

**HB**

**33**

**HFIN**

**FILE**

adopted N/O

AMENDMENT # 1

OFFERED IN THE HOUSE

TO: Proposed CSHB 33 (FIN)/Version R

Page 30, line 28

AFTER: "(18)"

DELETE: "real estate transactions"

INSERT: "community association management"

Page 30, line 30

AFTER: "percent of the property"

INSERT: ","

DELETE: rest of line 30 and all of line 31

Page 31, line 29

AFTER: "means"

DELETE: "an interest in a mobile home or"

Page 32, line 29

DELETE

Re-number remaining paragraphs accordingly

Page 33, lines 8, and 9

AFTER: "in a"

DELETE: "mobile home or a"

Page 33, line 11

AFTER: "to market"

DELETE: "a mobile home or"

2/17/98

E

No Obj - adopted

**AMENDMENT** #2.

OFFERED IN THE HOUSE

TO: Proposed CSHB 33 (FIN)/Version R

Page 32, lines 25-27

DELETE paragraph (8)

Renumber remaining paragraphs accordingly.

Insert a new bill section to read:

"Application to independent contractors. The provisions of this chapter that apply to employment relationships and employees also apply to contracting relationships and independent contractors."

# HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: January 30, 1998

FURTHER REFERRALS:

Date of Committee Action: 2/17/98

The FINANCE Committee considered:

HB 33

HOUSE BILL NO. 33

REAL ESTATE LICENSING

"An Act relating to real estate licensing and the real estate surety fund; and providing for an effective date."

recommends it be replaced with the following committee substitute CS HB 33 (FIN)  the same title  a new title

additional referral to \_\_\_\_\_ Committee

attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_

APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

fiscal note(s) DCED 1/30/98

zero fiscal note(s) \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Gene Theriault</i> Theriault			X	
<i>Mark Hanley</i> Hanley			X	
<i>Edo Muel</i> Muel			X	
<i>Terry Martin</i> Martin			X	
<i>Vic Kohring</i> Kohring			X	
<i>John Grussard</i> Grussard				X
<i>John Davis</i> J. Davis			X	

CHAIR'S SIGNATURE

*Gene Theriault*  
Theriault

*Mark Hanley*  
Hanley

# FISCAL NOTE

No. 1

**STATE OF ALASKA**  
**1998 LEGISLATIVE SESSION**

Bill Version: CSHB 33 (L&C)  
 (H) Publish Date: 1/30/98

Revision Date: \_\_\_\_\_  
 Title: An Act relating to real estate licensing and the  
real estate surety fund;....  
 Sponsor: Representative Rokeberg by Request  
 Requestor: House Labor and Commerce

Department: Commerce and Economic Development  
 BRU: Occupational Licensing  
 Component: Operations

COMPONENT SERIAL NO. 1844

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	7.1	7.1				
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>7.1</b>	<b>7.1</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES	***	***				
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FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other 1091 Designated PR	7.1	7.1				
<b>TOTAL</b>	<b>7.1</b>	<b>7.1</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY 98) cost: \$ 0.0

POSITIONS						
FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

HB 33 makes several amendments to the real estate licensing statutes, AS 08.88. The costs shown on this fiscal note represent costs associated with the re-write and public noticing of regulations for \$1.2; printing and mailing of new statute and regulation booklets to approximately 2,124 licensees for \$5.9. No costs are included for restructuring of the examination since the exam is scheduled for review at no additional costs in FY 98 by the exam contractor. Costs are shown for the first two-years only to cover the implementation stage of this legislation. Once HB 33 is implemented, these costs will no longer apply. \*\*\*Revenue in both designated program receipts and the surety fund can be expected to increase with the authority to set fees for each type of endorsement and to recover costs for educational programs. However, the amount of revenue cannot be estimated at this time until fees are reviewed in accordance with sec. 08.88.221.

Prepared by: Jennifer Strickler, Administrative Manager  
 Division: Occupational Licensing  
 Approved by Commissioner: Deborah B. Sedwick  
 Agency: Commerce and Economic Development

Phone: 465-2144  
 Date: 1/29/98  
 Date: \_\_\_\_\_

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2/17/98

✶

0-LS0197Q.2  
Lauterbach  
2/17/98

adopted N/D  
#3

A M E N D M E N T

OFFERED IN THE HOUSE  
TO: CSHB 33(L&C)<sup>FIN</sup>

1 Page ~~19~~<sup>20</sup>, line ~~20~~<sup>2</sup>, through page 20, line ~~8~~<sup>22</sup>.

2 Delete all material and insert:

3 "Sec. 08.88.391. Conflict of interest. A [LICENSED] real estate licensee  
4 [BROKER, ASSOCIATE REAL ESTATE BROKER, OR REAL ESTATE  
5 SALESMAN] who has a conflict of interest relating to [PERSONAL FINANCIAL  
6 INTEREST IN] a real estate transaction shall disclose that conflict of interest at the  
7 time of initial substantive contact with the principals or agents of the principals  
8 and confirm the conflict of interest in writing to the principals or agents of the  
9 principals [EVERY PERSON] involved in the transaction as soon as possible after  
10 the initial substantive contact.

11 \* Sec. 31. AS 08.88.391 is amended by adding new subsections to read:

12 (b) The failure of a licensee to disclose a conflict of interest as required under  
13 this section does not give rise to a cause of action by a private person. However, the  
14 commission may, under AS 08.88.071, impose a disciplinary sanction for violation of  
15 this section, and a claim may be filed by a private person under AS 08.88.460 if the  
16 violation constituted fraud, misrepresentation, or deceit and the person suffered a loss  
17 as a result of the violation.

18 (c) In this section, "conflict of interest" is when a licensee

19 (1) has a present ownership or leasehold interest in the property that  
20 is the subject of a transaction;

21 (2) is whole or part owner of a business interest in the property being  
22 marketed or considered for purchase or lease;

23 (3) represents a relative, as defined in AS 08.88.900(19), or a person  
24 with whom the licensee has a financial relationship if the relative or person has a  
25 present financial interest in the property being marketed or considered for purchase

or lease;

- (4) receives compensation from someone other than a party to the contract or another party having a financial interest in the transaction; or
- (5) receives compensation for community association management while simultaneously engaged as a property manager for a unit within the community association.

Renumber the following bill sections accordingly.

Renumber internal references to bill sections in accordance with this amendment.

or lease;

- (4) receives compensation from someone other than a party to the contract or another party having a financial interest in the transaction; or
- (5) receives compensation for community association management while simultaneously engaged as a property manager for a unit within the community association.

Renumber the following bill sections accordingly.

Renumber internal references to bill sections in accordance with this amendment.

#4

add section  
require commission to add to disclosure statement <sup>34.70</sup>  
"buyer is responsible to obtain info regarding sex offenders.  
& direct buyer to source of information"

# FISCAL NOTE

No: 1

**STATE OF ALASKA**  
**1998 LEGISLATIVE SESSION**

Bill Version: CSHB 33 (L&C)  
 (H) Publish Date: 1/30/98

Revision Date: \_\_\_\_\_ Department: Commerce and Economic Development  
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real estate surety fund;... Component: Operations  
 Sponsor: Representative Rokeberg by Request  
 Requestor: House Labor and Commerce COMPONENT SERIAL NO. 1844

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<b>CAPITAL EXPENDITURES</b>						
<b>CHANGE IN REVENUES</b>						

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POSITIONS						
FULL-TIME						
PART-TIME						
TEMPORARY						

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Prepared by: Jennifer Strickler, Administrative Manager Phone: 465-2144  
 Division: Occupational Licensing Date: 1/29/98  
 Approved by Commissioner: Deborah B. Sedwick Date: \_\_\_\_\_  
 Agency: Commerce and Economic Development

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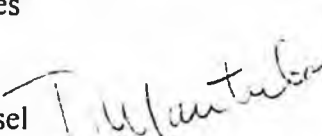
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## MEMORANDUM

February 16, 1998

**SUBJECT:** Real Estate (CSHB 33(FIN), version "R")

**TO:** Representative Gene Theriault  
Attn: Mike Tibbles

**FROM:** Terri Lauterbach  
Legislative Counsel 

Enclosed is a draft FIN CS for HB 33.

I recommend that at least one more change be made in the draft. In paragraph (8) of AS 08.88.990, which is added in sec. 52 of the draft, there is a definition that is flawed. That paragraph reads as follows:

(8) "employ," "employing," "employs," "employed," "employee," "employees," and "employment" include being an independent contractor with an employer;

Using the term "employer" to define words relating to an employee involves a circularity that results in uncertain legal meaning. The legal meaning is further complicated by the use of a noun ("independent contractor") as the counterpart for verbs ("employ and "employs") and adjectives ("employing" and "employment").

The following amendment would help clarify the situation:

Delete paragraph (8) on page 32.

Insert a new bill section to read:

**Application to independent contractors.** The provisions of this chapter that apply to employment relationships and employees also apply to contracting relationships and independent contractors.

Please let me know if I can be of additional assistance.

TML:jdr  
98-093.jdr

Enclosure

0-LS0197R  
Lauterbach  
2/14/98

Amendment #1  
#2  
#3

adopted Mo 2/17/98

**CS FOR HOUSE BILL NO. 33(FIN)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTIETH LEGISLATURE - SECOND SESSION**

**BY THE HOUSE FINANCE COMMITTEE**

Offered:  
Referred:

Sponsor(s): **REPRESENTATIVE ROKEBERG BY REQUEST**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to real estate licensees and to the real estate surety fund; and  
2 providing for an effective date."

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

4 \* Section 1. AS 08.67.010 is amended to read:

5           **Sec. 08.67.010. Registration of mobile home dealers.** A mobile home dealer  
6 may not do business in the state unless the dealer is registered with the department.  
7 However, a person licensed under AS 08.88 may, without registering under this  
8 chapter, perform the same activities with respect to mobile homes, except for  
9 property management, as are authorized for that person to perform under  
10 AS 08.88 with respect to real estate.

11 \* Sec. 2. AS 08.88.051(c) is amended to read:

12           (c) The commission shall elect its officers at the first meeting of each fiscal  
13 year.

14 \* Sec. 3. AS 08.88.061 is amended to read:

1                   **Sec. 08.88.061. Assistants. Notwithstanding contrary provisions of**  
2                   **AS 08.01.050, the [THE] commission may assign or designate [USE] assistants to**

3                   (1) issue licenses to applicants who meet the qualifications for  
4                   licensure established under this chapter;

5                   (2) prepare questions on examinations;

6                   (3) administer and [(2)] grade examinations;

7                   (4) certify courses required under this chapter;

8                   (5) approve instructors to teach courses required under this  
9                   chapter; and

10                  (6) negotiate terms for payment of fines and other money due  
11                  under this chapter.

12 \* Sec. 4. AS 08.88.071 is amended to read:

13                   **Sec. 08.88.071. Duties of the commission.** (a) The commission shall

14                   (1) determine whether [PASS ON QUALIFICATIONS OF] applicants  
15                   meet requirements for licenses under this chapter and issue licenses to those who  
16                   qualify;

17                   (2) prepare and grade examinations;

18                   (3) after hearing, have the authority to suspend or revoke the license  
19                   of a licensee or impose other disciplinary sanctions authorized under AS 08.01.075  
20                   on a licensee who

21                                   (A) with respect to a real estate transaction

22   (i) made a substantial misrepresentation;

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

25   (iii) in the case of a real estate broker, pursued a  
26                                   flagrant course of misrepresentation or made a false promise through  
27                                   another [AN AGENT, ASSOCIATE REAL ESTATE BROKER, OR]  
28                                   real estate licensee [SALESMAN];

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

31   (v) violates AS 08.88.391;

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

3 (C) has engaged in conduct of [IN] which the commission had  
4 no knowledge at the time the licensee was licensed demonstrating the licensee's  
5 unfitness to engage in the business for which the licensee is licensed;

6 (D) knowingly authorizes, directs, connives at or aids in  
7 publishing, distributing, or circulating a material false statement or  
8 misrepresentation concerning the licensee's business or concerning real estate  
9 offered for sale, rent, or lease, or managed in the course of the licensee's  
10 business in this or any other state or concerning the management of an  
11 association in the course of a licensee's business in this or another state;

12 (E) if a real estate broker, wilfully violates AS 08.88.171(d) or  
13 08.88.291;

14 (F) if an associate real estate broker, claims to be a real estate  
15 broker, or, if a real estate salesperson [SALESMAN], claims to be a real estate  
16 broker or associate real estate broker;

17 (G) if a real estate broker, employs an unlicensed person to  
18 perform activities for which a real estate license is required [ASSOCIATE  
19 REAL ESTATE BROKER OR REAL ESTATE SALESMAN];

20 (H) if an employed real estate licensee of a [ASSOCIATE]  
21 real estate broker [OR REAL ESTATE SALESMAN], fails immediately to turn  
22 money or other property collected in a real estate transaction over to the  
23 employing real estate broker;

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

26 (5) release for publication [PUBLISH, ON THREE CONSECUTIVE  
27 WEEKENDS] in a newspaper of general circulation in the locale of the offending  
28 person's principal office registered with the commission notice of [LICENSED  
29 UNDER THIS CHAPTER,] disciplinary action taken by the commission against a  
30 person licensed under this chapter;

31 (6) issue a temporary permit to the personal representative of the estate

1 of a deceased real estate broker or to another [SOME OTHER] person designated by  
2 the commission with the approval of the personal representative of the estate in order  
3 to secure proper administration in concluding the affairs of the decedent broker's real  
4 estate business;

5 (7) issue a temporary permit to the personal representative of a  
6 legally incompetent real estate broker or to another person designated by the  
7 commission with the approval of the personal representative of the broker in  
8 order to secure proper administration in temporarily managing the real estate  
9 business of the broker;

10 (8) establish and periodically revise the form of the seller's property  
11 disclosure statement required by AS 34.70.010;

12 (9) have the authority to levv civil fines as established in this  
13 chapter;

14 (10) revoke the license of a broker or associate broker who is  
15 convicted of forgerv, theft, extortion, conspiracy to defraud creditors, or a felony  
16 involving moral turpitude committed while licensed under this chapter;  
17 notwithstanding AS 08.88.171, a person whose license is revoked under this  
18 paragraph is not qualified for a license under AS 08.88.171(a) or (b) until seven  
19 years have elapsed since the person completed the sentence imposed for the  
20 conviction.

21 (b) When an award is made from the real estate surety fund under this chapter  
22 [IN REIMBURSEMENT OF LOSSES SUFFERED BY A CLAIMANT AS A  
23 RESULT OF FRAUD, MISREPRESENTATION, DECEIT, OR CONVERSION OF  
24 TRUST FUNDS ON THE PART OF A LICENSED BROKER, ASSOCIATE  
25 BROKER, OR SALESMAN], the commission may suspend [CONSIDER THE  
26 HEARING ON THE CLAIM TO BE A HEARING ON THE SUSPENSION OF] the  
27 license of the real estate licensee whose actions formed the basis of the award  
28 [BROKER, ASSOCIATE BROKER, OR SALESMAN, AND MAY SUSPEND THE  
29 LICENSE OF THE BROKER, ASSOCIATE BROKER, OR SALESMAN]. A  
30 suspension ordered under this subsection shall be lifted if the licensee [BROKER,  
31 ASSOCIATE BROKER, OR SALESMAN] reaches an agreement with the commission

1 on terms and conditions for the repayment to the real estate surety fund of the money  
2 awarded to the claimant and the costs of hearing the claim under AS 08.88.465. The  
3 suspension shall be reimposed if the licensee [BROKER, ASSOCIATE BROKER, OR  
4 SALESMAN] violates the terms of a repayment agreement entered into under this  
5 subsection.

6 (c) For the purposes of (a)(3) of this section, the conduct of an employee is  
7 [NOT] attributable to a real estate broker if [UNLESS] the real estate broker has actual  
8 knowledge that the employee is going to engage in the conduct and agrees to the  
9 conduct, either actively or by remaining silent, or ratifies the conduct after it is  
10 engaged in.

11 \* Sec. 5. AS 08.88.091(d) is amended to read:

12 (d) A person who is licensed under this chapter must complete 20 hours of  
13 continuing education approved by the commission before the person's license may be  
14 renewed. The commission may not establish limits that prevent a person from  
15 satisfying this continuing education requirement within a two-day period.

16 \* Sec. 6. AS 08.88.091(e) is amended to read:

17 (e) Except for a course described in (1)(1) or (3) of this section, in order  
18 for an educational course to be recognized for credit under this section, [THE  
19 COMMISSION MAY NOT APPROVE AN EDUCATION OR CONTINUING  
20 EDUCATION COURSE REQUIRED UNDER THIS SECTION UNLESS THE  
21 COMMISSION CERTIFIES] the course outline and [APPROVES] the instructor of the  
22 course must have been approved by the commission or the commission's designee  
23 before the course was [IS] conducted. A course outline or instructor is considered  
24 approved if the commission or the commission's designee does not disapprove the  
25 outline or instructor within 45 days after the date on which complete application  
26 was made for approval. Each approved contact hour of a submitted course  
27 outline constitutes one credit hour of continuing education. The fee for continuing  
28 education course certification under AS 08.88.221 shall be based on the hours  
29 approved for credit not hours submitted.

30 \* Sec. 7. AS 08.88.091 is amended by adding new subsections to read:

31 (f) The commission shall establish by regulation the educational and continuing

1 educational requirements for licenses issued by the commission. The regulations for  
2 continuing education requirements must allow the following types of courses to qualify  
3 for the appropriate number of credit hours, as determined by the commission:

4 (1) courses that are developed by national organizations, as identified  
5 for the purpose of this paragraph in the commission's regulations, that are delivered by  
6 nationally certified instructors and that are required in order to earn professional  
7 designations from a national organization in specialized areas of licensed real estate  
8 practice; notwithstanding other provisions of this chapter, the commission may not  
9 charge a fee for these courses;

10 (2) technology courses directly related to real estate practice that are  
11 designed to enhance the skills and performance of a real estate licensee; and

12 (3) courses offered by an accredited college or university as part of a  
13 real estate curriculum that are available for at least one quarter-hour or one-half  
14 semester-hour of academic credit; the commission may not charge a fee for these  
15 courses.

16 (g) The commission shall establish core curricula for continuing education in  
17 the following areas: real estate sales, property management, community association  
18 management, and commercial sales. A licensee shall complete at least one of the four  
19 core curricula during each biennial licensing period as part of the licensee's continuing  
20 education.

21 \* Sec. 8. AS 08.88.161 is amended to read:

22 **Sec. 08.88.161. License required.** Unless licensed as a real estate broker,  
23 associate real estate broker, or real estate salesperson in this state [SALESMAN], a  
24 [NATURAL] person [, FOREIGN OR DOMESTIC CORPORATION, OR  
25 PARTNERSHIP, OR LIMITED PARTNERSHIP, OR OTHER ENTITY] may not,  
26 **except as otherwise provided in this chapter,**

27 (1) sell, exchange, rent, lease, auction, or purchase real estate;

28 (2) list real estate for sale, exchange, rent, lease, auction, or purchase;

29 (3) collect rent for the use of real estate **or collect fees for property**

30 **management:**

31 (4) **practice, or negotiate for a contract to practice, property**

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**management;**

**(5) collect fees for community association management;**

**(6) practice, or negotiate for a contract to practice, community association management;**

**(7)** as a business, buy, sell, or deal in

(A) options in real estate; or

(B) options in improvements to real estate;

**(8) [(5)]** assist in or direct the procuring of prospective buyers **and sellers of real estate, communicate with prospective buyers and sellers of real estate,** or **assist in** the negotiation of a transaction **that** [WHICH] results or is calculated to result in the sale, exchange, rent, lease, auction, or purchase of real estate;

**(9) accept or pay a fee for the performance of any of the activities listed in this section except as otherwise specifically provided in this chapter;**

**(10) [(6)]** hold out to the public as being engaged in the business of doing any of the things listed in this section; **or**

**(11) [(7)]** attempt or offer to do any of the things listed in this section [.

(8) REPEALED].

\* Sec. 9. AS 08.88 is amended by adding a new section to read:

**Sec. 08.88.167. Civil penalty for unlicensed or unauthorized practice.** (a) In addition to penalties prescribed by any other provision of law, if a person engages or offers to engage in an activity for which a license is required under AS 08.88.161 without being licensed or authorized to engage in the activity in accordance with the provisions of this chapter, the commission may enter an order levying a civil penalty.

(b) A civil penalty levied under this section may not exceed \$5,000, or the amount of gain realized plus \$5,000, whichever is greater, for each offense. In levying a civil penalty, the commission shall set the amount of the penalty imposed under this section after taking into account the seriousness of the violation, the economic benefit resulting from the violation, the history of violations, and other facts the commission considers relevant.

1 (c) Before entering an order under (a) of this section, the commission shall  
2 send the person written notice of the proposed order that grants the person a 30-day  
3 period during which the person may request a hearing on the record.

4 (d) In connection with proceedings under (a) - (c) of this section, the  
5 commission may issue subpoenas to compel the attendance and testimony of witnesses  
6 and the disclosure of evidence and may request the department to bring an action to  
7 enforce a subpoena.

8 (e) A person aggrieved by the levy of a civil penalty under this section may  
9 file an appeal with the superior court for judicial review of the penalty under  
10 AS 44.62.560.

11 (f) If a person fails to pay a civil penalty within 30 days after entry of an order  
12 under (a) of this section, or within 10 days after the court enters a final judgment in  
13 favor of the commission of an order stayed pending an appeal under (e) of this section,  
14 the commission may initiate other action to recover the amount of the penalty.

15 (g) An action to enforce an order under this section may be combined with an  
16 action for an injunction under AS 08.88.037.

17 \* **Sec. 10.** AS 08.88.171 is amended to read:

18 **Sec. 08.88.171. Entitlement to license.** (a) A natural person qualifies [IS  
19 ELIGIBLE] for a real estate broker license if the person passes the [REAL ESTATE]  
20 brokers examination, [IF THE PERSON] applies for a license within six months after  
21 passing the [PERSON HAS TAKEN THE REAL ESTATE BROKERS] examination,  
22 [IF THE PERSON] furnishes satisfactory proof of successful completion of the  
23 education requirements of AS 08.88.091, [IF THE PERSON] has had at least 24  
24 months of active and continuous experience as a licensed real estate salesperson  
25 within the 36 months immediately preceding application for the broker license,  
26 [SALESMAN, IF THE PERSON] is not under indictment for, or seven years have  
27 elapsed since the person has completed a sentence imposed upon conviction of,  
28 forgery, theft, extortion, conspiracy to defraud creditors, or any other felony involving  
29 moral turpitude, and [IF THE PERSON] is an owner of a real estate business or  
30 employed as a real estate broker by a foreign or domestic corporation, [OR A]  
31 partnership, limited partnership, or limited liability company [AND IF THAT

1 CORPORATION OR PARTNERSHIP DOES NOT HAVE AN EXISTING  
2 LICENSED BROKER]. Unless the broker fails to renew the license [PAY THE  
3 BIENNIAL RENEWAL FEE] or unless the broker's license is suspended or revoked  
4 [UNDER AS 08.88.071(a)(3)], the [REAL ESTATE] broker's license continues in  
5 effect as [SO] long as the broker's license is active or inactive [BROKER IS AN  
6 OWNER OF A REAL ESTATE BUSINESS, OR THE BROKER IS EMPLOYED  
7 AS A REAL ESTATE BROKER BY A CORPORATION OR A PARTNERSHIP].  
8 If the broker stops being an owner of a real estate business [,] or stops being employed  
9 as a real estate broker by a foreign or domestic corporation, [OR] partnership, limited  
10 partnership, or limited liability company, the broker's license is suspended from the  
11 time the broker stops until

12 (1) the broker again becomes an owner of a real estate business or is  
13 again employed as a real estate broker by a foreign or domestic corporation, [OR A]  
14 partnership, limited partnership, or limited liability company; or

15 (2) the broker is employed by another [A LICENSED REAL  
16 ESTATE] broker as an associate [REAL ESTATE] broker, in which case the real  
17 estate broker license shall be [IS] returned to the commission by the broker, and the  
18 commission shall issue [ISSUES] the broker an associate real estate broker license.

