

**HB**

**33**

# ALASKA STATE LEGISLATURE

## House of Representatives

### COMMITTEE ASSIGNMENTS:

LABOR & COMMERCE COMMITTEE, CHAIRMAN  
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JUDICIARY COMMITTEE, MEMBER  
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## Representative Norman Rokeberg

### MEMORANDUM

TO: The Honorable Tim Kelly  
Chairman, Senate Rules Committee

FROM: Representative Norman Rokeberg

DATE: April 23, 1998

RE: CSHB 33 (FIN) am  
Real estate licensees

A handwritten signature in black ink, appearing to read "Norman Rokeberg".

I would request that CSHB 33 (FIN) am be considered for calendaring for action on the Senate floor.

Attached are the following:

- I. CSHB 33 (FIN) am
- II. Sponsor Statement
- III. Sponsor Summary
- IV. Sectional Analysis
- V. Frequently Asked Questions
- VI. Current Fiscal Note [CSHB 33 (L&C)]
- VII. Position Statement:
  - A. Department of Commerce & Economic Development
  - B. Real Estate Commission
- VIII. Anchorage Daily News, July 2, 1996, "Embezzlement nets five-year sentence"
- IX. "Commission payment disclosures: Why do we care" from the *Alaska Real Estate News*, November 1997.

Senator Tim Kelly  
April 23, 1998  
Page Two

- X. "AmeriNet Financial Systems, Inc. Announces Cash Rebates  
Totaling Over \$1,000,000"
  
- XI. Indications of support from:
  - A. Alaska Land Title Association
  - B. Kachemak Bay Title Agency, Inc.
  - C. Seattle Mortgage
  - D. Alaska Association of REALTORS®
  - E. Anchorage Board of REALTORS®
  - F. Kenai Peninsula Board of REALTORS®
  - G. Kodiak Board of REALTORS®
  - H. Southeast Board of REALTORS®
  - I. Valley Board of REALTORS®
  - J. Kachemak Board of REALTORS®
  - K. Greater Alaska Chapter, Community Associations Institute
  - L. Alaska Mortgage Bankers
  - M. Concerned Advocates for Real Estate Services (C.A.R.E.S.)
  - N. Powell Realty, Inc./Better Homes and Gardens letters (G.  
Eve Reckly, Helen G. Troutt, Janie Bee Powell, Honey Bee  
Anderson, Dale Anderson)
  - O. Dutch Knight, Frontier Realty
  - P. Totem Properties, Inc. letters (Janet Argevitch, Van  
Madding, Gary Lewis, Roger Porto, and Mike Ban)
  - Q. Robert E. Baer, Totem Realty, Inc.
  - R. Jack White Company (Manuel Escobedo, Carol Jensen)
  - S. Trevor Roehl
  - T. Century 21 All Star REALTORS® (Sue Bigelow, Whit  
Weaver, Terry Whitbeck)
  - U. Coldwell Bankers:Whiting Realty (Gene Whiting)
  - V. Larry Spencer
  
- XII. December 18, 1997 letter from Assistant Attorney General Horetski
  
- XIII. April 8, 1998 letter from Ruth Blackwell to Senator Leman

Thank you for considering this bill for scheduling.

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### Representative Norman Rokeberg

#### SPONSOR STATEMENT

#### CSHB 33 (FIN) am

CSHB 33 (FIN) am, 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 (FIN) am 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, or, if more than four units, without a fee (except for expenses), (c) manage as a resident manager, or (d) manage as a member of a self-managed association.

I urge your support of this legislation.

ED4:2/27/98

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## Representative Norman Rokeberg

### SPONSOR SUMMARY OF CSHB 33 (FIN) am Real Estate Licensing, AS 08.88

- I. REQUIRES COMMUNITY ASSOCIATION MANAGERS TO BE REAL ESTATE LICENSEES TO PROTECT CONSUMERS
  - A. Results from theft of \$570,000 from 18 associations
  - B. Creates limited/grandfathered licensees for current community association managers minimizing transition problem
  - C. Establishes fidelity bonds/account procedures
  - D. Allows surety fund claims
- II. CLARIFIES AND EMPOWERS THE REAL ESTATE COMMISSION ("REC") STATUTORY AUTHORITY. For example:
  - A. Staff delegation to speed up workload
  - B. Grants authority to levy civil fines
  - C. Expands disciplinary powers of REC
  - D. Increases authority to charge fees to licensees
- III. EXPANDS AND CLARIFIES EDUCATIONAL REQUIREMENTS AND COURSES
  - A. Provides that determination on courses submitted for approval/disapproval must be accomplished within 45 days
  - B. Establishes core curricula for continuing education in real estate sales, property management, community association management, and commercial sales.
  - C. Grants credit for nationally recognized professional designations, technology courses, and college courses.
- IV. LICENSED REQUIRED
  - A. Activities are clarified and expanded to include community association management

V. PROHIBITED CONDUCT

- A. Existing law clarified and strengthened to strictly prohibit a licensee from entering into a "marketing kickback" scheme with a marketing company that promises kickbacks to unlicensed persons.
- B. In spite of conflicting legal opinions (including legislative counsel), the Attorney General has recommended a statutory remedy. (See Section 34, page 23.)

