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VOLUME, SUNSET REVIEWS

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Occupational Licensing. Information is submitted by that agency to the examination proctor(s) and to the Educational Testing Service, which provides the examination to this State and several others. If the individual subsequently passes the examination, (s)he then submits application and fee for a license. ETS has recently offered to take over the entire examination procedure and to provide results to the Division for licensure of those individuals who have passed. The fee owed by the applicant to ETS would be \$11.00 as opposed to the \$50 fee now being paid to the Division which is nonrefundable. By memorandum of July 5, 1979 (see Appendix C), the Department of Law, indicates that the \$11 could be credited toward the \$50 examination fee to "be consistent with the statute." Of course, if the statute were amended, this problem would be resolved. Adoption of the ETS proposal would eliminate a considerable amount of paperwork, would be less expensive for the applicant, and would require license application only after passing the examination.

Another pending issue is that of allowing reciprocity among all states utilizing the ETS examination. Under such a program, applicants from another jurisdiction would only be required to pass the Alaska law portion of the exam. Although AS 08.88.261 allows for licensure by reciprocity, the Commission does not use this method and has, in fact, cancelled its previous agreements with other states. Under reciprocity, only applicants from states with which agreements have been established may be admitted without examination regardless of individual qualifications. Endorsement, however, would allow licensure of those persons whose qualifications are substantially similar to those in Alaska at a given time, independently of formal interstate concurrence.

The Commission has taken positive action to inform and educate licensees and the public. Articles regarding real estate transactions and laws are prepared by the Executive Secretary and published in major newspapers as well as in the industry newsletter. Several references are

found in Commission minutes to development of seminars and educational programs. AS 08.88.091 provides that the Commission "may conduct and assist in conducting real estate clinics, meetings, courses or institutes" and may "assist libraries and education institutions in sponsoring studies and programs for the purpose of raising the standards of the real estate business and the competency of licensees." AS 45.85 (Real Estate Surety Fund) creates a special account into which payments are made by licensed real estate brokers and salesmen. Funds in excess of \$250,000 may be appropriated for real estate educational purposes. In 1979, \$75,000 was provided from these funds.

The surety fund provides financial recourse against licensees who have been adjudicated liable on grounds of fraud, misrepresentation, deceit or conversion of trust funds in a maximum amount of \$10,000 for each transaction. A court order must be obtained directing payment from the fund and application for payment must be served upon the Commissioner of the Department of Commerce and Economic Development.

In the first half of 1979 four claims were settled in the amounts of \$7,052.00, \$1,112.65, \$10,000.00, and \$8,070.95. The balance of the fund on July 30, 1979 was \$310,925.40.

The Commission has discussed at length the advisability of mandatory continuing education; however, no consensus of opinion has been reached. No evidence has been shown regarding the positive benefits of such requirements and administration aspects would have to be considered. The Commission also feels that upgrading of the profession is important. CSSB 212 (see Appendix D) addresses the matter of continuing education. The bill was introduced during the 1979 session of the Legislature and is in Committee.

The Real Estate Commission will hold five regular meetings in 1979. Meeting minutes are formulated by the Commission secretary rather than by its Executive Secretary or licensing examiner. Meetings are not tape

recorded. Several subcommittees of the Commission have been appointed to focus on special projects such as legislation, Sunset preparation and budget submission.

It is felt that the Commission has operated in the public interest through its examination, education and enforcement efforts. This Commission is actively concerned about enforcement of the laws and has requested assistance from the Division and Department of Law on numerous occasions. One of the Commission's more effective enforcement tools is education as a preventative measure. Public interests are served by making people more cognizant of the profession and disseminating information regarding common real estate practices and transactions.

B. To what extent has the operation of the Real Estate Commission been impeded or enhanced by existing statutes, procedures and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

The Real Estate Commission has the same operational impediments as do all boards: not enough money, time, support, or investigative services. It does, however, have an Executive Secretary and access to the Anchorage and Juneau Departments of Law. Those factors have put the Real Estate Commission in a considerably better position than other boards and commissions with respect to its operations and accomplishments. Additional support staff provided by the Division of Occupational Licensing includes a licensing examiner whose time is almost entirely devoted to real estate. It is worth noting that almost 3,000 individuals are currently licensed in this profession statewide.

Fees and revenues for all boards and commissions under the jurisdiction of the Division are collected through the Division and are deposited into the general fund. Monies deposited and withdrawn are identified by codes so that direct revenues and expenses may be determined.

Members of the real estate profession are regulated by portions of Title 34 (Property) as well as by AS 08.88 (Real Estate Commission) and AS 45.85 (Real Estate Surety Fund). Extensive regulations have been promulgated and adopted by the Commission. Bills for statutory amendments have been sponsored by the Commission and by the professional association.

The Division would support a transfer of examination responsibilities to the Educational Testing Service as being less cumbersome for the Commission, the Division, and the applicants. The Commission has elected not to have its meetings tape recorded. Goals and objectives have been established by the Commission but no Performance Report for FY '79 has been submitted as of this writing.

C. To what extent has the Real Estate Commission recommended statutory changes which are generally of benefit to the public interest?

The Commission has recommended and supported numerous changes that are designed to clarify the law and improve services by licensees. As previously noted, CSSB 212 is currently in Committee. HB 328 (regarding exemptions from licensing) is also in Committee and is not supported by the Commission in its present form. HB 494 (an Act repealing the prohibition on licensng felons) is still in Committee. Proposed statutory amendments submitted by administration in 1978 are delineated in Appendix E.

D. To what extent has the Real Estate Commission encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions, or to report to it concerning the effectiveness, economy, and availability of services which it has provided?

The Commission appears to be conscientious and sensitive to the public interests; however, the bulk of participation concerning its affairs and services has come from individuals with particular problems. According to the Executive Secretary, a large portion of his time is spend with persons who are dissatisfied with, or seeking clarification of, real estate transactions. That person also feels that public awareness is increasing as well as that of licensees. Public media has been used to help accomplish this.

Public interests are also furthered by the presence of two public members on the Board. "In recent years a number of states have added one or more public members (citizens with no particular interest in the occupation or profession governed by the board) to licensing boards in an effort to ensure that the interests of the public would be represented in decisionmaking."¹ The State of California, which provides for a one-third public membership on health care boards and a public majority on others, has indicated that its experience with public members has been highly rewarding. The Commission has expressed satisfaction with its public members.

E. How efficiently are public inquiries or complaints regarding the activities of the Real Estate Commission processed and resolved?

¹Shimberg, B. and Roederer, D., Occupational Licensing Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March 1978, p. 20.

As discussed elsewhere, complaints and investigative procedures have been established which were agreed upon by all concerned parties. Those procedures appear to be reasonable and workable but delays are encountered through the administrative process and as a result of complaint prioritization based on seriousness of offenses. Public inquiries are handled by Commission members and by Division personnel as appropriate.

- F. To what extent does the Real Estate Commission present qualified applicants to serve the public?

One method of assuring qualified applicants is through an examination procedure. Individuals who pass the exam are then required to submit application and fees for licensure. All qualifications are outlined in AS 08.88; those who demonstrate compliance and a satisfactory level of knowledge are granted a license.

The Commission has previously terminated all reciprocity agreements with other states and will not license by this method. While there is not felt to be a shortage of licensees within the State, this should not be a basis upon which restrictions on entry into the field are postulated. Neither should the presumption that out-of-State licensees are not familiar with Alaska law; this could be addressed by utilization of a jurisprudence examination.

- G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Real Estate Commission in its own activities, and in its area of activity or interest?

Commission staff consists of the support services of an Executive Secretary as well as a licensing examiner (most of whose time is spent on real estate matters). These individuals are employed by the Division of Occupational Licensing and are subject to the requirements and procedures of the State Personnel System.

Licenses in this profession are issued on the basis of specific statutory criteria to which affirmative action requirements are not applicable.

H. To what extent are statutory, budgetary or other changes necessary to enable the Real Estate Commission to better serve the interests of the public?

As 08.88.026, regarding terms of office of initial Commission members should be repealed. A limitation on consecutive numbers of terms may also be considered. The Department has not been issuing inactive license certificates as cited in § 251, nor is this felt to be necessary in practice. CSSB 212 deletes this requirement and outlines appropriate procedures for reactivating a license. This bill also allows for endorsement of out-of-State licensees who pass an examination on Alaska law.

Statutory qualifications for examination require that the applicant not have been convicted of a felony involving "moral turpitude" within the previous ten years. This term has not been defined and should be either defined or deleted. Actions which constitute "unethical conduct" are cited in Commission regulations.

Sec. 08.88.241 provides that only those individuals who were licensed by examination can be reexamined if their license has lapsed for more than three years. It is not reasonable to exempt those persons licensed in

another manner, such as reciprocity or endorsement, should their license lapse.

Commission statutes require 90 days residency of applicants for licensure. This condition is not considered to serve any valid licensing purpose.

The Division has not been charging a \$2 fee for amendments to licenses, such as reactivation or changes of employment (§221).

The Division and the Commission are in favor of allowing ETS to take over examinations entirely provided that benefit would result as indicated in the current proposal.

Extensive regulations have been promulgated by the Commission as a result of problems encountered in its activities and operations.

Chapter 88. Real Estate Brokers and Salesmen.

Article

1. Real Estate Commission (§§ 08.88.011-08.88.141)
2. Licensing (§§ 08.88.161-08.88.261)
3. Miscellaneous Provisions (§§ 08.88.281-08.88.401)
4. General Provisions (§§ 08.88.421-08.88.431)

Article 1. Real Estate Commission.

Section

11. Creation and membership of commission
21. Appointment and terms of office
26. Initial terms of office
31. Executive secretary of commission
41. Qualifications of commission members
51. Commission meetings and officers
61. Assistants
71. Duties of the commission
81. Commission regulations
91. Education
101. Administrative duties of department
111. Department regulations
121. Sale of register
131. Applicability of the Administrative Procedure Act
141. Compensation

Sec. 08.88.011. Creation and membership of commission. There is created a Real Estate Commission. It consists of seven members. (§ 1 ch 95 SLA 1964; am § 9 ch 258 SLA 1976)

Sec. 08.88.021. Appointment and terms of office. The governor shall appoint the members of the commission, with the confirmation of the legislature, for staggered terms of four years. A member serves at the pleasure of the governor. The governor shall fill a vacancy by appointment for the unexpired term. A member serves until his successor is appointed. (§ 1 ch 95 SLA 1964)

Sec. 08.88.026. Initial terms of office. Initial appointments of members are as follows: one member for one year, one member for two years, one member for three years, and two members for four years. Initial terms date from February 1 after appointment. (§ 1 ch 37 SLA 1965)

Sec. 08.88.031. Executive secretary of commission. The commissioner of commerce and economic development shall appoint a full-time staff administrator and delineate his authority and duties. He shall serve as the executive secretary of the Real Estate Commission. (§ 1 ch 95 SLA 1964; am § 1 ch 28 SLA 1974; am § 56 ch 218 SLA 1976)

Sec. 08.88.041. Qualifications of commission members. (a) Five members of the commission must be real estate brokers or associate brokers who have been licensed real estate brokers or licensed associate brokers in Alaska for at least three years before appointment. Two members of the board must be public members in accordance with AS 08.01.025.

(b) One member of the commission shall be from the First Judicial District, one shall be from the Second Judicial District, one shall be from the Third Judicial District, one shall be from the Fourth Judicial District and one shall be from the state at large. However, if no person is eligible or available for appointment from the Second Judicial District, then two shall be from the state at large. (§ 1 ch 95 SLA 1964; am § 1 ch 130 SLA 1966; am § 1 ch 14 SLA 1972; am § 10 ch 258 SLA 1976)

Sec. 08.88.051. Commission meetings and officers. (a) The commission shall hold a regular annual meeting. It may hold a special meeting at the call of the chairman or at the request of three commission members.

(b) At least two judicial districts shall be represented and at least a majority of the commission members shall be present in order to conduct business.

(c) The commission shall elect its officers. (§ 1 ch 95 SLA 1964; am § 2 ch 130 SLA 1966; am § 11 ch 258 SLA 1976)

Sec. 08.88.061. Assistants. The commission, with the approval of the commissioner of commerce and economic development, may employ assistants to

- (1) prepare questions on examinations;
- (2) grade examinations;
- (3) investigate alleged violations of this chapter. (§ 1 ch 95 SLA 1964; am § 57 ch 218 SLA 1976)

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

- (1) pass on qualifications of applicants for licenses and issue licenses to those who qualify;
- (2) prepare and grade examinations;
- (3) after hearing, have the authority to suspend or revoke the license of a licensee who

- (A) with respect to a real estate transaction;
 - (i) made a substantial misrepresentation;
 - (ii) made a false promise likely to influence, persuade, or induce;
 - (iii) in the case of a real estate broker, pursued a flagrant course of misrepresentation or made a false promise through an agent, associate real estate broker, or real estate salesman;
 - (iv) has engaged in conduct that is fraudulent or dishonest;
 - (v) violates § 391 of this chapter;
- (B) procures his license by deceiving the commission, or aids another to do so;
- (C) has engaged in conduct of which the commission had no knowledge at the time he was licensed demonstrating his unfitness to engage in the business for which he is licensed;
- (D) knowingly authorizes, directs, connives at or aids in publishing, distributing, or circulating a material false statement or misrepresentation concerning his business or concerning real estate for sale in his business in this or any other state;
- (E) if a real estate broker, wilfully violates § 171(d) or § 291 of this chapter;
- (F) if an associate real estate broker, claims to be a real estate broker, or, if a real estate salesman, claims to be a real estate broker or associate real estate broker;
- (G) if a real estate broker, employs an unlicensed associate real estate broker or real estate salesman;
- (H) if an associate real estate broker or real estate salesman, fails immediately to turn money collected in a real estate transaction over to the employing real estate broker;
- (4) prosecute, through the Department of Law, violations of the provisions of this chapter or lawful regulations promulgated under this chapter;
- (5) publish, on three consecutive weekends in a newspaper of general circulation in the locale of the offending person's principal office licensed under this chapter, any disciplinary action taken by the commission against a person licensed under this chapter.