19 (b) A natural person qualifies [IS ELIGIBLE] for an associate real estate  
20 broker license if the person passes the [REAL ESTATE] brokers examination, [IF THE  
21 PERSON] applies for the [A] license within six months after passing [THE PERSON  
22 HAS TAKEN] the examination, [IF THE PERSON] submits satisfactory proof of  
23 successful completion of the education requirements of AS 08.88.091, [IF THE  
24 PERSON] has had at least 24 months of active and continuous experience as a licensed  
25 real estate salesperson within the 36 months immediately preceding application for  
26 the license, [SALESMAN, IF THE PERSON] is not under indictment for, or five  
27 years have elapsed since the person has completed a sentence imposed upon conviction  
28 of, forgery, theft, extortion, conspiracy to defraud creditors, or any other felony  
29 involving moral turpitude, and [IF THE PERSON] is employed by a licensed real  
30 estate broker as an associate real estate broker. Unless the associate broker fails to  
31 renew the license [PAY THE BIENNIAL RENEWAL FEE] or unless the associate

1 broker's license is suspended or revoked [UNDER AS 08.88.071(a)(3)], the associate  
2 [REAL ESTATE] broker's license continues in effect as [SO] long as the associate  
3 broker is employed by a licensed real estate broker as an associate broker. If the  
4 associate broker stops being employed by a licensed real estate broker, the associate  
5 broker's license is suspended from the time the associate broker stops until

6 (1) the associate broker again is employed by a real estate broker as an  
7 associate broker; or

8 (2) the associate broker becomes an owner of a real estate business or  
9 is employed as a real estate broker by a foreign or domestic corporation,  
10 partnership, limited partnership, or limited liability company, in which case the  
11 associate broker's [ASSOCIATE REAL ESTATE BROKER] license shall be [IS]  
12 returned to the commission by the associate broker, and the commission shall issue  
13 [ISSUES] the licensee [ASSOCIATE BROKER] a broker's [REAL ESTATE  
14 BROKER] license.

15 (c) A natural person qualifies [IS ELIGIBLE] for a real estate salesperson  
16 [SALESMAN] license if the person passes the real estate salesperson [SALESMAN]  
17 examination, [IF THE PERSON] applies for the [A] license within six months after  
18 passing [THE PERSON HAS TAKEN] the examination, [IF THE PERSON] submits  
19 satisfactory proof of successful completion of the education requirements of  
20 AS 08.88.091, [IF THE PERSON] is at least 19 years old, [IF THE PERSON] is not  
21 under indictment for forgery, theft, extortion, conspiracy to defraud creditors, or any  
22 other felony involving moral turpitude, or, if convicted of such an offense, the person  
23 has completed the sentence imposed upon conviction, and [IF THE PERSON] is  
24 employed by a real estate broker. Unless the salesperson [SALESMAN] fails to  
25 renew the license [PAY THE BIENNIAL RENEWAL FEE] or unless the real estate  
26 salesperson's [SALESMAN'S] license is suspended or revoked [UNDER  
27 AS 08.88.071(A)(3)], a real estate salesperson's [SALESMAN'S] license continues in  
28 effect as [SO] long as the salesperson [SALESMAN] is employed as a salesperson  
29 [SALESMAN] by a licensed real estate broker. If the salesperson [SALESMAN]  
30 stops being employed as a real estate salesperson [SALESMAN], the real estate  
31 salesperson's [SALESMAN'S] license is suspended from the time the salesperson

1 [SALESMAN] stops until the salesperson [SALESMAN] again is employed as a real  
2 estate salesperson [SALESMAN] by a licensed real estate broker.

3 (d) A real estate licensee shall promptly inform the commission of a change  
4 in business association that affects the status of the licensee's license under this  
5 section.

6 \* **Sec. 11.** AS 08.88.171 is amended by adding new subsections to read:

7 (e) Notwithstanding (a) - (d) of this section, a natural person qualifies for a  
8 limited license to practice community association management under (f) of this section  
9 if the person

10 (1) applies by January 1, 1999;

11 (2) pays the required fees;

12 (3) demonstrates to the commission's satisfaction that the person has  
13 engaged in the practice of community association management for at least 24 months  
14 before January 1, 1999; and

15 (4) meets other requirements that may be established by the  
16 commission in its regulations for issuance of a license under this subsection.

17 (f) A person who qualifies under (e) of this section shall be issued an associate  
18 broker license if, at the time of issuance, the person is employed by a broker. A  
19 person who qualifies under (e) of this section shall be issued a broker license if, at the  
20 time of issuance, the person is the owner of a community association management  
21 business or is employed as a community association manager by a foreign or domestic  
22 corporation, partnership, limited partnership, or limited liability company. After initial  
23 issuance of a license to a person under this subsection, the person is subject to the  
24 same requirements that exist for other brokers and associate brokers licensed under this  
25 chapter. However, notwithstanding other provisions of this chapter, under a license  
26 issued under this subsection, a person may practice only community association  
27 management and does not qualify as a broker or associate broker for purposes of  
28 AS 08.88.161(1) - (4), (7), or (8) or 08.88.165(2). A person issued a limited license  
29 to practice community association management under this section may not use the  
30 terms "salesperson," "broker," or "associate broker" for any business purpose unless  
31 the person is also licensed appropriately under other provisions of this chapter.

1 \* **Sec. 12.** AS 08.88 is amended by adding new sections to read:

2           **Sec. 08.88.173. Fidelity bond for community association managers.** (a) If  
3 the board of directors of a community association allows a broker to exercise control  
4 over community association fees or other community association funds, the broker  
5 must provide evidence to the commission that the broker is covered by a blanket  
6 fidelity insurance bond. The bond may be in the name of the broker with the  
7 association as an additional insured or in the name of the association with the broker  
8 as an additional insured. The bond must cover the maximum funds that will be within  
9 the control of the community association manager at any time while the bond is in  
10 force. The commission may grant an exemption from the bonding requirement of this  
11 subsection if the commission determines that the community association manager has  
12 equivalent comparable coverage or that coverage is unavailable. The commission may  
13 adopt regulations to implement this subsection, including regulations concerning the  
14 minimum coverage and terms of coverage that are required and proof of bond and the  
15 granting of exemptions.

16           (b) If a loss covered by the fidelity bond required under this section is also  
17 reimbursable from the real estate surety fund, the owners' association that suffered the  
18 loss may not recover under the bond until the association has filed a claim for  
19 reimbursement under AS 08.88.460 and proceedings relating to the claim are  
20 concluded.

21           **Sec. 08.88.175. Limitations on community association managers.** A  
22 licensee may not, within the practice of community association management, exercise  
23 control over the

24                   (1) reserves or investment accounts of a community association;

25                   (2) operating account of a community association unless

26                           (A) allowed under a contract that has been approved by the  
27 association's board of directors; and

28                           (B) duplicate financial statements concerning the account are  
29 sent by the institution holding the account to the licensee and the association's  
30 board of directors at separate addresses.

31 \* **Sec. 13.** AS 08.88.181(a) is amended to read:

1 (a) The real estate examinations [EXAMINATION] may include [, BUT IS  
2 NOT NECESSARILY LIMITED TO,] questions on real estate business ethics and  
3 standards; arithmetic and accounting; elementary principles of land economics and  
4 appraisal; the general principles in state statutes relating to deeds, mortgages, real  
5 estate contracts, subdivisions, common interest communities, legal descriptions,  
6 building restrictions, agency, [AND] brokerage, disclosure requirements, trust  
7 accounting requirements, and landlord and tenant law; property management  
8 ethics and standards; community association management operations, ethics, and  
9 standard; and the general provisions of this chapter and of the regulations of the  
10 commission.

11 \* Sec. 14. AS 08.88.191(b) is amended to read:

12 (b) If the commission authorizes the department to contract with a national  
13 testing service to prepare, administer, and grade examinations,

14 (1) the commission or its designee shall review the examination and  
15 approve its contents;

16 (2) application for an [THE] examination [, ACCOMPANIED BY THE  
17 PROPER FILING FEE,] may be transmitted by the applicant directly to the national  
18 testing service; payment of an examination fee shall be made by the applicant  
19 directly to the national testing service's designated representative before the  
20 examination is taken by the applicant.

21 \* Sec. 15. AS 08.88.201 is amended to read:

22 **Sec. 08.88.201. Reexamination.** A person who fails an examination may  
23 apply for a subsequent examination, but shall pay the application fee with [FOR] each  
24 application.

25 \* Sec. 16. AS 08.88.221 is amended to read:

26 **Sec. 08.88.221. Fees.** The Department of Commerce and Economic  
27 Development shall set fees under AS 08.01.065 for a real estate broker, associate  
28 broker, or salesperson [SALESMAN] licensee or applicant for the following:

29 (1) examination;

30 (2) [RECIPROCITY;

31 (3)] initial license;

- 1                   (3) [(4)] renewal of an active license;
- 2                   (4) [(5)] renewal of an inactive license;
- 3                   (5) [(6)] amending or transferring a license;
- 4                   (6) [(7)] publications offered by the commission;
- 5                   (7) [(8)] seminars offered by the commission;
- 6                   (8) reinstatement of a lapsed license;
- 7                   (9) changes to registered office information;
- 8                   (10) course certification and recertification; and
- 9                   (11) instructor approval and renewal of approval.

10       \* Sec. 17. AS 08.88.241 is repealed and reenacted to read:

11               Sec. 08.88.241. **Reinstatement of lapsed license.** (a) A person whose real  
12       estate license has lapsed less than 24 months is eligible for reinstatement of the license  
13       if the person provides the required application, license fees, proof of continuing  
14       education as required by AS 08.88.091 for licensing periods during which the license  
15       was inactive or lapsed.

16               (b) A real estate licensee whose license has been lapsed for more than 24  
17       months is not eligible for reinstatement of the license and is eligible for the license  
18       only by meeting the qualifications applicable to initial licensure under AS 08.88.171.

19       \* Sec. 18. AS 08.88.251 is amended to read:

20               Sec. 08.88.251. **Inactive license.** (a) A real estate licensee who intends to  
21       [PERSON LICENSED BY THE COMMISSION MAY] become inactive shall return  
22       [BY RETURNING] to the commission the person's license certificate and a completed  
23       inactivation form provided by the commission along with any applicable fees. [IN  
24       THE FORM, THE PERSON SHALL STATE THE DATE ON WHICH THE PERSON  
25       INTENDS TO BECOME INACTIVE. THE PERSON'S INACTIVE STATUS  
26       BEGINS ON THE DATE STATED.] The commission shall issue the person an  
27       inactive license certificate.

28               (b) An inactive licensee may not attempt or offer to do any of the activities  
29       listed in AS 08.88.161, but may receive commissions or other payments from the  
30       broker who previously contracted with or employed the licensee for services  
31       performed while actively licensed [EXCEPT AS OTHERWISE ALLOWED FOR

1 UNLICENSED PERSONS UNDER AS 08.88.165].

2 (c) A person who has an [IS] inactive license certificate under (a) of this  
3 section may reactivate the license [BECOME ACTIVE] by applying for an active  
4 license and paying the required fees. [IN THE APPLICATION FORM THE PERSON  
5 SHALL STATE THE DATE ON WHICH THE PERSON INTENDS TO BECOME  
6 ACTIVE. THE PERSON'S ACTIVE STATUS BEGINS ON THE DATE STATED.  
7 THE COMMISSION SHALL SEND THE PERSON A LICENSE CERTIFICATE.]  
8 A person is eligible for change from an inactive to an active status under this  
9 subsection only [WITHOUT EXAMINATION] if the person has [NOT] been in  
10 inactive status for less [MORE] than 24 months [TWO YEARS]. If the person has  
11 been in inactive status for 24 months or for more than 24 months [TWO YEARS],  
12 the person is required to meet the requirements for initial licensure in order to be  
13 licensed under this chapter again [TAKE AN EXAMINATION].

14 \* Sec. 19. AS 08.88.281 is amended to read:

15 **Sec. 08.88.281. Real estate surety fund.** Before issuing a license to an  
16 applicant under this chapter, the commission shall ensure [DETERMINE] that the  
17 applicant has complied with the provisions of AS 08.88.455 and is covered by the real  
18 estate surety fund established in AS 08.88.450.

19 \* Sec. 20. AS 08.88.291 is amended to read:

20 **Sec. 08.88.291. Location.** A person licensed as a real estate broker shall, by  
21 registering with the commission, inform the commission of the person's  
22 [BROKER'S] principal office and of any branch offices of the person's real estate  
23 business and include in the information the names of the real estate licensees who  
24 are employed at each office. A [BROKER HAS. THE BROKER AND THE  
25 ASSOCIATE] real estate licensee [BROKERS AND REAL ESTATE SALESMEN  
26 THE BROKER EMPLOYS] may do real estate business only through a [IN OR OUT  
27 OF THE BROKER'S] principal office or from a [AND THE BROKER'S] branch  
28 office registered by the broker by whom the licensee is employed [OFFICES].  
29 Failure of a real estate broker to maintain a place of business or to inform the  
30 commission of its location and the names and addresses of all real estate licensees  
31 employed at each location by the broker is [UNDER THE BROKER'S

1 JURISDICTION AT THE LOCATION ARE] grounds for the suspension or revocation  
2 of the broker's license.

3 \* Sec. 21. AS 08.88.301 is amended to read:

4 **Sec. 08.88.301. Change of location.** Before [IF] a real estate broker changes  
5 the location of the broker's principal office or of a branch office, the broker shall  
6 [IMMEDIATELY] notify the commission of the new address and any other office  
7 changes on a form provided by the commission and pay the applicable fees.

8 \* Sec. 22. AS 08.88.311 is amended to read:

9 **Sec. 08.88.311. Branch offices.** (a) A branch office shall be under the direct  
10 supervision of a real estate associate broker whose principal place of business is that  
11 office and who is licensed under this chapter. An associate [REAL ESTATE] broker  
12 may serve in the capacity of direct supervisor at only one office [ONLY].

13 (b) A [ALL] branch office [OFFICES] shall bear and be advertised only in the  
14 name of the principal office but may also indicate that it is a [THEY ARE] branch  
15 [OFFICES OF THE PRINCIPAL] office.

16 \* Sec. 23. AS 08.88.321 is repealed and reenacted to read:

17 **Sec. 08.88.321. Possession and display of license certificates.** (a) The  
18 license certificate of a real estate broker shall be displayed in the broker's principal  
19 office.

20 (b) The license certificate of each licensee working in the broker's principal  
21 office shall be displayed in that office.

22 (c) The license certificate of the designated associate broker who is in charge  
23 of a branch office and the certificate of each licensee working in a branch office shall  
24 be displayed in the branch office indicated as the office of the licensees' employment  
25 in the registration required under AS 08.88.291.

26 (d) Certificates displayed under this section must be displayed where they are  
27 available for public clients and customers to verify the current active status of licensees  
28 working in the office.

29 \* Sec. 24. AS 08.88.331 is amended to read:

30 **Sec. 08.88.331. Making of transactions.** An active [A] real estate  
31 salesperson [SALESMAN] or associate real estate broker may perform activities for

1 which a real estate license is required [MAKE A REAL ESTATE TRANSACTION]  
2 only through the real estate broker who employs or contracts with the licensee  
3 [REAL ESTATE SALESMAN OR ASSOCIATE REAL ESTATE BROKER]. All  
4 money or other proceeds collected in trust and related to a real estate transaction  
5 [ON BEHALF OF THE BROKER] shall immediately be turned over to the broker or  
6 the broker's authorized representative [AGENT. ALL TRANSACTIONS IN REAL  
7 ESTATE BY A REAL ESTATE SALESMAN OR ASSOCIATE REAL ESTATE  
8 BROKER SHALL BE PROCESSED THROUGH THE REAL ESTATE  
9 SALESMAN'S OR THE ASSOCIATE REAL ESTATE BROKER'S EMPLOYING  
10 REAL ESTATE BROKER'S OFFICE, WHETHER THE TRANSACTIONS ARE FOR  
11 THE REAL ESTATE SALESMAN'S OR ASSOCIATE REAL ESTATE BROKER'S  
12 OWN USE OR THE USE OF A CLIENT].

13 \* Sec. 25. AS 08.88.341 is amended to read:

14 Sec. 08.88.341. Listings or management contracts. All real estate listings  
15 or management contracts must be in writing and must be signed by the broker  
16 [SELLER] or associated licensee [BY AN AGENT] of the broker and by the client  
17 or an authorized representative of the client for whose benefit the real estate  
18 licensee will act [SELLER]. All real estate exclusive listings or management  
19 contracts must have a definite expiration date that may be renewed or extended  
20 only by a written agreement signed by the client or the client's authorized  
21 representative.

22 \* Sec. 26. AS 08.88.351 is amended to read:

23 Sec. 08.88.351. Accounts; records of transactions [RECORD OF  
24 TRANSACTION]. A real estate broker shall

25 (1) keep a complete record, [OF ALL REAL ESTATE  
26 TRANSACTIONS MADE BY THE BROKER OR EMPLOYEES OF THE BROKER]  
27 for [AT LEAST] three years, of all real estate transactions in which the broker or  
28 employed licensees of the broker engaged:

29 (2) provide upon request to any principal in a transaction an  
30 [MAKE A CLOSING STATEMENT SHOWING DISBURSEMENTS AND]  
31 accounting for all money or other property collected or held in the course of each

1 transaction:

2 (3) keep a separate trust account in a bank [,] into which the broker  
3 shall deposit all earnest money deposits, [AND] purchase money, security deposits,  
4 contingency funds, collected rental money, rental receipts, or other money  
5 collected in trust until it is appropriate [PROPER] for the broker to distribute the  
6 money to the proper persons;

7 (4) if authorized by the board of directors of a community  
8 association to collect, control, or disburse association funds, keep a separate  
9 account in a financial institution for the funds;

10 (5) make available to the commission, on request, account records and  
11 all other documents [RELATING TO TRANSACTIONS UNDER (3) OF THIS  
12 SECTION] that the commission may require in order to conduct an investigation or  
13 to [A COMPLETE] audit an account required under this section;

14 (6) if records are delivered to a partnership, corporation, or  
15 business entity other than another licensed broker upon termination of  
16 employment, ensure by contract the maintenance and availability of those records  
17 for a minimum of three years in accordance with this section [OF TRUST  
18 ACCOUNTS].

19 \* Sec. 27. AS 08.88.351 is amended by adding new subsections to read:

20 (b) A real estate licensee

21 (1) shall keep, for a minimum of three years, a complete record of all  
22 real estate transactions in which the licensee was a principal;

23 (2) who maintains records concerning management or sale of the  
24 licensee's own properties or the licensee's client properties separate from the broker's  
25 file, shall retain those records for a minimum of three years;

26 (3) shall make available to the commission, on request, records and  
27 other documents that the commission may require to conduct an investigation;

28 (4) shall promptly deposit community association funds or proceeds  
29 from periodic community association assessments into either a community association  
30 reserve account or a community association operating account; if, at any time, the  
31 community association operating account contains more money than is estimated to be

1 needed for budgeted expenditures for the subsequent three months, the licensee shall  
2 transfer the excess funds to the community association reserve account as soon as  
3 practicable;

4 (5) may not commingle funds of a community association with funds  
5 of another community association or with the licensee's funds.

6 (c) For the purposes of this section, the three-year requirement for records  
7 maintenance begins at the initiation of a transaction and continues, as applicable, until  
8 three years after the date

9 (1) a listing agreement ends;

10 (2) a sales transaction closes or otherwise ends;

11 (3) a management contract ends; or

12 (4) another contractual or fiduciary obligation ends.

13 \* Sec. 28. AS 08.88.361 is amended to read:

14 **Sec. 08.88.361. When a commission or other fee is earned. An obligation**  
15 **to pay a [A] commission, management fee, or other compensation to a real estate**  
16 **broker must be based on [IS EARNED WHEN THE REAL ESTATE BROKER**  
17 **FULFILLS] the terms of a written listings or management [PERSONAL SERVICES]**  
18 **contract. Other than through enforcement of the terms of a written listings or**  
19 **management contract, a licensee has no right under law to enforce collection of**  
20 **a commission or other fee for a service that requires a real estate license.**

21 \* Sec. 29. AS 08.88.381 is amended to read:

22 **Sec. 08.88.381. Signs. A [LICENSED] real estate broker shall maintain a sign**  
23 **at each of the [REAL ESTATE] broker's registered real estate offices [,] prominently**  
24 **showing the name of the real estate [BROKER'S] business as registered with the**  
25 **commission. The required size, content, and location of signs under this section**  
26 **may be determined by the commission under regulations. The regulations must**  
27 **allow signs in offices located on premises with more restrictive sign requirements**  
28 **than would otherwise be applicable under the commission's regulations to be**  
29 **considered to be in compliance with the regulations if the signs meet the**  
30 **requirements of the premises and the licensee submits a copy of the sign**  
31 **requirements of the premises to the commission.**

1 \* Sec. 30. AS 08.88.391 is amended to read:

2           Sec. 08.88.391. **Conflict of interest.** A [LICENSED] real estate licensee  
3 [BROKER, ASSOCIATE REAL ESTATE BROKER, OR REAL ESTATE  
4 SALESMAN] who has a personal financial interest or other conflict of interest  
5 relating to [IN] a real estate transaction shall, at the time of initial substantive  
6 contact with the principals or agents of the principals, disclose that interest in  
7 writing to the principals and agents of the principals [EVERY PERSON] involved  
8 in the transaction. In this section, "conflict of interest" is when a licensee

9                   (1) has a present personal interest in the property that is the  
10 subject of a transaction;

11                   (2) is whole or part owner of a business interest in the property  
12 being marketed or considered for purchase or lease;

13                   (3) represents a person with whom the licensee has a financial  
14 relationship or who has a present financial interest in the property being  
15 marketed or considered for purchase or lease;

16                   (4) represents more than one party in a transaction without giving  
17 disclosure notification as required by law;

18                   (5) receives compensation from someone other than a party to the  
19 contract or another party having a financial interest in the transaction;

20                   (6) receives compensation for community association management  
21 while simultaneously engaged as a property manager for a unit within the  
22 community association.

23 \* Sec. 31. AS 08.88.396 is amended to read:

24           Sec. 08.88.396. **Disclosure of agency to prospective buyers and sellers.** (a)  
25 A person licensed [HOLDING A LICENSE] under this chapter shall, when acting as  
26 an agent for a prospective seller of real estate,

27                   (1) disclose in writing the licensee's [PERSON'S] agency relationship  
28 with the seller to each prospective buyer at the time that the licensee [PERSON]  
29 begins to provide specific assistance to locate or acquire real estate for the buyer, and  
30 obtain from each prospective buyer a signed acknowledgement that the buyer is aware  
31 of the agency relationship between the licensee [PERSON LICENSED UNDER THIS

1 CHAPTER] and the seller; and

2 (2) include in the purchase agreement a statement of the agency  
3 relationship between the licensee [PERSON LICENSED UNDER THIS CHAPTER]  
4 and the seller.

5 (b) A person licensed [HOLDING A LICENSE] under this chapter shall, when  
6 acting as an agent for a prospective buyer of real estate,

7 (1) disclose the licensee's [PERSON'S] relationship with the buyer to  
8 a prospective seller of real estate, or to the seller's agent, at the time of the initial  
9 contact between the licensee [PERSON LICENSED UNDER THIS CHAPTER] and  
10 the prospective seller or the seller's agent, and confirm the relationship in writing as  
11 soon as possible after the initial contact;

12 (2) include in the purchase agreement a statement of the agency  
13 relationship between the licensee [PERSON LICENSED UNDER THIS CHAPTER]  
14 and the buyer;

15 (3) if the prospective seller has an unexpired exclusive listing contract  
16 for a property, present all offers [AN OFFER] to purchase that property through [TO]  
17 the seller's agent; and

18 (4) disclose in writing to all parties to a transaction when the licensee's  
19 [PERSON'S] compensation as agent for the buyer is to be paid by anyone other than  
20 the buyer being represented by the licensee [PERSON].