VI. CONFLICT OF INTEREST

- A. Disclosure is clarified with new definitions
- B. Disclosure is expanded to protect consumers and meet the recommendations of a 1995 Legislative Audit.

VII. EXCEPTIONS

- A. Current 10 exceptions to real estate activity requiring a license expanded to 21. Exceptions include:
  - 1. Administrative activities
  - 2. Self-management of community association
  - 3. Management for a fee of 4 or less units
  - 4. Management by relatives
  - 5. Management for expenses, but not a fee
  - 6. Exempts real estate licensees from mobile home dealer license requirements
  - 7. Property management jurisdiction of the REC is not expanded in HB 33 and the new property management clarifying exceptions are to current law

VIII. MISCELLANEOUS PROVISIONS

- A. Allows licensed assistants to be employed (not currently allowed)
- B. Adds several definitions
- C. Calls for immediate effective date except for certain educational changes which will require regulations to be implemented.

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## Representative Norman Rokeberg

CSHB 33 (FIN) am – Real Estate Licensees  
Sectional Analysis  
By Representative Norman Rokeberg

Date: March 3, 1998

Title: An Act relating to real estate licensees and to the real estate surety fund; relating to the Real Estate Commission; 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 provides 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 assitants. 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 forgery, theft, extortion, conspiracy to defraud creditors, or a felony involving moral turpitude 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 45 days after the date of receipt of a complete application.

Section 7. **Education of applicants and licensees.** New. Commission is to establish core curricula 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. 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 unless person licensed appropriately under other provisions of this chapter.

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.

**Limitations on community association managers.** 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. **Administration 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 representative.

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

**Section 26. Accounts; record of transaction.** Amends to provide that a broker needs to keep a complete record, for three years, of all real estate transactions 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 financial institution 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. Accounts; 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; licensee shall make available to the commission these records as requested; licensee shall promptly deposit community association funds or proceeds; licensee may not commingle funds of community association with funds of another community association or with licensee's funds.

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. **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 29. **Conflict of interest**. Amends. Describes when a real estate licensee has conflict of interest. Provides that conflict must be disclosed at the time of initial substantive contact with principals or agents of the principals and confirm the conflict in writing to principals or agents of the principals as soon as possible after initial substantive contact.

Section 30. **Conflict of interest**. New subsections. New subsection (b) indicates that the failure of a licensee to disclose the conflict as required under this section does not give rise to a cause of action by private person. The Commission may impose a disciplinary sanction. A private person who has a cause under the surety fund for fraud, misrepresentation, or deceit may file against the surety fund. No common law remedies are prohibited by this subsection.

Subsection (c) describes "conflict of interest" as: having a present ownership or leasehold interest in property which is subject of transactions; being a whole or part owner of business interest in the subject property; representing a relative or person with whom licensee has financial relationship if the relative or person has a present financial interest in the property being marketed or considered for purchase or lease; receiving compensation from someone other than a party to the contract or another party having a financial interest in the transaction; or receiving compensation for community association management while simultaneously engaged as a property manager for a unit within the community association.

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 that licensee, and allows direct compensation by employment contract.

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

Section 36. **Payments by real estate licensee.** Minor language changes.

Section 37. **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 the conversion of community association accounts under the control of a community association manager". Adds the principal and any other licensee involved in the transaction to list of recipients of copy of the claim.

Section 38. **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 39. **Consideration of application.** Minor language changes. Adds "or the conversion of community association accounts under the control of a community association manager". The word "trust" is added in reference to the type of funds in the "conversion" language.

Section 40. **Consideration of application.** Minor language changes.

Section 41. **Consideration of application.** Minor language changes including the "or the conversion of community association accounts under the control of a community association manager" language.

Section 42. **Findings and payment.** Amends with minor language changes. Same as Section 41.

Section 43. 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 44. 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 45. Maximum liability. Minor language changes.

Section 46. Right to subrogation. Minor language changes.

Section 47. Exceptions: Amends and adds new exceptions in (a). 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 when act relates to the management, sale, or other disposition of real estate owned by listed entities; 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) AMENDED: person performing duties as a resident manager;

- (11) NEW: bookkeeper or accountant performing bookkeeping or accounting functions;
- (12) NEW: secretary or receptionist in real estate office accepting rent or association fees and providing 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 delivering or accepting 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: management of a total of four or fewer residential units by a natural person for other persons;
- (17) NEW: community association management for property organized under AS 34.07 or 34.08 by resident owner if owner is member of a self-managed community association for the property;
- (18) NEW: community association management by a developer of property organized under AS 34.07 or AS 34.08 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;
- (20) NEW: mobile home dealer licensed under AS 08.67 performing within the scope of the dealer's license; or
- (21) NEW: management by natural person of property for another person without a fee other than reimbursement of expenses.

