

SB

39

DIVISION OF OCCUPATIONAL LICENSING

Proposed Legislative Changes
to the
REAL ESTATE COMMISSION

*Section 1. AS 08.03.010(c)(18) is amended to read:

(18) Real Estate Commission (AS 08.88.011) - - June 30, 1991 [1987].

*Section 2. AS 08.88.031 is repealed and reenacted to read:

Sec. 08.88.031. Executive secretary of commission. The department shall, after consultation with the board, employ a person who is not a member of the commission, to serve as executive secretary of the real estate commission. The executive secretary shall perform duties as prescribed by the commission.

*Section 3. AS 08.88.037 is amended to read:

Sec. 08.88.037. Investigation and injunction. (a) The commission shall [MAY, UPON ITS OWN MOTION,] ~~request the department to~~ conduct investigations to determine whether a person has violated a provision of this chapter or a regulation adopted under it, or to secure information useful in the administration of this chapter.

*Section 4. AS 08.88.061 is amended to read:

Sec. 08.88.061. Assistants. The commission may use [EMPLOY] assistants to

- (1) prepare questions on examinations;
- (2) grade examinations. [;]
- [(3) INVESTIGATE ALLEGED VIOLATIONS OF THIS CHAPTER.]

THE FOLLOWING SHOULD BE REPEALED:

- Sec. 08.88.034. Investigator of the commission.
- Sec. 08.88.101. Administrative duties of the commission. (Note: The department's authority is listed under AS 08.01.050.)
- Sec. 08.88.121. Sale of Register. (Note: See AS 08.01.050(12).)
- Sec. 08.88.231. Deposit in general fund. (Note: This is covered by AS 37.10.050 and .060.)

THE FOLLOWING REQUIRE SOME AMENDING AS NOTED:

- Sec. 08.88.037(b) - Substitute "department" for "Executive Director".
- Sec. 08.88.191(b) - Substitute "department" for "commission".
- Sec. 08.88.221(d) - Same as above.
- Sec. 08.88.251 - Need some substitution of "department" for "commission".
- Sec. 08.88.490 - Same as above.

1 IN THE SENATE

CS

BY ZHAROFF

by Request

2 ~~SPONSOR-SUBSTITUTE~~ FOR SENATE BILL NO. 39

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Real Estate Commission."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

NEED EFFECTIVE DATE.

8 * Section 1. AS 08.01.010 is amended by adding a new paragraph to read:

9 (27) Real Estate Commission (AS 08.88.011).

10 * Sec. 2. AS 08.01.050(a) is amended to read:

11 (a) The department shall perform the following administrative
12 and budgetary services when appropriate:

13 (1) collect fees and issue receipts;

14 (2) maintain records and files;

15 (3) issue and receive application forms;

16 (4) notify applicants of acceptance or rejection of appli-
17 cants as determined by the board or as determined by the department
18 under AS 08.11 for audiologists, under AS 08.45 for naturopaths, or
19 under AS 08.55 for hearing aid dealers;

20 (5) designate dates examinations are to be held and notify
21 applicants;

22 (6) publish notice of examination;

23 (7) arrange space for holding examinations;

24 (8) notify applicants of results of examinations;

25 (9) issue licenses and certificates or temporary licenses
26 or certificates as authorized by the board or as authorized by the
27 department under AS 08.11 for audiologists, under AS 08.45 for naturo-
28 paths, or under AS 08.55 for hearing aid dealers;

29 (10) issue duplicate licenses or certificates upon proof

1 by the licensee of loss of the original and payment by the licensee of
2 a fee of \$2 except as otherwise provided in this title;

3 (11) notify licensees of renewal dates at least 30 days
4 before the expiration date of their licenses;

5 (12) compile and maintain current a register of licenses;

6 (13) answer routine inquiries;

7 (14) maintain files relating to individual licensees;

8 (15) arrange for printing and advertising;

9 (16) purchase supplies;

10 (17) employ secretarial help when needed;

11 (18) perform other services that may be requested by the
12 board;

13 (19) provide investigative services to the boards estab-
14 lished under AS 08.04, AS 08.20, AS 08.36, AS 08.64, AS 08.68, AS 08.-
15 70, AS 08.71, AS 08.72, AS 08.80, AS 08.84, [AND] AS 08.86, and AS 08.-
16 88, for the purpose of assisting those boards in matters of profes-
17 sional discipline and in responding to consumer complaints.

18 * Sec. 3. AS 08.01.065(a) is amended to read:

19 (a) The department shall adopt regulations that establish the
20 amount and manner of payment of application fees, examination fees,
21 license fees, registration fees, permit fees, investigation fees, and
22 all other fees as appropriate for the occupations covered by this
23 chapter [AND FOR REAL ESTATE BROKERS AND SALESMEN UNDER AS 08.88].

24 * Sec. 4. AS 08.03.010(c)(18) is amended to read:

25 (18) Real Estate Commission (AS 08.88.011) -- June 30, 1991
26 [1987].

27 * Sec. 5. AS 08.88.031 is repealed and reenacted to read:

28 Sec. 08.88.031. EXECUTIVE SECRETARY OF COMMISSION. The depart-
29 ment shall, after consultation with the commission, employ a person.

1 who is not a member of the commission, to serve as executive secretary
2 for the commission. The executive secretary shall perform duties as
3 assigned by the commission.

4 * Sec. 6. AS 08.88.037 is amended to read:

5 Sec. 08.88.037. INVESTIGATION AND INJUNCTION. (a) The commis-
6 sion may request the department to [, UPON ITS OWN MOTION,] conduct
7 investigations to determine whether a person has violated a provision
8 of this chapter or a regulation adopted under it, or to secure infor-
9 mation useful in the administration of this chapter.

10 (b) If it appears to the department [EXECUTIVE DIRECTOR] that a
11 person has engaged in or is about to engage in an act or practice in
12 violation of a provision of this chapter or a regulation adopted under
13 it and that action is warranted in the public interest, the department
14 [EXECUTIVE DIRECTOR] shall notify all commission members by telephone
15 or telegraph of a proposed order or action, and, if a majority of the
16 members of the commission approve, the department [EXECUTIVE DIRECTOR]
17 may

18 (1) after reasonable notice of and an opportunity for a
19 hearing is given to the person, issue an order directing the person to
20 stop the act or practice; the department [EXECUTIVE DIRECTOR] may
21 issue a temporary order before a hearing is held; a temporary order
22 remains in effect until a final order affirming, modifying, or revers-
23 ing the temporary order is issued or until 15 days have elapsed after
24 the person receives the notice and has not requested a hearing; a
25 temporary order becomes final if the person to whom the notice is
26 addressed does not request a hearing within 15 days after receiving
27 the notice; if a hearing is requested, a hearing shall be conducted by
28 a hearing officer within 30 days; the commission shall issue a final
29 order within 10 days after the hearing;

1 (2) bring an action in superior court to enjoin the act or
2 practice and to enforce compliance with this chapter, a regulation
3 adopted under it, or an order issued under it;

4 (3) examine or have examined the books and records of a
5 person whose business activities require licensure under this chapter
6 and the department [EXECUTIVE DIRECTOR] may require the person to pay
7 the reasonable costs of the examination; and

8 (4) issue subpoenas for the attendance of witnesses, and
9 the production of books, records, and other documents.

10 * Sec. 7. AS 08.88.061 is amended to read:

11 Sec. 08.88.061. ASSISTANTS. The commission may use [EMPLOY]
12 assistants to

13 (1) prepare questions on examinations;

14 (2) grade examinations [;

15 (3) INVESTIGATE ALLEGED VIOLATIONS OF THIS CHAPTER].

16 * Sec. 8. AS 08.88.191(b) is amended to read:

17 (b) If the commission authorizes the department to contract
18 [CONTRACTS] with a national testing service to prepare, administer and
19 grade examinations,

20 (1) the commission shall review the examination and approve
21 its contents;

22 (2) application for the examination, accompanied by the
23 proper filing fee, may be transmitted by the applicant directly to the
24 national testing service.

25 * Sec. 9. AS 08.88.034, 08.88.101, 08.88.121, and 08.88.231 are re-
26 pealed.

REAL ESTATE COMMISSION
STAGGERED RENEWAL GROUPS
AND
REVENUE PROJECTIONS

FY 1988-95 Page 1

Group	FY	Revenues (160 Lic)	FY	Revenues (160 Lic)	FY	Revenues (160 Lic)	FY	Revenues (160 Lic)	FY	Revenues (160 Lic)	FY	Revenues (160 Lic)
A	88	5,000	89	20,000	91	20,000	93		95			
B	88	5,833.33	89	20,000	91	20,000	93		95			
C	88	6,666.67	89	20,000	91	20,000	93		95			
D	88	7,500.00	89	20,000	91	20,000	93		95			
E	88	8,333.33	89	20,000	91	20,000	93		95			
F	88	9,166.67	89	20,000	91	20,000	93		95			
G	88	10,000.00	89	20,000	91	20,000	93		95			
H	88	10,833.33	89	20,000	91	20,000	93		95			
I	88	11,666.67	89	20,000	91	20,000	93		95			
J	88	12,500.00	89	20,000	91	20,000	93		95			
K	88	13,333.33	89	20,000	91	20,000	93		95			
L	88	14,166.67	89	20,000	91	20,000	93		95			
					FY 91	T=240,000	FY 93	T=240,000	FY 95	T=240,000		
M	88	10,833.33	89	10,000	90	20,000	92		94			
N	88	11,666.67	89	10,000	90	20,000	92		94			
O	88	12,500.00	89	10,000	90	20,000	92		94			
P	88	13,333.33	89	10,000	90	20,000	92		94			
Q	88	14,166.67	89	10,000	90	20,000	92		94			
R	88	15,000.00			90	20,000	92		94			
S	88	15,833.34			90	20,000	92		94			
T	88	16,666.67			90	20,000	92		94			
U	88	17,500.00			90	20,000	92		94			
V	88	18,333.34			90	20,000	92		94			
W	88	19,166.67			90	20,000	92		94			
X	88	20,000.00			90	20,000	92		94			
								FY 92	T=240,000	FY 94	T=240,000	
					T-FY88 = 300,000	T-FY89 = 290,000	T-FY90 = 240,000					

REAL ESTATE COMMISSION
STAGGERED RENEWAL GROUPS
AND
REVENUE PROJECTIONS

FY 1988-95 Page 2

Group	Ren Mos.	Next Renewal	FY NR	Next Renewal	Ren Mo	FY NR	Next Renewal	FY NR	Ren. Mos.
A	6	July 88	89				July 90	91	24
B	7	Aug. 88	89				Aug. 90	91	24
C	8	Sep. 88	89				Sep. 90	91	24
D	9	Oct. 88	89				Oct. 90	91	24
E	10	Nov. 88	89				Nov. 90	91	24
F	11	Dec. 88	89				Dec. 90	91	24
G	12	Jan. 89	89				Jan. 91	91	24
H	13	Feb. 89	89				Feb. 91	91	24
I	14	Mar. 89	89				Mar. 91	91	24
J	15	Apr. 89	89				Apr. 91	91	24
K	16	May 89	89				May 91	91	24
L	17	June 89	89				June 91	91	24
M	13	Feb. 89	89	Feb. 90	12	90	Feb. 92	92	24
N	14	Mar. 89	89	Mar. 90	12	90	Mar. 92	92	24
O	15	Apr. 89	89	Apr. 90	12	90	Apr. 92	92	24
P	16	May 89	89	May 90	12	90	May 92	92	24
Q	17	June 89	89	June 90	12	90	June 92	92	24
R	18	July 89			24	90	July 91	92	24
S	19	Aug. 89			24	90	Aug. 91	92	24
T	20	Sep. 89			24	90	Sep. 91	92	24
U	21	Oct. 89			24	90	Oct. 91	92	24
V	22	Nov. 89			24	90	Nov. 91	92	24
W	23	Dec. 89			24	90	Dec 91	92	24
X	24	Jan. 90			24	90	Jan 92	92	24

REAL ESTATE COMMISSION
STAGGERED RENEWAL GROUPS
AND
REVENUE PROJECTIONS

FY 1988-95 Page 3

FY Revenue Projection

Renewals - See chart (based on 3840 licensees - 160 hrs)

Other Renewals

License exams	900 x 30	= \$18,000
New exams	300 x 125	= \$37,500
Transfers, etc.	1200 x 25	= \$30,000
Other		= <u>\$10,000</u>
		\$95,500.00
FY 88		\$395,500 (\$300,000 + \$95,500)
FY 89		\$385,500 (\$290,000 + \$95,500)
FY 90		\$335,500 (\$240,000 + \$95,500)
FY 91		\$335,500 (\$240,000 + \$95,500)

These projections assume a drop in licensees (total active + inactive) from the January 86 number of 4000 to 3840.

SB 39 An Act relating to real estate brokers and salespersons and to the Real Estate Commission and providing for an effective date.

The Real Estate Commission is generally supportive of SB 39, however, there are several items that need to be looked at again in view of current fiscal problems and several items that still do not accomplish what they are intended for.

The commission does not support reducing the surety fund filing fee to \$25. The original purpose of the filing fee was to reduce "frivolous" claims. This has been accomplished. The current claims filings are just over 40 per year. Previously we were receiving approximately 130 or more claims per year. The number of claims being paid is about the same and perhaps a bit higher than before the filing fee. The percentage of claims being paid has been running about 50%. This is an indication that we are still receiving claims in which there is a question as to whether or not there is a valid claim, but we are not receiving claims in which there is no chance of a claimant prevailing.

A reduction of the fee to \$25 would increase the filings to about the same number as the license complaints and would again inundate commission and staff in handling of claims. The additional hearing costs would be approximately \$110,000 - \$75,000 for hearing examiners and \$35,000 for clerical support. This would almost triple our current surety fund processing cost. Without an additional full-time hearing examiner and a full-time clerical position, the additional load simply cannot be handled with existing personnel.

The commission has no documented case of a person not being able to file because of the fee. There have been several cases in which people had to get the money together before filing and numerous cases in which people with a claim that had no face validity claimed that they wouldn't file because they didn't have the money, but in these cases it seemed more likely that they had properly evaluated their claims as not having merit. In all cases, persons not having the \$250 can still file a small claim action for the small claims filing fee. We know of none that have done this (and the grounds for winning a small claim are broader than those for a surety claim). If the problem being solved is that some people are (may be) unable to file a claim due to financial limitations a system providing for waiver of the fee under appropriate circumstances would be a better way to do it. One way to do this might be to require that a person be unemployed and have an unemployment card or be on public assistance. Authority to grant waivers could be assigned to the executive director with the concurrence of one commission member.

Reducing the filing fee amounts to giving the public a mandatory hearing on every complaint filed. This is not economically feasible at this time. All fees have been raised for licenses in order to support the commission's current program. Raising them by 70% to handle a large number of inappropriate claims would be an unpopular move.

SB 39 POSITION PAPER
(Continued)

Section 8 (AS 08.88.251(a), line 27). The words "the person's license certificate and . . ." need to be deleted. This section is inconsistent with current practice and with the regulations. The commission does not have licensees return certificates except in cases of disciplinary action. The return of licenses was found to create delays for licensees, confusion for all and significant additional cost to the commission. Current practices have been in use for at least seven or eight years and have not resulted in a single documented (or undocumented) problem.

Section 15 (AS 08.88.406). This section should be deleted. Based on further examination of the problem and a great deal of comment from members of the real estate industry, it appears that it would be better to give the commission authority (as AS 08.88.071(a)(9) would) to establish procedures by which brokers may set up arbitration through the current arbitration statutes rather than have the burden and cost of those arbitrations and their administration assumed by the commission. The cost of arbitrating these disputes, if assumed by the commission, could be as much as \$100,000 to \$200,000 or more. If the commission wishes to take on the task of arbitrating these disputes itself, the commission can do so by regulation under .071(a)(9). In any case, with .071(a)(9) in place, .406 can be enacted as regulation and leaving it to regulation permits greater flexibility in solving the problem of earnest money disputes.

With these exceptions, the commission supports the proposed changes.

Section 3 (AS 08.88.081). This section has been rewritten several times to eliminate problems in drafting regulations due to the fact that the current language of the section appears to limit regulation drafting authority to only certain parts of the statute. I understand this section to be read as, "Including but not limited to (1-4)." This is what is needed.

In Section 2, the amendment to provide for confidentiality of records protects individuals from being harmed by unfounded allegations filed with the commission. It also protects individuals who file complaints from being sued or intimidated by threats of suits by licensees who claim they are being slandered. The public is best protected when alleged improprieties are not publicized until the commission has looked into them. Many times the determination of whether or not wrong has been done requires technical knowledge not available to the public. Other times people not technically sophisticated can perceive something as wrong when it is not. In both cases, the commission is the body that should screen the allegations before they can damage anyone. This is the basic premise upon which professional licensing boards and discipline is based and it requires confidentiality of certain records until the record is complete.

SB 39 POSITION PAPER
(Continued)

Section 6 (AS 08.88.171, line 21), apparently an editing oversight. One additional "entitled" needs to be changed to eligible.

Section 4. Publication is the primary means of prevention that the commission can use to protect the public from widespread scams and to educate the licensees to problems and solutions to problems in the industry.

Section 6. Change entitle to eligible. The commission has been unable to deny licenses to individuals that it has felt should not be licensed after they were convicted of crimes. The commission feels that, because trust is such an important part of the fiduciary relationship, simply serving a sentence should not entitle a person to reinstatement of a real estate license because that trust was broken. When a license has been revoked due to a conviction, the commission feels that it should make a separate determination of the person's suitability for licensure.

(d) this change simply makes a vague term (promptly) definite (48 hours) and makes the law clear and uniformly enforceable.

Section 10. Most real estate licensees work as independent contractors. It is often difficult to establish whether or not a licensee was actually working or not when an injury occurs and the potential for improper claims being filed against the insurance is great. The impracticality of covering salespeople with workers' compensation results in many brokers being liable for not covering them. This section eliminates this problem and has strong support from the commission and the industry.

Section 11. This section brings the current section more in line with the practical and legal situation which exists today. There are many current situations for which the current statute is inadequate.

Section 12. This more clearly defines the requirement to disclose a conflict of interest.

Section 14. Recent court decisions have extended the problems of excessive liability to the real estate industry to the extent that the public is being negatively affected. The "innocent but guilty of misrepresentation" situation that licensees are in has made errors and omissions insurance either impossible to get or prohibitively expensive. The consequence is that none is carried and when serious injury does occur the injured parties are often unable to collect even if they do get a judgment.

This section limits the broker's liability and removes the licensee from the role of guarantor of the property.

SB 39 POSITION PAPER
(Continued)

Section 16. The commission has encountered numerous situation in which individuals attempt to circumvent the license law by creating corporations and/or appointing salespeople as "officers" of the corporation to avoid licensure. The purpose of the "corporate exemption" has always been to say that corporations enjoy no greater or lesser rights under the law than do natural persons. A natural person may not hire unlicensed people to sell real estate, therefore, neither can a corporation. The changes in this section clarify the fact that the corporation's exemption is actually subsumed under the first part of .421 which provides that a person is exempt when the person sells the person's own property. A director or officer of the corporation, acting as the corporation and not as an employee of the corporation, can convey title without being licensed.

Section 17. This section exempts business brokers from real estate licensure when they sell businesses in which real estate in the form of a lease of business premises is included in the transaction but is not a material or variable part of the negotiation. In many cases, business brokerage requires specialized knowledge which is not a normal part of a real estate licensee's qualifications and no real estate knowledge is actually required. Business seliers should have the right to hire competent business brokers as long as the business is not real estate.

Section 18. This section eliminates the \$500,000 cap on the fund. Experience is showing that the cap on the fund can create problems as the industry grows because both claims and education programs grow with the fund balance then becoming too low to establish a stable fund size.

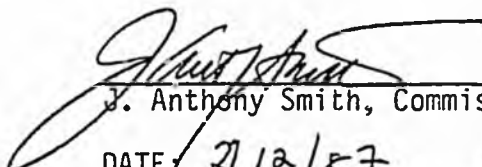
Section 19. This section expands the liability of the fund to include negligent misrepresentation. Currently, under a Supreme Court ruling, the fund is liable only for willful misrepresentation.

Section 25. This section appears to eliminate the need for a surety claim hearing when a judgment is received by a claimant. Some clarification is in order. It is not clear that the unpaid balance up to a maximum of \$10,000 is paid by the fund. It is also not clear how the determination of whether or not the action was based on conduct similar to that set out in AS 08.88.460(a) is made. This can all be done by regulation if an adequate regulation authority can be put in AS 08.88.081.

Section 28. This section is based on passage of the \$25 filing fee. It should be deleted along with the \$25 filing fee for reasons previously stated.

SB 39 POSITION PAPER
(Continued)

The remaining sections are simply cleanup and rearrangement needed due to other changes and simply need to be carefully matched to any amendments to the bill.



J. Anthony Smith, Commissioner
DATE: 7/12/87

Bill No. Senate Bill No. 39

Date February 2, 1987

Title "An Act relating to real estate brokers and salespersons and to the Real Estate Commission; and providing for an effective date."

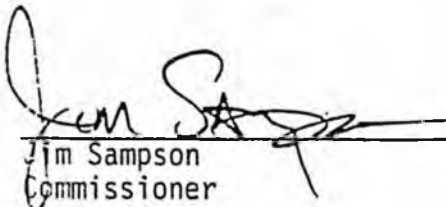
Contact P. L. McClintock
465-2790

Section 10 of the bill specifically exempts a certain occupational class from coverage under the Alaska Workers' Compensation Act if the people in that class have entered into a written contract as an independent contractor.

The Department and Workers' Compensation Board oppose Section 10 of the bill because we question that it is appropriate to single out a particular group of people from coverage under the Act. Under current workers' compensation law, an independent contractor is already exempt from coverage whether the person is, for example, a tradesman, a merchant, or a salesperson. We feel this amendment opens itself to possible abuse and could very well adversely affect those real estate salespersons who have, in fact, an employer-employee relationship with the broker but have been coerced into signing a contractual agreement.

The Supreme Court in Calvo v. Calhoon, 559 P.2d 111 (Alaska 1977), stated that "[T]he Alaska statutory system governing real estate brokers and salespersons implies that the relationship is one of employer and employee." (See Notes to Decisions AS 08.88.331). Therefore, if a bona fide employee/employer relationship exists between the associate or salesperson and the broker, they should not be exempted from workers' compensation coverage.

APPROVED:


Jim Sampson
Commissioner

POSITION PAPER/Department of Labor

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

Bill Version: SB 39
Publish Date: _____

REQUEST: _____

Revision Date: _____
Title: "An Act relating to real estate
brokers and salespersons..."
Sponsor: Zharoff
Requestor: Senate Labor & Commerce

Agency Affected: Labor
BRU: Workers' Compensation
Comments: workers' Compensation

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Jacquelyn McClintock Phone: 465-2790
Division: Workers' Compensation Date: 02/02/87
Approved by Commissioner: Jim Sampson Date: 02/02/87
Agency: Labor

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
Senate Secretary

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version : SB 39
Publish Date : _____

Revision Date: _____

Agency Affected: Commerce & Econ. Dev.
Real Estate Commission

Title: An Act Relating to real estate brokers & salespersons & to the Real Estate Commission & providing for an effective date.