21 (c) A person licensed under this chapter may [NOT] act as an agent for both  
22 a prospective seller and a prospective buyer of real estate only after [UNLESS] the  
23 licensee [PERSON] informs both the seller and the buyer of the dual agency and  
24 obtains written consent to the dual [JOINT] agency from both principals.

25 (d) When a change occurs during a transaction that makes a prior written  
26 disclosure required by this section incomplete, misleading, or inaccurate, the licensee  
27 [PERSON LICENSED UNDER THIS CHAPTER] shall make a revised disclosure, in  
28 writing, to all parties to the transaction as soon as possible. The revised disclosure  
29 must include the date of the revision and shall be acknowledged in writing by all the  
30 parties.

31 \* Sec. 32. AS 08.88 is amended by adding new sections to read:

1           **Sec. 08.88.397. No duty to disclose nearby sex offenders.** A real estate  
2 licensee does not have a duty to notify a client that a person who has been convicted  
3 of a sex offense, as defined in AS 12.63.100, resides in the vicinity of the property that  
4 is the subject of a potential transaction involving the licensee and the client.

5           **Sec. 08.88.398. Licensed assistants.** A licensed real estate salesperson or  
6 licensed associate real estate broker may act as a licensed assistant to a real estate  
7 licensee other than the broker who employs the salesperson or associate broker if

8                   (1) the employment arrangement between the licensed assistant and the  
9 other licensee is in writing and conforms to the applicable state and federal regulations  
10 regarding employment;

11                   (2) the employment of the licensed assistant is approved in writing by  
12 the broker of the licensee who employs the assistant;

13                   (3) the licensee who employs the assistant agrees to be responsible for  
14 paying the licensed assistant's wages and appropriate taxes and completing the  
15 appropriate state and federal tax forms;

16                   (4) the broker of the licensee who employs the assistant agrees to be  
17 liable for the actions of the licensed assistant.

18 \* **Sec. 33.** AS 08.88.401 is amended to read:

19           **Sec. 08.88.401. Prohibited conduct.** (a) A person licensed under this chapter  
20 may not falsely represent to

21                   (1) have been awarded a degree or other designation;

22                   (2) [OR TO] be a member or an affiliate of a professional organization;

23           or

24                   (3) be a member of a franchise or other business association.

25           (b) A person

26                   (1) who is not a real estate broker licensed in this state may not accept  
27 a fee or a commission for performance of an act for which a license is required by this  
28 chapter except that a real estate broker validly licensed in another state may accept a  
29 fee or commission or a portion of a fee or commission for assisting a real estate broker  
30 licensed in this state in the performance of an act for which a license is required by  
31 this chapter;

1 (2) who is an associate broker or a real estate salesperson  
2 [SALESMAN] licensed in this state may [NOT] accept a fee or commission for  
3 performance of an act for which a license is required by this chapter only from  
4 [UNLESS ACCEPTANCE IS AUTHORIZED BY] the licensee's employing broker,  
5 except that the wages of a person who is engaged as a licensed assistant under  
6 AS 08.88.398 may be accepted by the person from the assistant's employer [WHO  
7 EMPLOYS THE SALESMAN].

8 (c) A person licensed under this chapter may not knowingly make, authorize,  
9 direct, or aid in the publication of a false statement or misrepresentation concerning  
10 land or a subdivision or other real estate offered for sale, [OR] lease, or rent or  
11 concerning an association being managed.

12 (d) A person who violates [A PROVISION OF] this section, AS 08.88.161,  
13 or 08.88.396 is guilty of a class A misdemeanor.

14 \* Sec. 34. AS 08.88.401 is amended by adding new subsections to read:

15 (e) A person licensed under this chapter may not knowingly pay any part of  
16 a fee, commission, or other compensation received by the licensee in buying, selling,  
17 exchanging, leasing, auctioning, or renting real estate to

18 (1) a person who is not licensed under this chapter, except as provided  
19 in (f) of this section;

20 (2) another licensee, except through the licensee's responsible broker;  
21 or

22 (3) another licensee knowing that the other licensee intends to pay all  
23 or a portion of that which is received to a person who is not licensed under this  
24 chapter.

25 (f) The prohibition of (e)(1) of this section does not prohibit

26 (1) payments by a licensee to a person licensed to perform real estate  
27 activities in another jurisdiction if the other person has assisted the licensee in the  
28 performance of an act for which a license is required by this chapter; or

29 (2) payments from a real estate licensee to a principal as part of the  
30 resolution of a dispute regarding the terms of a transaction or regarding the property  
31 transferred.

- 1 (g) A person may not  
2 (1) use or attempt to use a license issued under this chapter that was  
3 issued to another person;  
4 (2) give false or forged evidence to the commission or to a  
5 representative of the commission in an attempt to obtain a license;  
6 (3) impersonate an applicant under this chapter;  
7 (4) knowingly use or attempt to use an expired, suspended, revoked,  
8 or nonexistent license; or  
9 (5) falsely claim to be licensed and authorized to practice under this  
10 chapter.

11 \* Sec. 35. AS 08.88.450 is amended to read:

12 **Sec. 08.88.450. Real estate surety fund.** The real estate surety fund is  
13 established in the general fund to carry out the purposes of AS 08.88.450 - 08.88.500.  
14 The fund is composed of payments made by [LICENSED] real estate licensees  
15 [BROKERS AND SALESMEN] under AS 08.88.455 and filing fees retained under  
16 [IN ACCORDANCE WITH] AS 08.88.460. The fund may not exceed \$500,000 and  
17 amounts in the fund in excess of \$250,000 may be appropriated for real estate  
18 educational purposes as provided in AS 08.88.091.

19 \* Sec. 36. AS 08.88.455 is amended to read:

20 **Sec. 08.88.455. Payments by real estate licensees [BROKERS AND**  
21 **SALESMEN].** (a) A [LICENSED] real estate licensee, [BROKER, ASSOCIATE  
22 BROKER, OR SALESMAN] when applying for [OBTAINING] or renewing a real  
23 estate license, in lieu of obtaining a corporate surety bond, shall pay to the commission  
24 in addition to the license fee, a surety fund fee not to exceed \$125. After the fund  
25 reaches \$250,000, the commission shall by regulation adjust the surety fund fees so  
26 that, taking into account anticipated expenditures for claims against the fund and real  
27 estate educational purposes, the fund is maintained at a level not less than \$250,000.

28 (b) All fees collected under this section shall be paid at least once a month by  
29 the department [COMMISSION] into the general fund. These payments shall be  
30 credited to the real estate surety fund.

31 \* Sec. 37. AS 08.88.460 is amended to read:

1           **Sec. 08.83.460. Claim for payment.** (a) Subject to (e) of this section, a [A]  
2 person seeking reimbursement for a loss suffered in a real estate transaction as a result  
3 of fraud, misrepresentation, deceit, or the conversion of trust funds or the conversion  
4 of community association accounts under the control of a community association  
5 manager on the part of a licensee [REAL ESTATE BROKER, ASSOCIATE REAL  
6 ESTATE BROKER, OR REAL ESTATE SALESMAN] licensed under this chapter  
7 shall make a claim to the commission for reimbursement on a form furnished by the  
8 commission. In order to be eligible for reimbursement by the commission, the  
9 claim form must be filed within two years after the occurrence of the fraud,  
10 misrepresentation, deceit, or conversion of trust funds or the conversion of  
11 community association accounts under the control of a community association  
12 manager claimed as the basis for the reimbursement. The form shall be executed  
13 under penalty of unsworn falsification [,] and must include the following:

14                   (1) the name and address of each [THE] real estate licensee involved  
15 [BROKER, ASSOCIATE REAL ESTATE BROKER, OR REAL ESTATE  
16 SALESMAN];

17                   (2) the amount of the alleged loss;

18                   (3) the date or period of time during which the alleged loss occurred;

19                   (4) the date upon which the alleged loss was discovered;

20                   (5) the name and address of the claimant; and

21                   (6) a general statement of facts relative to the claim.

22           (b) A copy of a claim filed with the commission under (a) of this section shall  
23 be sent to each [THE] real estate licensee [BROKER, ASSOCIATE REAL ESTATE  
24 BROKER, OR REAL ESTATE SALESMAN] alleged to have committed the  
25 misconduct resulting in losses, to the principal [AS WELL AS A] real estate broker  
26 employing a licensee [AN ASSOCIATE REAL ESTATE BROKER OR REAL  
27 ESTATE SALESMAN] alleged to have committed the conduct resulting in losses, and  
28 to any other real estate licensee involved in the transaction at least 20 days before  
29 any hearing held on the claim by the commission.

30           (c) Within seven days after receipt of notice of a claim under (b) of this  
31 section, each [THE] real estate licensee [BROKER, ASSOCIATE REAL ESTATE

1 BROKER, OR REAL ESTATE SALESMAN] against whom the claim is made may  
2 elect to defend the claim as a small claims action in district court under District Court  
3 Civil Rules 8 - 22 [,] if the claim does not exceed the small claims jurisdictional limit.  
4 An election to defend a claim in district court under the small claims rules may not  
5 be revoked by the real estate licensee [BROKER, ASSOCIATE BROKER, OR  
6 SALESMAN] without the consent of the claimant. Upon receipt of a valid written  
7 election under this subsection, the commission shall dismiss the claim filed with the  
8 commission and notify the claimant that the claim must be brought as a small claims  
9 action in the appropriate state court.

10 (d) A claimant under this section shall pay a filing fee of \$250 to the  
11 commission at the time the claim is filed. The filing fee shall be refunded [ONLY]  
12 if

13 (1) the commission makes an award to the claimant from the real estate  
14 surety fund;

15 (2) the claim is dismissed under (c) of this section; or

16 (3) the claim is withdrawn by the claimant before the commission holds  
17 a hearing on the claim.

18 \* Sec. 38. AS 08.88.460 is amended by adding a new subsection to read:

19 (e) If the claim is for a loss incurred as a result of acts or omissions occurring  
20 in the course of the licensee's practice of community association management, only the  
21 owners' association for which the real estate licensee practices community association  
22 management may file a claim under this section.

23 \* Sec. 39. AS 08.88.465(b) is amended to read:

24 (b) A certified or authenticated copy of a record, including a transcript of  
25 testimony, of a hearing held under AS 08.88.071(a)(3) in which fraud,  
26 misrepresentation, deceit, or conversion of trust funds or the conversion of  
27 community association accounts under the control of a community association  
28 manager on the part of a [LICENSED BROKER, ASSOCIATE BROKER, OR] real  
29 estate licensee [SALESMAN] is established [,] may constitute sufficient evidence to  
30 support a finding that a claim should be paid.

31 \* Sec. 40. AS 08.88.465(c) is amended to read:

1 (c) Before the commission finds that payment should be made from the real  
2 estate surety fund, each [THE] real estate licensee against whom the claim is made  
3 [BROKER, ASSOCIATE BROKER, OR REAL ESTATE SALESMAN] shall be  
4 afforded an opportunity to file with the commission, within 10 days after receipt of  
5 notification of the claim under AS 08.88.460(b), either a written statement in  
6 opposition to the claim or an application for the presentation of additional evidence.

7 \* Sec. 41. AS 08.88.465(d) is amended to read:

8 (d) The claimant bears the burden of proof of establishing that the claimant  
9 suffered losses in a real estate transaction as a result of fraud, misrepresentation,  
10 deceit, or the conversion of trust funds or the conversion of community association  
11 accounts under the control of a community association manager on the part of a  
12 real estate licensee [BROKER, ASSOCIATE REAL ESTATE BROKER, OR REAL  
13 ESTATE SALESMAN] and the extent of those losses. All facts shall be established  
14 by a preponderance of the evidence.

15 \* Sec. 42. AS 08.88.470 is amended to read:

16 **Sec. 08.88.470. Findings and payment.** At the conclusion of the  
17 commission's consideration of a claim made under AS 08.88.460, it shall make written  
18 findings and conclusions on the evidence. If the commission finds that the claimant  
19 has suffered a loss in a real estate transaction as a result of fraud, misrepresentation,  
20 deceit, or the conversion of trust funds or the conversion of community association  
21 accounts under the control of a community association manager on the part of a  
22 real estate licensee [BROKER, ASSOCIATE BROKER, OR SALESMAN], the  
23 commission may award a claimant reimbursement from [OUT OF] the real estate  
24 surety fund for the claimant's loss up to \$10,000. Not [HOWEVER, NOT] more than  
25 \$10,000 may be paid for each transaction regardless of the number of persons injured  
26 or the number of parcels of real estate involved in the transaction.

27 \* Sec. 43. AS 08.88.472(a) is amended to read:

28 (a) The [WHEN AN AWARD IS MADE FROM THE REAL ESTATE  
29 SURETY FUND UNDER AS 08.88.470, THE] commission may charge to the real  
30 estate surety fund the costs of a hearing on a claim for reimbursement held under  
31 AS 08.88.465. The commission shall deposit into the real estate surety fund

1        **amounts** [AS 08.88.071 OR 08.88.465. AMOUNTS SUBSEQUENTLY] recovered  
2        [BY THE COMMISSION] for these costs from the licensee under AS 08.88.071(b) or  
3        from other parties under AS 08.88.490 [SHALL BE DEPOSITED TO THE REAL  
4        ESTATE SURETY FUND].

5        \* **Sec. 44.** AS 08.88.474 is amended to read:

6                **Sec. 08.88.474. Payment of small claims judgment.** If a claim originally  
7        filed with the commission is dismissed and is heard as a small claims action under  
8        AS 08.88.460(c) and the claimant prevails in the small claims action against a [THE]  
9        real estate licensee [BROKER, ASSOCIATE REAL ESTATE BROKER, OR  
10       SALESMAN], the commission shall make an award from the fund of any outstanding  
11       portion of the small claims judgment on receipt of a copy of the final judgment and  
12       an affidavit from the claimant stating that more than 30 days have elapsed since the  
13       judgment became final and that the judgment has not yet been satisfied by the  
14       licensee determined responsible [BROKER, ASSOCIATE BROKER, OR  
15       SALESMAN HAS NOT SATISFIED THE JUDGMENT DURING THAT TIME].  
16       After payment of a small claims judgment, the commission is subrogated to the  
17       claimant's rights in the judgment under AS 08.88.490.

18       \* **Sec. 45.** AS 08.88.475 is amended to read:

19                **Sec. 08.88.475. Maximum liability.** (a) The maximum liability of the real  
20       estate surety fund may not exceed \$50,000 for any one real estate licensee [BROKER  
21       OR SALESMAN].

22                (b) If the \$50,000 liability of the fund as provided in (a) of this section is  
23       insufficient to pay in full the valid claims of all persons who have filed claims against  
24       an individual licensee [ONE BROKER OR SALESMAN], the \$50,000 shall be  
25       distributed among the claimants in the ratio that their individual claims bear to the  
26       aggregate of valid claims, or in another manner that the commission considers  
27       equitable. Distribution shall be among the persons entitled to share in the recovery [,]  
28       without regard to the order [OF PRIORITY] in which their claims were filed.

29       \* **Sec. 46.** AS 08.88.490 is amended to read:

30                **Sec. 08.88.490. Right to subrogation.** When the commission has paid to a  
31       claimant from the real estate surety fund the sum awarded by the commission, the

1 commission shall be subrogated to all of the rights of the claimant to the amount paid,  
2 and the claimant shall assign all right, title, and interest in that portion of the claim to  
3 the commission. Money collected [AMOUNTS SUBSEQUENTLY REALIZED] by  
4 the commission on the claim shall be deposited to the real estate surety fund.

5 \* Sec. 47. AS 08.88.900 is amended to read:

6 **Sec. 08.88.900. Exceptions. (a) Except as provided in (b) of this section,**  
7 **this** [THIS] chapter does not apply to

8 (1) a person who is not licensed under this chapter who manages or  
9 makes a real estate transaction with respect to real estate the person owns or is seeking  
10 to own so long as the compensation the person receives does not include any  
11 portion of the commission or other compensation paid to a real estate licensee in  
12 the transaction [ON THE PERSON'S OWN BEHALF, UNLESS THE  
13 TRANSACTION INVOLVES LAND DEFINED IN AS 34.55.044(7) THAT IS NOT  
14 IN ALASKA];

15 (2) an attorney in fact under a power of attorney authorizing the  
16 consummation of a specific real estate transaction; an attorney in fact may not act as  
17 such under this paragraph for more than two transactions in a calendar year;

18 (3) a lawyer performing duties as a lawyer;

19 (4) a public official in the conduct of official duties;

20 (5) a person acting as receiver, trustee, administrator, executor, or  
21 guardian;

22 (6) a person acting under court order;

23 (7) a person acting under the authority of a will or trust instrument;

24 (8) a person dealing in mineral rights transactions;

25 (9) an [A DOMESTIC OR FOREIGN CORPORATION, A GENERAL  
26 OR LIMITED PARTNERSHIP, OR A PARTNER OR REGULAR] employee of a  
27 domestic or foreign corporation, [OR A] general or limited partnership, or limited  
28 liability company when performing an act described in AS 08.88.161 incidental to  
29 [IN] the regular course of business when the act relates [, OR AS AN INCIDENT]  
30 to [,] the management, sale, or other disposition of real estate owned by the foreign  
31 or domestic corporation, general or limited partnership or limited liability company;

1 the exemption under [PROVIDED IN] this paragraph does not apply to a person  
2 employed by a foreign or domestic corporation, partnership, limited partnership,  
3 or limited liability company who performs an act described in AS 08.88.161 [,  
4 UNLESS ALLOWED FOR UNLICENSED PERSONS UNDER AS 08.88.165.] either

5 (A) as a vocation; or

6 (B) for compensation if the amount of the compensation is  
7 dependent upon or directly related to the value of the real estate with respect  
8 to which the act is performed;

9 (10) a person performing duties as a resident manager;

10 (11) a bookkeeper or accountant performing bookkeeping or  
11 accounting functions;

12 (12) a secretary or receptionist in a real estate office accepting rent  
13 or association fees and providing a written receipt for the rent or fees when a  
14 tenant or community association member delivers the rent or fees to the real  
15 estate office;

16 (13) tradesmen or vendors of services performing maintenance and  
17 repair functions;

18 (14) an employee of a real estate firm or of a property owner  
19 delivering or accepting a real estate contract or application, or a related  
20 amendment, to or from another person;

21 (15) an individual assisting in the performance of real estate  
22 activities only by carrying out administrative, clerical, or maintenance tasks;

23 (16) the management of a total of four or fewer residential units by  
24 a natural person for other persons;

25 (17) community association management for property organized  
26 under AS 34.07 or AS 34.08 by a resident owner of a unit in the property if the  
27 owner is a member of a self-managed community association for the property;

28 (18) real estate transactions by a developer of property organized  
29 under AS 34.07 or AS 34.08 during the period that the developer retains control  
30 of at least 51 percent of the property if the transactions are within the scope of  
31 the activities authorized by the developer's permit to develop the property;

1                    (19) an attorney in fact who, for a relative, acts under a power of  
 2                    attorney that authorizes the consummation of a specific real estate transaction;  
 3                    in this paragraph, "relative" means a spouse or a great grandparent,  
 4                    grandparent, parent, uncle, aunt, sibling, child, nephew, niece, grandchild, or  
 5                    great grandchild by the whole or half blood or by marriage but does not include  
 6                    a relative who is only related through a step relationship, such as a stepbrother  
 7                    or the child of a stepbrother, except that "relative" includes a stepchild;

8                    (20) a mobile home dealer licensed under AS 08.67 performing  
 9                    within the scope of the dealer's license; or

10                    (21) the management by a natural person of property for another  
 11                    person without a fee other than the reimbursement of expenses [OF RENTED  
 12                    REAL ESTATE IF THE RESIDENT MANAGER'S DUTIES ARE LIMITED TO  
 13                    THE NEGOTIATION OF LEASES AND RENTAL AGREEMENTS AND THE  
 14                    COLLECTION OF RENT FOR THE USE OF THE REAL ESTATE AND IF THE  
 15                    RESIDENT MANAGER IS

16                    (A) EMPLOYED BY THE OWNER OF THE REAL ESTATE:

17                    OR

18                    (B) EMPLOYED BY, OR ENGAGED UNDER CONTRACT  
 19                    WITH, A LICENSED REAL ESTATE BROKER].

20                    \* Sec. 48. AS 08.88.900 is amended by adding a new subsection to read:

21                    (b) Notwithstanding that, under this section, a person is exempt from this  
 22                    chapter, AS 08.88.401(e)(1) prohibits a licensee from knowingly paying to that person  
 23                    any part of a fee, commission, or other compensation received by the licensee in  
 24                    buying, selling, exchanging, leasing, auctioning, or renting real estate.

25                    \* Sec. 49. AS 08.88.990(1) is amended to read:

26                    (1) "commission" means the Real Estate Commission except where the  
 27                    context indicates that "commission" refers to a fee paid for personal services;

28                    \* Sec. 50. AS 08.88.990(3) is amended to read:

29                    (3) "real estate" means an interest in a mobile home or an interest or  
 30                    estate in land, corporeal or incorporeal, except that it does not include a unit in a  
 31                    hotel, motel, boarding house, rooming house, or other transient lodging facility.

1 or a unit in a warehouse, mini-storage facility, or other facility the function of  
2 which is limited to warehousing purposes:

3 \* Sec. 51. AS 08.88.990(4) is amended to read:

4 (4) "resident manager" means a person who resides on rented or leased  
5 real property or on contiguous property owned by the same owner, [AND] manages  
6 the property [IT] for the benefit of another person, and is either employed by the  
7 owner of the real estate or employed by, or under contract with, a real estate  
8 licensee.

9 \* Sec. 52. AS 08.88.990 is amended by adding new paragraphs to read:

10 (5) "community association management" means an activity undertaken  
11 for an owners' association with regard to property organized under either AS 34.07 or  
12 AS 34.08 under an agreement in exchange for a fee, commission, or other valuable  
13 consideration, including the following activities: preparing budgets and other financial  
14 documents, collecting, controlling, or disbursing funds, obtaining insurance for the  
15 association, contracting for maintenance and repair to association property, and  
16 supervising the day-to-day operations of the association under the direction of the  
17 association's board of directors;

18 (6) "community association operating account" means an account in a  
19 financial institution maintained in the name of a specific community association that  
20 contains money used for day-to-day operation and not for other uses;

21 (7) "community association reserve account" means an account in a  
22 financial institution maintained in the name of a specific community association that  
23 contains money reserved for the expected replacement cost of improvements within the  
24 community association or for other future uses;

25 (8) "employ," "employing," "employs," "employed," "employee,"  
26 "employees," and "employment" include being an independent contractor with an  
27 employer;

28 (9) "knowingly" has the meaning given in AS 11.81.900(a);

29 (10) "mobile home" has the meaning given in AS 08.67.080;

30 (11) "property management" is an activity undertaken for another with  
31 regard to real property under an agreement in exchange for a fee, commission, or other

1 valuable consideration, including the following activities: marketing, leasing,  
2 contracting for physical, administrative, or financial maintenance, performance of  
3 overall management of real property, and the supervision of these actions;

4 (12) "real estate licensee" is a person who holds a license under this  
5 chapter; the term includes a broker unless the context clearly excludes brokers;

6 (13) "real estate transaction"

7 (A) in sales, means the transfer or attempted transfer of an  
8 interest in a mobile home or a unit of real property, an act conducted as a  
9 result of or in pursuit of a contract to transfer an interest in a mobile home or  
10 a unit of real property, or an act conducted in an attempt to obtain a contract  
11 to market a mobile home or real property;

12 (B) in property management, means the lease or rental of a unit  
13 of real property, including collection of rent from a tenant of a unit of rented  
14 or leased real property, an attempt to rent or lease a unit of real property, an  
15 attempt to collect rent from a tenant of rented or leased real property, or an act  
16 conducted as a result of or in pursuit of a contract to manage a unit of leased  
17 or rented real property;

18 (C) in community association management, means the collection  
19 or attempted collection of dues from a unit owner or an activity conducted as  
20 a result of or in pursuit of a contract with a community association to manage  
21 the affairs of a community association.

