

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004

10826 HOUSE JUDICIARY

**BOND, STEPHENS & JOHNSON, INC.  
COMPENSATION AGREEMENT**

This compensation agreement ("Agreement") is by and between: (a) ("Seller/Landlord"), a(n) \_\_\_\_\_, and (b) Bond, Stephens & Johnson, Inc. ("Broker"), an Alaska corporation.

1. The Buyer/Tenant identified below has granted Broker the exclusive right to procure Buyer's/Tenant's purchase/lease of the Seller's/Landlord's real property ("Property") described below with the understanding that Seller/Landlord will pay Broker's commission ("Commission") on the transaction. Seller/Landlord has agreed to pay Broker a Commission at the rate provided in the attached Exhibit A ("Schedule") if, during the Term or within one (1) year after the expiration of the Term ("Tail Period"), the Property is sold or leased to Buyer/Tenant or any affiliate thereof or a contract for such sale or lease is entered into that Seller/Landlord is legally obligated to perform but does not perform. If an earnest money or similar deposit made by Buyer/Tenant is forfeited to Seller/Landlord by Buyer/Tenant or any affiliate thereof, in addition to any other Commission rights Broker has pursuant to this Agreement, Seller/Landlord shall pay Broker a Commission equal to one-half (1/2) of such deposit. In the event that an option or refusal right to purchase or lease the Property is granted by Seller/Landlord to Buyer/Tenant or any affiliate thereof during the Term or the Tail Period, Seller/Landlord shall pay Broker a Commission in accordance with the Schedule based upon the purchase price in the option or refusal right, regardless of whether or when the option or refusal right is exercised.

Property Description: \_\_\_\_\_

Buyer/Tenant is an undisclosed principal.

**OR**

Buyer/Tenant's name is:

2. Notwithstanding that Seller/Landlord has committed to pay Broker's Commission, Broker is:

The agent for Buyer/Tenant only and not the agent for Seller/Landlord or the dual agent for Seller/Landlord and Buyer/Tenant. As such, Broker owes Seller/Landlord no fiduciary or other special duties and may recommend and procure a purchase/lease of other properties by Buyer/Tenant.

**OR**

Dual agent for Seller/Landlord and Buyer/Tenant. As such, Brokers duties are as described in the attached Dual Agency Agreement.

3. Seller/Landlord shall defend, indemnify and hold harmless Broker and its brokers, agents, shareholders, directors and employees from and against any obligations, liabilities, demands, claims, fees and costs suffered or incurred by any of them, that arise out of, result from, are based upon or are caused by, in whole or in part, directly or indirectly, any acts or omissions of Seller/Landlord or any person for whom Seller/Landlord is legally responsible, including, without limitation, all acts and omissions in any way relating to erroneous disclosures or partial or complete failures to disclose required information regarding physical conditions or defects in or environmental contamination affecting the Property or any adjacent or nearby properties.

4. This Agreement (a) is fully integrated; (b) constitutes the entire agreement between Seller/Landlord and Broker with respect to its subject matter; and (c) supersedes all prior discussions, negotiations, promises, understandings and agreements with respect thereto, whether oral or written. No amendment, novation, supplementation, termination or rescission of this Agreement shall be valid or enforceable unless made in writing and executed and delivered by both Seller/Landlord and Broker. This Agreement shall not be construed against its drafter. This Agreement shall be binding upon, and shall benefit, the heirs, successors and assignees of the parties. This Agreement and the respective rights and obligations of the parties hereunder shall be construed and interpreted as a contract under the laws of the State of Alaska, without regard to its conflicts of law principles. If a question, dispute or requirement for interpretation or construction should arise with respect to this Agreement, the jurisdiction and venue therefore shall lie exclusively with the courts for the Third Judicial District for the State of Alaska, at Anchorage, Alaska, or, alternatively, with the United States District Court for the District of Alaska, at Anchorage, Alaska, unless a nonwaivable federal or Alaska state law should require to the contrary.

**Company:**

**Seller/Landlord:**

BOND, STEPHENS & JOHNSON, INC.,  
An Alaska corporation

\_\_\_\_\_  
, Seller/Landlord

By: \_\_\_\_\_  
, Agent

Dated: \_\_\_\_\_, 20

By: \_\_\_\_\_  
, Agent

\_\_\_\_\_  
, Seller/Landlord

Dated: \_\_\_\_\_, 20

Dated: \_\_\_\_\_, 20

**Exhibit A****Bond, Stephens & Johnson, Inc.  
Commission Schedule  
For Compensation Agreement****A. SALES:**

1. For sales of improved real properties, the Commission shall be six percent of the gross sales price. For sales of unimproved real property, the Commission shall be ten percent of the gross sales price. The gross sales price shall include any and all monetary consideration and the fair market value of all non-monetary consideration in whatever form paid or given by or on behalf of the purchaser to Seller or its designee(s) for or with respect to the Property, including but not limited to the assumption or release of existing liabilities. For purposes of this Schedule, the Property is deemed to be  improved  unimproved (deemed to be unimproved if unchecked).
2. The Commission shall be paid upon the earlier to occur of: (a) the closing of the transaction; (b) when the sales price is paid (for installment sales, the entire commission is due with the down payment); (c) Seller's failure or refusal to close the transaction; or (d) when provided in the Term Sheet or otherwise.

**B. LEASES:**

For leases the Commission shall be six percent of the aggregate gross rent for the original term, without reductions, deductions, credits or offsets, payable in its entirety upon the execution of the lease, subject to the following:

1. *Month to Month Tenancy.* The minimum Commission for a month to month tenancy, tenancy at will, or any tenancy which is not reduced to a written lease between a tenant and Landlord shall be equal to 50% of the first month's base rent or \$1,000, whichever is greater. The Commission shall be payable upon occupancy. In the event such a tenant subsequently executes a written lease with Landlord, either directly or with the assistance of Broker or any other person or entity, within 24 months from the date of initial occupancy, then Broker shall receive a Commission with respect to such lease in accordance with the provisions of paragraph B above.
2. *Extension, Renewal or New Lease.* If the lease term is effectively renewed or extended, in accordance with the terms of an option, refusal right, new lease,

Seller/Landlord's Initials:

substitute lease or otherwise, then Landlord shall pay Broker a Commission at one-half of the commission rate provided in Section B of this Schedule based on the aggregate gross rent payable during the extended or renewed lease term for the existing space, without deduction, credit, reduction or set-off. If additional space is leased during the initial, renewed or extended term, Landlord shall pay Broker a Commission at the commission rate provided in Section B of this Schedule based on the aggregate gross rent for the additional space payable during the extended or renewed lease term, without deduction, credit, reduction or set-off. Such Commission shall be earned and payable at the time the extended or renewed term commences for the existing space and at the time of agreement for any additional space.

3. *Purchase of Property by Tenant.* If a tenant, its successors or assignees, or any agent, officer, employee, principal, partner, member, director, manager or shareholder of such tenant or its successors or assigns purchases the Property during (a) the term of the lease, (b) any extension or renewal thereof, or (c) within 180 days after the expiration thereof, then a Commission shall be paid to Broker in accordance with the provisions of Section A above; provided however, that there shall be a credit against such Commission in the amount of the Commission previously paid to Broker for the portion of the purchaser's lease term which is cancelled by reason of such sale. In no event shall such credit exceed the amount of such sales Commission.
4. *Percentage Rent.* If a lease for which a Commission is payable hereunder contains a percentage rent or similar clause, Seller/Landlord shall pay a Commission on the percentage rent or similar payment payable by the tenant at the Commission rate in Section B above applicable to the period of the lease term for which the percentage rent or similar payment is payable. This Commission shall be payable to Broker within 15 days after the tenant's payment of the percentage rent or similar payment for such period. Notwithstanding the foregoing, at the end of the third full lease year Landlord shall pay Broker a Commission on the percentage rent or similar payment for the remainder of the original term of the lease. For the purpose of calculating this Commission, the percentage rent or similar payment for each remaining year of the term of the lease shall be deemed to be the same amount as the percentage rent or similar payment payable for the third full lease year.
5. *Ground Lease.* If a lease is a ground lease, the Commission shall not exceed what the Commission would be for a sale of the Property at a price equal to the

Seller/Landlord's Initials:

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value of the Property used to compute the Property rental rate or, if no such value was used, the then fair market value of the Property.

The provisions hereof are subject to the terms and provisions of any Term Sheet or other agreement to which this Schedule may be attached and which is executed by the parties hereto.

In the event Seller/Landlord fails to make Commission payments to Broker within the time limits set forth herein, then from the date due until paid the delinquent amount shall bear interest at the legal rate set forth in AS 45.45.010 or the maximum legal interest rate chargeable on such amount in Alaska, whichever is less. If Broker is required to pursue legal action against Seller/Landlord to collect any Commission due it, Broker shall be entitled to also recover from Seller/Landlord the reasonable actual attorneys' fees and costs it incurs in such pursuit.

