

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 86/2

9263 HOUSE LABOR & COMMERCE

period when the conditions imposed in the suspension order have been met and the suspended licensee otherwise qualifies for licensure.

ARTICLE 3. PLACE OF BUSINESS.

Section

- 110. Offices
- 112. Registration of business name
- 115. Minimum requirements for maintaining an office
- 120. Branch offices
- 125. Supervision
- 126. Supervision of licensees in remote areas
- 127. Office signs

12 ACC 64.110. OFFICES. (a) A real estate broker holding an active license shall establish and maintain a business office. The office in which the broker works and maintains his license is considered the principal office or principal branch of the broker.

(b) A broker who maintains offices or branch offices other than the principal office or branch shall have an associate broker in charge of each branch office. If a broker has an associate broker in charge of an office, the broker is responsible for supervision of the associate broker. The operation of a branch office without licensed personnel or without an associate broker in charge is grounds for suspension or revocation of the broker's license.

(c) *Repealed 12/6/81.*

(d) When a broker establishes a real estate office in a location not normally considered a business location, the commission may require the broker to submit evidence that the office is where the broker and the broker's employees transact business and receive business calls.

(e) A broker shall, before operating any office or branch office, register the office or branch office with the commission on a form provided by and approved by the commission. The information provided by the broker must include

- (1) the broker's name and license number;
- (2) the business name under which the broker will operate and advertise as required by 12 AAC 64.112;
- (3) the mailing address of the business;
- (4) the location of the office, if different from the mailing address;
- (5) the bank account numbers of all real estate trust accounts maintained by the broker;
- (6) the name and license number of all licensees employed by the broker at that office;
- (7) the name of the broker or the associate broker in charge of a

- (3) use trust funds to pay the maintenance expenses of a trust account;
- (4) commingle funds by depositing the broker's own funds in a trust account, except those described in 12 AAC 64.180(d);
- (5) withdraw funds from a trust account without fully complying with the recordkeeping requirements of 12 AAC 64.220;
- (6) refuse to provide an accounting to the principals of a transaction for funds being held in trust; or
- (7) refuse to return a deposit to a prospective buyer whose offer was not accepted; the broker may delay the return of the deposit until one business day after the prospective buyer's check has cleared.

12 AAC 64.260. VIOLATION. Failure to comply with 12 AAC 64.180—12 AAC 64.271 or failure to turn over to the 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).

12 AAC 64.271. NON-CASH DEPOSIT. When a non-cash deposit is approved by the seller to bind an offer, control over the item deposited must be surrendered to the broker, and the broker shall inform the principal parties of the measures taken to safeguard it.

ARTICLE 6. SURETY FUND CLAIMS.

Section

- 280. Scope
- 285. Claims
- 290. Notification of claim
- 300. Current address of claimants
- 305. Hearings
- 310. Role of involved licensee
- 315. Withdrawal of claim
- 320. Motion for reconsideration
- 325. Findings and conclusions

12 AAC 64.280. SCOPE. 12 AAC 64.280—12 AAC 64.325 govern the procedures relating to claims for reimbursement from the real estate surety fund and for hearings under AS 08.88.450—08.88.495.

12 AAC 64.285. CLAIMS. Claims for reimbursement from the real estate surety fund must

- (1) be submitted on a form provided by the commission;
- (2) be for a loss suffered in a real estate transaction by the claimant

AAC 64.180(d).

(d) A broker shall establish a ledger for every transaction, including those transactions for which the deposit is held in the trust account of a cooperating broker, title company, or another third party.

(e) A broker shall retain the following transaction and trust account records:

- (1) transaction ledgers;
 - (2) records of deposit showing the date, transaction code, amount of the deposit, and trustor's name;
 - (3) all disbursement records, including voided checks written on the trust account, showing the date, payee, and transaction code;
 - (4) all cancelled checks, bank statements, and monthly reconciliations; and
 - (5) all transaction contracts and supporting documents.
- (f) Trust accounts must be reconciled monthly by completing a
- (1) reconciliation of the bank statement with the check register;
 - (2) reconciliation of the monthly deposits and expenditures with the independent transaction ledger for each transaction; and
 - (3) cross-check of the bank balance with the sum of the transaction ledgers.

12 AAC 64.230. OTHER TRUST FUNDS. (a) For trust funds other than earnest money, rents, or security deposits, including mortgage payments or funds for repairs, records must be kept consistent with the requirements of 12 AAC 64.220.

(b) *Repealed 7/16/94.*

12 AAC 64.240. BROKER'S COMMISSION. (a) Each withdrawal of a broker's commission from a trust account must be 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.

(c) A broker shall disburse from a trust account the fee earned for providing property management services. The disbursement must be made on a regular monthly basis after the collection of monthly receipts and disbursement of expenses for that management contract are completed.

12 AAC 64.250. PROHIBITED TRUST ACCOUNT ACTIVITY. A broker may not

- (1) pay a salesperson's commission directly from the trust account;
- (2) pay bills for the broker's business or personal obligations from the trust funds;

branch office;

(8) the telephone number of the office.

(f) More than one licensed broker may operate an office at the same address; each broker shall maintain a clearly separate office identity.

12 AAC 64.112. REGISTRATION OF BUSINESS NAME. (a) A broker shall register with the commission the name under which the broker will advertise and conduct business. A broker's business name registered with the commission is the name that will be entered into the commission's data base and appear on the roster of licensees published by the commission.

(b) If a broker's registered business name is different from the corporate identity of the business, the broker shall document the relationship of the registered brokerage to the corporation on a corporate affidavit submitted with the registration form required by 12 AAC 64.110(e).

(c) The business name that a broker registers with the commission must be separate and distinct from all other active brokers' registered business names.

(d) In order to register a business name that is protected through registration with the division of banking, securities, and corporations in the Department of Commerce and Economic Development, a broker shall submit proof of legal ownership of the business name.

12 AAC 64.115. MINIMUM REQUIREMENTS FOR MAINTAINING AN OFFICE. A real estate broker holding an active license shall

- (1) within the state, maintain a trust account and records of all Alaska real estate transactions as required by AS 08.88.351 and 12 AAC 64.220; and
- (2) provide for acceptance of legal service at the business address registered with the commission.

12 AAC 64.120. BRANCH OFFICES. (a) A broker wishing to establish an office in addition to the principal office must apply to the department for permission to do business at the proposed branch location on a form provided by the department. Each application must contain

- (1) the mailing address of the proposed branch office and the geographical location of the office if not the same as the mailing address; and
- (2) the name of the associate broker to be in charge of the proposed branch office.

(b) An associate real estate broker shall supervise only one office and it must be the associate broker's principal business office.

(c) Operating a branch office without licensed personnel or without an associate broker in charge is grounds for suspension or revocation of the broker's license.

12 AAC 64.125. SUPERVISION. (a) Failure of a broker or associate broker to adequately supervise the activities of licensees for whom they are responsible is grounds for disciplinary action against the

- (1) employing broker;
 - (2) licensee designated by the broker to manage a branch office; or
 - (3) broker or associate broker designated by the broker of record to supervise transactions or licensees during the broker of record's absence.
- (b) Adequate supervision of a licensee includes
- (1) reviewing and approving all real estate agreements; and
 - (2) communicating office policies to affiliated licensees.
- (c) *Repealed 7/16/94.*
- (d) *Repealed 7/16/94.*
- (e) A broker or associate broker may use computer, modem, or facsimile communications to review and approve documents of licensees for whom they are responsible. All transaction records must be maintained in the real estate office where the supervised licensee is registered with the commission.

12 AAC 64.126. SUPERVISION OF LICENSEES IN REMOTE AREAS.

(a) In remote areas of the state as determined by the commission where there are fewer than two real estate brokers registered who will employ licensees, a broker from another area of the state may request approval from the commission to employ a salesperson to work in that remote area.

(b) The broker shall provide a written statement to accompany the salesperson's application that states the arrangements the broker has made for

- (1) maintaining regular supervisory contact each week with the salesperson;
- (2) reviewing contracts before their execution;
- (3) handling trust money; and
- (4) the use of the company name in advertising in the remote area.

(c) The salesperson shall work out of the broker's principal office or branch office, and the broker shall supervise the salesperson in accordance with 12 AAC 64.125.

12 AAC 64.127. OFFICE SIGNS. (a) The physical address of the office of a licensed real estate broker must be clearly identifiable to the public from outside the office.

(b) A real estate broker shall prominently display a sign showing the name of the real estate business at the entrance to the real estate office.

within five days following receipt unless factors such as geographical location, weather conditions, or transportation facilities make such depositing impossible or unreasonable.

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. To avoid commingling funds, interest earned does not belong to the broker.

12 AAC 64.220. RECORD OF TRUST ACCOUNT TRANSACTIONS.

(a) A broker shall assign a transaction code and establish a transaction ledger for each written offer to purchase real estate. This ledger must include

- (1) a transaction code;
- (2) a legal description of the property;
- (3) the name of the property owner;
- (4) for all deposits, the
 - (A) date;
 - (B) name of the trustor; and
 - (C) purpose of the funds received; and
- (5) for all funds paid from the account, the
 - (A) date;
 - (B) check number;
 - (C) name of payee; and
 - (D) purpose of the payment.

(b) For each property management contract, a broker shall assign a transaction code that is identified with a specific landlord or property. The broker shall track the funds received and disbursed for the landlord in an accompanying transaction ledger. The broker shall also track the funds of each tenant through a related but separate transaction code and transaction ledger. These transaction ledgers must include

- (1) a transaction code;
- (2) an identification of the property or unit within the property;
- (3) the name of the property owner;
- (4) for all deposits, the
 - (A) date;
 - (B) name of the person making the payment; and
 - (C) purpose of the payment; and
- (5) for all disbursements from the account, the
 - (A) date;
 - (B) check number;
 - (C) name of the payee; and
 - (D) purpose of the payment.