Section 48. **Exceptions.** New subsection (b) indicating that while a person may be exempt from this chapter, AS 08.88.401(e)(1) [SEE: Section 34] prohibits a licensee from knowingly paying to that person any part of a fee, commission, or other compensation received by the licensee in buying, selling, exchanging, leasing, auctioning, or renting real estate.

Section 49. **Application to independent contractors.** New section. Provisions of this chapter that apply to employment relationships and employees also apply to contracting relationships and independent contractors.

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.

"community association operating account": an account in a financial institution maintained in the name of a specific community association that contains money used for day-to-day operation and not for other uses;

"community association reserve account": an account in a financial institution maintained in name of specific community association that contains money reserved for expected replacement cost of improvements within the community association or for other future uses.

"Knowingly" means same as AS 11.81.900(a).

"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 real property, an act conducted as result of or in pursuit of a contract to transfer interest 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 unit of real property including collect of rent from a tenant of a unit of rented or

leased property, attempt to rent or lease a unit of real property, an attempt to collect rent from tenant of 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.

(3) community association management: collection 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. Form of disclosure statement.** New language added that indicates the disclosure statement must include a provision that notifies transferees (1) that they are responsible for determining whether a convicted sex offender resides in the vicinity of the property that is the subject of the transferee's potential real estate transaction, and (2) where information on convicted sex offenders may be obtained.

**Section 55.** Repeals AS 08.88.111 (Commission regulations with regard to examinations).

**Section 56. Transitional provision.** Person may practice community association management without a license under this chapter until January 1, 1999.

**Section 57. Regulations.** Permits Commission to adopt regulations before the effective date of Section 7.

**Section 58. Revisor's instruction:** Wherever "salesman" appears, it shall be read as "salesperson".

**Section 59. Effective date** for 08.88.091(f) and (g). See section 7.

**Section 60. Effective date** for all other sections. Immediate.

# ALASKA STATE LEGISLATURE

## House of Representatives

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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) 258-8191  
FAX: (907) 258-2916

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

## Representative Norman Rokeberg

### FREQUENTLY ASKED QUESTIONS CSHB 33 (FIN) am Real Estate Licensing By Representative Rokeberg

1. Does HB 33 restrict the ability of an individual or business from managing or selling their own property?

No. The bill clarifies current law and provides numerous exceptions to required licensing.

2. Can a person have a relative or friend manage and rent their rental property or properties?

Yes. The bill allows a relative to perform the same activities as an owner. Also, anyone can do this and be reimbursed for expenses only, but cannot collect a fee. Moreover, there are no restrictions on four (4) units or less.

3. Is a person free to negotiate the amount of the fee or commission?

Yes. A person has every right to bargain with a real estate licensee on the amount of compensation.

4. Why license community association managers?

To ensure that anyone entering this business is subject to regulation, thus affording protection to consumers. Currently anyone can enter into this business without any regulation or any consumer protection.

5. Can a community association be self-managed?

Yes. The association board can do it. Also, a resident unit owner is allowed to manage for a fee.

6. My subdivision has a homeowner's association. Is that covered by this bill?

No. Only condominium and townhouse community associations established under AS 34.07 (Old Horizontal Regime Act) or AS 34.08 (New Alaska Common Interest Ownership Act) are covered by this bill.

**7. Will the Real Estate Commission ("REC") be overburdened with individual complaints from community association members?**

No. Only complaints received from the community association board of directors will have standing with the REC.

**8. What benefits will a community association receive from this bill?**

Several: the right to make a claim against the surety fund; mandated fidelity bonds for community association managers; restricted access to association funds by community association managers; a grievance process; increased competence with mandatory continuing education; and more.

**9. How will the strengthened licensing provisions of HB 33 help protect Alaskan consumers?**

Alaska law has always required a license to practice real estate in Alaska. But our licensing statutes are more than twenty-five years old, and according to the assistant attorney general, do not adequately cover recent developments in the real estate industry. New "kick-back" marketing schemes have emerged which attempt to circumvent the consumer protections provided by state licensure requirements.

Under these schemes, non-licensed entities procure buyers or sellers of real estate in return for a percentage of the commission or other compensation. Because such entities are not licensed, the state has no authority to regulate the activity to protect the consumer.