(b) When a payment is made from the real estate surty fund under AS 45.85 in settlement of a claim or toward satisfaction of a judgment against a licensed broker, associate broker or salesman for fraud, misrepresentation, deceit or conversion of trust funds, the commission, after a proper hearing establishing the misconduct, shall suspend or revoke the license of the broker, associate broker or salesman. The broker, associate broker or salesman may not be reinstated until he has satisfied in full any judgment based on any of the grounds listed in AS 45.85.030. (§ 1 ch 95 SLA 1964; and §§ 2, 3 ch 28 SLA 1974; § 3 ch 143 SLA 1974)

Sec. 08.88.081. Commission regulations. The commission shall adopt substantive regulations making more specific the general grounds for revoking or suspending a license. (§ 1 ch 95 SLA 1964)

Sec. 08.88.091. Education. The commission may conduct and assist in conducting real estate clinics, meetings, courses, or institutes. The commission may assist libraries and educational institutions in sponsoring studies and programs for the purpose of raising the standards of the real estate business and the competency of licensees. (§ 1 ch 95 SLA 1964)

Sec. 08.88.101. Administrative duties of department. (a) The department shall furnish the commission with administrative services, including collecting fees and issuing receipts; keeping records of receipts and disbursements; distributing and receiving application forms; notifying an applicant whether or not the commission has accepted his application; designating the dates on which examinations are to be held; at least 30 days before an examination is to be held, publishing notice that it is to be held; printing examinations; providing space for holding examinations; proctoring examinations; notifying applicants of the results of the examination; printing and distributing uniform license certificates, duplicate certificates to replace lost ones, and pocket-sized recognition cards; sending notice, before December 1 of each year, that licenses must be renewed; keeping a current register of licensees; employing secretarial assistants; replying to routine requests for information; printing and distributing forms and informational bulletins; maintaining records and completed examinations; recording suspensions and revocations of licenses; and recording office registrations.

(b) The department shall allow members of the commission free access to its records concerning the commission's activities. (§ 1 ch 95 SLA 1964)

Sec. 08.88.111. Department regulations. The department shall adopt procedural regulations describing

(1) how it conducts an examination;

(2) how a person applies to take an examination, applies for a license, and registers his office. (§ 1 ch 95 SLA 1964)

Sec. 08.88.121. Sale of register. The department shall offer for sale to the public publications containing the names, addresses, license classifications, and business associations of persons licensed by the commission. The department shall sell the publications at a price designed to recover costs of compilation, publication, and distribution. (1 ch 95 SLA 1964)

Sec. 08.88.131. Applicability of the Administrative Procedure Act. The Administrative Procedure Act (AS 44.62) applies to regulations and proceedings under this chapter. (§ 1 ch 95 SLA 1964)

Sec. 08.88.141. Compensation. A commission member is entitled to transportation expenses and per diem allowances specified in AS 39.20.180. (§ 1 ch 95 SLA 1964)

Article 2. Licensing.

Section

- 161. License required
- 171. Entitlement to license
- 181. Content of examination
- 191. Administration of examination
- 201. Reexamination
- 211. Qualification for examination
- 221. Fees
- 231. Deposit in general fund
- 241. Reinstatement of lapsed license
- 251. Inactive license
- 261. Out-of-state licenses

Sec. 08.88.161. License required. Unless licensed as a real estate broker, associate real estate broker, or real estate salesman, no natural person, foreign or domestic corporation, or partnership, or limited partnership, or other entity may

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

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

(3) collect rent for the use of real estate;

(4) as a business, buy, sell, or deal in

(A) options in real estate, or

(B) options in improvements to real estate;

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

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

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

(8) (deleted) (§ 1 ch 95 SLA 1964; am § 1 ch 108 SLA 1970; am § 4 ch 28 SLA 1974)

Sec. 08.88.171. Entitlement to license. (a) A person is entitled to a real estate broker license if he has been a resident of the state for 90 days and if he applies for his license within six months after receipt of notice that he has passed the real estate examination, files the required bond, and is an owner of a real estate business or employed as a real estate broker by a corporation or a partnership, if the corporation or partnership does not have an existing licensed broker. Unless he fails to pay the biennial renewal fee or his license is suspended or revoked to pay the biennial renewal fee or his license is suspended or revoked under § 71(3) of this chapter, a real estate broker's license continues in effect so long as he is an owner of a real estate business, or he is employed as a real estate broker by a corporation or a partnership. If he stops being an owner of a real estate business, or stops being employed as a real estate broker by a corporation or partnership, his license is suspended from the time he stops until

(1) he again becomes an owner of a real estate business or is again employed as a real estate broker by a corporation or a partnership; or

(2) he is employed by a licensed real estate broker, in which case his real estate broker license is returned to the department, and the department issues him an associate real estate broker license.

(b) A person is entitled to an associate real estate broker license if he has been a resident of the state for 90 days and if he passes the real estate examination, applies for his license within six months after receipt of notice that he has passed the examination, files the required bond, and is employed by a licensed real estate broker.

Unless he fails to pay the biennial renewal fee or his license is suspended or revoked under § 71(3) of this chapter, an associate real estate broker's license continues in effect so long as he is employed by a licensed real estate broker. If he stops being employed by a licensed real estate broker, his license is suspended from the time he stops until

(1) he again is employed by a real estate broker, or

(2) he becomes an owner of a real estate business, in which case his associate real estate broker license is returned to the department, and the department issues him a real estate broker license.

(c) A person is entitled to a real estate salesman license if he has been a resident of the state for 90 days and if he passes the real estate salesman examination, applies for his license within six months after receipt of notice that he has passed the examination, files the required bond, and is employed by a real estate broker. Unless he fails to pay the biennial renewal fee or his license is suspended or revoked under § 71(3) of this chapter, a real estate salesman's license continues in effect so long as he is employed by a licensed real estate broker, his license is suspended from the time he stops until he again is employed by a licensed real estate broker.

(d) A licensee shall promptly inform the department of a change in his business association that affects the status of his license under this section. (§ 1 ch 95 SLA 1964; am § 3 ch 130 SLA 1966; am § 1 ch 55 SLA 1969; am §§ 5-7 ch 28 SLA 1974)

Sec. 08.88.181. Content of examination. (a) The real estate examination includes questions on business ethics; arithmetic; elementary principles of land economics and appraisal; the general principles in state statutes relating to deeds, mortgages, real estate contracts, subdivisions, legal descriptions, building restrictions, agency and brokerage; and the general provisions in this chapter and in regulations of the commission.

(b) The real estate salesman examination covers the same subjects as the real estate broker examination, but is less difficult.

(c) The only purpose of an examination under this chapter is to disqualify those whose lack of ability to participate in real estate transactions would create a serious risk of serious financial loss to members of the public. (§ 1 ch 95 SLA 1964; am § 2 ch 55 SLA 1969)

Sec. 08.88.191. Administration of examination. (a) The department shall offer examinations at least one a year and more frequently if more than two persons who are qualified to take an examination petition the department for an additional examination.

(b) Examinations shall be so administered that one who grades an examination does not know whose paper he is grading.

(c) The department shall maintain files of examination papers. A person, at any reasonable time within two months of the date he is notified of the results of the examination, is entitled to inspect his examination paper for the purpose of challenging the propriety of its questions, the method of grading, or the accuracy of grading.

(d) If a person fails to take an examination after he has paid the application fee, the department shall refund one-half of the fee.

(e) The provisions of (c) of this section are inapplicable if a nationally recognized testing service prepares and grades the examination provided the national testing service, if requested, will evaluate the examination results for an applicant. (§ 1 ch 95 SLA 1964; am § 2 ch 108 SLA 1970; am §§ 1, 2 ch 24 SLA 1972; am § 8 ch 28 SLA 1974)

Sec. 08.88.201. Reexamination. A person who fails an examination may apply for a subsequent examination, but shall pay the application fee each time he applies. He may not petition for an additional examination under § 191(a) of this chapter, but may take one if it is offered. (§ 1 ch 95 SLA 1964)

Sec. 08.88.211. Qualification for examination. (a) A person is entitled to take a real estate broker or associate broker examination if he

(1) has had at least 24 months of active and continuous experience as a licensed real estate salesman;

(2) Repealed by § 10 ch 28 SLA 1974.

(3) Repealed by § 25 ch 245 SLA 1970.

(4) has not been convicted of a felony involving moral turpitude within the past 10 years, is not under indictment for fraud or embezzlement and has not engaged in conduct that demonstrates that he is unfit to be a real estate broker;

(5) Repealed by § 17 ch 127 SLA 1974.

(6) Repealed by § 4 ch 55 SLA 1969.

(b) A person is entitled to take a real estate salesman examination if he

(1) is at least 19 years old;

(2) Repealed by § 11 ch 28 SLA 1974.

(3) has not been convicted of a felony involving moral turpitude within the past 10 years, is not under indictment for fraud or embezzlement and has not engaged in conduct that demonstrates that he is unfit to be a real estate salesman;

(4) Repealed by § 17 ch 127 SLA 1974.

(5) Repealed by § 4 ch 55 SLA 1969.

(c) In addition to the requirements of (a) or (b) of this section, to be qualified to take an examination a person must

(1) within the time specified by a department regulation, return application forms to the department showing information specified in regulations of the commission;

(2) pay the application fee.

(d) Repealed by § 9 ch 108 SLA 1970. (§ 1 ch 95 SLA 1964; am § 4 ch 130 SLA 1966; am § 1 ch 31 SLA 1968; am § 4 ch 55 SLA 1969; am §§ 3-5, 9 ch 108 SLA 1970; am § 25 ch 245 SLA 1970; am §§ 9-11 ch 28 SLA 1974; am § 17 ch 127 SLA 1974)

Sec. 08.88.221. Fees. (a) The following fees shall be charged a real estate broker or associate broker licensee or applicant when applicable:

(1) examination.....	\$ 50
(2) reciprocity.....	50
(3) initial license.....	100
(4) biennial renewal - active license.....	100
(5) biennial renewal - inactive license.....	25

(b) The following fees shall be charged a salesman licensee or applicant when applicable:

(1) examination.....	\$ 50
(2) reciprocity.....	50
(3) initial license.....	50

(4) biennial renewal - active license..... \$ 50

(5) biennial renewal - inactive license..... 25

(c) The fee for amending a license is \$2. (§ 1 ch 95 SLA 1964; am § 2 ch 31 SLA 1968; am §§ 12, 13 ch 28 SLA 1974)

Sec. 08.88.231. Deposit in general fund. The department shall deposit money collected under this chapter in the general fund. (§ 1 ch 95 SLA 1964)

Sec. 08.88.241. Reinstatement of lapsed license. A licensee who was required to take an examination before receiving a license and whose license has lapsed for more than three years shall be reexamined before reinstatement. (§ 1 ch 95 SLA 1964; am § 5 ch 130 SLA 1966; am § 3 ch 31 SLA 1968; am § 6 ch 94 SLA 1968; am § 6 ch 108 SLA 1970)

Sec. 08.88.251. Inactive license. (a) A person licensed by the commission may become inactive by returning to the department his license certificate and a form provided by the department. In the form, he shall state the date on which he intends to become inactive. His inactive status begins on the date stated. The department shall issue him an inactive license certificate.

(b) An inactive licensee may not do any of the things § 161 of this chapter authorizes an active licensee to do, nor is he required to have a bond.

(c) A person who is inactive may become active by returning to the department his inactive license certificate, the active license biennial renewal fee, if he becomes active more than five months before January 1 following, and a completed form provided by the department. In the form he shall state the date on which he intends to become active. His active status begins on the date stated. The department shall send him a license certificate. A person is entitled to change from an inactive to an active status without examination if he has not been inactive more than three years. If he has been inactive more than three years, he is required to take an examination. (§ 1 ch 95 SLA 1964; am § 4 ch 31 SLA 1968; am § 7 ch 108 SLA 1970)

Sec. 08.88.261. Out-of-state licenses. A person who holds a valid, active license from another state which grants an equivalent right to Alaskan licensees is entitled to a license of the kind he holds there without examination if he

(1) meets the requirements of § 211(a)(2)-(5) of this chapter for brokers or § 211(b) for salesmen, and files the required bond;

(2) passed an examination in the other state; and

(3) has actively practiced his profession for at least five out of the previous six years before filing his application. (§ 1 ch 95 SLA 1964; am § 3 ch 55 SLA 1969)

Article 3. Miscellaneous Provisions.

Section

- 281. Real estate surety fund
- 291. Location
- 301. Change of location
- 311. Branch offices
- 321. Possession and display of license certificates
- 331. Making of transactions
- 341. Listings
- 351. Record of transaction
- 361. When commission is earned
- 371. Conduct by employee
- 381. Signs
- 391. Conflict of interest
- 401. Prohibited conduct

Sec. 08.88.281. Real estate surety fund. Before issuing a license to an applicant under this chapter, the board shall determine that the applicant has complied with the provisions of AS 45.85.020 and is covered by the real estate surety fund established in AS 45.85. (§ 1 ch 95 SLA 1964; am § 1 ch 54 SLA 1968; am § 2 ch 143 SLA 1974)

Sec. 08.88.291. Location. A licensed real estate broker shall inform the commission of his principal office and of any branch offices he has. He and the associate real estate brokers and real estate brokers and real estate salesmen he employs may do business only in or out of his principal office and his branch offices. Failure of a real estate broker to maintain a place of business or inform the department of its location and the names and addresses of all licensees under his jurisdiction at the location are grounds for the suspension or revocation of his broker license. (§ 1 ch 95 SLA 1964; am § 14 ch 28 SLA 1974)

Sec. 08.88.301. Change of location. If a real estate broker changes the location of his principal office or of a branch office, he shall immediately notify the department. (§ 1 ch 95 SLA 1964; am § 15 ch 28 SLA 1974)

Sec. 08.88.311. Branch offices. (a) A branch offices shall be under the direct supervision of a broker or an associate real estate broker whose principal place of business is that office and who is licensed under this chapter. An associate real estate broker may serve in the capacity of direct supervisor at one office only.

