

HB

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REALTOR<sup>®</sup>

HB  
705

ALASKA ASSOCIATION OF REALTORS<sup>®</sup>

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Attached is a summary of a problem area of vital concern to the real estate industry. The ALASKA ASSOCIATION OF REALTORS is suggesting content for a bill which will address the issue. We seek your consideration and support.

History

From its creation in 1964, as reflected in AS 08.88, the Real Estate Commission's primary purpose has been the protection of the public through the examining and licensing of real estate practitioners. Through 1975, the public's guarantee of monetary relief was a required bond in the amount of \$1000/Salesman and \$5000/broker.

Through the early '70's there were few claims against the bonds; however, the industry realized that the bonding level was not adequately protecting the public's interests. Following the example of twelve other states, (Footnote: 1974 NARELLO Report, page 25) the industry together with the Real Estate Commission actively lobbied for the 1974 legislation (Attachment A: 45.85.010-110 & 08.88.281, .071, & .401) to create a surety fund with a two-fold purpose:

1) to provide indemnification up to \$10,000/transaction for judgments awarded by the courts to persons who suffered financial loss because of a licensee's actions that involved fraud, deceit, misrepresentation, or conversion of trust funds, and

2) to provide funding for real estate education of both the public and the licensees from funds collected in excess of the specified \$250,000 minimum balance in the fund.

The 1974 legislation, which was patterned after the California model, required court action and a judgment against a licensee prior to any disbursement of Surety Fund dollars. However, Alaska's enacted version did not require an attempt to collect money from or attach the assets of the named licensee, nor did it provide for any review by the Commission prior to payment from the fund.

Thus from the 1976 license renewal cycle when the first fees were paid into the surety fund, judges were able to order payment directly from the fund to satisfy a judgment.

These conditions were in effect until 1980 when the statute was amended, initiated by the Legislative Audit Committee during the Sunset Review, to charge the Real Estate Commission with the responsibility to both hear cases and award payments, but without ensuring the full protection of due process and judicial precedent (Attachment B).

The use of hearing officers (as allowed by the Administrative Procedures Act) starting in January 1982 and the regulations adopted by the Commission in December 1982 (effective April 1983) have further attempted to work within the current statute (Attachment C).

- Attachments: A) 1974 Surety Fund Statute  
B) 1980 Amended Surety Fund Statute  
C) 1982 Surety Fund Regulations

Current Situation

The real estate industry in Alaska consists of some 4000 licensees who support sensible legislation to regulate the industry and to protect the public against illegal real estate practices. This sense of professional responsibility has not changed throughout the 20-year historical summary period outlined above.


Currently there are no filing fees or costs if a claim is denied, nor is the claimant required to exhaust other remedies before receiving satisfaction from the Surety Fund. Thus, the "no-risk" and "no-costs incurred" status of claimants simply encourages claims. Further, the state entity, either contracted or appointed, is in the position of being both judge and jury.

It is the consensus of the industry that a concentrated effort must be made immediately to restore the integrity of the surety fund, both in concept and in actual administration.

Points to Achieve

1. Ensure the rights of all parties to due process through the court system with the determination of a claim's validity and resultant damage assessment in the courts.
2. Maintain the Surety Fund as a resource to be drawn upon only when funds are not collectable from the judgment debtor by any other means.
3. Charge the Real Estate Commission with the responsibility of timely license action on the licensee whose action has resulted in a draw from the Fund.
4. Direct the Real Estate Commission to provide quality education programs to licensees and the public as to licensees' responsibilities under the real estate statutes and regulations.

ALASKA ASSOCIATION OF REALTORS

  
RITA JO SHOULTZ  
President

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: April 2, 1984

REQUEST

Bill/Resolution No.: HB 705  
Title: An Act relating to the real estate surety fund  
Sponsor: Labor, Commerce & Finance  
Requestor: Legislature  
Date of Request: March 28, 1984

FISCAL DETAIL

Agency Affected: Real Estate Commission  
Program Category Affected: Consumer Protection  
BRU, Program or Subprogram(s) Affected: Real Estate Commission/Dept. of Comm. & Econ. Dev.

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
100 PERSONAL SERVICES			[67.0]	[70.0]	[75.0]	[75.0]
200 TRAVEL			[3.0]	[5.0]	[5.0]	[6.0]
300 CONTRACTUAL			[1.0]	[1.0]	[1.2]	[1.2]
400 SUPPLIES			[0.4]	[0.5]	[0.5]	[0.7]
500 EQUIPMENT			[1.0]	-0-	-0-	-0-
600 LAND & STRUCTURES			-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS			-0-	-0-	-0-	-0-
800 MISCELLANEOUS			-0-	-0-	-0-	-0-
TOTAL OPERATING			[72.4]	[76.5]	[81.7]	[82.9]
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND			60.0			
FEDERAL FUNDS						
OTHER SURETY			12.4			
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

- NOTE: 1. Fund payments reduced by 30,000 - 70,000 per year.  
2. Current case load will be handled in FY '85 under existing law. Savings will result in FY '86.

ANALYSIS: Attach a separate page for analysis

Prepared By: James L. Magowan, Executive Director Phone: 563-2169  
Division: Real Estate Commission Date: \_\_\_\_\_

Approved by Commissioner: Richard A. Lyon Date: 4/2/84  
Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):

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