business dies. This section remedies that particular problem. It should be noted that this is a problem that the Real Estate Commission has faced on a number of occasions in the past.

Section 3. AS 8.88.081. This section is explained by Item 6 above. It should be noted that because of the ambiguity of the current section, the Real Estate Commission has received differing interpretations of its authority from successive Assistant Attorney Generals who are assigned to assist the Commission in the regulation writing process.

Section 4. AS 8.88.091. Education. Most violations and problems encountered by the public are due to ignorance and lack of training rather than willful intent to injure or defraud the public. Educated licensees is the obvious answer to this problem. The current statute is such that, as a part of its educational activities, the Real Estate Commission is barred from publicizing even an informational newsletter to licensees on a periodic basis in order to keep them abreast of the real estate license law, changes that occur in the law and information on common violations encountered by the Commission where those violations may be a result of ignorance. This section slightly broadens the Commission's permitted educational activities and will enable the Commission to better inform licensees of their obligations and responsibilities to the public and to the Commission itself.

Section 5. AS 8.88.171. This section relates to Items (1), (2), (3) and (4) as set forth above. This is basically a housekeeping measure. It does eliminate the 90-day residency requirement for licensure which has apparently served no useful purpose and by reference and cross-reference eliminates some of the situations described in the numbered items above including a licensee being able to remain licensed and renew a license even though claims have been paid out of the surety fund and have not been repaid. Amendments to Section 171 and Section 211 and cross-references between those sections also permits procedural changes in the handling and processing of license applications and examinations for licensure which should cut down duplication of our effort, cost to the Division of Occupational Licensing or the State and which should also facilitate issuance of license to the licensee.

Section 8. AS 8.88.181(a). The amendment to this section is technical and clarifying in nature. The proposed changes broaden and allow for better coverage of real estate topics on the real estate examination.

Section 9. AS 8.88.191. Administration of Examination. This section deals with the physical administration of the examination and provides for examination applications to be handled directly by the testing service. This eliminates the redundant step which we currently must follow whereby applicants apply to the Division of Occupational Licensing which in turn forwards the applications to Educational Testing Service and receipts the application and funds received. The receipting of applications and the forwarding of applications to ETS involves a considerable amount of paperwork on the part of the license examiner. The paperwork is basically nonproductive work and eliminating it will be a net savings to the State. This section also clarifies the examinees' rights if they feel that their examination has been improperly graded. There have been occasions when examinees have requested that they be permitted to review the actual examination after they have failed it. Since

Alaska uses a national examination which is copyrighted and portions of it are used throughout the nation, it is extremely unlikely that the examination itself will be faulty, and if there is a fault with the examination this can be determined by the Commission reviewing the examination. For security purposes, therefore, it is deemed inappropriate for applicants to examine their actual examinations. In a remote possibility that an examination is improperly scored by the ETS computers, on request, any applicant may have an examination hand scored. This has been the practice in the past, and, to date, there have been no examination results which have been changed as a result of hand scoring. The computers in this situation are remarkably reliable. It should be noted that changing the application procedure from applications going to the license examiner to having applications going directly to Educational Testing Service will mean that the full \$50.00 application fee will not be collected from those who fail the examination. Only those who pass the examination will submit applications for complete examination of their qualifications to the license examiner and will be required to pay the balance of the \$50.00 examination fee.

All applicants who apply for the examination will send Educational Testing Service the fee for the written test. This fee is currently \$12.50 and will probably go to \$13.00 or \$14.00 in the near future.

It is felt that the loss of revenue by not collecting the full \$50.00 from applicants who fail is more than offset by the decreased workload on the license examiner in handling those applications. It is not felt that additional fees are justified if this process can be handled at no cost to the State and at less cost to the applicant.

The Commission could not justify handling applications simply for the purpose of collecting additional application fees.

Section 10. AS 08.88.211. This section has already been referenced.

This is a change in application procedures and processing whereby the Commission treats examination for licensure as having two parts; a written test which must be passed before an applicant's total qualifications are examined and the examination or review of the applicant's total qualifications are the two portions of licensure examination. Splitting the qualifications in this manner makes it possible for applicants to apply directly to Educational Testing Service for the written portion of the examination and eliminates the question of additional fees from applicants who failed the examination.

The statute, as currently written, talks about qualifications for examination and actually imposes qualifications on an applicant who wishes to take the written examination. The Real Estate Commission

feels that this is not necessary and that those who are otherwise eligible should take the written examination and then have their qualifications for licensure examined.

There have been some rewording changes in section 211 in order to clarify the types of offenses which would warrant denying an applicant a real estate license for previous convictions; and the wording of the statute has been or is being brought to conformity with the specific wordings used in the revised Alaska Criminal Code. This section and previously referenced sections, therefore, have the effect of permitting applicants to apply directly to ETS, take and pass the examination, then apply to the Real Estate Commission for examination for licensure rather than following the current procedure of applying to Occupational Licensing for the written examination and then applying for licensure, thereby duplicating effort.

Section 11. AS 08.88.221(c). This section adds a fee for transferring a license. License transfers are a heavy workload on the Occupational Licensing staff and it is appropriate that licensees pay for the service. This section also raises the fee from \$2.00 to \$5.00. This is more in line with the actual cost of handling this type of transaction.

Section 12. AS 08.88.221. This section is related to section 211 and, basically provides that when persons pay the examination fee directly to ETS, they shall be credited with the fee paid to ETS when they apply for licensure. Currently they pay their application fee to the State and the State is billed by ETS. This aspect of the bill will have no fiscal impact on the State other than to cut down the personnel required to handle applications. Instead of the fee coming to the State and then going to ETS, it goes directly to ETS, thereby improving the efficiency of the process.

Section 13. AS 08.88.241. Reinstatement of lapsed license. Licensees are required to keep the department informed of their employment and their address or location. When licensees fail to do this, at the end of the license year their licenses lapse. In essence, a lapsed license is the result of a licensee not conforming with the statutes. The way the law is currently written, it could be enforced in such a way that a lapsed licensee gains an economic advantage over a licensee who complies with the statute because the lapsed licensee does not pay inactive license fees; and lapsed licenses are currently treated the same as inactive licenses for purposes of renewal.

In order to eliminate this inequity, this section provides that a licensee whose license lapses for more than six months (a reasonable time for a person who inadvertently overlooks a renewal period) to lose the license until they again complete the examination requirements for licensure.

It should also be noted that a person who fails to comply with the law is probably a suitable subject for reexamination, since they obviously don't understand the law which regulates their business activities.

Section 14. AS 08.88.251(b). The changes in this section are simply for clarification. The section is self-explanatory.

Section 15. AS 08.88.251(c). The procedure described in the previous sub (c) of this section were cumbersome and ineffective and, basically, not followed by the division; this section simply spells out procedures which have already been developed and found to be more effective by the Division of Occupational Licensing.

Section 16. AS 08.88.263. License by Endorsement. Reciprocity is no longer practical due to varying license requirements, particularly educational requirements in different states. Alaska has no education requirement. Endorsement is the simplest way of assuring that licensees coming from other states will be licensed in Alaska with a minimum of hindrance, but at the same time providing for full protection of the public as well as other licensees in the state. Since state laws vary from state to state, it is felt appropriate that anyone practicing real estate in Alaska should be familiar with Alaska Real Estate Licensing Law. License by endorsement provides that anyone holding a license outside of the State who moves to Alaska can obtain an Alaska real estate license by simply demonstrating a knowledge of the Alaska Real Estate License Law. We recognize the fact that all states examine persons for real estate licenses and general real estate knowledge is transferrable from state to state.

Also Bill Section 16. AS 08.88.276. Suspension of License. This section provides for the suspension of a license whenever a claim is paid out of the surety fund against a licensee and is in effect until the licensee repays the fund. This is not a disciplinary action, and should not require the costly time consuming procedures of a hearing. It is simply recognition of the fact that as long as a claim has not been repaid to the fund, the public does not have the full protection of the surety fund which they are entitled to have. If the Commission fails to take disciplinary action and the licensee repays the fund they can immediately be issued a license under this section. There is no violation of the licensee's right to due process under this section. The licensee can defend themselves against payment from the surety fund in court and payments from the surety fund are ordered only after judgement. Therefore the licensee's rights are protected by the full judicial system. The licensee can be relicensed provided that no disciplinary action has occurred subsequent to the suspension for payment of the surety fund and the surety fund is repaid (the public then has full surety fund protection).

Section 17. AS 08.88.361. When commission is earned. Modern real estate practice involves more than a listing and selling of real property. The current statute could jeopardize a broker's right to collect a fee or commission for a service which does not involve a listing but does involve a written contract between the broker and the client. This revision of the wording simply makes the broker's right to compensation enforceable on written agreements other than listing agreements when listing agreement is not the appropriate instrument to be used.

Section 18. AS 08.88.421(1). This section of the bill provides for exception to the requirement to be licensed. There has been a great deal of confusion on the part of licensees who read the statute as it is currently written and believe that they are not required to have transactions on their own account processed through their employing broker. This is not correct even under the current statute because there is a more specific section in the statute which states that all transactions by a licensee must go through the broker even if they are for the licensee's own account. In addition, the wording about land defined in AS 34.55.046 which is not in Alaska clarifies the licensee's absolute responsibility to process transactions through his broker and eliminates confusion by persons reading the statute. The addition of the final words, "which is not in Alaska;" was necessitated by a legislative change in AS 34.55.044(6) which changed that section from defining only land located outside the State of Alaska to defining all subdivided land in the State of Alaska. When that statute was changed 421(1), by reference to that section, technically prohibited an Alaska subdivider of Alaska land from selling his own property without the services of a broker. This is clearly in violation of his constitutional rights. This wording clarifies that.

Section 19. AS 08.88.421(9). This section has been a source of great confusion. The basic intent of the section as spelled out in an Attorney General's opinion and enforced by the Commission over the years has been that no person may, as a regular vocation, sell real estate for another person whether on a salary or for compensation. The reason for this ruling by the Commission is that when a person purchases real estate from someone other than the owner of the real estate, they are entitled to have the full protection of competency and the surety fund provided by licensing. Additionally, no person may transact even one real estate transaction for a fee dependent upon the value or proportional to the value of the property sold even if the transaction is an isolated or single incident, because selling real estate for a fee even one time would require a license. The general exception applies to persons who are employed by corporations or partnerships for purposes other than the selling of real estate, but who in the course of their day to day activities might be called upon to dispose of excess property or property interests held by the corporation. The traditional example used by

the commission would be if a food chain were to determine that it had one store too many it might ask the manager of that store to handle the sale and disposition of the store. During the time of the sale, he would also be responsible for any other management activities, and would not be paid for disposing of excess or surplus company property in the course of his normal duties as manager of a store.

A confusing phrase in the statute has been the statement that a person may not perform these acts as a vocation or for compensation. Most people think that those two qualifications go together. The Commission has inserted the word "either" so that it reads..." either as a vocation or for compensation if the compensation is dependent upon and directly related to the value of the real estate." Performing real estate transaction as a vocation requires a license, performing real estate transactions for a commission requires a license. Again, it should be noted that the changes do not necessarily affect the statute itself or the way in which the statute has been or will be enforced but simply makes it clearer to those involved.

The other changes in this section are simply for clarification of meaning.

Section 20. AS 08.88.421. This is a new section. This section has already been referenced in the numbered items at the beginning of this document; specifically, item 5, eliminating the technical requirement for property managers to be licensed.

Section 21. AS 45.85.010. Real Estate Surety Fund. The surety fund as it is currently established by the statute is virtually impossible to manage in a manner which is equitable and acceptable to the licensees, the Commission, and the department. The statute provides that the fund shall build until it reaches \$250,000. This has happened. The statute further provides that the fund may not go over \$300,000. In the event that the fund is over \$300,000 at the end of any fiscal year, the excess reverts to the General Fund. When the fund goes over \$250,000 the Commissioner may, by regulation, adjust the surety fees to maintain the fund between \$250,000 and \$300,000. The cash flow to and from the fund is such that the \$50,000 margin between \$250,000 and \$300,000 does not permit sufficient leeway for the Commissioner to adopt regulations in a timely fashion so that money is not lost to the General Fund, that appropriations may be made for educational purposes, and that claims can be determined prior to lowering fees. For example, in November of 1979, the fund paid out approximately \$40,000. If the fund were at \$250,000 at the beginning of November 1979, and the Commissioner were to then adopt regulations for the license year 1980 through 1981 reducing the fees because it was anticipated that the fund would continue to build, by the time we started collecting the new

fees the fund would have already dropped to \$210,000. If, in addition to reducing the fees, an educational appropriation were made, such as was the case last year for \$75,000, the fund would actually be down to \$135,000 prior to the new license year. In addition to that, one or two more months like November of 1979 could totally deplete the fund, while, at the same time, the Commissioner was lowering fees and the Real Estate Commission was planning on using appropriation for educational programs.

Now that the fund has been in effect for four years, the use of the fund has dramatically increased and, at the same time, the predictability of the fund over a six month period has dramatically decreased. The Commission feels that it is necessary to broaden the margin between the mandatory minimum and the mandatory maximum limits of the fund so that appropriations and judgements can be made which will not result in the fund being depleted and the public going for some period of time without adequate protection under the fund.

It should be noted that a complicating factor in adjusting the fees is the fact that licenses are renewed every two years on the first of January. If adjustments are not made by the first of January of the license year, it would be manifestly inequitable to make an adjustment at mid-year. Therefore, it has been determined that adjustments will be made at the beginning of license years. Fiscal years, on the other hand, occur every twelve months at mid-calendar year and it is impossible to correlate surety fund adjustments with fiscal years in order to avoid having surety fund money revert to the General Fund. The licensees are understandably upset about such practice since they would view this as an additional and unjustified taxation of the licensees; a taxation which is discriminatory.

The Real Estate Commission is particularly concerned that the Real Estate Surety Fund be well managed since this is an item which can be controversial with respect to the licensees. Licensees are, in effect, self-insuring themselves against malpractitioners and, as such, are very sensitive about the use of the funds, and any excess funds being taken into the State General Treasury.

A new section has been added to AS 08.88.431 and, basically, this is a sub(5) defining resident manager as a person who resides on real property and manages for the benefit of another person. This definition is necessary to clarify the meaning of the change in Section 421 which exempts resident property managers from the licensing requirement. Without this definition it might be difficult to enforce any kind of regulation over property managers. This would manifestly endanger the public as can be seen by the fact that one of the largest frauds the Commission has encountered in recent years did involve a huge amount of money handled in

property management accounts. The Commission charged with protecting the public, and the realtors are charged with improving the industry. Both have reached a high degree of agreement on these changes to the statute and this is an indication of the need for the adoption of these changes. When the regulators and the regulatees are both acting conscientiously on behalf of their respective constituencies and are in agreement, it is highly likely that the changes they request are to the benefit of all concerned, including the public.