Seller/Landlord's Initials:

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**BOND, STEPHENS & JOHNSON, INC.  
UNDISCLOSED PRINCIPAL ADDENDUM TO  
AGENCY AGREEMENT BY BUYERS AND SELLERS**

This addendum ("Addendum") is by and between: (a) Bond, Stephens & Johnson, Inc. ("Broker"), an Alaska corporation, the address of which is 3000 "A" Street, Suite 200, Anchorage, Alaska 99503; and (b) \_\_\_\_\_ ("Buyer/Tenant"), a(n) \_\_\_\_\_, the address of whom/which is \_\_\_\_\_.

1. *Amendment to Agency Agreement.* This Addendum is an amendment to the Bond, Stephens & Johnson, Inc. Agency Agreement for Buyers and Tenants ("Agency Agreement") between Broker and Buyer/ Tenant of on or about even date herewith.

2. *Undisclosed Principal.* Buyer/Tenant wishes to remain an undisclosed principal for purposes of Broker's efforts to procure a purchase or lease suitable real property on its behalf on the terms and conditions stated in the Agency Agreement. As a result, Broker shall not disclose the identity of Buyer/Tenant to any prospective seller/landlord of real estate without Buyer's/Tenant's prior consent.

3. *Formation of Sale/Purchase Agreement or Lease.* If and when Broker negotiates a purchase or lease of suitable real property on behalf of Buyer/Tenant on the terms and conditions stated in the Agency Agreement, Broker shall enter into a sale/purchase agreement or lease on such terms and conditions as the agent for an undisclosed principal, which Buyer/Tenant hereby authorizes and grants Broker a special power of attorney to do on its behalf. Such agreement or lease shall (i) identify Broker as the agent for an undisclosed principal to whom (which) the agreement or lease will be assigned and (ii) provide that Broker shall be unconditionally released from all obligations and liabilities thereunder upon such undisclosed principal assuming the agreement or lease.

4. *Assignment of Sale/Purchase Agreement or Lease.* Promptly following Broker's execution of such sale/purchase agreement or lease on behalf of Buyer/Tenant and, in any event before the closing of any purchase by Buyer or occupancy of the premises by Tenant: (a) Broker shall assign all of its right, title and interest in and to such agreement or lease to Buyer/Tenant without warranty, representation or recourse; and (b) Buyer/Tenant shall (i) unconditionally and irrevocably accept such assignment and assume all of Broker's obligations and liabilities under such agreement or lease and (ii) notify the seller/landlord that it is the undisclosed principal and the real party in interest with respect to such agreement or lease.

5. *Earnest Money/Security Deposits.* Buyer/Tenant shall timely provide Broker with sufficient unrestricted funds to make all earnest money and security deposits required to be

Buyer/Tenant's Initials:



**BOND, STEPHENS & JOHNSON, INC.  
ASSIGNMENT OF PURCHASE AND SALE AGREEMENT AND LEASES BY BROKER  
TO ITS UNDISCLOSED PRINCIPAL**

For good, valuable and sufficient consideration received, Bond, Stephens & Johnson, Inc. ("Broker"), an Alaska corporation, hereby assigns, without representation, warranty, covenant or recourse, to ("Undisclosed Principal"), a(n) , all of Broker's right, title and interest in, to and under that certain written Purchase and Sale Agreement, dated , 20 , between Broker and , which Broker entered into at the direction, with the approval and for the benefit of Undisclosed Principal, as its agent, to purchase the following described real estate:

Recording District, Judicial District, State of Alaska, and all improvements, buildings and structures located thereon and appurtenances thereto.

Undisclosed Principal, rather than Broker, was at all times the real party in interest in, to and under such Purchase and Sale Agreement, and the purpose of this Agreement is to confirm its status as such.

Undisclosed Principal hereby (a) accepts such assignment, (b) assumes and agrees to fully, faithfully and timely perform and satisfy all of Broker's obligations and liabilities under and with respect to such Purchase and Sale Agreement, and (c) agrees to defend, indemnify and hold harmless Broker with respect to all such obligations and liabilities.

Effective Date: , 20 .

Broker:  
BOND, STEPHENS & JOHNSON, INC., an  
Alaska Corporation

By: \_\_\_\_\_  
, Its Agent



**BOND, STEPHENS & JOHNSON, INC.  
REVISED DISCLOSURE**

Pursuant to AS 08.88.396(d), the Company, Bond, Stephens & Johnson, Inc., through its Agent, \_\_\_\_\_, hereby make the following revised disclosure(s) to Seller/Landlord, \_\_\_\_\_, and Buyer/Tenant, \_\_\_\_\_, in response to a change that has made a prior disclosure by it required by AS 08.88.396 incomplete, misleading or inaccurate:

\_\_\_\_\_

**Company:**

BOND, STEPHENS & JOHNSON, INC.,  
an Alaska corporation

By:

\_\_\_\_\_  
, Agent

Dated: \_\_\_\_\_, 20



**BOND, STEPHENS & JOHNSON, INC.**  
**DISCLAIMER OF REPRESENTATIONS BY COMPANY/AGENT**  
(Without Acknowledgment)

, the Seller/Landlord, and , Buyer/Tenant, are negotiating for the sale and purchase of the following-described real property ("Property"): \_\_\_\_\_.  
, the Company, , and , the Agent, have provided professional real estate services in connection with such negotiations.

To avoid any future dispute as to what statements, representations, warranties, inducements, promises or assurances, oral or written, express or implied, (collectively "Representations") have been made by Company or Agent on which Seller/Landlord and Buyer/Tenant have reasonably relied in negotiating such sale and purchase of the Property, Company and Agent hereby deny and disclaim any and all Representations with regard to the Property, including any Representations made by Seller/Landlord pursuant to AS 34.70.090 or any other applicable law, except for those expressly set forth in the attached Exhibit A (if any). Seller/Landlord and Buyer/Tenant have no right to rely on any other Representations by Company or Agent in entering into any agreement for the sale and purchase of the Property.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

**Company:**  
BOND, STEPHENS & JOHNSON, INC.,  
an Alaska corporation

**Agent:**

By: \_\_\_\_\_

\_\_\_\_\_, Agent

Its:

Dated: \_\_\_\_\_, 20 \_\_\_\_\_

Dated: \_\_\_\_\_, 20 \_\_\_\_\_

**EXHIBIT A**  
**To**  
**DISCLAIMER OF REPRESENTATIONS BY COMPANY/AGENT**  
**(Without Acknowledgment)**

\_\_\_\_\_  
[Company's Representations re Property]

**BOND, STEPHENS & JOHNSON, INC.**  
**DISCLAIMER OF REPRESENTATIONS BY COMPANY/AGENT**  
(With Acknowledgment)

**Disclaimer**

("Seller/Landlord") and ("Buyer/Tenant") hereby acknowledge, represent and warrant to and for the benefit of , the Company, and , the Agent, that Company and Agent have made no statements, representations, warranties, inducements, promises or assurances, express or implied, oral or written, (collectively "Representations") with respect to the following-described real property ("Property") on which Seller/Landlord or Buyer/Tenant have relied in selling or buying the Property, except for those expressly set forth in the attached Exhibit A (if any):

\_\_\_\_\_

**Acknowledgment**

Seller/Landlord and Buyer/Tenant acknowledge and agree: (a) that the Representations made in any disclosure statement pertaining to the Property delivered by Seller/Landlord or Company or Agent to Buyer/Tenant pursuant to AS 34.70.010 or any other applicable law were made solely by Seller/Landlord and not by Company or Agent, except for those expressly set forth in the attached Exhibit A (if any); (b) that Company and Agent are not legally obligated or liable to Seller/Landlord or Buyer/Tenant for any such Representations or the accuracy or completeness of them; and (c) accept and acknowledge this disclaimer.

Dated this        day of        , 20        .

**SELLER/LANDLORD:**

\_\_\_\_\_  
, Seller/Landlord

Dated: \_\_\_\_\_, 20

\_\_\_\_\_  
, Seller/Landlord

Dated: \_\_\_\_\_, 20

**BUYER/TENANT:**

\_\_\_\_\_  
, Buyer/Tenant

Dated: \_\_\_\_\_, 20

\_\_\_\_\_  
, Buyer/Tenant

Dated: \_\_\_\_\_, 20

**EXHIBIT A  
To  
DISCLAIMER OF REPRESENTATIONS BY COMPANY/AGENT**

[Company's Representations re Property]



# BOND, STEPHENS & JOHNSON

COMMERCIAL REAL ESTATE SERVICES

April 14, 2003

Representative Norman Rokeberg  
Alaska Legislature  
State Capitol, Room 214  
Juneau, AK 99801-1182

Re: House Bill No. 257 regarding agency for real estate licensees.