(c) A broker shall establish a separate ledger to account for any funds deposited to a trust account to cover service charges in accordance with 12

statutes or regulations. When a licensee is requested to respond to a complaint, the licensee shall do so within the time period specified; however, the specified response period must allow at least 10 days from the date of the receipt of the request.

(b) *Repealed 7/1/89.*

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. Other trust funds
- 240. Broker's commission
- 250. Prohibited trust account activity
- 260. Violation
- 271. Non-cash deposit

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) A real estate broker shall file with the commission the name of the account, the account number, and the name and branch of the bank that holds the account for all trust accounts maintained 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.

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.

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

ARTICLE 4. PROHIBITED CONDUCT.

Section

- 130. Grounds for revocation or suspension
- 135. Inspections or audits of records and accounts
- 140. Employment of unlicensed personnel
- 160. False or misleading statements
- 175. Investigation of complaints or violations

12 AAC 64.130. GROUNDS FOR REVOCATION OR SUSPENSION.

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

- (1) acting or failing to act as specified in AS 08.88.071(a)(3);
- (2) representing more than one party in a real estate transaction without the knowledge and consent of all parties for whom the licensee acts;
- (3) failing to account for, remit, or surrender 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 or unreasonably delaying the accounting for or disbursement of money, documents, or other property held by or which is the responsibility of the broker for parties in a real estate transaction;
- (4) paying to or receiving from any unlicensed person associated with a real estate transaction, any rebate or compensation that is not disclosed to the principal of the licensee; after a transaction closes, a gift up to a value of \$100 per transaction is allowable; this paragraph applies only to compensation not listed in (7) of this section;
- (5) being found guilty of forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or other similar offenses committed while licensed under this chapter; for the purpose of this paragraph, "being found guilty" means a guilty verdict by a judge or jury or pleading nolo contendere or guilty to any of these acts or having a hearing officer find that the licensee participated in these at a hearing held in accordance with AS 44.62 (Administrative Procedure Act);
- (6) advertising a property for sale, lease, or rent without first obtaining the written authority of the owner or the owner's authorized agent to sell, lease, or rent the property;
- (7) paying referral fees, sharing commissions, or otherwise compensating a person who is prohibited from receiving compensation under AS 08.88.401(b);
- (8) advertising to buy, sell, rent, lease or exchange any real estate without including in the advertisement the broker's business name registered with the department; this paragraph applies to all real estate advertised

to the public including that owned by the licensee;

(9) failing to disclose to all parties in a real estate transaction the fact that the licensee is licensed or failing to disclose the name of the broker or company under whom the licensee is licensed;

(10) employing or using a third-party purchaser, purchasing through corporations, partnerships, or other entities or working through friends, relatives, or business associates in a way that profits the licensee with the effect, in whole or in part, of concealing the profit and the name of the interested licensee;

(11) acting in violation of the provisions of AS 08.88;

(12) accepting as earnest money anything other than cash unless the offered non-cash substitute is communicated to the owner before accepting the offer to purchase, and the acceptance of the non-cash substitute is identified as a non-cash substitute on the earnest money receipt;

(13) failing to submit to the seller or the seller's agent all written bona fide offers received before the seller accepts another offer in writing and the broker has knowledge of the acceptance;

(14) failing to disclose to a prospective buyer a known material defect regarding the condition of, or a known legal defect pertaining to, the offered real estate or interest in real estate;

(15) engaging in or committing any act which is grounds for denying a license;

(16) for a broker, permitting another person to use the broker's license, whether for compensation or not, to enable someone other than the broker to establish or carry on a business for which a real estate license is required;

(17) for a broker, allowing a salesperson to operate a real estate business without retaining control as the employing broker for the business;

(18) establishing or carrying on a real estate business without a broker's supervision as required by 12 AAC 64.125;

(19) being found guilty of violating local, state, or federal fair housing laws.

12 AAC 64.135. INSPECTIONS OR AUDITS OF RECORDS AND ACCOUNTS. (a) The commission will, in its discretion, and the commission's designee may, inspect a broker's transaction records; the inspection must be conducted between 8:00 a.m. and 5:00 p.m., Monday through Friday, unless otherwise agreed, and the broker must be given at least 72 hours' advance notice of the inspection. The broker shall make available to the commission or its designee all requested transaction records including, but not limited to, earnest money agreements, listing agreements, trust account records, disbursement records, broker or agent communications regarding transactions, and closing statements for all principals to transactions.

(b) The commission will, in its discretion, and the commission's designee may, conduct complete audits of broker trust accounts, transaction records,

and related accounts and records. The commission may direct that the audit be held with or without prior notice to the broker. In the case of a non-noticed audit, the auditor must present the request for access to the records during regular business hours. When a non-noticed audit would constitute a grave hardship on a broker or the broker's business, the broker may request a 24-hour delay. If granted, the records must be sealed or secured by and at the direction of the auditor for the duration of the delay; the seals must be broken only by the auditor.

12 AAC 64.140. EMPLOYMENT OF UNLICENSED PERSONNEL. (a) 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 salesperson or an associate real estate broker who is not licensed under AS 08.88;

(2) accepting a commission or valuable consideration as a real estate salesperson for the performance of any of the acts specified in AS 08.88 or this chapter from any person except the real estate broker whose name appears on the salesperson's license.

(b) A licensee may not authorize an unlicensed assistant to perform any duties for which a license is required, including

(1) discussing a listing or property management agreement with an owner or with licensees;

(2) showing any property available for sale or rental;

(3) negotiating or discussing the terms of a sale or rental;

(4) having a prospective buyer or lessee sign an offer to purchase or lease;

(5) presenting an offer to a seller;

(6) making prospecting calls or visits; and

(7) reading prepared information in response to inquiries about properties.

12 AAC 64.160. FALSE OR MISLEADING STATEMENTS. (a) Making any false or fraudulent representation or material misstatement on an application for a license, renewal, examination, or any additional material requested by the commission under 12 AAC 64.060(b) is grounds for revocation, suspension, or denial of a license.

(b) Making a false or misleading statement to the commission regarding an alleged violation of AS 08.88 or the regulations set forth in this chapter or the qualifications of the licensee is grounds for suspension, revocation, or denial of a license.

12 AAC 64.175. INVESTIGATION OF COMPLAINTS OR VIOLATIONS. (a) Licensees shall cooperate with the department and the commission during the investigation of complaints or alleged violations of licensing

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

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




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Representative Norman Rokeberg

MEMORANDUM

TO: House Labor & Commerce Committee Members

FROM: Representative Norman Rokeberg 

DATE: January 23, 1998

RE: House Bill 33
Affinity Groups

For your information, attached are the following:

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

The downside of affinity deals

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

by Susan Heck-French



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

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

Example A

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

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

Example B

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

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

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

Is she getting a good deal?

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

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

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

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

Example C

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

Example D

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

LEGAL SERVICES

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

MEMORANDUM

October 23, 1997

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

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

FROM: Tamara Brandt Cook *IBC*
Director

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

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

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

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

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

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

Representative Norman Rokcberg, Chair
October 23, 1997
Page 2

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

A person

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

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

TBC:glc
97-383.glc



Official Business

Alaska State Legislature

HOUSE OF REPRESENTATIVES

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

State Capitol
Juneau, AK 99801-1182

October 28, 1997

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

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

Dear Attorney General Botelho:

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

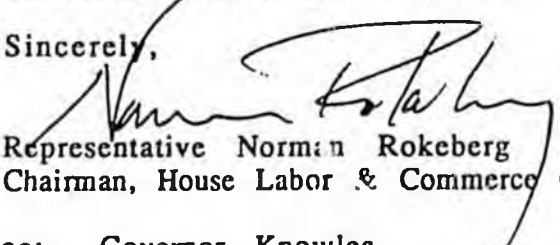
This regulation was intended to inform the public of all parties to a real estate transaction and is specifically directed at home relocation companies and firms that may wish to give a "rebate" back to members of an affinity group.

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

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

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

Sincerely,


Representative Norman Rokeberg
Chairman, House Labor & Commerce Committee

cc: Governor Knowles
Real Estate Commission

Alaska Real Estate News



Tony Knowles
Governor

Jeffrey W. Bush
Acting Commissioner

Catherine Reardon
Director

Volume 10

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Number 2

Time to renew!

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

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

What are the fees?

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

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

How long will it take?

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

Renewed license certificates will be mailed to the broker of
(continued on page 7)

Commission payment disclosures: *Why do we care?*

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

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

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

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

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

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

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

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

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

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

(continued on page 5)

In this issue:

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

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

Why require disclosure?

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

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

It's a national problem.

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

AREC has already taken action to ensure that consumers are advised

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

"12 AAC 64.130 GROUNDS FOR REVOCATION OR SUSPENSION. The following acts, in addition to those specified elsewhere in the chapter, are grounds for revocation or suspension of a license:

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

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

What can the Commission do by regulation?

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

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

any such affinity group marketing plans.

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

PHH vs. MREC

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

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

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

(continued on page 6)



Commission disclosure (continued from page 1)

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

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

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

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

PHH asserted that the rule was preempted by the provisions of

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

The court's ruling

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

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

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

Alaska law is different.

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

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

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

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

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



Do we know where you are?

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

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

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

LAW OFFICES OF
YOUNG & FELDMAN
A PROFESSIONAL CORPORATION
500 L STREET, SUITE 400
ANCHORAGE, ALASKA 99501

AREA CODE 907
TELEPHONE 272-3538
FACSIMILE 274-0819

December 1, 1997



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

Re: Legality of Referral Fees in Alaska.