The schemes also threaten to channel millions of dollars of Alaska real estate activity outside. To participate, consumers must agree to "package" transactions that are facilitated by a central "clearinghouse" processor outside of Alaska who then arranges for all aspects of the transaction. Alaska consumers would be denied the opportunity to pick the agent, lender, appraiser or title company of their choosing. Since the loan financing is referred to outside lenders, Alaska consumers would also be deprived of the opportunity to participate in unique and beneficial Alaska financing programs like AHFC that require the use of instate lenders.

**10. Wouldn't prohibiting these "kickbacks" amount to "protectionism" or "restraint of trade"?**

No. The law would simply create a level playing field by requiring that all entities that engage in real estate transactions be *licensed*. That has always been the intent and interpretation of Alaska law. Any marketing company would be free to do business in Alaska as long as they were licensed here and followed the regulations established by Alaska's real estate commission.

**11. Is there a precedent for such provisions?**

Yes. The provisions contained in HB 33 are modeled after a Mississippi statute that recently withstood federal court challenge. The provisions also have the strong support of Alaska's Real Estate Commission which has stated that it is imperative that Alaska's licensure statutes be updated.

# 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						
CHANGE IN REVENUES	***	***				

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	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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 \$6.9. 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 Phone: 465-2144  
 Division: Occupational Licensing Date: 1/29/98  
 Approved by Commissioner: Deborah B. Sedwick Date: \_\_\_\_\_  
 Agency: Commerce and Economic Development

# STATE OF ALASKA

## DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

P.O. BOX 110800  
JUNEAU, ALASKA 99811-0800  
PHONE: (907) 465-2500  
FAX: (907) 465-5442  
TDD: (907) 465-5437

February 9, 1998

FEB - 9 1998

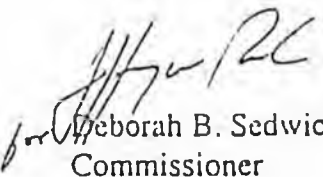
The Honorable Norman Rokeberg  
Chairman, Labor & Commerce Committee  
House of Representatives  
State Capitol, Rm. 24  
Juneau, Alaska 99801

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

# STATE OF ALASKA

## DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

### DIVISION OF OCCUPATIONAL LICENSING

TONY KNOWLES, GOVERNOR

1601 C STREET, SUITE 722  
ANCHORAGE, ALASKA 99503-5985  
PHONE: (907) 269-8160  
FAX: (907) 269-8156  
TDD: (907) 465-5437  
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,

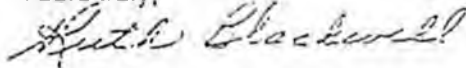
The Real Estate Commission voted to support HB33 at a teleconferenced meeting held on January 28, 1998. They were aware of the amendments being considered by the House Labor and Commerce Committee later that same day. The amendments which were adopted by your committee and incorporated into CSHB33 are 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 09.93.401;
- 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 Commission

cc: REC Members

Catherine Reardon, Director  
Division of Occupational Licensing



## 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 Lorea 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 \$10,760 since January 1992, according to documents filed in court.

Kalk Arms, downtown, got hit hardest of all. The condo claims Thornton took \$110,000, 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 \$20,000 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.

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# Alaska Real Estate News



Published by the Alaska Real Estate Commission

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?*

Licenses applying for license renewal will submit a fee of \$350. This includes the new biennial license fee of \$250 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 \$250 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



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EMAIL: FRANK@ERNEST.COM

## 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.*



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Tuesday April 14, 8:09 am Eastern Time

### Company Press Release

## AmeriNet Financial Systems, Inc. Announces Cash Rebates Totaling Over \$1,000,000

ENGLEWOOD, Colo.--(BUSINESS WIRE)--April 14, 1998--AmeriNet Financial Systems, Inc. (OTC BB:ANES - news), announced today it has paid out over \$1,000,000 in cash rebates to consumers since introducing the CARES(tm) Program in October, 1997.

The AmeriNet CARES(tm) Program pays consumers cash rebates and discounts when buying, selling, financing and refinancing their home. On a typical real estate and mortgage transaction, the CARES(tm) Program member could receive cash rebates totaling over \$8,600. The AmeriNet CARES(tm) Program is made available to corporations and affinity groups' employees and members and direct to consumers over AmeriNet's Internet Web site. Members and employees of Costco Companies and VETS(R) Data Corporation were the major benefactors of the AmeriNet CARES(tm) Program. \*not

Eric Cunliffe, President and Chief Operating Officer of AmeriNet said, "AmeriNet processed almost \$1 billion in mortgage loans and over \$256 million in real estate transactions. The Company's revenue is increasing at over 25% per month. AmeriNet is expanding into Virginia, Maryland and D.C. in April and California shortly thereafter. Revenues are expected to continue to increase as these and other states are opened. Currently, AmeriNet has approved over 80 real estate brokers with over 250 offices in Washington, Oregon, Arizona, New Mexico, Colorado and Virginia and 55 mortgage lenders to participate in the CARES(tm) Program."