(b) All branch offices shall bear and be advertised only in the name of the principal office but may indicate that they are branch offices of the principal office. (§ 1 ch 95 SLA 1964; am § 8 ch 108 SLA 1970; am § 16 ch 28 SLA 1974; am § 1 ch 174 SLA 1976)

Sec. 08.88.321. Possession and display of license certificates. A real estate salesman or an associate real estate broker shall turn his license certificate over to the real estate broker who employs him. The employing real estate broker shall display his license certificate in his principal office and the license certificates of those he employs in the office where they do most of their work. (§ 1 ch 95 SLA 1964)

Sec. 08.88.331. Making of transaction. A real estate salesman or associate real estate broker may make a real estate transaction only through the real estate broker who employs him. All money collected on behalf of the broker shall immediately be turned over to the broker or his agent. All transactions in real estate by a real estate salesman or associate real estate broker shall be processed through his employing real estate broker's office, whether the transactions are for the real estate salesman's or associate real estate broker's own use or the use of a client. (§ 1 ch 95 SLA 1964)

Sec. 08.88.341. Listings. All real estate listings must be in writing and must be signed by the seller or by an agent of the seller. All exclusive listings must have a definite expiration date. (§ 1 ch 95 SLA 1964)

Sec. 08.88.351. Record of transaction. A real estate broker shall

(1) keep a complete record of all real estate transactions made by himself or persons in his employ for at least three years;

(2) make a closing statement showing disbursements and accounting for all money in the transaction;

(3) keep a separate trust account in a bank, into which he shall deposit all earnest money deposits and purchase money until it is proper for him to distribute the money to the proper persons;

(4) make available to the commission, on request, records and all other documents relating to transactions under (3) of this section which the commission may require in order to conduct a complete audit of trust accounts. (§ 1 ch 95 SLA 1964; am § 17 ch 28 SLA 1974)

Sec. 08.88.361. When commission is earned. A commission is earned when the real estate broker finds a buyer willing and able to purchase at a price and on terms set by the seller, providing negotiations with the buyer were initiated during the term of a valid listing agreement and within the time limit of the listing. (§ 1 ch 95 SLA 1964)

Sec. 08.88.371. Conduct by employee. For the purpose of § 71(3) of this chapter, the conduct of an employee is not attributable to a real estate broker unless the real estate broker has actual knowledge that the employee is going to engage in the conduct and agrees to the conduct, either actively or by remaining silent, or ratifies the conduct after it is engaged in. (§ 1 ch 95 SLA 1964)

Sec. 08.88.381. Signs. A licensed real estate broker shall maintain a sign at each of his offices, prominently showing the name of his business. (§ 1 ch 95 SLA 1964)

Sec. 08.88.391. Conflict of interest. A licensed real estate broker, associate real estate broker, or real estate salesman who has a personal financial interest in a real estate transaction shall disclose that interest to every person involved in the transaction. (§ 1 ch 95 SLA 1964)

Sec. 08.88.401. Prohibited conduct. (a) No licensee may use the term "Realtor" unless he is entitled to use it.

(b) No person, even though he is an obligor or escrow holder, may pay or deliver compensation to a person who is not licensed in this state or who does not hold a valid broker license in another state for doing work for which a license is required under this chapter.

(c) No person may

(1) knowingly authorize, direct, or aid in the publication of a false statement or misrepresentation concerning land or a subdivision or other real estate offered for sale or lease;

(2) with knowledge that an advertisement, pamphlet, or letter concerning land or a subdivision or other real estate contains a written statement that is false or fraudulent, issue, circulate, publish, or distribute it or cause it to be issued, circulated, published, or distributed.

(d) A person who violates a provision of this section or § 161 of this chapter is guilty of a misdemeanor. (1 ch 95 SLA 1964; am § 6 ch 130 SLA 1966; am § 18 ch 28 SLA 1974; am § 4 ch 143 SLA 1974)

Article 4. General Provisions.

Section

421. Exceptions

431. Definitions

Sec. 08.88.421. Exceptions. This chapter does not apply to

(1) a person making a real estate transaction with respect to real estate he owns or on his own behalf, unless the transaction involves land defined in AS 34.55.044(6);

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

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

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

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

(6) a person acting under court order;

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

(8) a person dealing in mineral rights transactions;

(9) a domestic or foreign corporation, general or limited partnership, or a partner or regular employee of one of these, when performing acts described in § 161 of this chapter in the regular course, or as an incident to, the management, sale or other disposition of real estate owned by the corporation or partnership; however, the person may not perform these acts as a vocation or for compensation if the amount of the compensation is dependent upon or directly related to the value of the real estate with respect to which the acts are performed. (§ 1 ch 95 SLA 1964; am § 1 ch 38 SLA 1969; am § 19 ch 28 SLA 1974)

Sec. 08.88.431. Definitions. In this chapter

(1) "real estate" means an interest or estate in land, corporeal or incorporeal;

(2) "commission" means the Real Estate Commission;

(3) "department" means the Department of Commerce and Economic Development;

(4) "lease" includes a lease that is a part of another transaction. (§ 1 ch 95 SLA 1964; am § 58 ch 218 SLA 1976)

CHAPTER 64.
REAL ESTATE COMMISSION

Article

1. Examinations
2. Licensing
3. Place of Business
4. Prohibited Conduct
5. Trust Accounts

ARTICLE 1.
EXAMINATIONS

Section

10. Applications for examination
20. Time and places
30. (Repealed)
40. Notification of applicant
50. Appeals

12 AAC 64.010. APPLICATIONS FOR EXAMINATION. (a) All applicants for examination to act as real estate broker, associate real estate broker, or real estate salesman, shall be in writing to the Commissioner of Commerce upon a form to be prescribed and furnished by the Commissioner of Commerce. The fee required by law shall accompany the application.

(b) The applicant may be required to furnish additional information to demonstrate that he meets the minimum qualification of the law as to age, residence, citizenship, and has not engaged in conduct that demonstrates that he is unfit to be licensed.

(c) Applications for examination must reach the office of the Commissioner of Commerce not later than 45 days prior to the examination date. (Eff. 8/6/67, Reg. 24; am 8/9/72, Reg. 43)

Authority: AS 08.88.111
AS 08.88.211

12 AAC 64.020. TIME AND PLACES. (a) Examinations shall be given at least three times each year at times and places to be designated by the Commissioner of Commerce, such notice to be given to the public as required by law.

(b) The Commissioner of Commerce shall arrange for space in which the examinations will be given and arrange for persons to proctor the examination. Such proctors shall be paid for their services, and conduct the examination

under instructions issued by the Commissioner of Commerce. (Eff. 8/6/67, Reg. 24)

Authority: AS 08.88.101
AS 08.88.111

12 AAC 64.030. METHOD OF CONDUCTING. Repealed 8/9/72, Reg. 43.

12 AAC 64.040. NOTIFICATION OF APPLICANT. (a) All applicants will be notified in writing of the time and place of examination by the Commissioner of Commerce at least seven days prior to the examination.

(b) The applicant will be advised of his grade in writing no later than 10 days following the grading of examinations by the commission. (Eff. 8/6/67, Reg. 24)

Authority: AS 08.88.101
AS 08.88.111

12 AAC 64.050. APPEALS. A contested scoring of an examination will be hand scored upon request in writing directly to Educational Testing Service, Princeton, New Jersey 08540. (Eff. 8/6/67, Reg. 24; am 8/9/72, Reg. 43; am 1/13/73, Reg. 44)

Authority: AS 08.88.191(e)

ARTICLE 2. LICENSING

Section

- 60. Applications for licenses
- 70. License year
- 80. Suspension and revocation of active licenses
- 90. Surrender of suspended or revoked licenses
- 100. Reissuance of a suspended license

12 AAC 64.060. APPLICATIONS FOR LICENSES. (a) All applications for license to act as real estate broker, associate real estate broker, or real estate salesman, shall be made in writing to the Commissioner of Commerce upon a form to be prescribed and furnished by the Commissioner of Commerce. The fee required by law shall accompany the application.

(b) The applicant may be required to furnish additional information to demonstrate that he meets the minimum qualification of the law as to age, residence, citizenship, and has not

engaged in conduct that demonstrates that he is unfit to be licensed. (Eff. 8/6/67, Reg. 24)

Authority: AS 08.88.111
AS 08.88.171
AS 08.88.211

12 AAC 64.070. LICENSE YEAR. (a) The license year begins January 1 and ends December 31, on a biennial basis, to be effective January 1, 1968 and fees are not prorated for a fractional portion of the year.

(b) All licenses expire December 31, of the appropriate year, regardless of the date the license was issued. It shall be the duty of all persons licensed as a real estate broker, associate real estate broker, or a real estate salesman to register biennially with the Commissioner of Commerce and to renew their license, by paying for each biennial registration the fee for license, as set forth in the act, section, etc. (Eff. 8/6/67, Reg. 24)

Authority: AS 08.88.111
AS 08.88.221

12 AAC 64.080. SUSPENSION AND REVOCATION OF ACTIVE LICENSES. An active license is defined as a license which has been duly issued by the Department of Commerce for the purposes expressed in AS 08.88.161. An active license is one which has neither lapsed nor been exchanged for an inactive license. An active license shall be suspended or revoked under the following conditions:

(1) it shall be suspended when the licensee ceases to act in the capacity of or be employed as a real estate broker, associate real estate broker or real estate salesman as required under AS 08.88.171;

(2) it shall be revoked

(A) if the license is that of a real estate broker and he becomes employed by a licensed real estate broker (AS 08.88.171(a)(2));

(B) if the license is that of an associate real estate broker and he becomes an owner of a real estate business (AS 08.88.171(b)(2));

(3) it is suspended or revoked when, after hearing, it has been declared suspended or revoked by the commission as provided in AS 08.88.071 and these regulations;

(4) upon the suspension or revocation of a real estate broker's license, the license of every associate real estate broker, or real estate salesman employed by such broker is automatically suspended. (Eff. 8/6/67, Reg. 24)

Authority: AS 08.88.071
AS 08.88.081
AS 08.88.111
AS 08.88.161
AS 08.88.171

12 AAC 64.090. SURRENDER OF SUSPENDED OR REVOKED LICENSES. (a) Every license which has been suspended or revoked, and the pocket part of such license shall be immediately surrendered by the employing broker to the Commissioner of Commerce; or if such license and pocket part are not in the possession of a broker, they shall be surrendered by the licensee. A license and pocket part have been surrendered when they have been placed in the United States mail, postage prepaid and properly addressed to the Commissioner of Commerce or when they have been delivered to the Commissioner of Commerce or his authorized agent.

(b) When a real estate broker surrenders his license, he shall at the same time surrender all licenses and pocket parts within his possession of all associate real estate brokers and salesmen employed by him.

(c) When an associate real estate broker or real estate salesman is discharged or otherwise terminates his employment with a broker, the broker shall inscribe the date and reason for termination on the reverse side of the license to be surrendered.

(d) The surrender of a license does not entitle the licensee to any refund of license fees and no refund shall be made by the department or the commission.

(e) A licensee whose license has been suspended or revoked may not engage in any of the activities authorized by AS 08.88.161 until

his license has been reissued. (Eff. 8/6/67, Reg. 24)

Authority: AS 08.88.081
AS 08.88.111
AS 08.88.161

12 AAC 64.100. REISSUANCE OF A SUSPENDED LICENSE. A license which has been suspended and surrendered, together with its pocket part, will be reissued, without charge, for the unexpired balance of the license period, under the following conditions:

(1) if suspended by the commission for cause as provided in AS 08.88.071(3) or these regulations, the license will be reissued when the conditions imposed in the suspension order have been met and the licensee complies with the appropriate subsections (2) and (3) or (2) and (4) of this section;

(2) submission to the department of satisfactory evidence that the licensee's required bond is in full force and effect; and

(3) if the suspended license is that of an associate real estate broker or real estate salesman, he has met the employment requirements of AS 08.88.171(b) or (c) and has completed and returned to the department the required notice of release, transfer and re-employment; or

(4) if the suspended license is that of a real estate broker, he has met the ownership or employment requirements of AS 08.88.181(a) and he has completed and returned to the department his notice of compliance with Section 08.88.171 as to issuance of a broker license. (Eff. 8/6/67, Reg. 24)

Authority: AS 08.88.071(3)
AS 08.88.111
AS 08.88.171

ARTICLE 3. PLACE OF BUSINESS

Section

110. Defined

120. Branch offices

12 AAC 64.110. DEFINED. The commission recommends that the office of licensed real estate brokers be established in an office or

headquarters where the real estate broker conspicuously displays his license and the licenses of his employees, if any, and at or from which a real estate broker, either through his own efforts or through his employees, regularly transacts the business of a real estate broker as defined in the law, and where he or his employees can receive business calls and direct business calls to be made. (Eff. 8/6/67, Reg. 34)

Authority: AS 08.88.111

AS 08.88.291

12 AAC 64.120 BRANCH OFFICES. Branch offices shall be applied for on a form provided by the Commissioner of Commerce. Each application shall contain the following:

(1) address of the branch office;

(2) the name of the person in charge of the branch office;

(3) a branch office must be staffed at all times. Failure to staff a branch office will be grounds for withdrawing permission to operate a branch office. (Eff. 8/6/67, Reg. 24)

Authority: AS 08.88.111

AS 08.88.311

ARTICLE 4. PROHIBITED CONDUCT

Section

- 130. Business ethics
- 140. Employment of unlicensed personnel
- 150. Failure to maintain a place of business
- 160. False or misstatement in obtaining a license
- 170. Investigation by commission

12 AAC 64.130. BUSINESS ETHICS. The following acts will be grounds for revocation or suspension of licenses for unethical business practices:

(1) those grounds specifically enumerated in AS 08.88.071(3);

(2) acting for more than one party in a real estate transaction without the knowledge of all parties for whom he acts;

(3) failure to account for or to remit or surrender to the person entitled thereto, any money, documents, or other property of value coming into the possession or control of the licensee in the course of a real estate transaction;

(4) paying or receiving any rebate, profit, compensation or commission in violation of these regulations;

(5) forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud or other like offenses committed in the course of employment as a real estate broker, associate real estate broker or real estate salesman and who has been convicted thereof in a court of competent jurisdiction of this or any other state;

(6) placing a sign on a property offering it for sale, lease or rent without first obtaining the written authority of the owner or his authorized agent to sell, lease or rent the property;

(7) splitting fees with or otherwise compensating others not licensed here under AS 08.88 for referring business;

(8) advertising to buy, sell, rent or exchange any real property for another or others without including in the advertisement the name of the employing or selling real estate broker. (Eff. 8/6/67, Reg. 24)

Authority: AS 08.88.031

AS 08.88.111

AS 08.88.401

12 AAC 64.140. EMPLOYMENT OF UNLICENSED PERSONNEL. Grounds for revocation or suspension of licenses for employment of unlicensed personnel are as follows:

(1) retaining the services of any person as a real estate salesman or an associate real estate broker who is unlicensed under Alaska Statutes;

(2) accepting a commission or valuable consideration as a real estate salesman for the performance of any of the acts specified in the

laws or these regulations from any person except the real estate broker whose name appears on his license. (Eff. 8/6/67, Reg. 24)

Authority: AS 08.88.081
AS 08.88.111
AS 08.88.401

12 AAC 64.150. FAILURE TO MAINTAIN A PLACE OF BUSINESS. Failure of a real estate broker to maintain a place of business is grounds for suspension or revocation of his broker's license. (Eff. 8/6/67, Reg. 24)

Authority: AS 08.88.081
AS 08.88.111
AS 08.88.401

12 AAC 64.160. FALSE OR MISSTATEMENT IN OBTAINING A LICENSE. Obtaining a license through false or fraudulent representation or making a material misstatement on his application for license or renewal or application for examination will be grounds for revocation or suspension of a license. (Eff. 8/6/67, Reg. 24)

Authority: AS 08.88.081
AS 08.88.111
AS 08.88.401

12 AAC 64.170. INVESTIGATION BY COMMISSION. Reference to Section 08.88.261 - Applications under this section shall be processed at the next regular meeting of the commission following receipt of such application. (Eff. 8/6/67, Reg. 24)

Authority: AS 08.88.071
AS 08.88.081
AS 08.88.111
AS 08.88.261

**ARTICLE 5.
TRUST ACCOUNTS**

Section

- 180. Establishment of trust account
- 190. Trust funds exempt from attachment, other process
- 200. Deposit to trust account
- 210. Trust account interest
- 220. Record of trust account transactions
- 230. Trust funds other than earnest money
- 240. Broker's commission
- 250. Prohibited activity
- 260. Violation

12 AAC 64.180. ESTABLISHMENT OF TRUST ACCOUNT. (a) Every real estate broker shall establish a trust account in a bank authorized to do business in this state, and the name of the account so established must include the words "trust account" or "trustee account."