Dear Members of the Commission:

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

Summary

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

December 1, 1997

Page 2

Alaska's Statutory and Regulatory Scheme

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

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

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

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

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

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

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

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

Costco Proposes to Illegally Assist in the Procurement of Buyers

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

December 1, 1997

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

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

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

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

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

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

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

December 1, 1997

Page 4

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

The Commission's Role in Costco's Plan

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

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

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

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

Conclusion

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

Sincerely,

YOUNG & FELDMAN



Jeffrey M. Feldman

LEGAL SERVICES

Post-It™ brand fax transmittal memo 7671		# of pages •
To <i>Grace Kelly</i>	From <i>Terri Ryan</i>	
Co.	Co.	
Dept. <i>269</i>	Phone #	
Fax # <i>269-3156</i>	Fax #	

10 RESEARCH SERVICES
AFFAIRS AGENCY
F ALASKA

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

MEMORANDUM

December 3, 1997

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

TO: Representative Joe Ryan

FROM: Terri Lauterbach
Legislative Counsel *TLauterbach*

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

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

DISCUSSION

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

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

• • •

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

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

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

(Emphasis added.)

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

Representative Joe Ryan

December 3, 1997

Page 2

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

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

(b) A person

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

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

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

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

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

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

TML:jdr
97-363.jdr

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 269-5100
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KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 451-2811
FAX: (907) 451-2846

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

December 18, 1997

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

Dear Representative Rokeberg:

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

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

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

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

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

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

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

The Honorable Norman Rokeberg
Chairman, House Labor & Commerce Committee

December 18, 1997
Page 3

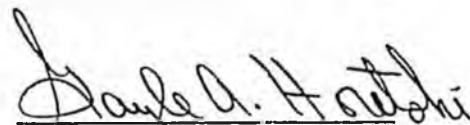
I note that, in the past, the Alaska Supreme Court has narrowly construed the scope of the regulatory authority conferred upon the Commission by the legislature. Warner v. State, 819 P. 2d 28 (Alaska 1991). Also, as the violation of AS 08.88.401 is a misdemeanor criminal offense, any ambiguities in its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

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

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:



Gayle A. Horetski
Assistant Attorney General

GAH:mrj

cc: Governor Knowles
Real Estate Commission

STEPHEN D. VLAHOVICH
2509 EIDE STREET SUITE #4
ANCHORAGE, ALASKA 99503
PHONE: OFFICE: 907-258-8888
HOME: 907-243-2624
FAX: 907-278-5898



FAX MESSAGE

To: *Norman State House* From: Stephen D. Vlahovich
Fax: *907-465-4268* Date: *1-21-98*
Attn: *Rep. Norm Kolbeberg* Pages: *- 2 -*
Re: *T. Wase Bill # 33* CC:

Urgent For your file Please Comment Please Reply Please Recycle

Comments:

NORMAN! THESE ARE MY
COMMENTS AFTER REVIEWING
THE LATEST VERSION OF TTB 33.
SHOULD HAVE GOOD PARTICIPATION
BY CONDO OWNERS AT THIS NEXT
HEARING ON THE BILL - Best Regards.
Stephen

January 21, 1998

MEMORANDUM

TO: Representative Norman Rokeberg

FROM: Stephen D. Vlahovich Associated Brokers Inc.

Reference: House Bill #33 Draft 0-LS0197P

Page #7 line #1&2. I both assist in and direct the management of the affairs of a community association as a member of the Board of Directors. Am I required to be licensed? This needs to be clearer.

Page #11 lines 29-31. What if the commission requires a bond in excess of the maximum money to be covered? Are condo owners then obligated to pay this excess coverage?

Page #17 line 11-13 Are condo associations now going to be captive to the banks as to where and how they handle their monies??

Page #20 line 20-21 Does a bookkeeper who receipts in money or prepares resale certificates have to be licensed?

Page #29 Line4-7. This monetary restriction on the self-managed community associations is an infringement on their property rights and is in direct conflict with Article II Sec 3 of the By-Laws of the Anchorage Board of Realtors. "To provide a unified medium for real estate owners and those engaged in the real estate profession whereby their interests may be safeguarded and advanced. "

Page 31 line 8-11 What does "or in pursuit of a contract" mean? I thought that we were requiring all contracts to be in writing prior to beginning to work.

I will be testifying at the committee meeting on 1/23/98.

AMENDMENT

*no objections
adopted*

OFFERED IN THE HOUSE BY REPRESENTATIVE ROKEBERG

TO: CSHB 33 (L&C); Draft "P" Version

Page 5, Line 18:

After "which" insert "complete"

Page 11, Line 31:

After "bond" insert "and the granting of exemptions"

Page 12, Line 8:

After "community association management" insert "operations and"

Line 9. delete non profit corporation creation & operation

Page 13, Line 19:

After "lapsed"

Delete ","

Insert "."

Page 13, Line 20:

Delete entire line.

Page 29, Line 4:

After "(17)", delete "an"

Insert "a resident"

Page 29, Line 5:

After "community association" insert ";" and delete remainder of line 5 and lines 6-7

CONCEPTUAL AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE ROKEBERG

TO: CSHB 33 (L&C); Draft "P" Version

Reserve and investment accounts are not to be placed in control of a community association manager. A community association manager may not sign on reserve and/or investment accounts of a community.

By contract agreement, with the approval of the association's board, the community association manager may be a signer on the operating account of a community association.

The community association may establish other accounts.

If a community association manager may sign on an account, the community association board or the manager, shall request the financial institution to send one statement to the community association board and one statement to the community association manager. The addresses of the manager and the board may not be the same.

AMENDMENT

*Concurring
Mended
6 no objection
adopted*

OFFERED IN THE HOUSE

BY REPRESENTATIVE ROKEBERG

TO: CSHB 33 (L&C); Draft Version "P"

Page 30, lines 18-19:

Delete current language

Insert as new (6) "employ", "employing", "employs", "employed",
"employee", "employees", "employment" include being an independent
contractor with an employer.

No Amend # 7

01/23/98 16:21:53 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
MESSAGE FROM: LIOCMBB IN KENAI LIO

LTN1120
JNU

RE TCN: 80135 SCHEDULED FOR:01/23/98 15:15 TO 17:15
SPONSOR: HOUSE LABOR & COMMERCE PURPOSE: PUBLIC HEARING

MESSAGE TEXT: MR. JOHNSON IN KENAI HAS FURTHER
TESTIMONY IF POSSIBLE

01/23/98 16:21:53 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
MESSAGE FROM: LIOCMBB IN KENAI LIO

RE TCN: 80135 SCHEDULED FOR:01/23/98 15:15 TO 17:15
SPONSOR: HOUSE LABOR & COMMERCE PURPOSE: PUBLIC HEARING

MESSAGE TEXT: MR. JOHNSON IN KENAI HAS FURTHER
TESTIMONY IF POSSIBLE

LTN1100-R01
01/23/98

LEGISLATIVE TELECONFERENCE NETWORK

PAGE 01
14:59:38

TCN: 80135 DATE & TIME: 01/23/98 15:15 TO 17:15 STATUS:3 ANNOUNCED

**** ORDER SUMMARY ****

SPONSOR: HL&C HOUSE LABOR & COMMERCE CHAIRS: ROKEBERG
PURPOSE: PUB PUBLIC HEARING LEGISLATIVE
CONTACT: SHIRLEY TEL#: (907)465-4968
CHAIRING SITE: JUNEAU CAPITOL CAP017
TOLL FREE: DIAL-UP: LIO: (800)478-9908

SPONSOR REMARKS (PUB): TESTIMONY:Y ALLOWED 3 MINUTE LIMIT
TESTIMONY WILL BE TAKEN WITH A 3 MINUTE LIMIT. PLEASE HAVE GROUPS PRESENT WIT
1 PERSON.

SPONSOR REMARKS (LIO): BACKUP MATERIAL-N MEETING IN PROGRESS:N MAX. SITES: 7
OTHER SITES MAY ADD THROUGH CHAIR CONTACT.
TCN REQUESTED ON 01/23/98 AND HAS 3 UPDATES

**** AGENDA ****

1 HB 33 REAL ESTATE LICENSING

**** PARTICIPATING LIOS ****

ANC ANCHORAGE	716 W 4TH, #200	LOCATION STAFF
FBX FAIRBANKS	119 N CUSHMAN ST	LOCATION STAFF
GLN GLENNALLEN	COMMUNITY LIB.	LOCATION STAFF
HOM HOMER	345 W STERLING	LOCATION STAFF
* JNU JUNEAU	CAPITOL CAP017	LOCATION STAFF
KEN KENAI LIO	145 MAIN ST LOOP	LOCATION STAFF
MAT MATSU	600 E RAILROAD	LOCATION STAFF

**** SCHEDULING NOTES ****

AM SENDING ALONG (VIA FAX - 1/16/98) THE WORK DRAFT OF HB33. IT WILL BE THE P
VERSION AND IS THE VERION WHICH WILL BE DISCUSSED DURING THIS TELECONFERENCE.