22 \* Sec. 53. AS 08.88.111 is repealed.

23 \* Sec. 54. TRANSITIONAL PROVISION. Notwithstanding AS 08.88.161(5) and (6),  
24 added by sec. 8 of this Act, a person may practice, or negotiate a contract to practice,  
25 community association management and may collect fees for community association  
26 management without a license issued under AS 08.88 until January 1, 1999.

27 \* Sec. 55. REGULATIONS. Notwithstanding sec. 57 of this Act, the Real Estate  
28 Commission may proceed to adopt regulations necessary to implement AS 08.88.091(f) and  
29 (g), added by this Act. The regulations take effect under AS 44.62 (Administrative Procedure  
30 Act), but not before January 31, 1999.

31 \* Sec. 56. REVISOR'S INSTRUCTION. Wherever in the Alaska Statutes and the Alaska

1 Administrative Code the term "salesman" is used in a context relating to real estate salesmen  
2 licensed under AS 08.88, it shall be read as "salesperson" when to do so would be consistent  
3 with changes made by this Act. Under AS 01.05.031, the revisor of statutes shall implement  
4 this section in the statutes, and, under AS 44.62.125, the regulations attorney shall implement  
5 this section in the administrative code.

6 \* Sec. 57. AS 08.88.091(f) and (g), added by sec. 7 of this Act, take effect January 31,  
7 1999.

8 \* Sec. 58. Except as provided in sec. 57 of this Act, this Act takes effect immediately  
9 under AS 01.10.070(c).

# ALASKA STATE LEGISLATURE

## House of Representatives

### COMMITTEE ASSIGNMENTS:

LABOR & COMMERCE COMMITTEE, CHAIRMAN  
SPECIAL COMMITTEE ON OIL & GAS, MEMBER  
JUDICIARY COMMITTEE, MEMBER  
CORRECTIONS BUDGET SUBCOMMITTEE, MEMBER  
ADMINISTRATION BUDGET SUBCOMMITTEE, MEMBER  
HESS BUDGET SUBCOMMITTEE, MEMBER



INTERIM:  
716 WEST 4TH AVENUE, SUITE 640  
ANCHORAGE, AK 99501  
PHONE: (907) 257-8191  
FAX: (907) 256-2916

SESSION:  
STATE CAPITOL  
JUNEAU, AK 99801-1182  
PHONE: (907) 485-4968  
FAX: (907) 485-2040

## Representative Norman Rokeberg

CSHB 33 (L&C) – Real Estate Licensees  
Sectional Analysis  
By Representative Norman Rokeberg

Date: February 7, 1998

Title: An Act relating to real estate licensees and to the real estate surety fund; and providing for an effective date.

Section 1: **Registration of mobile home dealers**: Exempts a real estate licensee who buys or sells mobile homes from licensing as a mobile home dealer.

Section 2: **Commission meetings and officers**. Amends to provide that the Real Estate Commission ("Commission") is to elect officers at the first meeting of each fiscal year.

Section 3. **Assistants**. Amends to permit the Commission to assign certain duties to assistants. New duties include: issuing licenses, administering examinations, certifying educational courses, approving instructors of educational courses, and negotiating terms and payment of fines and other money due.  
Note: AS 08.01.050, referenced in first line, concerns administrative duties of the Department.

Section 4. **Duties of the Commission**. Sets out the specific duties of the Commission. Adds duties to include: issuing temporary permits to personal representative of estate of deceased real estate broker or legally incompetent real estate broker, revising the form of a seller's property disclosure statement, levying civil fines, revoking license of broker or associate broker convicted of felony committed while licensed.

Section 5. **Education of applicants and licensees.** Amends to provide Commission may not prohibit completion of educational requirement within a two-day period.

Section 6. **Education of applicants and licensees.** Amends so that, with certain exceptions in Section 7, in order to be an approved course for education under this chapter, the course must have been approved prior to the time the course was conducted. A course outline or instructor will be considered approved if the commission does not disapprove same within 30 days after the date of receipt of a complete application.

Section 7. **Education of applicants and licensees.** New. Commission is to establish courses for licenses issued. Courses to be allowed include courses developed by national organizations who specialize in real estate, technology courses related to real estate practice, courses offered at accredited college or university as part of real estate curriculum; and courses offered at national conventions for real estate licensees if host state's licensing board has approved same. Sets forth the areas for which Commission should establish continuing education: real estate sales, property management, community association management, commercial sales. A licensee shall complete at least one of the four core curricula during each biennial licensing period.

Section 8. **License required.** Sets forth when a real estate license is required. Major additions are in subsections (4) through (6) concerning property management and community association management.

Section 9. **Civil penalty for unlicensed or unauthorized practice.** New section. Civil penalty for such activities may not exceed \$5,000 or the amount of gain realized plus \$5,000, whichever is greater. Before entering fine, commission must send written notice of the proposed order to licensee and grant 30-day time period in which licensee may request hearing. Commission may issue subpoenas; to compel attendance and testimony of witnesses and disclosure of evidence. Person aggrieved by levy of civil penalty may file an appeal with superior court. If person does not pay fine within 30 days after entry of order or within 10 days after court enters final judgement, Commission may initiate other action to recover amount of the penalty.

Section 10. **Entitlement to license.**

- (a) Amended to provide that a natural person, ~~only~~ not a business entity, can be licensed. The person applies ~~within~~ six months after passing examination, and has at least 24 months of active and continuous experience as licensed real estate salesperson within 36 months immediately preceding application, and is owner of real estate business or employed as a real estate broker by a foreign or

domestic corporation, partnership, limited partnership, or limited liability company.

- (b) Amended to provide that a natural person, only, not a business entity, can be licensed. The person applies within six months after passing brokers examination and has at least 24 months of active and continuous experience as a licensed real estate salesperson within 36 months immediately preceding application. Adds a foreign or domestic corporation, partnership, limited partnership, or limited liability company as additional forms of business entities that can employ an associate broker as a broker.
- (c) Amended to provide that a natural person, only, not a business entity, can be licensed. The person applies within six months after passing salesperson examination.

Section 11. **Entitlement to license.** New section concerning community association management. Sets forth qualifications for limited license to practice community association management: applies by January 1, 1999; pays required fees; demonstrates to Commission that has been engaged in practice of community association management for at least 24 months before January 1, 1999; and meets other requirements established by the Commission. Person issued a limited community association management license may not use the term "broker", "associate broker", or "salesperson" for any business purpose.

If employed by broker, will be issued associate broker license. If qualifies for broker license and is owner of community association management business or employed as a community association manager by a foreign or domestic corporation, partnership, limited partnership, or limited liability company will be issued broker license. After initial licensing, a person is subject to same requirements existing for other brokers and associate brokers; however, person may practice only community association management and does not qualify as a broker or associate broker for the purpose of engaging in other types of real estate transactions.

Section 12. **Fidelity bond for community association managers.** New section. Requires that if a broker exercises some control over community association funds that the broker must provide evidence of coverage by blanket fidelity insurance. Bond may be in name of broker with association as additional insured or may be in name of association with broker as an additional insured. Bond must cover maximum funds within control of community association manager. Commission may grant exemptions from this section.

Owners' association is only entity allowed to file claim with surety fund against a community association manager. Surety fund will be in first position on these claims.

Community association managers may not exercise control over reserve or investment accounts and may only exercise control over operating accounts under a contract approved by the association's board and duplicate statements must be sent by the licensee and the association.

Section 13. **Content and purpose of examination.** Amends language concerning real estate examinations to add additional topics to be covered

Section 14. **Content and purpose of examination.** Amends to provide that examination fee payment shall be made by applicant directly to national testing service's designated representative before exam taken.

Section 15. **Reexamination.** Minor language change to current law.

Section 16. **Fees.** Adds language covering fees or courses offered by the commission, reinstatement of lapsed license, changes to registered office, course certification and recertification, and instructor approval and renewal of approval.

Section 17. **Reinstatement of lapsed license.** Repeals and reenacts this section. If license has lapsed less than 24 months is eligible for reinstatement when person provides application, license fee and proof of continuing education. If license has lapsed more than 24 months, not eligible for reinstatement and must meet initial licensure requirements.

Section 18. **Inactive license.** Amends by providing that a licensee who wants to become inactive shall complete an inactivation form along with applicable fees. Inactive licensees may receive commissions or other payments for services performed while actively licensed.

Section 19. **Real estate surety fund.** Minor language change.

Section 20. **Location.** Amends. Broker must register with the commission a principal office and branch office(s) and include information as to which licensees practice where.

Section 21. **Change of location.** Amends. Before a broker changes principal office or branch office, broker must notify commission, and pay a fee.

Section 22. **Branch offices.** Allows an associate broker whose principal place of business is at the branch office to directly supervise that branch office and may only supervise one branch office. All branch offices shall be advertised only in the name of the principal office but indication may be made that it is a branch office.

Section 23. **Possession and display of license certificates.** Repealed and reenacted. Broker must display license at broker's principal office. License of each licensee working in broker's principal office must be displayed in principal office. Designated associate broker who is in charge of branch office and certificate of each licensee working in branch office must be displayed in branch office. Such display of license certificates must be in such a manner that they are available for public to view.

Section 24. **Making of transactions.** Amends to provide that an active sales person or associate broker may perform real estate activities only through broker who employs (which includes contracts) that licensee. All money or other proceeds must be turned over to broker or broker's authorized agent.

Section 25. **Listing and management contracts.** Amends to provide all listings and management contracts must be in writing signed by broker or licensee of broker and client or authorized representative.

Section 26. **Record of transaction.** Amends to provide that a broker needs to keep a complete record, for three years, of all real estate transaction in which broker or employed licensee of broker engaged; provide upon request to any principal in a transaction an accounting for money or other property collected or held; keep a separate trust account in a bank into which broker will deposit all earnest money deposits, purchase money, security deposits, contingency funds, collected rental money, rental receipts, or other money collected in trust; if authorized by board of directors of a community association to collect, control, or disburse association funds, keep a separate account in a bank for the funds; make available to commission, on request, records under this section; ensure that records are kept for a minimum of three years even if delivered to another entity.

Section 27. **Record of transaction.** New. A real estate licensee shall keep, for a minimum of three years, complete record of all real estate transactions in which licensee was principal; if the licensee maintains records concerning management or sale of licensee's own properties or client properties separate from the broker's file, these shall also be retained for a minimum of three years; and licensee shall make available to the commission these records as requested.

Establishes the three-year requirement for records maintenance as beginning at the initiation of a transaction and continues until three years after the date a listing agreement ends, a sales transaction costs or otherwise ends, a management contract ends, or another contract or fiduciary obligation ends.

Section 28. **When commission or other fee is earned.** Amends to provide that an obligation to pay a commission or fee to a broker is based upon the terms of a written contract. Licensee has no right under law to enforce collection of commission or other fee unless contract is in writing.

Section 29. **Signs.** Amends. Provides that signs must be maintained at each registered real estate office. Signs must prominently show real estate business name as registered with Commission. If office located in premises with more restrictive sign requirements than those adopted by the Commission, the premise restrictions will control.

Section 30. **Conflict of interest.** Amends. Describes when a real estate licensee has conflict of interest. Provides that conflict must be disclosed in writing to principals and agents of the principals. Describes "conflict of interest" as: having a present personal interest in property which is subject of transactions; being a whole or part owner of business interest in the subject property; representing a person with whom licensee has a financial relationship or who has a present financial interest in the subject property; representing more than one party in a transaction; receiving compensation from someone other than a party to the contract or another party having a financial interest in the transaction.

Section 31. **Disclosure of agency to prospective buyers and sellers.** Makes minor language changes (i.e., "person's" to "licensee"). Adds reference to "dual agency".

Section 32. **Licensed assistants.** New section. Permits a salesperson or associate broker to act as a licensed assistant to a real estate licensee other than the broker who employs the salesperson or associate person if: employment agreement is in writing and conforms to applicable state and federal employment regulations; is approved in writing by the broker of the licensee who employs the assistant; licensee who employs assistant agrees to be responsible for paying assistant's wages and taxes and completing associated forms; broker of licensee who employs the assistant agrees to be liable for actions of licensed assistant.

Section 33. **Prohibited conduct.** Amended. Licensee may not falsely represent to be a member of a franchise or other business association in addition to current provisions. Licensee may not pay a fee or commission for which licensed required under this chapter to an unlicensed person. Broker may pay fee or commission to broker licensed in another state for assisting in transactions. Associate broker or salesperson may accept fee or commission only from employing broker except when acting as a licensed assistant.

Section 34. **Prohibited conduct.** New subsections. Licensee may not knowingly pay any part of fee, commission, or other compensation: to a person not licensed under this chapter except under certain circumstances; to another licensee except through that licensee's broker; or to another licensee knowing that the other licensee intends to pay all or portion of that fee or commission to an unlicensed person. This prohibition does not apply to payment by a licensee

to a person licensed to perform real estate activities in another jurisdiction if that person has assisted in something for which a license is required under this act, allows for negotiations between a licensee and a principal in a real estate transaction concerning amount of commission or other compensation, or payment from a licensee to a principal as part of a resolution of dispute regarding terms of transaction or property transferred.

Person may not use or attempt to use a license issued under this chapter that was issued to another person, give false or forged evidence to the commission, impersonate an applicant, knowingly use or attempt to use expired or suspended or revoke or nonexistent license or falsely claim to be licensed.

Section 35. **Preparation of documents**: Adds "mobile homes" and "mobile home contracts" to this section.

Section 36. **Real estate surety fund**. Minor language changes (i.e., "brokers and salesmen" to "licensees").

Section 37. **Payments by real estate licensee**. Minor language changes.

Section 38. **Claim for payment**. Amended. Adds reference to community association manager. Adds "licensee" language. Adds requirement that claim for payment must be filed within two years after event. Adds reference to "or community association accounts under the control of a community association manager" after "conversion of trust funds". Adds the principal and any other licensee involved in the transaction to list of recipients of copy of the claim.

Section 39. **Claim of payment**. New subsection. Only owners' associations are permitted to file claims with the surety funds for claims against a community association manager.

Section 40. **Consideration of application**. Minor language changes. Adds "or community association accounts under the control of a community association manager" after "conversion of trust funds". The word "trust" is added in reference to the type of funds in the "conversion" language.

Section 41. **Consideration of application**. Minor language changes.

Section 42. **Consideration of application**. Minor language changes including the "or community association accounts under the control of a community association manager" language.

Section 43. **Findings and payment**. Amends with minor language changes. Same as Section 42.

Section 44. **Hearing costs.** Amends to provide that Commission may charge surety fund for costs of hearing on claim for reimbursement. Mandates that the Commission deposit into the surety fund any amounts recovered for these costs from the licensee.

Section 45. **Payment of small claims judgment.** Amends to provide that Commission shall make an award from the fund of any outstanding portion of a small claims judgment on receipt of a copy of the final judgment, an affidavit from the claimant stating that more than 30 days have elapsed since the judgment became final and that the responsible licensee has not yet satisfied the judgment.

Section 46. **Maximum liability.** Minor language changes.

Section 47. **Right to subrogation.** Minor language.

Section 48. **Exceptions:** Amends and adds new exceptions. Provisions of this chapter that require licensure do not apply to:

- (1) AMENDED: person may manage or make real estate transaction on with respect to real estate person owns or is seeking to own so long as the compensation the person receives does not include any portion of the commission or other compensation paid to a real estate licensee in the transaction.
- (2) attorney in fact under power of attorney may accomplish a specific real estate transaction; may not act as such for more than two transactions in a calendar year (current law);
- (3) Lawyer performing duties as lawyer (current);
- (4) Public official in conduct of official duties (current);
- (5) Person acting as receiver, trustee, administrator, executor, or guardian (current);
- (6) Person acting under court order (current);
- (7) Person acting under authority of a will or trust (current);
- (8) Person dealing in mineral rights transactions (current);
- (9) AMENDED: an employee of domestic or foreign corporation, general or limited partnership, or limited liability company, when performing duties incidental to regular course of business; does not apply to person employed by these entities who performs either as a vocation or for compensation if the amount of such compensation is dependent upon or related to value of real estate.
- (10) Resident manager (current)
- (11) NEW: bookkeeper or accountant performing bookkeeping or accounting functions;

- (12) NEW: secretary or receptionist in real estate office who accepts rent or association fees and provides written receipt for same;
- (13) NEW: tradesmen or vendors of services performing maintenance and repair functions;
- (14) NEW: employee of real estate firm or property owner who delivers or accepts a real estate contract or application, or related amendment, to or from another person;
- (15) NEW; individual assisting in performance of real estate activities by carrying out administration, clerical, or maintenance tasks;
- (16) NEW: person managing a total of four or fewer residential units for others;
- (17) NEW: resident owner of a unit in property organized under AS 34.07 or AS 34.08 who is a member of a self-managed community association;
- (18) NEW: developer of community association while that developer owns at least 51 percent of association;
- (19) NEW: attorney in fact acting for a relative under a power of attorney. Relative means: spouse, great grandparent, grandparent, parent, uncle, aunt, sibling, child, nephew, niece, grandchild, or great grandchild by the whole or half blood or by marriage but does not include a relative who is only related through a step relationship such as a stepbrother or the child of a step brother but does include a stepchild; or
- (20) NEW: mobile home dealer licensed under AS 08.67 performing within the scope of the dealer's license.

Section 49. **Definitions.** New subsection (b) indicating that while a person may be exempt from licensure, that person is not exempt from AS 08.88.401(3)(1) (See Section 34).

Section 50. **Definitions:** Amends definition of "commission" to mean Real Estate Commission except where the context indicates that it refers to a fee paid for personal services.

Section 51. **Definitions.** Amends definition of "real estate" to state that such term does not include a unit in a hotel, motel, boarding house, rooming house, or other transient lodging facility, or a unit in a warehouse, mini-storage facility or other facility the function of which is limited to warehousing purposes.

Section 52. **Definitions:** Amends definition of "resident manager" to indicate that a resident manager resides on rented or leased real property or on contiguous property owned by the same owner, manages the property for the

benefit of another person, and is either employed by the owner of the real estate or employed by, or under contract with, a real estate licensee.

Section 53. **Definitions.** Adds new definitions for:

"Community association management": activity undertaken for an owners' association with regard to property organized under AS 34.07 or 34.08 under an agreement in exchange for a fee, commission or other valuable consideration.

"Employ", "employing," "employs", "employed", "employee", "employees", and "employment" include being an independent contract with an employer.

"Knowingly" means same as AS 11.81.900(a). AS 11.81.900(a)(2) states:

A person acts "knowingly" with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes it does not exist; a person who is unaware of conduct or a circumstance of which the person should have been aware had that person not been intoxicated acts knowingly with respect to that conduct or circumstance;

"mobile" home has the meaning given in 08.67.080, which states in part:

(3) "mobile home" means a vehicle designed and equipped or human habitation, and that may only be moved by another motor vehicle when authorized by permit.

"Property management": activity undertaken for another with regard to real property under an agreement in exchange for a fee, commission or other valuable consideration.

"Real estate licensee": Person who holds license under this chapter; includes broker unless context clearly excludes brokers

"Real estate transaction:" (1) sales means transfer or attempted transfer of interest in a mobile home or real property, an act conducted as result

of or in pursuit of a contract to transfer interest in a mobile home or a unit of real property, or act conducted in attempt to obtain a contract to market real property.

(2) property manager: lease or rental of a mobile home or a unit of real property including collect of rent from a tenant of a mobile home or a unit of rented or leased property, attempt to rent or lease a mobile home or a unit of real property, an attempt to collect rent from tenant of a mobile home or rented or leased real property, or an act conducted as a result of or in pursuit of a contract to manage a unit of leased or rented real property or a mobile home.

(3) community association management: collect or attempted collection of dues from unit owner or an activity conducted as a result of or in pursuit of a contract with a community association to manage the affairs of that association.

Section 54. Repeals AS 08.88.111 (Commission regulations with regard to examinations).

Section 55. **Transitional provision.** Person may practice community association management without a license under this chapter until January 1, 1999.

Section 56. **Regulations.** Permits Commission to adopt regulations before the effective date of Section 7.

Section 57. **Revisor's instruction:** Wherever "salesman" appears, it shall be read as "salesperson".

Section 58. **Effective date** for 08.88.091(f) and (g). See section 7.

Section 59. **Effective date** for all other sections. Immediate.

TESTIMONY BY RON JOHNSON

(Pg 1)

REFERENCE AMENDMENT "A"

PAGE 2

REF PAGE 18, LINE 4.

AFTER: "ACCOUNT IN A"

DELETE: "BANK"

INSERT: "financial institution"

Question:

Will this amendment allow credit unions to be the depository of trust funds - if so are they covered by FDIC?

PAGE 31, LINE 12

insert "an interest in a mobile home"

Question:

saying a "mobile home" is real estate can not change the fact that the legal definition of real estate is realty - very challengeable

REF AMENDMENT "A"

TESTIMONY  
BY  
RON JOHNSON

Pg 2

Global search on all "salespersons" and replace with "real estate services license or licensee" where appropriate

Page 5 line 12 & 13

support - education polls have determined there is no difference in retention in 7 hours of education that is delivered by competent trainers than 10 hours delivered in the same manner.

RON JOHNSON

610 ATTILA WAY, STE 6

KENAI, AK

Phone

(907) 283-7755 -

FAX

(907) 283-8103

emat

evalaska@alaska.net

AMENDMENT

A

OFFERED IN THE HOUSE

TO: CSHB 33 (L&C)

Page 1, line 8

AFTER: "perform the same activities"  
INSERT: ", except for property management,"

Page 2, line 9:

AFTER: "negotiate terms":  
DELETE: "of"  
INSERT: "for"

Page 5, line 24

AFTER: "The commission shall approve"  
INSERT: "or disapprove"

Page 5, line 30

AFTER: "requirements for"  
DELETE: "each type of"  
CHANGE: "license" to "licenses"

Page 7, line 9:

AFTER: "assist in"  
DELETE: "or communicate with"

Page 7, line 9

AFTER: "procuring of"  
INSERT: "or communicate with"

Page 9, line 7

AFTER: "PARTNERSHIP]."  
INSERT: Unless the broker fails to renew the license or unless the broker's license is suspended or revoked, the broker's license continues in effect as long as the broker's license is active or inactive.

Page 11, line 30

AFTER: "business purpose"  
INSERT: "unless that person is also licensed as a broker, associate broker, or salesperson under other sections of this chapter"

Page 12, line 2  
AFTER: "broker to exercise"  
DELETE: "some"

Page 12, line 9  
AFTER: "force."  
INSERT: "The commission may grant exemptions from this section if the commission determines that the community association manager is otherwise covered or that such coverage is unavailable."