(b) Every real estate broker shall file with the Department of Commerce and Economic Development the name of the account, the account number, and the name of the bank which holds the account for all trust accounts held by the broker.

(c) The broker who establishes the account shall be trustee of the account and responsible for all signatories to that account.

(d) If maintenance expenses are charged against a trust account, the broker shall deposit a sum of money not exceeding \$100 to the trust account for the purpose of paying the maintenance expenses of the account and shall make additional deposits when necessary, but not to exceed \$100 on deposit.

(e) All trust accounts must be demand accounts only. (Eff. 1/19/78, Reg. 65)
Authority: AS 08.88.081
AS 08.88.351

12 AAC 64.190. TRUST FUNDS EXEMPT FROM ATTACHMENT, OTHER PROCESS. No provision may be made for a bank to withhold issue of funds from a trust account except upon a court order. (Eff. 1/19/78, Reg. 65)
Authority: AS 08.88.081
AS 08.88.351

12 AAC 64.200. DEPOSIT TO TRUST ACCOUNT. All money deposited with the broker or person employed by or affiliated with the broker as trustee in real estate transactions must be deposited in or mailed to the trust account within five days following receipt unless factors such as geographical location, weather conditions, or transportation facilities make such depositing impossible or unreasonable. (Eff. 1/19/78, Reg. 65)
Authority: AS 08.88.081
AS 08.88.351

12 AAC 64.210. TRUST ACCOUNT INTEREST. If a trust account bears interest,

that fact and the rate of interest must be disclosed to the trustor. (Eff. 1/19/78, Reg. 65)

Authority: AS 08.88.081
AS 08.88.351

12 AAC 64.220. RECORD OF TRUST ACCOUNT TRANSACTIONS. (a) A broker shall keep a complete record of all trust account transactions and assign a transaction account number to each transaction. The broker shall assign a transaction number to all written offers on real estate. For property management transactions, the broker shall assign a transaction number to each landlord for whom property is managed or to each property managed.

(b) The record of the trust transactions must include

(1) deposit slips showing date, transaction account number, amount of deposit, and trustor's name;

(2) all checks and check records, including voided checks, written on the trust account, showing the date, the payee, and the transaction account number; and

(3) a ledger or its equivalent showing transaction number, all deposits to the trust account, and all withdrawals from the trust account identified by check number and payee.

(c) Trust accounts must be reconciled monthly.

(d) A complete record must be kept in the trust ledger of all transactions in which deposits are not made to the broker's trust account, including direct deposits to an escrow agent's trust account. (Eff. 1/19/78, Reg. 65)

Authority: AS 08.88.081
AS 08.88.351

12 AAC 64.230. TRUST FUNDS OTHER THAN EARNEST MONEY. (a) For trust funds other than earnest money including, but not limited to, rents or mortgage payments, records must be kept consistent with the requirements of sec. 220 of this chapter.

(b) Failure of a licensee engaged in property management to comply with the provisions of AS 34.03 is considered fraudulent or dishonest

conduct within the meaning of AS 08.88.071(a)(3)(A)(iv). (Eff. 1/19/78, Reg. 65)

Authority: AS 08.88.071
AS 08.88.081
AS 08.88.351

12 AAC 64.240. BROKER'S COMMISSION. (a) Each withdrawal of a broker's commission from a trust account must be separate and separate and identified as to the specific transaction.

(b) A broker shall withdraw his or her commission from a trust account within 15 days after the date that the transaction has been closed or otherwise settled. (Eff. 1/19/78, Reg. 65)

Authority: AS 08.88.071
AS 08.88.081
AS 08.88.351

12 AAC 64.250. PROHIBITED ACTIVITY. No broker may

(1) pay a salesman's commission directly from the trust account;

(2) pay bills for his or her business or personal obligations from the trust funds;

(3) use trust funds to pay the maintenance expenses of a trust account;

(4) deposit funds belonging to him or her in a trust account, except those described in sec. 180(d) of this chapter; or

(5) withdraw funds from a trust account without fully complying with the recordkeeping requirements of sec. 220 of this chapter. (Eff. 1/19/78, Reg. 65)

Authority: AS 08.88.071
AS 08.88.081
AS 08.88.351

12 AAC 64.260. VIOLATION. Failure to comply with secs. 180 - 260 of this chapter or the withholding of records or trust property which a broker is required to maintain, from that broker, or failure to turn over to the Real Estate Commission, upon the request of the commission, records that are required by this chapter is considered fraudulent and dishonest conduct within the meaning of AS

08.88.071(a)(3)(A)(iv). (Eff. 1/19/78, Reg. 65;
Authority: AS 08.88.071
AS 08.88.081
AS 08.88.351

All Members, Real Estate Commission
 Jim Magowan, Executive Secretary
 Richard H. Long, Chief Investigator

January 17, 1979


 Don Hostak, Director
 Division of Occupational Licensing
 Department of Commerce &
 Economic Development

Complaint Handling/
 Investigations
 Real Estate Licensees

This shall serve to clarify and establish the procedure for processing complaints received against real estate licensees only.

I. RECEIPTING

- A. All complaints received, whether received at the Juneau or Anchorage office, will be date-time stamped immediately on receipt and assigned a file control number, thereby entering the complaint into the main control system maintained by the Investigations Section. All complaints against real estate licensees are to be forwarded at the same time to the executive secretary for initial review and processing.
- B. A carbon copy of the complaint will be retained by the Investigations Section with no other action to be taken by the Investigations Section at this point. The executive secretary may continue to utilize whatever case number/control system which best applies to his purpose.

II. EXECUTIVE SECRETARY REVIEW

- A. The executive secretary will conduct the initial review of all complaints received against real estate licensees. The executive secretary will consider and attempt to establish jurisdictional authority and whether or not it appears that a violation has or may have occurred and proceed as follows:
 1. Matters determined not to be within the Commission's jurisdiction, no violation, or matters which may be closed informally will be brought before the Commission for formal concurrence to close.
 2. If the matter cannot be closed informally initially, the ten-day letter will be sent to the respondent to determine the respondent's position in the issue. Discretion should be used, as all complaints would not dictate the use of this letter.
 3. At this time, after receiving response to the ten-day letter, if the matter is to be closed informally, it will be brought before the Commission for formal concurrence to close.

4. As such matters are closed, a report of closure will be prepared and entered as a matter of record as the last transaction in the file.
 5. Matters not to be closed, which involve violations, will be transferred to the Investigations Section for further processing.
- B. The executive secretary will not receipt, review, or retain any complaint concerning possible conflicts of interest, i.e. complaints concerning the executive secretary or a Commission member or their relatives or business partners, past or present, or any matter involving unlicensed activity. These complaints will be immediately referred to the Investigations Section. The executive secretary will not be involved with these complaints.

III. REFERRALS TO THE INVESTIGATIONS SECTION

At any time following receipt of a complaint it becomes evident that a violation has or may have occurred, it is to be transferred in its entirety to the Investigations Section with a cover memorandum. This memorandum will serve to provide a record of the transfer and will include a brief synopsis of the matter, a priority recommendation and an index of the record developed to that point. Details of the information developed to that point will not be exposed to the members of the Commission. Full responsibility for all files and case handling thereafter rests with the Investigations Section. The executive secretary will not be further involved except at the request of the Investigations Section, usually to provide input, advice or other appropriate assistance relating to the field of real estate or particular real estate matters.

IV. INVESTIGATIONS SECTION - PROCESSING

- A. If the Investigations Section determines that no violation or jurisdiction exists, the Section will provide a full report and/or the investigative file, as appropriate, to the Commission for their formal concurrence to close.
- B. If the Investigations Section determines that a violation has occurred, the completed investigation file will be referred to the Department of Law for appropriate preparation for litigation. At the time an accusation is served on the respondent, a copy will be sent to the Commission members by the Investigations Section. This is a function of the Chief Investigator.
- C. If the Department of Law determines that a matter is not adequately supported, or if a matter is determined to be of such

insignificance not to warrant process in litigation, that matter will be otherwise processed by the Investigations Section for resolution or closure. This may be accomplished by the Department of Law, or will be in accordance with recommendations by that department which will probably include resolution directly by the Commission. Regardless, these matters will be brought before the Commission for formal concurrence to close or for the Commission to resolve and close.

V. CLOSURES, WITHOUT HEARINGS

All cases closed that do not require hearing or other litigation process by the Commission, whether closed by the executive secretary or the Investigations Section, will contain a report of closure as the last document in the file. This report of closure will include as a minimum the date closed before the Commission and a clear, but brief, explanation why the Commission closed the matter. Recommendations for referral, as appropriate, will also be written into the report of closure. The closed file will then be transferred with the cover memorandum (see III above) to the Investigations Section. The Investigations Section will then proceed to close the matter from the main Investigations Section files maintained by the Chief Investigator.

VI. REPORTS TO THE REAL ESTATE COMMISSION

- A. The Real Estate Commission will receive a written status report prior to each meeting on all cases currently handled by the Investigations Section. A similar report will be provided on all cases currently being handled by the executive secretary. This will consist of stating the number of cases open since the last report, number in progress, and the number closed since the last report.
- B. Status reports, whether prepared by the Investigations Section or the executive secretary, will not contain investigative details or developments or inferences of guilt or innocence. The Commission members will not be exposed to such information until the case is presented for closure by the Commission or presented in hearing.

VII. GENERAL

Cases currently under process by the executive secretary will be retained by the executive secretary until resolved or documented in detail what has been done to date pursuant to III above.

January 17, 1979

This procedure is effective on receipt and follows discussion before the Real Estate Commission during the meeting of December 6, 1978. Any problems which may develop on implementation of this procedure, or any requests for changes or additions, should be sent to this office immediately for consideration.

DH/mh/5/12

cc: Frank Moore, Investigator, Anchorage Field Office
Bob Barton, Investigator, Anchorage Field Office

Executive Secretary to the Real Estate Commission
Description of Duties

Administer and supervise the activities and functions of the Real Estate Commission office, arranging for efficient operation of office procedures in accordance with the law and policies set by the Real Estate Commission.

Resolve complaints from the public and the profession regarding violations of the Real Estate Act, AS 08.88, and provide for settlement or refer the matter to the proper court for appropriate action.

Interpret and administer the statutes (AS 08.88) and Regulations (12 AAC 64) in order to properly apply them to the functions of the office in the best interest of the public. Recommend any needed additions or amendments to regulations and/or statutes.

Establish policies to assure that the provisions of the statutes and regulations will be adequately administered for the protection of the public.

Assist the Office of the Attorney General and/or the District Attorney to compile and provide evidence to support and prosecute claims of violations of AS 08.88, Real Estate Act.

Attend and participate in professional meetings of District, State, and regional levels, and report in writing back to Commission and Department. Attend all regular Real Estate Commission meetings.

Approve real estate schools or classes in collaboration with the Real Estate Commission and review their curriculum to assure that it corresponds to the statutes, regulations and accepted real estate practices current in the State. Require reports by the schools as are deemed necessary to determine the students' course of study.

Keep the public alerted of the services available and to publicize violations.

Prepare figures on estimated expenditures to assist the Division in preparing the annual budget.

Compile and file a quarterly consolidated activities report with the Real Estate Commission and Department of Commerce.

Perform other duties as may be required by the Department of Commerce or the Real Estate Commission.

TO: Elaine Garrett
Dept. of Commerce
Div. of Occupational Licensing

DATE: July 5, 1979

FILE NO: J-66-776-79

TELEPHONE NO:

FROM: AVRUM M. GROSS
ATTORNEY GENERAL

SUBJECT: Educational Testing
Service Contract

By: *Norm E. Staton*
Norman E. Staton
Assistant Attorney General

You have requested us to review the \$50 examination fee of the Alaska Real Estate Commission in light of the proposed change of the Educational Testing Service conducting the examination and charging \$11.

From the letter of James L. Magowan, Executive Secretary of the Alaska Real Estate Commission, we assume the following facts. Presently, each applicant is charged a \$50 examination fee by the Division of Occupational Licensing. In the future, the Educational Testing Service will be responsible for the total administration of the examination and will directly charge each applicant \$11 to take the exam. This change raises the issue of whether the commission should credit the \$11 examination fee charged by ETS to the general \$50 examination fee or in the alternative have the \$11 examination fee be in addition to the general \$50 examination fee.

We recommend that ETS's \$11 examination fee be credited to the general \$50 examination fee. Although Mr. Magowan proposes that the regulations could be drafted either way, we remind you that the regulations must be consistent with the statute. Under AS 08.88.111, 1/ the Department of Commerce shall adopt procedural regulations regarding examination. The proposed change appears consistent with AS 08.88.111, in that the examination will be separated into two parts. The first, a written examination of the applicant's minimum competence and the second, examination of the applicant's qualifications.

-
- 1/ AS 08.88.111. Department Regulations. The department shall adopt procedural regulations describing
- (1) how it conducts an examination;
 - (2) how a person applies to take an examination, applies for a license, and registers his office.

However, under AS 44.62.030 2/ the proposed regulation must be consistent with the statute. AS 08.88.221 3/ provides for a \$50 examination fee and as a result of AS 44.62.030, the proposed regulation must not exceed that amount or it will be invalid.

Therefore, we recommend the proposed regulation provide that the ETS examination fee be credited to the general \$50 examination fee.