LCM

OKAY TO ADD MAT PER SHIRLEY ON 1/19. BH
OKAY TO ADD GLN PER SHIRLEY ON 1/20. BH CHANGE TIME LIMIT ON TESTIMONY TO 3
MINUTES INSTEAD OF FIVE AND LET THE PEOPLE KNOW TO HAVE 1 SPEAKER FOR A GROUP

**** UPDATES ****

01	01/16/98	15:51:41	ANNOUNCING TELECONFERENCE
02	01/19/98	14:43:15	MATSU ADDED ON
03	01/20/98	11:29:26	GLENNALLEN ADDED ON

01/23/98

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM

LTN1150

15:35:34

PARTICIPANT LIST (TESTIFIERS ONLY)

BY:JNU

TCN:80135

SCHEDULED FOR:01/23/98 15:15 TO 17:15

FOR:ALL

PUBLIC HEARING

HOUSE LABOR & COMMERCE

LOCATION:ANCHORAGE

HB 33 MR. S. M. JOHNSTON FIN RES MGT CORP TESTIFY

~~HB 33 MARY TUTTEROW TESTIFY~~

HB 33 DIANA WOODS TESTIFY

HB 33 DEBRA BRETT TESTIFY

HB 33 JOHN CARMON TESTIFY

~~HB 33 GRAYCE OAKLEY _____ HERE TO ANS ANY ?'S TESTIFY~~

HB 33 ART CLARK TESTIFY

01/23/98

HB 33 RON POLLOCK TESTIFY

15:35:34

LOCATION:HOMER

LOCATION:KENAI LIO

HB 33 MR. RON JOHNSON SELF TESTIFY

LOCATION:AKC...

HB 33

HB 33

HB 33

HB 33

HB 33

HB 33

HB 33

HB 33

15:35:34

01/23/98

HB 33

01/23/98

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM

LTN1150

15:43:58

PARTICIPANT LIST (ALL PARTICIPANTS)

BY:ANC

TCN:80135

SCHEDULED FOR:01/23/98 15:15 TO 17:15

FOR:ANC

PUBLIC HEARING

HOUSE LABOR & COMMERCE

LOCATION:ANCHORAGE

HB 33 MR. S. M. JOHNSTON FIN RES MGT CORP TESTIFY

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HB 33 DIANA WOODS TESTIFY

HB 33 DEBRA BRETT TESTIFY

HB 33 JOHN CARMON TESTIFY

HB 33 GRAYCE OAKLEY HERE TO ANS ANY ?'S TESTIFY

HB 33 ART CLARK TESTIFY

01/23/98
HB 33 RON POLLOCK TESTIFY

15:43:58
HB 33 STEPHEN VLAHOVICH TESTIFY

HB 33 SHANE OSOWSKI TESTIFY

HB 33 BILL BRADY TESTIFY

LOCATION:ANCHORAGE

HB 33

HB 33

HB 33

HB 33

HB 33

HB 33

HB 33

HB 33

HB 33

HB 33

HB 33

01/23/98

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM

LTN1150

15:26:35

PARTICIPANT LIST (TESTIFIERS ONLY)

BY:JNU

TCN:80135 SCHEDULED FOR:01/23/98 15:15 TO 17:15

FOR:ALL

PUBLIC HEARING

HOUSE LABOR & COMMERCE

LOCATION: ANCHORAGE

HB 33	MR.	S. M.	JOHNSTON	FIN RES MGT CORP	TESTIFY
HB 33		MARY	TUTTEROW		TESTIFY
HB 33		DIANA	WOODS		TESTIFY
HB 33		DEBRA	BRETT		TESTIFY
HB 33		JOHN	CARMON		TESTIFY
HB 33		GRAYCE	OAKLEY	HERE TO ANS ANY ?'S	TESTIFY
HB 33		ART	CLARK		TESTIFY
HB 33		RON	POLLOCK		TESTIFY

LOCATION: HOMER

LOCATION: KENAI LIO

HB 33	MR.	RON	JOHNSON	SELF	TESTIFY
-------	-----	-----	---------	------	---------

AGENDA
January 26, 1998

Good Afternoon

This Meeting Of The House Labor & Commerce Committee Is Called To Order
On January 26, 1997 At 3:15 P.M.

For The Record The Committee Members Present or on Teleconference are:

Rep. Norman Rokeberg, Chairman

Rep. John Cowdery, Vice Chairman

Rep. Bill Hudson

Rep. Joe Ryan

Rep. Jerry Sanders

(Time).

Rep. Tom Brice

Rep. Gene Kubina

Committee Secretary, Paula Smedley

If A Committee Member Arrives Late Announce:

Representative (Name) Has (Joined) (Left) The Committee At

A Quorum (Is) (Is Not) Present.

On Today's Calendar We Have:

1. A public hearing on:

HB 33 Real Estate Licensing

Anyone Wishing To Testify On HB 33 and Who Has Not Already Done So, Please Sign The Witness Register For The Secretary, Printing Your Name, Address, Telephone Number, Agency Or Business And Title.

Witness Testimony Will be Limited To 3 to 5 minutes

We have 6 amendments that were handed out at Friday's meeting and there are 2 additional amendments on the table today. We now have a total of 8 amendments to HB 33, Version P, dated 1/16/98. The amendments are the result of a number of discussions I have had with various segments of the real estate industry and the community association representatives.

Take Testimony In Order, Recognizing Each Witness By Name:

- 1. Other Legislators (Ask Other Legislators To Join The Committee At The Table)**
- 2. Individuals With Time Constraints**
- 3. Individuals In Order On Witness List.**
- 4. Teleconferenced Testimony Should Be Rotated Between Locations.**
(Teleconference Moderator Will Provide You With A List Of Witnesses
At The Various Locations)

THIS COMMITTEE STANDS AJOURNED AT (time)

ALASKA STATE LEGISLATURE
House of Representatives

COMMITTEE ASSIGNMENTS:

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



INTERIM:
716 WEST 4TH AVENUE, SUITE 640
ANCHORAGE, AK 99501
PHONE: (907) 258-8191
FAX: (907) 258-2916

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

Representative Norman Rokeberg

JUST THE FAX

Date: 23 Jan 1998

TO: Becky

FAX: 2864 Telephone: _____

FROM: Representative Norman Rokeberg

FAX: (907) 465-2040 Telephone: (907) 465-4968

Number of Pages: 10 (including this page)

Comments: For House Labor + Commerce
3:15pm Meeting
Pls fax to appropriate
LIDS.

Have a Nice Day

AGENDA
January 26, 1998

Good Afternoon

**This Meeting Of The House Labor & Commerce Committee Is Called To Order
On January 26, 1997 At 3:15 P.M.**

For The Record The Committee Members Present or on Teleconference are:

Rep. Norman Rokeberg, Chairman

Rep. John Cowdery, Vice Chairman

Rep. Bill Hudson

Rep. Joe Ryan

If A Committee Member Arrives Late Announce:

Rep. Jerry Sanders

**Representative (Name) Has (Joined) (Left) The Committee At
(Time).**

Rep. Tom Brice

Rep. Gene Kubina

Committee Secretary, Paula Smedley

A Quorum (Is) (Is Not) Present.

On Today's Calendar We Have:

1. A public hearing on:

HB 33 Real Estate Licensing

Anyone Wishing To Testify On HB 33 and Who Has Not Already Done So, Please Sign The Witness Register For The Secretary, Printing Your Name, Address, Telephone Number, Agency Or Business And Title.

Witness Testimony Will be Limited To 3 to 5 minutes

We have 6 amendments that were handed out at Friday's meeting and there are 2 additional amendments on the table today. We now have a total of 8 amendments to HB 33, Version F, dated 1/16/98. The amendments are the result of a number of discussions I have had with various segments of the real estate industry and the community association representatives.

Take Testimony In Order, Recognizing Each Witness By Name:

1. Other Legislators (Ask Other Legislators To Join The Committee At The Table)
2. Individuals With Time Constraints
3. Individuals In Order On Witness List.
4. Teleconferenced Testimony Should Be Rotated Between Locations.
(Teleconference Moderator Will Provide You With A List Of Witnesses
At The Various Locations)

THIS COMMITTEE STANDS AJOURNED AT (time)

01/28/98
15:29:26

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
PARTICIPANT LIST (ALL PARTICIPANTS)
TCN:80183 SCHEDULED FOR:01/28/98 15:15 TO 17:15
PUBLIC HEARING HOUSE LABOR & COMMERCE

LTN1150
BY:KTN
FOR:KTN

LOCATION:KETCHIKAN
HB 33 MR

LEIF

STENFJORD

TONGASS REALTY TESTIFY

LAW OFFICES OF STANLEY AND SCHATZ, P.C.

ATTORNEYS AT LAW
 3003 Minnesota Drive, Suite 200
 Anchorage, Alaska 99503
 TELEPHONE: (907) 276-4979
 FACSIMILE: (907) 278-5722

GORDON F. SCHATZ
 JAMES T. STANLEY

LILLI FREDRICKSON, *Paralegal*
 MARILYN REED, *Paralegal*
 GINGER SWANSON, *Legal Assistant*

5: LINDA MACLE, *Of Counsel*
 7: KEVIN A. TULLOCH, *Of Counsel*

January 26, 1998

Alaska Association of Realtors
 Legislative Committee
 c/o Bill Brady
 RE/MAX
 2600 Cordova, Suite 100
 Anchorage, Alaska 99503

*Writing for amendment
 from LAA Legal.
 This is backup.*

Re: House Bill 33

Dear Bill:

Per the legislative committee's request I have reviewed the issues related to the payment of fees to unlicensed persons including affinity groups and the sellers or buyers of property. I have also set forth later in this letter proposed revisions to two sections of the draft House Bill 33. In my consideration of these issues, I have reviewed the following:

1. Drafts L and P of HB-33
2. Current statutes and regulations related to the issues set forth in drafts of HB-33.
3. Jeff Feldman's letter of December 1, 1997 to the Real Estate Commission.
4. Gayle Horetzki's letter of December 18, 1997 to Representative Rokeberg.
5. Tamara Brandt Cook's memorandum of October 23, 1997 to Representative Rokeberg.
6. Transcript of the Real Estate Commission's meeting with Gayle Horetzki regarding payment of fees to unlicensed persons and affinity and relocation companies.
7. The Opinion and Order in the case of PHH Real Estate Services Corporation vs. Mississippi Real Estate Commission from the United States District Court for the Southern District of Mississippi Jackson Division; Civil Action No. 3:96-CV-667BN
8. Other materials regarding broker's compensation and payment to unlicensed persons.