Dear Representative Rokeberg,

I am writing to urge passage of House Bill 257. As President of Bond, Stephens & Johnson, Inc., the state's largest commercial real estate brokerage company, and as a seasoned commercial real estate broker in Alaska, I can attest to serious flaws in the current agency law. I strongly believe House Bill 257 will correct the situation. Let me elaborate.

Agency law, as recently defined by a residential real estate court ruling, is totally unworkable for commercial real estate brokerage. In instances of dual agency the current agency law makes it impossible for commercial real estate brokers to do our job. The required disclosure forms are outside the norm for commercial real estate, are cumbersome, unworkable and cause additional costs. Furthermore, the law's application to commercial real estate is unnecessary.

The current law's serious hindrance to commercial real estate transactions is harmful to the business sector of our economy and consumers. House Bill 257 corrects these problems with only minor changes to the existing law.

More specifically, regarding dual agency:

- When there is dual agency, the current law prohibits an agent from providing advice to the parties in the transaction.
- Dual agency occurs when there is one agent in a transaction that has an established relationship with the both parties, or when there are two agents from the same brokerage company in a transaction, one with the listing and the other with the buyer/tenant. This creates the absurd restriction where if an agent in my company brings the buyer/tenant to one of my listing we have to declare dual agency, but if an agent from another company brings the buyer/tenant there is not dual agency.
- Commercial transactions tend to have a high proportion of transactions that are dual agency. In 2002, 45 percent of my company's transactions were dual agency; I believe this is about average for commercial real estate in Alaska. The industry-wide high proportion of dual agency transaction is due to several factors:

- Alaska's small economy and business sector, in terms of people and companies, means that commercial brokers conduct many transactions with established clients on both sides of a transaction.
- Because of the complexity of commercial properties commercial brokers tend to sell/lease their own listings or find buyers/tenants through agents in their own company.
- Businesses and investors engage commercial brokerage services for our expertise, which is essential to completing commercial transactions. But under the current law, in about half the transactions because there is dual agency, it is illegal to provide our clients that expertise relative to price and terms- the heart of the transaction. We have to be silent observers. In other words, the law will not allow commercial brokers to do the job they were hired to do. That is ridiculous. It is almost impossible to believe that such an Alice-in-Wonderland situation exists, but it does.
- An example. I was recently in a transaction where I listed a large property for sale for an estate. The heirs have no commercial real estate experience and relied heavily on my expertise. Several offers were received, two from agents outside my company and one from an agent in my company. When I met with the sellers to determine which offer to move forward with, I provided an analysis of the advantages and disadvantages of each offer. But, with the offer from an agent in my company, the law requires that I remain silent and provide no assistance.
- Without brokers' expertise it is more difficult to complete transactions. This is not only harmful to brokers and their clients, but is also harmful to our economy and consumers.
- We simply cannot conduct business under these circumstances.

#### Regarding disclosure forms

- They are voluminous. I have provided you copies of the agency forms our attorney drafted so that we could meet the requirements of the current court ruling on agency. You can see the amount of paperwork we are dealing with in meeting just this one requirement of the current law. When we provide these forms to our clients to sign their eyes glaze over.
- The parties to commercial transactions are businesses and investors doing business transactions; they are not consumers buying a home. They know they are doing business transactions, and if they want to have their own broker, will do so. They don't need to be reminded of this by a form we have to ask them to sign.
- These disclosure forms can significantly slow down a transaction.
  - Many national companies' representatives refuse to accept the forms because they can not sign them without approval from their corporate law department in some far-away city.
  - Many individual business owners and investors have the same reaction and want their attorney to review them, because that is business practice.
- Attorney review of the forms only adds time and additional cost to completing a transaction.
- The law requires that when there is dual agency we must obtain each party's written agreement before we even show the property. Many of our clients are out-of-state corporate real estate officers with busy travel schedules who are difficult to contact. To

have to contact both parties for permission in advance to show their property in instances of dual agency unnecessarily delays and complicates the marketing process.

- The parties in a commercial real estate transaction don't care who the other parties are, they just want them to be financially qualified. If there are parties they will not sell to, (such as fast food competitors), they tell us up front and we won't show those competitors the property. Plus the competitor knows they can not buy from another competitor and don't even ask to see their properties.
- Managing and tracking the required paper work is becoming a monumental task.

Testimony that these requirements of the law are unnecessary is on the record. During the 22 years I have been a broker, I am not aware of a single instance when agency related issues have been part of a commercial real estate dispute anywhere in Alaska. If there have been any, they have been few. I am confident that was also the case prior to my entering the profession.

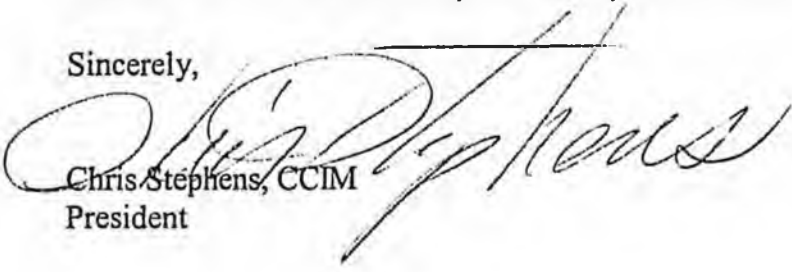
I am concerned that legislators understand the significant difference between commercial and residential real estate. I hope this letter helps you and your colleagues understand that commercial real estate is a unique business with its own special needs that are totally unlike residential real estate.

This difference is highlighted by the following true story. We once had a secretary who had worked for many years in a residential real estate office before coming to work for my company. After a few months with us, I asked how she found commercial real estate compared to residential real estate. The only similarity, she answered, was they both had real estate in their name.

We have a state law that is seriously flawed as it applies to commercial real estate. It serves no purpose to the public good. The law is a major hindrance to the conduct of necessary business and must be changed. House Bill 257 does this in a simple, straight-forward manner.

Again I urge in the strongest possible manner for the legislature to pass House Bill 257. It is in the best interest of consumers, businesses, and our economy.

Sincerely,

  
Chris Stephens, CCIM  
President

**Subject:** HB 257

**Date:** Mon, 21 Apr 2003 15:10:18 -0800

**From:** kevin taylor <kevint@alaska.net>

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

Norm,

I am a voter in your district, a Realtor and I am in favor of HB 257. I appreciate your efforts in helping those of us in the real estate industry. The state Board of Realtors has come out against this bill, but I don't think they speak for the majority of agents. I think if you took a poll of agents most of them would be in favor of what you are trying to accomplish with this bill.

If you wait for the Board of Realtors to contribute to the language in a bill, you will be waiting a long time...they can't agree on anything.

Thank you again for your efforts.

Kevin Taylor

7221 Setter Dr.

Anchorage, 99502

D27  
P. 710

**Subject:** HB 257

**Date:** Mon, 21 Apr 2003 21:22:20 -0700

**From:** Robert Stanton <rstanton@gci.net>

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

Dear Representative Rokeberg:

I have been a licensed realtor here in Anchorage since 1975 and I sincerely appreciate and support your efforts in attempting to introduce and pass HB 257. It is imperative that we take steps to resolve and correct this issue quickly and to reduce the exposure to all within our industry. If there is anything I can do to assist you, please feel free to contact me either by email or on my cel phone at (907) 240 2560. Thank you.

Sincerely,

Robert J. Stanton, Jr.  
License Number 3803

PO Box 112587  
Anch 99511

D31

**Subject:** hb 257

**Date:** Mon, 21 Apr 2003 16:56:14 -0700

**From:** "ronzm" <ronzm@mtaonline.net>

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

Dear Representative Rokeberg,

As an active Associate Broker in the State of Alaska and also, I might add, a member of NAR I disagree with AAR's position. You can cast my vote in favor of your bill. I totally agree that lawsuits originating on the basis of non-disclosure of agency in and of itself is ludicrous and a potential windfall for hungry attorneys. One could tighten the requirements a bit for the commercial application requirements but in general I am in favor of that portion of your bill also.

Sincerely,

Ron Zmuda  
RE/MAX of Wasilla

PO Box 876326

Wasilla

**Subject:** HB257

**Date:** Tue, 22 Apr 2003 15:56:27 EDT

**From:** PLumetta@aol.com

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

DEAR REPRESENTATIVE ROKEBERG,

I WOULD LIKE TO TAKE THIS OPPORTUNITY TO THANK YOU FOR THE LEGISLATION YOU HAVE PROPOSED IN HB257 TO HELP IMPROVE THE REAL ESTATE INDUSTRY HERE IN ALASKA. I SUPPORT THIS LEGISLATION 100% AND HOPE IT GETS APPROVED. I HAVE BEEN IN REAL ESTATE HERE IN ALASKA FOR 20 YEARS AND AM A MEMBER OF THE BOARD OF REALTORS AND THE AK ASSO. OF REALTORS. MY LICENSE IS #14223.