In addition, we feel it appropriate to comment on Mr. Magowan's statement that the regulations could be adopted on an emergency basis. The proposed regulation would not seem to be "necessary for the immediate preservation of the public peace, health, safety or general welfare" and as a result, would not qualify as a emergency regulation of AS 44.62.250. We recommend that you coordinate the time sequence for your regulations with your need requirements without the use of emergency regulations.

2/ AS 44.62.030. Consistency between regulation and statute. If, by express or implied terms of a statute, a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute.

3/ AS 08.88.221. Fees. (a) The following fees shall be charged a real estate broker or associate broker licensee or applicant when applicable: (1) examination ... \$50.

* * *

NES:bwb

Original sponsor: Bennett by request

Offered: 4/16/79
Referred: Rules

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2

CS FOR SENATE BILL NO. 212 (Judiciary)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

ELEVENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the regulation of real estate

7

brokers and salesmen; and providing for an effective

8

date."

9

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

10

* Section 1. AS 08.88.041(b) is amended to read:

11

(b) Of the five members of the commission who must be real estate

12

brokers or associate brokers, one [ONE] member [OF THE COMMISSION] shall

13

be from the First Judicial District, one shall be from the Second

14

Judicial District, one shall be from the Third Judicial District, one

15

shall be from the Fourth Judicial District and one shall be from the

16

state at large. However, if no licensed real estate broker or licensed

17

associate broker [PERSON] is eligible or available for appointment from

18

the Second Judicial District, then two licensed real estate brokers or

19

licensed associate brokers shall be appointed from the state at large.

20

* Sec. 2. AS 08.88.071(a) is amended by adding a new paragraph to read:

21

(6) issue a temporary permit to the executor, administrator,

22

or personal representative of the estate of a deceased broker or to some

23

other person designated by the commission in order to secure proper

24

administration in concluding the affairs of decedent broker's real

25

estate business.

26

* Sec. 3. AS 08.88.091 is repealed and re-enacted to read:

27

Sec. 08.88.091. EDUCATION. The commission shall

28

(1) initiate and maintain a program of continuing education

29

in real estate by

1 (A) reviewing and, when applicable, granting approval to
2 courses of instruction which provide opportunity to persons engaged
3 in the real estate business to gain knowledge and reasonable pro-
4 ficiency in current real estate practices and procedures;

5 (B) defining course standards, to include a variety of
6 subject material covering general and special areas of real estate
7 practice and procedure in courses presented by

8 (i) accredited educational institutions;

9 (ii) private vocational schools;

10 (iii) correspondence schools; or

11 (iv) educational programs, seminars, and workshops
12 offered by institutes, professional societies and organiza-
13 tions, and equivalent offerings;

14 (C) qualifying instructors to present approved courses
15 of instruction based on the academic qualifications and practical
16 experience in real estate of the instructor and the specific course
17 to be offered;

18 (2) assist in conducting real estate clinics, meetings,
19 courses, or institutes;

20 (3) assist educational institutions in sponsoring studies and
21 programs for the purpose of raising the standards of the real estate
22 business and the competency of licensees; and

23 (4) maintain a list of those educational programs which
24 receive approval under (1) of this subsection.

25 * Sec. 4. AS 08.88.171(a) is amended to read:

26 (a) A person is entitled to a real estate broker license if he has
27 been a resident of the state for 90 days and if he applies for his
28 license within six months after the date he completed the real estate
29 examination, furnishes satisfactory proof that he has successfully com-

1 pleted all requirements imposed by AS 08.88.173 [RECEIPT OF NOTICE THAT
2 HE HAS PASSED THE REAL ESTATE EXAMINATION, FILES THE REQUIRED BOND], and
3 is an owner of a real estate business or employed as a real estate
4 broker by a corporation or a partnership, if the corporation or partner-
5 ship does not have an existing licensed broker. Unless the broker [HE]
6 fails to pay the biennial renewal fee or fails to furnish satisfactory
7 proof that he has complied with all continuing educational requirements
8 under AS 08.88.175, or unless his license is suspended or revoked under
9 AS 08.88.071(3), the [A] real estate broker's license continues in
10 effect so long as he is an owner of a real estate business, or he is
11 employed as a real estate broker by a corporation or a partnership. If
12 he stops being an owner of a real estate business, or stops being
13 employed as a real estate broker by a corporation or partnership, his
14 license is suspended from the time he stops until

15 (1) he again becomes an owner of a real estate business or is
16 again employed as a real estate broker by a corporation or a partner-
17 ship; or

18 (2) he is employed by a licensed real estate broker, in which
19 case his real estate broker license is returned to the department, and
20 the department issues him an associate real estate broker license.

21 * Sec. 5. AS 08.88.171(b) is amended to read:

22 (b) A person is entitled to an associate real estate broker li-
23 cense if he has been a resident of the state for 90 days and if he
24 passes the real estate examination, applies for his license within six
25 months after the date he completed the real estate examination, fur-
26 nishes satisfactory proof that he has successfully completed all require-
27 ments imposed by AS 08.88.173 [RECEIPT OF NOTICE THAT HE HAS PASSED THE
28 EXAMINATION, FILES THE REQUIRED BOND], and is employed by a licensed
29 real estate broker. Unless the associate broker [HE] fails to pay the

1 biennial renewal fee or fails to furnish satisfactory proof that he has
2 complied with all continuing educational requirements under AS 08.88.175,
3 or unless his license is suspended or revoked under AS 08.88.071(3), the
4 [AN] associate real estate broker's license continues in effect so long
5 as he is employed by a licensed real estate broker. If he stops being
6 employed by a licensed real estate broker, his license is suspended from
7 the time he stops until

8 (1) he again is employed by a real estate broker; or

9 (2) he becomes an owner of a real estate business, in which
10 case his associate real estate broker license is returned to the depart-
11 ment, and the department issues him a real estate broker license.

12 * Sec. 6. AS 08.88.173(c) is amended to read:

13 (c) A person is entitled to a real estate salesman license if he
14 has been a resident of the state for 90 days and if he passes the real
15 estate salesman examination, applies for his license within six months
16 after the date he completed the real estate examination, furnishes
17 satisfactory proof that he has successfully completed all requirements
18 imposed by AS 08.88.173 [RECEIPT OF NOTICE THAT HE HAS PASSED THE EXAM-
19 INATION, FILES THE REQUIRED BOND], and is employed by a real estate
20 broker. Unless the salesman [HE] fails to pay the biennial renewal fee
21 or fails to furnish satisfactory proof that he has complied with all
22 continuing educational requirements under AS 08.88.175, or unless his
23 license is suspended or revoked under AS 08.88.071(3), the [A] real
24 estate salesman's license continues in effect so long as he is employed
25 by a licensed real estate broker. If he stops being employed as a real
26 estate salesman, his license is suspended from the time he stops until
27 he again is employed by a licensed real estate broker.

28 * Sec. 7. AS 08.88 is amended by adding new sections to read:

29 Sec. 08.88.173. PREPARATORY REQUIREMENTS. (a) An applicant for

1 an initial license as a real estate broker or associate real estate
2 broker shall provide evidence that he has passed the real estate examina-
3 tion and, during the two years preceding submission of his license
4 application, successfully completed 60 hours of courses, workshops,
5 seminars, institutes or programs approved by the commission under AS 08.-
6 88.091(1).

7 (b) An applicant for an initial license as a real estate salesman
8 shall provide evidence that he has passed the real estate examination
9 and, during the two years preceding submission of his license applica-
10 tion, successfully completed 30 hours of courses, workshops, seminars,
11 institutes or programs approved by the commission under AS 08.88.091(1).

12 Sec. 08.88.175. CONTINUING EDUCATION REQUIREMENTS. (a) A real
13 estate broker, associate real estate broker, or real estate salesman who
14 holds an active license or who seeks reinstatement of an inactive
15 license shall provide evidence that he has, during the two years preced-
16 ing the biennial renewal period, successfully completed 30 hours of
17 courses, workshops, seminars, institutes or programs approved by the
18 commission under AS 08.88.091(1).

19 (b) The provisions of (a) of this section do not apply to a person
20 renewing an inactive license within two years of the date on which his
21 license becomes inactive.

22 Sec. 08.88.177. CREDIT FOR INSTRUCTION. A real estate broker,
23 associate real estate broker, or real estate salesman who provides
24 evidence that he has been an instructor in a course, workshop, seminar,
25 institute or program approved by the commission under AS 08.88.091(1)
26 shall receive credit for his hours as an instructor against the require-
27 ments of AS 08.88.175. The commission may give course instruction
28 credit under this section only once for the same course of instruction.

29 * Sec. 8. AS 08.88.211(a)(4) is amended to read:

1 (4) has not been convicted of forgery, embezzlement, obtain-
2 ing money under false pretenses, larceny, extortion, conspiracy to de-
3 fraud or similar offense or of a felony involving moral turpitude within
4 the past 10 years, is not under indictment for fraud or embezzlement and
5 has not engaged in conduct that demonstrates that he is unfit to be a
6 real estate broker;

7 * Sec. 9. AS 08.88.211(b) 3) is amended to read:

8 (3) has not been convicted of forgery, embezzlement, obtain-
9 ing money under false pretenses, larceny, extortion, conspiracy to de-
10 fraud or similar offense or of a felony involving moral turpitude within
11 the past 10 years, is not under indictment for fraud or embezzlement and
12 has not engaged in conduct that demonstrates that he is unfit to be a
13 real estate salesman;

14 * Sec. 10. AS 08.88.241 is amended to read:

15 Sec. 08.88.241. REINSTATEMENT OF LAPSED LICENSE. A licensee who
16 was required to take an examination before receiving a license and whose
17 license has lapsed for more than six months [THREE YEARS] shall be
18 re-examined before reinstatement.

19 * Sec. 11. AS 08.88.251(b) is amended to read:

20 (b) An inactive licensee may not do anything authorized by [ANY OF
21 THE THINGS] AS 08.88.161 for [AUTHORIZES] an active licensee [TO DO, NOR
22 IS HE REQUIRED TO HAVE A BOND].

23 * Sec. 12. AS 08.88.251(c) is amended to read:

24 (c) A person who is inactive may become active by applying for an
25 active license, paying the required fees, and providing evidence of com-
26 pletion of educational requirements, when required [BY RETURNING TO THE
27 DEPARTMENT HIS INACTIVE LICENSE CERTIFICATE, THE ACTIVE LICENSE BIENNIAL
28 RENEWAL FEE, IF HE BECOMES ACTIVE MORE THAN FIVE MONTHS BEFORE JANUARY 1
29 FOLLOWING, AND A COMPLETED FORM PROVIDED BY THE DEPARTMENT]. In the

1 application form he shall state the date on which he intends to become
2 active. His active status begins on the date stated. The department
3 shall send him a license certificate. A person is entitled to change
4 from an inactive to an active status without examination if he has not
5 been inactive more than three years. If he has been inactive more than
6 three years, he is required to take an examination.

7 * Sec. 13. AS 08.88. is amended by adding a new section to read:

8 Sec. 08.88.263. LICENSE BY ENDORSEMENT. A person who holds a
9 valid active real estate license issued by another state shall be
10 granted an equivalent Alaska real estate license if he

11 (1) passes the portion of the real estate examination which
12 examines on Alaska law; and

13 (2) meets the requirements of AS 08.88.171 and 08.88.211.

14 * Sec. 14. AS 08.88.361 is amended to read:

15 Sec. 08.88.361. WHEN COMMISSION IS EARNED. A commission is earned
16 when the real estate broker fulfills the terms of a written agreement
17 [FINDS A BUYER WILLING AND ABLE TO PURCHASE AT A PRICE AND ON TERMS SET
18 BY THE SELLER, PROVIDING NEGOTIATIONS WITH THE BUYER WERE INITIATED
19 DURING THE TERM OF A VALID LISTING AGREEMENT AND WITHIN THE TIME LIMIT
20 OF THE LISTING].

21 * Sec. 15. AS 08.88.261 is repealed.

22 * Sec. 16. Section 1 of this Act takes effect February 1, 1981. Sections
23 2, 3, 8 - 11, and 13 - 15 of this Act take effect immediately in accordance
24 with AS 01.10.070(c). Sections 4 - 7 and 12 of this Act take effect
25 February 1, 1980.

1978 Proposed Amendments by Commission

Add new statute

08.88.176 Death of a Broker. In the event of a death of a broker, the real estate commission shall have the authority to issue a temporary permit to the executor, administrator, or representative of the estate of the deceased broker or to some person designated by the real estate commission to continue to transact business for the sole purpose of concluding the affairs of the deceased broker.

Change Sec. 08.88.361. When commission is earned. To read: A commission is earned when the real estate broker fulfills the terms of a written employment agreement.

Change Sec. 08.88.091. Education. To read: The commission shall establish and assist in conducting real estate clinics, meetings, courses, or institutes. The commission shall assist educational institutions in sponsoring studies and programs for the purpose of raising the standards of the real estate business and the competency of licensees.

Add new statute

08.88.036. Educational Coordinator of Commission. The Commissioner of Commerce and Economic Development shall appoint a full time staff administrator whose duties shall be to serve with the Real Estate Commission to carry out the requirements of Sec. 08.88.091 of this chapter.

Change Sec. 08.88.171. Entitlement to license. To read: (a) A person is entitled to a real estate broker license if he has been a resident of the state for 90 days and if he applies for his license within six months after the date he took the exam, furnishes satisfactory proof that he has completed successfully all educational requirements adopted by the commission, and is an owner of a real estate business or employed as a real estate broker by a corporation or a partnership....(all of the rest of (a)(1)(2) remain the same)

(b) A person is entitled to an associate real estate broker license if he has been a resident of the state for 90 days and if he passes the real estate examination, applies for his license within six months after the date he took the exam, furnishes satisfactory proof that he has completed successfully all educational requirements adopted by the commission, and is employed by a licensed real estate broker.... (all of the rest of (b)(1)(2) remain the same)

(c) A person is entitled to a real estate salesman license if he has been a resident of the state for 90 days and if he passes the real estate salesman examination, applies for his license within six months after the date he took the exam, furnishes satisfactory proof that he has completed successfully all educational requirements adopted by the commission, and is employed by a real estate broker....(all of the rest of (c)(d) remain the same)

Delete Sec. 08.88.261

Add new statute

08.88.177. Reciprocity. A person who holds a valid active real estate license from another state shall be granted an equivalent Alaska real estate license upon passing the Alaska law portion of the exam and meeting the requirements of Sec. 171 and 211 of this chapter.

Delete from Sec. 08.88.251(b) nor is he required to have a bond.