Alaska Association of Realtors
Legislative Committee
January 26, 1998
Page 2

As a result of my review, it appears to me that the approach of the proposed HB-33 of prohibiting licensees from making payment of a portion of the commission money to unlicensed persons is sound and relatively well set forth. However, as pointed out by Assistant Attorney General Horciski, an argument can be made that the owner exception set forth in AS 08.88.900(1) allows payments to them from relocation companies, affinity groups, or similar organizations.

To address the owner's exception issue I propose the following additions to the draft of HB-33:

Sec. 08.88.900(1) A natural person who is not licensed under this chapter who manages or makes a real estate transaction with respect to real estate the person owns or on the person's own behalf so long as the compensation they receive does not include any portion of the commission or other compensation paid to a real estate licensee in the transaction.

Sec. 08.88.401(f) The prohibition of (e)(1) of this section does not prohibit:

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

(2) negotiations between licensee and principals of the amount of commissions or other compensation; or

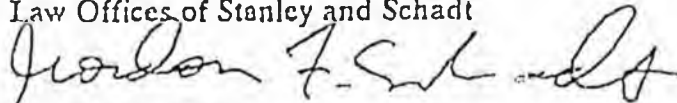
(3) payments from real estate licensees to principals as part of the resolution of disputes regarding the terms of the transaction or the property transferred.

The added language is intended to make it clear that the ability of non-licensed individuals to sell or buy on their own account does not allow them to receive a portion of the commission from a licensee. I believe that this is consistent with the other draft changes in the statute related to this issue.

I would be glad to discuss the proposed language or suggestions the committee might have in relation to these issues as may be desired.

Best regards,

Law Offices of Stanley and Schadt


Gordon F. Schadt

GFS:hs
cc: Dea Turner
Art Clark

LEGAL SERVICES

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

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


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

MEMORANDUM

January 30, 1998

SUBJECT: Real Estate Licensing (CSHB 33(L&C), Q version)

TO: Representative Norman Rokeberg, Chair
House Labor and Commerce Committee
Attn: Shirley Armstrong

FROM: Terri Lauterbach
Legislative Counsel 

Enclosed is CSHB 33(L&C), as passed out by the committee. We have not had time to put this CS through the revisor of statutes for its final technical and proofreading review, so I urge you to check it carefully to ensure that it reads as requested. I also submit the following comments for your consideration:

(1) AS 08.88.091(e). The second-to-the-last sentence, which was added by Amendment 3, removes discretion from the commission so that it may not disapprove a submitted course outline. It requires the commission to "approve each submitted contact hour."

(2) AS 08.88.161(8). The phrase "or communicate with" breaks up a phrase that must stay together grammatically: "assist in or direct the procuring of ..." The new phrase belongs either before or after the assist/direct language.

(3) AS 08.88.171(f). The last sentence, added by Amendment 5, is imprecise in its wording. I think that the language would preclude a person originally issued a limited license from ever using the term "broker" (etc.) even if the person later qualified for, and was issued, a full broker license.

(4) AS 08.88.173(a). The last phrase relating to granting exemptions, added by Amendment 7, is probably insufficient to give the commission the power to grant exemptions. The regulations can only "implement this subsection," and nothing elsewhere in the subsection allows an exemption.

(5) On Amendment 9, I interpreted the brackets and handwritten notation to mean that the amendment to page 6, line 16, was not passed by the committee.

Representative Norman Rokeberg
January 30, 1998
Page 2

(6) AS 08.88.361. Maybe "and" should be "or" in the language added by Amendment 10. There are two types of contracts involved, aren't there, not just one contract covering both listings and management?

(7) Surety fund statutes. With respect to the language added in handwriting to Amendment 11, there was a grammatical problem ("in the control by"?). Based on the transcript of committee tapes sent to me by Shirley Armstrong, I have changed "by" to "of." However, the wording is still problematical. As it appears now, the phrase "under the control of a community association manager" is tied into "trust funds." What about trust funds under the control of brokers who are not community association managers?

If you believe that any of these items should be corrected in the next committee or at some other time, or if I can be of other assistance, please let me know.

TML:jdr:pl
98-047.jdr

Enclosure

ALASKA STATE LEGISLATURE
House of Representatives

COMMITTEE ASSIGNMENTS:

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



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

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

Representative Norman Rokeberg

JUST THE FAX

Date: 1/29/98

TO: LAA Legal / Siri Lautubock

FAX: 24502029 Telephone: 2450

FROM: Representative Norman Rokeberg

FAX: (907) 465-2040 Telephone: (907) 465-4968

Number of Pages: 2 (including this page)

Comments: Siri,
I added House Records to list
to the top of HB 33 Amendment #11. As
you can see the discussion was very
disjointed. Hope this helps on the draft.
I tried to get the amendment restated.
Thanks
Shirley.

Have a Nice Day

ROKEBERG

We just adopted an amendment that said we had the reserve and investment accounts as one account. The community manager can't sign on that account. He can sign on an operating account, therefore, he has control over that operating account. But he doesn't have it over the reserve account. These amendments down below, "or community association accounts." It should be under the control of the manager.

Each line would be amended to say, "Under the control of the manager." So that means that the surety fund could not be liable for any conversion out of the investment accounts because the financial institution holding those funds would be responsible for the disposition if a nonsignatory was to access those funds. In other words, you can't sign on the reserve accounts and the investment accounts so, therefore, the surety or the bond would cover those funds because he has no control over those funds

SHIRLEY

Should we say "community association manager" to make it perfectly clear what we're talking about.

ROKEBERG

Yes, controlled by community association managers.

BRICE

The page 23 changes -- or starting on the page 23, line 21, changes.

ROKEBERG

Right. Each one of those

BRICE

Should be, "or community association accounts under the control of the community association manager."

ROKEBERG

That's controlled by a community association manger. And that goes through to the second page.

Janet/Shirley

Jan-29-98 04:50 PM

<u>Identification</u>	<u>Result</u>	<u>Pages</u>	<u>Type</u>	<u>Date</u>	<u>Time</u>	<u>Duration</u>	<u>Diagnostic</u>
2029	OK	02	Sent	Jan-29	04:49P	00:01:11	002485030022

z.z.z

ALASKA STATE LEGISLATURE
House of Representatives

COMMITTEE ASSIGNMENTS:

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



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

Representative Norman Rokeberg

JUST THE FAX

Date: 1/28/98

TO: LIO / Barky

FAX: 2864 Telephone: 4648

FROM: Representative Norman Rokeberg

FAX: (907) 465-2040 Telephone: (907) 465-4968

Number of Pages: 8 (including this page)

Comments: Here are amendments that will be
offered today + L&C Committee on HB33 - please
FAH out to LIO's on teleconference -
In addition please tell the LIO's
that we will be taking up the amendments
before we take public testimony and that the
participants are to comment on the bill HB33
Version P as amended. Thanks
Shirley Arting

Have a Nice Day

AMENDMENT # 8

OFFERED IN THE HOUSE

BY REPRESENTATIVE ROKEBERG

TO: CSHB 33(L&C); Draft version "P"

1 Page 11, line 19:

2 Delete "a new section"

3 Insert "new sections"

4 Page 11, following line 31:

5 Insert a new section to read:

6 "Sec. 08.88.175. Limitations on community association managers. A
7 licensee may not, within the practice of community association management, exercise
8 control over the

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

10 (2) operating account of a community association unless

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

13 (B) duplicate financial statements concerning the account are
14 sent by the institution holding the account to the licensee and the association's
15 board of directors at separate addresses."

AMENDMENT #9

OFFERED IN THE HOUSE

BY REPRESENTATIVE ROKEBERG

TO: CSHB 33 (L&C); Draft Version "P"

Page 6, line 16

After "Unless licensed" insert "in the State of Alaska"

Page 6, line 27

After "assist in" insert "or communicate with"

After "prospective buyers" insert "sellers,"

AMENDMENT #10

OFFERED IN THE HOUSE

BY REPRESENTATIVE ROKEBERG

TO: CSHB 33 (L&C); Draft Version "P"

Page 18, line 12

Page 18, line 14

Delete "real estate employment"

Insert: "listings and management"

NOTE: This is to conform with amendment #2 adopted by the House Labor & Commerce Committee on January 26, 1998.

AMENDMENT # 11

OFFERED IN THE HOUSE

BY REPRESENTATIVE ROKEBERG

TO: CSHB 33(L&C); Draft version "P"

- 1 Page 11, line 29:
- 2 Delete "(b)"
- 3 Delete "section"
- 4 Insert "subsection"

- 5 Page 11, following line 31:
- 6 Insert a new subsection to read:
- 7 "(b) If a loss covered by the fidelity bond required under this section is also
- 8 reimbursable from the real estate surety fund, the ^{owners' association} ~~person~~ who suffered the loss may
- 9 not recover under the bond until the person has filed a claim for reimbursement under
- 10 AS 08.88.460 and proceedings relating to the claim are concluded."

- 11 Page 23, line 21, following "funds":
- 12 Insert "or community association accounts"

- 13 Page 23, line 27, following "funds":
- 14 Insert "or community association accounts"

- 15 Page 25, line 11, following "funds":
- 16 Insert "or community association accounts"

- 17 Page 25, line 25, following "funds":
- 18 Insert "or community association accounts"

- 19 Page 26, line 3, following "funds":

1

Insert "or community association accounts"

AMENDMENT 12

OFFERED IN HOUSE LABOR AND COMMERCE COMMITTEE OFFERED FOR: DCED

TO: HB 33 (L&C) Version P dated 1/16/98

PAGE 3, lines 17 thru 18, after "(4)":

Delete the proposed changes and insert current law. This section should now read:

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

PAGE 13, line 11, after "license.":

Delete: All material on lines 11 through 15.