Sponsor: Zharoff

Components: Operations

Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		216.0	223.6	239.9	239.2	251.1
TRAVEL		4.0	4.0	4.0	4.0	4.0
CONTRACTUAL		16.8	16.8	18.0	18.0	18.0
SUPPLIES		3.0	3.0	3.0	3.0	3.0
EQUIPMENT		23.3	0.0	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		263.1	247.4	255.9	264.2	276.1

CAPITAL						
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REVENUE		[1.5]	[1.5]	[1.5]	[1.5]	[1.5]
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FUNDING: (Thousands of Dollars)

GENERAL FUND		263.1	247.4	255.9	264.2	276.1
FEDERAL FUNDS		0	0	0	0	0
OTHER		0	0	0	0	0
TOTAL		263.1	247.4	255.9	264.2	276.1

POSITIONS:

FULL-TIME		4	4	4	4	4
PART-TIME		0	0	0	0	0
TEMPORARY		0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

See Attachment

Prepared by: James L. Magowan
Division: Real Estate Commission

Phone: 563-2169
Date: 2/2/87

Approved by Commissioner: J. Anthony Smith
Agency: Commerce and Economic Development

Date: _____

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Senate Secretary
5293W2287a

FISCAL NOTE

SB 39 FISCAL ANALYSIS

This bill would require the addition of four positions, two clerk typists and two hearing examiners. These would result from the handling of 30 or more earnest money disputes per month and the handling of an additional 100 or more surety hearings per year. Clerk typists are Range 8, hearing examiners are Range 24.

There would be travel necessary to hold hearings outside Anchorage several times per year and there would be substantial telephone and related costs. Telephone costs would include teleconference costs for those hearings and arbitrations that could be handled by phone.

The commission currently has net revenues of \$250 per claim on 20 claims (approximately) per year or \$5,000. An additional \$5,000 per year is refunded when claimants are awarded a claim; \$25 per claim, nonrefundable, for 140 claims would net \$3,500 for a net decrease in revenues of \$1,500.

The costs for other services include estimated minimum space costs.

The Legislative Audit found the commission in need of immediate addition of a clerical position. This could not be done. Any increase or addition to the commission work load will require additional clerical support at least sufficient to carry the entire additional load or it will impact the current program negatively.

SSSB 39: An Act relating to the Real Estate Commission.


SSSB 39 transfers the Real Estate Commission in the Department of Commerce and Economic Development to the Division of Occupational Licensing, also within the Department of Commerce and Economic Development, and extends the commission to June 30, 1991. In September 1985, Legislative Audit issued a performance report on the commission which recommended it be reestablished.

The department maintains its support for continuation of the Real Estate Commission and recognizes the important functions it provides. However, the department concurs with the proposal to reestablish the commission within the Division of Occupational Licensing.

There are a number of advantages to the plan for both the State of Alaska and licensed realtors.

1. The regulation of the occupation would be more cost effective. The number of licensed realtors has decreased by approximately 50% since the Real Estate Commission became semiautonomous which has increased the cost of service provided per licensee while decreasing the commission's ability to be self-supporting. The commission was unable to generate sufficient program receipts for FY 87 to maintain its current level of expenditures. The department believes the commission can be as effectively administered under the Division of Occupational Licensing at a much lower cost. The transfer of the commission to the Division of Occupational Licensing would save approximately \$150,000.00 per year and would enable the commission to be supported by the licensing fees.
2. As indicated in the Legislative Audit, the Real Estate Commission is in dire need of regulatory and statutory revision. The Division of Occupational Licensing employs both a legislative and a regulations specialist who could more effectively assist the commission in its efforts to improve regulations and statutes.
3. The transfer of administrative responsibilities, such as budget preparation and fiscal monitoring, to the division would enable the commission and staff to concentrate their efforts on increasing services to licensees including auditing of trust accounts, recovering surety fund claims, coordinating with the Real Estate Association, and improving functions.

In summary, the department believes the transfer of the Real Estate Commission will increase efficiency without diminishing the authority of the commission or the level of services provided.


 J. Anthony Smith, Commissioner
 Department of Commerce & Economic
 Development

DATE: 4/9/87

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version : SSSB 39
Publish Date : 4/7/87

REQUEST: _____
Revision Date: _____
Title: An Act relating to the
Real Estate Commission.
Sponsor: Senator Zharoff
Requestor: _____

Agency Affected: Commerce and Economic Dev.
BRU: Real Estate Commission/Occupational
Licensing
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES	0	[62.0]	0	0	0	0
TRAVEL	0	[15.1]	0	0	0	0
CONTRACTUAL	0	[75.7]	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	[152.8]	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	[152.8]	0	0	0	0
TOTAL	0	[152.8]	0	0	0	0

POSITIONS:

FULL-TIME	0	[1]	0	0	0	0
PART-TIME	0	1	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

(See Attached)

Prepared by: Kathy Marshall
Division: Occupational Licensing

Phone: 465-2534
Date: April 9, 1987

Approved by Commissioner: J. Anthony Smith
Agency: Commerce and Economic Development

Date: _____

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

SSSB 39

SSSB 39 amends the statutes to transfer the semiautonomous Real Estate Commission within the Department of Commerce and Economic Development to the Division of Occupational Licensing within the same department. As a result, the reorganization will create a cost savings of \$152,800.00 as a one-time impact in FY 88.

The decrement of \$62,000.00 in personal services result through reclassification of certain positions currently providing support to the Real Estate Commission. In addition, one position is being reduced from full-time to part-time.

The attached forms document the costs associated with the transfer.

STATE OF ALASKA
Office of Management & Budget
Division of Budget Review

REVISED PROGRAM SUMMARY
by
BUDGET COMPONENT

CATEGORY Public Protection
PROGRAM Consumer Protection
AGENCY Commerce & Economic Dev
DIVISION Real Estate Commission
BRU Real Estate Commission
COMPONENT

	FY '88 REQUEST	SSSB 39 Note	ADJUSTED AUTH	ADN	ADJUSTED AUTH	ADN	ADJUSTED AUTH	ADN	ADJUSTED AUTH	ADN	ADJUSTED AUTH
70010 UNALLOCATED											
71000 PERS SVCS	300.5	-300.5	0.0								
72000 TRAVEL	36.1	-36.1	0.0								
73000 CONT SVCS	166.9	-166.9	0.0								
74000 SUPPLIES	10.3	-10.3	0.0								
75025 LAND/STRCT											
75690 EQUIPMENT											
77000 GRANTS											
78000 DEBT SVC											
TOTAL	513.8	-513.8	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
68515 GEN FUND											
68510 GF MATCH											
51010 FED REC											
51015 IA REC											
51060 PROG REC	513.8	-513.8	0.0								
51200 CIP REC											
FULL TIME	6.0	-6.0	0.0								
PART TIME	2.0	-2.0	0.0								
TEMPORARY MONTHS	82.0	-82.0	0.0								

STATE OF ALASKA
Office of Management & Budget
Division of Budget Review

REVISED PROGRAM SUMMARY
by
BUDGET COMPONENT

CATEGORY Public Protection
PROGRAM Consumer Protection
AGENCY Commerce & Economic Dev
DIVISION Occupational Licensing
BRU Occupational Licensing
COMPONENT Administration

	FY '88 REQUEST	SSSB 39 Note	ADJUSTED AUTH	ADN	ADJUSTED AUTH	ADN	ADJUSTED AUTH	ADN	ADJUSTED AUTH	ADN	ADJUSTED AUTH
70010 UNALLOCATED											
71000 PERS SVCS	713.3	271.5	984.8								
72000 TRAVEL	14.1	11.0	35.1								
73000 CONT SVCS	311.9	91.2	403.1								
74000 SUPPLIES	10.4	10.3	20.7								
75025 LAND/STRCT											
75690 EQUIPMENT											
77000 GRANTS											
78000 DEBT SVC											
TOTAL	1049.7	394.0	1443.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
88515 GEN FUND											
88510 GF MATCH											
51010 FED REC											
51015 IA REC											
51080 PROG REC	1049.7	394.0	1443.7								
51200 CIP REC											
FULL TIME	19.0	5.0	24.0								
PART TIME	1.0	3.0	4.0								
TEMPORARY MONTHS	234.0	76.0	310.0								

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: SSSB 39
Publish Date: 4/7/87

REQUEST: _____
Revision Date: _____
Title: An Act relating to the
Real Estate Commission.
Sponsor: Senator Zharoff
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Agency Affected: Commerce and Economic Dev.
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SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	[152.8]	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
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ANALYSIS : (Attach a separate page if necessary)

(See Attached)

Prepared by: Kathy Marshall
Division: Occupational Licensing

Phone: 465-2534
Date: April 9, 1987

Approved by Commissioner: J. Anthony Smith
Agency: Commerce and Economic Development

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Distribution (by preparer):

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The decrement of \$62,000.00 in personal services result through reclassification of certain positions currently providing support to the Real Estate Commission. In addition, one position is being reduced from full-time to part-time.

The attached forms document the costs associated with the transfer.

STATE OF ALASKA
Office of Management & Budget
Division of Budget Review

REVISED PROGRAM SUMMARY
by
BUDGET COMPONENT

CATEGORY Public Protection
PROGRAM Consumer Protection
AGENCY Commerce & Economic Dev
DIVISION Real Estate Commission
BRU Real Estate Commission
COMPONENT

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75690 EQUIPMENT											
77000 GRANTS											
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TOTAL	513.8	-513.8	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
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TEMPORARY MONTHS	82.0	-82.0	0.0								

STATE OF ALASKA
Office of Management & Budget
Division of Budget Review

REVISED PROGRAM SUMMARY
by
BUDGET COMPONENT

CATEGORY Public Protection
PROGRAM Consumer Protection
AGENCY Commerce & Economic Dev
DIVISION Occupational Licensing
BRU Occupational Licensing
COMPONENT Administration

	FY '88 REQUEST	SSSB 39 Note	ADJUSTED AUTH	ADN	ADJUSTED AUTH	ADN	ADJUSTED AUTH	ADN	ADJUSTED AUTH	ADN	ADJUSTED AUTH
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PART TIME	1.0	3.0	4.0								
TEMPORARY MONTHS	234.0	76.0	310.0								

1 IN THE SENATE

CS
2 ~~SPONSOR~~-SUBSTITUTE FOR SENATE BILL NO. 39

BY ZHAROFF
by REQUEST

3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - FIRST SESSION

if SS;

5 A BILL

6 For an Act entitled: "An Act relating to the Real Estate Commission."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

NEED EFFECTIVE DATE.

8 * Section 1. AS 08.01.010 is amended by adding a new paragraph to read:

9 (27) Real Estate Commission (AS 08.88.011).

10 * Sec. 2. AS 08.01.050(a) is amended to read:

11 (a) The department shall perform the following administrative
12 and budgetary services when appropriate:

13 (1) collect fees and issue receipts;

14 (2) maintain records and files;

15 (3) issue and receive application forms;

16 (4) notify applicants of acceptance or rejection of appli-
17 cants as determined by the board or as determined by the department
18 under AS 08.11 for audiologists, under AS 08.45 for naturopaths, or
19 under AS 08.55 for hearing aid dealers;

20 (5) designate dates examinations are to be held and notify
21 applicants;

22 (6) publish notice of examination;

23 (7) arrange space for holding examinations;

24 (8) notify applicants of results of examinations;

25 (9) issue licenses and certificates or temporary licenses
26 or certificates as authorized by the board or as authorized by the
27 department under AS 08.11 for audiologists, under AS 08.45 for naturo-
28 paths, or under AS 08.55 for hearing aid dealers;

29 (10) issue duplicate licenses or certificates upon proof

1 by the licensee of loss of the original and payment by the licensee of
2 a fee of \$2 except as otherwise provided in this title;

3 (11) notify licensees of renewal dates at least 30 days
4 before the expiration date of their licenses;

5 (12) compile and maintain current a register of licenses;

6 (13) answer routine inquiries;

7 (14) maintain files relating to individual licensees;

8 (15) arrange for printing and advertising;

9 (16) purchase supplies;

10 (17) employ secretarial help when needed;

11 (18) perform other services that may be requested by the
12 board;

13 (19) provide investigative services to the boards estab-
14 lished under AS 08.04, AS 08.20, AS 08.36, AS 08.64, AS 08.68, AS 08.-
15 70, AS 08.71, AS 08.72, AS 08.80, AS 08.84, [AND] AS 08.86, and AS 08.-
16 88, for the purpose of assisting those boards in matters of profes-
17 sional discipline and in responding to consumer complaints.

18 * Sec. 3. AS 08.01.065(a) is amended to read:

19 (a) The department shall adopt regulations that establish the
20 amount and manner of payment of application fees, examination fees,
21 license fees, registration fees, permit fees, investigation fees, and
22 all other fees as appropriate for the occupations covered by this
23 chapter [AND FOR REAL ESTATE BROKERS AND SALESMEN UNDER AS 08.88].

24 * Sec. 4. AS 08.03.010(c)(18) is amended to read:

25 (18) Real Estate Commission (AS 08.88.011) -- June 30, 1991
26 [1987].

27 * Sec. 5. AS 08.88.031 is repealed and reenacted to read:

28 Sec. 08.88.031. EXECUTIVE SECRETARY OF COMMISSION. The depart-
29 ment shall, after consultation with the commission, employ a person,

1 who is not a member of the commission, to serve as executive secretary
2 for the commission. The executive secretary shall perform duties as
3 assigned by the commission.

4 * Sec. 6. AS 08.88.037 is amended to read:

5 Sec. 08.88.037. INVESTIGATION AND INJUNCTION. (a) The commis-
6 sion may request the department to [, UPON ITS OWN MOTION,] conduct
7 investigations to determine whether a person has violated a provision
8 of this chapter or a regulation adopted under it, or to secure infor-
9 mation useful in the administration of this chapter.

10 (b) If it appears to the department [EXECUTIVE DIRECTOR] that a
11 person has engaged in or is about to engage in an act or practice in
12 violation of a provision of this chapter or a regulation adopted under
13 it and that action is warranted in the public interest, the department
14 [EXECUTIVE DIRECTOR] shall notify all commission members by telephone
15 or telegraph of a proposed order or action, and, if a majority of the
16 members of the commission approve, the department [EXECUTIVE DIRECTOR]
17 may

18 (1) after reasonable notice of and an opportunity for a
19 hearing is given to the person, issue an order directing the person to
20 stop the act or practice; the department [EXECUTIVE DIRECTOR] may
21 issue a temporary order before a hearing is held; a temporary order
22 remains in effect until a final order affirming, modifying, or revers-
23 ing the temporary order is issued or until 15 days have elapsed after
24 the person receives the notice and has not requested a hearing; a
25 temporary order becomes final if the person to whom the notice is
26 addressed does not request a hearing within 15 days after receiving
27 the notice; if a hearing is requested, a hearing shall be conducted by
28 a hearing officer within 30 days; the commission shall issue a final
29 order within 10 days after the hearing;

1 (2) bring an action in superior court to enjoin the act or
2 practice and to enforce compliance with this chapter, a regulation
3 adopted under it, or an order issued under it;

4 (3) examine or have examined the books and records of a
5 person whose business activities require licensure under this chapter
6 and the department [EXECUTIVE DIRECTOR] may require the person to pay
7 the reasonable costs of the examination; and

8 (4) issue subpoenas for the attendance of witnesses, and
9 the production of books, records, and other documents.

10 * Sec. 7. AS 08.88.061 is amended to read:

11 Sec. 08.88.061. ASSISTANTS. The commission may use [EMPLOY]
12 assistants to

13 (1) prepare questions on examinations;

14 (2) grade examinations [;

15 (3) INVESTIGATE ALLEGED VIOLATIONS OF THIS CHAPTER].

16 * Sec. 8. AS 08.88.191(b) is amended to read:

17 (b) If the commission authorizes the department to contract
18 [CONTRACTS] with a national testing service to prepare, administer and
19 grade examinations,

20 (1) the commission shall review the examination and approve
21 its contents;

22 (2) application for the examination, accompanied by the
23 proper filing fee, may be transmitted by the applicant directly to the
24 national testing service.

25 * Sec. 9. AS 08.88.034, 08.88.101, 08.88.121, and 08.88.231 are re-
26 pealed.

Alaska Recreational Property, Inc.

Suite 800 Court Plaza
P.O. Box 1211
Juneau, Alaska 99802
(907) 586-3340

Reed R. Stoops, President

James F. Clark, Secretary-Treasurer

March 5, 1987

The Honorable Tim Kelly
Chairman, Senate Labor & Commerce Committee
P. O. Box V
Juneau, AK 99811

Dear Senator Kelly:

The Senate Labor and Commerce Committee currently has SB 39 "An Act relating to real estate brokers and salespersons and to the Real Estate Commission" in its jurisdiction. The bill was introduced by Senator Zharoff at the request of the Real Estate Commission.

Should the bill be moved through the Committee, I strongly urge that you delete the proposed new language on lines 3-6 on page 10.

This provision would prohibit corporations such as Alaska Recreational Properties from selling their own properties unless they use a licensed real estate broker. There is absolutely no need for such a requirement. While our corporation may choose to use a broker under certain circumstances, we are more familiar with the property to be sold, and are generally more effective in making sales than a broker.

Property owners, either individual or corporate, deserve the right to market their own property if they so choose. This provision is only one step away from requiring individuals to hire brokers when they sell their own homes.

The purpose of the proposed provision seems clear: to enhance the economic status of real estate brokers at the expense of the individual or corporate right to manage the affairs of one's own business. Unless the Commission has a clear and convincing public purpose to justify their position, I do not see any reasonable grounds for this proposal.

Thank you for your consideration of this matter.

Sincerely,



Reed R. Stoops

RRS:sd/9.31
cc: Senator Fred Zharoff



SENATOR FRED F. ZHAROFF

ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

P. O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474 • 465-3844 (Labor and Commerce Committee)

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • TRIBILOF ISLANDS • SHUMAGIN ISLANDS

20 January, 1987

MEMORANDUM:

TO: Mark Johnson, Committee Aide
Senate Labor and Commerce Committee

FROM: Michael Thill
Senator Zharoff's Staff

SUBJ: SB 39 Real Estate Commission Bill

Senate Bill 39 was prefiled by Senator Zharoff to address concerns of the Real Estate Commission which were not acted upon last session. This measure contains substantive changes which were requested by the Real Estate Commission, extends the termination date of the commission, and grants general regulation adoption authority common to most boards and commissions.

The text of the bill is the result of a task force composed of real estate professionals, related businesses, and the public.

The most knowledgeable person to speak with regarding this measure is:

Jim Magowan, Executive Director of the Real Estate
Commission: 563-2169

I will attach a sectional analysis, a copy of a memo from the AG's Office concerning this bill, a copy of the most recent audit, the OMB report which recommends an overhaul of the commission statutes, and a copy of those statutes which are being repealed.



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

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SB 39 Sectional Analysis:

Section 1) Extends the termination date of the Real Estate Commission until June 30, 1990.

Section 2) Makes gender changes throughout the section and provides that a license may be suspended or revoked if the licensee represents himself as an independent contractor for the purposes of avoiding worker's compensation obligations.

Section also requires the confidentiality of investigations, claims, and complaints until the commission has taken final action, unless disclosure is necessary to conduct an official investigation.

Also provides for public access to license files of the commission, and establishes that earnest money disputes shall be settled by binding arbitration.

Section 3) Grants the commission typical regulation adoption authority normally given to occupational licensing boards and commissions.

Section 4) Authorizes the publishing of books, pamphlets, radio and TV spots, by the commission, to protect and serve the public.

Section 5) Adds a new subsection which allows the commission to charge a fee sufficient for the production of educational materials, and requires that fees for those materials funded by the surety fund shall be paid to the surety fund.

Section 6) Expands real estate broker license eligibility requirements. Increases the experience requirement from 24 to 60 months of active real estate sales, and requires the broker to register with the commission.

Section makes gender changes in both the associate real estate brokers license statute and the real estate salesperson statutes.

Further, requires notification to the commission within 48 hours after a change in a business association which effects the status of a licensee's license.

- Section 7) Adds a new section which provides that an applicant for a license, who has had a license suspended in this state or another jurisdiction, is ineligible for the issuance of a license until the conditions of suspension have been satisfied.
- Applicant who has had a license revoked is not eligible for reinstatement of a license until the commission finds the applicant fit. An applicant who is found "unfit" for licensure, without benefit of a hearing, shall receive a statement of the issues and be provided an opportunity for a hearing.
- Any act which is grounds for license revocation is sufficient for license denial.
- Section 8) Removes the "inactive license certificate" which is issued by the commission when a person becomes inactive from the profession.
- Section 9) Removes the license certificate requirement issued by the commission when a person goes from inactive status to active status.
- Section 10) Exempts associate brokers or salespersons who have entered into bonafide independent contractor status from the requirements of workers compensation coverage.
- Section 11) Requires full disclosure to all parties of the broker's relationship in the transaction and fulfillment of the terms of a written contract before the commission is earned.
- Section 12) Amends the conflict of interest provisions of real estate transactions by requiring disclosure of personal interest in a transaction before making an offer to purchase to a seller.
- Section 13) Adds a new subsection requiring a licensee to obtain written consent from all parties to a

transaction prior to representing more than one party in a transaction.

Section 14) persons licensed under this chapter are not liable for "innocent misrepresentations of fact".

Section 15) Adds a new section concerning earnest money disputes. Broker may hold disputed earnest money in a trust account if he notifies all parties in the dispute and requests the parties to reach a mutual agreement about the earnest money.

If the parties don't reach an agreement within 15 days of the certified mailing, the broker shall submit the dispute to the commission for binding arbitration.

Broker shall hold the earnest money in dispute in his trust account until the arbitrator issues instructions over the distribution of the earnest money.

If a party in the dispute files a civil action to recover the earnest before the completion of arbitration, the broker shall hold the money in his trust account until instructed to do otherwise by the courts.

Section 16) The exemption from state law relating to real estate does not apply to a corporation that is engaged in the business of selling real estate or that maintains and sells real estate in an inventory.

Section 17) Amends the definition of "lease" to distinguish between real estate brokerage and business brokerage.

Section 18) Adds "associate real estate brokers" to the list of real estate professionals who make payments to the real estate surety fund, and deletes the provision prohibiting the fund from exceeding \$500.0. Retains the provision that amounts in the fund exceeding \$250.0 may be appropriated for real estate educational purposes.

Section 19) Adds qualifying language to the concept of "misrepresentation", (negligent or intentional), and tightens up the information requirements on forms for reimbursement.