Change Sec. 08.88.211(a)(4) to read: has not been convicted of forgery, embezzlement, obtaining money under false pretences, larceny, extortion, conspiracy to defraud, or any other similar offense or offenses or has not been convicted of a felony involving moral turpitude within the past 10 years, is not under indictment for fraud or embezzlement and has not engaged in conduct that demonstrates that he is unfit to be a real estate broker;

Change Sec. 08.88.211(b)(3) to read: has not been convicted of forgery, embezzlement, obtaining money under false pretences, larceny, extortion, conspiracy to defraud, or any other similar offense or offenses or has not been convicted of a felony involving moral turpitude within the past 10 years, is not under indictment for fraud or embezzlement and has not engaged in conduct that demonstrates that he is unfit to be a real estate salesman;

Delete from Sec. 08.88.251(c), if he becomes active more than five months before January 1 following,

Change Sec. 08.88.251(c) to read: A person is inactive may become active by applying for an active license and paying the required fees, and a completed form provided by the Department. (The rest of the section remain the same)

Change Sec. 08.88.241. Reinstatement of lapsed license. A licensee who was required to take an examination before receiving a license and whose license has lapsed for more than six months shall be re-examined before reinstatement.

MEMORANDUM

TO: Elaine Garrett
Management Analyst

DATE: August 29, 1979

FILE NO.

TELEPHONE NO.

FROM: James L. Magowan
Executive Secretary
Real Estate Commission

SUBJECT: Real Estate Investigation/
Complaints (Memo of 8/23/79)

There is apparently some confusion of terms in regard to "investigations." Most cases before the real estate commission have not been investigated in great depth. What has been done since 1976 is as follows:

1. Receipt of written complaint
2. All licenses implicated are sent "10 day letter"
3. Response and complaint are evaluated - if there is reason to continue at this point. Further investigation is made - occasionally interviews etc., are conducted.
4. If response satisfies us the case is recommended to the commission for closing.
5. If case's further investigated or file is prepared for Attorney General to issue accusation.

As far as I have been concerned all written complaints are investigated - even if only to the extent of requiring a response to a 10-day letter.

The 10-day letter automatically requests trust account records - this is our only form of random "auditing."

Most "complaints" or inquiries are not written and no record of them exists. I receive many phone calls each day from persons who are not

pleased with real estate transactions. Most complaints - both written and phoned are from the public. We receive a few from licensees. Sometimes the caller is able to resolve the problem by calling the licensee and telling them what I said. Sometimes I make a call or two to find out "what is going on" which results in problems disappearing.

I estimate the phone complaints at better than 3 or 4 times the number of written complaints.

There are also innumerable calls from licensees asking clarification of the law with respect to specific situations. The phone inquiries absorb most of my time. Over the past four years I have been able to thoroughly investigate few cases because the initial receipt of cases and the phone inquiries have taken most of my time.

The following is a tabulation of written complaints for FY 78 and FY 79.

FY 1978 Received 107 written complaints

Closed 94

Two licenses were revoked.

One license was denied.

One applicant was denied admittance to the examination.

One hearing on two licensees is in progress.

One exam score was cancelled (cheating - 2 applicants)

One hearing was requested on 9/1/78 by the commission but this has not occurred.

Total for 2 years 234 written complaints
 150 Closed
 84 referred to investigations
 or inactive.

We are closing about 60% of our cases. A number of these have died of old age.

It should be noted that a number of serious cases have had hearings requested by the commission but there has been no action to proceed with hearings on most of these.

Most of our serious cases involve misrepresentation, fraud or embezzling. Misrepresentation, fraud and embezzling all require a considerable amount of investigation.

We know of brokers and salesmen who are repeat offenders but nothing happens.

Example: We currently are awaiting an accusation against [REDACTED], Broker. [REDACTED] confessed judgement in a \$45,000 embezzlement.

Over a year ago the commission requested a hearing against [REDACTED] in another complaint. Last October in an inspection of her trust account I found a \$7,000 embezzlement and again requested a hearing through the investigation section. There are about three other "old" complaints against her. Nothing has happened on these.

One case against her was referred to the ombudsman's office due to delay. The Legislative Audit felt the charge of delay was justified - and this case is the most difficult to prove and the most minor offense filed against her.

We get some complaints from licensees--usually difficulty in collecting earned commissions from brokers. Most of these are considered civil disputes and out of commission jurisdiction. The majority of our complaints are from aggrieved buyers and/or sellers.

H

STATE OF ALASKA
Board of Public Accountancy
(October, 1979)

Findings

The Board of Public Accountancy operates under AS 08.04 to license qualified applicants and regulate individuals within the profession. It is to the benefit of the public that business entities within communities can be competently evaluated and subsequently perpetuated on the basis of economic viability. The Board of Public Accountancy has demonstrated responsibility and conscientiousness in performing its duties. We believe that the Board and State regulation of the profession should continue.

I. General information

A. Regulated Parties

1. Certified Public Accountants
2. Public Accountants
3. Partnerships and Corporations

B. Definitions

"(1) 'accountant' means any person licensed in the state as either a certified public accountant or public accountant under AS 08.04;

(7) 'practice of public accounting' means the holding of a CPA certificate or a PA license and the performance for the general public of any auditing services, accounting services, tax services, management services or special accounting services for compensation; this definition does not apply to acts of public officials or public employees in the performance of their duties, or to any officer, employee, partner, or principal except for those employed as an employee, partner, principal, or practitioner of a certified public accountant firm or public accountant firm;" (12 AAC 04.290)

C. Nature and Composition of Board

1. Board members and terms:

Three-year term; no person who has served two successive complete terms may be reappointed until one year from the expiration of his term.

Charlotte Stuart, C.P.A., Inactive (Chairman)	ends April 25, 1981
James Dieringer, C.P.A. & P.A.	ends April 25, 1981
Vern Johnson, C.P.A. & P.A.	ends April 25, 1981
L. Pete Hogan, C.P.A.	ends April 25, 1980
Roxana Kemp (public member) (professional member vacancy) (public member vacancy)	ends April 25, 1981

2. Representation:

Profession = 5 (by statute)
Public = 2 (by statute)

3. Qualifications:

"Each member shall be a resident of this state for at least one year. Three members shall be certified public accountants, two members shall be public members in accordance with AS 08.01.025, and the remaining members shall be public accountants." All professional members must hold a current certificate or license or must be eligible to receive a permit.
(AS 08.04.020)

D. Licensing Data

Current Licenses	(through September, 1979)
in-State	364
out-of-State	<u>37</u>
Total	401

E. Fees

1. examination	\$ 50.00
2. partnership change	5.00
3. biennial permit (partnership or corporate practice)	60.00
4. annual permit	100.00

F. Board Revenues and Expenditures

	FY '76	FY '77	FY '78	FY '79
Receipts	\$21,437.00	\$15,780.00	\$39,265.00	\$21,471.00
- refunds	<u>660.00</u>	<u>645.00</u>	<u>590.00</u>	<u>285.00</u>
Total	\$20,777.00	15,135.00	\$38,675.00	\$21,186.00
Expenditures				
Transportation	2,399.90	2,645.48	4,263.76	4,022.26
Per Diem	2,051.53	3,117.17	2,723.50	3,638.00
Phone	131.26	316.55	393.17	875.08
Printing, Adver. & Postage	897.75	2,091.24	854.25	767.43
Fees & Services	6,773.90	6,532.17	8,356.70	10,370.01
Rents, Leases & Other	<u>71.15</u>	<u>436.09</u>	<u>657.43</u>	<u>562.15</u>
Total	<u>\$12,325.49</u>	<u>\$15,138.70</u>	<u>\$17,248.81</u>	<u>\$20,174.93</u>
Surplus	\$ 8,451.51	-	\$21,426.19	\$ 1,011.07
Deficit	-	\$ 3.70	-	-

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

G. Complaints

One case remains open since August, 1976; this case went to litigation and in March, 1978, the individual's license was revoked. A March, 1977 case involving misuse of funds was responded to in August by the individual against whom the complaint was made; apparently no further action has been taken. Six complaints remain open from 1978: four show no action in the files, one is pending receipt of further information from the complainant, and one was resolved in July, 1978. Four complaints were received in 1979, all of which are pending investigation. Thirty-three cases have been purged from agency files and will be taken before the Board with a recommendation for closure due to age of complaint and lack of jurisdiction. (The Board considered and closed a number of these cases at its October, 1979 meeting.)

The twelve open cases consist of complaints regarding unlicensed activity, overcharging, misuse of funds, and criminal activities. Five were received from members of the profession and the remainder from the profession and/or Board.

II. Analysis

- A. To what extent has the Board of Public Accountancy operated in the public interest?

The Board of Public Accountancy has acted in the public interest in assuring qualified practitioners and availability of services throughout the State. Recommendations and observations made in this review are designed to enhance Board operations in regulating the profession in a manner which is most desirable for the continued protection of the public.

The Board is given broad authority in its affairs under AS 08.04.070(b) which provides that the Board "may adopt and amend regulations for the orderly conduct of its affairs and for the administration of this chapter." Extensive regulations have been adopted by the Board (and more are being promulgated) concerning rules of professional conduct, meetings of the Board, requirements for certificate or license, examination procedures, reciprocity (endorsement), general provisions, and continuing education.

Applicants for licensure as Certified Public Accountants or Public Accountants must be at least 19 years old, Alaska residents, and of good moral character. They must also meet the education and experience requirements prescribed by the Board. All applicants for initial licensure in Alaska (who are not licensed by endorsement) must take the uniform CPA examination prepared and graded by the American Institute of Certified Public Accountants. The applicant may take and pass all parts of the CPA examination prior to obtaining the necessary experience. The examination consists of four major parts: auditing, theory, business law, and accounting practice; accounting practice consists of two "sub-parts." Applicants who have passed all of the accounting practice portion of any other two parts are considered to be "conditioned," and may retake all or any one of the remaining parts at subsequent examinations. The ability of Alaska applicants to take only portions of the test has been a matter of concern to the Board because some states require the "all or nothing" procedure; licensees who obtained their certificates in another manner may not be eligible for reciprocity or endorsement in those states. Alaska proctors for other states' candidates and most states proctor for Alaska candidates. The Board will also be requiring applicants who have passed the Uniform CPA examination to take and pass an ethics examination, graded by the American Institute.

As of September, 1979, there were 27 resident and 11 nonresident partnerships registered with the Department of Commerce and Economic Development, and 16 corporations. Eight individuals are licensed Public

Accountants, two of which are Board members, yet AS 08.04.020 requires two Public Accountants to serve on the Board. The Board is supposed to consist of seven members, three CPAs, two PAs, and two public members. Five members is considered to be adequate but is not in keeping with statutes.

Temporary certifications are statutorily provided for CPA applicants who do not meet residency requirements, or who do not have a place of business in the State, or are not regularly employed in the State. The Board does not issue temporary certificates. Residency requirements have not been shown to affect the job performance of licensees and have no relationship to their professional ability. It is suggested that all such requirements be deleted from Board statutes.

AS 08.04.425 mandates Board regulations prescribing criteria for continuing education as a condition of relicensure. Regulations effective January 18, 1978 accomplished this and will be utilized for December 31, 1979 renewals. Based upon a memorandum from the Department of Law dated October 27, 1978, renewal applicants will be required to have completed 58.5 hours of continuing education in 1979 and 60 hours each renewal prior thereafter (see Appendix A). Exceptions to continuing education requirements are instances of chronic illness, retirement, military service or as individually determined by the Board.

The Board has the authority to revoke or suspend certificates, licenses, registrations or permits. This has been done in some cases. The Board is actively concerned about enforcement and has suggested development and implementation of a positive enforcement program which would, of course, require additional funding.

Maintenance of records and supporting documents by the administrative agency is an area of some concern. Minutes clearly reflect approval and denial of applicants, Board policies and resolutions, and indications of

intent for actions (or inaction). Agency records, however, are lacking some pertinent information and follow through material. Steps have recently been taken to organize records and files for all boards and commissions, and relevant statistics on activity are being maintained. Efforts in this area will continue.

- B. To what extent has the operation of the Board of Public Accountancy been impeded or enhanced by existing statutes, procedures and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

Generally speaking, the Board of Public Accountancy has done very well with the resources provided to it. As with all boards and commissions for which support services are furnished by the Department, it has been adversely affected by limitations in budget and personnel. Support staff is provided by the Division of Occupational Licensing and is presently adequate to serve Board needs; however, past employee turnover has impeded continuity and follow-up on Board requests. Fees and revenues for all boards and commissions under the jurisdiction of the Division of Occupational Licensing are collected through the Division and are deposited into a general fund. Monies deposited and withdrawn are identified by codes so that direct board revenues and expenses may be determined.

The Board has encountered the same difficulties as have all other boards and commissions with respect to investigative services provided by the administrative agency. During FY '78 two investigator positions were vacant; as a result, one position was abolished by the Legislature. At the present time, two investigators are located in Anchorage with a Chief Investigator located in Juneau. An additional investigator position was approved in the FY '80 budget but will probably not be filled immediately due to vacancy factors incorporated into the personal ser-

vice category of the budget. Procedural constraints of the administrative adjudication article of the Administrative Procedure Act (AS 44.62.330-.630), while necessary, restrict timely disposition of litigation. Prioritization based on time, staffing and nature of alleged offense results in pursuit of only the most flagrant and potentially injurious licensing complaints. The administrative agency will continue to address the need for initial assessment and follow through on complaints with emphasis on magnitude of offense as it relates to public safety.

Statutory authority given the Board allows it to develop regulations, policies and procedures suitable and appropriate for its operations. The Board actively formulates and institutes changes as necessary. Further regulations are now pending hearings, approval and adoption.

C. To what extent has the Board of Public Accountancy recommended statutory changes which are generally of benefit to the public interest?

Two public members were added to the Board in 1976; the examination fee was increased from \$25 to \$50; continuing education requirements were added; and several clarifying and housekeeping amendments were made. The Board supports CSSB 185, now in Senate Rules Committee, which concerns issuance of temporary permits. As previously noted, the Board reviews its statutes and regulations routinely.

D. To what extent has the Board of Public Accountancy encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions, or to report to it concerning the effectiveness, economy, and availability of service which it has provided?

The bulk of participation at Board meetings and hearings has come from applicants for certification and/or members of the profession. Among these, substantial interest has been demonstrated in proposed regulations, particularly with respect to experience requirements. As a result of professional participation, changes were incorporated into experience provisions prior to final adoption of regulations in August, 1979.

The Board has considered methods of encouraging public interest in its activities. Effective August, 1979, form letters to applicants will contain a statement inviting them to attend Board meetings. There is also a requirement under AS 08.04.080 that all licensees be notified of proposed Board rules.