Page 13, line 4  
AFTER: "standards,"  
DELETE: "nonprofit corporation creation and operations"

Page 17, line 2:  
AFTER: "broker's authorized"  
DELETE: "agent"  
INSERT: "representative"

Page 17, lines 10, 11, and 14  
AFTER: "listings"  
DELETE: "and"  
INSERT: "or"

Page 18, line 4  
AFTER: "account in a"  
DELETE: "bank"  
INSERT: "financial institution"

Page 18, line 31  
AFTER: "When"  
INSERT: "a"

Page 19, lines 3 and 5  
AFTER: "listings"  
DELETE: "and"  
INSERT: "or"

Page 24, line 26; Page 25, line 2; Page 26, line 18; Page 27, lines 2 and 12  
AFTER: "trust funds or"  
INSERT: "for the conversion of"

Page 24, line 28  
DELETE: "real estate"

Page 24, line 29

DELETE: LICENSED UNDER THIS CHAPTER]

AFTER: "SALESMAN"

INSERT: ] licensed under this chapter

Page 32, line 7

AFTER: "regard to"

DELETE: "a mobile home or"

Page 32, line 10

AFTER: "management of"

DELETE: "mobile homes or"

Page 32, lines 21, 22, 23, 24, and 26:

AFTER: "real property"

DELETE: "or a mobile home"

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 33 (L&C)

Page 13, line 1

AFTER: "subdivisions,"

INSERT: "common interest communities,"

Page 18, line 22

AFTER: "conduct an investigation"

INSERT: ; (4) shall immediately deposit all community association funds or proceeds from periodic community association assessments in either a reserve or operating account belonging to the association; however, excess funds not required to meet budgeted expenditures within a three (3) month period shall be transferred to a community association reserve account as soon as practical;  
(5) may not commingle funds of any association with other associations or with the licensee's funds;

Page 31, line 31

AFTER: "board of directors;"

INSERT: (6) "community association operating account" means an account in a financial institution maintained in the name of a particular community association containing proceeds used for day-to-day operation and not for other uses;

(7) "community association reserve account" means an account in a financial institution maintained in the name of a particular community association containing proceeds reserved for the expected replacement cost of improvements within the community association or other future uses;

Renumber remaining subsections accordingly

# STATE OF ALASKA

## DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

P.O. BOX 110800  
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PHONE: (907) 465-2500  
FAX: (907) 465-5442  
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February 9, 1998

FEB - 9 1998

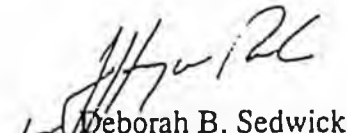
The Honorable Norman Rokeberg  
Chairman, Labor & Commerce Committee  
House of Representatives  
State Capitol, Rm. 24  
Juneau, Alaska 99801

Dear Representative Rokeberg:

The Department of Commerce and Economic Development supports the passage of CSHB 33 (L&C) ("HB 33"), which addresses several key issues of concern to Alaskans involved in real estate transactions. The bill provides for the regulation of Community Association Managers by requiring them to hold a real estate license with specific bonding and trust accounting requirements for handling community association funds. This will help protect community associations from financial loss. HB 33 strengthens enforcement by allowing civil fines for unlicensed practice of real estate and defining what constitutes a conflict of interest. The bill also reduces unregulated real estate activity by prohibiting the payment of any portion of a real estate commission to any unlicensed person either in Alaska or in another state.

The Department appreciates your introduction of House Bill 33 and asks for its favorable consideration by the Legislature.

Sincerely,

  
Deborah B. Sedwick  
Commissioner

AMENDMENT

C

OFFERED IN THE HOUSE

TO: CSHB33 (L&C)

Page 30, line 28 following "dealer's license"

Insert new subsection to read:

(21) the management by a natural person of property for another person without a fee, other than the reimbursement of expenses

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 33 (L&amp;C)

Page 13, line 1

AFTER: "subdivisions,"

INSERT: "common interest communities,"

Page 18, line 22

AFTER: "conduct an investigation"

INSERT: ; (4) shall immediately deposit all community association funds or proceeds from periodic community association assessments in either a reserve or operating account belonging to the association; however, excess funds not required to meet budgeted expenditures within a three (3) month period shall be transferred to a community association reserve account as soon as practical;

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Page 31, line 31

AFTER: "board of directors;"

INSERT: (6) "community association operating account" means an account in a financial institution maintained in the name of a particular community association containing proceeds used for day-to-day operation and not for other uses;

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Renumber remaining subsections accordingly

AMENDMENT

C

OFFERED IN THE HOUSE

TO: CSHB33 (L&C)

Page 30, line 28 following "dealer's license"

Insert new subsection to read:

(21) the management by a natural person of property for another person without a fee, other than the reimbursement of expenses

# STATE OF ALASKA

## DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

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February 9, 1998

FEB - 9 1998

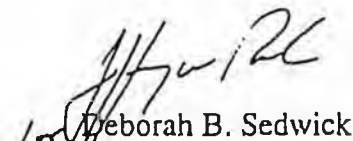
The Honorable Norman Rokeberg  
Chairman, Labor & Commerce Committee  
House of Representatives  
State Capitol, Rm. 24  
Juneau, Alaska 99801

Dear Representative Rokeberg:

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The Department appreciates your introduction of House Bill 33 and asks for its favorable consideration by the Legislature.

Sincerely,

  
Deborah B. Sedwick  
Commissioner

**WALKER WALKER WENDLANDT & OSOWSKI, LLC**

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**FACSIMILE COVER SHEET**

TO: Norman Rokeberg  
OF: Alaska State Legislature  
PHONE: XXX-XXX-XXXX  
FAX: 907-465-2040  
FROM: Shane J. Osowski  
RE: HB-33  
CLIENT: 3000-1 (non-billable)  
DATE: February 4, 1998  
PAGES: 5 (includes this cover page)  
Original to Follow?: Yes/No VIA: U.S. Mail

02-04-98A11:49 RCVD

**Comments:**

I apologize for the delay, as I'm sure a legislator knows, it is difficult to obtain consensus and get everyone's signature on a document. I hope this is still of some help. Please call with any questions or concerns.

Shane

**Confidentiality Notice**

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Community Associations Institute  
Greater Alaska Chapter  
c/o Shane Osowski  
550 West 7<sup>th</sup> Avenue, Suite 1350  
Anchorage, Alaska 99501

January 29, 1998

VIA TELECOPIER  
(907) 465-2040

Honorable Norman Rokeberg  
Representative, House District 11  
Alaska State Legislature  
Alaska State Capitol  
Juneau, Alaska 99801-1182

Re: House Bill 33

Dear Representative Rokeberg:

In accordance with our discussion, we propose the following amendments to House Bill 33:

1. Fidelity Bond. The fidelity bond section on Page 11 should be eliminated in its entirety. The risk of loss for embezzlement is no different between managed and self-managed condominium associations. Reserve accounts and operating accounts would be the same in any event and embezzlement is at least if not more likely to occur in an unregulated, self-managed environment. The present version of House Bill 33 avoids "forcing" a bonding requirement on all associations but does in fact "force" bonding expenses on all managed associations. We believe bonding is a prudent management practice, although there is no reason to impose this as a selective requirement on associations using managers.

Fidelity bonding is not for the managers' benefit, and in fact we have been told that managers cannot obtain bonding to insure themselves against their own dishonesty. The insurance policy would have to run to the association, protecting it from embezzlement of the manager, board members, treasurer, or other named employees. Because this insurance should be carried by the association, we do not believe the requirement should exist in a manager licensing bill. If bonding is deemed necessary, it should be in the Uniform Common Interest Ownership Act and should apply to all associations.

The situation is analogous to a vehicle insurance law restricted only to vehicles driven by a chauffeur. While liability insurance may protect the chauffeur from personal lawsuits (much like errors and omissions insurance for an association manager), collision insurance protects the owner's vehicle (much like fidelity bonding would protect the association's assets). It would be ludicrous to require chauffeurs to purchase collision insurance protection for

Honorable Norman Rokeberg  
January 29, 1998  
Page 2

owners of the vehicles they operate, and would create the same unfair situation as requiring managers to purchase fidelity bonding for accounts of the associations they manage. If full coverage collision insurance is a desired feature from a public policy standpoint, it should be imposed against all vehicle owners, not just those choosing to hire a chauffeur. Similarly, fidelity bonding, if it is to be legislated, should apply to all associations rather than just those that use managers.

2. Reserve Accounts. We suggest inserting the following language beginning after Page 17, Line 31:

Shall immediately deposit all community association funds in either a reserve or operating account belonging to the association. No licensee shall commingle funds of any association with other associations or with the licensee's funds. No licensee shall be authorized to withdraw monies from an association reserve account. A real estate licensee shall be authorized to withdraw funds from an association operating account only if such authority is delegated in writing from the association board of directors. An association operating and reserve accounts shall be maintained in such a manner that the depository institution mails at least one copy of statements for each account directly to a board member.

We would also add definitions for "community association operating account" and "community association reserve account" within Section 50 (Page 30) of the bill as follows:

"Community Association Operating Account" means a depository institution financial account maintained in the name of a particular community association. Proceeds from periodic community association assessments shall be deposited in the operating account, although excess funds not required to meet budgeted expenditures within a twelve (12) month period shall be transferred to a community association reserve account as soon as practical.

"Community Association Reserve Account" means a depository institution financial account maintained in the name of a particular community association containing proceeds reserved for the expected replacement cost of improvements within the community association.

We would ask that Section 12 (Page 12) of the bill be amended to require the real estate examination to include the general subject of "Common Interest Communities" on Line 6 between the categories of "Subdivisions" and "Legal Descriptions." This would require general knowledge of resale certificates and operation of community associations for all real estate salespersons regardless of their anticipated work with associations. We would also add the subject of "Community Association Operating and Reserve Accounts Requirements" immediately following the subject of "Trust Accounting Requirements" on Line 7.

Honorable Norman Rokeberg  
January 29, 1998  
Page 3

Section 29 (Page 19) of the bill expressly defines five situations presenting a "conflict of interest" which must be disclosed. We suggest a sixth category for disclosure when a licensee "receives compensation for association management while simultaneously engaged as a property manager for one or more of the units within the association." This should be inserted at Line 15, Page 19. This avoids problems of a property manager requesting repairs benefiting a particular unit while simultaneously being in the position of making decisions or recommendations concerning those repairs on behalf of the association. There are situation where all parties can benefit from the "dual roles," although full disclosure should be required.

Finally, we ask that the language " , acting through its board of directors," be added after the word "management" on Line 7, Page 25. This would clarify that surety fund claims may only be filed by the association itself, acting through its board of directors. Homeowners typically confuse rights held by "the association" with their own rights, and frivolous filings from disgruntled owners could otherwise be expected.

Norm, we sincerely appreciate your efforts to involve CAI in the legislative process and meet our concerns. As discussed, CAI's national board of directors has a standing policy opposed to licensing of managers as real estate brokers. While our board of directors is unanimously in favor of your bill with these changes, there is some question whether our local chapter may be required to adopt an "official" neutral position regarding the bill while individually supporting it. We are still in the process of sorting this out, but will make every effort to show our support.

Community Associations Institute  
Greater Alaska Chapter

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Shane J. Osowski, President

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Art Clark, Co-Chairperson  
Legislative Committee

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Debra Britt, Co-Chairperson  
Legislative Committee




Honorable Norman Rokosberg  
January 28, 1998  
Page 3

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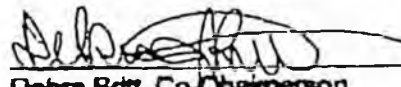
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# ALASKA STATE LEGISLATURE

## House of Representatives

### COMMITTEE ASSIGNMENTS:

LABOR & COMMERCE COMMITTEE, CHAIRMAN  
SPECIAL COMMITTEE ON OIL & GAS, MEMBER  
JUDICIARY COMMITTEE, MEMBER  
CORRECTIONS BUDGET SUBCOMMITTEE, MEMBER  
ADMINISTRATION BUDGET SUBCOMMITTEE, MEMBER  
HESS BUDGET SUBCOMMITTEE, MEMBER



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## Representative Norman Rokeberg

### SPONSOR STATEMENT

#### CSHB 33 (L&C)

CSHB 33 (L&C), An Act relating to real estate licensees, was introduced at the request of the Real Estate Commission (hereinafter "Commission"), and its appointed task force, with the intent of **enhanced consumer protection**. The most significant changes to the law are: including community association managers in real estate licensing; strengthening the language prohibiting unlicensed activities; expanding educational requirements; increasing the Commission's scope of authority; and expanding the exemptions for property management. The length of this bill is due to the many technical language revisions and housekeeping changes.

The need for new legislation became obvious after the indictment, and subsequent conviction, of a manager for various community associations on charges stemming from the embezzlement of \$570,000 from 18 separate community associations in Anchorage. Currently, anyone can undertake this activity and, with the exception of criminal law, there is no legal protection for the public.

In 1994, the Commission appointed a Task Force to review the significant number of recent consumer complaints and surety fund claims filed regarding property managers and also discussed the consumer losses brought about by some community association manager activities. CSHB 33 (L&C) is the result of suggestions made by: the Commission's Task Force, members of the real estate community, community association managers, and the public.

The licensure of community association managers will provide the consumer with (1) more qualified managers, (2) recourse to surety fund and fidelity bond recovery, and (3) a licensing agency to oversee those who have a fiduciary responsibility to the public.

The other changes made by the bill are to assure the public that all real estate licensees in Alaska follow certain guidelines. Payments to non-licensed individuals and "marketing kickback" mechanisms ("affinity" groups) are strictly prohibited under this legislation.

The legislation expands the exemptions under current law, and will not impact individuals who (a) manage their own property, (b) manage four or fewer residential units for another, (c) manage as a resident manager, or (d) manage as a member of a self-managed association.

I urge your support of this legislation.

ED2:2/6/98

# ALASKA STATE LEGISLATURE

## House of Representatives

### COMMITTEE ASSIGNMENTS:

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CORRECTIONS BUDGET SUBCOMMITTEE, MEMBER  
ADMINISTRATION BUDGET SUBCOMMITTEE, MEMBER  
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## Representative Norman Rokeberg

CSHB 33 (L&C) – Real Estate Licensees  
Sectional Analysis  
By Representative Norman Rokeberg

Date: February 7, 1998

Title: An Act relating to real estate licensees and to the real estate surety fund; and providing for an effective date.

Section 1: **Registration of mobile home dealers**: Exempts a real estate licensee who buys or sells mobile homes from licensing as a mobile home dealer.

Section 2: **Commission meetings and officers**. Amends to provide that the Real Estate Commission ("Commission") is to elect officers at the first meeting of each fiscal year.

Section 3. **Assistants**. Amends to permit the Commission to assign certain duties to assistants. New duties include: issuing licenses, administering examinations, certifying educational courses, approving instructors of educational courses, and negotiating terms and payment of fines and other money due.  
Note: AS 08.01.050, referenced in first line, concerns administrative duties of the Department.

Section 4. **Duties of the Commission**. Sets out the specific duties of the Commission. Adds duties to include: issuing temporary permits to personal representative of estate of deceased real estate broker or legally incompetent real estate broker, revising the form of a seller's property disclosure statement, levying civil fines, revoking license of broker or associate broker convicted of felony committed while licensed.

Section 5. **Education of applicants and licensees.** Amends to provide Commission may not prohibit completion of educational requirement within a two-day period.

Section 6. **Education of applicants and licensees.** Amends so that, with certain exceptions in Section 7, in order to be an approved course for education under this chapter, the course must have been approved prior to the time the course was conducted. A course outline or instructor will be considered approved if the commission does not disapprove same within 30 days after the date of receipt of a complete application.

Section 7. **Education of applicants and licensees.** New. Commission is to establish courses for licenses issued. Courses to be allowed include courses developed by national organizations who specialize in real estate, technology courses related to real estate practice, courses offered at accredited college or university as part of real estate curriculum; and courses offered at national conventions for real estate licensees if host state's licensing board has approved same. Sets forth the areas for which Commission should establish continuing education: real estate sales, property management, community association management, commercial sales. A licensee shall complete at least one of the four core curricula during each biennial licensing period.

Section 8. **License required.** Sets forth when a real estate license is required. Major additions are in subsections (4) through (6) concerning property management and community association management.

Section 9. **Civil penalty for unlicensed or unauthorized practice.** New section. Civil penalty for such activities may not exceed \$5,000 or the amount of gain realized plus \$5,000, whichever is greater. Before entering fine, commission must send written notice of the proposed order to licensee and grant 30-day time period in which licensee may request hearing. Commission may issue subpoenas to compel attendance and testimony of witnesses and disclosure of evidence. Person aggrieved by levy of civil penalty may file an appeal with superior court. If person does not pay fine within 30 days after entry of order or within 10 days after court enters final judgement, Commission may initiate other action to recover amount of the penalty.

Section 10. **Entitlement to license.**

- (a) Amended to provide that a natural person, only, not a business entity, can be licensed. The person applies within six months after passing examination, and has at least 24 months of active and continuous experience as licensed real estate salesperson within 36 months immediately preceding application, and is owner of real estate business or employed as a real estate broker by a foreign or

domestic corporation, partnership, limited partnership, or limited liability company.

- (b) Amended to provide that a natural person, only, not a business entity, can be licensed. The person applies within six months after passing brokers examination and has at least 24 months of active and continuous experience as a licensed real estate salesperson within 36 months immediately preceding application. Adds a foreign or domestic corporation, partnership, limited partnership or limited liability company as additional forms of business entities that can employ an associate broker as a broker.
- (c) Amended to provide that a natural person, only, not a business entity, can be licensed. The person applies within six months after passing salesperson examination.

Section 11. **Entitlement to license.** New section concerning community association management. Sets forth qualifications for limited license to practice community association management: applies by January 1, 1999; pays required fees; demonstrates to Commission that has been engaged in practice of community association management for at least 24 months before January 1, 1999; and meets other requirements established by the Commission. Person issued a limited community association management license may not use the term "broker", "associate broker", or "salesperson" for any business purpose.

If employed by broker, will be issued associate broker license. If qualifies for broker license and is owner of community association management business or employed as a community association manager by a foreign or domestic corporation, partnership, limited partnership, or limited liability company will be issued broker license. After initial licensing, a person is subject to same requirements existing for other brokers and associate brokers; however, person may practice only community association management and does not qualify as a broker or associate broker for the purpose of engaging in other types of real estate transactions.

Section 12. **Fidelity bond for community association managers.** New section. Requires that if a broker exercises some control over community association funds that the broker must provide evidence of coverage by blanket fidelity insurance. Bond may be in name of broker with association as additional insured or may be in name of association with broker as an additional insured. Bond must cover maximum funds within control of community association manager. Commission may grant exemptions from this section.

Owners' association is only entity allowed to file claim with surety fund against a community association manager. Surety fund will be in first position on these claims.

Community association managers may not exercise control over reserve or investment accounts and may only exercise control over operating accounts under a contract approved by the association's board and duplicate statements must be sent by the licensee and the association.

Section 13. **Content and purpose of examination.** Amends language concerning real estate examinations to add additional topics to be covered

Section 14. **Content and purpose of examination.** Amends to provide that examination fee payment shall be made by applicant directly to national testing service's designated representative before exam taken.

Section 15. **Reexamination.** Minor language change to current law.

Section 16. **Fees.** Adds language covering fees or courses offered by the commission, reinstatement of lapsed license, changes to registered office, course certification and recertification, and instructor approval and renewal of approval.

Section 17. **Reinstatement of lapsed license.** Repeals and reenacts this section. If license has lapsed less than 24 months is eligible for reinstatement when person provides application, license fee and proof of continuing education. If license has lapsed more than 24 months, not eligible for reinstatement and must meet initial licensure requirements.

Section 18. **Inactive license.** Amends by providing that a licensee who wants to become inactive shall complete an inactivation form along with applicable fees. Inactive licensees may receive commissions or other payments for services performed while actively licensed.

Section 19. **Real estate surety fund.** Minor language change.

Section 20. **Location.** Amends. Broker must register with the commission a principal office and branch office(s) and include information as to which licensees practice where.

Section 21. **Change of location.** Amends. Before a broker changes principal office or branch office, broker must notify commission, and pay a fee.

Section 22. **Branch offices.** Allows an associate broker whose principal place of business is at the branch office to directly supervise that branch office and may only supervise one branch office. All branch offices shall be advertised only in the name of the principal office but indication may be made that it is a branch office.

Section 23. **Possession and display of license certificates.** Repealed and reenacted. Broker must display license at broker's principal office. License of each licensee working in broker's principal office must be displayed in principal office. Designated associate broker who is in charge of branch office and certificate of each licensee working in branch office must be displayed in branch office. Such display of license certificates must be in such a manner that they are available for public to view.

Section 24. **Making of transactions.** Amends to provide that an active sales person or associate broker may perform real estate activities only through broker who employs (which includes contracts) that licensee. All money or other proceeds must be turned over to broker or broker's authorized agent.

Section 25. **Listing and management contracts.** Amends to provide all listings and management contracts must be in writing signed by broker or licensee of broker and client or authorized representative.

Section 26. **Record of transaction.** Amends to provide that a broker needs to keep a complete record, for three years, of all real estate transaction in which broker or employed licensee of broker engaged; provide upon request to any principal in a transaction an accounting for money or other property collected or held; keep a separate trust account in a bank into which broker will deposit all earnest money deposits, purchase money, security deposits, contingency funds, collected rental money, rental receipts, or other money collected in trust; if authorized by board of directors of a community association to collect, control, or disburse association funds, keep a separate account in a bank for the funds; make available to commission, on request, records under this section; ensure that records are kept for a minimum of three years even if delivered to another entity.

Section 27. **Record of transaction.** New. A real estate licensee shall keep, for a minimum of three years, complete record of all real estate transactions in which licensee was principal; if the licensee maintains records concerning management or sale of licensee's own properties or client properties separate from the broker's file, these shall also be retained for a minimum of three years; and licensee shall make available to the commission these records as requested.

Establishes the three-year requirement for records maintenance as beginning at the initiation of a transaction and continues until three years after the date a listing agreement ends, a sales transaction costs or otherwise ends, a management contract ends, or another contract or fiduciary obligation ends.

Section 28. **When commission or other fee is earned.** Amends to provide that an obligation to pay a commission or fee to a broker is based upon the terms of a written contract. Licensee has no right under law to enforce collection of commission or other fee unless contract is in writing.

Section 29. **Signs.** Amends. Provides that signs must be maintained at each registered real estate office. Signs must prominently show real estate business name as registered with Commission. If office located in premises with more restrictive sign requirements than those adopted by the Commission, the premise restrictions will control.

Section 30. **Conflict of interest.** Amends. Describes when a real estate licensee has conflict of interest. Provides that conflict must be disclosed in writing to principals and agents of the principals. Describes "conflict of interest" as: having a present personal interest in property which is subject of transactions; being a whole or part owner of business interest in the subject property; representing a person with whom licensee has a financial relationship or who has a present financial interest in the subject property; representing more than one party in a transaction; receiving compensation from someone other than a party to the contract or another party having a financial interest in the transaction.

Section 31. **Disclosure of agency to prospective buyers and sellers.** Makes minor language changes (i.e., "person's" to "licensee"). Adds reference to "dual agency".

Section 32. **Licensed assistants.** New section. Permits a salesperson or associate broker to act as a licensed assistant to a real estate licensee other than the broker who employs the salesperson or associate person if: employment agreement is in writing and conforms to applicable state and federal employment regulations; is approved in writing by the broker of the licensee who employs the assistant; licensee who employs assistant agrees to be responsible or paying assistant's wages and taxes and completing associated forms; broker of licensee who employs the assistant agrees to be liable for actions of licensed assistant.

Section 33. **Prohibited conduct.** Amended. Licensee may not falsely represent to be a member of a franchise or other business association in addition to current provisions. Licensee may not pay a fee or commission for which licensed required under this chapter to an unlicensed person. Broker may pay fee or commission to broker licensed in another state for assisting in transactions. Associate broker or salesperson may accept fee or commission only from employing broker except when acting as a licensed assistant.

Section 34. **Prohibited conduct.** New subsections. Licensee may not knowingly pay any part of fee, commission, or other compensation: to a person not licensed under this chapter except under certain circumstances; to another licensee except through that licensee's broker; or to another licensee knowing that the other licensee intends to pay all or portion of that fee or commission to an unlicensed person. This prohibition does not apply to payment by a licensee

to a person licensed to perform real estate activities in another jurisdiction if that person has assisted in something for which a license is required under this act, allows for negotiations between a licensee and a principal in a real estate transaction concerning amount of commission or other compensation, or payment from a licensee to a principal as part of a resolution of dispute regarding terms of transaction or property transferred.