THANKS  
PETER LUMETTA

*Kenai*

4/20/03

**The Honorable Norman Rokeberg  
House of Representatives  
Alaska State Capitol  
Juneau, AK 99801-1182**

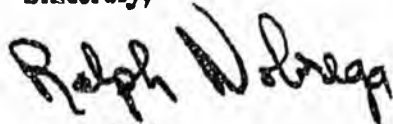
**Dear Representative Rokeberg,**

Just a personal note to say how much I appreciate you sponsoring HB 257. I have been a full time residential licensed Realtor in Anchorage for 23 years. I have never been involved in a lawsuit or even gone to arbitration. But, I resent the fact that under current statute, I can be sued on a technicality over "what minute I got the proper agency forms signed". I am pleased with HB 257, which does not relieve me of my responsibility to disclose agency, but limits my liability to any act, which results in actual damages to the public that I serve, as a result of fraud, misrepresentation, or deceit on my part.

HB 257 goes a long way in deterring fire-truck-chasing attorneys from pursuing "Technicality lawsuits" at the expense of everyone. When this important piece of legislation is passed, they can concentrate on serving the public when they are a victim of misconduct resulting in damages.

I strongly support HB 257. If there is anything I can do to assist in getting your bill passed, please contact me immediately.

Sincerely,



**Ralph Nobrega  
AK licensee #6482  
907-727-6903  
Ralpho@iglide.net**

**Subject: Real Estate Agency**

**Date: Sat, 19 Apr 2003 11:23:03 -0800**

**From: Scott Dennis <sddennis@InfoTechAlaska.com>**

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

To the Editor: Please do not edit my letter. It is difficult to be brief enough when discussing legal issues, but this is a response to the piece written by Richard Richtmyer on April 19. I would prefer either to cut it down myself if you declare it is too long, or perhaps to have it published as a voice from the community column or some other means. Thank you.

Dear Editor:

Rep Rokebergs bill limiting liability in dual-agency real estate transactions is a good first step towards tort reform but does not go far enough. This bill limits the liability in transactions in which there are no actual damages, thus removing the threat of punitive lawsuits based on mere technicalities. He obviously understands the fact that lawyers increasingly profit as conflict is prolonged, and that they might be persuaded to bring frivolous lawsuits merely on speculation of personal gain. I believe these lawsuits threaten the real estate industry in Alaska.

The biggest difficulty with Alaskas approach to agency relationships is the fact that representation in law rests with the employing real estate broker. Instead, it should rest with the actual agent who performs the service for the client. Right now, when two agents under the same broker represent the two parties to a transaction (even if one agent is in Anchorage and the other is with another office in Eagle River), it is declared by state law to be technical dual agency. Still, the agents have a duty to adequately represent their clients, and they do so. Yet state law specifies that they must limit the advocacy they give their clients. This is just plain wrong. There would be no true need to limit advocacy in these transactions were it not for the threat of these frivolous lawsuits. Another way to look at it is this: If an agent is taking a buyer on a driving tour, they would be free to show any and all homes on the market, on a moments notice, except for those listed by other agents at their employing brokerage; in those situations the state law implies that they must first obtain written consent from both buyer and the seller. Of course we have a duty to inform the buyer. But the law seemingly departs from the reality, at least in a lawyers eyes. This is obviously not a healthy situation for the industry as a whole as it limits the ability of the agent to adequately represent the buyer due to the fear of frivolous lawsuits.

Since the agents themselves are representing the client it does not make sense to declare that the employing broker is the representative, as the brokers often have no direct involvement in the actual transaction. It is time for the law to accurately reflect the reality. If this were changed, the only dual-agency transactions would be those where a

single agent represents both sides of a transaction, as it should be. Even in these transactions the agent would still be able to help facilitate the transaction. Often this is advantageous, actually, especially in new construction, where the buyer then has an agent with intimate access to the builder.

I strongly support Rep Rokebergs bill as in interim measure to protect the industry from the ambulance-chasers while the Real Estate Commission addresses the real problems in state law.

Scott Dennis  
Anchorage Alaska

(Disclosure: I am a licensed real estate agent)

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Scott Dennis, Owner and Consulting Engineer  
*InfoTech Alaska*  
POB 240706  
Anchorage, AK 99524  
(907) 441-7776

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<http://www.InfoTechAlaska.com/>

# Code of Ethics and Standards of Practice of the NATIONAL ASSOCIATION OF REALTORS®

Effective January 1, 2003

Where the word REALTORS® is used in this Code and Preamble, it shall be deemed to include REALTOR-ASSOCIATE®s.

While the Code of Ethics establishes obligations that may be higher than those mandated by law, in any instance where the Code of Ethics and the law conflict, the obligations of the law must take precedence.

## Preamble

Under all is the land. Upon its wise utilization and widely allocated ownership depend the survival and growth of free institutions and of our civilization. REALTORS® should recognize that the interests of the nation and its citizens require the highest and best use of the land and the widest distribution of land ownership. They require the creation of adequate housing, the building of functioning cities, the development of productive industries and farms, and the preservation of a healthful environment.

Such interests impose obligations beyond those of ordinary commerce. They impose grave social responsibility and a patriotic duty to which REALTORS® should dedicate themselves, and for which they should be diligent in preparing themselves. REALTORS®, therefore, are zealous to maintain and improve the standards of their calling and share with their fellow REALTORS® a common responsibility for its integrity and honor.

In recognition and appreciation of their obligations to clients, customers, the public, and each other, REALTORS® continuously strive to become and remain informed on issues affecting real estate and, as knowledgeable professionals, they willingly share the fruit of their experience and study with others. They identify and take steps, through enforcement of this Code of Ethics and by assisting appropriate regulatory bodies, to eliminate practices which may damage the public or which might discredit or bring dishonor to the real estate profession. REALTORS® having direct personal knowledge of conduct that may violate the Code of Ethics involving misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm, bring such matters to the attention of the appropriate Board or Association of REALTORS®. (Amended 1/00)

Realizing that cooperation with other real estate professionals promotes the best interests of those who utilize their services, REALTORS® urge exclusive representation of clients; do not attempt to gain any unfair advantage over their competitors; and they refrain from making unsolicited comments about other practitioners. In instances where their opinion is sought, or where

REALTORS® believe that comment is necessary, their opinion is offered in an objective, professional manner, uninfluenced by any personal motivation or potential advantage or gain.

The term REALTOR® has come to connote competency, fairness, and high integrity resulting from adherence to a lofty ideal of moral conduct in business relations. No inducement of profit and no instruction from clients ever can justify departure from this ideal.

In the interpretation of this obligation, REALTORS® can take no safer guide than that which has been handed down through the centuries, embodied in the Golden Rule, "Whatsoever ye would that others should do to you, do ye even so to them."

Accepting this standard as their own, REALTORS® pledge to observe its spirit in all of their activities and to conduct their business in accordance with the tenets set forth below.

## Duties to Clients and Customers

### Article 1

When representing a buyer, seller, landlord, tenant, or other client as an agent, REALTORS® pledge themselves to protect and promote the interests of their client. This obligation to the client is primary, but it does not relieve REALTORS® of their obligation to treat all parties honestly. When serving a buyer, seller, landlord, tenant or other party in a non-agency capacity, REALTORS® remain obligated to treat all parties honestly. (Amended 1/01)

#### • Standard of Practice 1-1

REALTORS®, when acting as principals in a real estate transaction, remain obligated by the duties imposed by the Code of Ethics. (Amended 1/93)

#### • Standard of Practice 1-2

The duties the Code of Ethics imposes are applicable whether REALTORS® are acting as agents or in legally recognized non-agency capacities except that any duty imposed exclusively on agents by law or regulation shall not be imposed by this Code of Ethics on REALTORS® acting in non-agency capacities.

As used in this Code of Ethics, "client" means the person(s) or entity(ies) with whom a REALTOR® or a REALTOR®'s firm has an agency or legally recognized non-agency relationship; "customer" means a party to a real estate transaction who receives information, services, or benefits but has no contractual



NATIONAL ASSOCIATION  
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*The Voice for Real Estate®*

Real Strength.  
Real Advantages.

relationship with the REALTOR® or the REALTOR®'s firm; "agent" means a real estate licensee (including brokers and sales associates) acting in an agency relationship as defined by state law or regulation; and "broker" means a real estate licensee (including brokers and sales associates) acting as an agent or in a legally recognized non-agency capacity. (Adopted 1/95, Amended 1/99)

• **Standard of Practice 1-3**

REALTORS®, in attempting to secure a listing, shall not deliberately mislead the owner as to market value.