PAGE 13, line 16 after "lapsed":

Delete: "more than 60 days and"

Renumber bill sections accordingly.

PAGE 27, lines 19 thru 20, after "Exceptions.":

Delete the proposed changes and insert current law. This section should read:

"This chapter does not apply to"

PAGE 31, line 26, add a new bill section:

"Sec. 56. Notwithstanding Section 54 the Real Estate Commission may begin the process to adopt regulations to implement 08.88.091 (f) and (g). "

(Plus any additional language LAA Legal determines necessary to activate this section)

Renumber bill sections accordingly.

ALASKA STATE LEGISLATURE
House of Representatives

COMMITTEE ASSIGNMENTS:

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



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

Representative Norman Rokeberg

JUST THE FAX

Date: 1/29/98

TO: LAA Legal / Siri Lusterbeck

FAX: _____ Telephone: 2450

FROM: Representative Norman Rokeberg / Shirley LLC Com

FAX: (907) 465-2040 Telephone: (907) 465-4968

Number of Pages: _____ (including this page)

Comments: Here on the amendments
1-16 to HB33 Versie P.

HB-33 passed out of Sabraed
Comerde 1/28/98-

Please prepare a House LLC
CS for HB 33

Shirley
Shirley K

Have a Nice Day

*Condensed
No objections
adopted*

Revised P.2

AMENDMENT /

OFFERED IN THE HOUSE

BY REPRESENTATIVE ROKEBERG

TO: CSHB 33 (L&C); Draft version "P"

Page 14, line 4:

Delete "licensee's former employer"

Insert "broker who previously contracted with or employed the licensee"

*Has to do with
the concept of
employee*

Page 16, line 4:

Delete "employed"

Insert "active"

Page 16, line 5:

Delete "licensee"

Insert "salesperson or associate real estate broker"

Page 16, line 7, following "employs"

Insert "or contracts with"

*Condensed
minutes
no objections
adopted*

AMENDMENT 2

OFFERED IN THE HOUSE

BY REPRESENTATIVE ROKEBERG

TO: CSHB 33(L&C); Draft version "P"

- 1 Page 4, line 18:
- 2 Delete "shall suspend [MAY"
- 3 Insert "may suspend ["

- 4 Page 16, lines 19 - 26:
- 5 Delete all material and insert:
- 6 "Sec. 08.88.341. Listings and management contracts. All real estate listings
- 7 and management contracts must be in writing and must be signed by the broker
- 8 [SELLER] or associated licensee [BY AN AGENT] of the broker and by the client
- 9 or an authorized representative of the client for whose benefit the real estate
- 10 licensee will act [SELLER]. All real estate exclusive listings and management
- 11 contracts must have a definite expiration date that may be renewed or extended
- 12 only by a written agreement signed by the client or the client's authorized
- 13 representative."

- 14 Page 19, line 4:
- 15 Delete "or anticipated"

- 16 Page 19, line 8:
- 17 Delete "material"
- 18 Insert "financial"

- 19 Page 19, line 9:
- 20 Delete "or anticipated material"
- 21 Insert "financial"

*Conrad
M. M. M.
Price objected
with new objection
adopted*

Revised P.4

AMENDMENT 3

OFFERED IN THE HOUSE BY REPRESENTATIVE ROKEBERG

TO: CSHB 33 (L&C); Draft version "P"

Page 5, line 19, following "approval.":

Insert "The Real Estate Commission shall approve each submitted contact hour of a course outline as one credit hour of continuing education. The fee for continuing education course certification under AS 08.88.221 shall be based on the hours approved for credit not hours submitted."

*requested by an individual
active, real estate ad
icators -*

*Commission has to recertify
courses every 2 years -
from \$5 to \$25 -*

*Dept:
Someone is going to pay ^{for} it is not
the person who applied for the course,
but by the rest of the licensees.*

*Amended
no objection
adopted*

0-LS0197P.5
Lauterbach
1/21/98

AMENDMENT 4

OFFERED IN THE HOUSE BY REPRESENTATIVE ROKEBERG
TO: CSHB 33 (L&C); Draft version "P"

- 1 Page 6, line 23:
- 2 Delete "or community association management"

- 3 Page 6, line 24, following "(4)":
- 4 Insert "practice, or negotiate for a contract to practice, property management:
- 5 (5) collect fees for community association management:
- 6 (6) practice, or negotiate for a contract to practice, community
- 7 association management:
- 8 (7)"

- 9 Page 6, line 27:
- 10 Delete "(5)"
- 11 Insert "(8) {(5)}"

- 12 Page 6, line 30, through page 7, line 2:
- 13 Delete all material.

- 14 Page 7, line 3:
- 15 Delete "(8)"
- 16 Insert "(9)"

- 17 Page 7, line 5:
- 18 Delete "(9)"
- 19 Insert "(10) {(6)}"

1 Page 7, line 7:

2 Delete "(10)"

3 Insert "(11)"

4 Page 11, line 18:

5 Delete "AS 08.88.165(2)"

6 Insert "AS 08.88.161(1) - (4), (7), or (8) or 08.88.165(2)"

7 Page 31, line 13:

8 Delete "AS 08.88.161(6)"

9 Insert "AS 08.88.161(5) and (6)"

10 Page 31, line 14, following "management":

11 insert "and may collect fees for community association management"

*Courtesy
Moved
Rokeberg
Moved adopted
amend #1
amend #5* AMENDMENT 5 *vs objective
adopted*

OFFERED IN THE HOUSE BY REPRESENTATIVE ROKEBERG

TO: CSHB 33(L&C); Draft version "P"

Page 11, line 15, after "chapter."

Insert A person issued a limited license to practice community association management under this section may not use the terms "broker" or "associate broker" for any business purpose.

*amend to
"amend"
5*

AMENDMENT #6

*Condensed
version
no objections
adopted*

OFFERED IN THE HOUSE

BY REPRESENTATIVE ROKEBERG

TO: CSHB 33 (L&C); Draft Version "P"

Page 30, lines 18-19:

Delete current language

Insert as new (6) "employ", "employing", "employs", "employed",
"employee", "employees", "employment" include being an independent
contractor with an employer.

AMENDMENT #7

*County
Mand
no objection
adopted
(DEED)*

OFFERED IN THE HOUSE

BY REPRESENTATIVE ROKEBERG

TO: CSHB 33 (L&C); Draft "P" Version

Page 5, Line 18:

After "which" insert "complete"

Page 11, Line 31:

After "bond" insert "and the granting of exemptions"

Page 12, Line 8:

After "community association management" insert "operations and"

Page 13, Line 19:

After "lapsed"

Delete " ,"

Insert " ."

Page 13, Line 20:

Delete entire line.

Page 29, Line 4:

After "(17)", delete "an"

Insert "a resident"

Page 29, Line 5:

After "community association" insert " ;" and delete remainder of line 5 and lines 6-7

see amend #12

*Moved by
Crowder
adopted
No objection*

0-LS0197P.7
Lauterbach
1/28/98

AMENDMENT # 8

OFFERED IN THE HOUSE

BY REPRESENTATIVE ROKEBERG

TO: CSHB 33(L&C); Draft version "P"

1 Page 11, line 19:

2 Delete "a new section"

3 Insert "new sections"

4 Page 11, following line 31:

5 Insert a new section to read:

6 "Sec. 08.88.175. Limitations on community association managers. A
7 licensee may not, within the practice of community association management, exercise
8 control over the

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

10 (2) operating account of a community association unless

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

13 (B) duplicate financial statements concerning the account are
14 sent by the institution holding the account to the licensee and the association's
15 board of directors at separate addresses."

*Amendment #9
as amended
no objection
adopted*

AMENDMENT #9

OFFERED IN THE HOUSE

BY REPRESENTATIVE ROKEBERG

TO: CSHB 33 (L&C); Draft Version "P"

[Page 6, line 16
After "Unless licensed" insert "in the State of Alaska"]

*amend 1
to amend 9*

Page 6, line 27

After "assist in" insert "or communicate with"
After "prospective buyers" insert ^{and} "sellers,"

*technical
amend*

*Cowdery
moved
10
no objection
adopted*

AMENDMENT #10

OFFERED IN THE HOUSE

BY REPRESENTATIVE ROKEBERG

TO: CSHB 33 (L&C); Draft Version "P"

Page 18, line 12

Page 18, line 14

13*

Delete "real estate employment"

Insert: "listings and management"

NOTE: This is to conform with amendment #2 adopted by the House Labor & Commerce Committee on January 26, 1998.

*Moved
by Council
no objection
adopted
as amended*

0-LS0197P.9
Lauterbach -
1/28/98

AMENDMENT

*Rokeberg
amend #1
to amend #11*

OFFERED IN THE HOUSE

BY REPRESENTATIVE ROKEBERG

TO: CSHB 33(L&C); Draft version "P"

- 1 Page 11, line 29:
- 2 Delete "(b)"
- 3 Delete "section"
- 4 Insert "subsection"

- 5 Page 11, following line 31:
- 6 Insert a new subsection to read:
- 7 "(b) If a loss covered by the fidelity bond required under this section is also
- 8 reimbursable from the real estate surety fund, the ^{owners' association} ~~person~~ who suffered the loss may
- 9 not recover under the bond until the person has filed a claim for reimbursement under
- 10 AS 08.88.460 and proceedings relating to the claim are concluded."