James L. Magowan

May 2, 1980

EXPLANATION OF THE PROPOSED BUDGET TO SUPPORT THE ALASKA REAL ESTATE
COMMISSION CREATED UNDER HOUSE BILL ~~1004~~

SB 212

The proposed budget was developed through a simplified process of PPBS (Policy Program Budgeting System). The goals and objectives of the Real Estate Commission were identified. These represent the projected policies of the Commission. The functions and activities necessary to carry out those policies were determined as clearly as possible with current information. Commission policies cover enforcement. A policy for purposes of budgeting would include a goal stating how much enforcement is to be performed and the results expected. To carry out this policy through a program it is necessary to determine specific activities (program). For instance, complaints must be received cataloged, filed and tracked within the system. When it appears there may have been a violation, the violation must be investigated. The investigation must be scheduled and developed. The results must be prepared for prosecution through the Attorney General's Office. The Attorney General's Office must process the results of the Real Estate Commission investigations through its system. That system is beyond the direct control of the Real Estate Commission and therefore does not enter into the system except that the budget includes a specific allocation for a half-time attorney, which will assure a minimum level of A.G. support.

The specific activities of investigators, clerks, typists and other personnel in terms of processing the investigation and its results constitute the program which is instituted to achieve the policy goal.

Once the program has been determined the budget is axiomatic. A budget change changes the program which in turn changes the policies or goals.

It is estimated that a single investigation requires 20 to 30 hours of clerk-typist support if it is carried through the complete hearing and revocation, suspension or exoneration process.

If we accept a figure of two hearings per month as a reasonable policy goal at this stage of the Commission's development (two hearings per month is not enough to keep up with all valid complaints that could result in successful prosecutions but is a reasonable goal in view of the fact that the past year and a half has seen one hearing completed and one other hearing in process.) In this example, we then have an investigator who will be averaging two (2) completed investigations per month after the initial start up. That means one investigator will be producing between 40 & 60 hours per month of typing and clerical work for the support staff, on those two investigations alone. Additionally the investigator will also be responsible for the initial complaint handling, sending out letters, gathering initial responses, making reports of cases closed or not accepted for investigation and preparing periodic summary reports of all investigations, open, closed or in progress for the Commission. The investigator should be expected to utilize anywhere from 75 to 100% of one clerk-typist's time per month, if the investigator is to operate at an adequate level.

The investigator with clerical support will be responsible for keeping track of and keeping current records of the 150 to 200 complaints that

are anticipated over the next year, plus all cases currently on file and not completed. To do this with the number of personnel available requires adequate word processing equipment. The word processing equipment is part of the policy program budget system. Word processing equipment enables the investigator to achieve the operational goals set with the amount of time and clerical support available to him. A lack of adequate equipment can also effect basic policy goal achievement because it will delay the work of the investigator. Lack of proper equipment or management produces a syndrome which is usually manifest as a demand for more personnel.

The heart of PPB is that the budget is designed to achieve goals not simply to pay for positions or maintain a function which may or may not be in line with the goals. The budget is tied to the goals and the program is designed to achieve goals not to fit within the budget. Or to put it another way, the budgeting process is often backwards, programs are established or budget is established and then programs are developed out of the budget. In this system, the program is established and then the budget is derived from the program.

The fact that adequate personnel and equipment are required in order to achieve the policy goals set out and that all of these items are inter-related and that a change in one will effect the other components brings out the systems nature of this approach. This approach is a systems approach and is a means of budgeting systems to achieve goals.

In addition to enforcement the Real Estate Commission has a primary responsibility seeing to it that applicants are examined and licensed with a minimum of red tape or bureaucratic hassling and also that licenses

are issued in a prompt and expeditious manner. Real Estate licensees are a highly mobile population in terms of locus of employment. They frequently change employing brokers and brokers frequently move locations. It is essential to keep track of these movements because when complaints or inquiries come in about various licensees it is essential to know who is responsible for a given licensee. The issuing of licenses, the recording and tracking of changes and transfers, the processing of applicants for license, the review of applicants qualifications and so on are all what might be termed paper work intensive activities. Whenever an activity is what we will call paper work intensive it requires either a very high input of labor or it requires sophisticated paper work processing equipment to get the job done in a reasonable time. We have budgeted for word processing equipment, which will maximize the paper work handling capability of a relatively few personnel.

By using word processing equipment, for example, that has filing, indexing and retrieval capability the license examiner will not have to maintain duplicate hand typed files for every licensee and every licensee location. By, using this type of equipment, when a change such as when a licensee, changes from one broker to another broker and also changes their license status from salesman to associate broker, the changes for can be accomplished in one operation by the license examiner. Additionally, if it is needed to send out a new license, a new license can be prepared automatically from the one entry which the examiner made into the system. When it is necessary to track an individual licensees employment or employment history this can be retrived from the system, automatically, by a

single operation. None of these things are currently possible with either the record-keeping or the word processing equipment available to the Real Estate Commission. The claim that the equipment saves man-hours or personnel costs is always met with the question, "How many people then are being eliminated?" In this situation, what we are proposing is starting with the minimum number of people. The word processing equipment is expanding the capability of those on the payroll to meet both current work load and a large portion if not the total portion of anticipated increase in work load in the immediate future.

It should be noted, that currently the routine issuing of licenses and maintaining the files is so under-equipped that we still have Real Estate licensees who have not received their licenses, renewal for which was sent months ago. This situation could be corrected under the current system by the addition of one or two license examiners or the installation of adequate word processing equipment. We are proposing word processing equipment. It should be noted that currently word processing equipment while costly, is nowhere near as costly as personnel.

A large part of the Real Estate Commission's current goals rest in the area of education or more accurately information. The Commission wishes to keep the licensees informed and the responsibilities and obligations that licensees must live up to in order to adequately serve and protect the public. One means of doing this would be through a periodic newsletter direct mailed to all licensees. The cost of the newsletter itself and the mailing may be covered by the Real Estate Surety Fund Educational Program, however, the equipment necessary to produce the newsletter

and permit it to be written, edited and composed with an absolute minimum of clerk-typist and other personnel time being used requires adequate word processing equipment. One of the major benefits of word processing equipment is that it increases many-fold the output of the typist in terms of both quantity and quality.

The Real Estate Commission currently provides informational and informative articles to a number of publications including the Anchorage Realtor News Magazine, which goes to all members of the Anchorage Board of Realtors, Building Alaska magazine, which is distributed to many organizations including contractors and organizations involved in activities related to contracting and building industries in Alaska. Also local newspapers including the Fairbanks Daily News Minor, The Southeast Alaska Empire in Juneau and the Anchorage Daily News publish articles produced by the Commission. These articles are tailored to the various audiences at which the publications are directed. Daily News articles are aimed at increasing public awareness and ability to effectively work with Real Estate licensees and understand real estate transactions. Articles for Realtor News are designed specifically toward alerting the licensees to the requirements and obligations imposed by the Alaska Licensing Statute and advising licensees when areas of the Statutes appear to be subject to wide-spread mis-interpretation, hence violation. Articles written for Building Alaska magazine are aimed at both licensees and contractors with specific emphasis on the relationship between the licensee and the builder/contractor whom the licensee represents in a real estate transaction with emphasis on the obligation of both the contractor and the licensee to protect

the public. All articles and information released by, through or about the Real Estate Commission, particularly those that deal with licensee obligations and/or potential violations of the law by acts of licensees must be very carefully written, must be extensively edited and often re-written in order to avoid the possibility of giving erroneous advice or slipping into the area of giving legal advice rather than advice and interpretation of the license law itself. Word Processing equipment improves the capability of the Commission staff to write, develop, edit and correct information for publication with a minimum use of clerical time. Basically, what we are looking at here is cost effectiveness in preparing printed information.

Using the PPB approach, we have examined the type and amount of publication involved, we have budgeted for the raw materials and we have also, budgeted for adequate personnel assuming the presence of adequate equipment and adequate personnel. Past experience has indicated that the Executive Secretary of the Real Estate Commission produces a volume of written work including correspondence and public information as well as notification to licensees, communications to the Real Estate Commission, to the public, to professional organizations, such as the Board of Realtors and articles as mentioned previously, which is sufficient to occupy a clerk-typist for at least 3/4's of the time therefore, with just the Executive Director and the Real Estate Investigator the Real Estate Commission would require approximately 1-1/4 clerk-typist simply to keep up the current level activity of the Executive Director and to support a reasonable level of investigations.

In addition to the typing, already mentioned there is further typing and

routine correspondence which currently is handled out of Juneau and is processed by either the License Examiner or clerk-typist in the Juneau office of the Division of Occupational Licensing which support the License Examiner on a when needed basis. Under 1004, the Real Estate Commission would not have access to these additional personnel even on an occasional basis, therefore the clerk-typist requested would also be utilized in some instances, to support the License Examiner with some of the non-technical aspects of his job, including the preparation of routine forms, documents and requests for information which must be sent out on a regular and continued basis.

Telephone

Both the Anchorage Field Office of Occupational Licensing and the Juneau office specifically the Real Estate License Examiner's desk currently receive a high volume of telephone calls. The Anchorage Field office receptionist spends approximately 1/2 to 3/4's of her time answering the telephone and receiving calls for the Real Estate Commission, specifically for the Executive Secretary. It is anticipated that the telephone call load, so to speak, will continue to increase because the number of licensees and the assistance required by licensees has increased constantly over the past 4 to 5 years. A clerk-typist, who is responsible for answering telephones produces relatively little typing because of the constant erratic and unpredictable interruptions of the telephone. The propose budget includes one clerk-typist for telephones who can supplement the typing support provided by the second clerk-typist.

Under House Bill 1004, the Real Estate Commission will be responsible for hearing claims for payment from the Real Estate Surety Fund and making

determinations and awards from the Surety Fund to aggrieved members of the public. This will involve notices, communications, summarizing complaints and preparing documents for the Real Estate Commission which up until this time neither the Real Estate Commission nor Occupational Licensing has had the responsibility for and therefore the work load for this activity must be estimated. Our estimates are if anything, conservative. It is anticipated that this would add at least another 1/4 to 1/2 person typing load. This is the weakest point in the budget because it could prove to be considerably more work anticipated due to it being a new activity of the Commission.

Travel

The Commission travel budget of \$20,000 includes Commission meetings, Surety Fund hearings, investigations and attendance by the Executive Director at National Association of Real Estate License Law Officials conferences. The nature of the Commission's functions make the travel budget virtually self-explanatory.

The two clerical positions on the word processing equipment will be used to support one Executive Director, one investigator both of whom shall be considered the executive level positions as far as the type and volume of work they produce. Also one Licensing Examiner whose position should be considered a semi-executive level position in that the Licensing Examiner does require some clerical level support for some of the routine filing and entry that has to be performed particularly the Licensing Examiner is heavily involved in the technical examination of applicants

qualifications.

In addition a point overlooked with respect to a body such as the Real Estate Commission is that when you have seven (7) active volunteers as we should consider the Real Estate Commission, the clerical staff is in effect supporting these volunteers also. The seven members of the commission do generate work for the clerical staff. While individually they may not generate as much direct paperwork as say the Executive Director or the Investigator, they generate a considerable amount of work in view of the fact that they are active and this must also be supported by the same clerical staff as supports the Executive position of the Commission. What we have designed here is a set of policies, carried out by a program-budget which will achieve the goals of the Real Estate Commission and the legislature as expressed during the Sunset Hearings on Real Estate Commission and as implied in the letters from the House Commerce Committee and the Senate Commerce committee to the respect to House and Senate.

Those goals generally stated are:

1. Effective prosecution of those willfully injuring the public.
2. Effective education of those who wish to provide service to the public.
3. Eliminate delays and confusion in the licensing of and tracking of Real Estate licensees.
4. Improve public awareness of the complexity of Real Estate transactions and the role of licensees so they may better utilize the services of licensees.

5. Better inform the public about the Real Estate Commission so that they know how and where to turn when they have a problem with a license.
6. Provide day to day answers to licensees who need them to voluntarily comply with the law and protect the public.

May 22, 1980

Christian,

Per your request I have outlined the sections of SB 212 with a brief explanation as follows:

- Sec. 1 - 031: Changes the title of the Executive Secretary to Executive Director and gives the Commission the power to appoint and direct this position rather than the Commissioner of Commerce.
- Sec. 2 - 034: Provides for the appointment by the Executive Director of a full-time investigator or auditor.
- 037: This section gives the Commission it's own powers for investigations and injunctions. In essence it is transferring the powers now held by the Commissioner of Commerce for investigations and cease and desist to the Commission and states the authority the Executive Director has WITH a majority of the Commission's approval.
- Sec. 3 - 041(b): This change, which is part of the original SB212 passed by the Senate, simply prevents the appointment of a Commission that might have most of the Broker members from only one district. It assures that, if available, each district will have a Broker member.
- Sec. 4 - 061: Deletes the approval of the Commissioner of Commerce from the Commission's authority to employ assistants.
- Sec. 5 - 071(a): This was a portion of the original SB 212. The death of a sole-proprietor broker creates problems since the license is suspended upon death. It merely gives the Commission the power to appoint someone to handle the affairs of the office for the purpose of winding up the estate. The House Commerce Committee added the wording about having the Commission's appointee approved by a representative of the estate.
- Sec. 6 - 071(b): This is simply a rewording of the current statute to clarify and reference appropriate statutes in SB212 if adopted.
- Sec. 7 - 081: This section clarifies the intent of the statute and the regulation making authority of the Commission.
- Sec. 8 - 091: Under the current statute the Commission is barred from publishing such items as a news letter to the licensees. This change would allow the Commission to better inform the licensees of the obligations and responsibilities.

Sec. 9 - 101: Changes the authority of the administrative duties from the Department of Commerce to the Commission.

Sec. 10 - 111: Changes Department to Commission.

Sec. 11 - 121: Changes Department to Commission.

Sec. 12 - 171(a): Under the Commission's current and future operating procedures Educational Testing Service (or any other testing service) provides the examinations and handles all of the testing centers and applications. The Commission will simply examine for licensing which will include the applicant presenting a certificate stating that he has passed the examination required for the license. Previously 08.88.211 was the section which stated who could be examined. In SB212 before you we have deleted 211 and placed those items which were appropriate under 171(a).

House Commerce Committee did change the length of time after conviction for a felony, etc. that one must wait before being licensed.

Simply put, anyone can apply to ETS and take the examination. To get licensed they must pass the qualifications of 171(a) by making application to the Commission and one of these qualifications is that they have passed the appropriate examination.

Sec. 13 - 171(b): Same as 171(a) except it applies to Associate Brokers.

Sec. 14 - 171 (c): Same as 171(a) except it applies to Salesmen.

Sec. 15 - 171(d): Changes Department to Commission.

Sec. 16 - 181(a): Due to ETS and other national testing procedures there are two sections for the exams, general and state. The Commission does not control the questions in the general section and therefore the change in this sections states the exam questions "may include" rather than "must include."

Sec. 18-221(c): Merely raises the fee for transferring or amending licenses from \$2 to \$5.