- Section 20) Changes the refund policy for filing fees by not refunding the filing fee in a case where the claim is dismissed by the claimant.
- Section 21) Adds qualifying language to the concept of "misrepresentation" (negligent or intentional), and makes gender changes to this section.
- Section 22) Adds new sections as follow:
- b) When an award is made from the real estate surety fund to a claimant for prohibited real estate practices, the commission may consider the hearing on the claim as a hearing on the suspension of the license. A suspension so ordered shall be lifted when the real estate professional reaches an agreement with the commission on repayment of the surety fund award and the costs of the hearing. Violations of the repayment agreement will result in a reimposition of the suspension.
 - c) Repayment does not affect a suspension or revocation of a license when the licensee has violated a law or regulation under this chapter. Penalties so imposed are separate and in addition to those penalties imposed for surety fund claim proceedings.
- Section 23) Authorizes the commission to charge the costs of a hearing described in (b) of the preceding section to the surety fund.
- Section 24) When a licensee is found to have committed fraud, deceit, etc. the licensee shall reimburse to the surety fund the amount of the award plus the costs of the hearing which have been charged to the fund.
- Section 25) Section concerns "payment of judgements" by real estate professionals who have violated the law. Deletes references to "small claims action" and inserts "court" action. The mechanics of how a payment shall be made remain the same.
- Section 26) Exemption from liability for "innocent misrepresentation" (authorized in section 14), applies to causes of action arising on or after the effective date of this act.
- Section 27) Applicability section

- Section 28) Requires the refund of \$225 of the filing fee paid under 08.88.460(d) to a claimant whose case is pending on the effective date of this act.
- Section 29) Directs the revisor of statutes to make AS 08.88 gender neutral when AS 08 is reprinted.
- Section 30) Repealers
- Section 31) Immediate effective date.

A PERFORMANCE REPORT ON THE
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
ALASKA REAL ESTATE COMMISSION

September 19, 1985

Audit Control Number

08-1224-86-R

Commissioner, Department of
Commerce and Economic Development

Loren H. Lounsbury

Deputy Commissioners, Department of
Commerce and Economic Development

Terry Elder
Greg Baker

Members of the
Alaska Real Estate Commission

Chairman
Vice-Chairman
Member
Member
Member
Member
Member

Dave Ribacchi
Barbara J. Hill
LaVerne Collins
Gilbert Serrano
John E. Benson
Barry L. Brown
Iola Robinson

STATE OF ALASKA

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811-3300

THE LEGISLATURE
BUDGET AND AUDIT COMMITTEE

October 29, 1985

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 and 44 of the
Alaska Statutes (sunset legislation), the attached report is
submitted for your review.

A PERFORMANCE REPORT ON THE
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
ALASKA REAL ESTATE COMMISSION

September 19, 1985

Audit Control Number

08-1224-86-R



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

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PURPOSE AND SCOPE OF THE REPORT

Purpose

In accordance with the provisions of Alaska Statutes 24.20.271(1) and 44.66.050 (sunset legislation), an examination of the Alaska Real Estate Commission was conducted 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 Alaska Real Estate Commission should be reestablished. The law currently specifies that this Commission will terminate on June 30, 1986, but will continue until June 30, 1987 for the purpose of concluding its affairs.

The policy and audit approach utilized by the Division of Legislative Audit for performance reports can best be described as "audit by exception." This methodology focuses audit effort on areas of an auditee's operations that have been identified by a preliminary survey as having a high degree of probability for needing improvements.

Therefore, by design, finite audit resources are used to identify where and how improvement can be made and little time is devoted to reviewing well-run operations or programs. Consequently, this report highlights those areas needing improvement and does not emphasize those operations and programs that are properly functioning.

Scope

The major areas of our examination were the licensing, examination, administration, complaint, and affirmative action functions of the Commission. We reviewed and evaluated the following:

1. Applicable statutes and regulations.
2. Tests of records and documents of the Commission.
3. Discussions with Commission members and staff of the Commission.
4. Complaints filed with the Commission and the Ombudsman's Office.
5. Questionnaires sent to Commission members and Alaska licensed real estate brokers, associate brokers, and salespersons.

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ORGANIZATION AND FUNCTION

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

The Commission regulates persons licensed as real estate 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, violations of real estate statutes and regulations.

AREC 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 associate brokers and brokers must pass an examination and have had at least 24 months of active and continuous experience as a real estate salesperson. Additionally, an applicant for an associate broker or broker license may not be under indictment for any felony involving moral turpitude or five or seven years, respectively, have elapsed since completing a sentence for a felony involving moral turpitude. 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 or partnership. An associate broker has met the statutory requirements of a broker, but is employed by a real estate broker.

A real estate salesperson must pass an examination; be at least 19 years old; not be under indictment for, or completed the sentence imposed if convicted of, any felony involving moral turpitude; and be employed by a real estate broker.

Real estate licensees must pay a surety fund fee, in lieu of obtaining a corporate surety bond, when obtaining or renewing their licenses. These fees are deposited in the Real Estate Surety Fund and are to be used for reimbursement of losses suffered as a result of fraud, misrepresentation, deceit, or the conversion of trust funds on the part of a real estate licensee. Claims for reimbursement require a

\$250 filing fee and payment is made by AREC after a hearing is held. The Surety Fund balance in excess of \$250,000 may be appropriated for educational purposes.

Chapter 167, SLA 1980 gave the Commission the power to appoint an executive director, employ assistants, and approve the appointment of an investigator or auditor. Prior to enactment of this legislation, the Commission received staff support from the Division of Occupational Licensing.

REPORT CONCLUSION

Policy Issues

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

Report Conclusion

In our opinion, the Alaska Real Estate Commission (AREC) 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, substantial improvement needs to take place in the operations of the Commission. The Office of Management and Budget (OMB) conducted a comprehensive management audit of AREC and issued its report, "Management Audit Report on the Alaska Real Estate Commission" dated December 1984. We support the recommendations made by OMB, but note little progress to date in implementation of those recommendations. Implementation of the recommendations contained in this report and the OMB report (see Appendix D) would enable AREC to perform more effectively and efficiently.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Alaska Real Estate Commission (AREC) should revise the procedures for processing and closing licensing complaints.

Currently AREC uses procedures for processing licensing complaints which are ineffective and inefficient. A copy of each complaint file is sent to an AREC commissioner. This "coordinating commissioner" is supposed to assist the Accountant III (REC investigator/auditor hereinafter referred to as investigator) in his investigation by offering real estate expertise. For each complaint recommended for closure, the commissioner is supposed to review the file and approve or disapprove the closure recommendation. During the next Commission meeting, those complaints approved for closure by individual commissioners are officially voted closed by the entire Commission.

The first sunset review of AREC by Legislative Audit dated May 7, 1979, found fault with commissioners being informed as to the facts and being involved in the investigations and recommended that investigation procedures be changed and revised to develop an accurate and proper system for handling complaints. A follow-up review dated June 4, 1981, recommended that a formal system of investigative procedures be developed, approved, and documented prior to the investigative responsibility being transferred from the Division of Occupational Licensing. An Ombudsman investigation completed on April 13, 1983, included recommendations addressing delays in the management and processing of licensing complaints. An Office of Management and Budget (OMB) management report dated December 1984 found that AREC lacked a formal, structured procedure for processing license complaints.

The executive director and investigator have established informal procedures in response to these recommendations that conflict with those in use by other regulatory licensing boards under Occupational Licensing. We recommend AREC take a proactive, rather than reactive approach and revise its procedures to include the following:

1. Case files should not be copied and sent to a commissioner. This is the single most compromising element of the present system.
2. The investigator should fully investigate every complaint. This may involve nothing more than reading the complaint form and supporting documents, but the case file should contain evidence of the investigation conducted.

3. The investigator should prepare a generic summary of the complaint, evidence, investigation, and conclusion reached. If that conclusion recommends closure due to no violation or no jurisdiction, the summary should be sent to each commissioner at least two weeks prior to the next meeting for action by the entire Commission. At the meeting, the complaint could either be referred back to the investigator for further action or closed.
4. If the investigator determines a violation has occurred, an accusation or statement of issues would be prepared as under the current procedures. If a hearing is requested, the commissioners would act on the hearing officer's proposed decision.
5. These procedures should be formalized and supported by time standards. Implementation of these procedures would allow the investigator to be more efficient. Cases recommended for closure would be acted on at the next meeting and the carrying over of cases to the next meeting due to the absence of one or more commissioners would not occur. The amount of copying and mailing costs, as well as time spent tracking complaints, would be reduced substantially.

Recommendation No. 2

AREC should actively pursue recovery of Surety Fund claims paid and the associated hearing costs from the involved licensees.

Alaska Statute 08.88.071(b) allows AREC to suspend the license of a broker, associate broker, or salesperson until an agreement is reached on terms and conditions for the repayment to the Real Estate Surety Fund of the money awarded to the claimant and the costs of hearing the claim. To date, repayment by the involved licensee has been more voluntary than required. Of the approximately \$430,000 of claims and associated hearing costs paid from the Surety Fund, only fifteen percent or \$65,000 has been recovered.

The Attorney General's (AG) Office must file suit to collect these payments. Several of the larger payouts have recently been turned over to an Assistant AG for action. The Commission has been trying to develop a process to recover through Small Claims Court, which has a \$2,000 limit, those claims under \$5,000 which the AG's Office will not prosecute. This process has not been implemented due to lack of time by the investigator to follow through.

We recommend that judgement, execution, and collection be undertaken on a test basis as soon as possible through the appropriate trial court in order to refine the procedures necessary for recovery of monies owed to the Surety Fund.

Initially, active licensees should be notified that their licenses will be suspended if an agreement on repayment is not reached. If these procedures reveal inadequate authority for recovery, statute changes may be necessary. However, lack of action because a problem may exist is not acceptable. These procedures must be formalized and written in order to facilitate recovery.

Recommendation No. 3

AREC should undertake a major revision of Alaska Statutes, Title 8, Chapter 88.

The Attorney General's Office as well as staff and commissioners of AREC pointed to statutes which needed revision. Some sections need clarification while others appeared to give inadequate authority to the Commission to carry out its duties. Some examples follow:

1. Duties of the Commission. AS 08.88.071.
 - (a)(3) could be changed to a simple statement such as: "hold hearings and order disciplinary sanctions against a person who violates this chapter or the regulations of the commission." A separate section is needed delineating grounds for denial, suspension, and revocation of a license. A section on penalties or disciplinary sanctions is usually found in other chapters of Title 8.
 - (b) should be relocated to Article 5, the Real Estate Surety Fund. Combined license and Surety Fund claim hearings are now being scheduled and suspension of a license until repayment of the claim should not be confused with suspension for a licensing violation. Qualifying language may be needed to distinguish between suspension for a violation and suspension for a repayment agreement in those combined hearings. Repayment of the Surety Fund claim does not "buy back" the license suspended for a violation.
2. Entitlement to license. AS 08.88.171.

This section should be retitled "eligibility for license" or "qualifications for license." At this time, a broker or associate broker is still "entitled" to a salesperson license even though the Commission revokes the broker or associate broker license. If this is not the intent of the Legislature, a provision should be included that licensees lose their eligibility for all licenses upon license revocation and that license eligibility can only be reinstated by the Commission.
3. Reinstatement of lapsed license. AS 08.88.241.

The Commission has taken the position that a broker, associate broker, or salesperson whose license has

lapsed for more than two years must be reexamined before reinstatement and must begin at the salesperson level. If the intent of the legislation is that the broker and associate broker licenses cannot be reinstated after examination, that language should be inserted in the statutes. The current policy is to reinstate any license lapsed less than two years without examination.

4. Out-of-state licenses. AS 08.88.261.
This section should be repealed. The State of Alaska does not have reciprocity agreements with other states. License by endorsement is available to a person who holds a valid active real estate license issued by another state upon passing an examination in Alaska law and meeting the requirements of AS 08.88.171.
5. Education. AS 08.88.091.
Authority to sell informational materials at a price designed to recover costs and deposit the money in the Real Estate Surety Fund should be added. The Commission should establish guidelines for charges for copies exceeding one per licensee.

Specific language should be added regarding the liability of the licensee to repay Surety Fund claims and hearing costs paid from the Surety Fund. Procedures should be developed in consultation with the Attorney General's Office to standardize and expedite recovery efforts. Other areas needing clarification are definitions of "real estate" and "employed" as used in Chapter 88.

This project should be prioritized. A reimbursable services agreement with the Department of Law, if necessary, or a contract with a private attorney would assure the time needed to accomplish this goal.

In addition, the Commission should revise the regulations, License Biennium and License Renewal, 12 AAC 64.070 and .071. A staggered renewal should be instituted to spread the workload more evenly throughout the biennium. An alternative to staggering license renewal within the biennium could be to seek statutory change to allow for a triennial renewal and staggering license renewal over three years. This change would also necessitate a change to the fee section of the statutes, AS 08.88.221.

Recommendation No. 4

AREC should analyze the need for an additional clerical position.

The staff of AREC consists of an executive director, an investigator, a licensing examiner, two half-time hearing officers, a secretary, and a clerk typist. Staff complains

of a workload such that they are unable to complete their assigned duties. The investigator and hearing officers were added to staff with no increase in clerical support. Each of these positions generate a large amount of clerical work. The investigator spends a great deal of time tracking complaint files and Surety Fund claims because no one else is available to do it. The license examiner must do most of the typing and filing of that position due to lack of support. The hearing officers currently have a backlog of proposed decisions awaiting typing. Additionally, AREC is now involved in a computer conversion which will require a substantial amount of time of the licensing examiner and investigator to develop programs to assist them in their duties. When the programs are developed all the information for the licensing history and complaint files must be entered in the system. Also, 1986 is the biennial renewal year which historically overwhelms the staffing available.

Thirty-one percent of the licensees responding to a questionnaire had complaints regarding the handling of applications, fees, or other administrative duties of the Commission. An accurate, up-to-date roster of licensees is still not available. The Commission has not published its quarterly newsletter since February 1985, which was a copy of the statutes and regulations. The executive director states he does not have time to manage the appropriation from the Surety Fund for education. However, a position has recently been authorized, funded by the Surety Fund, for an educational coordinator. This position may also require clerical support.

We believe the need for additional temporary clerical help is critical at this time. The license examiner and investigator must have time available to assist in development of computer programs. Existing staff must have assistance with the biennial renewal of licenses and data input. The Commission should try to make the funding available from the FY 86 budget, seek assistance from any departmental typing pool, or request supplemental funding. Implementation of the recommendations such as changing the license renewal date and computerizing operations may reduce the workload and streamline operations so that a permanent position is not necessary in the long-term. Further analysis will be needed after the changes are instituted. However, we believe temporary assistance is critically necessary at this time.

Recommendation No. 5

The investigator should develop a time accounting system which would document investigative actions.

During the course of our review, fifty license complaint files were examined from FY 84 and 85. Documentation

included the license complaint form and supporting documentation, a checklist, priority evaluation form, copies of the ten-day letters sent and the responses received, and the investigator's report/recommendation. Twenty-five of the fifty files had one or more errors noted such as lack of forms, incomplete forms, no commissioner signatures on closure recommendations, or missing files. It was extremely difficult to determine what, if any, investigation was done. Some files were referred back to the investigator marked "investigate" but no further action had been documented.

The investigator was unable to estimate how much time he spent on investigations, tracking Surety Fund claims, and other assigned duties. Implementation of a time accounting system, in conjunction with the computerized complaint tracking system, would analyze his workload as well as document investigative procedures.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analysis of Commission activities relate 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.
 - A. The Commission has held five meetings each year during the last three years.
 - B. The Commission has implemented regulations to administer Surety Fund claims.
 - C. The Commission has issued fifteen stop orders to prevent unlicensed activity from continuing.
 - D. The Commission has sponsored seminars and publications on real estate matters.

- 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.
 - A. Procedures for processing licensing complaints are ineffective and inefficient (see Recommendation No. 1). Additionally, complaint files often lack documentation to determine if investigations are properly conducted (see Recommendation No. 5).
 - B. The statutes governing the Commission are not clear and concise and need revision (see Recommendation No. 3).
 - C. Existing staff needs temporary clerical assistance through completion of computer programming and the biennial license renewal (see Recommendation No. 4).
 - D. The Commission requires increasingly more legal assistance from the Department of Law, Attorney General's Office, which may not be available under the present budgetary program.

- III. The extent to which the board, commission, or agency has recommended statutory changes which are generally of benefit to the public interest.
- A. The Commission succeeded in having some obsolete or vague statutory requirements repealed or amended. Changes were also enacted to the Surety Fund claim process. A claimant is required to pay a \$250 filing fee, which may not be 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.
- A. Commission meetings are announced to the public. Time is scheduled to hear from interested persons.
- B. Comments on regulation changes are solicited by announcement in public newspapers and notices to interested associations.
- V. The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.
- A. The Commission announces proposed regulation changes or additions in newspapers in accordance with the Administrative Procedures Act.
- B. The Commission formed a Project Action Committee composed of commission members, licensees, and the public. Task forces for statutes and regulations, education, and agency were established to make recommendations in those areas.
- 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.
- A. We found no instances where the Commission did not respond to public inquiries.
- B. During the last three years, forty-nine complaints have been closed by the Office of the Ombudsman. Ten of these were found to be justified or partially justified and most involved unreasonable delay or lack of action on licensing complaints and Surety Fund claims.

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

A. The Commission gave the licensing examination each month in Anchorage and quarterly in Fairbanks, Kenai, and Juneau. Approximately 7,500 persons took the examination with 3,100 or 41 percent passing during the past three years. Licenses issued totalled 2,329.

B. The Commission revoked, suspended, or denied thirty licenses in the last three years. As of June 30, 1985, the Commission had 176 open license complaints.

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.

A. We found no evidence of problems in this area.

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.

A. Please refer to the previous section, Findings and Recommendations, and the December 1984 report by OMB included in its entirety as Appendix D of this report.

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APPENDIXES

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APPENDIX A

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
ALASKA REAL ESTATE COMMISSION
SCHEDULE OF GENERAL FUND REVENUES
COMPARED WITH OPERATING EXPENDITURES
For Fiscal Years 1983 through 1985
(UNAUDITED)
(Note 1)

	<u>Fiscal Year</u>		
	<u>1983</u>	<u>1984</u>	<u>1985</u>
<u>Revenues</u>	<u>\$ 130,941</u>	<u>\$477,074</u>	<u>\$229,200</u>
<u>Expenditures:</u>			
Personal services	195,737	195,066	245,089
Travel	18,011	19,752	18,890
Contractual services	91,241	83,700	42,734
Supplies and materials	5,312	3,282	4,243
Machinery and equipment	490	428	1,236
<u>Total Expenditures</u>	<u>310,791</u>	<u>302,228</u>	<u>312,192</u>
<u>Revenues over (under)</u> <u> Expenditures</u>	<u>\$(179,850)</u>	<u>\$174,846</u>	<u>\$(82,992)</u>

SCHEDULE OF REVENUES

<u>Unrestricted Revenues</u>	<u>Amount</u>	<u>Collection Time</u>
Examination fee	\$ 50	With taking the examination
Reciprocity fee	100	With granting of license through reciprocity
Initial license fee	100	With issuance of license
Renewal-active license	100	Biennially
Renewal-inactive license	50	Biennially
Amendment or transfer of license fee	5	When amending or transferring

Note 1: The information included in this schedule was obtained from the accounting records of the Alaska Real Estate Commission. The information has not been audited by us and, accordingly, we express no opinion on it.

APPENDIX B

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
ALASKA REAL ESTATE COMMISSION
SCHEDULE OF EXAMINATION STATISTICS
For Fiscal Years 1983 through 1985

	<u>Fiscal Year</u>		
	<u>1983</u>	<u>1984</u>	<u>1985</u>
<u>Brokers and Associate Brokers</u>			
Number of examinees	425	442	302
Number passed	190	186	156
Percentage pass rate	<u>44.7%</u>	<u>42.1%</u>	<u>51.7%</u>
<u>Salespersons</u>			
Number of examinees	2,305	2,436	1,604
Number passed	839	1,018	694
Percentage pass rate	<u>36.4%</u>	<u>41.8%</u>	<u>43.3%</u>
<u>Total</u>			
Number of examinees	2,730	2,878	1,906
Number passed	1,029	1,204	850
Percentage pass rate	<u>37.7%</u>	<u>41.8%</u>	<u>44.6%</u>
<u>Initial Licenses Issued</u>	<u>708</u>	<u>939</u>	<u>682</u>

APPENDIX C

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
ALASKA REAL ESTATE COMMISSION
SUMMARY OF RESPONSES TO A
REAL ESTATE LICENSEE QUESTIONNAIRE

Are you licensed as a (please circle one of the following):

Broker	Associate Broker	Salesperson	<i>Not Designated</i>
38	25	29	15

	<u>Yes</u>	<u>No</u>	<u>N/O*</u>
1. Do you believe that it is in the public's best interest that the following professions be licensed?			
a) Brokers	<u>99%</u>	<u>1%</u>	<u>0%</u>
b) Associate Brokers	<u>97%</u>	<u>3%</u>	<u>0%</u>
c) Salespersons	<u>98%</u>	<u>2%</u>	<u>0%</u>
2. Do you believe that the Real Estate Commission has operated in the public's best interest?	<u>84%</u>	<u>9%</u>	<u>7%</u>
3. Do you have any complaints regarding the handling of applications, fees, or other administrative duties by the Commission?	<u>31%</u>	<u>63%</u>	<u>6%</u>

Please explain if answered Yes.

Most prevalent answer was that the processing of applications, renewals, and complaints is not timely.

*No/Opinion

APPENDIX C

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
ALASKA REAL ESTATE COMMISSION
SUMMARY OF RESPONSES TO A
REAL ESTATE LICENSEE QUESTIONNAIRE

	<u>Yes</u>	<u>No</u>	<u>N/O</u>
4. Do you believe the examination and screening process for licensure is performed adequately by the Commission?	<u>73%</u>	<u>22%</u>	<u>5%</u>
Please explain if answered No.			
<i>Most prevalent answer was that requirements should be stricter.</i>			
5. Do you believe that applicants for real estate licenses should be required to complete real estate courses before they are licensed?	<u>67%</u>	<u>27%</u>	<u>6%</u>
6. Do you believe that continuing education should be required for the following to renew their licenses?			
a) Prokers	<u>56%</u>	<u>37%</u>	<u>7%</u>
b) Associate Brokers	<u>53%</u>	<u>37%</u>	<u>10%</u>
c) Salespersons	<u>54%</u>	<u>37%</u>	<u>9%</u>
7. Do you believe licensing by reciprocity should be continued?	<u>76%</u>	<u>18%</u>	<u>6%</u>
8. Does the license examination cover material which is not pertinent or relevant to actual practice?	<u>48%</u>	<u>33%</u>	<u>19%</u>

Please explain if answered Yes.

Most prevalent answers were that the examination is too technical, and more emphasis should be placed on professional ethics.