Person may not use or attempt to use a license issued under this chapter that was issued to another person, give false or forged evidence to the commission, impersonate an applicant, knowingly use or attempt to use expired or suspended or revoke or nonexistent license or falsely claim to be licensed.

Section 35. **Preparation of documents**: Adds "mobile homes" and "mobile home contracts" to this section.

Section 36. **Real estate surety fund**. Minor language changes (i.e., "brokers and salesmen" to "licensees").

Section 37. **Payments by real estate licensee**. Minor language changes.

Section 38. **Claim for payment**. Amended. Adds reference to community association manager. Adds "licensee" language. Adds requirement that claim for payment must be filed within two years after event. Adds reference to "or community association accounts under the control of a community association manager" after "conversion of trust funds". Adds the principal and any other licensee involved in the transaction to list of recipients of copy of the claim.

Section 39. **Claim of payment**. New subsection. Only owners' associations are permitted to file claims with the surety funds for claims against a community association manager.

Section 40. **Consideration of application**. Minor language changes. Adds "or community association accounts under the control of a community association manager" after "conversion of trust funds". The word "trust" is added in reference to the type of funds in the "conversion" language.

Section 41. **Consideration of application**. Minor language changes.

Section 42. **Consideration of application**. Minor language changes including the "or community association accounts under the control of a community association manager" language.

Section 43. **Findings and payment**. Amends with minor language changes. Same as Section 42.

Section 44. **Hearing costs.** Amends to provide that Commission may charge surety fund for costs of hearing on claim for reimbursement. Mandates that the Commission deposit into the surety fund any amounts recovered for these costs from the licensee.

Section 45. **Payment of small claims judgment.** Amends to provide that Commission shall make an award from the fund of any outstanding portion of a small claims judgment on receipt of a copy of the final judgment, an affidavit from the claimant stating that more than 30 days have elapsed since the judgment became final and that the responsible licensee has not yet satisfied the judgment.

Section 46. **Maximum liability.** Minor language changes.

Section 47. **Right to subrogation.** Minor language.

Section 48. **Exceptions:** Amends and adds new exceptions. Provisions of this chapter that require licensure do not apply to:

- (1) AMENDED: person may manage or make real estate transaction on with respect to real estate person owns or is seeking to own so long as the compensation the person receives does not include any portion of the commission or other compensation paid to a real estate licensee in the transaction.
- (2) attorney in fact under power of attorney may accomplish a specific real estate transaction; may not act as such for more than two transactions in a calendar year (current law);
- (3) Lawyer performing duties as lawyer (current);
- (4) Public official in conduct of official duties (current);
- (5) Person acting as receiver, trustee, administrator, executor, or guardian (current);
- (6) Person acting under court order (current);
- (7) Person acting under authority of a will or trust (current);
- (8) Person dealing in mineral rights transactions (current);
- (9) AMENDED: an employee of domestic or foreign corporation, general or limited partnership, or limited liability company, when performing duties incidental to regular course of business; does not apply to person employed by these entities who performs either as a vocation or for compensation if the amount of such compensation is dependent upon or related to value of real estate.
- (10) Resident manager (current)
- (11) NEW: bookkeeper or accountant performing bookkeeping or accounting functions;

- (12) NEW: secretary or receptionist in real estate office who accepts rent or association fees and provides written receipt for same;
- (13) NEW: tradesmen or vendors of services performing maintenance and repair functions;
- (14) NEW: employee of real estate firm or property owner who delivers or accepts a real estate contract or application, or related amendment, to or from another person;
- (15) NEW; individual assisting in performance of real estate activities by carrying out administration, clerical, or maintenance tasks;
- (16) NEW: person managing a total of four or fewer residential units for others;
- (17) NEW: resident owner of a unit in property organized under AS 34.07 or AS 34.08 who is a member of a self-managed community association;
- (18) NEW: developer of community association while that developer owns at least 51 percent of association;
- (19) NEW: attorney in fact acting for a relative under a power of attorney. Relative means: spouse, great grandparent, grandparent, parent, uncle, aunt, sibling child, nephew, niece, grandchild, or great grandchild by the whole or half blood or by marriage but does not include a relative who is only related through a step relationship such as a stepbrother or the child of a step brother but does include a stepchild; or
- (20) NEW: mobile home dealer licensed under AS 08.67 performing within the scope of the dealer's license.

Section 49. **Definitions.** New subsection (b) indicating that while a person may be exempt from licensure, that person is not exempt from AS 08.88.401(3)(1) (See Section 34).

Section 50. **Definitions:** Amends definition of "commission" to mean Real Estate Commission except where the context indicates that it refers to a fee paid for personal services.

Section 51. **Definitions.** Amends definition of "real estate" to state that such term does not include a unit in a hotel, motel, boarding house, rooming house, or other transient lodging facility, or a unit in a warehouse, mini-storage facility or other facility the function of which is limited to warehousing purposes.

Section 52. **Definitions:** Amends definition of "resident manager" to indicate that a resident manager resides on rented or leased real property or on contiguous property owned by the same owner, manages the property for the

benefit of another person, and is either employed by the owner of the real estate or employed by, or under contract with, a real estate licensee.

Section 53. **Definitions.** Adds new definitions for:

"Community association management": activity undertaken for an owners' association with regard to property organized under AS 34.07 or 34.08 under an agreement in exchange for a fee, commission or other valuable consideration.

"Employ", "employing", "employs", "employed", "employee", "employees", and "employment" include being an independent contract with an employer.

"Knowingly" means same as AS 11.81.900(a). AS 11.81.900(a)(2) states:

A person acts "knowingly" with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes it does not exist; a person who is unaware of conduct or a circumstance of which the person should have been aware had that person not been intoxicated acts knowingly with respect to that conduct or circumstance;

"mobile" home has the meaning given in 08.67.080, which states in part:

(3) "mobile home" means a vehicle designed and equipped or human habitation, and that may only be moved by another motor vehicle when authorized by permit.

"Property management": activity undertaken for another with regard to real property under an agreement in exchange for a fee, commission or other valuable consideration.

"Real estate licensee": Person who holds license under this chapter; includes broker unless context clearly excludes brokers

"Real estate transaction:" (1) sales means transfer or attempted transfer of interest in a mobile home or real property, an act conducted as result

of or in pursuit of a contract to transfer interest in a mobile home or a unit of real property, or act conducted in attempt to obtain a contract to market real property.

(2) property manager: lease or rental of a mobile home or a unit of real property including collect of rent from a tenant of a mobile home or a unit of rented or leased property, attempt to rent or lease a mobile home or a unit of real property, an attempt to collect rent from tenant of a mobile home or rented or leased real property, or an act conducted as a result of or in pursuit of a contract to manage a unit of leased or rented real property or a mobile home.

(3) community association management: collect or attempted collection of dues from unit owner or an activity conducted as a result of or in pursuit of a contract with a community association to manage the affairs of that association.

Section 54. Repeals AS 08.88.111 (Commission regulations with regard to examinations).

Section 55. **Transitional provision.** Person may practice community association management without a license under this chapter until January 1, 1999.

Section 56. **Regulations.** Permits Commission to adopt regulations before the effective date of Section 7.

Section 57. **Revisor's instruction:** Wherever "salesman" appears, it shall be read as "salesperson".

Section 58. **Effective date** for 08.88.091(f) and (g). See section 7.

Section 59. **Effective date** for all other sections. Immediate.

## AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 33 (L&C)

Page 13, line 1

AFTER: "subdivisions,"

INSERT: "common interest communities,"

Page 18, line 22

AFTER: "conduct an investigation"

INSERT: ; (4) shall immediately deposit all community association funds in either a reserve or operating account belonging to the association;  
(5) shall not commingle funds of any association with other associations or with the licensee's funds

Page 31, line 31

AFTER: "board of directors;"

INSERT: "community association operation account" means an account in a financial institution maintained in the name of a particular community association. Proceeds from periodic community association assessments shall be deposited in the operating account, although excess funds not required to meet budgeted expenditures within a three (3) month period shall be transferred to a community association reserve account as soon as practical;

"community association reserve account" means an account in a financial institution maintained in the name of a particular community association containing proceeds reserved for the expected replacement cost of improvements within the community association or other future uses;

## AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 33 (L&C)

Page 2, line 9:

AFTER: "negotiate terms":  
DELETE: "of"  
INSERT: "for"

Page 5, line 24

AFTER: "The commission shall approve"  
INSERT: "or disapprove"

Page 5, line 30

AFTER: "requirements for"  
DELETE: "each type of"  
CHANGE: "license" to "licenses"

Page 7, line 9:

AFTER: "assist in"  
DELETE: "or communicate with"

Page 7, line 9

AFTER: "procuring of"  
INSERT: "or communicate with"

Page 9, line 6

AFTER: 'PARTNERSHIP]."  
INSERT: Unless the broker fails to renew the license or unless the broker's license is suspended or revoked, the broker's license continues in effect as long as the broker is an owner of a real estate business.

Page 11, line 30

AFTER: "business purpose"  
INSERT: "unless that person is also licensed as a broker, associate broker, or salesperson under other sections of this chapter"

Page 12, line 9

AFTER: "force."

INSERT: "The commission may grant exemptions from this section if the commission determines that the community association managers is otherwise covered or that such coverage is unavailable."

Page 13, line 4

AFTER: "standards,"

DELETE: "nonprofit corporation creation and operations"

Page 17, line 2:

AFTER: "broker's authorized"

DELETE: "agent"

INSERT: "representative"

Page 17, lines 10, 11, and 14

AFTER: "listings"

DELETE: "and"

INSERT: "or"

Page 18, line 4

AFTER: "account in a"

DELETE: "bank"

INSERT: "financial institution"

Page 18, line 31

AFTER: "When"

INSERT: "a"

Page 19, lines 3 and 5

AFTER: "listings"

DELETE: "and"

INSERT: "or"

Page 24, line 26

AFTER: "trust funds or"

INSERT: "conversion of"

Page 24, line 28

DELETE: "real estate"

Page 24, line 29

DELETE: LICENSED UNDER THIS CHAPTER]

AFTER: "SALESMAN"

INSERT: ] licensed under this chapter

Page 32, line 7

AFTER: "regard to"

DELETE: "a mobile home or"

Page 32, line 10

AFTER: "management of"

DELETE: "mobile homes or"

Page 32, lines 21, 22, 23, 24, and 26:

AFTER: "real property"

DELETE: "or a mobile home"

ght after consumers' a) // P.A. (CLASSIFIED) Find what you want / D-5

# BUSINESS

ANCHORAGE DAILY NEWS  
July 2, 1996

ANCHORAGE DAILY NEWS

SECTION D

## Embezzlement nets five-year sentence

### Condo association manager took at least \$423,500

By **BRUCE MELZER**  
Daily News reporter

Condominium manager Ronald W. Thornton stood in court Monday, faced some of the people whose money he embezzled and said, "I do deserve time" in prison.

Superior Court Judge Milton Souter gave it to him: a five-year prison sentence.

Thornton had pleaded no contest to one felony count of theft. The owner of Frontier Management Inc. admitted in court filings that he embezzled at least \$423,510 from 17 Anchorage condominium associa-

tions he managed.

Thornton's thefts totaled \$570,200 from 10 associations in all, said assistant district attorney James Fayette. Given the discrepancy in those amounts, the judge Monday postponed setting restitution that Thornton must pay.

But the judge said he was pessimistic that the homeowners' associations will recoup much. "He's not going to be able to pay this off, short of winning the New York State lottery," Souter said.

"Until the day I die I will try to make restitution to the

associations. I'm sorry. I am truly sorry," Thornton told the 25 or so former clients who filled nearly every seat in the courtroom.

Thornton will be eligible for parole after 20 months, Fayette said.

Thornton was a well-liked, trusted manager who ran the day-to-day affairs and finances of condominium associations around town, his former clients say. A condo association collects dues each month from condominium owners in a de-



ANNE RALPH / Anchorage Daily News  
Ron Thornton is sentenced Monday to five years in state Superior Court.

Please see Page D-4, CONDO

## CONDO: Judge gives 5-year sentence

Continued from Page D-1

velopment. The association decides how to spend the money — on landscaping, snow plowing, roof repairs, etc. — to benefit all the owners. Sometimes associations manage the money themselves; sometimes they hire professional managers like Thornton.

In Thornton's case, he often had the power to sign checks, and embezzled the money in part by writing checks for work never done and falsifying the financial reports he gave the associations, according to prosecutors and the victims.

Thornton's thefts were uncovered by Loren Taft, president of Goldleaf Terrace on Strawberry Road in South Anchorage. Taft started looking for money in a reserve account to paint the condo units. But the cash wasn't there.

Taft said when he inquired about the money, Thornton replied, "Don't worry, the funds will be there."

Taft went to the association's auditor. There he found out that even though the association has been audited each year, Thornton never passed those audits to the board.

As they cobbled together a financial picture, Taft and the auditor saw that money was missing. All told the association lost \$10,750 since January 1992, according to documents filed in court.

Knik Arms, downtown, got hit hardest of all. The condo claims Thornton took \$119,000, although Thornton estimated the amount at \$89,000, according to papers his lawyer filed in court.

Throughout it all, Thornton offered apologies but no excuses for his actions, he and his lawyer, Joe Josephson, said.

Thornton's story goes like this. In 1993, his wife left him for another man, according to papers Josephson filed.

Following that breakup, Thornton embarked on

path of self-destructive behavior, Josephson told the court. "It was inevitable that he be found out. I think he wanted to be found out, in a way," Josephson said.

Thornton took up with a woman and invested heavily in her businesses, paid her medical debts and took her on trips. All told, Thornton spent about \$350,000 on her and her companies, according to Josephson's documents.

Even Josephson said the woman, who is no longer with Thornton, didn't speak to the why of the crime.

"That's not a real excuse, that's just a soap opera."

Souler was incredulous. "I can understand \$25,000," the judge said, "But not 420,000 plus dollars. This is not understandable."

Where is the money now? Fayette the prosecutor said Thornton had no assets that he or the police could find.

## STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF COMMERCE AND  
ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

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ANCHORAGE, ALASKA 99503-5986  
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E-MAIL: License@commerce.state.ak.us

February 6, 1998

FEB - 6 1998

Representative Norman Rokeberg  
Chairman, Labor & Commerce Committee  
House of Representatives  
State Capitol  
Juneau, AK 99801

Dear Rep. Rokeberg,

The Real Estate Commission voted to support HB33 at a teleconferenced meeting held on January 28, 1998. They were aware of the amendments being considered by the House Labor and Commerce Committee later that same day. The amendments which were adopted by your committee and incorporated into CSHB33 are amendments which they also supported.

In their discussion, the members expressed specific support for:

- 1) the proposed provisions of AS 08.88.167 which would enable civil penalties to be imposed by the Real Estate Commission on persons practicing without a license after an administrative hearing;
- 2) the new sections [ (e), (f), & (g) ] in AS 08.88.401;
- 3) the provisions throughout the bill relative to the licensing of community association managers.

The Commission appreciates your efforts and cooperation with the agency and the industry to address the licensing issues contained in HB33.

Yours truly,

Ruth Blackwell, Chair  
Real Estate Commissioncc: REC Members  
Catherine Reardon, Director  
Division of Occupational Licensing

# ALASKA STATE LEGISLATURE

## House of Representatives

### COMMITTEE ASSIGNMENTS:

LABOR & COMMERCE COMMITTEE, CHAIRMAN  
SPECIAL COMMITTEE ON OIL & GAS, MEMBER  
JUDICIARY COMMITTEE, MEMBER  
CORRECTIONS BUDGET SUBCOMMITTEE, MEMBER  
ADMINISTRATION BUDGET SUBCOMMITTEE, MEMBER  
HESS BUDGET SUBCOMMITTEE, MEMBER




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716 WEST 4TH AVENUE, SUITE 640  
ANCHORAGE, AK 99501  
PHONE: (907) 258-4191  
FAX: (907) 258-2916

SESSION:  
STATE CAPITOL  
JUNEAU, AK 99801-1182  
PHONE: (907) 465-4968  
FAX: (907) 465-2040

## Representative Norman Rokeberg

### MEMORANDUM

TO: House Labor & Commerce Committee Members

FROM: Representative Norman Rokeberg 

DATE: January 23, 1998

RE: House Bill 33  
Affinity Groups

For your information, attached are the following:

- A: "The downside of affinity deals" from April 1997 *Alaska Real Estate News*
- B: October 23, 1997 Legal Services Opinion on "Regulation of the Real Estate Commission regarding disclosure of certain rebates" by Tamara Brandt Cook
- C: October 28, 1997 letter from me to Attorney General Botelho
- D: "Commission payment disclosures: Why do we care" from November 1997 *Alaska Real Estate News*
- E: December 1, 1997 letter to Alaska Real Estate Commission from law offices of Young & Feldman concerning "Legality of Referral Fees in Alaska"
- F: December 3, 1997 Legal Services Opinion addressed to Rep. Ryan from Terri Lauterbach concerning "Real Estate Practices".
- G: December 18, 1997 letter from Assistant Attorney General Gayle Horetski

# The downside of affinity deals

*Who's in control? Who really benefits? Who takes the heat if it fails?*

*by Susan Heck-French*



Free offers of frequent flyer points, discounts on products or services, or dollars to spend at wholesale clubs are becoming increasingly common in real estate, apparently with little thought toward how they impact the consumer and others in the deal.

Let's take a look at several examples and determine who is benefitting: the consumer, the broker, or the third-party company?

## *Example A*

A typical sale goes like this: A consumer wants to sell her house and a neighbor refers her to a realty company. The broker charges a 6% fee, but the seller feels it will be worth it, knowing she will get the attention and services she needs. The broker sets the process rolling, and the sale of her home lives up to the quality reputation the office has worked to maintain.

In the end, the consumer receives a \$97,000 contract, just slightly less than the asking price of \$100,000. The broker receives \$5,820 for services. The consumer nets out \$91,220.

## *Example B*

Now let's change the scenario: Another consumer also has a house to sell, but she sees an ad that says she'll get \$440 "club dollars" just for listing her house through a particular wholesale shoppers club.

The club, of course, doesn't list the house. It has an arrangement with a real estate company to handle the sale.

The seller has all sorts of things she wants to buy for her next home, so she is really excited about receiving \$440 in "fun" money. In fact, she is so excited, she forgets to get details about the real estate firm. It seems like a bonus without any effort on her part.

Is she getting a good deal?

First, is she really getting the \$440? The answer is "no". Since the \$440 will be considered income, she will pay \$88 in income tax, assuming her family is in the 20 percent tax bracket. Also, since wholesale club dollars are not retail dollars, she is not getting their full value. The club really benefits because this is

a deductible expense, and the dollars are worth less to them.

The consumer, in this case, nets a total of \$91,660 (\$91,220 from the house, plus the \$440 in taxable dollars).

But let's not forget the broker. The broker usually charges six percent, but in this case the broker pays the club a 30 percent referral fee — meaning that since the club is providing the vehicle to obtain the listing of the house, it gets about a third of the commission. Therefore, when the broker sells the house for \$97,000, and receives a \$5,820 commission, \$1,940 goes to the club. In hard dollars, the broker receives \$3,880 for the sale — a four percent commission.

## *Example C*

Another home owner wants to sell a \$100,000 house, but elects to bypass the club promotion and go back to the broker she's used before. They agree to a five percent commission. Taking the same house with a \$97,000 selling price, the broker makes \$4,750 in commission. The seller nets out \$92,250. By negotiating, this homeowner gets a better value than the affinity deals could offer, and the broker also benefits.

## *Example D*

Our final \$100,000-home-selling consumer sees an ad that offers 20,000 Frequent Flyer Points on an airline if she lists her house with a particular brokerage firm. That's enough points for a free, cross-country ticket to visit her family

**LEGAL SERVICES**

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

**MEMORANDUM**

October 23, 1997

**SUBJECT:** Regulation of the Real Estate Commission regarding disclosure of certain rebates (Work Order No. 20-LS1195)

**TO:** Representative Norman Rokeberg, Chair  
House Labor and Commerce Committee  
Attn: Janet Seitz

**FROM:** Tamara Brandt Cook *TBC*  
Director

You have asked whether 12 AAC 64.130(4) adopted by the Real Estate Commission conflicts with AS 08.88.161(5). In my opinion it does not. AS 08.88.161(5) provides:

Unless licensed as a real estate broker, associate real estate broker, or real estate salesman, a natural person, foreign or domestic corporation, or partnership, or limited partnership, or other entity may not... (5) assist in or direct the procuring of prospective buyers or the negotiation of a transaction which results or is calculated to result in the sale, exchange, rent, lease, auction, or purchase of real estate. . .

The regulation at issue does not grant authority to pay an unlicensed person or receive compensation from an unlicensed person in connection with a real estate transaction. Rather, it is a disclosure requirement. 12 AAC 64.130(4) provides:

The following acts, in addition to those specified elsewhere in this chapter, are grounds for revocation or suspension of a license: . . . (4) any payment or receipt of any rebate or compensation from any licensee or any unlicensed person, entity, or association in a real estate transaction without disclosing the specific names and amounts, in writing, to the principals of that transaction at the time that the following documents are signed:

- (A) the listing contract;
- (B) the receipt and agreement to purchase;
- (C) the settlement statement.

The regulation makes the failure to disclose certain payments by or to persons other than the principals of a real estate transaction independent grounds for the revocation or suspension

Representative Norman Rokcberg, Chair

October 23, 1997

Page 2

of a license regardless of whether the payments are, themselves, permitted under the law. Obviously, the disclosure of payments could, in some circumstances, reveal a violation of AS 08.88.401(b) which is a class A misdemeanor. That subsection states:

A person

(1) who is not a real estate broker licensed in this state may not accept a fee or a commission for performance of an act for which a license is required by this chapter except that a real estate broker validly licensed in another state may accept a fee or commission or a portion of a fee or commission for assisting a real estate broker licensed in this state in the performance of an act for which a license is required by this chapter;

(2) who is a real estate salesman licensed in this state may not accept a fee or commission for performance of an act for which a license is required by this chapter unless acceptance is authorized by the broker who employs the salesman.

TBC:glc

97-383.glc



Official Business

# Alaska State Legislature

## HOUSE OF REPRESENTATIVES

Representative Norman Rokeberg, Chairman  
House Labor and Commerce Committee  
716 West Fourth Avenue  
Anchorage, AK 99501  
Telephone: (907) 258-8191; FAX: (907) 258-2916

State Capitol  
Juneau, AK 99801-1182

October 28, 1997

Bruce Botelho, Attorney General  
Department of Law  
PO Box 110300  
Juneau, AK 99811-0300

FAX: (907) 465-2075 (HARD COPY FOLLOWS VIA MAIL)

Dear Attorney General Botelho:

During its October 23, 1997, meeting regarding real estate licensing, the House Labor and Commerce Committee discussed 12 AAC 64.130(4) as adopted by the Real Estate Commission and AS 08.88.161(5).

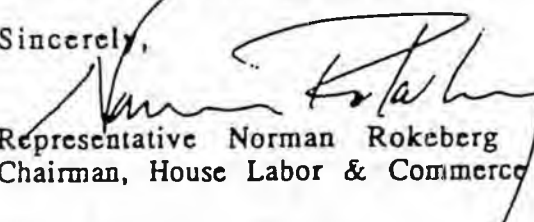
This regulation was intended to inform the public of all parties to a real estate transaction and is specifically directed at home relocation companies and firms that may wish to give a "rebate" back to members of an affinity group.

A controversy has developed because the present regulations regarding referral fees and rebates seem to imply that affinity group rebates and/or relocation company referral fees are allowed under Alaska statute. I recently received a legal opinion from our Legislative Counsel that it was prohibited but the Real Estate Commission's understanding is that it is allowed as long as the payment is disclosed.