Sec. 17 - 191: These changes are to conform with the current procedures for having the exams contracted out to a national testing service. Such items as having one-half of the examination fee returned ~~if~~ the applicant did not show up for the test are impractical under the new system.

Sec. 20 - 231: Changes Department to Commission.

Sec. 21 - 241: Changes the period a lapsed licensee may go before having to be re-examined from three to two years. In this instance it refers to someone who has not renewed his license.

Sec. 22 - 251(a): Changes Department to Commission.

Sec. 23 - 251(b): Changes are simply for clarity.

Sec. 24 - 251(c): Changes Department to Commission and corrects to current procedures. As an example, we no longer issue an inactive license certificate.

Sec. 25 - 263: Most states are now going to this procedure. If a licensee from another state comes to Alaska we will only require him to take the State portion of the examination and meet the requirements of 08.88.171. The reference to 08.88.211 could be deleted since it is being repealed at the end of this bill.

Sec. 26 - 291: Changes Department to Commission.

Sec. 27 - 301: Changes Department to Commission.

Sec. 28 - 361: There are many types of "listing" contracts used by the real estate industry and not all have to do with selling a property. Other would be leasing, management, etc. This section clarifies and corrects the previous statute.

Sec. 29 - 421(1): This section of the bill provides for exception to the requirement to be licensed. There has been a great deal of confusion on the part of licensees who read the current statute and believe they are not required to have transaction to their own account processed through their employing broker. The addition of the final words, "which is not in Alaska;" was necessitated by a legislative change in AS 34.55.044(6) which changed that section from defining only land located outside of the State of Alaska to defining all subdivided land in the State of Alaska. When the statute was changed 421(1), by reference to that section, technically prohibited an Alaska subdivider from selling his own property without the services of a Broker. This is clearly a violation of his constitutional rights. This wording clarifies that.

Sec. 30 - 421(9): There has been great confusion in interpreting the current law. The changes in this section hopefully clarifies the interpretation of vocation and compensation.

Sec. 31 - 421: Resident managers have technically been required to be licensed under the existing statutes. This has been unreasonable and the addition of this section will allow certain types of resident managers not to be licensed.

Sec. 32 - 431: Defines resident manager.

Sec. 33 - 010: Due to the narrow window of the surety fund limits, \$250,000 to \$300,000 before excess funds revert to the general fund, the Commission and licensees have been losing funds that they have paid. By increasing this window to \$500,000 we will eliminate this problem.

One argument has been that the surety fund fees will not be reduced. The Commission may still lower the fees if appropriate provided the fund does not go below \$250,000. It might be pointed out that the licensee is now receiving a \$50,000 "bond" per year for a cost of, in the case of brokers, \$62.50. Under the old bonding method this coverage would cost approximately \$200 per year.

Sec. 34 - 020: Changes Commissioner to Commission.

Sec. 35 - 031: This section spells out the procedures one must use when making a claim to the Commission for payment from the surety fund.

Sec. 35 - 041: Lays out the procedures for the Commission for considering payment from the surety fund.

Sec. 35 - 051: Lays out how the Commission shall make payment upon findings from the surety fund.

Sec. 36 - 070: Changes Commissioner to Commission.

Sec. 37 - 080: Changes Commissioner to Commission.

Sec. 38 - 090: Changes Commissioner to Commission.

Sec. 39 - 120: Defines Commission

Sec. 40 - 010(c): Establishes a new sunset date for the Commission. The intent of the legislature has been to set the Commission up as an "experiment" and this establishes legislative review in two years rather than four.


Sec. 41 - : Repealers.

Sec. 42 - : Effective date of the bill.

One additional comment. In the fiscal note we are requesting a budget for FY 81 of \$278,300.00. According to Occupational Licensing's figures licensees have paid \$428,294 into the general fund in FY78 and FY79. The yearly average is \$214,147 or \$64,153 short of the requested budget. Of the \$278,300, \$12,500 is for one-time cost of furniture, etc.

We are anticipating the excess amount to be approximately \$14.00 per licensee.

If you have any questions, please call me at anytime. It is my opinion that this is an excellent and workable bill.



Lance Youngquist
Chairman, Alaska Real Estate Commission

586-1212

SECTIONAL ANALYSIS FOR HCSCS SB 212
MAY 27, 1980

(Sec. 08.88.031)
P.1, L.11

SECTION 1 CHANGES THE TITLE OF THE EXECUTIVE SECRETARY TO EXECUTIVE DIRECTOR AND GIVES THE COMMISSION THE POWER TO APPOINT AND DIRECT THIS POSITION RATHER THAN THE COMMISSIONER OF COMMERCE. ESSENTIALLY THIS REMOVES THE ADMINISTRATIVE SUPPORT FUNCTION OF THE REAL ESTATE COMMISSION FROM THE DIVISION OF OCCUPATIONAL LICENSING AND PLACES THIS FUNCTION WITHIN THE REAL ESTATE COMMISSION.

(Sec. 08.88.034)
P.1, L.17

SECTION 2 PROVIDES FOR THE APPOINTMENT BY THE EXECUTIVE DIRECTOR OF A FULL-TIME INVESTIGATOR AUDITOR.

(Sec. 08.88.037)
P.1, L.21

THIS POSITION OF SECTION 2 GIVES THE COMMISSION ITS OWN POWERS FOR INVESTIGATIONS AND INJUNCTIONS AND TRANSFERS THE POWER NOW HELD BY THE COMMISSIONER OF COMMERCE FOR INVESTIGATIONS AND CEASE AND DESIST TO THE COMMISSION AND STATES THE AUTHORITY THE EXECUTIVE DIRECTOR HAS WITH A MAJORITY OF THE COMMISSION'S APPROVAL.

(Sec. 08.88.041(B))
P.2, L.25

SECTION 3 PREVENTS THE APPOINTMENT OF A COMMISSION WHOSE MEMBERS ARE FROM ONLY ONE DISTRICT. IT ASSURES THAT, IF AVAILABLE, EACH DISTRICT WILL HAVE A BROKER MEMBER. THERE IS ALREADY A PROVISION FOR TWO PUBLIC MEMBERS.

(SEC. 08.88.061) P.3, L.6 SECTION 4 DELETES THE APPROVAL OF THE COMMISSIONER OF COMMERCE FROM THE COMMISSION'S AUTHORITY TO EMPLOY ASSISTANTS.

(SEC. 08.88.071(A)) P.3, L.12 SECTION 5 GIVES THE COMMISSION THE POWER TO APPOINT SOMEONE TO HANDLE THE OFFICE AFFAIRS OF A DECEASED SOLE-PROPRIETOR BROKER, FOR THE PURPOSE OF CLOSING THE ESTATE.

(SEC. 08.88.071(B)) P.3, L.18 SECTION 6 GUARANTEES REPAYMENT INTO THE REAL ESTATE SURETY FUND IF A CLAIM HAS BEEN AWARDED UNDER AS 45.85.

(SEC. 08.88.08L) P.4, L.2 SECTION 7 CLARIFIES THE INTENT OF THE EXISTING STATUTE REGARDING THE REGULATION MAKING AUTHORITY OF THE COMMISSION.

(SEC. 08.88.091) P.4, L.6 SECTION 8 WILL ALLOW THE COMMISSION TO PUBLISH INFORMATIONAL MATERIAL TO BETTER INFORM THE LICENSEES OF THEIR OBLIGATIONS AND RESPONSIBILITIES.

(SEC. 08.88.101) P.4, L.15 SECTION 9 CHANGES THE AUTHORITY OF THE ADMINISTRATIVE DUTIES FROM THE DEPARTMENT OF COMMERCE (DOC) TO THE COMMISSION.

(SEC. 08.88.111) P.5, L.14 SECTION 10 CHANGES DEPARTMENT OF COMMISSION.

(SEC. 08.88.121) SECTION 11 CHANGES DEPARTMENT TO COMMISSION,
P.5, L.20

(SEC. 08.88.171(A)) SECTION 12 STIPULATES THAT A STATE RESIDENT
P.5, L.27 CAN APPLY FOR THE EDUCATIONAL TESTING SERVICE.
FOR LICENSURE AN APPLICANT MUST PASS THE
QUALIFICATIONS OF THIS SECTION.

(SEC. 08.88.171(B)) SECTION 13 IS THE SAME AS SECTION 12 EXCEPT
P.6, L.26 IT APPLIES TO ASSOCIATE BROKERS.

(SEC. 08.88.171(C)) SECTION 14 IS THE SAME AS SECTION 12 EXCEPT
P.7, L.20 IT APPLIES TO SALESMEN.

(SEC. 08.88.171(D)) SECTION 15 CHANGES DEPARTMENT TO COMMISSION,
P.8, L.8

(SEC. 08.88.181(A)) SECTION 16 STATES THE EXAM QUESTIONS "MAY
P.8, L.12 INCLUDE" RATHER THAN "MUST INCLUDE" SINCE
THE COMMISSION DOES NOT CONTROL THE QUESTIONS
IN THE GENERAL SECTION OF THE NATIONAL
EDUCATIONAL TESTING SERVICE.

(SEC. 08.88.191) SECTION 17 CHANGES ARE TO CONFORM WITH THE
P.8, L.19 CURRENT PROCEDURES FOR HAVING THE EXAMS CON-
TRACTED OUT TO A NATIONAL TESTING SERVICE.

(SEC. 08.88.221(c)) SECTION 18 RAISES THE FEE FOR TRANSFERRING
P.9, L.8 OR AMENDING LICENSES FROM \$2 TO \$5.

(SEC. 08.88.221) SECTION 19 COMPENSATES AN APPLICANT BY
P.9, L.10 REDUCING HIS EXAMINATION FEE BY THE AMOUNT
PAID TO THE NATIONAL TESTING SERVICE.

(SEC. 08.88.23L) SECTION 20 CHANGES DEPARTMENT TO COMMISSION.
P.9, L.17

(SEC. 08.88.241) SECTION 21 CHANGES THE PERIOD ~~OF~~ A LAPSED
P.9, L.21 LICENSEE MAY GO BEFORE HAVING TO BE RE-EXAMINED
FROM THREE TO TWO YEARS.

(SEC. 08.88.251(A)) SECTION 22 CHANGES DEPARTMENT TO COMMISSION.
P.9, L.26

(SEC. 08.88.251(B)) SECTION 23 CLARIFIES EXISTING STATUTES
P.10, L.4 CONCERNING INACTIVE LICENSEES.

(SEC. 08.88.251(c)) SECTION 24 CHANGES DEPARTMENT TO COMMISSION
P.10, L.7 AND OUTLINES THE PROCEDURE BY WHICH AN INACTIVE
LICENSEE CAN AGAIN BECOME ACTIVE.

(SEC. 08.88.263) SECTION 25 GUARANTEES RECIPROCITY WITH
P.10, L.19 OUT-OF-STATE LICENSES PROVIDED THE APPLICANT
HAS PASSED THE PORTION OF THE REAL ESTATE
EXAMINATION WHICH EXAMINES ON ALASKA LAW.

(SEC. 08.88.291) SECTION 26 CHANGES DEPARTMENT TO COMMISSION.
P.10, L.26

(SEC. 08.88.301) SECTION 27 CHANGES DEPARTMENT TO COMMISSION.
P.11, L.7

(SEC. 08.88.361) SECTION 28 CLARIFIES AND CORRECTS THE CURRENT
P.11, L.11 STATUTE. THERE ARE NUMEROUS TYPES OF "LISTING"
CONTRACTS USED BY THE REAL ESTATE INDUSTRY
AND NOT ALL ARE INVOLVED WITH SELLING A PRO-
PERTY. (I.E., LEASING, MANAGEMENT, ETC.)

(SEC. 08.88.421(1)) SECTION 29 PROVIDES FOR EXCEPTION TO THE
P.11, L.18 REQUIREMENTS TO BE LICENSED. SPECIFICALLY,
TRANSACTIONS ON A BROKER'S OWN ACCOUNT MUST
BE PROCESSED THROUGH THEIR EMPLOYING BROKER.

(SEC. 08.88.421(9)) SECTION 30 CLARIFIES THE INTERPRETATION OF
P.11, L.23 THE WORD VOCATION WITH RESPECT TO COMPENSATION.

(SEC. 08.88.421) SECTION 31 ALLOWS CERTAIN TYPES OF RESIDENT
P.12, L.9 MANAGERS NOT TO BE LICENSED. RESIDENT MANAGERS
HAVE TECHNICALLY BEEN REQUIRED TO BE LICENSED
UNDER THE EXISTING STATUTES.

(SEC. 08.88.431) SECTION 32 DEFINES RESIDENT MANAGER.
P.12, L.16

(SEC. 45.85.010) SECTION 33 RAISES THE AMOUNT FROM \$300,000 TO
P.12, L.19 \$500,000 BEFORE EXCESS OF THE SECURITY FUND
FUNDS REVERT TO THE GENERAL FUND. THE
COMMISSION AND LICENSEES HAVE BEEN LOSING
FUNDS THAT THEY HAVE PAID IN.

(Sec. 45.85.020) SECTION 34 CHANGES COMMISSIONER TO COMMISSION.
P.12, L.27

(Sec. 45.85.031) SECTION 35 SPELLS OUT THE PROCEDURES ONE MUST
P.13, L.14 USE WHEN MAKING A CLAIM TO THE COMMISSION FOR
PAYMENT FROM THE SURETY FUND AND LAYS OUT HOW
THE COMMISSION SHALL MAKE PAYMENT UPON FINDINGS
FROM THE SURETY FUND.

(Sec. 45.85.070) SECTION 36 CHANGES COMMISSIONER TO COMMISSION.
P.15, L.20

(Sec. 45.85.080) SECTION 37 CHANGES COMMISSIONER TO COMMISSION.
P.15, L.28

(Sec. 45.85.090) SECTION 38 CHANGES COMMISSIONER TO COMMISSION.
P.16, L.6

(Sec. 45.85.120) SECTION 39 DEFINES COMMISSION.
P.16, L.16

(Sec. 08.03.010(c)) SECTION 40 ESTABLISHES A NEW SUNSET DATE OF
P.16, L.19 JUNE 30, 1982, FOR THE COMMISSION, THE INTENT
OF THE LEGISLATURE IS TO ESTABLISH THE
COMMISSION AS AN "EXPERIMENT" AND LEGISLATIVE
REVIEW WILL BE IN TWO YEARS RATHER THAN FOUR.

SECTION 41. REPEALERS.

08.01.010(13) REMOVES THE REAL ESTATE COMMISSION FROM
CENTRALIZED LICENSING.

08.03.010(B)(9) TERMINATION DATE OF JUNE 30, 1980

08.88.211 QUALIFICATION FOR EXAMINATION

08.88.431(3) REMOVED "DEPARTMENT" FROM DEFINITIONS

08.85.030 REMOVES APPLICATION FOR PAYMENT FOR THE SURETY
FUND FROM THE DEPARTMENT OF COMMERCE.

45.85.040 REMOVES PAYMENT FROM THE SURETY FUND FROM THE
DEPARTMENT OF COMMERCE.

45.85.050 REMOVES THE COMMISSIONER OF THE DEPARTMENT OF
COMMERCE AND ECONOMIC DEVELOPMENT FROM THE RESPONSIBILITY
OF DISPENSING MONIES FROM THE SECURITY FUND. THIS FUNC-
TION WILL BE ADMINISTERED BY THE REAL ESTATE COMMISSION.