APPENDIX C

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
ALASKA REAL ESTATE COMMISSION
SUMMARY OF RESPONSES TO A
REAL ESTATE LICENSEE QUESTIONNAIRE

9.	Has the Commission handled complaints fairly?	<u>47%</u>	<u>14%</u>	<u>39%</u>
10.	Do you believe the Commission should conduct broker trust account audits on a random basis?	<u>60%</u>	<u>32%</u>	<u>8%</u>
11.	Do you believe the Commission has adequate revocation and suspension powers to be effective?	<u>81%</u>	<u>8%</u>	<u>11%</u>
12.	Do you believe the Commission should be allowed to levy fines for enforcement of regulations?	<u>59%</u>	<u>28%</u>	<u>13%</u>
13.	Do you believe the Commission has discriminated against minorities?	<u>0%</u>	<u>86%</u>	<u>14%</u>

Response Rate:

Number of Questionnaires Sent:	250
Number of Responses Received:	107
Response Rate:	42.8%

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**Management Audit Report
On The
Alaska Real Estate Commission**

Division of Management
December 1984

OMB

STAFF PAPERS AND REPORTS

STATE OF ALASKA
BILL SHEFFIELD, GOVERNOR

OFFICE OF MANAGEMENT AND BUDGET

STATE OF ALASKA

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OFFICE OF MANAGEMENT AND BUDGET
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December 11, 1984

Mr. John T. Shively
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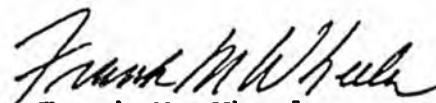
Dear Mr. Shively:

We are pleased to submit our Management Audit Report on the Alaska Real Estate Commission (AREC). The audit was requested by Barbara Hill, AREC Chairman.

This report provides specific recommendations for improving the Commission's licensing, license complaint, and surety fund claim operations. This report also identifies the need for improving the Commission's current office automation and internal management control.

AREC is presently taking action to improve its operations based on our recommendations. An implementation project, under the direction of AREC Commissioner Dave Ribacchi, should be completed by September 1985.

Sincerely,



Frank M. Wheeler
Associate Director

Enclosure

cc/enc: Carol Derfner, Special Staff Assistant
Office of the Governor

Lois Cock, Director
Division of Administrative Services
Department of Commerce and
Economic Development

Barbara Hill, Chairman
Alaska Real Estate Commission

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SUMMARY

The Alaska Real Estate Commission (AREC) regulates the State's real estate profession by examining prospective licensees, issuing licenses, investigating license complaints, and holding hearings to suspend or revoke licenses. AREC is also responsible for adjudicating surety fund claims from victims of fraud, deceit, misrepresentation, and conversion of trust funds by licensees.

At the request of AREC Chairman Barbara Hill, the Office of Management and Budget (OMB) conducted a management audit of AREC. This report shows that AREC could improve its licensing, license complaint, and surety fund claim operations. The report also identifies the need for improving the Commission's current office automation and internal management control.

LICENSING

AREC could improve its licensing operations by:

- Verifying that license candidates have passed the licensing examination before issuing licenses;
- Prorating initial license fees within the licensing biennium;
- Establishing the license renewal date as the first of the month following each licensee's birthday;
- Using the current ten-year license certificate as a permanent license certificate;
- Updating the licensee register;
- Initiating a cooperative information network between the Commission, Alaska Association of Realtors, and multiple listing services to periodically compare each other's licensee registers; and
- Identifying licensees with lapsed licenses who are currently engaged in real estate business.

LICENSE COMPLAINTS

AREC could improve its license complaint operations by:

- Establishing a formal, structured procedure for processing license complaints;
- Re-evaluating the investigator position;
- Discontinuing to close complaints "without prejudice" and establishing an administrative closure process;
- Providing complainants and respondents with closure letters immediately following complaint closures; and
- Revising the license entitlement statute to read "Eligibility for License" and including a provision that licensees will lose their eligibility for all licenses upon license revocation.

SURETY FUND CLAIMS

AREC could improve its surety fund claim operations by:

- Establishing a minimum fund balance for the Real Estate Surety Fund instead of the current maximum fund balance;
- Combining license action and surety fund claim hearings;
- Reducing the current \$250 filing fee to a more reasonable amount, such as \$50, or discontinuing the fee if surety fund claims are included with license complaints;
- Re-evaluating the staff hearing officer position;
- Proceeding to recover paid claims and hearing costs from licensees; and
- Returning the two \$10,000 warrants found in Commission files to the State treasury.

OFFICE AUTOMATION

AREC could improve its operations by:

- Replacing the current Wang word processing system with a computer system, such as a Wang VS System 80 if it meets needs; and
- Considering to replace the current daisy-wheel printer with a higher speed printer.

INTERNAL MANAGEMENT CONTROL

AREC could improve its operations by:

- Establishing standard policies and operating procedures; and
- Delegating authority in writing to its staff.

OTHER ISSUES

Other issues which should be addressed by AREC include:

- Ensuring the confidentiality of open investigative files;
- Conducting audits of broker trust accounts;
- Developing an operations manual for commissioners; and
- Forming joint committees between AREC and the Alaska Association of Realtors to study areas of common concern.

AGENCY COMMENTS

Based on the recommendations in our draft report, AREC is taking action to improve its operations. AREC Commissioner Dave Ribacchi has been appointed project manager to coordinate the Commission's implementation of our recommendations. During the implementation project, Commissioner Ribacchi will utilize joint committees between AREC and the Alaska Association of Realtors. Senior OMB Analyst Greg Moyer, who conducted the management audit, will assist Commissioner Ribacchi and the joint committees.

INTRODUCTION

The Alaska Real Estate Commission (AREC) was established in 1964 to regulate the State's real estate profession. AREC regulatory responsibilities include:

- examining prospective real estate licensees;
- issuing real estate licenses to qualified applicants;
- conducting investigations to determine whether real estate agents have violated statutes or regulations; and
- holding hearings to suspend or revoke licenses of real estate agents who violate statutes or regulations.

AREC is also authorized to conduct educational clinics or seminars for the purpose of raising the standards of the real estate industry and the competency of licensees.

LICENSEES

There are currently a total of about 5,500 licensed real estate agents in Alaska. Of this total, approximately 3,900 are actively employed as real estate agents, 600 are inactive, and 1,000 are lapsed (licenses not renewed by real estate agents).

Of the 3,900 active licensees, approximately 1,400 are associate brokers or brokers, and 2,500 are salespersons. A broker differs from an associate broker in that a broker is an owner of a real estate business or is 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.

LICENSE REQUIREMENTS

For a real estate broker or associate broker license, an applicant must pass an examination, be a State resident, have had 24 months of continuous work experience as a real estate salesperson, and have not engaged in conduct demonstrating unfitness to be a broker.

For a real estate salesperson license, an applicant must pass an examination, be a resident of the State, be employed by a real estate broker, and have not engaged in conduct demonstrating unfitness to be a salesperson.

LICENSE RENEWAL

Currently, all real estate licenses are renewed biennially on the first of February in even-numbered years. Licenses were last renewed on February 1, 1984. The next renewal will be on February 1, 1986.

LICENSE FEES

The fee schedule for real estate licenses is as follows:

	<u>License Fee</u>	<u>Surety Fee 1/</u>	<u>Process Fee</u>	<u>Total Fees</u>
<u>Initial License</u>				
Salesperson	\$100	\$40		\$140
Assoc. Broker/ Broker	\$100	\$125		\$225
<u>License Changes</u>				
Transfer			\$5	\$5
Name change			\$5	\$5
Address change			\$5	\$5
Inactivation			\$5	\$5
Reactivation			\$5	\$5
<u>Renewal</u>				
Active Salesperson	\$100	\$40		\$140
Active Broker or Assoc. Broker	\$100	\$125		\$225
Inactive Salesperson	\$50			\$50
Inactive Broker or Assoc. Broker	\$50			\$50

1/ AREC places these fees in the Real Estate Surety Fund to be used for making monetary settlements to victims of fraud, deceit, intentional misrepresentation, and conversion of trust funds by real estate agents.

During FY 84, which included a renewal of all licenses, AREC collected fees totaling approximately \$845,000. Of this amount, about \$292,000 was credited to the Real Estate Surety Fund and about \$553,000 was credited to the General Fund.

AREC ORGANIZATION

AREC consists of seven members: five real estate brokers or associate brokers, and two public members appointed by the Governor, with confirmation of the Legislature.

AREC staff consists of an executive director, two half-time hearing officers, an auditor, a licensing examiner, a clerk typist, and a secretary.

PURPOSE AND SCOPE

Our review was conducted at the request of Barbara Hill, Chairman of the Alaska Real Estate Commission. The review had two purposes. The first purpose was to assess the effectiveness and efficiency of AREC operations, systems, and management methods. The second purpose was to provide recommendations for any needed improvements regarding operating efficiency and effectiveness which would enhance service delivery or reduce present costs.

During our review, we performed the following steps:

- Reviewed applicable statutes, regulations, and AREC policies and procedures;
- Interviewed Commission members and staff, and Alaska Association of Realtors officials;
- Documented and evaluated the Commission's workloads, staffing, and management methods;
- Reviewed and analyzed current AREC systems and procedures for examining prospective licensees, issuing and renewing licenses, investigating license violations, and adjudicating license complaints and surety fund claims;
- Reviewed statutes, regulations, and procedures of other states' real estate commissions; and
- Attended two Commission meetings and the National Association of Real Estate License Law Officials (NARELLO) annual meeting.

LICENSING

AREC licensing responsibilities are critical to regulating the State's real estate profession. These responsibilities include examining prospective licensees, collecting license fees, renewing licenses, and maintaining a current license register. Our review found that AREC could improve its operations in each of these areas as discussed below.

LICENSING EXAMINATION

In Alaska, candidates for a real estate license must pass a licensing examination. Currently, an average of 200 candidates a month take the Alaska real estate licensing examination. The Educational Testing Service (ETS), which is under contract to administer the examination statewide, provides each candidate who takes the examination with a pass/fail notice. ETS also provides AREC with a pass/fail listing on microfiche.

Candidates who pass the licensing examination may apply to AREC for a real estate license. On the license application, candidates must provide the date they passed the examination and the examination site. With this information, AREC can verify whether candidates actually passed the examination by checking their names on the ETS pass/fail listings. However, our review found that AREC has been issuing real estate licenses without verifying that candidates actually passed the licensing examination. According to the AREC license examiner, AREC has relied on information provided by candidates on the license application.

Issuing licenses without verifying examination results defeats the purpose of examining license candidates. By not verifying examination results, there is a remote possibility that some real estate licenses have been issued to candidates who have failed the examination or have never taken the examination.

LICENSE FEES

Our review found that initial license fees would be more equitable if the fees were prorated within the licensing biennium. Currently, broker/associate broker candidates and salesperson candidates must pay the total license fees of \$225 and \$140 respectively when applying for their initial licenses. Current AREC regulations prohibit prorating fees within the licensing biennium. By not prorating fees, some new licensees are required to pay another \$225 or \$140 in renewal fees even though their initial licenses were applied for and received a month or two prior to the renewal date.

If AREC would prorate initial license fees, we envision the fees being prorated from the first of the month following date of initial license application to date of renewal. (The date of initial license application would be the postmark date if application is mailed or AREC receipt date if application is delivered.)

LICENSE RENEWAL

Our review found that license renewals could be accomplished more efficiently if licenses were renewed biennially based on each licensee's birthday. Currently, all real estate licenses are renewed biennially on the first of February in even-numbered years. To renew over 5,000 licenses at the same time, AREC must commit the majority of its staff to send renewal notices, open mail, receipt fees, review renewal applications, issue licenses, and update licensee data. The latest license renewal in February 1984 required staff commitment from December 1983 to May 1984. During this period, other AREC functions such as investigating license complaints, monitoring surety fund claim hearings, and publishing the AREC newsletter were disrupted.

By establishing the license renewal date as the first of the month following each licensee's birthday, AREC would have twelve license renewals instead of one. This renewal process would spread the administrative workload over the entire year allowing time for the AREC staff to perform its other functions with minimal disruption. Both the AREC executive director and license examiner support this renewal process. In addition, real estate commissions in Idaho, Oregon, and Washington have switched to this renewal process to eliminate the burden of renewing all licenses at the same time.

If AREC would establish the license renewal date based on each licensee's birthday, we envision a transition renewal in February 1986. Licenses would be renewed from February 1, 1986, to the first of the month following each licensee's birthday in 1987. Total renewal fees (license and surety fees) would be prorated based on the schedule shown on the following page.

<u>Birthday Month</u>	<u>Date License Renewed to</u>	<u>Broker/Associate Broker Renewal Fees</u>	<u>Salesperson Renewal Fees</u>
January	February 1, 1987	\$113	\$ 70
February	March 1, 1987	122	76
March	April 1, 1987	131	82
April	May 1, 1987	141	88
May	June 1, 1987	150	93
June	July 1, 1987	159	99
July	August 1, 1987	169	105
August	September 1, 1987	178	111
September	October 1, 1987	188	117
October	November 1, 1987	197	123
November	December 1, 1987	206	128
December	January 1, 1987	216	134

The next license renewal would be two years from the above dates and biennium renewal fees for brokers/associate brokers and salespersons would be \$225 and \$140 respectively.

LICENSE CERTIFICATE

For license renewals prior to the February 1984 renewal, AREC provided licensees with license certificates that were valid for only one licensing biennium. However, for the February 1984 renewal, AREC provided licensees with certificates that are to be valid for five licensing bienniums. Each license certificate has five spaces for renewal validation stickers. This use of validation stickers is similar to the system used for motor vehicle licensing.

We support the use of validation stickers instead of printing and issuing new license certificates at each renewal. However, we believe the current ten-year license certificates could be permanent license certificates by continuing to place new validation stickers over existing stickers. Real estate commissions in Montana, Rhode Island, South Dakota, and Tennessee currently have permanent license certificates with validation stickers.

If AREC would establish the license renewal date as the first of the month following each licensee's birthday, we envision the validation stickers to read as shown in the example below.

EXAMPLE

For a licensee with a birthday on May 3, the following validation sticker would be sent to the licensee at the February 1, 1986 renewal:

EXPIRES 6-1-87

During May 1987, the license would again be renewed and the following validation sticker would be sent to the licensee:

EXPIRES 6-1-89

LICENSEE REGISTER

AREC is required by statute to maintain a current register of licenses. AREC currently maintains an alphabetical register of licensees on its Wang word processor. The register is kept on 23 separate system documents which group licensees alphabetically by the first letter of their last names. For each licensee, the register provides the licensee's real estate office and address, license number, and license expiration date (currently January 31, 1986 for all licensees).

We reviewed the accuracy of the AREC licensee register by comparing its contents with a current licensee register provided by the Anchorage Multiple Listing Service (MLS). Our review found inaccuracies in the AREC licensee register. Specifically, we found:

- The AREC register did not account for some licensees. During our review, we found five licensed real estate agents (including one broker) not listed on the

register. Each of these licensees are actively engaged in real estate business.

- The AREC register listed some licensees twice - once as active and once as lapsed.
- The AREC register did not have current company names and addresses for some real estate firms.

Concerning licensees not accounted for on the register, the AREC licensing examiner told us that her predecessor failed to enter some licensees on the register during the 1982 renewal. Specifically, these licensees included some brokers with low license numbers and some licensees with license numbers between 7000 and 7999.

Lapsed Licenses

The AREC licensing examiner estimates that 1,000 licensees on the AREC licensee register have lapsed licenses. Given the inaccuracies found in the AREC licensee register, we are concerned that some licensees with lapsed licenses may not have received notices of the February 1984 license renewal. Though licensees have the responsibility to renew their licenses with or without renewal notices, we believe that AREC should make an attempt to identify licensees with lapsed licenses who are currently engaged in real estate business. For example, AREC could send a notice to brokers instructing the brokers to verify the license status of each associate broker and salesperson under their supervision.

RECOMMENDATIONS

In the area of licensing, we recommend that AREC:

1. Verify that license candidates have passed the licensing examination before issuing licenses. It is our understanding that the AREC license examiner has already been instructed by the executive director to implement this recommendation.
2. Prorate initial license fees within the licensing biennium.
3. Establish the license renewal date as the first of the month following each licensee's birthday.
4. Use the current ten-year license certificate as a permanent license certificate by continuing to place new validation stickers over existing stickers.

5. Update the licensee register. For a cost of \$85, Wang Laboratories could take the 23 system documents of the current alphabetical register and provide AREC with a register in sequential order by license number. This new register could then be compared with information in the Commission's hard-copy license folders which are also kept in sequential order by license number. This register could also be compared with an AREC notebook which recorded license issues in sequential order prior to use of the word processor.
6. Initiate a cooperative information network between the Commission, Alaska Association of Realtors, and multiple listing services to periodically compare each other's licensee registers.
7. Identify licensees with lapsed licenses who are currently engaged in real estate business. AREC could send a notice to brokers instructing the brokers to verify the license status of each associate broker and salesperson under their supervision.

LICENSE COMPLAINTS

As a regulatory agency, AREC is responsible for investigating complaints alleging licensee violations of State statutes or regulations. AREC is also responsible for suspending or revoking licenses of real estate licensees who actually violate statutes or regulations. Our review found that AREC could improve its operations in each of these areas as discussed below.

COMPLAINT STATISTICS

As of September 14, 1984, AREC showed the following license complaint statistics:

<u>Year</u> <u>Complaints</u> <u>Filed</u>	<u>Total</u> <u>Complaints</u> <u>Filed</u>	<u>Total</u> <u>Complaints</u> <u>Closed</u>	<u>Total</u> <u>Complaints</u> <u>Open</u>
1977	86	85	1
1978	108	99	9
1979	203	200	3
1980	114	110	4
1981	119	101	18
1982	151	115	36
1983	184	103	81
1984 to date	<u>170</u>	<u>54</u>	<u>116</u>
Total	<u>1,135</u>	<u>867</u>	<u>268</u>

Of the 268 open complaints, only 24 complaints were designated as being in active investigation and 17 were designated as having license actions in progress. The remaining 227 open cases were in backlog status.

We reviewed 61 of approximately 240 closed license complaints which were in AREC files awaiting closure letters. Our review found that the average processing time for these complaints from date of complaint filing to date of recommended closure was 14 months.

COMPLAINT PROCESSING

Our review found that AREC lacks a formal, structured procedure for processing license complaints. AREC currently processes complaints based on informal procedures established by the executive director and auditor. We believe these procedures were implemented before being fully developed and are currently

ineffective and inefficient. Examples of these procedures are shown below.

1. For each complaint actively investigated, AREC has a procedure to forward a copy of the complaint file to an AREC commissioner. The commissioner supposedly becomes an "investigating commissioner" who will assist the AREC auditor during the investigation. However, we found that neither the auditor nor commissioners know what is expected of the "investigating commissioner." The procedure has never been formalized to identify the commissia ers' investigative duties.
2. For each complaint recommended for closure, AREC has a procedure to forward the original complaint file to an AREC commissioner. The commissioner is supposed to review the file, approve or disapprove the closure recommendation, and return the file to the AREC auditor. During the next Commission meeting, those complaints approved for closure by individual commissioners are officially voted closed by the entire Commission. We question the entire Commission voting to close complaints when the complaints were only reviewed by one commissioner. We also question the mailing of original complaint files to commissioners, especially when we were told that four original files have been lost through these mailings.

We believe that AREC needs a formal, structured procedure for processing complaints from date of initial inquiry to completion of hearing. The procedure should provide a sequence of processing stages and internal time standards (processing days from date of complaint filing). We also believe that the processing stages should be supported by statutes and regulations.

If AREC would establish a formal, structured procedure for processing license complaints, we envision the following major processing stages, internal time standards, and needed statute and regulation sections:

<u>Processing Stage</u>	<u>Internal Time Standard</u>	<u>Statute Section</u>	<u>Regulation Section</u>
1. <u>INQUIRY</u>			
AREC documents the volume and nature of questions answered and problems resolved by telephone, mail, and personal contact.			Acceptance of Inquiry Record of Inquiry

	<u>Processing Stage</u>	<u>Internal Time Standard</u>	<u>Statute Section</u>	<u>Regulation Section</u>
2.	<u>COMPLAINT</u>		Complaint	Complaints by Individuals Complaints by Commission
	AREC sends a copy of the complaint and an interrogatory to respondent.	10 days		
	Respondent provides AREC with completed interrogatory.	30 days		
3.	<u>STAFF INVESTIGATION</u>		Investigation	Investigation Procedures Determination Procedures
	AREC prepares an investigative plan of action.	45 days		
	After investigation, AREC makes a determination whether or not complaint is supported by substantial evidence.	90 days		
4.	<u>STIPULATION</u>		Stipulation	Stipulation Procedures
	If the complaint is supported by substantial evidence, AREC provides respondent with proposed terms of stipulation, i.e., license suspension for specific time period.	120 days		
	Respondent accepts or rejects the proposed stipulation.	150 days		

	<u>Processing Stage</u>	<u>Internal Time Standard</u>	<u>Statute Section</u>	<u>Regulation Section</u>
5.	<u>HEARING</u>		Hearing	Commencement of Hearing Process
	If proposed stipulation is rejected by respondent, a hearing commences.	180 days	Order	Subpoenas
				Notice of Hearing
				Conduct of Hearing
				Hearing Officer's Recommended Decision
				Orders by Commission
				Hearing Record

By establishing a complaint processing procedure supported by internal time standards, statutes, and regulations, we believe that AREC would be more accountable to licensees and the public.

INVESTIGATOR

The AREC auditor is responsible for investigating license complaints filed with the Commission. The auditor is an Accountant III with no prior investigative experience.

Current AREC statutes state that "the executive director shall appoint, with approval of the commission, a full-time investigator or auditor." We understand that an auditor was appointed because investigations may involve audits of broker trust accounts. However, we found that the auditor has conducted only three trust account audits since his appointment three years ago.

We believe AREC should re-evaluate its investigator position. In our opinion, the State's class specification 7768, Investigator III, includes the knowledge and skills needed by AREC. We note that each investigator within the State's Division of Occupational Licensing is an Investigator III.

Closure Letters

AREC currently has about 240 closed license complaints which are awaiting closure letters to complainants and respondents. These complaints were closed by the Commission between 1982 and 1984. Given that the usual license complaint involves two brokers, two salespersons, and a complainant, we estimate that approximately 960 respondents and 240 complainants have not received closure letters.

We believe that AREC has the responsibility to provide complainants and respondents with prompt notices of complaint closures. AREC currently has a form letter which could be prepared immediately following closures.

For the 240 closed license complaints currently awaiting closure letters, AREC should consider employing a student intern or other part-time employee to prepare the estimated 1,200 closure letters. Given that some of these complaints were filed years ago, the mailing addresses of complainants and respondents will have to be verified.