Resolution of this conflict is urgent as the Real Estate Commission and members of the real estate community are struggling with the interpretation and implementation of this new regulation. Moreover, large national corporations such as COSTCO are presently interviewing real estate brokers for participation in affinity group "rebates", which I believe are prohibited by law and, at the least, would have an extraordinarily negative impact on the commerce of the state of Alaska.

Therefore, I would ask that you give this matter your earliest attention.

Sincerely,

  
Representative Norman Rokeberg  
Chairman, House Labor & Commerce Committee

cc: Governor Knowles  
Real Estate Commission

# Alaska Real Estate News



Tony Knowles  
Governor

Jeffrey W. Bush  
Acting Commissioner

Catherine Reardon  
Director

Volume 10

November 1997

Number 2

## *Time to renew!*

Any license issued before November 3, 1997 must be renewed by January 31, 1998, or it will lapse.

If your license lapses, you are NOT licensed to practice real estate, and you cannot perform any real estate activity until your license has been reinstated. No exceptions. And there is no grace period.

### *What are the fees?*

Licensees applying for license renewal will submit a fee of \$380. This includes the new biennial license fee of \$280 and a \$100 surety fee.

Applicants for new licenses to be issued after November 21, 1997, will pay \$430. This includes a non-refundable \$50 application fee, the new biennial license fee of \$280 and a \$100 surety fee.

### *How long will it take?*

Applications submitted by December 31 will be processed before January 31st.

Renewed license certificates will be mailed to the broker of

*(continued on page 7)*

## Commission payment disclosures: *Why do we care?*

The demand for "referral fees" by relocation companies is a source of alarm for Alaska licensees.

These fees amount to 25-35% of total commission fees in transactions where customers or clients are members of affinity groups.

Affinity groups may be groups of employees of a large corporation, government groups or other groups with some association in common.

Relocation companies contract with organizations to assist their employees or members who are relocating from one geographic location to another.

Relocation companies then often have contracts with brokers throughout the country, to which the company refers members of these affinity groups for the sale of their existing homes and the purchase of new homes.

The company collects a referral fee from the real estate broker at the closing of the sale or purchase of a member's home, which often amounts to 25 - 35% of the commission on the transaction.

In order to gain more clients, relocation companies may offer cash rebates and/or cash discounts in

the form of frequent flyer miles to consumers who use their services.

The rebates or discounts to consumers come from the referral fees the company collects after the sale of the consumer's property. Thus, in effect, the consumer receives a portion of the real estate commission from the sale of the property.

The affinity groups in Alaska include British Petroleum, ARCO, American Airlines and Costco generally market the program to their own members.

*(continued on page 5)*

## *In this issue:*

- *Affinity group marketing: what is it?*
- *Fee changes*
- *Mobile home dealers: register!*
- *Why require E&O insurance?*

The concern of real estate brokers in Alaska and elsewhere is that they cannot provide the same services for 35% less than it cost them to provide those services before the emergence of the relocation companies.

### *Why require disclosure?*

The Alaska Real Estate Commission (AREC) is also concerned about the financial health of brokerages, and about the cost and effect of such plans for consumers.

It is clear that eventually the cost of real estate services to consumers would have to increase to provide commissions to an additional party in the transaction. Consumers are generally not aware of the price they are paying for the minimal benefit they receive.

### *It's a national problem.*

If it's any consolation, the same concerns were expressed by regulators and practitioners from across the country at a recent meeting of the Association of Real Estate License Law Officials (ARELLO). ARELLO has set up a special task force to look for solutions to the problem.

AREC has already taken action to ensure that consumers are advised

of exactly what commission money is being paid to whom in connection with real estate transactions in this state. Effective June 28, 12 AAC 64.130 says:

### *"12 AAC 64.130 GROUNDS FOR REVOCATION OR SUSPENSION.*

*The following acts, in addition to those specified elsewhere in the chapter, are grounds for revocation or suspension of a license:*

*(4) any payment or receipt of any rebate or compensation from any licensee or any unlicensed person, entity, or association in a real estate transaction without disclosing the specific names and amounts, in writing, to the principals of that transaction at the time that the following documents are signed:*

- (A) the listing contract;*
- (B) the receipt and agreement to purchase;*
- (C) the settlement statement."*

### *What can the Commission do by regulation?*

In an attempt to further clarify this language, the Commission has noticed its intent to reconsider the regulation at its December meeting.

Many licensees are not satisfied with a requirement for disclosure, but instead, want a prohibition on

any such affinity group marketing plans.

Many other states have attempted to clarify statutes and regulations to make it clear that payment of any kind to unlicensed persons in conjunction with a real estate transaction is unlawful. The most celebrated regulatory revision to date was accomplished by the Mississippi Real Estate Commission (MREC).

### *PHH vs. MREC*

MREC passed a rule making it unlawful for a Mississippi licensee to pay a referral fee to another real estate licensee when they knew that the second licensee intended to pay a portion of that commission to an unlicensed individual.

Mississippi law already provided its Commission power to revoke or suspend a license of an individual who paid any rebate, profit or commission to an unlicensed person.

The regulation further explained that a licensee could not pay any part of a fee, commission or other compensation received in the course of a transaction except to another licensee through the licensee's broker.

*(continued on page 6)*

FRANK & ERNEST® by Bob Thaves



## Commission disclosure (continued from page 1)

In August of this year, MREC added another section to the regulation stating: "No licensee shall knowingly pay a commission, or other compensation to a licensed person knowing that licensee will in turn pay a portion or all of that which is received to a person who does not hold a real estate license."

PHH, a relocation company doing business in Mississippi, sued the Commission seeking an injunction to prevent enforcement of the regulation.

Both parties agreed that the rule as amended prohibits the consumer rebates offered by PHH as part of its incentive program for affinity group members.

Both parties moved for summary judgment, agreeing that there were no genuine issues of material fact and that the case could be finally decided on the issues of law that were before the court.

PHH asserted that the rule was preempted by the provisions of

RESPA, violated the commerce clause of the United States Constitution, and was a violation of its first amendment right to free speech, because it prevented PHH from advertising its consumer rebate program.

### *The court's ruling*

The court found that the federal law did not conflict with the Mississippi rule, that it does not directly discriminate against interstate commerce, that it applies equally to brokers inside and outside the state of Mississippi, and that the rule effectuates the local interest of protecting consumers from unscrupulous organizations.

The court also found that the rule regulates conduct, not speech, and is therefore not subject to a First Amendment challenge.

Further, the court stated that the MREC was well within its statutory authority when it passed the rule in question "to carry out the purposes of this chapter".

### *Alaska law is different.*

In Alaska, recent decisions of the Office of the Attorney General have construed the powers of the Commission very narrowly.

That means that unless the statute specifically addresses a given issue, the Commission has no authority to pass regulations on that issue.

It is the position of the Attorney General's Office is that there is no prohibition in Alaska law against paying rebates or other compensation to principals in the transaction.

Therefore, a statutory revision is necessary to create such a prohibition. To incorporate language such as that upheld in Mississippi, Alaska would need a change in the law passed by the state legislature.

Representative Norman Rokeberg has been working on this issue. Contact his office with comments or suggestions.



## *Do we know where you are?*

*If you have not received your renewal forms, it is likely that the Commission does not have your current address.*

*To provide a current address, you must report your new address to the Commission's Anchorage office in writing. Be sure to indicate on your renewal form that the address you have given is a new address.*

JEFFREY M. FELDMAN  
SUSAN ORLANSKY  
JOSEPH L. YOUNG (OF COUNSEL)

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TELEPHONE 272-3538  
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December 1, 1997



Alaska Real Estate Commission  
Frontier Building  
3601 "C" Street, Suite 722  
Anchorage, Alaska 99503

Re: Legality of Referral Fees in Alaska.

Dear Members of the Commission:

I am writing on behalf of Concerned Advocates for Real Estate Services ("CARES"). CARES is a group comprised of licensed real estate brokers and other individuals who have an interest in matters relating to the regulation of real estate services in Alaska. CARES recently learned of the proposed entry into the Alaska real estate market by Costco, a national warehouse merchandiser. As CARES understands the plan, Costco proposes to refer customers to designated Alaska real estate brokers in exchange for a share of the commission realized from any ensuing sale or purchase. This letter sets forth the basis on which CARES believes that this plan violates existing statutes and regulations governing real estate practices in Alaska. Request is made on behalf of CARES that, upon completion of a review of Costco's plan and the applicable law, the Commission take appropriate steps as necessary to ensure full compliance with Alaska law, both by Costco and by brokers licensed in Alaska.

#### Summary

Alaska law prohibits Costco's plan because the applicable statutes and regulations forbid a corporation from assisting in the procuring of real estate buyers for the purpose of realizing a commission without a license. Not only would Costco violate licensure law by operating a referral service, but any licensed broker who splits a commission with Costco would subject his or her real state license to revocation or suspension.

December 1, 1997

Page 2

### Alaska's Statutory and Regulatory Scheme

The Alaska legislature has provided for the regulation of real estate services in Alaska in enacting Chapter 88 of Title 8 of the Alaska Statutes. Of particular relevance is AS 08.88.401(b), which states:

A person who is not a real estate broker licensed in this state may not accept a fee or a commission for performance of an act for which a license is required by this chapter . . . .

AS 08.88.161, which enumerates those activities requiring a real estate license in Alaska, states that a corporation may not:

(5) assist in or direct the procuring of prospective buyers or the negotiation of a transaction which results or is calculated to result in the sale, exchange, rent, lease, auction, or purchase of real estate.

The legislature deemed compliance with AS 08.88.161 to be a matter of sufficient public policy significance that a corporation that violates this provision is guilty of a class A misdemeanor criminal offense. See AS 08.88.401(d).

In addition, 12 AAC 64.130(7), promulgated by the Real Estate Commission, provides that a licensed broker may have his or her license suspended or revoked for:

[p]aying referral fees, sharing commissions, or otherwise compensating a person who is prohibited from receiving compensation under AS 08.88.401(b).

Pursuant to the regulation and statutes, under existing Alaska law, it is improper for a licensed broker to pay a referral fee to one assisting in the procurement of prospective buyers which results or is calculated to result in the sale or purchase of real estate.

### Costco Proposes to Illegally Assist in the Procurement of Buyers

As CARES understands Costco's plan, Costco will violate AS 08.88.161(5) by assisting in the procuring of prospective buyers for the purpose of effecting a sale, or which actually effects a sale. Costco's plan clearly aims to procure buyers of real estate in order to make real estate sales. Under Costco's plan, Costco would market its real estate program to its customers, with the intent that its customers sign up. Costco would then refer the customers to a licensed

December 1, 1997

Page 3

real estate broker, an "Affinity Broker," who would split any consequent commission with Costco. Costco, in turn, presumably, would rebate a portion of its commission to customers as a cash-back incentive for using Costco's program.

There is no case law in Alaska interpreting the statutory procurement provisions. Under existing case law, however, Alaska courts would interpret the provisions giving the words in the procurement statutes their common and ordinary meaning. See Huges v. Harrelson, 844 P.2d 1006, 1007 (Alaska 1993). Alaska courts also would interpret the provisions to give the statutes a reasonable and practical meaning in accordance with common sense. See O'Callaghan v. State, 826 P.2d 1132 (Alaska 1991), cert. denied, 113 S.Ct. 176 (1992). The definition of the word "procuring," used in AS 08.88.161(5), is "(1) doing one's best, labouring, striving; (2) the action of causing or contriving to bring about; the fact of being the prime agent; (3) getting or obtaining (of anything) by effort." See The Oxford English Dictionary 559 (2<sup>nd</sup> ed. 1991).

The common and ordinary meaning of the phrase, "assist in or direct the procuring of prospective buyers . . . which result[s] or is calculated to result in the sale . . . or purchase of real estate," prohibits precisely what Costco's real estate program proposes to do. Costco's program seeks to get or obtain prospective buyers -- from its pool of customers -- for the purpose of attaining a referral fee.

This application of the statute and regulations is consistent with the underlying public policies that support prohibiting referral fees. Alaska's licensure laws serve to protect Alaska's citizens against fraudulent, misleading, and unscrupulous transactions in real estate. AS 08.88.161(5) specifically seeks to protect against unnecessarily high settlement charges caused by kickbacks and referral fees.<sup>1</sup>

The fact that a portion of Costco's fee will be paid back to its customers does not affect the analysis of whether Costco's proposed program is legal. AS 08.88.161(5) prevents an unlicensed person from receiving *any* fee for procuring prospective buyers, whether that fee is large or nominal, administrative or for profit, retained or rebated. Further, under Costco's proposed program, the value of the kickback to the customer is dependant on the form of the kickback, which is wholly unregulated and susceptible to fraud.

Costco may claim that the proposed rebate is not a fee rendered at or in relation to the settlement, and thus not subject to Title 8. There are several reasons why this argument fails. First, the referral fee to Costco is contingent upon the occurrence of the sale or purchase of

---

<sup>1</sup> The United States Congress similarly recognized the need to protect the public from these harms when it adopted the Real Estate Settlement Procedures Act. See 12 U.S.C. § 2601(a) (1989).

December 1, 1997

Page 4

property, the very subject of the settlement. Second, the amount of the fee is determined by the settlement price and is not discretionary. Third, the fee is paid subject to a contract entered prior to the settlement. And fourth, a debt is incurred when the debtor first becomes legally bound to pay. See In the Matter of CHG Int'l, 897 F.2d 1479, 1486 (9<sup>th</sup> Cir. 1991). Even though the settlement itself does not provide for payment of a commission to Costco, the payment is integrally intertwined with the agreement, and thus within the scope of Title 8.

### The Commission's Role in Costco's Plan

Under the statutory and regulatory authority discussed above, the Commission can take action to ensure compliance with the provisions of existing law in at least in three ways:

First, the Commission can prohibit implementation of Costco's plan because Costco cannot legally engage the in procuring of real estate buyers without a real estate license under AS 08.88.161.

Second, since the Commission has the statutory duty of ensuring the high standards for real estate practices set by the Alaska legislature, it has the authority to suspend or revoke the license of any broker who pays any portion of a commission to Costco for referral services, as provided by 12 AAC 64.130(7).

Third, since AS 08.88.161(5) prohibits an unlicensed person or entity from receiving a fee for procuring a prospective buyer, the Commission has the authority to adopt regulations expressly prohibiting the payment of referral fees to unlicensed persons.

### Conclusion

Existing Alaska law governing the real estate industry prohibits Costco or any other unlicensed party from receiving a referral fee. CARES respectfully requests the Commission's close scrutiny of the plan at issue here and its protection of the public policy set by the Alaska legislature in this important area of business activity affecting all Alaskans who participate in the purchase or sale of real estate. Thank you for according CARES an opportunity to be heard on this matter.

Sincerely,

YOUNG & FELDMAN



Jeffrey M. Feldman

## LEGAL SERVICES

Post-It™ brand fax transmittal memo 7671	
To: <i>Genes Oddy</i>	From: <i>Terri Lauterbach</i>
On:	On:
Dept: <i>269</i>	Phone #
Fax: <i>267-3156</i>	Fax #

ID RESEARCH SERVICES  
 AFFAIRS AGENCY  
 F ALASKA

130 Seward Street, Suite 409  
 Juneau, Alaska 99801-2105

## MEMORANDUM

December 3, 1997

SUBJECT: Real Estate Practices (Work Order No. 0-I.S1291)

TO: Representative Joe Ryan

FROM: Terri Lauterbach  
 Legislative Counsel *Terri Lauterbach*

You have asked whether any law is violated if an entity, such as Costco, gets a rebate from a broker after a Costco member uses the broker for real estate services.

Based on these facts, it appears to me that, unless Costco has a real estate license, Costco may be violating AS 08.88.161(5) - (7) and 08.88.401(b)(1). I do not, at this time, see any law that the broker might be violating as long as the broker complies with the disclosure requirement of 12 AAC 64.130(4).

## DISCUSSION

AS 08.88.161(5) - (7) reads, in pertinent part, as follows:

Unless licensed as a real estate broker, associate real estate broker, or real estate salesman, a natural person, foreign or domestic corporation, or partnership, or limited partnership, or other entity may not

• • •

(5) assist in or direct the procuring of prospective buyers or the negotiation of a transaction which results or is calculated to result in the sale, exchange, rent, lease, auction, or purchase of real estate;

(6) hold out to the public as being engaged in the business of doing any of the things listed in this section;

(7) attempt or offer to do any of the things listed in this section.

*(Emphasis added.)*

It appears to me, under the facts you have offered, that Costco, through the membership benefits it offers, could be considered to be violating paragraph (5) by assisting in the procurement of prospective buyers for a particular realtor or set of realtors. Costco may also be considered to be violating paragraph (6) by holding out to the public (its potential membership) that Costco is in the business of assisting in the procurement of prospective real

Representative Joe Ryan  
December 3, 1997  
Page 2

estate buyers for realtors. Even if Costco members never use the intended broker, Costco may be violating paragraph (7) by attempting or offering to assist in the procurement of real estate buyers.

If Costco is considered to be assisting in the procurement of prospective buyers and is unlicensed, then Costco is probably also in violation of AS 08.88.401(b) because it is accepting a fee for performance of an act for which a license is required under AS 08.88.161(5). AS 08.88.401(b)(1) provides as follows:

(b) A person

(1) who is not a real estate broker licensed in this state may not accept a fee or a commission for performance of an act for which a license is required by this chapter except that a real estate broker validly licensed in another state may accept a fee or commission or a portion of a fee or commission for assisting a real estate broker licensed in this state in the performance of an act for which a license is required by this chapter...  
(*Emphasis added.*)

As to the broker in the situation you have described, there is a duty under 12 AAC 64.130(4) to disclose the Costco rebate to the principals of the transaction at the time certain documents are signed. As long as the broker complies with this regulation, I don't see any violations of law by the broker under the facts you've provided. 12 AAC 64.130(4) reads as follows:

The following acts, in addition to those specified elsewhere in this chapter, are grounds for revocation or suspension of a license... (4) any payment or receipt of any rebate or compensation from any licensee or any unlicensed person, entity, or association in a real estate transaction without disclosing the specific names and amounts, in writing, to the principals of that transaction at the time that the following documents are signed:

- (A) the listing contract;
- (B) the receipt and agreement to purchase;
- (C) the settlement statement.

In addition to license revocation authorized by the regulation, violation of the disclosure regulation may be prosecuted through the Department of Law under AS 08.88.071(a)(4).

-----

I hope that this fully answers your question. If you receive additional information on this matter that you would like me to consider, please let me know.

TM1:jdr  
97-363.jdr

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

1031 WEST 4TH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE: (907) 269-5100  
FAX: (907) 276-3697

KEY BANK BUILDING  
100 CUSHMAN ST., SUITE 400  
FAIRBANKS, ALASKA 99701-4679  
PHONE: (907) 451-2811  
FAX: (907) 451-2846

P.O. BOX 110300-DIMOND COURT HOUSE  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600  
FAX: (907) 465-6735

December 18, 1997

The Honorable Norman Rokeberg  
Chairman, House Labor & Commerce Committee  
716 West Fourth Ave.  
Anchorage, AK 99501

Dear Representative Rokeberg:

Attorney General Bruce Botelho has asked me to reply to your letter of October 23, 1997, regarding 12 AAC 64.130(4), a regulation adopted by the Alaska Real Estate Commission. I attended a Commission meeting in Anchorage on December 4, 1997, where the Commission heard considerable testimony from real estate licensees regarding several aspects of the Commission's regulations. At that meeting the Commission directed its staff to issue a public notice of proposed changes to its regulations. Among other things, it appears that the Commission now intends to repeal the present language of 12 AAC 64.130(4) and instead impose a requirement that a licensed broker must disclose, in writing, to the broker's principal in a real estate sales transaction any referral fee paid to another broker in connection with that transaction.

AS 08.88.401(b)(1), Prohibited Conduct, provides that a person (except for a broker licensed in another state) "who is not a real estate broker licensed in this state may not accept a fee or a commission for performance of an act for which a license is required . . ." Violation of this prohibition is a class A misdemeanor under AS 08.88.401(d). The conduct prohibited is that of the unlicensed person; existing state statutes do not explicitly address the payment of "rebates" or fees by licensees. Under AS 08.88.161(5), a person, corporation, partnership or other entity (unless licensed) may not "assist in or direct the procuring of prospective buyers or the negotiation of a transaction which results or is calculated to result in the sale, exchange, rent, lease, auction, or purchase of real estate." Again, the prohibition is upon the conduct of the unlicensed person or entity, not on the payment of rebates or the sharing of commissions by licensees.

Effective June 28, 1997, 12 AAC 64.130(4) allows a licensee to be disciplined for "any payment or receipt of any rebate or compensation from any licensee or any unlicensed person, entity, or association in a real estate transaction without disclosing the specific names and amounts, in writing, to the principals of that transaction. . ." (emphasis added). The regulation is a consumer

protection measure that requires a licensee to disclose to his principal in that transaction the payment or receipt by the licensee of any rebate or compensation to or from anyone, regardless of whether the other party is a real estate licensee or an unlicensed person. (Although the present version of 12 AAC 64.130(4) took effect in June of this year, the amendment that revised that subsection from a prohibition against paying any rebate or commission in violation of AS 08.88 to a disclosure requirement was adopted by the Commission in 1993, and took effect on July 16, 1994.)

12 AAC 64.130(4) does not in any way change the provisions of AS 08.88.161 regarding the acts for which a real estate license is required in this state. Obviously, the Real Estate Commission does not have the power to, by regulation, "legalize" conduct which the legislature has declared to be illegal. We do understand your point, however, that the broad scope of the disclosure requirement in present 12 AAC 64.130(4) appears to have led to much confusion among Alaska's real estate professionals.

Your letter also raised the larger issue of the legality of a licensee paying a referral fee or rebate to, or sharing a portion of his or her commission with, "home relocation companies" or "affinity groups" (you give COSTCO as an example). You indicate that you have received a legal opinion from your legislative counsel that such fees or rebates are prohibited. I am aware of two recent memorandums from the Legal Services Division of the Legislative Affairs Agency regarding this issue. In a memo dated October 23, 1997, Director Tamara Cook expresses her opinion that present 12 AAC 64.130(4) does not conflict with AS 08.88.161(5), as the regulation merely establishes a disclosure requirement. It does not (nor could it) grant a licensee authority to perform acts prohibited under state statutes. In a memorandum dated December 3, 1997, Legislative Counsel Terri Lauterbach expressed her opinion, based on the requestor's oral description of the arrangement, that (unless it has a real estate license) an entity such as COSTCO may violate state law if it obtains a rebate from a real estate licensee in connection with a real estate transaction. She did not believe the broker who paid the rebate would be guilty of an offense if he or she disclosed the payment. (I note, however, that present 12 AAC 64.130(7) would allow the imposition of discipline upon a licensee for "paying referral fees, sharing commissions, or otherwise compensating a person who is prohibited from receiving compensation under AS 08.88.401(b)".)

AS 08.88.161, describing the conduct for which a license is required, was originally adopted in 1964; it was most recently amended in 1974. At that time, many current commercial entities such as "relocation companies" contracting with national corporations and "affinity groups" like nationwide buyers' clubs or direct-sales companies did not exist, certainly not in their present form. Whether a particular business arrangement violates state law, depends upon the facts of that arrangement. A national corporation or organization may "employ" an Alaska-licensed real estate broker to handle real estate transactions in Alaska, for example; AS 08.88.171(a). Similarly, a broker referral system offered as a courtesy or as a benefit of membership by an "affinity group" to its members, for which no "fee or commission" is accepted, would not appear to fall within the conduct prohibited in AS 08.88.401.