SECTION 42 IS THE EFFECTIVE DATE CLAUSE: JUNE 30, 1980.

3/04/80 3:00 PM

Real Estate Commission

Lance Youngquist Chairman of Real Estate Board
Written testimony submitted.

Robert Rogers Licensed Broker from ANC
Rec #2. A form of arbitration

Rec #4. Continued Education is good but
some limitations exist.

James H. Brown - Executive Secretary of Real Estate Commission.
Rec #2 Arbitration difficult due to \leftarrow funds.
need A.G.'s office help. } $\$ >$
" Hearing office }

* Elane Get copy of the Register

George Oliver - Ch. Reg. Committee Board of Realtors.
Do not sunset this board
Protects Public Interest for transactions.

* \rightarrow Ken Gaim - Written testimony

\rightarrow SB-212 Educational Upgrading. dropped out of the
bill.

(H) 745-4441

Robert Berie (Wasilla)

Assurity fund should not be used
for education of the Public -- 45.85.010

Carol Masvez on the Board

↳ Opinion ~~is~~ Ignored By the St. S's office
A.6 not investigating complaints.

↳ Eliminate the commission.

↳ Banking & Securities can handle it.

↳ Consumer Protection can handle complaints.

↳ Educational Requirements good.

→ If > \$ is put into loan programs
many would sell and leave Ak. Now
they can't leave because they can't sell!

Mr. Bob Cogus

Ann Giggis

Lance Gungquist } Bureau
at T. Rogers }

Give REC some teeth. Need a special investigator for real estate.

Record #2

See Atty Gen - about settling claims -
Set up Arbitration Board

Record #3

Record #4 Establish ed hours - not mandatory.
Gen. Jud. Comm. working up
a bill - Make sure it
is referred to Commerce
first, then Judiciary.
Not mandatory education to maintain license!

Record #5

James McHewan

Need access to word-processing equipment
between Anchorage & Juneau.

George Oliver -

Karen Morris - Observer

Robert Barry - Pres. of the Mat. Valley Bldg. Rector
See not use Security Fund for education of the police.
745-4441 (Home)

Carol Moser - Member of REC

AG has ignored the REC - they chose not
investigate & prosecute.

If REC is not more effective, then it should
be dismantled. REC goes its own way &
Consumer Protection Office could do the
REC job.

- Ann Griggs - Security Fund Educational Program is not just public school. Open to public libraries but not just for them -
- Jim McHewer - RE licenses in regard to investment analysis -

SUNSET REVIEW PREPARED STATEMENT

BY

THE ALASKA REAL ESTATE COMMISSION

THURSDAY, JANUARY 24, 1980

JUNEAU, ALASKA

SUNSET REVIEW PREPARED STATEMENT BY THE ALASKA REAL ESTATE COMMISSION

THURSDAY, JANUARY 24, 1980

JUNEAU, ALASKA

Mr. Chairman and members of the House Commerce Committee. For the record, my name is Lance Youngquist and I am chairman of the Alaska Real Estate Commission. In attendance with me this morning are the six other real estate commissioners for Alaska, broker members Carol Maser of Anchorage, Gail Glad of Kenai, Karen Morris of Fairbanks, Ken Calhoun of Anchorage, and our two public members, Frank Austin of Anchorage and Gary Wilken of Fairbanks. We would like to thank the committee for the opportunity to make a presentation this morning.

Our statement is designed to achieve several objectives. We will provide you with comments on several aspects of the reports prepared for you by the Legislative Budget and Audit staff and the staff of the Department of Occupational Licensing and we will comment on our suggestions regarding possible legislative actions which would provide the tools needed to carry out the various responsibilities assigned to the Commission. I would like to add our thanks to the Legislative Audit and Occupational Licensing staffs for the opportunities they provided us with for input into their reports.

Because the document, "A Performance Review of the Alaska Real Estate Commission", prepared by Legislative Budget and Audit staff, is the primary

document being used by the committee, I would like to present the Commission's opinions as to the recommendations that were made in that document.

The first recommendation deals with investigative procedures and, specifically, potential conflicts of interest by the Commission's Executive secretary. Under the investigative procedure that was developed between Occupational Licensing and the Commission approximately one year ago, item 11.B. states, "The Executive Secretary will not receipt, review or retain any complaints concerning possible conflicts of interest, i.e., complaints concerning the Executive Secretary or a Commission member or their relatives or business partners, past or present, or any matter involving unlicensed activity. These complaints will be immediately referred to the investigative section. The Executive Secretary will not be involved with these complaints." The Commission is in total agreement with this statement and insists on its adherence.

As you know, there are a number of ways for an individual to enter a complaint into the system without going through the Executive Secretary, including direct contact with the investigative unit, through any Commission member, Occupational Licensing, the Attorney General's Office, and the Ombudsman. We feel the existing procedures that are now being used are adequate to deal with the potential conflicts.

Recommendation No. 2 deals with the real estate surety bond and the establishment of legislation to allow the commission to determine monetary settlements. The Real Estate Surety Fund was established through the strong efforts of the State's realtor organizations in an attempt to create a

more equitable program for loss recovery than the prior method of individual bonding. It was felt that having the courts determine the validity and amount of claims would be the most appropriate method as the legal questions, etc., are under the purview of the courts. While the recommendation by Legislative Audit is not rejected outright by the Commission, we must look at it from a practical point of view.

The Legislative Audit report states that five settlements have been made from the fund. As of this week, we have made eleven settlements, totaling \$87,564.83. It must be understood that it takes time to go through the courts for a judgment and that many persons counseling potential claimants were not aware of the Surety Fund for many months. We are now beginning to see judgments from suits filed as long as two years ago and, also, an increasing awareness of the Fund by the public. In fact, the Commission is concerned that the Fund may not be adequate as currently structured.

We feel that for the Commission to take on the responsibility of handling claims would require several full-time commissioners, staff members and attorneys, plus clerical help, simply to hear the cases. The monetary cost would be tremendous. If the Commission were to hear the claims there would be a drastic increase in workload due to the minor disputes over such items as earnest moneys. Small claims and other similar courts currently provide adequate protection for most of these claims. The larger claims are being handled judicially by the higher courts.

The report suggested that the Surety Fund could be patterned after the Alaska Bar Association's Client Security Fund, which would allow "cheaper, easier and possibly quicker remed(ies) to damaged individuals. The Bar Association's Fund provides virtually unlimited coverage for very narrowly-based security claims while the Surety Fund provides limited coverage for a broad range of claims. I might add that, as of September 1979, there has never been a claim against the Bar Association's Security Fund. Our recommendations for changes in the Surety Fund are made later in this report.

Recommendation No. 3. As you are aware, Legislative Audit's recommendation to move the licensing investigative unit from Occupational Licensing to Public Safety will be implemented on February 15, according to the information we have received. Though the Commission has opposed this transfer, the objective now, assuming the transfer will be made, is to make the change work. Let me state what the Commission feels has been the real problem with investigations of real estate complaints.

The Real Estate Commission is charged with protecting the public from dishonesty and incompetence of real estate licensees. To do this, we must have adequate legal, investigative, and clerical support. We have dealt with two agencies, and now must deal with three agencies, for that support: Occupational Licensing for clerical and other support services, the Attorney General's Office for legal services, and now Public Safety for the investigative procedures.

In the past we have had one investigator to handle medical boards and the Real Estate Commission. The investigator has more cases from any one of these boards than can be well investigated by a single person. All cases, therefore, must be prioritized. Real estate cases are prioritized vis a vis medical cases. No real estate case can have top priority because brokers do not kill people with their malpractice as physicians might. The Attorney General's Office does not have anywhere near the staff needed and assigned to Occupational Licensing to handle all or even the most pressing cases. Again, prioritization occurs and, again, real estate cases rank below medical cases in danger to "life and limb".

We cannot disagree with the prioritization by the Attorney General's Office and the investigative unit of "life and limb" cases over "money" cases. We are not faulting them for not doing things; rather, we are faulting the system that forces them into this procedure.

The Legislative Audit observations on improper filing systems and record keeping are concurred with by the Commission. There are corrective procedures that can help this situation but, again, it boils down to clerk-typist assistance and word-processing equipment. Though there have been recent improvements in the clerk-typist area, word-processing is still in dire need.

The Legislative Audit report states that the average time for investigating real estate complaints is 11.4 weeks. That is the time it takes to process

a complaint in which little or no further investigation is necessary to close the complaint without license action. 11.4 months to go from a complaint to a hearing would be more reasonable and, in most instances, we are forced to advise complainants that prosecution takes 18 to 24 months or longer, if it gets done at all.

The result of all these problems is lack of enforcement and what amounts to voluntary compliance by some and violation with impunity by others. Our enforcement is more effective against the small offices and minor offenders simply because these licensees are often concerned with what the "Commission" thinks about them, and because they cannot afford expensive litigation.

Legislative Audit Recommendation No. 4 requests consideration of legislation to establish real estate courses before licensing. There has been a matter of considerable debate not only amongst the Commission members, but also with other licensees and the State's realtor organizations. As you may be aware, the Commission introduced a bill through Senator Bennett last year, SB 212, in which we request authority to establish mandatory educational requirements by regulation. The bill was amended through efforts of the State Association of Realtors who felt that precise hours and effective dates should be spelled out by statute.

The subject of mandatory education is a complicated one. We object to Legislative Audit's implication that because 41 other states have it, we should have it. In fact, some states are beginning to rescind previously adopted requirements.

SB 212 originally submitted by the Commission was permissive towards mandatory education but would have provided time and flexibility in introducing requirements and evaluating needs of the public and the industry. The Commission is on record as supporting this concept, as introduced in the original SB 212.

It is our feeling that we should establish sound programs and procedures first rather than last, then measure them for effectiveness and need. At that point, if desired and workable, they could be required to be mandatory. We feel this will insure their success and effectiveness. We are attempting this first step now with recent contracts using our excess Surety Fund moneys, as I will explain in a moment.

Recommendation No 5., to provide program objectives for Occupational Licensing's budget has a simple answer. We have, we do, and they are meaningless and very difficult to measure in quantitative terms since the budgeting structure has been so vague. We do not feel this is a fault of Occupational Licensing and, in general, we have been very pleased with the services they have provided for us. Our licensing examiner, Brent Long, has done an excellent job, and the regulations specialist, investigators and others have provided us with reasoned, conscientious, and available support. It is our opinion that our Executive Secretary, James Magowan, has taken a difficult position and molded it into one of top quality service to the Commission and the public. The Commission particularly takes note of the professional approach taken by the Director of Occupational Licensing, Ann Griggs, and we appreciate her support of the Commission with the limited resources available to her.

While these are our responses to Legislative Audit's recommendations, let me add some further observations on the Commission's activities. We will not dwell on the need of the Commission to demonstrate its need as required by Sunset statutes, as this is answered in the various reports that have been submitted to the Committee. However, we did feel that, assuming the need is there, we have been trying very hard to meet that need.

1. Over the past few years we have completely rewritten all of our regulations and these became effective in August 1979. We have conscientiously reviewed our regulations on a continuing basis and we are presently in the public notice stage for additional changes.
2. While it is our opinion that our statutes need major overhauling, a subject I shall address in a moment, we have continually introduced legislation for statute changes, the most recent being SB 212.
3. We have fought long and hard for additional educational programs and, finally, with the Legislature's granting of a \$75,000 appropriation from our Surety Fund last year, we have been able to assist the University of Alaska in establishing an Alaskan center for real estate education, and a continuing educational program which is currently being developed and should begin in about two months. This program, in addition to ongoing courses, will provide two-day seminars ten times per year in Anchorage, four times in Fairbanks, twice in Juneau, Homer and Kenai, and

once in Seward and Kodiak. We also plan to hold seminars in some of the more remote communities including Nome, Barrow, Bethel and Kotzebue where there is a growing need for real estate competence.

These seminars will provide top quality instructors and distinguished speakers, using University facilities, and are designed to update the licensees and the public in such areas as the law. They will also provide training in areas identified as major risk to the public, such as trust accounts.

We have also contracted to have a law manual prepared to assist the public and practitioners in further understanding of the real estate laws, and these manuals will be used as texts for some of the seminar programs.

4. Our Executive Secretary is currently writing and publishing many articles which are distributed through magazines and periodicals throughout the State. In addition, he provides 52 newspaper columns per year which are published in the Anchorage Daily News, Southeast Alaska Empire, and the Fairbanks Daily News-Miner. This has been done in addition to his many other duties and responsibilities.
5. We have not only instituted a new testing program for licensees through Educational Test Service but, as of this month, have established a new procedure whereby ETS will be taking full

responsibility for the examinations. Our past procedure was to have an individual who wanted to take the real estate exam apply directly to the State. Occupational Licensing would then take all of the applications, set up the exam centers, request the appropriate number of exams from ETS, do the testing, return the exams to ETS for grading, send the results to the examinees, receive the applications for licenses from those who had passed and, finally, license the individual. Under the new system, all applications will be made to ETS directly and they will have the total responsibility for the exam centers, monitors, testing, grading, etc. Only after ETS has notified the examinee of a passing grade will Occupational Licensing become involved by examining the applicant's other qualifications and issue the license. The Commission will maintain control over ETS for the tests and procedures. It becomes obvious that the man hours saved by the State through this procedure will be tremendous and the efficiency greatly increased. The additional cost for this service is merely \$2.00 per exam and, in fact, will not cost the applicants any additional money.

6. We have broadened our testing program and are now giving exams not only in Anchorage, Fairbanks and Juneau, but also in Ketchikan, Kodiak, Nome, Bethel and Kenai/Soldotna.

In concluding these remarks, we would like to present our recommendations regarding what should be done to better perform our mandated function of serving the licensees and protecting the public. These recommendations are our request for assistance from you. We trust you will give careful consideration to them and we hope you will implement the procedures suggested.

Though you have heard the story many times that "we put more money into the system than we get out of it", this is a true statement when it comes from real estate licensees. Current figures show that the real estate licensing function over the past four years has provided revenues of \$726,323, while expenses have equaled \$601,803. The expense figures are from Occupational Licensing's method of dividing their total licensees by their total expenses. The revenue totals average \$181,580 per year, which we feel should be totally used for the real estate function.

Considering that we are providing sufficient funds, we would request the following changes in the Real Estate Commission be implemented.

We request that the real estate licensing and enforcement functions be immediately set up as a separate "section" under the Department of Occupational Licensing and the Commission. It should have its own budget and be staffed with an administrator, investigator, auditor and license examiner, with sufficient clerical assistance to support their functions. In addition, a full time attorney should be assigned to the section by the Attorney General's Office. Full-time funding is already being provided for the administrator, in the form of our Executive Secretary, and the license examiner. Partial funding for the other positions, except for the auditor,

is provided through the time these positions now devote to the Commission.