• **Standard of Practice 1-4**

REALTORS®, when seeking to become a buyer/tenant representative, shall not mislead buyers or tenants as to savings or other benefits that might be realized through use of the REALTOR®'s services. (Amended 1/93)

• **Standard of Practice 1-5**

REALTORS® may represent the seller/landlord and buyer/tenant in the same transaction only after full disclosure to and with informed consent of both parties. (Adopted 1/93)

• **Standard of Practice 1-6**

REALTORS® shall submit offers and counter-offers objectively and as quickly as possible. (Adopted 1/93, Amended 1/95)

• **Standard of Practice 1-7**

When acting as listing brokers, REALTORS® shall continue to submit to the seller/landlord all offers and counter-offers until closing or execution of a lease unless the seller/landlord has waived this obligation in writing. REALTORS® shall not be obligated to continue to market the property after an offer has been accepted by the seller/landlord. REALTORS® shall recommend that sellers/landlords obtain the advice of legal counsel prior to acceptance of a subsequent offer except where the acceptance is contingent on the termination of the pre-existing purchase contract or lease. (Amended 1/93)

• **Standard of Practice 1-8**

REALTORS® acting as agents or brokers of buyers/tenants shall submit to buyers/tenants all offers and counter-offers until acceptance but have no obligation to continue to show properties to their clients after an offer has been accepted unless otherwise agreed in writing. REALTORS® acting as agents or brokers of buyers/tenants shall recommend that buyers/tenants obtain the advice of legal counsel if there is a question as to whether a pre-existing contract has been terminated. (Adopted 1/93, Amended 1/99)

• **Standard of Practice 1-9**

The obligation of REALTORS® to preserve confidential information (as defined by state law) provided by their clients in the course of any agency relationship or non-agency relationship recognized by law continues after termination of agency relationships or any non-agency relationships recognized by law. REALTORS® shall not knowingly, during or following the termination of professional relationships with their clients:

- 1) reveal confidential information of clients; or
- 2) use confidential information of clients to the disadvantage of clients; or
- 3) use confidential information of clients for the REALTOR®'s advantage or the advantage of third parties unless:
  - a) clients consent after full disclosure; or
  - b) REALTORS® are required by court order; or
  - c) it is the intention of a client to commit a crime and the information is necessary to prevent the crime; or
  - d) it is necessary to defend a REALTOR® or the REALTOR®'s employees or associates against an accusation of wrongful conduct.

Information concerning latent material defects is not considered confidential information under this Code of Ethics. (Adopted 1/93, Amended 1/01)

• **Standard of Practice 1-10**

REALTORS® shall, consistent with the terms and conditions of their real estate licensure and their property management agreement, competently manage the property of clients with due regard for the rights, safety and health of tenants and others lawfully on the premises. (Adopted 1/95, Amended 1/00)

• **Standard of Practice 1-11**

REALTORS® who are employed to maintain or manage a client's property shall exercise due diligence and make reasonable efforts to protect it against reasonably foreseeable contingencies and losses. (Adopted 1/95)

• **Standard of Practice 1-12**

When entering into listing contracts, REALTORS® must advise sellers/landlords of:

- 1) the REALTOR®'s company policies regarding cooperation and the amount(s) of any compensation that will be offered to subagents, buyer/tenant agents, and/or brokers acting in legally recognized non-agency capacities;
- 2) the fact that buyer/tenant agents or brokers, even if compensated by listing brokers, or by sellers/landlords may represent the interests of buyers/tenants; and
- 3) any potential for listing brokers to act as disclosed dual agents, e.g. buyer/tenant agents. (Adopted 1/93, Renumbered 1/98, Amended 1/03)

• **Standard of Practice 1-13**

When entering into buyer/tenant agreements, REALTORS® must advise potential clients of:

- 1) the REALTOR®'s general company policies regarding cooperation and compensation; and
- 2) any potential for the buyer/tenant representative to act as a disclosed dual agent, e.g. listing broker, subagent, landlord's agent, etc. (Adopted 1/93, Renumbered 1/98, Amended 1/99)

• **Standard of Practice 1-14**

Fees for preparing appraisals or other valuations shall not be contingent upon the amount of the appraisal or valuation. (Adopted 1/02)

- **Standard of Practice 1-15**

REALTORS<sup>®</sup>, in response to inquiries from buyers or cooperating brokers shall, with the sellers' approval, divulge the existence of offers on the property. *(Adopted 1/03)*

## Article 2

REALTORS<sup>®</sup> shall avoid exaggeration, misrepresentation, or concealment of pertinent facts relating to the property or the transaction. REALTORS<sup>®</sup> shall not, however, be obligated to discover latent defects in the property, to advise on matters outside the scope of their real estate license, or to disclose facts which are confidential under the scope of agency or non-agency relationships as defined by state law. *(Amended 1/00)*

- **Standard of Practice 2-1**

REALTORS<sup>®</sup> shall only be obligated to discover and disclose adverse factors reasonably apparent to someone with expertise in those areas required by their real estate licensing authority. Article 2 does not impose upon the REALTOR<sup>®</sup> the obligation of expertise in other professional or technical disciplines. *(Amended 1/96)*

- **Standard of Practice 2-2**

*(Renumbered as Standard of Practice 1-12 1/98)*

- **Standard of Practice 2-3**

*(Renumbered as Standard of Practice 1-13 1/98)*

- **Standard of Practice 2-4**

REALTORS<sup>®</sup> shall not be parties to the naming of a false consideration in any document, unless it be the naming of an obviously nominal consideration.

- **Standard of Practice 2-5**

Factors defined as "non-material" by law or regulation or which are expressly referenced in law or regulation as not being subject to disclosure are considered not "pertinent" for purposes of Article 2. *(Adopted 1/93)*

## Article 3

REALTORS<sup>®</sup> shall cooperate with other brokers except when cooperation is not in the client's best interest. The obligation to cooperate does not include the obligation to share commissions, fees, or to otherwise compensate another broker. *(Amended 1/95)*

- **Standard of Practice 3-1**

REALTORS<sup>®</sup>, acting as exclusive agents or brokers of sellers/landlords, establish the terms and conditions of offers to cooperate. Unless expressly indicated in offers to cooperate, cooperating brokers may not assume that the offer of cooperation includes an offer of compensation. Terms of compensation, if any, shall be ascertained by cooperating brokers before beginning efforts to accept the offer of cooperation. *(Amended 1/99)*

- **Standard of Practice 3-2**

REALTORS<sup>®</sup> shall, with respect to offers of compensation to another REALTOR<sup>®</sup>, timely communicate any change of

compensation for cooperative services to the other REALTOR<sup>®</sup> prior to the time such REALTOR<sup>®</sup> produces an offer to purchase/lease the property. *(Amended 1/94)*

- **Standard of Practice 3-3**

Standard of Practice 3-2 does not preclude the listing broker and cooperating broker from entering into an agreement to change cooperative compensation. *(Adopted 1/94)*

- **Standard of Practice 3-4**

REALTORS<sup>®</sup>, acting as listing brokers, have an affirmative obligation to disclose the existence of dual or variable rate commission arrangements (i.e., listings where one amount of commission is payable if the listing broker's firm is the procuring cause of sale/lease and a different amount of commission is payable if the sale/lease results through the efforts of the seller/landlord or a cooperating broker). The listing broker shall, as soon as practical, disclose the existence of such arrangements to potential cooperating brokers and shall, in response to inquiries from cooperating brokers, disclose the differential that would result in a cooperative transaction or in a sale/lease that results through the efforts of the seller/landlord. If the cooperating broker is a buyer/tenant representative, the buyer/tenant representative must disclose such information to their client before the client makes an offer to purchase or lease. *(Amended 1/02)*

- **Standard of Practice 3-5**

It is the obligation of subagents to promptly disclose all pertinent facts to the principal's agent prior to as well as after a purchase or lease agreement is executed. *(Amended 1/93)*

- **Standard of Practice 3-6**

REALTORS<sup>®</sup> shall disclose the existence of an accepted offer to any broker seeking cooperation. *(Adopted 5/86)*

- **Standard of Practice 3-7**

When seeking information from another REALTOR<sup>®</sup> concerning property under a management or listing agreement, REALTORS<sup>®</sup> shall disclose their REALTOR<sup>®</sup> status and whether their interest is personal or on behalf of a client and, if on behalf of a client, their representational status. *(Amended 1/95)*

- **Standard of Practice 3-8**

REALTORS<sup>®</sup> shall not misrepresent the availability of access to show or inspect a listed property. *(Amended 11/87)*

## Article 4

REALTORS<sup>®</sup> shall not acquire an interest in or buy or present offers from themselves, any member of their immediate families, their firms or any member thereof, or any entities in which they have any ownership interest, any real property without making their true position known to the owner or the owner's agent or broker. In selling property they own, or in which they have any interest, REALTORS<sup>®</sup> shall reveal their ownership or interest in writing to the purchaser or the purchaser's representative. *(Amended 1/00)*

- **Standard of Practice 4-1**

For the protection of all parties, the disclosures required by Article 4 shall be in writing and provided by REALTORS® prior to the signing of any contract. *(Adopted 2/86)*

### Article 5

REALTORS® shall not undertake to provide professional services concerning a property or its value where they have a present or contemplated interest unless such interest is specifically disclosed to all affected parties.