AmeriNet Financial Systems, Inc. operates a technology based, personal contact real estate service. This service provides consumer with cash rebates coupled with unbiased and objective home buying, home selling and home financing assistance. AmeriNet's mission is to reduce the cost and stress of home ownership.

#### Contact:

AmeriNet Financial Systems, Inc.  
Ed Gresham, 303/267-1946 Fax: 303/290/0180  
Web Site: Ameri-Net.com

More Quotes and News: [AMERINET FIN \(OTC BB:ANES - news\)](#)

Related News Categories: [banking](#), [real estate](#)

**ALASKA LAND TITLE ASSOCIATION**

P.O. Box 241811 • Anchorage, Alaska 99524

April 10, 1998

Sen. Loren Leman  
Labor and Commerce Chair  
State Capitol  
Juneau AK 99811

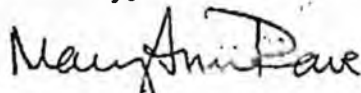
RE: HB 33

Dear Senator Leman:

The Alaska Land Title Association urges you to pass HB 33 in its current draft.

We feel this will be a much needed bill for the real estate industry and will be a benefit to the Alaska consumer.

Sincerely,



Mary Ann Rhee  
President

cc: Rep. Norm Rokeberg

**KACHEMAK BAY TITLE AGENCY, INC.**

3691 BEN WALTERS LANE #1

HOMER, ALASKA 99603

PHONE (907) 235-8196

-- FAX (907) 235-2420

April 10, 1998

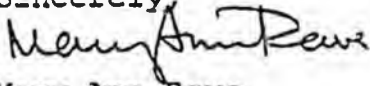
Sen. Loren Leman  
Labor and Commerce Committee  
State Capitol  
Juneau AK 99801

Dear Senator Leman

We urge you to pass HB 33 in it's current draft.

The passage of this bill is important, not only to the real estate and financial community but to the Alaskan consumer.

Sincerely,



Mary Ann Rowe  
President

cc: Rep. Norm Rokeberg



**SEATTLE  
MORTGAGE**  
A MORTGAGE BANKER

Alaska Branch  
4300 B Street  
Suite 206  
Anchorage, AK 99503  
(907) 562-5626  
FAX (907) 562-7798

April 8, 1998

Senator Loren Leman

VIA FAX (907) 465-3810

Re: House Bill 33

Dear Senator:

Seattle Mortgage Company has operated a branch office in Anchorage for the past 12 years and our branch currently services \$247,000,000 in loans in Alaska. I have been an Alaskan resident for 28 years and reside at 7721 Rovenna St., Anchorage, AK 99518.

I had intended to be neutral with regard to HB 33, but recent revelations have caused me to write this letter to urge you to pass the bill out of your committee and on to the floor of the Senate. I do not believe that affinity marketing will have a significant effect on our production, but I do believe that in the absence of control, unsophisticated Alaskan home buyers will be harmed.

Rebates are an indication that the product was overpriced to begin with. No viable business gives anything away. I have reviewed good faith estimates provided to Alaskans by outside lenders. Some of the lenders were part of affinity groups and others were stand alone. In every case, the customer was being over charged or the costs were grossly understated and did not relate to the actual settlement costs for an Alaskan mortgage transaction. If it was not prohibited by many of the regulations that which we must comply, we could give rebates with every loan we make. It's simple. Just charge the borrower an interest rate slightly higher than market, sell the excess yield for a premium, pay part of the premium to the affinity manager, (who rebates part to the borrower), and pocket the remainder. The customer thinks he got a great deal but in fact he/she was cheated. It also looks like laundering to me.

I have been approached by affinities via the Internet. After examining the programs they offered, I became convinced that I wanted nothing to do with it. I like to be able to see my customers at Carrs or Safeway and not have to duck down the next aisle.

I abhor regulation, but in this issue, I believe it would benefit Alaskans to shield them from the scams that are certain to develop out of affinity and/or multi-level marketing groups. Please pass HB 33 out of committee.

Sincerely,

Richard E. Dolman  
Manager



REALTOR®

ALASKA ASSOCIATION OF REALTORS, INC.

741 Sesame Street, Suite 100 • Anchorage, Alaska 99503  
 Telephone 907-563-7133 • Fax 907-561-1779

February 19, 1998

02-20-98A12:45 RCVD

Alaska State Legislature  
 State Capitol  
 Juneau, AK 99801-1182

Ref: HB 33

Dear Legislators,

The Alaska Association of REALTORS® and its over 1100 members statewide, believe HB 33 is good public policy and helps further protect the consumers of the State of Alaska. The industry has had numerous meetings with the author of House Bill 33 "An act relating to real estate licensees and to the real estate surety fund." The meetings were designed to clarify language in the bill, craft needed changes to the original bill, and insure the bill meets the needs of the public as well as our industry. It does that: Our Association supports and endorses the current HB 33 in concept and scope. We support the majority of changes the bill will create and would ask for your support when it comes up for a vote.