A special comment should be made on the auditor position. Many of the problems we now encounter are related to trust account misuse and fiduciary responsibilities. With auditing capability, the Commission feels it can eliminate many of these problems before they occur. The preventive benefits to the public will far outweigh the cost.

The rapid growth of the real estate industry indicates a proportionate increase in the problems in the future. Rather than compound these problems by continually trying to use and improve old procedures, let us take one bold step, establish a "real estate section", and provide services at the levels required.

In addition to a "real estate section", we would also request the following:

1. Provide legislation that would raise the ceiling on the Surety Fund from \$300,000 to \$500,000. The Commission will be introducing this change as an amendment to SB 212.
2. Grant an appropriation or other support to the Commission to allow for a complete rewriting of the current real estate statutes. We estimate a cost of approximately \$15,000.
3. Assist us in the immediate passage of SB 212, as introduced by the Commission, with appropriate amendments that we shall recommend.

We trust that these recommendations are not unreasonable, but practical, and that the service that licensees provide to the consumer and the State justifies their recognition by the State as an important and necessary element. The Commission is impressed by the high character and standard of our real estate industry and only asks that you allow us the tools to even better serve the public and the licensees. This is your responsibility. Ours is to do the best job we can in the areas assigned to us. We ask you to encourage continued improvement in our industry by your support.

The Real Estate Commission appreciates this opportunity to be heard and we are available for any questions you may have.



Official Business

Alaska State Legislature

Senate

Committee on Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

March 13, 1980

The Honorable Clem Tillion
President of the Senate
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. President:

Your Senate Commerce Committee has had under consideration for "Sunset" review the Real Estate Commission pursuant to your referral under AS 44.66.050 and AS 08.03.010.

In accordance with the statutory requirements, a public hearing was held on the review of this commission, at which written and oral testimony was received. Members of the commission testified in person or by teleconference. The Committee considered the proposed budget of the commission for FY 1981 and particularly examined the performance audit of the activities of the commission conducted by the Division of Legislative Audit.

Guided, in part, by this performance review the Committee took into consideration the factors required to be considered under AS 44.66.050(c).

Your Commerce Committee thereby makes the following findings: The Committee concurs only in recommendation number two and does not concur in recommendations one, three, four, and five as they appear on pages 10 through 13 of the Performance Review of the Real Estate Commission dated May 7, 1979, which is hereby incorporated by reference as though fully set out herein.

We agree with testimony provided by members of the commission that the commission could do a better job if it had its own investigator or auditor, or both. Therefore, legislation will be introduced which will remove the Real Estate Commission from the umbrella of the Division of Occupational Licensing (except for minor and administrative support) allowing the commission a separate budget, including

The Honorable Clem Tillion
March 13, 1980
Page 2

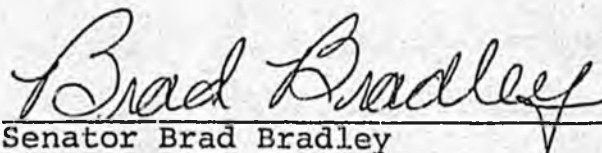
at least one full-time investigator or auditor. The Committee believes that minimum requirements for licensing of real estate brokers and real estate salesmen should be set by statute.

The Committee feels that it has adequately addressed the recommendations and categories required under AS 44.66.050(d), and recommends that with the changes stated in this report the Real Estate Commission be continued for another two years, that is, that the repealer with regard to the activities of the board be amended to read June 30, 1982.

We have recommended a two-year extension to allow review by the Legislature of this new structure before the running of a full four-year "Sunset" term.

A bill will be introduced by the Commerce Committee facilitating the changes and recommendations in this report.

Respectfully submitted,



Senator Brad Bradley
Chairman
Senate Commerce Committee

BB:jss

A PERFORMANCE REVIEW
OF THE
REAL ESTATE COMMISSION

MAY 7, 1979

A PERFORMANCE REVIEW
OF THE
REAL ESTATE COMMISSION

MAY 7, 1979

Commissioner of the Department
of Commerce and Economic Development
Deputy Commissioner of the Department
of Commerce and Economic Development

Charles Webber

Bertram L. Wagnon

Members of the
Real Estate Commission

Chairperson
Member
Member
Member
Member
Member
Member

Lance Youngquist
Karen Morris
Carol Maser
Frank Austin
Gary Wilken
Ken Calhoon
Gail Glad

STATE OF ALASKA

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

THE LEGISLATURE

FINANCE DIVISION
POUCH WF—STATE CAPITOL

BUDGET AND AUDIT COMMITTEE

JUNEAU, ALASKA 99811

June 27, 1979

Members of the
Legislative Budget and Audit Committee:

In accordance with the intent of Title 24 and 44 of the
Alaska Statutes, the attached report is submitted for your
review.

A PERFORMANCE REVIEW
OF THE
REAL ESTATE COMMISSION

May 7, 1979



Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

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PURPOSE AND SCOPE OF THE REVIEW

Purpose

In accordance with the intent of Alaska Statutes 24.20.271(1) and 44.66.050 (sunset legislation), an audit of the Real Estate Commission was conducted to review Commission activities and accomplishments to determine if the Commission has been operating in an effective, efficient, and economical manner.

As required by legislative intent, this report shall be considered during the legislative oversight function in determining whether the Real Estate Commission should be reestablished. The law currently specifies that this Commission will terminate on June 30, 1980, but will continue until June 30, 1981 for the purpose of concluding its affairs.

Scope

The major areas reviewed were the Commission's operations and its licensing, examination, administration, complaint and affirmative action functions. Our review consisted of analyzing and evaluating the following:

- (1) applicable statutes and Commission regulations;
- (2) interviews with Commission members and questionnaires sent to the Commission;
- (3) interviews with real estate agents and professional association representatives;
- (4) tests of records and documents of the Commission and the Division of Occupational Licensing (OL), Department of Commerce and Economic Development;
- (5) interviews with OL employees;
- (6) complaints filed with OL, the Ombudsman's Office, Consumer Affairs Agency, and the Equal Employment Opportunity Office;
- (7) questionnaires sent to Alaska licensed real estate brokers, associate brokers and salespersons; and
- (8) review of other states' licensing requirements.

Scope Constraints

This review was hampered by the following constraints:

- (1) The Commission has not established and reported financial and program plans as required by AS 37.07.050 nor has it developed and reported performance information regarding its effectiveness and accomplishments as required by AS 37.07.090.
- (2) OL has not adequately collected, recorded or maintained pertinent files and statistics relating to the Commission to effectively and efficiently carry out its administrative responsibilities.

ORGANIZATION AND FUNCTION

The Real Estate Commission (REC) was established and operates under Title 8, Chapter 88 of the Alaska statutes. It is a regulatory commission composed of five real estate brokers, or associate brokers, and two public members.

The Commission regulates licensed real estate agents (brokers, associate brokers, and salespersons) by:

1. examining and issuing licenses to qualified applicants;
2. establishing or amending rules and regulations necessary to enforce State statutes;
3. holding hearings to revoke or suspend the license of a person violating real estate statutes or regulations;
4. prosecuting through the Department of Law, violators of real estate statutes and regulations.

The REC is also authorized to conduct real estate clinics, meetings, or educational institutes for the purpose of raising the standards of the real estate business and the competency of licensees.

Real estate brokers and associate brokers must pass an examination, be a resident of the State, have had 24 months of experience as a real estate salesperson, and not have engaged in conduct demonstrating their unfitness to be a broker. A broker differs from an associate broker in that a broker must be an owner of a real estate business or employed as a broker by a corporation. An associate broker has met the statutory qualifications of a broker, but is employed by a real estate broker.

A real estate salesperson must pass an examination, be a resident of the State, be employed by the owner of a real estate brokerage and not have engaged in conduct demonstrating unfitness to be a salesperson.

Real estate agents must pay a bond fee when obtaining or renewing their licenses. These fees are deposited in the Real Estate Surety Fund and are to be used for making settlements to victims of fraud, misrepresentation, and deceit by real estate agents. Settlements to damaged parties are only paid upon a court order. If the Surety Fund balance reaches above \$250,000, the excess may be appropriated for educational programs put on by the REC.

The Commission has staff support from the Division of Occupation Licensing (OL). The Division is required to maintain license files, process applications, and provide other administrative support to the Commission. Also an executive secretary is assigned to perform investigative and other administrative services for the REC.

REPORT CONCLUSION

Policy Issues

This review contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting these practices are not within the scope of this review but require legislative consideration. In debating these issues the legislative oversight committees should consider the findings and alternatives presented in this report, so that the potential impact of policy changes can be evaluated.

Report Conclusion

In our opinion, the Real Estate Commission (REC) should continue to regulate and license real estate professionals. The regulation and licensing of the profession is necessary because of the potential for substantial economic loss resulting from the business practices of unqualified, incompetent, or dishonest real estate practitioners.

However, in order for the REC to perform more effectively and efficiently, several changes need to be made. For instance, investigative procedures need to be changed to correct any potential for a conflict of interest by the executive secretary. The executive secretary has investigated complaints against real estate agents for REC and has been placed in potential conflict of interest situations (see Recommendation No. 1).

Also legislation needs to be introduced which would assign the responsibility to REC of whether and to what extent monetary settlements should be made from the Real Estate Security Fund to persons damaged by licensed real estate agents. In order for individuals to be granted damages, they must obtain a court order. This has only been done five times since the Fund was created in 1976 (see Recommendation No. 2).

The complaint filing system is incomplete and inadequate to show that investigations are properly conducted. Therefore investigative procedures for real estate complaints should be revised to develop an accurate and efficient system for handling complaints (see Recommendation No. 3).

In addition, there are no educational requirements for licensing of real estate agents. Forty other states require some type of education for agents and responses from a Division of Legislative Audit questionnaire indicate, a need for additional education (see Recommendation No. 4).

And finally, the REC should develop program objectives to be included in the Division of Occupational Licensing's budget documents that specifically state what can be accomplished in quantitative terms (see Recommendation No. 5).

FINDINGS AND RECOMMENDATIONS

Findings and Recommendations No. 1 through No. 4 are addressed to the Real Estate Commission. Finding and Recommendation No. 5 is addressed to the Division of Occupational Licensing (OL), and should be read in conjunction with "A Performance Review of the Division of Occupational Licensing, Department of Commerce and Economic Development, October 30, 1978".

Recommendation No. 1

The Real Estate Commission (REC) in conjunction with the Division of Occupational Licensing (OL) should change and revise their investigative procedures to correct any potential conflict of interest by the executive secretary.

For the last few years, the executive secretary of the REC has been investigating complaints against real estate agents. Presently the executive secretary's wife is a real estate broker which places the executive secretary in a potential conflict of interest situation.

During our review, we noted several cases where a potential conflict of interest occurred. One case resulted in a complaint against the executive secretary being filed with the Ombudsman's office. In another case, the complainant stressed that she hesitated to file a complaint because of the executive secretary's position.

We suggest that all incoming complaints be filed with the investigative unit of OL. The executive secretary should be allowed to attempt to settle minor complaints which do not involve relatives or commission members. However, all other complaints should be controlled and investigated by the investigative unit of OL.

If this system is implemented, the executive secretary should have more time to devote to other activities because of the decrease in investigative duties. This extra time could for example be available for planning and organizing future educational programs conducted by the Commission.

Recommendation No. 2

Legislation should be introduced to assign the REC responsibility for determining monetary settlements from the Real Estate Surety Fund.

The Real Estate Surety Fund is for public protection against fraudulent actions by licensed real estate agents. The statutes currently require that an individual obtain a court order before being granted a settlement from the Fund. Each settlement is limited statutorily to \$10,000 or less. Persons with claims \$2,000 or less could collect in small claims court. However, persons with claims greater than \$2,000, may find it economically infeasible to obtain a court order because of the time and expense involved in litigation.

Since the Surety Fund's inception in 1976, there have been five settlements paid from the Fund. There have been about 400 real estate complaints filed with OL. Currently the Alaska Bar Rules assign the responsibility of controlling the Client Security Fund, which was created to protect consumers from fraudulent actions by lawyers, to the Board of Governors of the Alaska Bar Association.

We suggest that introduced legislation should be similar to the Alaska Bar Rules. This would allow cheaper, easier, and possibly quicker remedy to damaged individuals.

Recommendation No. 3

Investigation procedures for real estate complaints should be changed and revised to develop an accurate and proper system for handling complaints.

good

We found that Commission members were being informed as to the facts and opinions of investigations of potential license violations. In addition, a Commission member completed an investigation of a very sensitive complaint instead of the executive secretary, who normally handles investigations. Although the complaint has been closed, some questions about the case have not been fully investigated and answered.

In the Disciplinary Action Manual for Occupational Licensing Boards, the National Association of Attorney Generals has stressed that boards and commissions should refrain from involvement in investigations and that their primary role is decision maker.

We also reviewed the files of complaints against real estate agents to determine if investigations were properly completed. In an analysis of 100 complaints, we found:

- a. twenty-one files contained inadequate or incomplete information; and
- b. eighteen files either contained no documents or were only requests for information.

In addition, we found eight complaints listed and discussed in the Commission's meetings, which had no files. Consequently, there is no audit trail for the investigators or supervisors to determine what action to take, because the status of some complaints is unknown.

We recommended in "A Performance Review of the Division of Occupational Licensing, Department of Commerce and Economic Development", dated October 30, 1978, that OL's investigative unit should be transferred to the Department of Public Safety. If this recommendation is not implemented, we suggest that new investigative procedures for real estate complaints be implemented and include:

- a. documentation identifying the reasons for starting an investigation;
- b. progress reports for each investigation;
- c. final action decided by REC;
- d. number, substance, and disposition of any informally handled complaints; and
- e. procedures for all investigations, except those assigned to the executive secretary, to be conducted and reviewed by the investigation section including those previously examined by Commission members.

Recommendation No. 4

Legislation should be considered which would require real estate agents to have completed real estate courses before being licensed.

Currently Alaska Statutes do not require education as an entrance requirement for real estate agents. Forty-one states require that applicants have some type of education for brokers and forty states require education for sales persons.

In addition, we received the following responses to a Division of Legislative Audit questionnaire from 98 licensed real estate agents.

- a. Seventy-two percent know of real estate agents who lack a fundamental knowledge of proper practices, laws, and regulations.
- b. Seventy percent believe that applicants should be required to have taken real estate courses before they are licensed.
- c. Seventy-five percent believe that if the requirements for a real estate license were more difficult, there would be fewer agents entering the real estate profession. However, 65% believe agents would be more competent than they are now.

The REC has sent proposed statutory changes to OL to submit for legislative consideration. Our recommendation was included in the Commission's proposals.

Recommendation No. 5

The Real Estate Commission should develop program objectives to be included in OL's budget documents that specifically state what can be accomplished in quantitative terms.

Program objectives describe what a commission or agency is seeking to accomplish and can accomplish during a specific fiscal year. Well formulated objectives are capable of measurement and should include numeric targets so that actual accomplishments can be compared with stated targets.