Public interests are furthered by a presence of public members on the Board. "In recent years a number of states have added one or more public members (citizens with no particular interest in the occupation or profession governed by the board) to licensing boards in an effort to ensure that the interests of the public would be represented in decision-making."¹ The State of California, which provides for a one-third public membership on health care boards and a public majority on others, has indicated that its experience with public members has been highly rewarding.

E. How efficiently are public inquiries or complaints regarding the activities of the Board of Public Accountancy processed and resolved?

¹Shimberg, B and Roederer, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, p. 20.

General inquiries regarding the activities of the Board are responded to by Department staff and by members of the Board. Indications are that these responses are both accurate and timely and that efforts are made to disseminate appropriate information.

Twelve open cases involving the profession were delineated earlier in this review, as were cases pending closure. Several were closed by the Board at its October, 1979, meeting.

F. To what extent does the Board of Public Accountancy present qualified applicants to serve the public?

Individuals wishing certification must submit fees and application to the administrative agency. They must have passed the CPA examination and meet the experience requirements. The examination and qualification procedure is designed to insure competency.

The Board is also making an active effort to insure quality service subsequent to certification through continuing education requirements and enforcement against abuses in practice.

G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Board of Public Accountancy in its own activities, and in its area of activity or interest?

Board staff consists of the support services of a licensing examiner employed by the Division of Occupational Licensing (also responsible to two other boards), who is hired through the State Personnel System and is subject to affirmative action requirements.

Licenses in this profession are issued on the basis of specific statutory criteria. Affirmative action requirements are not applicable to licensure qualifications.

H. To what extent are statutory, budgetary or other changes necessary to enable the Board of Public Accountancy to better serve the interests of the public?

Recommended statutory changes include: reduction of Board membership from seven to five and deletion of requirement for two Public Accountants on the Board (§ 200); deletion of requirement for notice of proposed rules to all licentiates (§ 080); repeal of residency and age requirements (§§ 110 and 280); repeal of § 120(1) as outdated; and repeal of § 260, regarding temporary certificates, as unnecessary.

Investigation and complaint procedures are being addressed by the administrative agency with emphasis being placed on magnitude of offense and public safety.

Board and administrative expenses outweigh revenues collected through regulation of this profession. Fees collected are not adequate to cover transportation and per diem for meetings and examinations, and Division of Occupational Licensing administrative overhead such as staff salaries, examination expenses, and investigative services.

- 180. Prior applicants
- 190. Examination fee
- 200. Use of title "certified public accountant"
- 210. Effect on existing certificates
- 220. Certification of foreign accountants
- 230. [Repealed]
- 240. Registration of partnerships and corporations composed of certified public accountants
- 250. [Repealed]
- 260. Temporary certificate as certified public accountant

Sec. 08.04.100. Certificate granted. The certificate of "Certified Public Accountant" shall be granted by the board to any person who meets the requirements of §§ 110-130 of this chapter. (§ 3(1) ch 187 SLA 1960)

Sec. 08.04.110. Personal requirements. An applicant for the certified public accountant certificate shall be

- (1) Repealed by § 3 ch 127 SLA 1974.
- (2) a resident of this state;
- (3) at least 19 years of age; and
- (4) of good moral character. (§ 3(2) ch 187 SLA 1960; am § 3 ch 127 SLA 1974)

Sec. 08.04.120. Educational and experience requirements. An applicant shall meet the following requirements of education and experience.

(1) During the period from April 26, 1960, to and including April 26, 1965, the educational requirement is graduation from a high school or the substantial equivalent thereof. The experience requirement is four years of accounting experience satisfactory to the board.

(2) After April 26, 1965, the educational requirement is

(A) satisfactory completion of two years of study at one or more colleges or universities recognized by the board, or

(B) graduation from a junior or community college in Alaska or otherwise recognized by the board, or

(C) the substantial equivalent of (2)(A) or (B) of this section.

The experience requirement is four years of accounting experience satisfactory to the board.

(3) After April 26, 1960, the education and experience requirements may also be satisfied by

(A) the satisfactory completion of four years of study with a nonaccounting major at one or more colleges or universities recognized by the board, and three years of accounting experience satisfactory to the board, or

(B) the satisfactory completion of four years of study with an accounting major at one or more colleges or universities recognized by the board, and two years of accounting experience satisfactory to the board. (§ 3(3)-(6) ch 187 SLA 1960)

Sec. 08.04.130. Examination. An applicant shall pass a written examination in theory of accounts, in accounting practice, in auditing and in other related subjects which the board determines appropriate. The examination shall be designated in advance by the board as an examination for the certificate of certified public accountant. The board shall use the uniform certified public accountants' examination and advisory grading service, if available. (§ 3(7) ch 187 SLA 1960)

Sec. 08.04.140. Frequency of examination. The examination shall be held by the board as often as it determines desirable but not more than three times each year. If the uniform certified public accountants' examination is available less frequently, an examination shall be held not less than once each year. (§ 3(8) ch 187 SLA 1960)

Sec. 08.04.150. Experience prerequisite for certificate. An applicant who meets the educational requirements of § 120 of this chapter may take the examination whether or not he has met the experience requirements of that section. However an applicant shall meet the experience requirements of § 120 of this chapter before he is entitled to receive a certificate. (§ 3(9) ch 187 SLA 1960)

Sec. 08.04.160. Re-examination. An applicant who fails an examination may take as many examinations as he chooses. An applicant who receives a passing grade in accounting practice or in at least two of the other subjects has the right to be re-examined in only the remaining subjects at succeeding examinations within five years after the first examination, if he takes an examination in the remaining subjects at least once each calendar year unless excused by the board for good cause. If the applicant receives a passing grade in the remaining subjects he has passed the entire examination. (§ 3(10) ch 187 SLA 1960)

Sec. 08.04.170. Examination standards. An applicant passes the examination by attaining a grade of at least 75 in each subject in which he is examined. The board may give credit to an applicant who has passed all or part of the examination in another state if the board determines that the standards under which the examination was held are

as high as the standards established for the examination in this State. (§ 3(10) ch 187 SLA 1960)

Sec. 08.04.180. Prior applicants. Any applicant who, before April 26, 1960, applied to take an examination for the certificate of certified public accountant, or held a valid license as a public accountant, or was regularly enrolled in any college or correspondence course in accounting, or any person whose registration under this chapter is accepted by the board, shall receive a certificate when he has met either the requirements of this chapter, or the requirements which were effective at the time his first application was filed, at the option of the applicant. (§ 3(11) ch 187 SLA 1960)

Sec. 08.04.190. Examination fee. The board shall charge each application a fee of \$50 for the initial examination and for each re-examination. The applicant shall pay the fee at the time he applies for examination or reexamination. (§ 3(12) ch 187 SLA 1960; am § 1 ch 147 SLA 1976)

Sec. 08.04.200. Use of title "certified public accountant". A person who has received a certificate from the board as a certified public accountant and who holds a current permit issued under §§ 390-440 of this chapter shall be known as a certified public accountant and may use the abbreviation "CPA". (§ 3(13) ch 187 SLA 1960)

Sec. 08.04.210. Effect on existing certificates. A person who, on April 26, 1960, held a certificate as a certified public accountant issued under the laws of the Territory or State of Alaska is not required to obtain a certificate under this chapter but is otherwise subject to this chapter. Certificates issued before April 26, 1960, shall be considered certificates issued under this chapter. (§ 3(14) ch 187 SLA 1960)

Sec. 08.04.220. Certification of foreign accountants. Upon finding that an applicant meets the requirements of §§ 110 and 120 of this chapter the board may issue a certified public accountant certificate to an applicant who holds a certified public accountant certificate in effect under the laws of any state, or who holds a certificate, license or degree in effect in a foreign country which constitutes a recognized qualification for the practice of public accounting in that country comparable to that of a certified public accountant in this state. (§ 3(15) ch 187 SLA 1960)

Sec. 08.04.230. Registration of foreign accountants. Repealed by § 2 ch 147 SLA 1976.

Sec. 08.04.240. Registration of partnerships and corporations composed of certified public accountants. (a) A partnership engaged in this state in the practice of public accounting may register with the board as a partnership of certified public accountants if it meets the following requirements:

(1) at least one general partner must be a certified public accountant of this state in good standing;

(2) each partner must be a certified public accountant of some state in good standing; and

(3) except as otherwise provided in this chapter, each resident manager in charge of an office of a firm in this state, and each partner personally engaged in this state in the practice of public accounting as a member of that firm must be a certified public accountant of this state in good standing.

(b) A corporation organized for the practice of public accounting may register with the board as a corporation of certified public accountants if it meets the following requirements:

(1) the sole purpose and business of the corporation must be to furnish to the public services not inconsistent with this chapter or the regulations promulgated under it by the board; however, the corporation may invest its funds in a manner not incompatible with the practice of public accounting;

(2) each shareholder of the corporation must be a certified public accountant of some state in good standing and must be principally employed by the corporation or actively engaged in its business; no other person may have any interest in the stock of the corporation; the principal officer of the corporation and any officer or director having authority over the practice of public accounting by the corporation must be a certified public accountant of some state in good standing;

(3) at least one shareholder of the corporation must be a certified public accountant of this state in good standing;

(4) except as otherwise provided in this chapter, each resident manager in charge of an office of the corporation in this state and each shareholder or director personally engaged in this state in the practice of public accounting must be a certified public accountant of this state in good standing;

(5) to facilitate compliance with the provisions of this section relating to the ownership of stock, there must be a written agreement binding the corporation or the qualified shareholders to purchase shares offered for sale by, or not under the ownership or effective control of, a qualified shareholder and binding a holder not a qualified shareholder to sell these shares to the corporation or the qualified shareholders; the agreement must be noticed on each certificate of corporate stock; the corporation may purchase any amount of its stock for this purpose, notwithstanding any impairment of capital, so long as one share remains outstanding;

(6) the corporation must be in compliance with those other regulations pertaining to corporations practicing public accounting in this state that the board may prescribe.

(c) Application for registration must be made upon the affidavit of a general partner or shareholder who is a certified public accountant of this state in good standing. The board shall in each case determine whether the applicant is eligible for registration. A partnership or corporation which is so registered and which holds a permit issued under § 400 of this chapter may use the words "certified public accountants" or the abbreviation "CPA's" in connection with its partnership or corporate name. Notification shall be given the board, within one month, after the admission or withdrawal of a partner or shareholder from a partnership or corporation registered under this section. (§§ 5(1), 10(3) ch 187 SLA 1960; § 3 ch 147 SLA 1976)

Sec. 08.04.250. Requirements for registration. Repealed by § 4 ch 147 SLA 1976.

Sec. 08.04.260. Temporary certificate as certified public accountant. If an applicant for a certificate as a certified public accountant meets all the requirements for a certificate except the residence requirement, or the requirement that he have a place of business in the state or be an employee regularly employed in this state, the board may issue a temporary certificate as a certified public accountant. The certificate is effective until the board notifies the applicant that his application has been granted or rejected. A temporary certificate is effective for a period not exceeding six months. No fee may be charged for the issuance of a temporary certificate. (§ 6 ch 187 SLA 1960)

Article 3. Public Accountants.

Section

- 270. License granted
- 280. Personal requirements
- 290. Educational and experience requirements
- 300. Examination for license
- 310. Use of term "public accountant"
- 320. Effect on existing licenses
- 330. Partnerships of public accountants
- 340. Requirements for registration

Sec. 08.04.270. License granted. A license as a public accountant shall be granted by the board to a person who meets the requirements of §§ 280-320 of this chapter. (§ 7(1) ch 187 SLA 1960)

Sec. 08.04.280. Personal requirements. Any person is qualified to apply for a license who

(1) Repealed by § 4 ch 127 SLA 1974.

(2) is a resident of this state or has a place of business in this state or is an employee regularly employed in this state;

(3) is at least 19 years of age; and

(4) is of good moral character. (§ 7(2) ch 187 SLA 1960; am § 4 ch 127 SLA 1974)

Sec. 08.04.290. Educational and experience requirements. The requirements of education and experience shall be

(1) graduation from a high school or the substantial equivalent, and

(2) four years of accounting experience satisfactory to the board. (§ 7(3) ch 187 SLA 1960)

Sec. 08.04.300. Examination for license. (a) An applicant shall pass a written examination on subjects the board determines appropriate. The board shall designate the examination in advance as an examination for the license of public accountant.

(b) The examination shall be given by the board as often as it considers desirable but not less than once each year.

(c) The board shall charge each applicant a fee of \$50 for an initial examination and for each reexamination. The applicant shall pay the fee at the time he applies for examination or reexamination. (§ 7(4)-(6) ch 187 SLA 1960; am § 5 ch 147 SLA 1976)

Sec. 08.04.310. Use of term "public accountant". A person who receives a license as a public accountant and who holds a permit issued under §§ 390-440 of this chapter, which are both in effect, shall be known as a public accountant and may use the abbreviation "PA." (§ 7(7) ch 187 SLA 1960)

Sec. 08.04.320. Effect on existing licenses. A person who, on April 26, 1960, held a license as public accountant issued under the laws of this state or the Territory of Alaska is not required to obtain a license under this chapter but is otherwise subject to this chapter. A license issued prior to April 26, 1960, shall be considered a license issued under this chapter. (§ 7(8) ch 187 SLA 1960)

Sec. 08.04.330. Partnerships of public accountants. A partnership engaged in this state in the practice of public accounting may register with the board as a partnership of public accountants, if it meets the requirements of § 340 of this chapter. In each case the board shall determine whether the applicant is eligible for registration. Applica-

tion for registration of a partnership shall be made upon the affidavit of a general partner of the partnership who is a certified public accountant or public accountant of this state in good standing. A partnership which is registered and holds a permit issued under §§ 390-440 of this chapter may use the words "public accountants" or the abbreviation "PA's" in connection with its partnership name. The partnership shall notify the board of any change in partners within one month from the date of the change, and pay a fee of \$5. The board shall prescribe registration procedure by regulation. (§§ 8(1), 10(3) ch 187 SLA 1960)

Sec. 08.04.340. Requirements for registration. The board shall register a partnership if

(1) at least one general partner is a certified public accountant or public accountant of this state in good standing;

(2) each partner personally engaged in this state in the practice of public accounting is a certified public accountant or public accountant in good standing and holds a valid permit to practice issued under §§ 390-440 of this chapter;

(3) each nonresident partner is a certified public accountant in good standing in any state; and

(4) all offices of a partnership established or maintained in this state for the practice of public accounting in this state are maintained and registered as required by §§ 350-380 of this chapter. (§ 8(2) ch 187 SLA 1960)

Article 4. Regulation of Accountants.