Sincerely,

Jerry Royse  
 President Alaska Association of REALTORS®





ANCHORAGE BOARD OF REALTORS, INC.

REALTOR® The Voice for Real Estate™ In Anchorage

21 Sesame Street  
Suite #200  
Anchorage, Alaska 99503  
907-561-2338  
907-563-6476 Fax

February 18, 1998

Alaska State Legislature  
State Capital  
Juneau, Alaska 99801-1182

Dear Representative Rokeberg,

This letter is to make clear that the Anchorage Board of REALTORS® does support HB33. We appreciate all the time and effort that has gone into the Bill on your part. It is our hope that these changes will clarify the license law and items concerning the Senior Fund.

Best regards,

Don McKenzie, President  
Anchorage Board of REALTORS®

02-19-98P04:53 11 1



Feb-19-98 05:24P

February 19, 1998

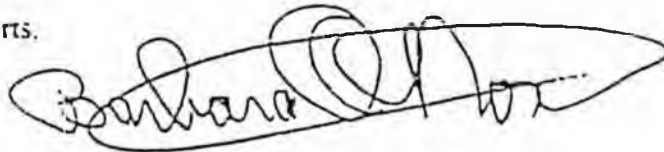
Kenai Peninsula Board of Realtors  
33477 Spur Hwy., Suite 201  
Soldotna, Ak. 99669

Re: HB 33

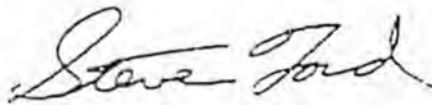
Dear Representative Rokeberg and Members of the House,

We, the members of the Kenai Peninsula Board of Directors, would like to go on record as supporting HB 33. The Legislative and Industry Issues Key Work Group from our Board of Realtors has been actively involved in the revisions and progress of this piece of legislation. We believe it is important to pass HB 33 to correct the current state of the Alaska Statutes that directly effect our industry.

Thank you for your efforts.



Barb Nord  
President  
Kenai Peninsula Board of Realtors



Steve Ford  
Co-Chairman  
Legislative and Industry Issues Key Work Group

02-19-98 05:25:00 RCVD



# Kodiak Board of Realtors

218 Center Ave. Suite 200  
Kodiak, Alaska 99615

---


February 20, 1998

Alaska State Legislature  
State Capital  
Juneau, Alaska 99801-1182

Dear Representative Rokeberg,

This letter is to make clear the Kodiak Board of REALTORS® supports HB33. We appreciate the time and effort that you have put into this Bill. It is our hope that these changes will clarify the license law and items concerning it.

Sincerely,

  
Sharlene Sullivan, President  
Kodiak Board of Realtors®



# Southeast Board of Realtors®



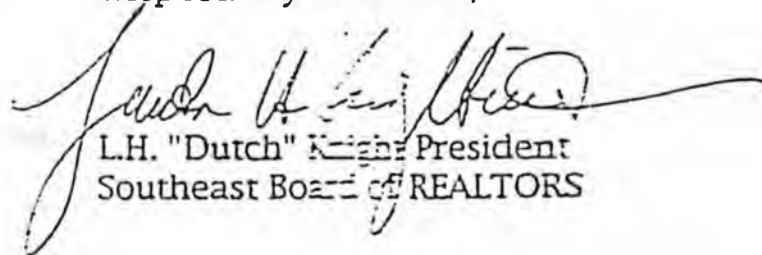
P. O. Box 32646  
Juneau, Alaska 99803-2646  
Phone: (907) 586-2491  
Fax: (907) 586-2021

February 21, 1998

## Resolution for support of House Bill 33

The Southeast Board of Realtors have hereby read and reviewed HB 33, version T and do hereby support and endorse HP 33. Therefore, the Southeast Board of REALTORS do hereby respectfully request that the House of Representatives of the Alaska Legislature pass HB 33.

Respectfully submitted,

  
L.H. "Dutch" Knight President  
Southeast Board of REALTORS



Valley Board of REALTORS®  
851 E. Westpoint Drive, Ste. 208, Wasilla, Alaska 99654  
Telephone 907-376-5080 • Fax 907-376-5081

02-20-98P03108 RCVD

February 20, 1998

Representative Norman Rokeberg  
State of Alaska  
House of Representatives  
State Capitol  
Juneau, AK 99801-1182

Dear Representative Rokeberg:

On behalf of the Valley Board of REALTORS please be advised that we are in support of H.B. 33. Please relay this message loud and clear to all House Members and others as you deem appropriate. We very much appreciate all your hard work and believe this bill is a win-win for Alaskan consumers as well as all members within the real estate industry.

Thank you again for your effort in this matter.