Although OL has not included any of the individual boards or commission's goals in their budget documents, the Real Estate Commission has established its own objectives. Many of the Commission's objectives are worthy; however, they are not stated in quantitative terms nor are they objectives which the Commission has responsibility or control over. For instance, the following objectives are from their objectives listed in the minutes from March 16 - 17, 1977:

- a. to produce a semi-annual roster of licensees; and
- b. to develop consistent forms for licensees and applicants.

Both of these objectives are the responsibility of the Division of Occupational Licensing.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analysis of Commission activities relates to the public need factors defined in the "Sunset" law. This analysis is not intended to be all inclusive, but addresses those areas we were able to cover within the scope of our review.

- I. The extent to which the board, commission or program has operated in the public interest.
 1. The Real Estate Commission (REC) has legally implemented several regulations concerning the:
 - a. suspension, revocation, and issuance of licenses;
 - b. prohibited conduct, by real estate agents;
 - c. accounting for trust accounts by real estate agents.
 2. According to OL's files, REC met five times last year; gave eleven examinations in Anchorage and four examinations in Fairbanks, Kenai, and Juneau; and held four hearings for proposed changes in regulations.
- II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.
 1. Based on a review of 100 filed complaints, we found the average investigating time for real estate complaints is 11.4 weeks.
 2. The complaint filing system is incomplete and inadequate to insure that investigations are properly conducted (see Recommendation No. 3).

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

1. REC has submitted proposed statutory changes to OL for legislative consideration. Those which were sent for consideration include upgrading the licensing statutes (see Recommendation No. 4), defining the authority of the Commission to issue a temporary permit, and allowing reciprocity. We believe these recommendations are in the public's best interest.

IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

1. The Commission has held part of their meetings to specifically meet with interested persons.
2. The executive secretary produces a column describing Commission business for the Realtor News, a publication of the Anchorage Board of Realtors. In addition, he has also written informative articles in local papers about real estate practices.

V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.

1. REC, through OL, advertises in newspapers to encourage public participation and also sends notices to interested associations. During the last three years, approximately one advertisement was published per newspaper for meetings, examinations, and hearings. These advertisements were limited to papers published in Juneau, Anchorage, Fairbanks, Ketchikan and Kenai. However one examination and two meetings were not advertised, which is in violation of the Administrative Procedures Act.

2. During the past three years, twenty-eight persons other than Commission members and State employees were present during meetings as recorded by Commission minutes.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.

1. There have been seven complaints sent to the Ombudsman's Office up to November, 1978. Two of these dealt with investigations, two were caused by the failure of a licensee to receive a license, one had to do with testing facilities, one concerned a license delay, and one was caused by OL refusing to release investigative files. Two were marked justified and they were about testing facilities and the lack of investigation of a complaint.

VII. The extent to which a board or commission which regulated entry into an occupation or profession has presented qualified applicants to serve the public.

1. OL has collected 444 real estate complaint files for the last six years. We analyzed 100 of the files and found that 18 were not complaints and also found that eight complaints did not have files (see Recommendation No. 3).

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest.

1. Examination and license renewal forms contain questions on date of birth, height, weight, sex, color of hair and eyes, and/or place of birth. This may be a violation of Equal Employment Opportunity requirements (see the "Performance Review of the Division of Occupational Licensing, Department of Commerce and Economic Development" dated October 30, 1978).

IX. The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Findings and Recommendations.

APPENDIXES

APPENDIX A

REAL ESTATE COMMISSION
REVENUES COMPARED WITH EXPENDITURES
 Fiscal Year 1978
 (UNAUDITED)

Average Revenue (See Schedule 1 and Note 1)	\$202,584
Expenditures (See Note 2)	<u>169,633</u>
Excess of Revenues Over Expenditures	<u>\$ 32,951</u>

Schedule 1

Types of Revenues

<u>Revenues</u>	<u>Amount</u>	<u>Collection Time</u>
<u>Brokers and Associate</u>		
<u>Brokers</u>		
Initial License Fee	\$100	With issuance of license
Biennial Renewal - Active License	\$100	Biennially
Biennial Renewal - Inactive License	\$ 25	Biennially
Examination Fee	\$ 50	With taking examination
Reciprocity Fee	\$ 50	With granting of license through reciprocity
Fee for Amending a License	\$ 2	With licensee filing to amend license
<u>Salespersons</u>		
Initial License Fee	\$ 50	With issuance of license
Biennial Renewal - Active License	\$ 50	Biennially
Biennial Renewal - Inactive License	\$ 25	Biennially
Examination	\$ 50	With taking examination

<u>Revenues</u>	<u>Amount</u>	<u>Collection Time</u>
Reciprocity Fee	\$ 50	With granting of license through reciprocity
Fee for Amending a License	\$ 2	With licensee filing to amend license

Note 1

Most of the real estate revenues are composed of renewal registration fees. These fees are collected once every two years and cause revenues in one year to be much greater than the revenues collected in the next year. Therefore, we calculated and reported an average of the revenues collected in Fiscal Year 1977 and 1978 in order to obtain an accurate representation of collected revenues.

Note 2

Expenditures include those made by Commission members, such as travel and per diem and an allocated percentage (estimated) of total administrative expenses of OL. They do not include expenditures for efforts of other departments, such as the Department of Law, that may be assisting the Commission and OL.

APPENDIX B

EXAMINATION AND ADMINISTRATIVE
STATISTICS

Schedule 1

Examination Statistics

	<u>1978</u>	<u>1977</u>
<u>Brokers and Associate Brokers</u>		
Number of Examinees	243	261
Number of Fails	<u>93</u>	<u>68</u>
Number of Passes	<u>150</u>	<u>193</u>
Percentage Pass Rate	<u>62%</u>	<u>74%</u>
<u>Salesperson</u>		
Number of Examinees	1536	1370
Number of Fails	<u>728</u>	<u>554</u>
Number of Passes	<u>808</u>	<u>816</u>
Percentage Pass Rate	<u>53%</u>	<u>60%</u>

Schedule 2

Administrative Statistics

	<u>1978</u>	<u>1977</u>
<u>Licenses Issued Per Calender Year</u>		
Brokers	46	34
Associate Brokers	33	59
Salespersons	<u>843</u>	<u>632</u>
Total	<u>922</u>	<u>725</u>
		As of
		<u>January 24, 1979</u>
<u>Active Licenses</u>		
Associate Brokers		294
Salesperson		<u>1,812</u>
<u>Total</u>		<u>2,516</u>

<u>Inactive License</u>	<u>As of January 24, 1979</u>
Brokers	31
Associate Brokers	24
Salepersons	<u>476</u>
<u>Total</u>	<u>531</u>

Schedule 3

Number of Licensees Per 1000 Population (Estimates)
(See Note 1)

Alaska	8.0
California	16.0
Idaho	7.5
Montana	5.0
Oregon	9.0
Washington	85.0

Note 1

These figures were obtained from the 1979 NARELLO Annual Report by the National Association of Real Estate License Law Officials.

APPENDIX C

QUESTIONNAIRE SENT TO COMMISSION MEMBERS

1. What do you believe to be the goals and objectives of the Real Estate Commission?

<u>Description</u>	<u>Number of Commission Members' Responses</u> (See Note 1 and 2)
<i>To protect consumers.</i>	3
<i>To oversee actions of licensee.</i>	2
<i>To develop programs to help educate public and licensee.</i>	4
<i>To be a liaison between public, industry, and governing agency.</i>	3
<i>To carry out statutory duties and help provide public with assurance and confidence.</i>	3
<i>To obtain sufficient staff to handle investigations and audits in an expedient and accurate manner.</i>	1
<i>To establish a division for incorporating real estate licensing, securities, subdivisions, appraisers, title insurance, and other related industries and laws.</i>	1

2. How does the Commission measure its progress in meeting its goals and objectives?

<u>Description</u>	<u>Number of Commission Members' Responses</u>
<i>Have not developed self-critique program.</i>	1
<i>Failing to assume competency because of lack of cooperation with administration that oversees Commission.</i>	1
<i>Quantity and quality of complaint caseload.</i>	2
<i>Industry and public feedback.</i>	1
<i>Time in bringing complaints to hearing.</i>	1

2. (Cont'd.)

<u>Description</u>	<u>Number of Commission Members' Responses</u>
<i>Delay caused by workload in Attorney General's Office.</i>	1
<i>Commissions goals and objectives reviewed almost every meeting.</i>	1

3. Is the staff from the Department of Commerce and/or other departments adequate to perform and enforce all laws and regulations relating to the Real Estate Commission? What staff support services are provided adequately/inadequately? Are investigations performed adequately/inadequately? Please give examples of inadequate service.

<u>Description</u>	<u>Number of Commission Members' Responses</u>
<i>Licensing and examination staff is adequate.</i>	3
<i>Licensing and examination staff is inadequate.</i>	2
<i>Investigation staff is inadequate.</i>	4
<i>Investigations are generally good.</i>	1
<i>Too much turnover in the licensing examiner position.</i>	2
<i>Prefer to have a Real Estate Division handle this.</i>	1
<i>Need to have an auditor - investigator.</i>	2

4. What evidence exists demonstrating that the absence of regulations and/or the commission would be detrimental to the public's best interest?

<u>Description</u>	<u>Number of Commission Members' Responses</u>
<i>Not aware of documented evidence.</i>	1
<i>The number of complaints against unlicensed people.</i>	1
<i>Obvious that this industry with its fiduciary characteristics requires state-wide regulations.</i>	3

5. Are there any statutes or regulations that you believe to be obsolete, vague, unduly restrictive, and/or inadequate to provide the Commission with the responsibility and power to properly govern the purpose and activities of the Commission? Please list and explain.

<u>Description</u>	<u>Number of Commission Members' Responses</u>
<i>Statutes are incomprehensible and obsolete. Need to be re-written.</i>	3
<i>No regulations for property management.</i>	3
<i>No statute unduly restrictive.</i>	1
<i>No control over unlicensed activity.</i>	1
<i>Commission's goal to review and re-write statutes has not been accomplished.</i>	2

6. Has the Commission recommended any statutory changes which are generally in the public's best interest?

<u>Description</u>	<u>Number of Commission Members' Responses</u>
<i>Yes. Most recent is pre-licensing education and continuing education for licensees.</i>	5

7. What changes need to be made which would improve the Commission's service to the public?

<u>Description</u>	<u>Number of Commission Members' Responses</u>
<i>Need investigator and auditor.</i>	4
<i>Need to institute educational programs for the public and licensee.</i>	3
<i>Need to overall streamline statutes.</i>	1
<i>Need to establish a real estate division.</i>	2

8. What do you believe is the underlying reason for many of the complaints against real estate practitioners (i.e. lack of knowledge of real estate laws, incompetence, unethical, or others)?

<u>Description</u>	<u>Number of Commission Members' Responses</u>
<i>Lack of knowledge and concern for the law by those licensed.</i>	4
<i>Unethical practitioners.</i>	2
<i>Vague statutes.</i>	2
<i>Nature of transactions are cause of more chance for error.</i>	1
<i>Misunderstandings and unintentional violations.</i>	2

9. Do you think continuing education requirements for license renewal would be in the public's best interest?

<u>Description</u>	<u>Number of Commission Members' Responses</u>
<i>Yes. Both continuing education and pre-licensing requirements are a must.</i>	3
<i>Not necessarily, but it could.</i>	1
<i>Logistics problems of mandatory continuing education do not warrant establishment of this program now.</i>	1

10. What do you believe is the reason for the low pass rate by applicants taking Alaska's (Educational Testing Services) examination for brokers and sales persons?

<u>Description</u>	<u>Number of Commission Members' Responses</u>
<i>Not low when compared to others using the Educational Testing Service, but is quite normal.</i>	3

10. (Cont'd.)

Description

Number of Commission
Members' Responses

Combination of:

- | | |
|---|----------|
| <i>a. State portion is a difficult test which has proven itself statistically; this portion, however, should not be made less difficult for the sake of increasing the pass rate.</i> | <i>1</i> |
| <i>b. The statutes and regulations are difficult to study and assimilate.</i> | <i>1</i> |
| <i>No reply.</i> | <i>1</i> |

Note 1

The questionnaire was sent to six Commission members and one prior Commission member. We received replies to our questions from five members therefore the response rate is 71%.

Note 2

Each Commission member responded to each question with several answers. Therefore total responses for each question may exceed the number of Commission members.

APPENDIX D

QUESTIONNAIRE SENT TO REAL
ESTATE AGENTS

(See Note 1)
% Responses

	<u>Yes</u>	<u>No</u>	<u>No Opinion</u>
1. Do you believe that it is in the public's best interest that the following professions be licensed?			
a) Brokers	99%	1%	0%
b) Associate Brokers	97%	2%	1%
c) Salespersons	98%	1%	1%
2. Do you believe that applicants for real estate licenses should be required to have taken real estate courses before they are licensed?	70%	30%	0%
3. Do you believe that continuing education should be required for the following to renew their licenses?			
a) Brokers	66%	29	5%
b) Associate Brokers	63%	30%	7%
c) Salespersons	58%	37%	5%
4. Do you believe that the Real Estate Commission has operated in the public's best interest?	65%	10%	25%
5. Do you know of real estate agents (brokers, salespersons) who lack a fundamental knowledge of proper practices, laws and regulations?	72%	24%	4%

(See Note 1)
% Responses

	<u>Yes</u>	<u>No</u>	<u>No Opinion</u>
6. Does the license examination cover material which is not relevant to actual practice?	46%	37%	17%
If yes, please comment:			
<i>The most prevalent answer was that the exam asked irrelevant questions.</i>			
7. Have Division of Occupational Licensing investigators, who you have contacted or have knowledge of, been thorough?	25%	1%	74%
8. Has the Commission handled complaints fairly?	29%	3%	68%
9. If the requirements for a license as a real estate agent were more difficult, what would happen (check each response that you think is true)?			
a) There would be fewer agents entering the real estate profession	75%		
b) Fees charged by agents would probably go up		6%	
c) Agents would be more competent than they are now		65%	
d) Probably no significant change		20%	
e) Other (please explain):		19%	

The most prevalent answer was that there is need to weed out incompetent agents.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

POUCH D - JUNEAU 99811

July 31, 1979

RECEIVED

AUG 3 1979

LEGISLATIVE
AUDIT

Mr. Gerald Wilkerson, CPA
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

The following comments are in response to the Performance Review of the Real Estate Commission, as submitted by the Division of Legislative Audit.

Recommendation No. 1: Agree. The division has implemented procedures which are designed to avoid any possibility of conflicting interest potential. We will continue to update any procedures relating to this recommendation as well as to the entire investigative effort.

Recommendation No. 2: Agree. We believe that the public would best be served by a procedure which would allow pursuit of claims through the Commission rather than through the courts. Claimants would thus be able to present their case before a board with expertise in real estate; such a procedure should expedite settlement and avoid court costs.