COMPLAINT CLOSURE

Our review found that the majority of complaints closed by AREC are closed for the reason of limited staff resources, not lack of substantial evidence. We reviewed 61 of approximately 240 closed complaints which were in AREC files awaiting closure letters. Almost all of the complaints we reviewed were voted closed by the Commission "without prejudice" -- meaning that the complaints, if investigated, would probably prove that license violations occurred, but the violations are probably not severe enough for using staff resources to investigate. Though the AREC auditor told us that these complaints could be reopened for investigation at a later time, we question the closing of complaints which may be supported by substantial evidence. We also question the time and money spent to officially close complaints which may be reopened; i.e., mailing complaint files to/from commissioners for review of staff recommended closures and voting to officially close complaints at Commission meetings.

If AREC would discontinue the closing of complaints "without prejudice," we envision the following complaint closure process:

1. After receipt of the respondent's completed interrogatory (within 30 days of complaint filing), AREC staff makes a determination based on the weight of the evidence whether or not the complaint warrants further investigation.

2. If the AREC staff determines that the complaint does not warrant further investigation, the staff administratively closes the complaint and notifies the complainant and respondent. By regulation, the complainant may apply to the Commission's chairman for a reconsideration of the staff's determination to close the complaint. The application must be in writing and filed within 30 days after receipt of closure notice unless the chairman grants an extension. The chairman will review the entire complaint file and may hear oral argument from the parties. If the chairman grants the complainant's application for reconsideration, the chairman will remand the complaint to staff for further investigation.

LICENSE ACTION

If AREC proves that a licensee has violated State statutes or regulations, the licensee's real estate license could be revoked or suspended by the Commission. However, we found that a broker or associate broker is still "entitled" to a salesperson license even though AREC revokes the broker or associate broker license. Current AREC statute 08.88.171, Entitlement to License, has no provision for barring a broker's or associate broker's entitlement to a salesperson license after revocation of the broker or associate broker license.

If AREC would revise its license entitlement statute, we envision the following statutory changes:

1. Change AS 08.88.171 from "Entitlement to License" to "Eligibility for License."
2. Include in AS 08.88.171 a provision that licensees lose their eligibility for all licenses upon license revocation. Also, include a provision that license eligibility can only be reinstated by the Commission.

RECOMMENDATIONS

In the area of license complaints, we recommend that AREC:

1. Establish a formal, structured procedure for processing license complaints. The procedure should include a sequence of processing stages with internal time standards. The processing stages should be supported by statutes and regulations.

2. Re-evaluate the investigator position. We believe that the position requires the knowledge and skills of an Investigator III, not an Accountant III.
3. Discontinue closing complaints "without prejudice." We believe AREC should establish an administrative closure process for complaints.
4. Provide complainants and respondents with closure letters immediately following complaint closures. For the approximately 240 closed complaints currently awaiting closure letters, AREC should employ a student intern or other part-time employee to prepare the estimated 1,200 letters.
5. Revise its license entitlement statute to read "Eligibility for License" and include a provision that licensees lose their eligibility for all licenses upon license revocation.

SURETY FUND CLAIMS

In 1974 the Real Estate Surety Fund was established to provide monetary settlements to victims of fraud, deceit, misrepresentation, and conversion of trust funds by licensees. From 1974 to 1980, victims had to receive court judgments against licensees before claims were paid. However, in 1981 AREC was given the responsibility of adjudicating surety fund claims. Our review found that AREC could improve its operations in this area as discussed below.

CLAIM STATISTICS

As of September 14, 1984, AREC showed the following surety fund claim statistics:

<u>Year</u> <u>Claims</u> <u>Filed</u>	<u>Total</u> <u>Claims</u> <u>Filed</u>	<u>Total</u> <u>Claims</u> <u>Paid</u>	<u>Total</u> <u>Amounts</u> <u>Paid</u>
1981	52	3	\$11,943
1982	92	18	\$62,612
1983	123	14	\$67,644
1984 to date	101	6	\$43,017

A total of 197 open claims were in backlog status.

FUND BALANCE

The Real Estate Surety Fund is totally funded by surety fees assessed from licensees. Current AREC statutes state that the fund may not exceed \$500,000. The fund's current balance is about \$650,000. We understand that the excess \$150,000 will be transferred to the General Fund.

Given that the fund balance currently exceeds its statutory limit, we question the Commission's continued assessment of surety fees. By continuing to assess surety fees, AREC is collecting monies from licensees for the General Fund, not the Surety Fund. Licensees actually pay the General Fund twice - once from their license fees and another from their surety fees.

AREC is attempting to resolve this situation by introducing legislation to raise the fund limit from \$500,000 to \$850,000. However, we estimate that the fund balance will probably exceed the \$850,000 limit after the February 1986 renewal. New legislation would have to be introduced to raise the fund limit again.

Based on the National Association of Realtors suggested pattern for real estate license law, we envision a statute provision for a minimum fund balance instead of the current maximum fund balance. As long as the balance remains above the minimum, licensees would not be assessed surety fees. However, if the balance becomes less than the minimum, licensees would be assessed surety fees during the next license renewal.

By establishing a minimum fund balance, AREC and licensees could realize the following benefits:

1. Based on the dollar amount of claims paid in prior years, AREC could set a minimum fund balance which would not require continuous statutory revisions as is currently being experienced with the maximum fund balance.
2. By not having to assess surety fees while the fund balance remains above the minimum, AREC could have less administrative costs.
3. By not having to pay surety fees while the fund balance remains above the minimum, brokers/associate brokers and salespersons could save \$125 and \$40 respectively in renewal fees.

HEARINGS

Our review found that AREC could combine license action and surety fund claim hearings. Currently, AREC holds separate hearings for adjudicating license actions and surety fund claims. However, given that a surety fund claim can only be awarded if a license violation occurs, we envision the following changes:

1. One AREC complaint form for complainants to report license violations and any monetary damages resulting from the violations. (AREC currently has separate forms for license complaints and surety fund claims.)
2. Staff investigations to determine if reported license violations are supported by substantial evidence and to verify any monetary damages. (AREC currently investigates only reported license violations; surety fund claims are automatically scheduled for hearing with no staff review or investigation.)
3. One hearing to determine license actions to be taken against licensees who violate State statutes or regulations and to determine complainants' monetary settlements from the Surety Fund (AREC currently holds separate hearings.)

HEARING OFFICERS

In November 1984 two half-time hearing officers joined the AREC staff to adjudicate surety fund claims and license actions. The AREC executive director estimates that the hearing officers will complete the backlog of surety fund claims in eight to ten months. Given this estimate, we believe that AREC should re-evaluate its hearing officer position. AREC may only need one half-time hearing officer in FY 86. The other half-time hearing officer might be utilized as a hearing advocate to assist in AREC investigations and hearing preparations.

FILING FEE

As of October 4, 1984, persons filing surety fund claims must pay a \$250 filing fee. We understand that the filing fee was established to discourage the filing of frivolous claims. Since AREC does not investigate surety fund claims, all claims including those considered frivolous must be adjudicated by a hearing.

We believe that the \$250 filing fee is excessive, if not unnecessary. A \$50 filing fee, as currently charged by small claims court, would be more reasonable. In addition, a filing fee would not be necessary if surety fund claims were included with license complaints. Frivolous claims would be identified during staff investigations of license complaints.

CLAIM RECOVERY

According to AREC statute 08.88.490, when the Commission pays a surety fund claim, "the Commission shall be subrogated to all of the rights of the claimant to the amount paid and the claimant shall assign all of his right, title, and interest in that portion of the claim to the Commission." Based on this statute provision, AREC has attempted to recover paid claims and hearing costs from the licensees who committed the license violations. However, our review found that AREC recovery attempts have been minimal. We found that AREC has sent only one notice, dated July 31, 1984, to the licensees requesting payment.

As of September 14, 1984, AREC showed the following claim recovery statistics:

<u>Number of Licensees</u>	<u>Total Amount of Claims Paid and Hearing Costs Incurred</u>	<u>Total Amount Recovered From Licensees</u>
33	\$200,680	\$33,597

CLAIM WARRANTS

During our review, we found two \$10,000 warrants which should have been returned to the State treasury. Both warrants were issued as surety fund claim payments, but the warrants were never forwarded to the claimants. One warrant, issued December 1981, was being held pending the outcome of an appeal made by the respondent. However, the warrant is no longer redeemable because of its age. The other warrant, issued March 1984, was not forwarded to the claimant due to a May 1984 court interpretation which disallowed payment of the claim.

RECOMMENDATIONS

In the area of surety fund claims, we recommend that AREC:

1. Establish a minimum fund balance for the Real Estate Surety Fund. Surety fees would only be assessed if the fund balance becomes less than the minimum.
2. Combine license action and surety fund claim hearings. AREC should also consider including surety fund claims with license complaints.
3. Reduce the \$250 filing fee to a more reasonable amount, such as \$50. However, if AREC includes surety fund claims with license complaints, the filing fee should be discontinued.
4. Re-evaluate the staff hearing officer position. Given the executive director's estimate of future workload, AREC may only need one half-time hearing officer in FY 86.
5. Proceed to recover paid claims and hearing costs from licensees.
6. Return the two \$10,000 warrants found in Commission files to the State treasury.

OFFICE AUTOMATION

Office automation is essential for AREC to operate an effective and efficient regulatory agency. Our review found that AREC could improve its current automation as discussed below.

CURRENT AUTOMATION

Our review found that AREC needs to improve its current office automation. AREC currently utilizes a Wang word processing system. We found that this system is being utilized far beyond its intended capabilities and is supplying only a fraction of the automated support needed by AREC.

In our opinion, AREC could use a computer system, not just the word processing system, to support the following areas:

1. Licensing - For each licensee, AREC needs computer support which will capture and provide access to current and historical data including:
 - a. personal data
 - b. licensing examination results
 - c. initial license date and number
 - d. current license status
 - e. history and dates of status changes
 - f. current employer
 - g. employer history and dates
 - h. current license complaint or surety claim
 - i. history of disciplinary actions
 - j. renewal and expiration dates

2. Office Registration - For each real estate office, AREC needs computer support which will capture and provide access to current and historical data including:
 - a. office address/telephone number
 - b. date office registration submitted
 - c. current office status
 - d. type of business/list of partners or corporation officers
 - e. current broker in charge/license number
 - f. history of brokers in charge with dates of employment and dates of termination
 - g. trust account name/number/bank

3. License Complaints and Surety Fund Claims - For each license complaint and surety fund claim, AREC needs computer support which will capture and provide access to current and historical data including:

- a. case number
- b. date initiated
- c. complainant/address/telephone number
- d. respondent/address/telephone number
- e. history of actions taken and dates
- f. next actions to be taken and dates
- g. current case status
- h. history of status changes

If AREC would improve its current automation, we envision a separate field (screen of information) for each licensee. Each field would be accessed by the licensee's license number. In addition, each field would provide other reference numbers such as the license number of the licensee's employing broker, the identification number of the licensee's real estate office, and file numbers of any license complaints or surety fund claims.

By including license numbers and other reference numbers, a computer could manipulate information to produce licensee rosters by real estate office or license type (broker, associate broker, or salesperson). To produce these rosters on the current word processing system, the AREC license examiner must sort information in 23 separate system documents. A recent roster of brokers took 1½ days to compile.

IMPROVED AUTOMATION

The Department of Commerce and Economic Development is taking steps to improve the Commission's office automation. The department's computer systems specialist is currently reviewing two alternative systems. These systems include:

1. Wang Office Information System (OIS) 140. This system is primarily a high-powered word processor with limited data processing capabilities.
2. Wang VS System 80. This system is a computer with high-volume, interactive computing capabilities. This system is currently being utilized by the State's Division of Occupational Licensing in Juneau.

Given the information processing needs of AREC, we believe AREC needs a computer system such as the Wang VS System 80, not another word processor. According to the department's computer systems specialist, the department has identified a refurbished VS system 80 which is available for purchase. If purchased,

this computer system could be utilized by AREC and other department operations in Anchorage.

We believe the department's computer systems specialist should also consider replacing the Commission's printer. We found the current daisy-wheel printer to be quite slow in printing licenses and licensee rosters. For example, a recent roster of brokers (approximately 750 names and addresses) took almost four hours to print.

RECOMMENDATIONS

In the area of office automation, we recommend that AREC:

1. Replace the current word processing system. Of the two alternative systems being considered for AREC (Wang OIS 140 and Wang VS System 90), the VS system is assumed to adequately support the Commission's information processing needs; a formal needs assessment would confirm its desirability.
2. Consider replacing the current daisy-wheel printer. We believe that AREC operations would benefit by having a higher speed printer.

INTERNAL MANAGEMENT CONTROL

To increase operational efficiency and effectiveness, the Commission needs to improve its internal management control. Specifically, we found that the Commission needs to establish two essential elements of internal management control as discussed below.

STANDARD POLICIES AND PROCEDURES

Our review found that the Commission has not established standard policies and operating procedures to give direction to staff decisions, and to set bounds within which such decisions and resulting actions are acceptable to the Commission. According to the AREC executive director, staff currently receive verbal directions from individual commissioners.

If the Commission would establish standard policies and operating procedures, we envision the following advantages for AREC:

1. Staff effort could be economized. It would be unnecessary for the staff to redecide the same issues.
2. Delegation of authority could be facilitated. Staff would be expected to proceed with actions so long as the situations are covered by the policies and procedures.
3. Control could be made easier. Policies and procedures would lead to uniformity of staff actions.

DELEGATED AUTHORITY

Our review also found that the Commission has not delegated authority to give its staff the right to decide and the power to carry out decisions within the staff's responsibilities. During our review, we witnessed staff frustration as a result of not being given the authority to carry out responsibilities.

If the Commission would formally delegate authority to its staff, we believe that the delegation should be spelled out in writing.

RECOMMENDATIONS

In the area of internal management control, we recommend that AREC:

1. Establish standard policies and operating procedures.
2. Delegate authority in writing to its staff.

OTHER ISSUES

During our review, we identified other issues which should be addressed by AREC. These issues and our recommendations are provided below.

CONFIDENTIALITY OF INVESTIGATIVE FILES

The Commission's open investigative files include unsubstantiated allegations of professional misconduct. A recent Attorney General opinion for AREC states that information in the Commission's open investigative files may not be withheld from public inspection. However, a prior Attorney General opinion for the State's Division of Occupational Licensing states that the division's open investigative files may be withheld from public inspection. Since AREC and the Division of Occupational Licensing have similar information in their investigative files, we question the different Attorney General opinions. In our opinion, the subjects of unsubstantiated allegations have a constitutional right not to have the information made public until the AREC investigation is completed and the relevant facts are presented at a public hearing.

Recommendation

We recommend that AREC request an explanation from the Attorney General concerning the different opinions given to AREC and the Division of Occupational Licensing. To ensure the confidentiality of open investigative files, we recommend that AREC statutes include a provision that all records of investigation and information obtained by the Commission during an investigation are confidential and may not be made available by the Commission for public inspection.

TRUST ACCOUNT AUDITS

The AREC executive director estimates that over fifty percent of the complaints filed with the Commission involve improper trust account management. Given this estimate, we question the lack of trust account audits currently being conducted by AREC. As previously mentioned, the AREC auditor has conducted only three audits of broker trust accounts in the last three years. Each of these audits was conducted as part of a complaint investigation.

If AREC could employ an Investigator III to handle complaint investigations, the current AREC auditor could conduct trust account audits on a full-time basis. We envision these audits being conducted as a service to brokers. Any accounting or

procedural deficiencies found and corrective actions needed would be discussed with brokers during exit conferences.

Recommendation

If staff resources would be available, we recommend that AREC conduct trust account audits to identify and resolve problems before the problems cause complaints to be filed with the Commission.

OPERATIONS MANUAL FOR COMMISSIONERS

AREC commissioners do not have an operations manual which could include:

- current statutes and regulations;
- delegated authority to staff;
- by-laws;
- standard policies and operating procedures;
- case law;
- forms; and
- other information which the commissioners deem appropriate.

Recommendation

We recommend that AREC develop an operations manual. This manual would provide excellent orientation material for new commissioners.

AREC/ALASKA ASSOCIATION OF REALTORS

We found that both the Alaska Real Estate Commission and the Alaska Association of Realtors (AAR) share the common goal of having effective and efficient regulation of the State's real estate profession. Based on this common goal, we believe that joint AREC/AAR committees could be utilized to study common concerns such as continuing education for licensees and statute/regulation revisions.

Recommendation

We recommend that the Alaska Real Estate Commission and the Alaska Association of Realtors form joint committees to study common concerns.

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BILL SHEFFIELD, GOVERNOR

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

POUCH D
JUNEAU, ALASKA 99811
PHONE: 465-2500

OFFICE OF THE COMMISSIONER

December 30, 1985

RECEIVED

DEC 31 1985

LEGISLATIVE
AUDIT

Mr. Gerald L. Wilkerson
Legislative Auditor
Division of Legislative Audit
P.O. Box W
Juneau, AK 99811

Dear Mr. Wilkerson:

Thank you for the opportunity to comment on your preliminary
audit report on the Alaska Real Estate Commission.

Enclosed is the response from the Alaska Real Estate Commission
on "A Performance Report on the Department of Commerce and
Economic Development, Alaska Real Estate Commission,
September 19, 1985."

Sincerely,


Loren H. Lounsbury
Commissioner

LHL/wfs3357W
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Enclosure

RECEIVED
DEC 31 1985

STATE OF ALASKA
MEMORANDUM

LEGISLATIVE
AUDIT

To: Loren Lounsbury
Commissioner
Dept. of Commerce & Economic Dev.

DATE: December 20, 1985

From: James L. Magowan
Executive Director
Alaska Real Estate Commission

Re: Answer to Preliminary Report of the Division of Legislative Audit

The real estate commission has reviewed the preliminary report of the Division of Legislative Audit and submits the following response:

Recommendation No. 1

The commission concurs with this recommendation and has implemented procedures that comply with the recommendations set out in the report. Procedures implementing each of the five points specifically mentioned have been adopted. The procedures now in place are attached (Attachment # 1).

Recommendation No. 2

The commission concurs with this recommendation. The commission has referred several major claims to the attorney general for collection. The commission is also submitting an application for membership in the Anchorage Credit Bureau so that it can be a source of credit information about licensees who have suspended licenses due to non repayment of the fund. The commission is also supporting an increase in the small claims limit to \$5000.

The authority to suspend licenses until the fund is repaid, without an additional hearing became effective October 2, 1984. Counsel advised that this authority applied to claims filed since that time. Commission policy and practice is to suspend the license of any licensee against whom an award is granted until the fund is repaid or satisfactory arrangements for repayment are made. The commission was advised that even with the statutory authority to suspend a license when the fund is not repaid it is necessary to advise the licensee, prior to the hearing, that this may occur. Licensees are now so notified and the order to suspend the license is contained in the final decision, again upon advice of counsel or hearing examiner as to the requirements for "due Process".

Effective recovery of most claims, particularly large ones requires that the commission execute against property or assets of the parties. This requires that the commission have court judgements. The commission feels that

effective recovery will, therefore, require additional assistance and time from the AG. The commission is also seeking statutory authority to execute on orders of payment out of the surety fund as though they were judgements, without further extended court proceedings once an award has been sustained on appeal or the time for appeal has tolled without appeal being filed.

Prior to the "suspension" clause being added to the statute the commission attempted collection in 1983. It sent letters to all licensees advising of the possibility of court action if the fund were not reimbursed. This attempt was largely ineffective due to the commission's inability to actively pursue the claims in court.

Recommendation No. 3

The commission concurs with this recommendation. The commission has requested that an attorney be assigned to assist with this on numerous occasions during the past nine years. During 1985 the commission formed a Project Action Committee one of the tasks of the committee was the preparation of recommendations for statutory amendments that the commission could submit for consideration during its "Sunset" review. The commission is submitting the results of this committee's work for consideration by the legislature. The issues specified in the LBA report as well as numerous others are addressed.

The commission concurs with the specific changes recommended in points 1 through 5 in the recommendation.

The commission is using a new renewal system for 1986-87 biennium. Before changing the dates for renewal the commission is going to evaluate the efficiency of this system as well as its cost effectiveness. Recent computer technology may make the current biennium clerically manageable and less costly than going to a Monthly or Birthdate renewal. The commission is not locked into one system over another but does not wish to introduce a new system until it is sure that it will not be introducing additional costs at the same time.

Recommendation No. 4

The commission concurs. An additional clerical position is desperately needed at this time.

Recommendation No. 5

The commission concurs and a time accounting system is now in effect.

Analysis of Public Need

The commission generally concurred with the findings of this section. The commission however notes that managerial and policy changes of the past 18 months have just begun to produce noticeable effects. The rate of complaint closures and license actions has begun to show dramatic increase.

In response to Item III the commission notes that it supported a filing fee of \$50 for a surety claim. The \$250 filing fee was enacted over recommendations from the commission and the industry that a lower fee be

adopted. There have been two known instances where claimants reported that they would need additional time before they could file a claim because they needed to obtain the money to pay the fee. There have been no substantiated instances at this time that a claim with at least face validity was not filed due to the amount of the fee.

The commission is currently reviewing options for the conduct of routine trust account audits including the possibility of developing a self-audit program that will enable the commission to identify problems in a more cost effective manner while at the same time offering the licensees a valuable educational and self help tool.

0179M

Complaint Investigative Procedures Checklist

1. Complaint Receipt: and evaluation

- Day
- [1] a. The Complaints Clerk will:
- [1] (1) log in the complaint with assignment of a complaint number;
- [1] (2) establish a complaint file to include:
- (a) a procedural checklist;
- (b) a contact record sheet;
- [1] (3) forward the file to the Investigator.
- [10] (4) send ten-day letters to identified licensees;
- (5) post responses to the file and forward them to the Investigator for evaluation.
- b. The Investigator will:
- [1-3] (1) assign a priority classification;
- [1-3] (2) assign a classification as to type of alleged violation;
- (3) identify the licensees to be contacted for response to the complaint (and any surety claim that accompanies the complaint);
- (4) initiate an investigative report under paragraph 2a.

2. Complaint evaluation:

- [1-3] a. The investigative report will include:
- (1) allegation(s) of the complainant;
- (2) violations that appear to be present;
- (3) evidence that supports the allegation(s);
- (4) probable outcome of the complaint;
- [30] b. Ten-day letter responses received. For failure to respond, initiate subpoena procedures in paragraph 8.
- [30] c. The Investigator will evaluate the responses and decide:
- (1) to investigate further, or
- (2) to close:
- (a) complete the investigative report for the file;
- (b) summarize the complaint for:
- 1 the weekly report to the Director;
- 2 the report for the next Commission meeting.

3. Investigation:

- [45] a. Write a work plan to detail the work required to complete the investigation and when the work will be accomplished. The work plan will be reviewed by the Executive Director.
- [90] b. Interview witnesses.
- [90] c. Identify needed additional documentation and obtain it.
- d. Record contacts and other work done on the complaint on the contact record sheet inside the complaint folder. The time taken for that particular entry will also be recorded.