- 11 Page 23, line 21, following "funds" *Community
assoc
manages*
- 12 Insert "or community association accounts" *by a manager* *under the control*
- 13 Page 23, line 27, following "funds":
- 14 Insert "or community association accounts" //

- 15 Page 25, line 11, following "funds":
- 16 Insert "or community association accounts" //

- 17 Page 25, line 25, following "funds":
- 18 Insert "or community association accounts" //

- 19 Page 26, line 3, following "funds":

1

Insert "or community association accounts"

//

AMENDMENT

#12 County
M need
no objection
adopt 1/28/98

OFFERED IN HOUSE LABOR AND COMMERCE COMMITTEE

OFFERED FOR: DCED & Law

TO: HB 33 (L&C) Version P dated 1/16/98

PAGE 3, lines 17 thru 18, after "(4)":

Delete the proposed changes and insert current law. This section should now read:

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

PAGE 13, line 11, after "license.":

Delete: All material on lines 11 through 15.

PAGE 13, line 16 after "lapsed":

Delete: "more than 60 days and"

Renumber bill sections accordingly.

PAGE 27, lines 19 thru 20, after "Exceptions.":

Delete the proposed changes and insert current law. This section should read:

"This chapter does not apply to"

PAGE 31, line 26, add a new bill section:

"Sec. 56. Notwithstanding Section 54 the Real Estate Commission may begin the process to adopt regulations to implement 08.88.091 (f) and (g). "

(Plus any additional language LAA Legal determines necessary to activate this section)

Renumber bill sections accordingly.

see amend 7

*Cowdery
moved
adopted*

AMENDMENT (13)

OFFERED IN THE HOUSE

TO: CSHB 33(L&C); Draft version "P"

1 Page 1, line 1:

2 Delete "licensing"

3 Insert "licensees"

4 Page 1, line 4, following "Section 1.":

5 Insert "AS 08.67.010 is amended to read:

6 Sec. 08.67.010. Registration of mobile home dealers. A mobile home dealer
7 may not do business in the state unless the dealer is registered with the department.

8 However, a person licensed under AS 08.88 may, without registering under this
9 chapter, perform the same activities with respect to mobile homes as are
10 authorized for that person to perform under AS 08.88 with respect to real estate.

11 * Sec. 2."

12 Renumber the following bill sections accordingly.

13 Page 22, following line 28:

14 Insert a new bill section to read:

15 ** Sec. 35. AS 08.88.405 is amended to read:

16 Sec. 08.88.405. Preparation of documents. Notwithstanding AS 08.08, a
17 person licensed as a real estate broker, associate real estate broker, or real estate
18 salesperson under this chapter may prepare real property contracts, mobile home
19 contracts, earnest money agreements, leases, and other documents related to real
20 property or mobile homes if the documents are prepared by the person in the course
21 of the person's work as a licensed real estate broker, associate real estate broker, or
22 real estate salesperson under this chapter."

*Carodan
moved
adopted*

0-LS0197P.10
Lauterbach
1/28/98

AMENDMENT #14

OFFERED IN THE HOUSE

BY REPRESENTATIVE ROKEBERG

TO: CSHB 33(L&C); Draft version "P"

1 Page 22, line 15, following "prohibit":

2 Insert "(1)"

3 Page 22, line 18, following "chapter":

4 Insert ";

5 (2) negotiations between a licensee and a principal in a real estate
6 transaction concerning the amount of a commission or other compensation; or

7 (3) payments from a real estate licensee to a principal as part of the
8 resolution of a dispute regarding the terms of a transaction or regarding the property
9 transferred"

10 Page 22, following line 24:

11 Insert a new bill section to read:

12 "** Sec. 47. AS 08.88.900 is amended by adding a new subsection to read:

13 (b) Notwithstanding that a person is exempt from licensure under this section,
14 the prohibition in AS 08.88.401(e)(1) is applicable to that person."

15 Renumber the following bill sections accordingly.

16 Renumber internal references to bill sections in accordance with this amendment. Internal
17 bill section references occur in the following places:

18 Page 31, line 24

AMENDMENT #15

*Moved by
Cawley
Adopted*

OFFERED IN THE HOUSE BY REPRESENTATIVE ROKEBERG

TO: CSHB 33 (L&C); Draft Version "P"

Page 27, line 21

Delete "natural"

Page 27, line 23

Delete: ^{DN} "the person's own behalf"

Insert "is seeking to own so long as the compensation the person receives does not include any portion of the commission or other compensation paid to a real estate licensee in the transaction."

*Technical
Change*

AMENDMENT #16

OFFERED IN THE L & COMMITTEE

BY REP RYAN

TO: CSHB 33 (L&C); Draft Version "P"

Page 13, line 5:

Delete "(7) courses and"

Re-number section accordingly.

Ryan Amendment

Conceptual Amendment - 16

thinks the fees are burdensome
and very high - the cost to do
business is very high -
adding 5 other things for
fee

Delete: (7), (8), (9), (10), (11) - all language

Withdraw Amendment 16 Ryan

New

Ryan Amendment 16

Delete (7) "courses and"
and renumber accordingly



REALTOR®

HB247

ALASKA ASSOCIATION OF REALTORS, INC.

741 Seagame Street, Suite 100 • Anchorage, Alaska 99503

Telephone 907-563-7133 • Fax 907-561-1779

Representative Norm Rokeberg
State Capital
Juneau, AK 99801

January 20, 1998

Dear Representative,

The Alaska Association of REALTORS®, with its over 1100 members statewide, joins with the Alaska Escrow Association in support of HB 247, an act relating to escrow funds.

This legislation would assure the public that funds are in fact available to pay off a seller's existing loan upon recording of documents. Settlement agent policies and procedures will be standardized and clear to both the real estate and lending communities. In addition Alaska statutes will parallel the statutes of most of the States in the Western U. S.

AAR supports passage of HB 247

Sincerely,

Dea Turner
Executive Vice President

11-21-98P12:32 RCVD

The Voice for Real Estate™ in Alaska

REALTOR® is a registered mark which identifies a professional in real estate who subscribes to a strict Code of Ethics as a member of the NATIONAL ASSOCIATION OF REALTORS®



House Labor and Commerce Standing Committee

January 26, 1998

3:24 p.m.

TAPE 98-6, SIDE A
 VERBATIM EXCERPT
 BEGINNING WITH
 Number 0170

Post-It™ brand fax transmittal memo 7671		# of pages	3
To	Shirley Armstrong	From	Paula Smedley
cc	Rep. Rokeberg	Co	House Records
Dept.		Phone #	x 2258
Fax #	x 2040	Fax #	x 2267

CHAIRMAN ROKEBERG stated, "... This is on page 11, line 31, after the word bond, insert and granting - and the granting of exemptions. What this does, this allows the commission, in establishing whatever fidelity bonding requirements that they might under subsection (b), also grant exemptions. The reason for this is that there's certain -- (indisc.) Alaska Housing Finance has like two standards for fidelity bonding to be certified for Alaska Housing. And therefore you can have one has full coverage, and if you do certain other things you have more coverage, and also the Hawaiian law that has this in there provides there to be exemptions. So I wanted to -- in the case we have further difficulty with this fidelity bond part, which is driving me nuts right now, we will have the ability of the - of the commission to rectify it by that. So that's why that's in there. And more on the fidelity bonds later, let's not take that up now. Page 12, here we are Representative Ryan. On page 12, line 8, there was the addition of the word operation after community association management, inserting operations and ethics and standards. There was a concern here without adding semicolons all over the place that we could add operations in here. There's nothing here on the examinations about the operations of a - of a management (indisc.) -- and the chairman would not find it hostile if there was an amendment to the amendment here, deleting nonprofit corporations creation and operation."

REPRESENTATIVE RYAN stated, "So moved."

CHAIRMAN ROKEBERG stated, "The Amendment number 7 has been amended."

REPRESENTATIVE RYAN said, "(Indisc.) offer (indisc.) comment."

CHAIRMAN ROKEBERG stated, "To page 12, line 9, we delete the words nonprofit corporation creation and operation. I think that the reason for the deletion, and I would -- (indisc.) any discussion on that? My discussion would be that I think that the commission and the examiner can cause that to be included in their presentation; it doesn't need a statutory requirement for it, if they so desire. Also, I'd point out, Representative Ryan, that on the line 2 of the operative word is 'may' up there. It doesn't say shall be in there."

REPRESENTATIVE RYAN said, "I had ..."

CHAIRMAN ROKEBERG stated, "And Representative Ryan, you had a comment."

REPRESENTATIVE RYAN stated, "I have a question, more or less. We are -- you're setting up a horse of a different color here, making a community manager associate or broker under that particular thing. They can't come over and be an associate broker or a broker in regular real estate or a salesperson. They're getting a special community association manager license. It seems to me that since you're making the special designation that you could set up a criteria for those guys that would be applicable to them -- things they need to know like this nonprofit so forth and - and this other stuff, without making it inclusive on the folks who just want to be a salesperson or real - associate broker, broker. And all the other real estate transactions, 'cause you differentiated these guys when you grandfathered [them]. They can't - they (indisc.) be associate broker, broker. They can't do what everybody (indisc.). So it would seem that criteria would be applicable to them and under their coverage as this particular license (indisc.) going to be created -- yeah, they probably need that. But to make it -- for everybody to do that, makes it burdensome and adds two things and - and causes a fellow has no -- person who has no particular interest in that sort of thing, just another hurdle to come 'crossed', and - and it's not really germane to the - to the whole thing. So you can take that under advisement if you like.

CHAIRMAN ROKEBERG replied, "Well my comment for the record is that we had that in there before, I was sorry to see it go, but any new licensee that's gonna engage in this activity is gonna have to be a licensed - real estate licensee, and that's the answer to it, because of the way we've constructed it, right. And that's -- the public didn't accept your suggestion."

"REPRESENTATIVE RYAN said, "(Indisc.) are grandfathered."