Sincerely,

Kevin Crozier, President  
Valley Board of REALTORS





*Kachemak Board of Realtors*

P.O. Box 2660

HOMER, ALASKA 99603

02-21-98P03:23 RCVC

February 21, 1998

The Honorable Chairman Norman Rokeberg  
Alaska State Legislature  
House of Representatives  
State Capitol  
Juneau, Alaska 99801-1182

Re: HB 33 Final Draft

Dear Chairman Rokeberg:

WHEREAS, the Directors of the Kachemak Board of Realtors reviewed HB 33 final draft:

Resolved: The Kachemak Board of Realtors do hereby support the final version of HB 33 received by fax at 13:31 on Friday, February 20, 1998.

Sincerely,

Terry Yager  
President  
Kachemak Board of Realtors  
Homer, Alaska

cc: Jerry Royce  
Dea Turner  
Gail Phillips

TY/lw

Community Associations Institute  
Greater Alaska Chapter  
c/o Shane Osowski  
550 West 7<sup>th</sup> Avenue, Suite 1850  
Anchorage, Alaska 99501

March 4, 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

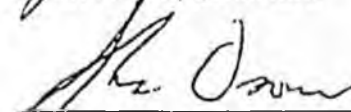
Dear Representative Rokeberg:

Thank you for your efforts to involve CAI in the legislative process concerning House Bill 33. House Bill 33 in its present form addresses all of our concerns and ensures the public of certain professional standards when dealing with licensed association managers. We strongly support this bill and urge its immediate passage.

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

  
John Harris, President

  
Shane Osowski, Past President

  
Art Clark, Co-Chairperson  
Legislative Committee

## 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,

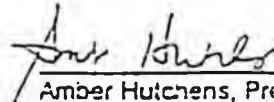
WHEREAS, the Alaska Mortgage Bankers Association promotes and supports affordable loans programs for Alaskans such as the Alaska Housing Finance Corporation's Tax Exempt Programs, Anchorage Neighborhood Housing Services' various loan programs, Municipality of Anchorage's ANCHOR program and Cook Inlet 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 effect 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 5290

F

Home Address

12120 RUSSELLWOOD CIR

ANCH, AK 99516

907 345 7229

CONCERNED ADVOCATES FOR REAL ESTATE SERVICES  
P.O. Box 112342, Anchorage, Alaska 99511

FEB - 6 1998

February 6, 1998

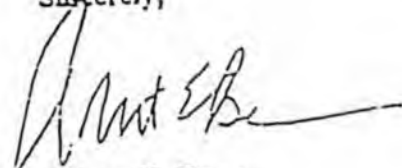
Rep. Norman Rokeberg  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801-1182

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

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

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

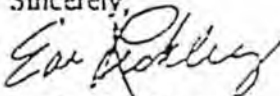
Dear Representative Rokeberg

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. Eva Reckley  
Realtor

copy: Members of the House Finance Committee:

Rep. Mark Hanley, Co-Chairman	Rep. Gene Theriault, 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 at 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. Trout  
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	

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\_HHAN,

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 15:25:55 -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 (HBE 33(L&C), Version 2).

Janie Bee Powell

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

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.



Honey Bee Anderson  
Sales Associate  
Powell Realty Inc./Better Homes and Gardens

Author: explor@ptialaska.net (Dale Anderson) at CCNMS1  
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) 789-1955 (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



# 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, Sales Associate  
Totem Properties, Inc.



# TOTEM

PROPERTIES, INC.



FEB - 5 1998

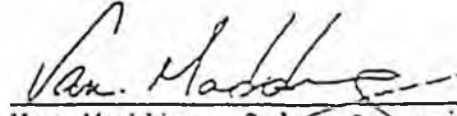
Rep. Norman Rokeberg  
Ak State Legislature  
Re: HB 33

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 Rokaherg  
Ak State Legislature  
Re: HB 33

February 5, 1998

Dear sir:

I am very much in favor of House Bill 33.

Respectfully,

Gaby Lawie, Sales Associate  
Totem Properties, Inc.



# TOTEM PROPERTIES, INC



FEB - 5 1998

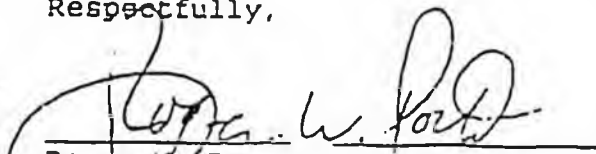
Rep. Norman Rokeberg  
Ak State Legislature  
Re: HB 33

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.



# 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





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,

Manuel Escobedo  
Jack White Real Estate



701 E PARKS HWY, SUITE 104  
WASILLA, 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  
NO. PAGES: 1

FEB - 6 1998

I AM IN SUPPORT OF HB33 WRITTEN TESTIMONY TO FOLLOW NEXT WEEK.