4. Hearing:

- [150] a. Complete the Investigative Report.
- [150] b. Draft the accusation or statement of issues for the license action with the investigative report as the basis for this document.
- [150] c. Submit the draft license action and the investigative report, along with necessary evidence, to the Assistant Attorney General for review and critique.
- [150] d. Determine whether a license action will be heard with or without Attorney General participation after consultation with the Director and the Assistant Attorney General. If without, the Investigator and/or the Director will represent the Commission at the hearing.
- [150] e. Prepare the final copy of the license action document.
- [150] f. Serve the license action on the licensee(s) and copy to the Commission:
 - (1) complete the affidavit of service;
 - (2) provide notice of defense.
- [180] (a) If a notice of defense is not filed with the Commission within the specified fifteen days, prepare for an uncontested hearing at the next Commission meeting.
- [180] (b) If a notice of defense is filed, copy the license action, with notice(s) of defense, to the appropriate Hearing Examiner.
- [180] (c) If an entry of appearance is filed at any time by an attorney, copy the complete file to the Assistant Attorney General who may decide to enter the case if not already involved.
- g. Provide required assistance to the Hearing Examiner and/or the Assistant Attorney General to arrange for and conduct the pre-hearing conference and hearing.

5. Commission meeting:

- a. After hearing, copy the proposed decision to all parties, to the Commissioners and to the Lieutenant Governor.
- b. Ensure that the adoption order is signed by the Chairman.

6. Post-meeting:

- a. Copy all parties with the adopted decision by certified mail. Include a reconsideration request form to the licensee if the decision was to suspend or revoke;
- b. Notify each complainant of complaint closure;
- c. Publish the decision results in the licensee's local newspaper thirty days after service of the adopted decision to the licensee (and counsel) if there has been no request for reconsideration granted by the Commission and/or appeal to the Superior Court.

7. Stop Orders:

a. When a stop order is needed, coordinate service with the Commission. The Commission will be given a brief explanation of the need for the subpoena; this will be a written statement so that all members receive the same information. The stop order may be served with approval of a majority of the Commission. Any Commissioner not contacted directly will be informed by telegram.

b. The Investigator will draft the stop order and have the Assistant Attorney General review it for completeness and propriety.

c. The stop order may be served by certified mail or in person by the Investigator. If in person, the Investigator will make sure that the subject(s) understand that it is a definite order from the Commission to stop the identified activity, and that to continue is a violation which could result in a further charge.

d. Following service, the Investigator will complete an affidavit of service.

e. If a notice of defense is filed, a copy of the stop order, with the investigative report of the circumstances, will be provided to the Attorney General's office as soon as possible to comply with the requirement that hearings be scheduled within thirty days.

f. If the subject continues to operate after service of the stop order, the Investigator will notify the Attorney General's office to enforce the order.

8. Subpoenae:

a. When a subpoena is needed, the Investigator will poll the Commission for approval. The Commission will be given a brief explanation of the need for the subpoena; this will be a written statement so that all members receive the same information. A majority of the Commission must approve service. Any Commissioner not contacted directly will be informed by telegram.

b. Service may be by mail or in person. An affidavit of service will be completed.

c. If the recipient of the subpoena does not comply, the Investigator will contact the Attorney General's office to request enforcement. The Investigator will provide any assistance that may be requested by the Assistant Attorney General.

Complaint Investigative Procedures

1. Complaint Receipt:

- a. The Complaints Clerk will, within two days of receipt:
 - (1) log in the complaint with assignment of a complaint number;
 - (2) establish a complaint file to include:
 - (a) a procedural checklist;
 - (b) a contact record sheet;
 - (3) forward the file to the Investigator.
- b. The Investigator will, within one to three days of receipt:
 - (1) assign priority and violation type classifications;
 - (2) list the licensees to be contacted for response to the complaint;
 - (3) initiate an investigative report as described in paragraph 2a.
 - (4) return the file to the Complaints Clerk to send ten-day letters.

c. The Complaints Clerk will send a ten-day letter to all identified licensees. The letter will include a copy of the complaint and copies of supporting documentation which are necessary to understand the complaint and which the licensee would not already have.

d. Respondents to receive ten-day letters for a surety claim will be the same as those for the parallel license complaint.

2. Complaint Evaluation:

a. For each complaint, the Investigator will initiate an investigative report. This report will serve as the basis for the decision to close or proceed to hearing. It will include information as to contacts, information sources, information and conclusions. At the start, this report will list the:

- (1) allegation(s) of the complainant;
- (2) violations that appear to be present;
- (3) evidence that supports the allegation(s);
- (4) probable outcome of the complaint.

b. The responses to ten-day letters should be received within thirty days of the complaint filing date. If a respondent fails to respond, a second, certified, notice of complaint will be sent. If the respondent still fails to respond, a subpoena will be served according to procedures in paragraph 8.

c. Upon receipt of the response(s) to the ten-day letter(s), the Investigator will reevaluate the complaint. Following this reevaluation, there will be a decision to close the complaint without action or to investigate further.

d. If the decision is to close, the Investigator will summarize the events of the complaint, without names, and specify the reason for closure. The summary will be included in the weekly report to the Director and in the Investigator's Report to the Commission at the next meeting. The investigative report will be completed with an explanation of the reasons for closure and will be included in the complaint file. The complaint file will then go to the Complaints Clerk for closure letters to be sent to the parties. The complaint is considered closed at this time unless new information or a Commission request cause it to be reopened.

e. An unqualified license applicant will not receive a ten-day letter. The case will go immediately to the statement of issues stage in paragraph 4. An investigative report as specified in paragraph 1c will be initiated.

3. Investigation: With the decision to investigate further, the investigative report draft to date will serve as the basis for the investigation.

a. A work plan will be written by the Investigator which will detail what work remains to be done to complete the investigation and when the various elements of that work will be accomplished.

(1) The work plan is due within forty-five days of the complaint date.

(2) The work plan will be reviewed by the Executive Director.

b. Interview witnesses.

c. Identify needed additional documentation and obtain it.

d. The investigative report will serve as a record of the investigation.

e. Record contacts and other work done on the complaint on the contact record sheet inside the complaint folder. The time taken for that particular entry will also be recorded.

f. The investigation will be completed within ninety days of complaint receipt. By that time, the Investigator will determine whether the complaint should be taken to hearing or closed. The procedures as outlined in paragraph 1f will be used whenever the complaint is to be closed without action.

4. Hearing: the Investigator will:

a. Complete the investigative report.

b. Draft the accusation or statement of issues for the license action. The investigative report will serve as the basis for this document.

c. Submit the draft license action to the Assistant Attorney General for review. The investigative report and supporting evidence will be provided to the Assistant Attorney General at the same time for this review.

d. Determine whether a license action will be heard with or without Attorney General participation after consultation with the Director and the Assistant Attorney General. If without, the Investigator and/or the Director will represent the Commission at the hearing.

e. Prepare the final copy of the license action document.

f. Serve the license action. Service can be in person or by certified mail to the last registered address of the licensee.

(1) Provide notice of defense.

(2) Complete the affidavit of service.

g. Notice of Defense:

(1) If a notice of defense is not filed with the Commission within the specified fifteen days, prepare for an uncontested hearing at the next

Commission meeting as specified in paragraph 4j.

(2) With a notice of defense:

(a) assign the case to a Hearing Examiner;

(b) copy the accusation/statement of issues, with notice(s) of defense, to the Hearing Examiner.

(c) copy the license action, with notice(s) of defense, the investigative report and full documentation, to the Assistant Attorney General if the case is to be heard with Attorney General participation.

(3) The Assistant Attorney General will be informed of each instance where an attorney files an entry of appearance and will have the option to enter any case where the Commission staff had previously intended to proceed alone. If the Assistant Attorney General decides to enter the case, copy the entire file to the Attorney General's office.

h. Copy the served accusation/statement of issues to the Commission.

i. Provide whatever assistance is required by either the Hearing Examiner or the Assistant Attorney General to arrange for and conduct the pre-hearing conference and hearing.

5. Commission meeting:

a. Upon receipt of the proposed decision after hearing, provide copies to the parties, all Commissioners and to the Lieutenant Governor.

b. Once decided, ensure that the adoption order is signed by the Chairman.

c. Provide copies of the closed complaint summaries for review by the Commission.

d. An uncontested hearing will have neither a Hearing Examiner nor an Assistant Attorney General present. The Investigator will present the case to the Commission at the meeting as if the matter were contested. Each Commissioner will be provided with a full copy of the investigative report and evidence that supports the accusation or statement of issues.

6. Post-meeting:

a. Copy all parties with the adopted decision in the license action by certified mail. Include a reconsideration request form to the respondent if the decision was to revoke, suspend or deny.

b. Notify each complainant of complaint closure.

c. Publish the decision in the licensee's local newspaper on three successive weekends thirty days after service of the adopted decision to the respondent (and counsel) if there has been no granted reconsideration request by the Commission and/or appeal to the Superior Court. Publication can be immediate in uncontested cases.

7. Stop Orders:

a. When a stop order is needed, the Investigator will poll the Commission for approval. The Commission will be given a brief explanation of the

need for the stop order; this will be a written statement so that all members receive the same information. A majority of the Commission must approve service. Any Commissioner not contacted directly will be informed by telegram.

b. The Investigator will draft the stop order and take it to the Attorney General's office for review. The Investigator will also ask the coordinating Assistant Attorney General to review enforcement procedures available should the subject(s) of the stop order refuse to abide by it.

c. The stop order may be served by certified mail or in person by the Investigator. Upon service of the stop order, the Investigator will make sure that the subject(s) understand that it is a definite order from the Commission to stop the identified activity, and that to continue is a violation which could result in a further charge.

d. An affidavit of service will be completed.

e. A copy of the stop order, with supporting documentation and the investigative report, will be provided to the Attorney General's office if a notice of defense is filed. This will be done as soon as possible after receipt to comply with the requirement that hearings in such matters be scheduled within thirty days.

f. If the subject continues to operate without licensure after service of the stop order, the Investigator will notify the Attorney General's office to enforce the order.

8. Subpoenae:

a. When a subpoena is needed, the Investigator will poll the Commission for approval. The Commission will be given a brief explanation of the need for the subpoena; this will be a written statement so that all members receive the same information. A majority of the Commission must approve service. Any Commissioner not contacted directly will be informed by telegram.

b. Service may be by mail or in person. An Affidavit of Service will be completed.

c. If the recipient of the subpoena does not comply, the Investigator will contact the Attorney General's office by memorandum to request enforcement. The Investigator will provide any assistance that may be requested by the Assistant Attorney General.

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**Management Audit Report
On The
Alaska Real Estate Commission**

Division of Management
December 1984

OMB

STAFF PAPERS AND REPORTS

STATE OF ALASKA
BILL SHEFFIELD, GOVERNOR

OFFICE OF MANAGEMENT AND BUDGET

STATE OF ALASKA

OFFICE OF THE GOVERNOR

OFFICE OF MANAGEMENT AND BUDGET

DIVISION OF MANAGEMENT

BILL SHEFFIELD, GOVERNOR

POUCH AM
JUNEAU, ALASKA 99811
PHONE: (907) 465-3568

December 11, 1984

Mr. John T. Shively
Chief of Staff
Office of the Governor
Pouch A
Juneau, AK 99811

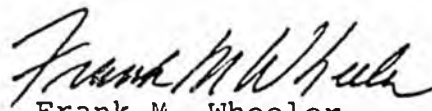
Dear Mr. Shively:

We are pleased to submit our Management Audit Report on the Alaska Real Estate Commission (AREC). The audit was requested by Barbara Hill, AREC Chairman.

This report provides specific recommendations for improving the Commission's licensing, license complaint, and surety fund claim operations. This report also identifies the need for improving the Commission's current office automation and internal management control.

AREC is presently taking action to improve its operations based on our recommendations. An implementation project, under the direction of AREC Commissioner Dave Ribacchi, should be completed by September 1985.

Sincerely,



Frank M. Wheeler
Associate Director

Enclosure

cc/enc: Carol Derfner, Special Staff Assistant
Office of the Governor

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SUMMARY

The Alaska Real Estate Commission (AREC) regulates the State's real estate profession by examining prospective licensees, issuing licenses, investigating license complaints, and holding hearings to suspend or revoke licenses. AREC is also responsible for adjudicating surety fund claims from victims of fraud, deceit, misrepresentation, and conversion of trust funds by licensees.

At the request of AREC Chairman Barbara Hill, the Office of Management and Budget (OMB) conducted a management audit of AREC. This report shows that AREC could improve its licensing, license complaint, and surety fund claim operations. The report also identifies the need for improving the Commission's current office automation and internal management control.

LICENSING

AREC could improve its licensing operations by:

- Verifying that license candidates have passed the licensing examination before issuing licenses;
- Prorating initial license fees within the licensing biennium;
- Establishing the license renewal date as the first of the month following each licensee's birthday;
- Using the current ten-year license certificate as a permanent license certificate;
- Updating the licensee register;
- Initiating a cooperative information network between the Commission, Alaska Association of Realtors, and multiple listing services to periodically compare each other's licensee registers; and
- Identifying licensees with lapsed licenses who are currently engaged in real estate business.

LICENSE COMPLAINTS

AREC could improve its license complaint operations by:

- Establishing a formal, structured procedure for processing license complaints;
- Re-evaluating the investigator position;
- Discontinuing to close complaints "without prejudice" and establishing an administrative closure process;
- Providing complainants and respondents with closure letters immediately following complaint closures; and
- Revising the license entitlement statute to read "Eligibility for License" and including a provision that licensees will lose their eligibility for all licenses upon license revocation.

SURETY FUND CLAIMS

AREC could improve its surety fund claim operations by:

- Establishing a minimum fund balance for the Real Estate Surety Fund instead of the current maximum fund balance;
- Combining license action and surety fund claim hearings;
- Reducing the current \$250 filing fee to a more reasonable amount, such as \$50, or discontinuing the fee if surety fund claims are included with license complaints;
- Re-evaluating the staff hearing officer position;
- Proceeding to recover paid claims and hearing costs from licensees; and
- Returning the two \$10,000 warrants found in Commission files to the State treasury.

OFFICE AUTOMATION

AREC could improve its operations by:

- Replacing the current Wang word processing system with a computer system, such as a Wang VS System 80 if it meets needs; and
- Considering to replace the current daisy-wheel printer with a higher speed printer.

INTERNAL MANAGEMENT CONTROL

AREC could improve its operations by:

- Establishing standard policies and operating procedures; and
- Delegating authority in writing to its staff.

OTHER ISSUES

Other issues which should be addressed by AREC include:

- Ensuring the confidentiality of open investigative files;
- Conducting audits of broker trust accounts;
- Developing an operations manual for commissioners; and
- Forming joint committees between AREC and the Alaska Association of Realtors to study areas of common concern.

AGENCY COMMENTS

Based on the recommendations in our draft report, AREC is taking action to improve its operations. AREC Commissioner Dave Ribacchi has been appointed project manager to coordinate the Commission's implementation of our recommendations. During the implementation project, Commissioner Ribacchi will utilize joint committees between AREC and the Alaska Association of Realtors. Senior OMB Analyst Greg Moyer, who conducted the management audit, will assist Commissioner Ribacchi and the joint committees.

INTRODUCTION

The Alaska Real Estate Commission (AREC) was established in 1964 to regulate the State's real estate profession. AREC regulatory responsibilities include:

- examining prospective real estate licensees;
- issuing real estate licenses to qualified applicants;
- conducting investigations to determine whether real estate agents have violated statutes or regulations; and
- holding hearings to suspend or revoke licenses of real estate agents who violate statutes or regulations.

AREC is also authorized to conduct educational clinics or seminars for the purpose of raising the standards of the real estate industry and the competency of licensees.

LICENSEES

There are currently a total of about 5,500 licensed real estate agents in Alaska. Of this total, approximately 3,900 are actively employed as real estate agents, 600 are inactive, and 1,000 are lapsed (licenses not renewed by real estate agents).

Of the 3,900 active licensees, approximately 1,400 are associate brokers or brokers, and 2,500 are salespersons. A broker differs from an associate broker in that a broker is an owner of a real estate business or is 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.

LICENSE REQUIREMENTS

For a real estate broker or associate broker license, an applicant must pass an examination, be a State resident, have had 24 months of continuous work experience as a real estate salesperson, and have not engaged in conduct demonstrating unfitness to be a broker.

For a real estate salesperson license, an applicant must pass an examination, be a resident of the State, be employed by a real estate broker, and have not engaged in conduct demonstrating unfitness to be a salesperson.

LICENSE RENEWAL

Currently, all real estate licenses are renewed biennially on the first of February in even-numbered years. Licenses were last renewed on February 1, 1984. The next renewal will be on February 1, 1986.

LICENSE FEES

The fee schedule for real estate licenses is as follows:

	<u>License Fee</u>	<u>Surety Fee 1/</u>	<u>Process Fee</u>	<u>Total Fees</u>
<u>Initial License</u>				
Salesperson	\$100	\$40		\$140
Assoc. Broker/ Broker	\$100	\$125		\$225
<u>License Changes</u>				
Transfer			\$5	\$5
Name change			\$5	\$5
Address change			\$5	\$5
Inactivation			\$5	\$5
Reactivation			\$5	\$5
<u>Renewal</u>				
Active Salesperson	\$100	\$40		\$140
Active Broker or Assoc. Broker	\$100	\$125		\$225
Inactive Salesperson	\$50			\$50
Inactive Broker or Assoc. Broker	\$50			\$50

1/ AREC places these fees in the Real Estate Surety Fund to be used for making monetary settlements to victims of fraud, deceit, intentional misrepresentation, and conversion of trust funds by real estate agents.

During FY 84, which included a renewal of all licenses, AREC collected fees totaling approximately \$845,000. Of this amount, about \$292,000 was credited to the Real Estate Surety Fund and about \$553,000 was credited to the General Fund.

AREC ORGANIZATION

AREC consists of seven members: five real estate brokers or associate brokers, and two public members appointed by the Governor, with confirmation of the Legislature.

AREC staff consists of an executive director, two half-time hearing officers, an auditor, a licensing examiner, a clerk typist, and a secretary.

PURPOSE AND SCOPE

Our review was conducted at the request of Barbara Hill, Chairman of the Alaska Real Estate Commission. The review had two purposes. The first purpose was to assess the effectiveness and efficiency of AREC operations, systems, and management methods. The second purpose was to provide recommendations for any needed improvements regarding operating efficiency and effectiveness which would enhance service delivery or reduce present costs.

During our review, we performed the following steps:

- Reviewed applicable statutes, regulations, and AREC policies and procedures;
- Interviewed Commission members and staff, and Alaska Association of Realtors officials;
- Documented and evaluated the Commission's workloads, staffing, and management methods;
- Reviewed and analyzed current AREC systems and procedures for examining prospective licensees, issuing and renewing licenses, investigating license violations, and adjudicating license complaints and surety fund claims;
- Reviewed statutes, regulations, and procedures of other states' real estate commissions; and
- Attended two Commission meetings and the National Association of Real Estate License Law Officials (NARELLO) annual meeting.

LICENSING

AREC licensing responsibilities are critical to regulating the State's real estate profession. These responsibilities include examining prospective licensees, collecting license fees, renewing licenses, and maintaining a current license register. Our review found that AREC could improve its operations in each of these areas as discussed below.

LICENSING EXAMINATION

In Alaska, candidates for a real estate license must pass a licensing examination. Currently, an average of 200 candidates a month take the Alaska real estate licensing examination. The Educational Testing Service (ETS), which is under contract to administer the examination statewide, provides each candidate who takes the examination with a pass/fail notice. ETS also provides AREC with a pass/fail listing on microfiche.

Candidates who pass the licensing examination may apply to AREC for a real estate license. On the license application, candidates must provide the date they passed the examination and the examination site. With this information, AREC can verify whether candidates actually passed the examination by checking their names on the ETS pass/fail listings. However, our review found that AREC has been issuing real estate licenses without verifying that candidates actually passed the licensing examination. According to the AREC license examiner, AREC has relied on information provided by candidates on the license application.

Issuing licenses without verifying examination results defeats the purpose of examining license candidates. By not verifying examination results, there is a remote possibility that some real estate licenses have been issued to candidates who have failed the examination or have never taken the examination.

LICENSE FEES

Our review found that initial license fees would be more equitable if the fees were prorated within the licensing biennium. Currently, broker/associate broker candidates and salesperson candidates must pay the total license fees of \$225 and \$140 respectively when applying for their initial licenses. Current AREC regulations prohibit prorating fees within the licensing biennium. By not prorating fees, some new licensees are required to pay another \$225 or \$140 in renewal fees even though their initial licenses were applied for and received a month or two prior to the renewal date.

If AREC would prorate initial license fees, we envision the fees being prorated from the first of the month following date of initial license application to date of renewal. (The date of initial license application would be the postmark date if application is mailed or AREC receipt date if application is delivered.)

LICENSE RENEWAL

Our review found that license renewals could be accomplished more efficiently if licenses were renewed biennially based on each licensee's birthday. Currently, all real estate licenses are renewed biennially on the first of February in even-numbered years. To renew over 5,000 licenses at the same time, AREC must commit the majority of its staff to send renewal notices, open mail, receipt fees, review renewal applications, issue licenses, and update licensee data. The latest license renewal in February 1984 required staff commitment from December 1983 to May 1984. During this period, other AREC functions such as investigating license complaints, monitoring surety fund claim hearings, and publishing the AREC newsletter were disrupted.

By establishing the license renewal date as the first of the month following each licensee's birthday, AREC would have twelve license renewals instead of one. This renewal process would spread the administrative workload over the entire year allowing time for the AREC staff to perform its other functions with minimal disruption. Both the AREC executive director and license examiner support this renewal process. In addition, real estate commissions in Idaho, Oregon, and Washington have switched to this renewal process to eliminate the burden of renewing all licenses at the same time.

If AREC would establish the license renewal date based on each licensee's birthday, we envision a transition renewal in February 1986. Licenses would be renewed from February 1, 1986, to the first of the month following each licensee's birthday in 1987. Total renewal fees (license and surety fees) would be prorated based on the schedule shown on the following page.

<u>Birthday Month</u>	<u>Date License Renewed to</u>	<u>Broker/Associate Broker Renewal Fees</u>	<u>Salesperson Renewal Fees</u>
January	February 1, 1987	\$113	\$ 70
February	March 1, 1987	122	76
March	April 1, 1987	131	82
April	May 1, 1987	141	88
May	June 1, 1987	150	93
June	July 1, 1987	159	99
July	August 1, 1987	169	105
August	September 1, 1987	178	111
September	October 1, 1987	188	117
October	November 1, 1987	197	123
November	December 1, 1987	206	128
December	January 1, 1987	216	134

The next license renewal would be two years from the above dates and biennium renewal fees for brokers/associate brokers and salespersons would be \$225 and \$140 respectively.