CHAIRMAN ROKEBERG stated, "Okay, let's move on to page 13, line 9. Page 13, line 19, excuse me. This was done at the request of the commission. They realized that by putting a period after lapsed and then going down on - and deleting line 20, which is the next paragraph -- what they're doing is taking away a double penalty here. They didn't intend to do that when they drafted this bill - this section of the bill.

REPRESENTATIVE BRICE asked, "They didn't?"

CHAIRMAN ROKEBERG replied, "No."

REPRESENTATIVE BRICE clarified, "They didn't intend to implement a double penalty?"

CHAIRMAN ROKEBERG replied, "Right."

REPRESENTATIVE BRICE "They didn't -- okay."

CHAIRMAN ROKEBERG "Right. So this would have required a double payment -- additional penalty of -- and they didn't want to do that. So they're -- ask that be deleted, I think it's a good idea."

CHAIRMAN ROKEBERG continued, "Page 29, line 4, now this is a major concession. This is the 'Stephen Vlahovich Amendment.' Mr. Vlahovich has been before this committee on at least four occasions requesting this change to allow a resident owner -- and you will see on line 4, page 29, the insertion of the word resident, and then on the page -- on line 5, after community association insert - delete the remainder of 5, line 7 - line 6 and 7. So the balance of that struck out. At the fall meeting this committee had adopted the provision that a community association could self-manage but then could only pay expenses, but there's been testimony before this committee that (indisc.) there's a belief that a[n] association should be able to self-manage and pay a small fee to a resident owner that was a manager of the - a member - unit owner resident of the association. So this frees up some of the concerns that Representative Cowdery had before. Also it satisfies Mr. Vlahovich's complaint, and his persistence before the committee. And I would also compliment my -- the people from the community association management chapter here who have agreed to this as part of this whole process."

REPRESENTATIVE RYAN said, "Mr. Chairman, I just noticed that I'm ten minutes late for a chiropractor's appointment. (Indisc.) I gotta run (indisc.)."

UNIDENTIFIED SPEAKER (Shirley Armstrong ?, Legislative Assistant to Chairman Rokeberg) "(Indisc.)."

CHAIRMAN ROKEBERG said, "Got one more amendment - but (indisc.) - - oh (indisc.)."

UNIDENTIFIED SPEAKER "(Indisc.) Norm, Representative Ryan ..."

CHAIRMAN ROKEBERG stated, "Is there any objection to this amendment?"

REPRESENTATIVE RYAN said, "No, go ahead."

CHAIRMAN ROKEBERG stated, "So adopted. Amendment 7's adopted. Thank you very much. Now we have a conceptual amendment"

END OF VERBATIM EXCERPT
ENDING WITH
Number 0735

01/28/98
15:14:05

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
PARTICIPANT LIST (TESTIFIERS ONLY)
TCN:80183 SCHEDULED FOR:01/28/98 15:15 TO 17:15
PUBLIC HEARING HOUSE LABOR & COMMERCE

LTN1150
BY:JNU
FOR:ALL

LOCATION:KENAI LIO
HB 33 MR.

RON

JOHNSON

ERA-KP BD OF R TESTIFY

01/28/98
15:42:39

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
PARTICIPANT LIST (ALL PARTICIPANTS)
TCN:80183 SCHEDULED FOR:01/28/98 15:15 TO 17:15
PUBLIC HEARING HOUSE LABOR & COMMERCE

LTN1150
BY:ANC
FOR:ANC

LOCATION:ANCHORAGE

HB 33
HB 33
HB 33

BETTY
ART
ERIC

COX
CLARK
DYRUD

BRADY & CO.

TESTIFY
TESTIFY
TESTIFY



ERA REAL ESTATE SPECIALISTS

Wednesday, January 28, 1998

Representative Norm Rokeberg
Alaska State Legislature
Juneau, AK

01-28-98A08:37 RCVD

via facsimile to 907-465-2040

RE: HB 33

Following please find three pages of proposed amendments to HB 33/P

The reasoning behind the proposals is to replace the terminology designated as "salesman" with a term that more clearly enhances the professional image with licensee.

The proposed changes replacing the terminology relative to employment to reflect a truer picture of the real market i.e., Independent contractors.

Further to eliminate where possible the perception of the commission being the method of payment for the services of a real estate licensee. The term "fee" covers all methods and compensation types.

Specifically the term personal services contract must be consistent in Sec. 08.88.341 and Sec 08.88 361.

Please consider these proposals in your upcoming hearings.

Respectfully submitted,

Ron Johnson
Industry Issues Key Work Group
Kenai Peninsula Board of Realtors

15F4

revisions to WORK DRAFT 0-LS0197.P DATED 1/16/98 HB33

page 2, line 3 (6) negotiate terms for [of] payments of fines. . . .

page 3, line 8 broker, or, if a real estate licensee [salesperson], claims to be a real estate

page 3, line 10 (G) if a real estate broker, contracts [employs] an unlicensed

page 3, line 13 (H) if a contracted [employed] real estate licensee of a . . .

page 6, line 17 associate real estate broker, or real estate licensee [salesperson], a

page 8, line 13 months of active and continuous experience as a real estate licensee
[licensed real estate salesperson] within the 36 months

page 9, line 15 real estate licensee within the 36 months immediately preceding . . .

page 10, line 5 (c) A natural person qualifies for a real estate licensee

page 10, line 6 license if the person passes the real estate licensee

page 10, line 14 employed by a real estate broker. Unless the licensee fails to . . .

page 10, line 16 licensee [salesperson's] license is suspended. . . .

page 10, line 17 a real estate licensee [salesperson's] license continues in

page 10, line 18 effect as long as the licensee [salesperson] is contracted
[employed] as a licensee [salesperson]

page 10, line 19 by a licensed real estate broker. If the licensee [salesperson]. . .

page 10, line 20 stops being contracted as a real estate licensee [salesperson], the
real estate

page 10, line 21 licensee's [salesperson's] license is suspended from the time the
licensee [salesperson].

page 10, line 22 stops until the licensee [salesperson] again is contracted,
[employed] as a

page 10, line 23 estate licensee [salesperson] by a licensed real estate broker.

page 12, line 27 Development shall set fees under AS 08.01.065 for a real estate
licensee [broker, as

page 12, line 28 broker, or salesperson licensee] or applicant for the following.

- page 14, line 3 listed in AS 08.88.161, but may receive fees [commissions] or other payments from the
- page 14, line 4 licensee's former contractor [employer] for services performed while actively licensed
- page 14, line 29 are contracted with [employed at] office. A
- page 15, line 2 office registered by the broker by whom the licensee is contracted [employed]
- page 16, line 4 Sec. 08.88.331. Making of transactions. A contracted [An employed].
- page 16, line 7 only through the real estate broker who contracts with [employs] the licensee
- page 16, line 11 broker's authorized representative [agent]. . . .
- page 16, line 25 or extended only by a written agreement signed by the principal or the principal's [client or the client's]
- page 17, line 28 licensee's own properties or the licensee's principal's [client] properties separate from
- page 18, line 9 Sec. 08.88.361. When a [commission or other] fee is earned. An obligation to
- page 18, line 10 pay a marketing fee [commission], management fee, or other compensation to a . . .
- page 18, line 15 [a commission or other] any fee for a service that requires a real estate licensee
- page 20, line 24 Sec. 08.88.397. Licensed assistants. A [licensed] real estate licensee [salesperson] or
- page 20, line 26 licensee other than the broker who contracts with a real estate licensee [employs the salesperson] or . . .
- page 20, line 27 (1) the contractual [employment] arrangement between the licensed assistant and the
- page 20, line 28 other licensee is in writing and conforms to the applicable state and federal regulations .

- page 20, line 29 [regarding employment;]
- page 20, line 30 (2) the contracting [employment] of [the] licensed assistants is approved in writing by
- page 20, line 31 the broker of the licensee who contracts [employs the] assistant and
- page 21, line 1 (3) the licensee who contracts [employs] the assistant agrees to be responsible for
- page 21, line 4 (4) the broker of the licensee who contracts the assistant agrees to be
- page 21, line 15 may not pay a fee [or a commission] for performance of an act for
- page 21, line 18 licensed as a broker in another state a fee [or commission] . . .
- page 21, line 22 (2) as an associate broker or a real estate licensee [salesperson].
- page 21, line 23 may accept a fee [or commission] . .
- page 21, line 25 he licensee's contracting broker,
- page 21, line 27 AS 08.88.397 may be accepted by the person from the assistant's contractor [employer]
- page 29, line 26 (1) "commission" means the Real Estate Commission, [except where the]
- page 29, line 27 [context indicates that "commission" refers to a fee paid for personal services;]
- page 30, line 12 AS 34.08 under an agreement in exchange for a fee, [commission] or other valuable
- page 30, line 22 regard to real property under an agreement in exchange for a fee, [commission] or other
- page 31, line 17 Administrative Code the term "salesman" or salesperson is used in the context relating to real estate salesman
- page 31, line 18 licensed under AS 08.88, it shall be read as real estate licensee ["salesperson"] when to do so would be consistent. . .

01-27-98P05:49 ROWN

FAX TRANSMITTAL

Page 1 of 3

TO: Shirley Armstrong

COMPANY: Representative Rokeberg's Office

CITY: Juneau

FAX NO: 1-907-465-2040

FROM: **BETTY A. COX**
Vice President
Brady & Company
1031 West Fourth Avenue, Suite 400
Anchorage, Alaska 99501
Telephone - 907/276-5617
Facsimile - 907/276-6292 or 907/276-6304

Date: 1/27/1998

SUBJECT: Fidelity Bonds

Enclosed is a better copy of the letter from Reliance Surety Company. In addition, Ms. Beesley indicated on the bottom of the letter that owners will not be excluded from the bond. Let me know if you have any questions.