### Article 6

REALTORS® shall not accept any commission, rebate, or profit on expenditures made for their client, without the client's knowledge and consent.

When recommending real estate products or services (e.g., homeowner's insurance, warranty programs, mortgage financing, title insurance, etc.), REALTORS® shall disclose to the client or customer to whom the recommendation is made any financial benefits or fees, other than real estate referral fees, the REALTOR® or REALTOR's firm may receive as a direct result of such recommendation. *(Amended 1/99)*

- **Standard of Practice 6-1**

REALTORS® shall not recommend or suggest to a client or a customer the use of services of another organization or business entity in which they have a direct interest without disclosing such interest at the time of the recommendation or suggestion. *(Amended 5/88)*

### Article 7

In a transaction, REALTORS® shall not accept compensation from more than one party, even if permitted by law, without disclosure to all parties and the informed consent of the REALTOR's client or clients. *(Amended 1/93)*

### Article 8

REALTORS® shall keep in a special account in an appropriate financial institution, separated from their own funds, monies coming into their possession in trust for other persons, such as escrows, trust funds, clients' monies, and other like items.

### Article 9

REALTORS®, for the protection of all parties, shall assure whenever possible that agreements shall be in writing, and shall be in clear and understandable language expressing the specific terms, conditions, obligations and commitments of the parties. A copy of each agreement shall be furnished to each party upon their signing or initialing. *(Amended 1/95)*

- **Standard of Practice 9-1**

For the protection of all parties, REALTORS® shall use reasonable care to ensure that documents pertaining to the purchase, sale, or lease of real estate are kept current through the use of written extensions or amendments. *(Amended 1/93)*

## Duties to the Public

### Article 10

REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, or national origin. REALTORS® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, or national origin. *(Amended 1/90)*

REALTORS®, in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color, religion, sex, handicap, familial status, or national origin. *(Amended 1/00)*

- **Standard of Practice 10-1**

REALTORS® shall not volunteer information regarding the racial, religious or ethnic composition of any neighborhood and shall not engage in any activity which may result in panic selling. REALTORS® shall not print, display or circulate any statement or advertisement with respect to the selling or renting of a property that indicates any preference, limitations or discrimination based on race, color, religion, sex, handicap, familial status, or national origin. *(Adopted 1/94)*

- **Standard of Practice 10-2**

As used in Article 10 "real estate employment practices" relates to employees and independent contractors providing real-estate related services and the administrative and clerical staff directly supporting those individuals. *(Adopted 1/00)*

### Article 11

The services which REALTORS® provide to their clients and customers shall conform to the standards of practice and competence which are reasonably expected in the specific real estate disciplines in which they engage; specifically, residential real estate brokerage, real property management, commercial and industrial real estate brokerage, real estate appraisal, real estate counseling, real estate syndication, real estate auction, and international real estate.

REALTORS® shall not undertake to provide specialized professional services concerning a type of property or service that is outside their field of competence unless they engage the assistance of one who is competent on such types of property or service, or unless the facts are fully disclosed to the client. Any persons engaged to provide such assistance shall be so identified to the client and their contribution to the assignment should be set forth. *(Amended 1/95)*

- **Standard of Practice 11-1**

When REALTORS® prepare opinions of real property value or price, other than in pursuit of a listing or to assist a potential purchaser in formulating a purchase offer, such opinions shall include the following:

- 1) Identification of the subject property
- 2) date prepared

- 3) defined value or price
- 4) limiting conditions, including statements of purpose(s) and intended user(s)
- 5) any present or contemplated interest, including the possibility of representing the seller/landlord or buyers/tenants
- 6) basis for the opinion, including applicable market data
- 7) if the opinion is not an appraisal, a statement to that effect  
(Amended 1/01)

• **Standard of Practice 11-2**

The obligations of the Code of Ethics in respect of real estate disciplines other than appraisal shall be interpreted and applied in accordance with the standards of competence and practice which clients and the public reasonably require to protect their rights and interests considering the complexity of the transaction, the availability of expert assistance, and, where the REALTOR® is an agent or subagent, the obligations of a fiduciary. (Adopted 1/95)

• **Standard of Practice 11-3**

When REALTORS® provide consultive services to clients which involve advice or counsel for a fee (not a commission), such advice shall be rendered in an objective manner and the fee shall not be contingent on the substance of the advice or counsel given. If brokerage or transaction services are to be provided in addition to consultive services, a separate compensation may be paid with prior agreement between the client and REALTOR®. (Adopted 1/96)

• **Standard of Practice 11-4**

The competency required by Article 11 relates to services contracted for between REALTORS® and their clients or customers; the duties expressly imposed by the Code of Ethics; and the duties imposed by law or regulation. (Adopted 1/02)

## Article 12

REALTORS® shall be careful at all times to present a true picture in their advertising and representations to the public. REALTORS® shall also ensure that their professional status (e.g., broker, appraiser, property manager, etc.) or status as REALTORS® is clearly identifiable in any such advertising. (Amended 1/93)

• **Standard of Practice 12-1**

REALTORS® may use the term "free" and similar terms in their advertising and in other representations provided that all terms governing availability of the offered product or service are clearly disclosed at the same time. (Amended 1/97)

• **Standard of Practice 12-2**

REALTORS® may represent their services as "free" or without cost even if they expect to receive compensation from a source other than their client provided that the potential for the REALTOR® to obtain a benefit from a third party is clearly disclosed at the same time. (Amended 1/97)

• **Standard of Practice 12-3**

The offering of premiums, prizes, merchandise discounts or other inducements to list, sell, purchase, or lease is not, in

itself, unethical even if receipt of the benefit is contingent on listing, selling, purchasing, or leasing through the REALTOR® making the offer. However, REALTORS® must exercise care and candor in any such advertising or other public or private representations so that any party interested in receiving or otherwise benefiting from the REALTOR®'s offer will have clear, thorough, advance understanding of all the terms and conditions of the offer. The offering of any inducements to do business is subject to the limitations and restrictions of state law and the ethical obligations established by any applicable Standard of Practice. (Amended 1/95)

• **Standard of Practice 12-4**

REALTORS® shall not offer for sale/lease or advertise property without authority. When acting as listing brokers or as subagents, REALTORS® shall not quote a price different from that agreed upon with the seller/landlord. (Amended 1/93)

• **Standard of Practice 12-5**

REALTORS® shall not advertise nor permit any person employed by or affiliated with them to advertise listed property without disclosing the name of the firm. (Adopted 1/86)

• **Standard of Practice 12-6**

REALTORS®, when advertising unlisted real property for sale/lease in which they have an ownership interest, shall disclose their status as both owners/landlords and as REALTORS® or real estate licensees. (Amended 1/93)

• **Standard of Practice 12-7**

Only REALTORS® who participated in the transaction as the listing broker or cooperating broker (selling broker) may claim to have "sold" the property. Prior to closing, a cooperating broker may post a "sold" sign only with the consent of the listing broker. (Amended 1/96)

## Article 13

REALTORS® shall not engage in activities that constitute the unauthorized practice of law and shall recommend that legal counsel be obtained when the interest of any party to the transaction requires it.

## Article 14

If charged with unethical practice or asked to present evidence or to cooperate in any other way, in any professional standards proceeding or investigation, REALTORS® shall place all pertinent facts before the proper tribunals of the Member Board or affiliated institute, society, or council in which membership is held and shall take no action to disrupt or obstruct such processes. (Amended 1/99)

• **Standard of Practice 14-1**

REALTORS® shall not be subject to disciplinary proceedings in more than one Board of REALTORS® or affiliated institute, society or council in which they hold membership with respect to alleged violations of the Code of Ethics relating to the same transaction or event. (Amended 1/95)

- **Standard of Practice 14-2**

REALTORS® shall not make any unauthorized disclosure or dissemination of the allegations, findings, or decision developed in connection with an ethics hearing or appeal or in connection with an arbitration hearing or procedural review. *(Amended 1/92)*

- **Standard of Practice 14-3**

REALTORS® shall not obstruct the Board's investigative or professional standards proceedings by instituting or threatening to institute actions for libel, slander or defamation against any party to a professional standards proceeding or their witnesses based on the filing of an arbitration request, an ethics complaint, or testimony given before any tribunal. *(Adopted 11/87, Amended 1/99)*

- **Standard of Practice 14-4**

REALTORS® shall not intentionally impede the Board's investigative or disciplinary proceedings by filing multiple ethics complaints based on the same event or transaction. *(Adopted 11/88)*

### Duties to REALTORS®

#### Article 15

REALTORS® shall not knowingly or recklessly make false or misleading statements about competitors, their businesses, or their business practices. *(Amended 1/92)*