*Carol J. Jensen*  
*Assoc. Partner*

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\_HTER, 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



CENTURY 21 All Star, REALTORS

8585 OLD DAIRY RD.  
JUNEAU, AK 99801

100-20000  
100-20000  
100-20000  
100-20000  
100-20000

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 EB 33 and hope you  
will do the same.

Thank you.

CC:

Rep. Mark Henley

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)790-4343 or 790-4800



All Star, REALTORS®  
6585 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

6188

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

Member  
of  
National  
Association  
of  
Realtors

Attention: Rep. NORMAN ROKEBURG

Date: 2/6/98

From: Terry Whitebeck

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 RB 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

2015 JORDAN AVENUE  
JUNEAU AK 99901  
PHONE (907) 788-8566  
FAX (907) 788-8440

February 6, 1998

TO: Representative Norman Rokeberg  
Alaska State Legislature  
Juneau, Alaska 99801

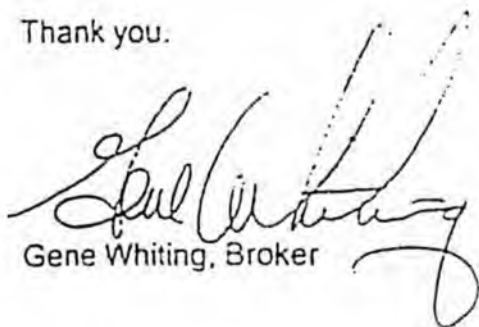
Via Fax Transmission to: 907 - 465 - 2040

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.



Gene Whiting, Broker

# 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  
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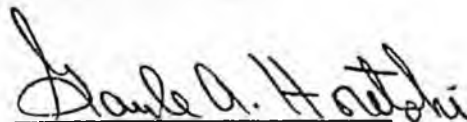
I note that, in the past, the Alaska Supreme Court has narrowly construed the scope of the regulatory authority conferred upon the Commission by the legislature. Warner v. State, 819 P. 2d 28 (Alaska 1991). Also, as the violation of AS 08.88.401 is a misdemeanor criminal offense, any ambiguities in its 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. Horetzki  
Assistant Attorney General

GAH:mrj

cc: Governor Knowles  
Real Estate Commission

April 8, 1998

Senator Loren Leman  
State Capitol  
Juneau, AK 99801

Thank you for meeting with me on March 26, 1998. At that time you indicated that possibly an exception for affinity groups would be appropriate since there were already numerous exceptions allowed. We have done an analysis of the exemptions in HB33 as follows:

Section 900 identifies numerous categories of persons who are exempt from the licensing requirements of AS 08.88. Although those falling within any one category are not necessarily in consecutive order, they fall into three distinct groups, as follows:

The first category is **PROPERTY OWNERS**. This includes the actual holders of title and relatives that might be acting for them under a power of attorney (sub-sections 1 & 19); resident managers (sub-section 10); and a unit owner/member in a self-managed community association project or the developer/owner of a community association project prior to formal organization of the homeowner's association (sub-sections 17-18)

The second group might be categorized as **LEGAL OR PROFESSIONAL EXEMPTIONS**; it includes persons acting under a power of attorney (sub-sections 2 and 19); attorneys performing legal duties; public officials conducting official duties; persons acting as receivers, trustees, administrators, executors, or guardians; persons acting under a court order; persons acting under authority of a will or trust instrument; and persons dealing in mining rights (sub-sections 3-8); a mobile home dealer licensed under AS 08.67 (sub-section 20);

The third category are **PEOPLE WHO ASSIST IN RELATED TASKS**, but the tasks they are performing are not those for which a license is required. This includes a bookkeeper or accountant performing accounting functions; a secretary/receptionist in a real estate office accepting rents delivered to the office and providing a written receipt for same; tradesmen or vendors performing maintenance and repair functions; a person providing courier type delivery services; a person assisting only by carrying out administrative, clerical or maintenance tasks (sub-sections 10-15 and 21).

Only sub-section 9 bears any similarity to the persons seeking payment by being identified with an "affinity group" and that similarity is limited to the fact that most affinity groups are incorporated businesses. According to sub-section 9, even corporation employees are not exempt if their involvement in a real estate transaction is considered a vocation or their compensation is directly related to the value of the subject property. Both of these conditions would nullify the exemption as stated in this sub-section, and therefore their employees would need to be licensed and operate in compliance with AS 08.88.

Everyone in the first three groups is accountable, either to a court, to a client/principal and the licensing authority, or to an employer. If affinity groups are included with the exemptions, they would be outside the jurisdiction of the Commission and accountable to no one. The Commission's primary purpose of protecting the public can be better served if their activities are subject to the disclosures and accountability required of real estate licensees.

Yours truly



Ruth Blackwell, Chair  
Real Estate Commission

cc: Annette Kreitzer  
Rep. Norman Rokeberg