Section

350. Registration of offices

360. Supervision required

370. Use of title "certified public accountant" by registered office

380. Waiver of requirements

390. Permit for individual practice as a public accountant

400. Permit for partnership or corporate practice as a public accountant

410. Permit for person not engaged in practice

420. Permit for general practice as a certified public accountant

425. Continuing education

430. Expiration and renewal

440. Effect of failure to obtain permit

450. Revocation or suspension of certificate, license, registration or permit

460. Suspension or revocation of license revokes permit

470. Revocation or suspension of partnership or corporate registration or permit

480. Grounds for revocation or suspension of partnership or corporate permit

490. Reinstatement

Sec. 08.04.350. Registration of offices. Each office established or maintained in this state for the practice of public accounting in this state

(1) by a certified public accountant, partnership or corporation of certified public accountants, or

(2) by a public accountant, partnership or corporation of public accountants, shall registered annually with the board. No fee may be charged for registration. The board shall prescribe registration procedure by regulation. (§ 9(1) ch 187 SLA 1960; am § 6 ch 147 SLA 1976)

Sec. 08.04.360. Supervision required. Each office established or maintained in this state for the practice of public accounting shall be under the direct supervision of a person in residence who holds a permit under §§ 390-440 of this chapter. The supervisor may be either a sole proprietor, partner, principal or staff employee. A supervisor may serve in this capacity at one office only. (§ 9(?) ch 187 SLA 1960)

Sec. 08.04.370. Use of title "certified public accountant" by registered office. The title "certified public accountant" or the abbreviation "CPA" shall not be used in connection with an office registered under this chapter unless the "person in residence" required by § 360 of this chapter is a certified public accountant in this state. (§ 9(3) ch 187 SLA 1960)

Sec. 08.04.380. Waiver of requirements. The board may waive the requirements of §§ 240(a)(3) and (b)(4), 360 and 370 of this chapter if

(1) the community has a population of 2,000 or less; and

(2) the firm opening or maintaining the office maintains another office in the state which meets the requirements outlined in §§ 360 and 370 of this chapter. (§ 9(4) ch 187 SLA 1960; am § 2 ch 70 SLA 1964; am § 7 ch 147 SLA 1976)

Sec. 08.04.390. Permit for individual practice as a public accountant. The board shall issue a permit to engage in the practice of public accounting to a holder of a certificate or license if all offices of the certificate holder or licensee are maintained and registered as required by §§ 350-380 of this chapter. The biennial permit fee is \$60. (§ 10(1), (2) ch 187 SLA 1960; am § 8 ch 147 SLA 1976)

Sec. 08.04.400. Permit for partnership or corporate practice as a public accountant. The board shall issue a permit to engage in the practice of public accounting as a partnership or as a corporation to a

partnership or corporation registered under §§ 240 or 330-340 of this chapter. The biennial permit fee is \$60. A permit is valid only for practice under the registered name of the partnership or corporation. (§ 10(3) ch 187 SLA 1960; am § 9 ch 147 SLA 1976)

Sec. 08.04.410. Permit for person not engaged in practice. A person holding a certificate or license not engaged in the practice of public accounting may maintain his certificate or license in good standing by registering with the board and paying an annual registration fee of \$10. (§ 10(4) ch 187 SLA 1960; am § 10 ch 147 SLA 1976)

Sec. 08.04.420. Permit for general practice as a certified public accountant. A certified public accountant, or a partnership or corporation of certified public accountants in good standing in a state, not holding a permit under §§ 390 or 400 of this chapter nor maintaining an office in this state but engaging in the practice of public accounting in this state, shall apply to the board for a permit to practice. The board shall determine whether the applicant is eligible for the permit. The annual fee for the issuance of a permit is \$100. (§ 10(5) ch 187 SLA 1960; am § 11 ch 147 SLA 1976)

Sec. 08.04.425. Continuing education. (a) the board shall by regulation prescribe requirements for continuing education for persons licensed to practice as certified public accountants under this chapter. In adopting these regulations, the board may

(1) use and rely upon guidelines and pronouncements with respect to continuing education issued by recognized educational and professional associations in the field; and

(2) prescribe content, duration and organization of courses or programs that will satisfy the continuing education requirements.

(b) After the expiration of two years immediately following the effective date of regulations promulgated by the board under (a) of this section, every application for renewal of a permit to practice as a certified public accountant by a person who has held a certificate as a certified public accountant for two years or more shall be accompanied or supported by documents or other evidence indicating satisfaction of the continuing education requirements prescribed by the board during the two years immediately preceding the application.

(c) Failure by an applicant for renewal of a permit to practice to furnish that evidence constitutes grounds for revocation, suspension or refusal to renew the permit under § 450 of this chapter, unless the board determines that failure to have been due to reasonable cause or excusable neglect. However, the board may renew a permit to practice despite failure to furnish evidence of satisfaction of the continuing education requirements established under (a) of this section if the applicant agrees to follow a particular program or schedule of continuing education prescribed by the board.

(d) In adopting regulations under (a) of this section, or in issuing individual orders under (c) of this section,

(1) the board shall consider

(A) the accessibility of applicants to the continuing education courses or programs that it may require; and

(B) any impediments to interstate practice of public accountancy which may result from differences in continuing education requirements prescribed by other states; and

(2) the board may relax or suspend the continuing education requirements

(A) for applicants who certify that they do not intend to engage in the practice of public accountancy; or

(B) in instances of individual hardship. (§ 12 ch 147 SLA 1976)

Sec. 08.04.430. Expiration and renewal. A permit or registration under §§ 390-420 of this chapter, unless revoked or suspended, shall be renewed biennially upon payment of a renewal fee in the same amount as the initial biennial fee. (§ 10(6) ch 187 SLA 1960; am § 3 ch 94 SLA 1968)

Sec. 08.04.440. Effect of failure to obtain permit. Failure of a person, partnership or corporation to apply for the annual permit to practice or to pay the annual fee within (1) three years from the expiration date of the permit to practice or annual registration last obtained or renewed, or (2) three years from the date upon which the certificate holder or licensee was granted his certificate as a certified public accountant or license as a public accountant deprives him of the right to a permit or annual registration or renewal of a permit, unless the board determines that the failure is excusable. In case of excusable failure, the fee shall not exceed three times the annual fee. (§ 10(7) ch 187 SLA 1960; am § 13 ch 147 SLA 1976)

Sec. 08.04.450. Revocation or suspension of certificate, license, registration or permit. The board may revoke or suspend a certificate or license, or may revoke, suspend, or refuse to renew any permit, or may censure any certificate holder, licensee, registrant, or permit holder for

(1) fraud or deceit in obtaining any certificate, license, registration, or permit required by this chapter;

(2) dishonesty or gross negligence in the practice of public accounting, or other acts discreditable to the accounting profession;

- (3) violation of any provision of §§ 500-610 of this chapter;
- (4) violation of a rule of professional conduct or other regulation promulgated by the board;
- (5) conviction of a felony under the laws of any state or of the United States;
- (6) conviction of any crime, an essential element of which is dishonesty or fraud, under the laws of any state or of the United States;
- (7) cancellation, revocation, suspension, or refusal to renew authority to practice as a certified public accountant or public accountant in any other state for any cause other than failure to pay an annual registration fee;
- (8) suspension or revocation of the right to practice before any state or federal agency; or
- (9) [delete]
- (10) failure of a certified public accountant to satisfy the continuing education requirements prescribed by the board under § 425 of this chapter, except as conditioned, relaxed or suspended by the board under § 425(c) and (d) of this chapter. (§ 11(1) ch 187 SLA 1960; am § 14 ch 147 SLA 1976)

Sec. 08.04.460. Suspension or revocation of license revokes permit. Revocation or suspension of a certificate, license, or registration required for the issuance of a permit under §§ 390-440 of this chapter revokes or suspends the permit. (§ 11(2) ch 187 SLA 1960)

Sec. 08.04.470. Revocation or suspension of partnership or corporate registration or permit. The board shall revoke the registration and permit to practice of a partnership or corporation if at any time it does not meet the qualifications prescribed by the sections of this chapter under which it qualified for registration. (§ 12(1) ch 187 SLA 1960; am § 15 ch 147 SLA 1976)

Sec. 08.04.480. Grounds for revocation or suspension of partnership or corporate permit. The board may revoke or suspend the registration and permit to practice of a partnership or corporation, may revoke, suspend or refuse to renew its permit to practice or may censure the partnership or corporation for any of the causes enumerated in §§ 450 and 460 of this chapter, or for the following additional causes:

- (1) the revocation or suspension of the certificate, license or registration of any partner or shareholder;

(2) the revocation, suspension, or refusal to renew the permit to practice of any partner or shareholder;

(3) the cancellation, revocation, suspension, or refusal to renew the authority of the partnership or any partner or the corporation or a shareholder to practice public accounting in any other state for any cause other than failure to pay an annual registration fee in that state. (§ 12(2) ch 187 SLA 1960; am § 16 ch 147 SLA 1976)

Sec. 08.04.490. Reinstatement. Upon application in writing and after a hearing, the board may issue a new certificate to a certified public accountant whose certificate has been revoked, or may permit reregistration of one whose registration has been revoked, or may modify the suspension of or may reissue any certificate, license, or permit to practice public accounting which has been revoked or suspended. (§ 14 ch 197 SLA 1960)

Article 5. Unlawful Acts and Penalties.

Section

- 500. Individual posing as a certified public accountant
- 510. Partnership or corporation posing as a certified public accountant
- 520. Individual posing as public accountant
- 530. Partnership or corporation posing as public accountant
- 540. Use of deceptive title or abbreviation
- 550. [Repealed]
- 560. Individual may not assume title
- 570. Persons not affected
- 580. Partnership posing as accountants or auditors
- 590. Use of title with corporate name
- 600. Disclosure of lack of permit
- 610. Deceptive use of partnership or corporation title
- 620. Exceptions
- 630. Injunction against unlawful act
- 640. Penalty
- 650. Single act evidence of practice

Sec. 08.04.500. Individual posing as a certified public accountant. (a) No person may assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, word, letter, abbreviation, sign, card, or device tending to indicate that he is a certified public accountant, unless he has received a certificate, holds a permit issued under §§ 390-440 of this chapter, hereinafter referred to as a "live" permit, and all of his offices in this state for the practice of public accounting are maintained and registered as required by §§ 350-380 of this chapter.

(b) This section does not prohibit

(1) a certified public accountant in good standing in any state holding a permit under § 420 of this chapter from using the title certified public accountant;

(2) Repealed by § 17 ch 147 SLA 1976. (§ 15(1) ch 187 SLA 1960; am § 17 ch 147 SLA 1976)

Sec. 08.04.510. Partnership or corporation posing as a certified public accountant. (a) No partnership or corporation may assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, word, letter, abbreviation, sign, card, or device tending to indicate that it is composed of certified public accountants, unless the partnership or corporation is registered and holds a live permit, is practicing under its registered name, and its offices in this state for the practice of public accounting are maintained and registered as required by §§ 350-380 of this chapter.

(b) A partnership or corporation of certified public accountants in good standing in any state, not registered as a partnership or corporation of certified public accountants under §§ 240 and 250 of this chapter but holding a permit under § 420 of this chapter, may use the title or designation "certified public accountants." (§ 15(2) ch 187 SLA 1960; am § 18 ch 147 SLA 1976)

Sec. 08.04.520. Individual posing as public accountant. No person may assume or use the title or designation "public accountant" or the abbreviation "PA" or other title, designation, word, letter, abbreviation, sign, card, or device tending to indicate that he is a public accountant, unless he holds a live permit and his offices in this state for the practice of public accounting are maintained and registered as required by §§ 350-380 of this chapter. (§ 15(3) ch 187 SLA 1960)

Sec. 08.04.530. Partnership or corporation posing as public accountant. No partnership or corporation may assume or use the designation "public accountant" or the abbreviation "PA" or any other title, designation, word, letter, abbreviation, sign, card, or device tending to indicate that the partnership or corporation is composed of public accountants, unless the partnership or corporation holds a live permit, is practicing under its registered name, and its office in this state for the practice of public accounting is maintained and registered as required by §§ 350-380 of this chapter. (§ 15(4) ch 187 SLA 1960; am § 19 ch 147 SLA 1976)

Sec. 08.04.540. Use of deceptive title or abbreviation. No person, partnership or corporation may assume or use the title or designation "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant," "registered accountant", or any other title or designation likely to be confused with "certified public accountant" or "public accountant," or any of the abbreviations "CA," "EA," "LA," "RA", or similar abbreviations likely to be confused with

"CPA", or "PA"; however, a person, partnership or corporation holding a live permit and whose offices in this state for the practice of public accounting are maintained and registered as required by §§ 350-380 of this chapter may hold himself or itself out to the public as an accountant or auditor. (§ 15(5) ch 187 SLA 1960; am § 20 ch 147 SLA 1976)

Sec. 08.04.550. Corporation may not assume title. Repealed by § 21 ch 147 SLA 1976.

Sec. 08.04.560. Individual may not assume title. No person may sign or affix his name or any trade or assumed name used by him to any accounting or financial statement, or opinion or report on any accounting or financial statement with any wording indicating that he is a certified public accountant or public accountant or with any wording indicating that he has expert knowledge in accounting or auditing, unless he holds a live permit and his offices in this state for the practice of public accounting are maintained and registered as required by §§ 350-380 of this chapter. (§ 15(7) ch 187 SLA 1960)

Sec. 08.04.570. Persons not affected. Section 560 does not prohibit

(1) an officer, employee, partner, or principal of any organization from affixing his signature to any statement or report in reference to the financial affairs of the organization together with any wording designating the position, title or office which he holds;

(2) an act of a public official or public employee in the performance of his duties;

(3) a person maintaining a bookkeeping or tax service from affixing his signature to any record, statement or report maintained or prepared by him. (§ 15(7) ch 187 SLA 1960)

Sec. 08.04.580. Partnership posing as accountants or auditors. No person may sign or affix a partnership name with any wording indicating that it is a partnership composed of accountants or auditors or persons having expert knowledge in accounting or auditing to any accounting or financial statement, or to any opinion, or report on or certificate to any accounting or financial statement unless the partnership holds a live permit, is practicing under its registered name, and its offices in this state for the practice of public accounting are maintained and registered as required by §§ 350-380 of this chapter. (§ 15(8) ch 187 SLA 1960)

Sec. 08.04.590. Use of title with corporate name. No person may sign or affix a corporate name with any wording indicating that it is a corporation performing services as accountants or auditors, or composed of accountants or auditors or persons having expert knowledge in accounting or auditing to any accounting or financial statement, or to any