LICENSE CERTIFICATE

For license renewals prior to the February 1984 renewal, AREC provided licensees with license certificates that were valid for only one licensing biennium. However, for the February 1984 renewal, AREC provided licensees with certificates that are to be valid for five licensing bienniums. Each license certificate has five spaces for renewal validation stickers. This use of validation stickers is similar to the system used for motor vehicle licensing.

We support the use of validation stickers instead of printing and issuing new license certificates at each renewal. However, we believe the current ten-year license certificates could be permanent license certificates by continuing to place new validation stickers over existing stickers. Real estate commissions in Montana, Rhode Island, South Dakota, and Tennessee currently have permanent license certificates with validation stickers.

If AREC would establish the license renewal date as the first of the month following each licensee's birthday, we envision the validation stickers to read as shown in the example below.

EXAMPLE

For a licensee with a birthday on May 3, the following validation sticker would be sent to the licensee at the February 1, 1986 renewal:

EXPIRES 6-1-87

During May 1987, the license would again be renewed and the following validation sticker would be sent to the licensee:

EXPIRES 6-1-89

LICENSEE REGISTER

AREC is required by statute to maintain a current register of licenses. AREC currently maintains an alphabetical register of licensees on its Wang word processor. The register is kept on 23 separate system documents which group licensees alphabetically by the first letter of their last names. For each licensee, the register provides the licensee's real estate office and address, license number, and license expiration date (currently January 31, 1986 for all licensees).

We reviewed the accuracy of the AREC licensee register by comparing its contents with a current licensee register provided by the Anchorage Multiple Listing Service (MLS). Our review found inaccuracies in the AREC licensee register. Specifically, we found:

- The AREC register did not account for some licensees. During our review, we found five licensed real estate agents (including one broker) not listed on the

register. Each of these licensees are actively engaged in real estate business.

- The AREC register listed some licensees twice - once as active and once as lapsed.
- The AREC register did not have current company names and addresses for some real estate firms.

Concerning licensees not accounted for on the register, the AREC licensing examiner told us that her predecessor failed to enter some licensees on the register during the 1982 renewal. Specifically, these licensees included some brokers with low license numbers and some licensees with license numbers between 7000 and 7999.

Lapsed Licenses

The AREC licensing examiner estimates that 1,000 licensees on the AREC licensee register have lapsed licenses. Given the inaccuracies found in the AREC licensee register, we are concerned that some licensees with lapsed licenses may not have received notices of the February 1984 license renewal. Though licensees have the responsibility to renew their licenses with or without renewal notices, we believe that AREC should make an attempt to identify licensees with lapsed licenses who are currently engaged in real estate business. For example, AREC could send a notice to brokers instructing the brokers to verify the license status of each associate broker and salesperson under their supervision.

RECOMMENDATIONS

In the area of licensing, we recommend that AREC:

1. Verify that license candidates have passed the licensing examination before issuing licenses. It is our understanding that the AREC license examiner has already been instructed by the executive director to implement this recommendation.
2. Prorate initial license fees within the licensing biennium.
3. Establish the license renewal date as the first of the month following each licensee's birthday.
4. Use the current ten-year license certificate as a permanent license certificate by continuing to place new validation stickers over existing stickers.

5. Update the licensee register. For a cost of \$85, Wang Laboratories could take the 23 system documents of the current alphabetical register and provide AREC with a register in sequential order by license number. This new register could then be compared with information in the Commission's hard-copy license folders which are also kept in sequential order by license number. This register could also be compared with an AREC notebook which recorded license issues in sequential order prior to use of the word processor.
6. Initiate a cooperative information network between the Commission, Alaska Association of Realtors, and multiple listing services to periodically compare each other's licensee registers.
7. Identify licensees with lapsed licenses who are currently engaged in real estate business. AREC could send a notice to brokers instructing the brokers to verify the license status of each associate broker and salesperson under their supervision.

LICENSE COMPLAINTS

As a regulatory agency, AREC is responsible for investigating complaints alleging licensee violations of State statutes or regulations. AREC is also responsible for suspending or revoking licenses of real estate licensees who actually violate statutes or regulations. Our review found that AREC could improve its operations in each of these areas as discussed below.

COMPLAINT STATISTICS

As of September 14, 1984, AREC showed the following license complaint statistics:

<u>Year</u> <u>Complaints</u> <u>Filed</u>	<u>Total</u> <u>Complaints</u> <u>Filed</u>	<u>Total</u> <u>Complaints</u> <u>Closed</u>	<u>Total</u> <u>Complaints</u> <u>Open</u>
1977	86	85	1
1978	108	99	9
1979	203	200	3
1980	114	110	4
1981	119	101	18
1982	151	115	36
1983	184	103	81
1984 to date	<u>170</u>	<u>54</u>	<u>116</u>
Total	<u>1,135</u>	<u>867</u>	<u>268</u>

Of the 268 open complaints, only 24 complaints were designated as being in active investigation and 17 were designated as having license actions in progress. The remaining 227 open cases were in backlog status.

We reviewed 61 of approximately 240 closed license complaints which were in AREC files awaiting closure letters. Our review found that the average processing time for these complaints from date of complaint filing to date of recommended closure was 14 months.

COMPLAINT PROCESSING

Our review found that AREC lacks a formal, structured procedure for processing license complaints. AREC currently processes complaints based on informal procedures established by the executive director and auditor. We believe these procedures were implemented before being fully developed and are currently

ineffective and inefficient. Examples of these procedures are shown below.

1. For each complaint actively investigated, AREC has a procedure to forward a copy of the complaint file to an AREC commissioner. The commissioner supposedly becomes an "investigating commissioner" who will assist the AREC auditor during the investigation. However, we found that neither the auditor nor commissioners know what is expected of the "investigating commissioner." The procedure has never been formalized to identify the commissia ers' investigative duties.
2. For each complaint recommended for closure, AREC has a procedure to forward the original complaint file to an AREC commissioner. The commissioner is supposed to review the file, approve or disapprove the closure recommendation, and return the file to the AREC auditor. During the next Commission meeting, those complaints approved for closure by individual commissioners are officially voted closed by the entire Commission. We question the entire Commission voting to close complaints when the complaints were only reviewed by one commissioner. We also question the mailing of original complaint files to commissioners, especially when we were told that four original files have been lost through these mailings.

We believe that AREC needs a formal, structured procedure for processing complaints from date of initial inquiry to completion of hearing. The procedure should provide a sequence of processing stages and internal time standards (processing days from date of complaint filing). We also believe that the processing stages should be supported by statutes and regulations.

If AREC would establish a formal, structured procedure for processing license complaints, we envision the following major processing stages, internal time standards, and needed statute and regulation sections:

<u>Processing Stage</u>	<u>Internal Time Standard</u>	<u>Statute Section</u>	<u>Regulation Section</u>
1. <u>INQUIRY</u>			
AREC documents the volume and nature of questions answered and problems resolved by telephone, mail, and personal contact.			Acceptance of Inquiry Record of Inquiry

	<u>Processing Stage</u>	<u>Internal Time Standard</u>	<u>Statute Section</u>	<u>Regulation Section</u>
2.	<u>COMPLAINT</u>		Complaint	Complaints by Individuals Complaints by Commission
	AREC sends a copy of the complaint and an interrogatory to respondent.	10 days		
	Respondent provides AREC with completed interrogatory.	30 days		
3.	<u>STAFF INVESTIGATION</u>		Investigation	Investigation Procedures Determination Procedures
	AREC prepares an investigative plan of action.	45 days		
	After investigation, AREC makes a determination whether or not complaint is supported by substantial evidence.	90 days		
4.	<u>STIPULATION</u>		Stipulation	Stipulation Procedures
	If the complaint is supported by substantial evidence, AREC provides respondent with proposed terms of stipulation, i.e., license suspension for specific time period.	120 days		
	Respondent accepts or rejects the proposed stipulation.	150 days		

	<u>Processing Stage</u>	<u>Internal Time Standard</u>	<u>Statute Section</u>	<u>Regulation Section</u>
5.	<u>HEARING</u>		Hearing	Commencement of Hearing Process
	If proposed stipulation is rejected by respondent, a hearing commences.	180 days	Order	Subpoenas
				Notice of Hearing
				Conduct of Hearing
				Hearing Officer's Recommended Decision
				Orders by Commission
				Hearing Record

By establishing a complaint processing procedure supported by internal time standards, statutes, and regulations, we believe that AREC would be more accountable to licensees and the public.

INVESTIGATOR

The AREC auditor is responsible for investigating license complaints filed with the Commission. The auditor is an Accountant III with no prior investigative experience.

Current AREC statutes state that "the executive director shall appoint, with approval of the commission, a full-time investigator or auditor." We understand that an auditor was appointed because investigations may involve audits of broker trust accounts. However, we found that the auditor has conducted only three trust account audits since his appointment three years ago.

We believe AREC should re-evaluate its investigator position. In our opinion, the State's class specification 7768, Investigator III, includes the knowledge and skills needed by AREC. We note that each investigator within the State's Division of Occupational Licensing is an Investigator III.

Closure Letters

AREC currently has about 240 closed license complaints which are awaiting closure letters to complainants and respondents. These complaints were closed by the Commission between 1982 and 1984. Given that the usual license complaint involves two brokers, two salespersons, and a complainant, we estimate that approximately 960 respondents and 240 complainants have not received closure letters.

We believe that AREC has the responsibility to provide complainants and respondents with prompt notices of complaint closures. AREC currently has a form letter which could be prepared immediately following closures.

For the 240 closed license complaints currently awaiting closure letters, AREC should consider employing a student intern or other part-time employee to prepare the estimated 1,200 closure letters. Given that some of these complaints were filed years ago, the mailing addresses of complainants and respondents will have to be verified.

COMPLAINT CLOSURE

Our review found that the majority of complaints closed by AREC are closed for the reason of limited staff resources, not lack of substantial evidence. We reviewed 61 of approximately 240 closed complaints which were in AREC files awaiting closure letters. Almost all of the complaints we reviewed were voted closed by the Commission "without prejudice" -- meaning that the complaints, if investigated, would probably prove that license violations occurred, but the violations are probably not severe enough for using staff resources to investigate. Though the AREC auditor told us that these complaints could be reopened for investigation at a later time, we question the closing of complaints which may be supported by substantial evidence. We also question the time and money spent to officially close complaints which may be reopened; i.e., mailing complaint files to/from commissioners for review of staff recommended closures and voting to officially close complaints at Commission meetings.

If AREC would discontinue the closing of complaints "without prejudice," we envision the following complaint closure process:

1. After receipt of the respondent's completed interrogatory (within 30 days of complaint filing), AREC staff makes a determination based on the weight of the evidence whether or not the complaint warrants further investigation.

2. If the AREC staff determines that the complaint does not warrant further investigation, the staff administratively closes the complaint and notifies the complainant and respondent. By regulation, the complainant may apply to the Commission's chairman for a reconsideration of the staff's determination to close the complaint. The application must be in writing and filed within 30 days after receipt of closure notice unless the chairman grants an extension. The chairman will review the entire complaint file and may hear oral argument from the parties. If the chairman grants the complainant's application for reconsideration, the chairman will remand the complaint to staff for further investigation.

LICENSE ACTION

If AREC proves that a licensee has violated State statutes or regulations, the licensee's real estate license could be revoked or suspended by the Commission. However, we found that a broker or associate broker is still "entitled" to a salesperson license even though AREC revokes the broker or associate broker license. Current AREC statute 08.88.171, Entitlement to License, has no provision for barring a broker's or associate broker's entitlement to a salesperson license after revocation of the broker or associate broker license.

If AREC would revise its license entitlement statute, we envision the following statutory changes:

1. Change AS 08.88.171 from "Entitlement to License" to "Eligibility for License."
2. Include in AS 08.88.171 a provision that licensees lose their eligibility for all licenses upon license revocation. Also, include a provision that license eligibility can only be reinstated by the Commission.

RECOMMENDATIONS

In the area of license complaints, we recommend that AREC:

1. Establish a formal, structured procedure for processing license complaints. The procedure should include a sequence of processing stages with internal time standards. The processing stages should be supported by statutes and regulations.

2. Re-evaluate the investigator position. We believe that the position requires the knowledge and skills of an Investigator III, not an Accountant III.
3. Discontinue closing complaints "without prejudice." We believe AREC should establish an administrative closure process for complaints.
4. Provide complainants and respondents with closure letters immediately following complaint closures. For the approximately 240 closed complaints currently awaiting closure letters, AREC should employ a student intern or other part-time employee to prepare the estimated 1,200 letters.
5. Revise its license entitlement statute to read "Eligibility for License" and include a provision that licensees lose their eligibility for all licenses upon license revocation.

SURETY FUND CLAIMS

In 1974 the Real Estate Surety Fund was established to provide monetary settlements to victims of fraud, deceit, misrepresentation, and conversion of trust funds by licensees. From 1974 to 1980, victims had to receive court judgments against licensees before claims were paid. However, in 1981 AREC was given the responsibility of adjudicating surety fund claims. Our review found that AREC could improve its operations in this area as discussed below.

CLAIM STATISTICS

As of September 14, 1984, AREC showed the following surety fund claim statistics:

<u>Year Claims Filed</u>	<u>Total Claims Filed</u>	<u>Total Claims Paid</u>	<u>Total Amounts Paid</u>
1981	52	3	\$11,943
1982	92	18	\$62,612
1983	123	14	\$67,644
1984 to date	101	6	\$43,017

A total of 197 open claims were in backlog status.

FUND BALANCE

The Real Estate Surety Fund is totally funded by surety fees assessed from licensees. Current AREC statutes state that the fund may not exceed \$500,000. The fund's current balance is about \$650,000. We understand that the excess \$150,000 will be transferred to the General Fund.

Given that the fund balance currently exceeds its statutory limit, we question the Commission's continued assessment of surety fees. By continuing to assess surety fees, AREC is collecting monies from licensees for the General Fund, not the Surety Fund. Licensees actually pay the General Fund twice - once from their license fees and another from their surety fees.

AREC is attempting to resolve this situation by introducing legislation to raise the fund limit from \$500,000 to \$850,000. However, we estimate that the fund balance will probably exceed the \$850,000 limit after the February 1986 renewal. New legislation would have to be introduced to raise the fund limit again.

Based on the National Association of Realtors suggested pattern for real estate license law, we envision a statute provision for a minimum fund balance instead of the current maximum fund balance. As long as the balance remains above the minimum, licensees would not be assessed surety fees. However, if the balance becomes less than the minimum, licensees would be assessed surety fees during the next license renewal.

By establishing a minimum fund balance, AREC and licensees could realize the following benefits:

1. Based on the dollar amount of claims paid in prior years, AREC could set a minimum fund balance which would not require continuous statutory revisions as is currently being experienced with the maximum fund balance.
2. By not having to assess surety fees while the fund balance remains above the minimum, AREC could have less administrative costs.
3. By not having to pay surety fees while the fund balance remains above the minimum, brokers/associate brokers and salespersons could save \$125 and \$40 respectively in renewal fees.

HEARINGS

Our review found that AREC could combine license action and surety fund claim hearings. Currently, AREC holds separate hearings for adjudicating license actions and surety fund claims. However, given that a surety fund claim can only be awarded if a license violation occurs, we envision the following changes:

1. One AREC complaint form for complainants to report license violations and any monetary damages resulting from the violations. (AREC currently has separate forms for license complaints and surety fund claims.)
2. Staff investigations to determine if reported license violations are supported by substantial evidence and to verify any monetary damages. (AREC currently investigates only reported license violations; surety fund claims are automatically scheduled for hearing with no staff review or investigation.)
3. One hearing to determine license actions to be taken against licensees who violate State statutes or regulations and to determine complainants' monetary settlements from the Surety Fund (AREC currently holds separate hearings.)

HEARING OFFICERS

In November 1984 two half-time hearing officers joined the AREC staff to adjudicate surety fund claims and license actions. The AREC executive director estimates that the hearing officers will complete the backlog of surety fund claims in eight to ten months. Given this estimate, we believe that AREC should re-evaluate its hearing officer position. AREC may only need one half-time hearing officer in FY 86. The other half-time hearing officer might be utilized as a hearing advocate to assist in AREC investigations and hearing preparations.

FILING FEE

As of October 4, 1984, persons filing surety fund claims must pay a \$250 filing fee. We understand that the filing fee was established to discourage the filing of frivolous claims. Since AREC does not investigate surety fund claims, all claims including those considered frivolous must be adjudicated by a hearing.

We believe that the \$250 filing fee is excessive, if not unnecessary. A \$50 filing fee, as currently charged by small claims court, would be more reasonable. In addition, a filing fee would not be necessary if surety fund claims were included with license complaints. Frivolous claims would be identified during staff investigations of license complaints.

CLAIM RECOVERY

According to AREC statute 08.88.490, when the Commission pays a surety fund claim, "the Commission shall be subrogated to all of the rights of the claimant to the amount paid and the claimant shall assign all of his right, title, and interest in that portion of the claim to the Commission." Based on this statute provision, AREC has attempted to recover paid claims and hearing costs from the licensees who committed the license violations. However, our review found that AREC recovery attempts have been minimal. We found that AREC has sent only one notice, dated July 31, 1984, to the licensees requesting payment.

As of September 14, 1984, AREC showed the following claim recovery statistics:

<u>Number of Licensees</u>	<u>Total Amount of Claims Paid and Hearing Costs Incurred</u>	<u>Total Amount Recovered From Licensees</u>
33	\$200,680	\$33,597

CLAIM WARRANTS

During our review, we found two \$10,000 warrants which should have been returned to the State treasury. Both warrants were issued as surety fund claim payments, but the warrants were never forwarded to the claimants. One warrant, issued December 1981, was being held pending the outcome of an appeal made by the respondent. However, the warrant is no longer redeemable because of its age. The other warrant, issued March 1984, was not forwarded to the claimant due to a May 1984 court interpretation which disallowed payment of the claim.

RECOMMENDATIONS

In the area of surety fund claims, we recommend that AREC:

1. Establish a minimum fund balance for the Real Estate Surety Fund. Surety fees would only be assessed if the fund balance becomes less than the minimum.
2. Combine license action and surety fund claim hearings. AREC should also consider including surety fund claims with license complaints.
3. Reduce the \$250 filing fee to a more reasonable amount, such as \$50. However, if AREC includes surety fund claims with license complaints, the filing fee should be discontinued.
4. Re-evaluate the staff hearing officer position. Given the executive director's estimate of future workload, AREC may only need one half-time hearing officer in FY 86.
5. Proceed to recover paid claims and hearing costs from licensees.
6. Return the two \$10,000 warrants found in Commission files to the State treasury.

OFFICE AUTOMATION

Office automation is essential for AREC to operate an effective and efficient regulatory agency. Our review found that AREC could improve its current automation as discussed below.

CURRENT AUTOMATION

Our review found that AREC needs to improve its current office automation. AREC currently utilizes a Wang word processing system. We found that this system is being utilized far beyond its intended capabilities and is supplying only a fraction of the automated support needed by AREC.

In our opinion, AREC could use a computer system, not just the word processing system, to support the following areas:

1. Licensing - For each licensee, AREC needs computer support which will capture and provide access to current and historical data including:
 - a. personal data
 - b. licensing examination results
 - c. initial license date and number
 - d. current license status
 - e. history and dates of status changes
 - f. current employer
 - g. employer history and dates
 - h. current license complaint or surety claim
 - i. history of disciplinary actions
 - j. renewal and expiration dates

2. Office Registration - For each real estate office, AREC needs computer support which will capture and provide access to current and historical data including:
 - a. office address/telephone number
 - b. date office registration submitted
 - c. current office status
 - d. type of business/list of partners or corporation officers
 - e. current broker in charge/license number
 - f. history of brokers in charge with dates of employment and dates of termination
 - g. trust account name/number, bank

3. License Complaints and Surety Fund Claims - For each license complaint and surety fund claim, AREC needs computer support which will capture and provide access to current and historical data including:

- a. case number
- b. date initiated
- c. complainant/address/telephone number
- d. respondent/address/telephone number
- e. history of actions taken and dates
- f. next actions to be taken and dates
- g. current case status
- h. history of status changes

If AREC would improve its current automation, we envision a separate field (screen of information) for each licensee. Each field would be accessed by the licensee's license number. In addition, each field would provide other reference numbers such as the license number of the licensee's employing broker, the identification number of the licensee's real estate office, and file numbers of any license complaints or surety fund claims.

By including license numbers and other reference numbers, a computer could manipulate information to produce licensee rosters by real estate office or license type (broker, associate broker, or salesperson). To produce these rosters on the current word processing system, the AREC license examiner must sort information in 23 separate system documents. A recent roster of brokers took 1½ days to compile.

IMPROVED AUTOMATION

The Department of Commerce and Economic Development is taking steps to improve the Commission's office automation. The department's computer systems specialist is currently reviewing two alternative systems. These systems include:

1. Wang Office Information System (OIS) 140. This system is primarily a high-powered word processor with limited data processing capabilities.
2. Wang VS System 80. This system is a computer with high-volume, interactive computing capabilities. This system is currently being utilized by the State's Division of Occupational Licensing in Juneau.

Given the information processing needs of AREC, we believe AREC needs a computer system such as the Wang VS System 80, not another word processor. According to the department's computer systems specialist, the department has identified a refurbished VS system 80 which is available for purchase. If purchased,

This computer system could be utilized by AREC and other department operations in Anchorage.

We believe the department's computer systems specialist should also consider replacing the Commission's printer. We found the current daisy-wheel printer to be quite slow in printing licenses and licensee rosters. For example, a recent roster of brokers (approximately 750 names and addresses) took almost four hours to print.

RECOMMENDATIONS

In the area of office automation, we recommend that AREC:

1. Replace the current word processing system. Of the two alternative systems being considered for AREC (Wang OIS 140 and Wang VS System 80), the VS system is assumed to adequately support the Commission's information processing needs; a formal needs assessment would confirm its desirability.
2. Consider replacing the current daisy-wheel printer. We believe that AREC operations would benefit by having a higher speed printer.

INTERNAL MANAGEMENT CONTROL

To increase operational efficiency and effectiveness, the Commission needs to improve its internal management control. Specifically, we found that the Commission needs to establish two essential elements of internal management control as discussed below.

STANDARD POLICIES AND PROCEDURES

Our review found that the Commission has not established standard policies and operating procedures to give direction to staff decisions, and to set bounds within which such decisions and resulting actions are acceptable to the Commission. According to the AREC executive director, staff currently receive verbal directions from individual commissioners.

If the Commission would establish standard policies and operating procedures, we envision the following advantages for AREC:

1. Staff effort could be economized. It would be unnecessary for the staff to redecide the same issues.
2. Delegation of authority could be facilitated. Staff would be expected to proceed with actions so long as the situations are covered by the policies and procedures.
3. Control could be made easier. Policies and procedures would lead to uniformity of staff actions.