- **Standard of Practice 15-1**

REALTORS® shall not knowingly or recklessly file false or unfounded ethics complaints. *(Adopted 1/00)*

#### Article 16

REALTORS® shall not engage in any practice or take any action inconsistent with the agency or other exclusive relationship recognized by law that other REALTORS® have with clients. *(Amended 1/98)*

- **Standard of Practice 16-1**

Article 16 is not intended to prohibit aggressive or innovative business practices which are otherwise ethical and does not prohibit disagreements with other REALTORS® involving commission, fees, compensation or other forms of payment or expenses. *(Adopted 1/93, Amended 1/95)*

- **Standard of Practice 16-2**

Article 16 does not preclude REALTORS® from making general announcements to prospective clients describing their services and the terms of their availability even though some recipients may have entered into agency agreements or other exclusive relationships with another REALTOR®. A general telephone canvass, general mailing or distribution addressed to all prospective clients in a given geographical area or in a given profession, business, club, or organization, or other classification or group is deemed "general" for purposes of this standard. *(Amended 1/98)*

Article 16 is intended to recognize as unethical two basic types of solicitations:

First, telephone or personal solicitations of property owners who have been identified by a real estate sign, multiple listing compilation, or other information service as having exclusively listed their property with another REALTOR®; and

Second, mail or other forms of written solicitations of prospective clients whose properties are exclusively listed with another REALTOR® when such solicitations are not part of a general mailing but are directed specifically to property owners identified through compilations of current listings, "for sale" or "for rent" signs, or other sources of information required by Article 3 and Multiple Listing Service rules to be made available to other REALTORS® under offers of subagency or cooperation. *(Amended 1/93)*

- **Standard of Practice 16-3**

Article 16 does not preclude REALTORS® from contacting the client of another broker for the purpose of offering to provide, or entering into a contract to provide, a different type of real estate service unrelated to the type of service currently being provided (e.g., property management as opposed to brokerage). However, information received through a Multiple Listing Service or any other offer of cooperation may not be used to target clients of other REALTORS® to whom such offers to provide services may be made. *(Amended 1/93)*

- **Standard of Practice 16-4**

REALTORS® shall not solicit a listing which is currently listed exclusively with another broker. However, if the listing broker, when asked by the REALTOR®, refuses to disclose the expiration date and nature of such listing; i.e., an exclusive right to sell, an exclusive agency, open listing, or other form of contractual agreement between the listing broker and the client, the REALTOR® may contact the owner to secure such information and may discuss the terms upon which the REALTOR® might take a future listing or, alternatively, may take a listing to become effective upon expiration of any existing exclusive listing. *(Amended 1/94)*

- **Standard of Practice 16-5**

REALTORS® shall not solicit buyer/tenant agreements from buyers/tenants who are subject to exclusive buyer/tenant agreements. However, if asked by a REALTOR®, the broker refuses to disclose the expiration date of the exclusive buyer/tenant agreement, the REALTOR® may contact the buyer/tenant to secure such information and may discuss the terms upon which the REALTOR® might enter into a future buyer/tenant agreement or, alternatively, may enter into a buyer/tenant agreement to become effective upon the expiration of any existing exclusive buyer/tenant agreement. *(Adopted 1/94, Amended 1/98)*

- **Standard of Practice 16-6**

When REALTORS® are contacted by the client of another REALTOR® regarding the creation of an exclusive relationship to provide the same type of service, and REALTORS® have not

directly or indirectly initiated such discussions, they may discuss the terms upon which they might enter into a future agreement or, alternatively, may enter into an agreement which becomes effective upon expiration of any existing exclusive agreement. *(Amended 1/98)*

• **Standard of Practice 16-7**

The fact that a client has retained a REALTOR® as an agent or in another exclusive relationship in one or more past transactions does not preclude other REALTORS® from seeking such former client's future business. *(Amended 1/98)*

• **Standard of Practice 16-8**

The fact that an exclusive agreement has been entered into with a REALTOR® shall not preclude or inhibit any other REALTOR® from entering into a similar agreement after the expiration of the prior agreement. *(Amended 1/98)*

• **Standard of Practice 16-9**

REALTORS®, prior to entering into an agency agreement or other exclusive relationship, have an affirmative obligation to make reasonable efforts to determine whether the client is subject to a current, valid exclusive agreement to provide the same type of real estate service. *(Amended 1/98)*

• **Standard of Practice 16-10**

REALTORS®, acting as agents of, or in another relationship with, buyers or tenants, shall disclose that relationship to the seller/landlord's agent or broker at first contact and shall provide written confirmation of that disclosure to the seller/landlord's agent or broker not later than execution of a purchase agreement or lease. *(Amended 1/98)*

• **Standard of Practice 16-11**

On unlisted property, REALTORS® acting as buyer/tenant agents or brokers shall disclose that relationship to the seller/landlord at first contact for that client and shall provide written confirmation of such disclosure to the seller/landlord not later than execution of any purchase or lease agreement.

REALTORS® shall make any request for anticipated compensation from the seller/landlord at first contact. *(Amended 1/98)*

• **Standard of Practice 16-12**

REALTORS®, acting as agents or brokers of sellers/landlords or as subagents of listing brokers, shall disclose that relationship to buyers/tenants as soon as practicable and shall provide written confirmation of such disclosure to buyers/tenants not later than execution of any purchase or lease agreement. *(Amended 1/98)*

• **Standard of Practice 16-13**

All dealings concerning property exclusively listed, or with buyer/tenants who are subject to an exclusive agreement shall be carried on with the client's agent or broker, and not with the client, except with the consent of the client's agent or broker or except where such dealings are initiated by the client.

Before providing substantive services (such as writing a purchase offer or presenting a CMA) to prospective purchasers, sellers, tenants or landlords ("prospects"), REALTORS® shall ask prospects whether they are a party to any

exclusive representation agreement. REALTORS® shall not knowingly provide substantive services concerning a prospective transaction to prospects who are parties to exclusive representation agreements, except with the consent of the prospects' exclusive representatives or at the direction of prospects. *(Adopted 1/93, Amended 1/03)*

• **Standard of Practice 16-14**

REALTORS® are free to enter into contractual relationships or to negotiate with sellers/landlords, buyers/tenants or others who are not subject to an exclusive agreement but shall not knowingly obligate them to pay more than one commission except with their informed consent. *(Amended 1/98)*

• **Standard of Practice 16-15**

In cooperative transactions REALTORS® shall compensate cooperating REALTORS® (principal brokers) and shall not compensate nor offer to compensate, directly or indirectly, any of the sales licensees employed by or affiliated with other REALTORS® without the prior express knowledge and consent of the cooperating broker.

• **Standard of Practice 16-16**

REALTORS®, acting as subagents or buyer/tenant agents or brokers, shall not use the terms of an offer to purchase/lease to attempt to modify the listing broker's offer of compensation to subagents or buyer's agents or brokers nor make the submission of an executed offer to purchase/lease contingent on the listing broker's agreement to modify the offer of compensation. *(Amended 1/98)*

• **Standard of Practice 16-17**

REALTORS®, acting as subagents or as buyer/tenant agents or brokers, shall not attempt to extend a listing broker's offer of cooperation and/or compensation to other brokers without the consent of the listing broker. *(Amended 1/98)*

• **Standard of Practice 16-18**

REALTORS® shall not use information obtained from listing brokers through offers to cooperate made through multiple listing services or through other offers of cooperation to refer listing brokers' clients to other brokers or to create buyer/tenant relationships with listing brokers' clients, unless such use is authorized by listing brokers. *(Amended 1/02)*

• **Standard of Practice 16-19**

Signs giving notice of property for sale, rent, lease, or exchange shall not be placed on property without consent of the seller/landlord. *(Amended 1/93)*

• **Standard of Practice 16-20**

REALTORS®, prior to or after terminating their relationship with their current firm, shall not induce clients of their current firm to cancel exclusive contractual agreements between the client and that firm. This does not preclude REALTORS® (principals) from establishing agreements with their associated licensees governing assignability of exclusive agreements. *(Adopted 1/98)*

**Article 17**

In the event of contractual disputes or specific non-contractual disputes as defined in Standard of Practice 17-4 between REALTORS® (principals) associated with different firms, arising

out of their relationship as REALTORS®, the REALTORS® shall submit the dispute to arbitration in accordance with the regulations of their Board or Boards rather than litigate the matter.

In the event clients of REALTORS® wish to arbitrate contractual disputes arising out of real estate transactions, REALTORS® shall arbitrate those disputes in accordance with the regulations of their Board, provided the clients agree to be bound by the decision.