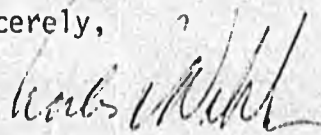
Recommendation No. 3: Agree. Implementation of recent investigative procedure policies and continued efforts in this area will further this recommendation.

Recommendation No. 4: Agree. Other methods of upgrading the profession could also be considered, such as possible improvements to the examination. This will be discussed with the board at its August meeting.

Recommendation No. 5: Agree. The division has requested information on goals and objectives from all boards and commissions for inclusion in the FY '81 budget. We do feel that boards should be able to establish their own priorities. Such priorities, however, should be discussed with an attempt to resolve them in a spirit of mutual respect and cooperation.

Thank you for this opportunity to comment on the review and for the time and effort expended by you and your staff.

Sincerely,



Charles R. Webber
Commissioner

CRW/tlp2/12

August 1, 1979

RECEIVED

AUG 3 1979

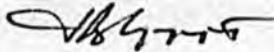
LEGISLATIVE
AUDIT

Mr. Richard A. Smith
State Internal Auditor
Office of the Governor
Department of Administration
Pouch A
Juneau, Alaska 99811

Mr. Smith,

It has come to my attention that the Legislative Budget and Audit Committee may be meeting in regards to Sunset Legislation of the Alaska Real Estate Commission during the interim legislative session here in Juneau. I would appreciate your passing on to the Committee that should they desire I would be available to appear before them and attempt to answer any questions they might have. If that is their desire I would appreciate your informing me of the time and location.

Sincerely,



Lance Youngquist
Chairman, Alaska Real Estate Commission

July 30, 1979

Mr. Richard A. Smith
State Internal Auditor
Office of the Governor
Department of Administration
Pouch A
Juneau, Alaska 99811

RECEIVED

AUG 3 1979

LEGISLATIVE
AUDIT

Mr. Smith,

At the July meeting of the Alaska Real Estate Commission in Fairbanks, Alaska, it was decided that each commissioner would respond individually to the preliminary report, "A Performance Review of the Alaska Real Estate Commission." The following are my responses to the findings.

Recommendation No. 1: During the last six months the Alaska Real Estate Commission in conjunction with the Department of Licensing has instigated a new investigative procedure which I believe has satisfactorily answered all of the questions in this recommendation. In addition we have published a complaint bulletin which explains the procedures one could use in filing a complaint showing that complaints can be filed with others and not just the Executive Secretary.

Recommendation No. 2: While I am not adverse to this recommendation I feel it would be imparative that the mechanics of such a program be looked into thoroughly. The repercussions on the licensee when a payment is made from the surety fund are severe and I feel it is extremely important that the Commission's authority be unquestioned when making a recommendation.

One of the reasons for the infrequent payments from this fund in the past is the lack of information on the program in the hands of those seeking settlements. Recently there have been instigated many more requests from the fund and I feel this will continue as more people are aware of this form of recourse.

Recommendation No. 3: Again, this procedure has been changed within the last six months and I feel we are now conforming to this recommendation in regards to the Commissions involvement in cases.

Investigations are still not being done in a timely manner and it is my opinion that the sole problem is one of man power. The Department of Licensing has only three investigators to handle all of the boards and commissions and this is an impossible task. The nature of many of the real estate complaints are severe enough that immediate actions should be taken. This has been a physical impossibility.

In reference to transferring investigations to the Department of

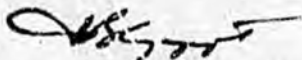
Public Safety, I am totally opposed. The function is a proper one for the Department of Licensing provided they are given the manpower to handle the job.

Recommendation No. 4: We are in concurrence with this recommendation provided the procedure is correctly set up. Many states are rescinding previously instituted requirements after finding that their procedures have not worked. By learning from other states mistakes I feel we can institute a good a proper program for Alaska.

Recommendation No. 5: This recommendation has been met through new procedures instituted by the Commission.

In summary I feel that the Alaska Real Estate Commission has corrected all of the deficiencies mentioned in the report that are within the Commission's power. The Commission, by statute, has been given a monumental task and with the continuing rapid number of new licensees, this task increases. Our principal downfall at the present time is in investigation and enforcement, a problem that can only be corrected with more manpower in this area. I highly urge that the Commission be given a full-time investigator and a full time auditor at which point we would meet the intent legislatively mandated upon us.

Sincerely,



Lance Youngquist
Chairman

JUL 30 1979

July 25 1979
LEGISLATIVE
AUDIT

Dear Mr. Wilkerson,

In reply to your recent letter on the Preliminary Audit Report for the real estate commission, I offer the following.

Rec.# 1 I believe we have tried to correct the situation by our new method whereby copies of all complaints go to investigations also but I feel all initial complaints should come thro either the Exec. Sec., the individual commission members or OL with copies to above.

Paragraph 3 Wholeheartedly agree with Exec. Sec. being allowed to settle minor complaints but would also include his authority to screen those which have no basis for us to act upon. The commission can only act on License Violations so if a complaint does not fit this category it should be so noted by the Exec Sec and the Commission with copies to OL and then it should go no farther. We are already experiencing a slow down in investigation of complaints since using this new system and I feel the Exec. Sec. and commission members should be the ones to decide which should be investigated and which have no case authority.

Paragraph 4 The Exec. Sec. would have time to spare now if he didn't spend so much time trying to educate real estate licensees and the public in what He sees as the problems with the industry. I do not feel this is one of his functions, however, I agree with his using the time to plan and organize programs conducted by REC.

Rec. #2 In full favor and agreement. I would go even farther and suggest that we introduce legislation allowing REC to fine and/or suspend a licensee for various violations. At present we have little authority to do more than reprimand and this is not particularly effective. We also need to have cases handled promptly by the AG's office when a violation of a serious nature is found. In my opinion that office is probably one of the most ineffective in the entire state government structure and that is a sad state of affairs.

Rec. # 3 I agree there are problems with the system of handling complaints, we noted in Rec. # 1. We've hopefully changed to speed up the process from our end but perhaps, again as I mentioned earlier, we need to determine what is a valid complaint and what does not come under a license law violation. Hopefully, education of the public and licensees by pamphlets and perhaps the media can reduce this.



REALTOR®

308 G St., Suite 225, Anchorage, Alaska 99501 (907) 274-6324

CAROL MASER REAL ESTATE

We are no longer involved in the early process of a complaint. We only become involved and then only on an individual basis, when a complaint case is recommended for closure. This does help considerably in keeping us from involvement in investigations. I disagree with the recommendation for transferring investigations to Public Safety. I do agree with the new suggestions for establishing better investigative procedures and will so move at our meeting in Fairbanks.

Rec. # 4 Again I agree wholeheartedly. I would take it one step farther and require continuing education in at least some areas where changes occur on a continual basis, before re-licensure of both Brokers and Salesmen. As you noted we have proposed this and will continue to work toward its implementation.

Rec. # 5 We are trying to improve in this area--most of us feel we are not well enough informed as to just what you are suggesting, i.e. what can be accomplished in quantitative terms--perhaps you could give us some more positive example. I would disagree with you as to a. and b. not being our responsibility. If OL doesn't do it, then it does become our responsibility and I feel people in the business know better what is needed than an "overview department" since we work with the problems on a daily basis.

I feel there is one area you did not consider which could have added greatly to your report. The real estate industry by and large pays it's way for it's regulations and I believe a better job of serving the public could be done if we were served by a separate department of real estate rather than under the present umbrella of OL.

I do appreciate the work you have done on this report and feel it has helped us in re-evaluating some areas and has certainly caused all of us on REC to think about what our role as a member should be.

*Our goal, except on one letter in
OL - perhaps operating under existing
Securities we would see more appropriate
if a separate department Carol Maser
isn't acceptable.*



2526 Glenwood

308 G St., Suite 225, Anchorage, Alaska 99501 (907) 274-6324

Gary Wilken
P.O. Box 485
Fairbanks, AK 99707
July 26, 1979

RECEIVED

AUG 3 1979

LEGISLATIVE
AUDIT



Commissioner of Administration
State of Alaska
Juneau, AK 99811

Dear Sir:

In response to your request for comment on the preliminary audit report on the Alaska Real Estate Commission, I submit the following.

Recommendation # 1

At the outset it should be realized that the executive secretary is the only employee of the State that was hired to be, and is expected to be, knowledgeable in the real estate industry. Therefore, I am most adamant in keeping the executive secretary position as the primary contact for problems which, in the public's view, arise in dealing with this industry.

If the complaints are entered with the O.L. Investigative Section three consequences will result. They are:

- 1) Most importantly, contact will be lost by the general public with that one person that should be representing the State of Alaska's interests in the real estate industry.
- 2) The efficiency of the system will suffer due to complaints being lodged by the public through someone not entirely familiar with the industry, therefore a screening process will be eliminated which at present acts to resolve many complaints before they actually become formal cases.
- 3) It follows that the caseload will increase due to the lack of a screening process by a thoroughly knowledgeable individual.

The conflict of interest situation is not a great problem considering, if one wishes to register a complaint and feels there may be a conflict, there are other avenues to where we may turn to enter the complaint. He may enter the complaint with the Ombudsman, any Commission member in the State, Consumer Protection Agency, or directly to the O.L.'s investigative section. He is not required to deal at all times with the Executive Secretary.

Commissioner of Administration

July 26, 1979

Pg. 2

In brief, if the complaint entering is changed to the O.L.'s Investigative Section, the harm done to the public in their frequent dealings with the State in regard to real estate problems far outweighs the benefits, which are only to eliminate a possible, and very infrequent, conflict situation which may easily be circumvented in other ways.

I urge you to continue to see that the public's complaints are entered through the Executive Secretary with a copy of the original complaints being sent to the investigative section, as is currently being done.

Recommendation # 2

I agree with the recommendation as modeled after the Alaska Bar rules.

Recommendation # 3

Action has been taken to eliminate prior knowledge, on the part of the Commission as a whole of those complaints which are entered.

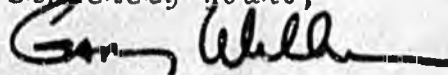
More accurate record keeping is perhaps desirable however not what I would consider a priority item except in those cases of meaningful importance.

Recommendation # 4

I agree with the recommendation, however (1) given the information which the Commission is able to obtain from the State, (2) the infrequency which we meet as a group and, (3) the changing attitudes on the part of the interfacing state agencies (ie. the Attorney General's office), to first quantify and then obtain will be very difficult yet none the less worth the attempt.

If I can comment further on the Preliminary Review of the Real Estate Commission or on the Commission itself, please advise.

Sincerely yours,



Gary Wilken
Member
Real Estate Commission

GW/sd



HERITAGE HOMES & INVESTMENTS, INC.
 207 E. Northern Lights Boulevard
 Anchorage, Alaska 99503
 Bus. (907) 276-1333



D. Smith
Review & recommend
W.A.

July 18, 1979

Commissioner of Administration
 B. B. Allen, Commissioner
 Pouch C
 Juneau, Alaska 99811

RECEIVED

AUG 3 1979

**LEGISLATIVE
 AUDIT**

Dear Commissioner Allen:

I have reviewed your legislative audit of the Real Estate Commission in accordance with the intent of Alaska Statutes 24.20.271 (1) and 44.66.050 (Sunset Legislation). Enclosed are my personal responses to your findings and recommendations.

Recommendation No. 1:

- Agree in part.
- Disagree in part.
- Already implemented.

Currently, the Real Estate Commission through the Executive Secretary receives many complaints that have little relevance to Administrative Law. Most of these complaints are handled by a phone call to parties involved or an informal meeting between the complaintant and the other parties is scheduled and the problems are solved without being turned over to the investigators.

One of the major reasons that the Executive Secretary tries to settle as many complaints as possible is due to the limited time and service that the Real Estate Commission receives from the investagators of Occupational Licensing. The general public does not benefit when complaints are not investigated by O.L. and remain as open cases for months.

Suggestion: A full time investigator from O.L. should be assigned to the Real Estate Commission to handle real estate related matters.

Commissioner of Administration
July 18, 1979
Page 2

Recommendation No. 2:

Agree.

Recommendation No. 3:

Agree in part.
Disagree in part.

Your examples of inadequate files or files that contain no documents could be eliminated by an investigator who understands real estate and is not concentrating on medical cases.

Since my appointment to the Real Estate Commission I have noticed a lack of services both from the Attorney General's Office for failure to prosecute cases, and from the investigators in O.L. claiming other priorities and lack of staff. To compensate for this lack of services the Real Estate Commission has utilized its own resources to determine the validity of cases which we felt were important for the protection of the general public. Procedures have now been adapted which coincide with your recommendation.

Recommendation No. 4:

Totally agree.

Legislation was introduced SB 212 last session to implement your recommendation. Perhaps if the administration would introduce this legislation rather than the Real Estate Commission it might have a better chance of passing.

Recommendation No. 5:

Agree with explanation.

Perhaps the Real Estate Commission would not need to include in their goals and objectives a semi-annual roster or consistent forms if O.L. would have included or implemented these two items. I agree that these two objectives are the responsibility of O.L., however O.L. has failed to provide this service to the Real Estate Commission consequently it was included as one of the goals of the Real Estate Commission.

Responses to Analysis of Public Need:

I. Agree.

- II. 1) It is ridiculous for an investigation to take 11.4 weeks. If the Real Estate Commission was given their own investigator this would be reduced substantially.
- 2) The complaint filing system has already been changed to comply with your recommendations.
- III. Agree.
- IV. Agree both 1 & 2.
- V. 1) O.L. is responsible for providing services to the Real Estate Commission and if an advertisement of a Real Estate Commission meeting was not published it was certainly not intentional.
- VI. 1) I would also complain about the lack of investigation of a complaint to the Ombudsman's office, and unless the investigators spend more time and attention to the real estate complaints I expect that the Ombudsman's office will receive more complaints.
- VII. 1) Talk to the investigators. The Real Estate Commission does not investigate complaints.
- VIII. 1) To my knowledge there have been no complaints filed concerning the license renewal forms. If you think they should be changed because they ask questions regarding the color of hair and eyes and place of birth then please get a ruling from the Attorney General's Office. If they think it should be changed it will be done. I think there are many more priorities that a legislative audit could be doing then to investigate license renewal forms.

Overall Review

These opinions are my personal views, and perhaps not the opinions of the Real Estate Commission. I am the most recent appointment to the Real Estate Commission and perhaps not as knowledgeable as other members. I have only attended two meetings, but I have drawn some conclusions about the Real Estate Commission in general which I would like to express.

- 1) The members of the Real Estate Commission are totally dissatisfied with the services they have been receiving from O.L., especially in the area of investigations. I realize

Commissioner of Administration

July 18, 1979

Page 4

there must be priorities, however, we are totally frustrated with the time it takes to get a complaint investigated. Even after it is investigated the time expended getting someone with the Attorney General's Office to file an action is tremendous. In one instance we have been waiting a year for some clarified regulations from the Attorney General's Office. Much too long. Real Estate is big business. Presently there are 1884 active salesman, 331 active associate brokers, 436 active brokers, 643 inactive salesman, 33 inactive associate brokers and 37 inactive brokers. Each month the O.L. license 157 new salesman. Last year O.L. received \$130,000 from the real estate industry. This money came from licenses, transfers, and exams. Next year the figure will be in excess of \$300,000 and will be nearly 30% of the total funding of O.L. These funds received by O.L. are not being utilized to the fullest.