DELEGATED AUTHORITY

Our review also found that the Commission has not delegated authority to give its staff the right to decide and the power to carry out decisions within the staff's responsibilities. During our review, we witnessed staff frustration as a result of not being given the authority to carry out responsibilities.

If the Commission would formally delegate authority to its staff, we believe that the delegation should be spelled out in writing.

RECOMMENDATIONS

In the area of internal management control, we recommend that AREC:

1. Establish standard policies and operating procedures.
2. Delegate authority in writing to its staff.

OTHER ISSUES

During our review, we identified other issues which should be addressed by AREC. These issues and our recommendations are provided below.

CONFIDENTIALITY OF INVESTIGATIVE FILES

The Commission's open investigative files include unsubstantiated allegations of professional misconduct. A recent Attorney General opinion for AREC states that information in the Commission's open investigative files may not be withheld from public inspection. However, a prior Attorney General opinion for the State's Division of Occupational Licensing states that the division's open investigative files may be withheld from public inspection. Since AREC and the Division of Occupational Licensing have similar information in their investigative files, we question the different Attorney General opinions. In our opinion, the subjects of unsubstantiated allegations have a constitutional right not to have the information made public until the AREC investigation is completed and the relevant facts are presented at a public hearing.

Recommendation

We recommend that AREC request an explanation from the Attorney General concerning the different opinions given to AREC and the Division of Occupational Licensing. To ensure the confidentiality of open investigative files, we recommend that AREC statutes include a provision that all records of investigation and information obtained by the Commission during an investigation are confidential and may not be made available by the Commission for public inspection.

TRUST ACCOUNT AUDITS

The AREC executive director estimates that over fifty percent of the complaints filed with the Commission involve improper trust account management. Given this estimate, we question the lack of trust account audits currently being conducted by AREC. As previously mentioned, the AREC auditor has conducted only three audits of broker trust accounts in the last three years. Each of these audits was conducted as part of a complaint investigation.

If AREC could employ an Investigator III to handle complaint investigations, the current AREC auditor could conduct trust account audits on a full-time basis. We envision these audits being conducted as a service to brokers. Any accounting or

procedural deficiencies found and corrective actions needed would be discussed with brokers during exit conferences.

Recommendation

If staff resources would be available, we recommend that AREC conduct trust account audits to identify and resolve problems before the problems cause complaints to be filed with the Commission.

OPERATIONS MANUAL FOR COMMISSIONERS

AREC commissioners do not have an operations manual which could include:

- current statutes and regulations;
- delegated authority to staff;
- by-laws;
- standard policies and operating procedures;
- case law;
- forms; and
- other information which the commissioners deem appropriate.

Recommendation

We recommend that AREC develop an operations manual. This manual would provide excellent orientation material for new commissioners.

AREC/ALASKA ASSOCIATION OF REALTORS

We found that both the Alaska Real Estate Commission and the Alaska Association of Realtors (AAR) share the common goal of having effective and efficient regulation of the State's real estate profession. Based on this common goal, we believe that joint AREC/AAR committees could be utilized to study common concerns such as continuing education for licensees and statute/regulation revisions.

Recommendation

We recommend that the Alaska Real Estate Commission and the Alaska Association of Realtors form joint committees to study common concerns.

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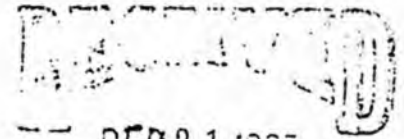
BILL SHEFFIELD, GOVERNOR

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

OFFICE OF THE COMMISSIONER

POUCH D
JUNEAU, ALASKA 99811
PHONE: 465-2500

December 30, 1985



LEGISLATIVE
AUDIT

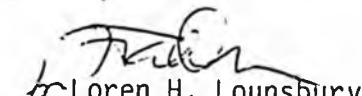
Mr. Gerald L. Wilkerson
Legislative Auditor
Division of Legislative Audit
P.O. Box W
Juneau, AK 99811

Dear Mr. Wilkerson:

Thank you for the opportunity to comment on your preliminary audit report on the Alaska Real Estate Commission.

Enclosed is the response from the Alaska Real Estate Commission on "A Performance report on the Department of Commerce and Economic Development, Alaska Real Estate Commission, September 19, 1985."

Sincerely,


Loren H. Lounsbury
Commissioner

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Enclosure

RECEIVED

DEC 31 1985

LEGISLATIVE
AUDIT

STATE OF ALASKA
MEMORANDUM

To: Loren Lounsbury
Commissioner
Dept. of Commerce & Economic Dev.

DATE: December 20, 1985

From: James L. Magowan
Executive Director
Alaska Real Estate Commission

Re: Answer to Preliminary Report of the Division of Legislative Audit

The real estate commission has reviewed the preliminary report of the Division of Legislative Audit and submits the following response:

Recommendation No. 1

The commission concurs with this recommendation and has implemented procedures that comply with the recommendations set out in the report. Procedures implementing each of the five points specifically mentioned have been adopted. The procedures now in place are attached (Attachment # 1).

Recommendation No. 2

The commission concurs with this recommendation. The commission has referred several major claims to the attorney general for collection. The commission is also submitting an application for membership in the Anchorage Credit Bureau so that it can be a source of credit information about licensees who have suspended licenses due to non repayment of the fund. The commission is also supporting an increase in the small claims limit to \$5000.

The authority to suspend licenses until the fund is repaid, without an additional hearing became effective October 2, 1984. Counsel advised that this authority applied to claims filed since that time. Commission policy and practice is to suspend the license of any licensee against whom an award is granted until the fund is repaid or satisfactory arrangements for repayment are made. The commission was advised that even with the statutory authority to suspend a license when the fund is not repaid it is necessary to advise the licensee, prior to the hearing, that this may occur. Licensees are now so notified and the order to suspend the license is contained in the final decision, again upon advice of counsel or hearing examiner as to the requirements for "due Process".

Effective recovery of most claims, particularly large ones requires that the commission execute against property or assets of the parties. This requires that the commission have court judgements. The commission feels that

effective recovery will, therefore, require additional assistance and time from the AG. The commission is also seeking statutory authority to execute on orders of payment out of the surety fund as though they were judgements, without further extended court proceedings once an award has been sustained on appeal or the time for appeal has tolled without appeal being filed.

Prior to the "suspension" clause being added to the statute the commission attempted collection in 1983. It sent letters to all licensees advising of the possibility of court action if the fund were not reimbursed. This attempt was largely ineffective due to the commission's inability to actively pursue the claims in court.

Recommendation No. 3

The commission concurs with this recommendation. The commission has requested that an attorney be assigned to assist with this on numerous occasions during the past nine years. During 1985 the commission formed a Project Action Committee one of the tasks of the committee was the preparation of recommendations for statutory amendments that the commission could submit for consideration during its "Sunset" review. The commission is submitting the results of this committee's work for consideration by the legislature. The issues specified in the LBA report as well as numerous others are addressed.

The commission concurs with the specific changes recommended in points 1 through 5 in the recommendation.

The commission is using a new renewal system for 1986-87 biennium. Before changing the dates for renewal the commission is going to evaluate the efficiency of this system as well as its cost effectiveness. Recent computer technology may make the current biennium clerically manageable and less costly than going to a Monthly or Birthdate renewal. The commission is not locked into one system over another but does not wish to introduce a new system until it is sure that it will not be introducing additional costs at the same time.

Recommendation No. 4

The commission concurs. An additional clerical position is desperately needed at this time.

Recommendation No. 5

The commission concurs and a time accounting system is now in effect.

Analysis of Public Need

The commission generally concurred with the findings of this section. The commission however notes that managerial and policy changes of the past 18 months have just begun to produce noticeable effects. The rate of complaint closures and license actions has begun to show dramatic increase.

In response to Item III the commission notes that it supported a filing fee of \$50 for a surety claim. The \$250 filing fee was enacted over recommendations from the commission and the industry that a lower fee be

adopted. There have been two known instances where claimants reported that they would need additional time before they could file a claim because they needed to obtain the money to pay the fee. There have been no substantiated instances at this time that a claim with at least face validity was not filed due to the amount of the fee.

The commission is currently reviewing options for the conduct of routine trust account audits including the possibility of developing a self-audit program that will enable the commission to identify problems in a more cost effective manner while at the same time offering the licensees a valuable educational and self help tool.

0179M

Complaint Investigative Procedures Checklist

1. Complaint Receipt: and evaluation

- Day
- [1] a. The Complaints Clerk will:
- [1] (1) log in the complaint with assignment of a complaint number;
- [1] (2) establish a complaint file to include:
- (a) a procedural checklist;
- (b) a contact record sheet;
- [1] (3) forward the file to the Investigator.
- [10] (4) send ten-day letters to identified licensees;
- (5) post responses to the file and forward them to the Investigator for evaluation.
- b. The Investigator will:
- [1-3] (1) assign a priority classification;
- [1-3] (2) assign a classification as to type of alleged violation;
- (3) identify the licensees to be contacted for response to the complaint (and any surety claim that accompanies the complaint);
- (4) initiate an investigative report under paragraph 2a.

2. Complaint evaluation:

- [1-3] a. The investigative report will include:
- (1) allegation(s) of the complainant;
- (2) violations that appear to be present;
- (3) evidence that supports the allegation(s);
- (4) probable outcome of the complaint;
- [30] b. Ten-day letter responses received. For failure to respond, initiate subpoena procedures in paragraph 8.
- [30] c. The Investigator will evaluate the responses and decide:
- (1) to investigate further, or
- (2) to close:
- (a) complete the investigative report for the file;
- (b) summarize the complaint for:
- 1 the weekly report to the Director;
- 2 the report for the next Commission meeting.

3. Investigation:

- [45] a. Write a work plan to detail the work required to complete the investigation and when the work will be accomplished. The work plan will be reviewed by the Executive Director.
- [90] b. Interview witnesses.
- [90] c. Identify needed additional documentation and obtain it.
- d. Record contacts and other work done on the complaint on the contact record sheet inside the complaint folder. The time taken for that particular entry will also be recorded.

4. Hearing:

- [150] a. Complete the Investigative Report.
- [150] b. Draft the accusation or statement of issues for the license action with the investigative report as the basis for this document.
- [150] c. Submit the draft license action and the investigative report, along with necessary evidence, to the Assistant Attorney General for review and critique.
- [150] d. Determine whether a license action will be heard with or without Attorney General participation after consultation with the Director and the Assistant Attorney General. If without, the Investigator and/or the Director will represent the Commission at the hearing.
- [150] e. Prepare the final copy of the license action document.
- [150] f. Serve the license action on the licensee(s) and copy to the Commission:
 - (1) complete the affidavit of service;
 - (2) provide notice of defense.
- [180] (a) If a notice of defense is not filed with the Commission within the specified fifteen days, prepare for an uncontested hearing at the next Commission meeting.
- [180] (b) If a notice of defense is filed, copy the license action, with notice(s) of defense, to the appropriate Hearing Examiner.
- [180] (c) If an entry of appearance is filed at any time by an attorney, copy the complete file to the Assistant Attorney General who may decide to enter the case if not already involved.
- g. Provide required assistance to the Hearing Examiner and/or the Assistant Attorney General to arrange for and conduct the pre-hearing conference and hearing.

5. Commission meeting:

- a. After hearing, copy the proposed decision to all parties, to the Commissioners and to the Lieutenant Governor.
- b. Ensure that the adoption order is signed by the Chairman.

6. Post-meeting:

- a. Copy all parties with the adopted decision by certified mail. Include a reconsideration request form to the licensee if the decision was to suspend or revoke;
- b. Notify each complainant of complaint closure;
- c. Publish the decision results in the licensee's local newspaper thirty days after service of the adopted decision to the licensee (and counsel) if there has been no request for reconsideration granted by the Commission and/or appeal to the Superior Court.

7. Stop Orders:

a. When a stop order is needed, coordinate service with the Commission. The Commission will be given a brief explanation of the need for the subpoena; this will be a written statement so that all members receive the same information. The stop order may be served with approval of a majority of the Commission. Any Commissioner not contacted directly will be informed by telegram.

b. The Investigator will draft the stop order and have the Assistant Attorney General review it for completeness and propriety.

c. The stop order may be served by certified mail or in person by the Investigator. If in person, the Investigator will make sure that the subject(s) understand that it is a definite order from the Commission to stop the identified activity, and that to continue is a violation which could result in a further charge.

d. Following service, the Investigator will complete an affidavit of service.

e. If a notice of defense is filed, a copy of the stop order, with the investigative report of the circumstances, will be provided to the Attorney General's office as soon as possible to comply with the requirement that hearings be scheduled within thirty days.

f. If the subject continues to operate after service of the stop order, the Investigator will notify the Attorney General's office to enforce the order.

8. Subpoenae:

a. When a subpoena is needed, the Investigator will poll the Commission for approval. The Commission will be given a brief explanation of the need for the subpoena; this will be a written statement so that all members receive the same information. A majority of the Commission must approve service. Any Commissioner not contacted directly will be informed by telegram.

b. Service may be by mail or in person. An affidavit of service will be completed.

c. If the recipient of the subpoena does not comply, the Investigator will contact the Attorney General's office to request enforcement. The Investigator will provide any assistance that may be requested by the Assistant Attorney General.

Complaint Investigative Procedures

1. Complaint Receipt:

- a. The Complaints Clerk will, within two days of receipt:
 - (1) log in the complaint with assignment of a complaint number;
 - (2) establish a complaint file to include:
 - (a) a procedural checklist;
 - (b) a contact record sheet;
 - (3) forward the file to the Investigator.
- b. The Investigator will, within one to three days of receipt:
 - (1) assign priority and violation type classifications;
 - (2) list the licensees to be contacted for response to the complaint;
 - (3) initiate an investigative report as described in paragraph 2a.
 - (4) return the file to the Complaints Clerk to send ten-day letters.

c. The Complaints Clerk will send a ten-day letter to all identified licensees. The letter will include a copy of the complaint and copies of supporting documentation which are necessary to understand the complaint and which the licensee would not already have.

d. Respondents to receive ten-day letters for a surety claim will be the same as those for the parallel license complaint.

2. Complaint Evaluation:

a. For each complaint, the Investigator will initiate an investigative report. This report will serve as the basis for the decision to close or proceed to hearing. It will include information as to contacts, information sources, information and conclusions. At the start, this report will list the:

- (1) allegation(s) of the complainant;
- (2) violations that appear to be present;
- (3) evidence that supports the allegation(s);
- (4) probable outcome of the complaint.

b. The responses to ten-day letters should be received within thirty days of the complaint filing date. If a respondent fails to respond, a second, certified, notice of complaint will be sent. If the respondent still fails to respond, a subpoena will be served according to procedures in paragraph 5.

c. Upon receipt of the response(s) to the ten-day letter(s), the Investigator will reevaluate the complaint. Following this reevaluation, there will be a decision to close the complaint without action or to investigate further.

d. If the decision is to close, the Investigator will summarize the events of the complaint, without names, and specify the reason for closure. The summary will be included in the weekly report to the Director and in the Investigator's Report to the Commission at the next meeting. The investigative report will be completed with an explanation of the reasons for closure and will be included in the complaint file. The complaint file will then go to the Complaints Clerk for closure letters to be sent to the parties. The complaint is considered closed at this time unless new information or a Commission request cause it to be reopened.

e. An unqualified license applicant will not receive a ten-day letter. The case will go immediately to the statement of issues stage in paragraph 4. An investigative report as specified in paragraph 1c will be initiated.

3. Investigation: With the decision to investigate further, the investigative report draft to date will serve as the basis for the investigation.

a. A work plan will be written by the Investigator which will detail what work remains to be done to complete the investigation and when the various elements of that work will be accomplished.

(1) The work plan is due within forty-five days of the complaint date.

(2) The work plan will be reviewed by the Executive Director.

b. Interview witnesses.

c. Identify needed additional documentation and obtain it.

d. The investigative report will serve as a record of the investigation.

e. Record contacts and other work done on the complaint on the contact record sheet inside the complaint folder. The time taken for that particular entry will also be recorded.

f. The investigation will be completed within ninety days of complaint receipt. By that time, the Investigator will determine whether the complaint should be taken to hearing or closed. The procedures as outlined in paragraph 1f will be used whenever the complaint is to be closed without action.

4. Hearing: the Investigator will:

a. Complete the investigative report.

b. Draft the accusation or statement of issues for the license action. The investigative report will serve as the basis for this document.

c. Submit the draft license action to the Assistant Attorney General for review. The investigative report and supporting evidence will be provided to the Assistant Attorney General at the same time for this review.

d. Determine whether a license action will be heard with or without Attorney General participation after consultation with the Director and the Assistant Attorney General. If without, the Investigator and/or the Director will represent the Commission at the hearing.

e. Prepare the final copy of the license action document.

f. Serve the license action. Service can be in person or by certified mail to the last registered address of the licensee.

(1) Provide notice of defense.

(2) Complete the affidavit of service.

g. Notice of Defense:

(1) If a notice of defense is not filed with the Commission within the specified fifteen days, prepare for an uncontested hearing at the next

Commission meeting as specified in paragraph 4j.

(2) With a notice of defense:

(a) assign the case to a Hearing Examiner;

(b) copy the accusation/statement of issues, with notice(s) of defense, to the Hearing Examiner.

(c) copy the license action, with notice(s) of defense, the investigative report and full documentation, to the Assistant Attorney General if the case is to be heard with Attorney General participation.

(3) The Assistant Attorney General will be informed of each instance where an attorney files an entry of appearance and will have the option to enter any case where the Commission staff had previously intended to proceed alone. If the Assistant Attorney General decides to enter the case, copy the entire file to the Attorney General's office.

h. Copy the served accusation/statement of issues to the Commission.

i. Provide whatever assistance is required by either the Hearing Examiner or the Assistant Attorney General to arrange for and conduct the pre-hearing conference and hearing.

5. Commission meeting:

a. Upon receipt of the proposed decision after hearing, provide copies to the parties, all Commissioners and to the Lieutenant Governor.

b. Once decided, ensure that the adoption order is signed by the Chairman.

c. Provide copies of the closed complaint summaries for review by the Commission.

d. An uncontested hearing will have neither a Hearing Examiner nor an Assistant Attorney General present. The Investigator will present the case to the Commission at the meeting as if the matter were contested. Each Commissioner will be provided with a full copy of the investigative report and evidence that supports the accusation or statement of issues.

6. Post-meeting:

a. Copy all parties with the adopted decision in the license action by certified mail. Include a reconsideration request form to the respondent if the decision was to revoke, suspend or deny.

b. Notify each complainant of complaint closure.

c. Publish the decision in the licensee's local newspaper on three successive weekends thirty days after service of the adopted decision to the respondent (and counsel) if there has been no granted reconsideration request by the Commission and/or appeal to the Superior Court. Publication can be immediate in uncontested cases.

7. Stop Orders:

a. When a stop order is needed, the Investigator will poll the Commission for approval. The Commission will be given a brief explanation of the

need for the stop order; this will be a written statement so that all members receive the same information. A majority of the Commission must approve service. Any Commissioner not contacted directly will be informed by telegram.

b. The Investigator will draft the stop order and take it to the Attorney General's office for review. The Investigator will also ask the coordinating Assistant Attorney General to review enforcement procedures available should the subject(s) of the stop order refuse to abide by it.

c. The stop order may be served by certified mail or in person by the Investigator. Upon service of the stop order, the Investigator will make sure that the subject(s) understand that it is a definite order from the Commission to stop the identified activity, and that to continue is a violation which could result in a further charge.

d. An affidavit of service will be completed.

e. A copy of the stop order, with supporting documentation and the investigative report, will be provided to the Attorney General's office if a notice of defense is filed. This will be done as soon as possible after receipt to comply with the requirement that hearings in such matters be scheduled within thirty days.

f. If the subject continues to operate without licensure after service of the stop order, the Investigator will notify the Attorney General's office to enforce the order.

8. Subpoenae:

a. When a subpoena is needed, the Investigator will poll the Commission for approval. The Commission will be given a brief explanation of the need for the subpoena; this will be a written statement so that all members receive the same information. A majority of the Commission must approve service. Any Commissioner not contacted directly will be informed by telegram.

b. Service may be by mail or in person. An Affidavit of Service will be completed.

c. If the recipient of the subpoena does not comply, the Investigator will contact the Attorney General's office by memorandum to request enforcement. The Investigator will provide any assistance that may be requested by the Assistant Attorney General.

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MEMORANDUM

State of Alaska

TO: Michael Thill, Staff Assistant
Senate Labor & Commerce Committee

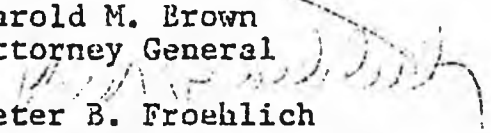
DATE: April 30, 1986

FILE NO:

TELEPHONE NO: 465-3600

FROM: Harold M. Brown
Attorney General

SUBJECT: Proposed amendment
to SB 487 concern-
ing general regula-
tion adoption
authority

By: 
Peter B. Froehlich
Assistant Attorney General

As I mentioned to you by telephone yesterday, there is an additional clarifying amendment that should be included in SB 487 on the Real Estate Commission. That amendment would correct an apparent oversight which has resulted in the absence of an explicit grant to the commission of general regulation adoption authority. Currently, AS 08.88 includes two explicit grants to the commission of specific regulation adoption authority, but no grant of the typical general regulation adoption authority usually given to occupational licensing boards and commissions.

The commission has the following explicit specific regulation adoption authority:

Sec. 08.88.081. COMMISSION REGULATIONS. The commission shall adopt regulations pertaining to the responsibilities of persons licensed under this chapter and the grounds for revoking or suspending a license.

Sec. 08.88.111. COMMISSION REGULATIONS. The commission shall adopt procedural regulations describing

(1) how it conducts an examination;

(2) how a person applies to take an examination, applies for a license, and registers that person's office.

I propose that AS 08.88.081 be amended to add a general regulation adoption authorization and at the same time consolidate the two specific authorities as follows:

* Sec. 2. AS 08.88.081 is amended to read:

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

(1) pertaining to the responsibilities of persons licensed under this chapter and the grounds for

revoking or suspending a license;

and (2) describing how it conducts an examination;

(3) describing how a person applies to take an examination, applies for a license, and registers that person's office.

Renumber the following sections of the bill accordingly.

Of course, AS 08.88.111 should then be repealed.

This additional amendment would clarify that the Real Estate Commission has the same general regulation adoption authority as do other agencies. We believe that the commission has this authority implicitly, even without this amendment but it would be better to make the authority explicit.

Concerning SB 487 as a whole, we believe that the bill includes both some desirable housekeeping amendments and some amendments that may not be desirable, or that at least may require more study.

Please let me know if I can provide you or the committee any further information on this proposed amendment to SB 487, or on the entire bill.

PBF:md

cc: Hon. Loren Lounsbury, Commissioner
Dept. of Commerce & Economic Development

James Magowan, Director
Real Estate Commission

Arthur H. Peterson
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