The Honorable Norman Rokeberg  
Chairman, House Labor & Commerce Committee

December 18, 1997  
Page 3

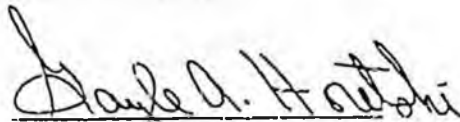
I note that, in the past, the Alaska Supreme Court has narrowly construed the scope of the regulatory authority conferred upon the Commission by the legislature. Warner v. State, 819 P. 2d 28 (Alaska 1991). Also, as the violation of AS 08.88.401 is a misdemeanor criminal offense, any ambiguities in its language would be construed in favor of the accused and against the prosecution.

In your letter you express your view that rebates to members of "affinity groups" would "have an extraordinary negative impact" on commerce in the state. Such rebates have been explicitly outlawed in some other states; see, e.g., Miss. Code Ann. Sec. 73-35-21(1)(j). Whether to prohibit recently-developed commercial arrangements that may lower the commission costs to the home buyer or seller, or provide rebates in the form of frequent flyer coupons or "credits" that may be applied by members toward the purchase of consumer goods, are matters of public policy. The legislature is in the best position to weigh any dangers that such arrangements might present to the public against any benefits to the state's residents or to its economy that might result.

Sincerely,

BRUCE M. BOTELHO  
ATTORNEY GENERAL

By:



Gayle A. Horvatski  
Assistant Attorney General

GAH:mrj

cc: Governor Knowles  
Real Estate Commission



9040 Glacier Highway, Juneau, AK 99801 TELEPHONE (907) 789-3888 FAX: (907) 789-7038

February 5, 1998

FEB - 5 1998

Representative Norman Rokeberg  
 Chairman, House Labor and Commerce Committee  
 Alaska State Legislature  
 Juneau, Alaska

Dear Representative Rokeberg

I have been a full-time professional realtor with Powell Realty/ Better Homes and Gardens of Juneau for the past eight and a half years. I strongly support the current version of HB 33 and any refinements to improve the consumer protection it provides in the Alaska real estate market.

We Realtors are continuously upgrading our skills to insure that the practice of real estate is done professionally and ethically. Our interest is in protecting the public when we provide our services. We in turn need the kind of protection for our industry as well as consumers of our services that this legislation provides.

Thank you for your efforts to make it so.

Sincerely,

G. Eve Reckley  
 Realtor

copy: Members of the House Finance Committee:

Rep. Mark Hanley, Co-Chairman	Rep. Gene Therriault, Co-Chairman
Rep. Eldon Mulder, Vice Chairman	Rep. Gary Davis
Rep. Richard Foster	Rep. Pete Kelly
Rep. Vic Kohring	Rep. Terry Martin
Rep. John Davies	Rep. Ben Grussendorf
Rep. Carl Moses	

**Powell Realty**  **Better**  
**inc.** **Homes**  
**and Gardens**

9040 Glacier Highway, Juneau, AK 99801 TELEPHONE (907) 789-3888  
FAX (907) 789-7038

February 6th, 1998

Representative Norman Rokeberg  
Chairman, House Labor and Commerce Committee  
Alaska State Legislature  
Juneau, Alaska


FEB - 6 1998

Dear Representative Rokeberg,

I am currently a full time Realtor or Powell Realty Better Homes and Gardens in Juneau, and have been for the past 3 1/2 years. It has been a very productive and successful career for me. I wish to express to you that I am in strong support of the current version of House Bill 33. I feel that it seeks to provide protection for our industry ( The Alaska Real Estate Market).. This legislation is necessary for us to provide our services at the level of quality that we have thus far been able to provide.

I certainly appreciate your efforts in attempting to protect the public and in turn our industry with this legislation.

Sincerely,

  
Helen G. Troutt  
Realtor

Copy: Members of the House Finance Committee:

Rep. Mark Hanley, Co-Chairman	Rep. Gene Therriault, Co-Chairman
Rep. Eldon Mulder, Vice-Chairman	Rep. Gary Davis
Rep. Richard Foster	Rep. Pete Kelly
Rep. Vic Kohring	Rep. Terry Martin
Rep. John Davies	Rep. Ben Grussendorf
Rep. Carl Moss	



Author: powell@eagle.ptialaska.net (Janie Bee Powell) at CC2MHS1

Date: 2/5/98 3:33 PM

FEB - 6 1998

Priority: Normal

TO: Representative Norman Rokeberg at LAA\_TRANS

CC: Representative Mark Hanley at LAA\_HHAN, Representative Gene Therriault at LAA\_HTHR,  
Representative Eldon Mulder at LAA\_TRANS, Representative Gary Davis at LAA\_TRANS,  
Representative Richard Foster at LAA\_TRANS, Representative Pete Kelly at LAA\_TRANS,  
Representative Vic Kohring at LAA\_TRANS, Representative Terry Martin at LAA\_TRANS,  
Representative John Davies at LAA\_TRANS,  
Representative\_Ben\_Grussendorf@legis.state.ak.us at CC2MHS1,  
Representative\_Carl\_Moses@legis.state.ak.us at CC2MHS1

Subject: [Fwd: House Bill 33]

Janie Bee Powell  
Powell Realty, Inc. BH&G  
9040 Glacier Hwy.  
Juneau, AK 99801  
(907) 789-3888

X-Mozilla-Status: 0001

Message-ID: <34DA5894.5604@eagle.ptialaska.net>

Date: Thu, 05 Feb 1998 15:25:56 -0900

From: Janie Bee Powell <powell@eagle.ptialaska.net>

Organization: Powell Realty, Inc. BH&G

X-Mailer: Mozilla 2.0 (Win95; U)

MIME-Version: 1.0

To: Representative\_Norman\_Rokeberg@legis.state.ak.us

CC: Representative\_Mark\_Hanley@legis.state.ak.us,  
Representative\_Gene\_Therriault@legis.state.ak.us,  
Representative\_Eldon\_Mulder@legis.state.ak.us,  
Representative\_Gary\_Davis@legis.state.ak.us,  
Representative\_Richard\_Foster@legis.state.ak.us,  
Representative\_Pete\_Kelly@legis.state.ak.us,  
Representative\_Vic\_Kohring@legis.state.ak.us,  
Representative\_Terry\_Martin@legis.state.ak.us,  
Representative\_John\_Davies@legis.state.ak.us,  
Representative\_Ben\_Grussendorf@legis.state.ak.us,  
Representative\_Carl\_Moses@legis.state.ak.us

Subject: House Bill 33

Content-Type: text/plain; charset=us-ascii

Content-Transfer-Encoding: 7bit

As the Broker for Powell Realty, Inc. BH&G, Juneau, Alaska, I firmly support the current version of House Bill 33 (CSHB 33(L&C), Version Q).

Janie Bee Powell



9040 Glacier Highway, Juneau, AK 99801 TELEPHONE (907) 789-3888 FAX: (907) 789-7038

February 6, 1998

Representative Norman Rokeberg  
Alaska State Legislature

FEB - 6 1998

Dear Representative Rokeberg,

I want to voice my support in favor of House Bill 33.

Thank you for your time.

A handwritten signature in cursive script, appearing to read "Honey Bec Anderson".

Honey Bec Anderson  
Sales Associate  
Powell Realty Inc./Better Homes and Gardens<sup>SM</sup>



Author: explor@ptialaska.net (Dale Anderson) at CC2MHS1  
Date: 2/6/98 11:10 AM  
Priority: Normal  
TO: Representative Norman Rokeberg at LAA\_TRANS  
Subject: HB 33

FEB - 6 1998

I am a licensed real estate agent in the State of Alaska and want to thank you for carrying HB33. I fully support the bill. Thank you and let me know if there is anything I can do to help you further. Best regards,  
Dale Anderson

Powell Realty, Inc  
9040 Glacier Highway  
Juneau, AK 99801  
(907) 789-3888 (work)  
(907) 789-1965 (home)

Admiralty Tours/Auke Lake B&B  
(907) 789-1965 (phone)  
(907) 790-3253 (fax)  
explor@ptialaska.net (e-mail)  
<http://www.ptialaska.net/~explor> (website)



FEB - 5 1998

To: Rep. Norman Rokeberg

From: Dutch Knight, Broker

Re: HB 33

I've been a fulltime Realtor for 7 years now and a broker for 4 years. HB 33 is an important bill that I believe deserves your support.

In short I believe that it protects the public and the real estate industry. Please support HB 33! If you have any questions please feel free to call me at 790-3305.

Failure to support HB 33 would be like letting the fox run loose in the chicken coop.

Without HB 33 more and more of the real estate and related services such as lending currently provided by local Alaskans will be sent out of state with a net result of lower incomes and reduced income for the State of Alaska and it's people. Please protect our future!

CC

Rep Mark Hanley, Co Chairman	465-2418
Rep. Gene Theriault, Co-Chairman	465-3884
Rep. Eldon Mulder, Vice Chairman	465-3518
Rep. Richard Foster	465-3242
Rep. Pete Kelly	465-5241
Rep. Vic Kohring	465-3818
Rep. Terry Martin	465-2293
Rep. John Davies	465-3519
Rep. Ben Grussendorf	465-2278
Rep. Carl Moses	465-3445

## ALASKA MORTGAGE BANKERS ASSOCIATION RESOLUTION

WHEREAS, the Alaska Mortgage Bankers Association is a non-profit association whose main purpose is to educate those associated with any facet of the finance portion of the home ownership process thus encouraging home ownership by providing access to affordable housing loan programs,

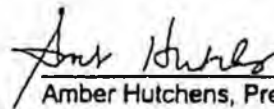
WHEREAS, the Alaska Mortgage Bankers Association promotes and supports affordable loans programs for Alaskans such as the Alaska Housing Finance Corporation's Tax Exempt Programs, Anchorage Neighborhood Housing Services' various loan programs, Municipality of Anchorage's ANCHOR program and Cook Inlet Housing Program,

WHEREAS, the Alaska Mortgage Bankers Association believes that knowledgeable Real Estate Professionals are a valuable and integral part of the education process for buyers and sellers, especially in understanding and executing a real estate contract,

WHEREAS, the Alaska Mortgage Bankers Association concludes when third party affinity groups become involved in Real Estate transactions, the consumer is likely to be referred to an affinity partner who may provide limited, if any, education of the Alaska home buying process and who may restrict referrals to lenders who do not actively promote affordable Alaska home loan programs,

THEREFORE RESOLVED, the Alaska Mortgage Bankers Association hereby supports enforcement of Alaska Statute 08.88.161 which states in part, "Unless licensed as a real estate broker, associate real estate broker, or real estate salesman, a natural person, foreign or domestic corporation, or partnership, or limited partnership, or other entity may not .... (5) assist in or direct the procuring of prospective buyers..." , and

FURTHERMORE, the Alaska Mortgage Bankers Association supports a regulatory ruling or legislative statute that would extend the intent of this statute to include non-payment of fees to a broker or other agent if it is known that the broker intends to pass that fee through to an unlicensed party.



Amber Hutchens, President  
Alaska Mortgage Bankers Association  
12/12/97

JOHN CARMAN

HOMESTATE MORTGAGE

3201 C ST #105

ANCH, AK 99503

907 762 5890

F

HOME ADDRESS

12120 RUSHWOOD CIR

ANCH, AK 99516

907 345 9789



# TOTEM PROPERTIES, INC.



FEB - 5 1998

Rep. Norman Rokeberg  
Ak State Legislature  
Re: HB 33

February 5, 1998

Dear sir:

I am very much in favor of House Bill 33.

Respectfully,

*Janet Argevitch*  
\_\_\_\_\_  
Janet Argevitch, Sales Associate  
Totem Properties, Inc.



# TOTEM

PROPERTIES, INC.



FEB - 5 1998


Rep. Norman Rokeberg  
Ak State Legislature  
Re: HB 33

February 5, 1998

Dear sir:

I am very much in favor of House Bill 33.

Respectfully,

  
\_\_\_\_\_  
Van Madding, Sales Associate  
Totem Properties, Inc.



# TOTEM PROPERTIES, INC.



FEB - 5 1998

Rep. Norman Rokaberg  
Ak State Legislature  
Re: HB 33

February 5, 1998

Dear sir:

I am very much in favor of House Bill 33.

Respectfully,

Gary Lewis, Sales Associate  
Totem Properties, Inc.



# TOTEM

PROPERTIES, INC.



FEB - 5 1998

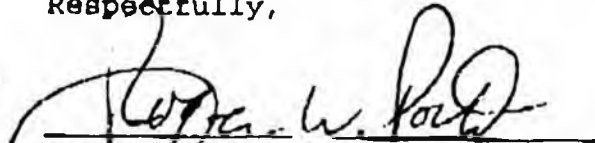
Rep. Norman Rokeberg  
Ak State Legislature  
Re: HB 33

February 5, 1998

Dear sir:

I am very much in favor of House Bill 33.

Respectfully,

  
\_\_\_\_\_  
Roger W. Porto, Broker  
Totem Properties, Inc.



# TOTEM

PROPERTIES, INC.



FEB - 5 1998

Rep. Norman Rokeberg  
Ak State Legislature  
Re: HB 33

February 5, 1998

Dear sir:

I am very much in favor of House Bill 33.

Respectfully,

Mike Ran, Associate Broker  
Totem Properties, Inc.



# Kodiak Board of Realtors

218 Center Ave. Suite 200  
Kodiak, Alaska 99615

---

January 22, 1998

JAN 27 1998

Jerry Royce, President  
Alaska Association of Realtors, Inc.  
741 Sesame Street, Suite 160  
Anchorage, Ak 99503

Dear Jerry,

The Kodiak Board of Realtors would like to express our endorsement of the revision of HB33 to contain the *Mississippi law* verbiage dealing with paying commissions to unlicensed people or entities. We strongly support your efforts in this endeavor.

Sincerely,

*Sharlene Sullivan*  
Sharlene Sullivan, Pres.

*Nita Eoff*  
Nita Eoff, Sec.



# TOTEM Realty Inc.

Bus: (907) 272-0571 • Fax: (907) 274-9616

FEB - 6 1998

February 6, 1998

Rep. Norman Rokeberg  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801-1182

Re: House Bill 33, Real Estate Licensing

Dear Rep. Rokeberg:

I support the goals of HB 33 and appreciate your continued efforts toward improving the accountability and regulation of the real estate industry in Alaska.

Sincerely,

Robert E. Baer



724 East 15th Avenue • Anchorage, Alaska 99501





Since 1953

FEB - 6 1998

February 6, 1998

3201 C Street  
Suite 200  
Anchorage, Alaska  
99503-3994

Bus. (907) 563-5500  
Fax (907) 762-3189

Dear Representative Norman Rokeberg:

I believe real estate law has come a long way in the last ten years. I see no need to set it back twenty. I am in favor of House Bill 33. If HB 33 does not pass then it will be the Alaskan consumer that will ultimately pay the price. Thank you very much for your work and time on this most important issue.

Sincerely,

A handwritten signature in cursive script that reads 'Manuel Escobedo Jr.'.

Manuel Escobedo  
Jack White Real Estate



701 E PARKS HWY, SUITE 104  
WASHILLA, ALASKA 99654  
907-373-1555-PHONE  
907-373-1444-FAX

FAX

DATE: 2/6/98

TO: NORM ROKEBERG

HOUSE FINANCE COMMITTEE

FAX NO: 465 2040

FROM: CAROL J. JENSEN GRI, CRB

FEB - 6 1998

NO. PAGES: 1

I AM IN SUPPORT OF HB33 WRITTEN TESTIMONY TO FOLLOW NEXT WEEK.

*Carol J. Jensen*  
*Assoc. Sen.*

Author: trevor@mail.ptialaska.net (Trevor Roehl) at CC2MHS1

FEB - 6 1998

Date: 2/6/98 11:53 AM

Priority: Normal

TO: Representative Norman Rokeberg at LAA\_TRANS

CC: Representative Vic Kohring at LAA\_TRANS, Representative Terry Martin at LAA\_TRANS,  
Representative Richard Foster at LAA\_TRANS, Representative Pete Kelly at LAA\_TRANS,  
Representative Mark Hanley at LAA\_HHAN, Representative John Davies at LAA\_TRANS,  
Representative Gene Therriault at LAA\_HTHR, Representative Gary Davis at LAA\_TRANS,  
Representative Eldon Mulder at LAA\_TRANS,  
Representative\_Norman\_Rokeberg@legis.state.ak.us at CC2MHS1,  
Representative\_Eldon\_Mulder@legis.state.ak.us at CC2MHS1,  
Representative\_Carl\_Moses@legis.state.ak.us at CC2MHS1,  
Representative\_Ben\_Grussendorff@legis.state.ak.us at CC2MHS1

Subject: HB 33

I have been a licensed Real Estate Agent in the State of Alaska since February of 1995. I support HB 33, Real Estate Licensing, and urge you to expeditiously review and approve it.

Thank you

Trevor Roehl  
Sales Associate

**CONCERNED ADVOCATES FOR REAL ESTATE SERVICES**  
**P.O. Box 112342, Anchorage, Alaska 99511**

**FEB - 6 1998**

**February 6, 1998**

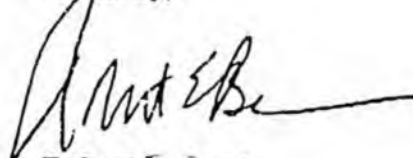
**Rep. Norman Rokeberg**  
**Alaska State Legislature**  
**State Capitol**  
**Juneau, Alaska 99801-1182**

**Re: House Bill 33, Real Estate Licensing**

**Dear Rep. Rokeberg:**

**The C.A.R.E.S. organization supports HB 33 and appreciates your continued efforts toward improving the accountability and regulation of the real estate industry in Alaska.**

**Sincerely,**



**Robert E. Baer**



CENTURY 21 All Star, REALTORS

8585 OLD DAIRY RD.  
JUNEAU, AK 99801

**FAX**

**FEB - 6 1998**

Attention: Rep. NORMAN ROKEBURG

Date: 2/6/98

From: Sue Bigelow

Number of pages: 1

I am a fulltime REALTOR working for CENTURY 21, All Star, REALTORS. I Support bill HB 33 and hope you will do the same.

Thank you.

CC:

Rep. Mark Hanley

Rep. Gene Theriault

Rep. Eldon Mulder

Rep. Richard Foster

Rep. Pete Kelly

Rep. Vic Kohring

Rep. Terry Martin

Rep. John Davies

Rep. Ben Grussendorf

Rep. Carl Moses

CENTURY 21 All Star, REALTORS

8585 Old Dairy Road

Juneau, AK 99801

Phone (790)790-4848 or 790-4800

**All Star, REALTORS®**

8585 Old Dairy Rd., Ste 103  
Juneau, Alaska 99801  
Business (907) 790-4848  
Fax (907) 790-4800  
akrealty@alaska.net



Feb 6, 98

FEB - 6 1998

To Whom it may concern.

My name is Walt Weary,  
and have been an agent  
with Century 21 since May of  
1995.

I support bill 33!

Thank you  
Walt Weary



CENTURY 21 ALL STAR, REALTORS

8585 OLD DAIRY RD.  
JUNEAU, AK 99801

**FAX**

Attention: Rep. NORMAN ROKEBURG

Date: 2/6/98

From: Terry whitbeck

Number of pages: 1

**FEB - 6 1998**

I have been a Real Estate Agent since 1986. I opened  
 my own office in 1991. I am the Broker / Owner of  
 the CENTURY 21 All Star, REALTORS office in Juneau, AK.  
 I Wholeheartedly support HB 33 and sincerely hope you  
 will too....

Thank You

CENTURY 21 All Star, REALTORS

8585 Old Dairy Road  
Juneau, AK 99801  
Phone (790)790-4848 or 790-4800



FEB - 6 1998

WHITING REALTY

2075 JORDAN AVENUE  
JUNEAU AK 99811  
BUS. (907) 788-0555  
FAX (907) 788-8888

February 6, 1998

TO: Representative Norman Rokeberg  
Alaska State Legislature  
Juneau, Alaska 99801

Via Fax Transmission to: 907 - 465 - 2040

RE: House Bill 33

Dear Representative Rokeberg,

I am very much in favor of House Bill 33. I appreciate your efforts to promote Alaskan industry.

Thank you.

A handwritten signature in cursive script, appearing to read "Gene Whiting".  
Gene Whiting, Broker

02/10/98  
13:36:04

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM

LINE 150

PARTICIPANT LIST (ALL PARTICIPANTS)

BY:KEN

TCN:80244 SCHEDULED FOR:02/10/98 13:30 TO 16:00  
PUBLIC HEARING HOUSE FINANCE

FOR:KEN

LOCATION: ~~SENATE LIO~~

HB 33

MR.

RON ✓

JOHNSON

PRES. KPBR

TESTIFY

02/10/98  
13:50:39

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM  
PARTICIPANT LIST (ALL PARTICIPANTS)  
SCHEDULED FOR:02/10/98 13:30 TO 16:00  
PUBLIC HEARING HOUSE FINANCE

TCN:80244

LTN1150  
BY:ANC  
FOR:ANC

LOCATION: ~~ANCHORAGE~~

HB 33	ART	CLARK ✓	AK ASSOC REALTOR	TESTIFY
HB 33	DEBRA	BRITT ✓		TESTIFY
HB 33	SHANE	OSOMSKI ✓ <i>Real Assoc. Group</i>		TESTIFY
HB 33	DAVID	GARRISON ✓		TESTIFY
HB 33	WILLIAM	BRADY ✓ <i>SUPPORT OF BILL w/ AMENDMENTS</i>		TESTIFY
HB 33	JOHN	CARMAN ✓		TESTIFY
HB 33	CLAIR	RAMSEY ✓		TESTIFY
HB 33	RON	POLI OCH ✓		TESTIFY
HB 33	ERIC	DYND ✓ <i>ANC. BOARD OF REALTORS</i>		TESTIFY

02/10/98  
15:19:47

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM  
PARTICIPANT LIST (ALL PARTICIPANTS)  
SCHEDULED FOR:02/10/98 13:30 TO 16:00  
PUBLIC HEARING HOUSE FINANCE

LTN1150  
BY:ANC  
FOR:ANC

TCN:80244

LOCATION:ANCHORAGE

HB 33	ART	CLARK	AK ASSOC REALTOR	TESTIFY
HB 33	DEBRA	BRITT		TESTIFY
HB 33	SHANE	OSOMSKI		TESTIFY
HB 33	DAVID	GARRISON		TESTIFY
HB 33	WILLIAM	BRADY		TESTIFY
HB 33	JOHN	CARMAN		TESTIFY
HB 33	CLAIR	RAMSEY		TESTIFY
HB 33	RON	POLLOCH		TESTIFY
HB 33	ERIC	DYRUD		TESTIFY
<del>HB 33</del>	<del>BOB</del>	<del>BAER</del>		<del>TESTIFY</del>



# House Finance Committee

SUBJECT OF MEETING:

HB 33

DATE: Feb 16, 98

PLACE: Capital 519

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Jim Mayo	SELF	P.O. Box 201 Delta Junction	99737	895-4610		Y	<input checked="" type="radio"/> N	HB 53
John Terence	ADOI	SOB		465-2560	465-2560	Y	<input checked="" type="radio"/> N	
Darry Spencer	SELF	1775 S Franklin		463-3787	463-4111	<input checked="" type="radio"/> Y	N	HB 33
Catherine Rendon	DEED	SOB Bureau Division of OCC Licensing	94501	463-5710	465-2528	<input checked="" type="radio"/> Y	N	HB 53
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	





02/10/98 15:21:22 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM  
MESSAGE FROM: LIOCJEN IN ANCHORAGE

LTN1120  
JNU

RE TCN: 80244 SCHEDULED FOR:02/10/98 13:30 TO 16:00  
SPONSOR: HOUSE FINANCE PURPOSE: PUBLIC HEARING

MESSAGE TEXT: EVEN WITH HIM PRINTING-STILL HAD TO CON-  
FIRM. [REDACTED] ALSO NEW NAME SENT DOWN