Solution: Eliminate my job. Create a Real Estate Department within the Department of Commerce consisting of a Real Estate Commissioner, an Executive Secretary, a License Examiner, a full-time investigator to handle real estate complaints, an Assistant Attorney General who will give priority to real estate matters, and two clerical personnel -- one in Anchorage and one in Juneau. This department should, and could, be funded by increasing the license fees collected by O.L. from real estate licenses (totalling 3,364). One of our problems is that the Real Estate Commission is all voluntary and meets only four times a year for two days each time. You can only accomplish so much with this type of procedure. A Real Estate Commissioner would be appointed by the Governor and would have the responsibility for his department. This concept works well in other states and I think it would work better than the system we are now operating under. A continuing problem in bureaucracy is that the buck does not stop anyplace. The Real Estate Commission blames the investigators; the investigators say their problem is priorities set by O.L.; O.L. passes the buck to limited appropriation of the Legislature; the Legislature says no one is doing anything, so they pass Sunset and then we all spend thousands of man hours justifying our commissions, boards, and departments. Someone must take the responsibility for the performance of his department and I think that by eliminating the Real Estate Commission, and forming a Real Estate Department, it would streamline the system.

Commissioner of Administration

July 18, 1979

Page 5

This response will probably be filed in the archives in a basement in Juneau somewhere never to be seen again. However, I do appreciate whoever reads this response for taking the time to wade through it.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ken Calhoon", written in a cursive style.

Ken Calhoon
Real Estate Commissioner

/jg

Enclosure

WORK ORDER REQUEST FORM

NO 8481

KEYWORDS: Real Estate

ASSIGNED TO Guthrie

Boards and Commissions

REQUEST FOR: BILL RESOLUTION RESEARCH OTHER

SUBJECT Real Estate Commission

REQUESTED FOR Senate Commerce BY Christian EXT. _____

* DELIVER TO Senate Commerce TAKEN BY Guthrie

INSTRUCTIONS, EXPLANATIONS Senate duplicate of HB 1004.

OBTAIN

SPECIAL DRAFTING INSTRUCTIONS ATTACHED

AUTHORIZED TO CONFER WITH _____

RETURN _____

TO REQUESTER

APPROVED: BCD Director, Legal Services

Director, Research

REVIEWED _____

IN 4/16 DUE _____

TYPED - Draft _____ DATE _____

Final _____ DATE _____

PROOFED _____ DELIVERED _____

SPECIAL INSTRUCTIONS TO TYPIST/PROOFREADER

DRAFT

FINAL

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CSHB 1004 - An Act continuing the existence of the Real Estate Title Commission and amending its powers and duties: and providing for an effective date.
Requested by Commerce Committee Date 5/7/80

II. FISCAL DETAIL

Agency Affected Department of Commerce & Economic Development
Program Category Affected Consumer Protection
BRU, Program, or Subprogram(s) Affected Regulations and Licensin of Professions
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES	-0-	180.8	193.5	207.0	221.5	237.0
200 TRAVEL	-0-	23.8	22.3	23.9	25.6	27.4
300 CONTRACTUAL	-0-	48.6	52.0	55.6	59.5	63.7
400 COMMODITIES	-0-	6.2	6.6	7.0	7.5	8.0
500 EQUIPMENT	-0-	9.5	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES	-0-	9.4	10.1	10.8	11.6	12.4
700 GRANTS CLAIMS, ETC.	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	278.3	284.5	304.3	325.7	348.5

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	278.3	284.5	304.3	325.7	348.5
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Fund Source)	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME	-0-	5	5	5	5	5
PART TIME (1/2 time)	-0-	1	1	1	1	1
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III) *This Fiscal Note assumes no reduction from the Division of Occupational Licensin's budget for FY'81.

Personal Services (7% inflation factor used)

1 Executive Director - Range 22A	\$ 49,443.00
1 Investigator/Auditor - Range 18A	37,186.44
1 Licensing Examiner I - Range 12C	26,651.04
2 Clerk III's - Range 8A (\$19,995.24 ea.)	39,990.48
Assistant Attorney General - 1/2 Time	27,500.00
Total	\$180,770.96

(Continued on next page. . . .)

IV. DATE 5/7/80

PREPARED BY

Ann Griggs
Ann Griggs

AGENCY Division of Occupational Licensing

Original: Legislative Finance

PHONE 465-2534

cc: Budget and Management

Prime Sponsor (First Legislator Named)

Travel

	Travel	Per Diem
Investigator		
Executive Director	\$8,932.00	\$11,236.00
Commission Members - 6 meetings per year		
Narello Convention registration fees (2)	190.00	
One time expense moving Licensing Examiner from Juneau to Anchorage	3,000.00	
	<hr/>	
Totals	\$12,122.00	\$11,236.00

(The Division of Occupational Licensing would transfer over from its budget whatever travel was requested for the Real Estate Commission for the FY'81 budget).

Contractual

Hearing Costs at \$1300 per hearing x 12	15,600.00
Dues & fees for organizations	1,500.00
Word Processor equipment lease	8,500.00
Property law digest subscription	200.00
Phone hook up	1,800.00
Long Distance phone	6,000.00
Automobile lease & maintenance	5,136.00
Copier rental, etc.	1,000.00
Postage meter	1,000.00
Exam application packets, etc.	5,000.00
Publications (various)	2,000.00
Total	<u>\$48,656.00</u>

Commodities

Tapes for Lanier	180.00
Postage	4,000.00
Paper stock	2,000.00
Total	<u>\$6,180.00</u>

Equipment - One time expense in FY'81

1 desk, single pedestal	237.24	2 tables(72"x30")	354.54
4 desks, standard	1,559.52	3 brief cases	180.00
2 typewriter tables	121.86	2 file tubs	363.00
2 mats	70.92	1 Lanier	1,000.00
2 tvnewriters	2,000.00	mail baskets	30.00
3 chairs, desk	380.49	waste baskets	45.00
6 side chairs	795.30	form racks	150.00
2 swivel chair	400.00		
9 4/drawer file cabinets	1,636.38		
3 bookcases	231.66	Total	<u>\$9,505.91</u>

Land Lease

Space for all positions	\$9.450.00
\$1.25 per square foot	
(Each position gets 125 sq. ft.)	



ALASKA ASSOCIATION OF REALTORS®
1818 W. Northern Lights Blvd., Suite 104 • Anchorage, Alaska 99503
Telephone 907-272-8016

March 4, 1980

Mr. Jon Mathison
Senate Commerce Committee
Pouch V
Juneau, Alaska 99811

RE: Sunset Legislation on the Alaska Real Estate Commission

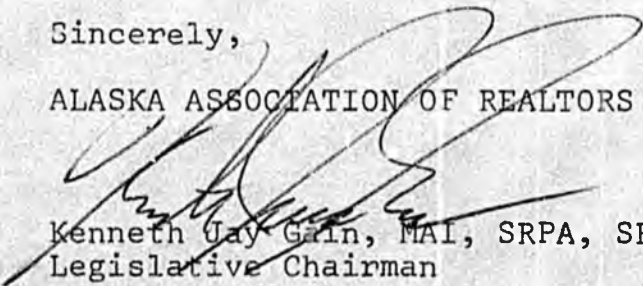
Dear Jon:

As we discussed yesterday, I will be unable to attend the Tele-Conference Hearing on the Sunset Legislation. However, the Alaska Association of Realtors has carefully followed this issue on the House side and several weeks ago I sent a letter to Representative Fred Brown commenting on the issue and reacting to written testimony provided by the Alaska Real Estate Commission. I have been advised by Lance Youngquist, Chairman of the Alaska Real Estate Commission, that he will present the same written testimony to your Committee. Therefore, I believe that my response to Representative Brown is still adequate. I have, therefore, enclosed a copy of my letter to Representative Brown, herewith.

Thank you for notifying me of this hearing and I will appreciate it if you will keep me advised of any further happenings.

Sincerely,

ALASKA ASSOCIATION OF REALTORS



Kenneth Jay Gain, MAI, SRPA, SRS, CCIM
Legislative Chairman

Enclosure

cc: Lance Youngquist
Ed Foster
Jeff Cook

KJG:lbk





REALTOR®

ALASKA ASSOCIATION OF REALTORS^(A)

1818 W. Northern Lights Blvd., Suite 104 • Anchorage, Alaska 99503
Telephone 907-272-8016

February 20, 1980

Representative Fred Brown
Chairman, House Commerce Committee
Pouch V
Juneau, Alaska 99811

RE: Sunset Legislation Concerning the Real Estate Commission

Dear Representative Brown:

As discussed with Mr. Bob Aaron of your staff while I was in Juneau two weeks ago, I would like to offer several comments on behalf of the Alaska Association of Realtors concerning the Sunset Review of the Alaska Real Estate Commission. We have reviewed the Performance Review prepared by the Division of Legislative Audit dated May 7, 1979, and have reviewed the written transcript of the testimony submitted by the Real Estate Commission on Thursday, January 24, 1980.

The Alaska Association of Realtors is generally in support of the statements and conclusions made by Mr. Lance Youngquist, speaking on behalf of the Alaska Real Estate Commission. We concur with the Commission's reply in regard to Legislative Audit Recommendation No. 2 and also believe that the present method of handling Surety Fund Claims is in the best public interest. We have no strong feeling in regard to Recommendation No. 3 but do believe that it is necessary that a greater emphasis be put on investigating existing complaints.

In reference to Legislative Audit Recommendation No. 4, please be advised that it is the position of the Alaska Association of Realtors to oppose any required real estate courses. This is not to be construed to mean that the Alaska Association of Realtors opposes advanced real estate education. We are, in fact, the largest provider of such education and have on our staff a full-time Director of Education (who holds two Master Degrees in education) who will be responsible for sponsoring 25 to 30 educational offerings during 1980 at which we expect an attendance of 500 to 600 persons. At the time of this writing, 140 of our members are attending the 3 courses sponsored by the Alaska Association of Realtors Institute. We strongly encourage education as a necessity for survival in a very competitive and fast changing business. In response to our educational efforts, over 200 of our members have obtained professional design-



Representative Fred Brown

February 20, 1980

Page 2

nations in the real estate field. The standards for these designations greatly exceed anything that would likely be enacted into license law.

Our basic objection to mandatory education is that we have seen what has happened in many other States with such requirements. In every State in which such mandatory education has been enacted, it has been supported by the State Association of Realtors. However, in a number of States, the Associations are now regretting their support due to the fact that what often starts off as a well-meaning program becomes something quite different when it has been convoluted through the bureaucratic process. While a recent poll of our membership, in which 238 members participated, found that most feel that there should be some educational requirements for new licensees, there was no consensus on the matter of continuing education requirements. It is, of course, only typical that someone who already has a license, would like to see the requirements more difficult for those who have not achieved a license. The unfortunate fact is that to require enough education to be truly meaningful would have the effect of excluding a number of people from the business.

Anyone who survives in our profession beyond their first biennial renewal, has probably acquired more education and spent more time studying than could possibly be required by law. The problem with mandatory education is that most States have adopted a compromise program to appeal to all of the various disciplines within the industry. As a result, nobody in any of the specialized fields is getting the full degree of specialized education required. For example, a licensed broker specializing in commercial sales, is not likely to increase his competence by taking a basic course in residential financing.

We believe that the freedom of choice and free market competition will provide more competent licensees than a new law. While of course it is easy to point to the fact that there are a number of incompetent people in the business, it must be recognized that we have only had a full-scaled educational program and an educational director for one year. If in three years the same problem exists, then we would be willing to reconsider our position. In the meantime, we must oppose all mandatory education as a prerequisite for or as a requirement to renew a license and ask that you give the free market and freedom of choice an opportunity to work.

We support the recommendation of the Real Estate commission that a "real estate section" be established within the Department of

Representative Fred Brown
February 20, 1980
Page 3

Commerce. Likewise, we concur in raising the ceiling on the Surety Fund to \$500,000 and that an appropriation should be made to completely rewrite the statutes. Because we realize that it will take time to rewrite the statutes, we are cooperating with the Commission in urging passage of SB 212.

Thank you for the opportunity to express our opinion.

Sincerely,

ALASKA ASSOCIATION OF REALTORS

Kenneth Jay Gain, MAI, SRPA, SRS, CCIM
Legislative Chairman

cc: Lance Youngquist, Juneau
Edward Foster, Auke Bay

KJG:lbk



Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

FOR FURTHER INFORMATION:

Senate Commerce Committee
Jon Mathison, AA
Assembly Building, Room 303
Juneau, Alaska 99811
(907) 465-3748/3783

FEBRUARY 11, 1980

PUBLIC SERVICE ANNOUNCEMENT

The Senate Commerce Committee will convene at 3:00 p.m. (Juneau time) on March 4, 1980 for the purpose of holding a public hearing on The Real Estate Commission. The hearing will be held in Juneau in the Beltz Room, Room 209 of the Capitol Building, and will be teleconferenced to the following cities:

Anchorage - 1:00 p.m. - Legislative Information Office
1024 West Sixth Avenue
Anchorage, Alaska 99501

Fairbanks - 1:00 p.m. Legislative Information Office
101 College Road, Building F, Room 252
Fairbanks, Alaska 99701

Public participation is invited and any written testimony or comments may be submitted to the Senate Commerce Committee, Pouch V, Mail Stop 3100, Juneau, Alaska 99811.

Notified by Phone

Brad Bradley
SENATOR BRAD BRADLEY, CHAIRMAN
SENATE COMMERCE COMMITTEE

~~Mr. Casper~~ Barbra Hill
276-7909

CAPITAL INVESTMENT REALTY
P.O. Box 7076
KETCHIKAN, ALASKA 99901

March 26, 1980

The Honorable W. E. Bradley
Chairman, Commerce Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator:

Re: Senate Bill #518
"An Act Relating to the
regulation of real estate
brokers and salesman"

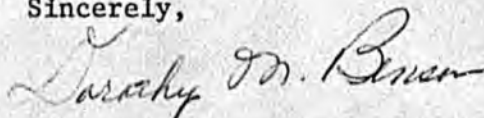
I am writing because the above bill is discriminatory to people desiring to obtain a Real Estate Broker or Real Estate Salesman License who live in rural areas.

Presently the real estate courses are given in Anchorage and Fairbanks and a three day stay-over in either of these cities is very restrictive to us in Southeastern or any of the people living in other communities.

However, I am in favor of the educational requirements but would stress that they be offered in all communities either through correspondence courses or through the local community colleges. This should be addressed in the above numbered bill.

Your consideration of this addition to the bill will be appreciated.

Sincerely,



Dorothy M. Benson
Assoc. Broker