The obligation to participate in arbitration contemplated by this Article includes the obligation of REALTORS® (principals) to cause their firms to arbitrate and be bound by any award. (Amended 1/01)

• **Standard of Practice 17-1**

The filing of litigation and refusal to withdraw from it by REALTORS® in an arbitrable matter constitutes a refusal to arbitrate. (Adopted 2/86)

• **Standard of Practice 17-2**

Article 17 does not require REALTORS® to arbitrate in those circumstances when all parties to the dispute advise the Board in writing that they choose not to arbitrate before the Board. (Amended 1/93)

• **Standard of Practice 17-3**

REALTORS®, when acting solely as principals in a real estate transaction, are not obligated to arbitrate disputes with other REALTORS® absent a specific written agreement to the contrary. (Adopted 1/96)

• **Standard of Practice 17-4**

Specific non-contractual disputes that are subject to arbitration pursuant to Article 17 are:

- 1) Where a listing broker has compensated a cooperating broker and another cooperating broker subsequently claims to be the procuring cause of the sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. (Adopted 1/97)
- 2) Where a buyer or tenant representative is compensated by the seller or landlord, and not by the listing broker, and the listing broker, as a result, reduces the commission owed by the seller or landlord and, subsequent to such actions, another cooperating broker claims to be the procuring cause of sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being

named as a respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. (Adopted 1/97)

- 3) Where a buyer or tenant representative is compensated by the buyer or tenant and, as a result, the listing broker reduces the commission owed by the seller or landlord and, subsequent to such actions, another cooperating broker claims to be the procuring cause of sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. (Adopted 1/97)
- 4) Where two or more listing brokers claim entitlement to compensation pursuant to open listings with a seller or landlord who agrees to participate in arbitration (or who requests arbitration) and who agrees to be bound by the decision. In cases where one of the listing brokers has been compensated by the seller or landlord, the other listing broker, as complainant, may name the first listing broker as respondent and arbitration may proceed between the brokers. (Adopted 1/97)

*The Code of Ethics was adopted in 1913. Amended at the Annual Convention in 1924, 1928, 1950, 1951, 1952, 1955, 1956, 1961, 1962, 1974, 1982, 1986, 1987, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001 and 2002.*

### Explanatory Notes

The reader should be aware of the following policies which have been approved by the Board of Directors of the National Association:

In filing a charge of an alleged violation of the Code of Ethics by a REALTOR®, the charge must read as an alleged violation of one or more Articles of the Code. Standards of Practice may be cited in support of the charge.

The Standards of Practice serve to clarify the ethical obligations imposed by the various Articles and supplement, and do not substitute for, the Case Interpretations in *Interpretations of the Code of Ethics*.

Modifications to existing Standards of Practice and additional new Standards of Practice are approved from time to time. Readers are cautioned to ensure that the most recent publications are utilized.

April 21, 2003

Representative Lesil McGuire  
VIA FACSIMILE: (907) 465-6592

Dear Representative Lesil McGuire,

I am writing to you to ask that as a member of the House Judiciary Committee, you vote no on HB257, and please advise other of my opposition to this legislation. The following are my reasons why I oppose HB 257.

HB 257 deals with issues of consumer protection and what is acceptable professional conduct of a real estate broker/agent. I don't see any way of compromising my current position on this bill, because I will not compromise my core professional conduct issues.

My professional association, the Alaska Association of REALTORS cannot support the following issues of HB 257:

REQUIRED DISCLOSURE OF CONFLICT OF INTEREST - Regarding dual agency, on in-house transactions, whether commercial or residential. If it can be shown that the actions of the sales agent encourages a belief that the sales agent represented the buyer/lessee/tenant, then an undisclosed, and therefore illegal, dual agency probably has been created.

Removing the requirement of disclosure is an act of fraud. How can misleading the public in issues as important as fiduciary duty be anything but fraud?

COMMON LAW OF AGENCY - If these principles do not apply, then what does? The reality of abrogating common law is that the states that have attempted it have attempted to find the duty of the agent and penalties for non-compliance. No state has been successful in this endeavor, and the National Association of REALTORS does not recommend abrogation of common law. Simply, it works as a balance of consumer protection and defining acceptable professional conduct.

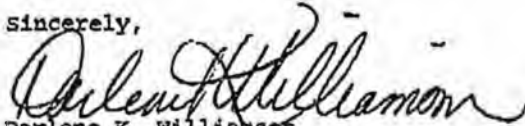
FIDUCIARY DUTY - This provision is simply embarrassing to professionals that endorse the National Association of REALTORS Code of Ethics. You can interpret this as; Citizen of Alaska, I will be honest, fair and act in good faith, but you can't trust me.

In regard to page 5, section (g) of the bill attempting to trivialize the requirement of AS 08.88.396 as technical violation is simply absurd. Most would not consider disclosing whom you work for and how you're paid a trivial technical violation. All states classify undisclosed dual agency as fraud, deceit, and misrepresentation.

APPLICABILITY AND RETROSPECTIVITY - This is a real slap in the face to the law abiding majority of real estate practitioners in Alaska. I have attached a copy of the Code of Ethics for your review to understand this position.

Thank you for considering my opinion.

Sincerely,



Darlene K. Williamson  
Sales Associate and  
President Kodiak Board of Realtors

# Fax Cover Sheet

*Vanessa  
FYI*

To.....The Honorable Lesil McGuire  
Fax #.....907-465-6592  
Date .....04-29-03  
# Pages .....1

**RE: HB 257**

The Honorable Lesil McGuire  
House of Representatives  
Alaska State Capitol  
Juneau, AK 99801-1182

Dear Representative McGuire:

I would like to ask for your support, as a member of the House Judiciary Committee, for the passage of Representative Rokeberg's HB 257 relating to the real estate industry. I understand that HB257 has passed out of the House Labor & Commerce Committee and there has been a hearing by the House Judiciary Committee. I am a licensed Realtor and a member of the Anchorage Board of Realtors and the Alaska Association of Realtors. My license number is 15298.

Thank you for your support. If you have any questions, please feel free to contact me at (907) 689-6464.

Sincerely,



Donna Alderman  
Realtor

## Fax Cover Sheet

To ..... The Honorable Lesil McGuire  
Fax # ..... 907-465-6592  
Date ..... 04-22-03  
# Pages ..... 1

RE: HB 257

*Vanessa  
FYI*

The Honorable Lesil McGuire  
House of Representatives  
Alaska State Capitol  
Juneau, AK 99801-1182

Dear Representative McGuire:

I would like to ask for your support, as a member of the House Judiciary Committee, for the passage of Representative Rokeberg's HB 257 relating to the real estate industry. I understand that HB257 has passed out of the House Labor & Commerce Committee and is scheduled for hearing by the House Judiciary Committee on approximately April 28<sup>th</sup>. I am a licensed Realtor and a member of the Anchorage Board of Realtors and the Alaska Association of Realtors. My license number is 157618.

Thank you for your support. If you have any questions, please feel free to contact me at (907) 689-6464.

Sincerely,

*Jill Davis, Realtor*



**Prudential**

**Prudential Jack White Real Estate**  
3201 C Street, Suite 200  
Anchorage, AK 99503  
Bus 907 563-5500 Fax 907 762-3189  
[www.jackwhite.com](http://www.jackwhite.com)

April 21, 2003

**The Honorable Lisel McGuire**  
**House of Representatives**  
**Alaska State Capital**  
**Juneau, AK 99801-1182**

**Dear Representative McGuire:**

I am a registered voter and I would like to ask for your support for the passage of Representative Rokeberg's HB 257 relating to the real estate industry. I am a licensed Realtor and a member of the Anchorage Board of Realtors and the Alaska Association of Realtors. My license number is 15608.

As a licensed and informed Realtor I would like you to know that I strongly support this bill and hope you will as well.

Thank you for your support. If you have any questions, please feel free to contact me at 762-5874.

Sincerely,

A handwritten signature in cursive script that reads "Michelle Croswhite".

**Michelle Croswhite**  
**Realtor**

April 23, 2003

The Honorable Lesil McGuire  
House of Representatives  
Alaska State Capitol  
Juneau, AK 99801-1182

Dear Representative McGuire:

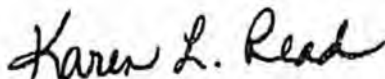
I would like to ask for your support for the passage of Representative Rokeberg's HB 257 relating to the real estate industry. I am a licensed Agent in Anchorage and have been since 1982. My license number is 7708.

Agency disclosure is vital in all residential sale transactions but complicated legislation in its present form. The timing of Agency disclosure should not be the sole grounds for litigation.

I am not arguing that a Real Estate Licensee should not be held responsible for following Agency Disclosure Law. Agency disclosure violations should be handled at the level of the Alaska Real Estate Commission whose purpose it is to determine whether a violation and/or damages have occurred. This commission was formed by the legislature and is funded by our industry to perform exactly this kind of duty.

Thank you for your support. If you have any questions, please feel free to contact me at 273-7270 or 222-7914.

Sincerely,



Karen L. Read  
Associate Broker

4/24/03

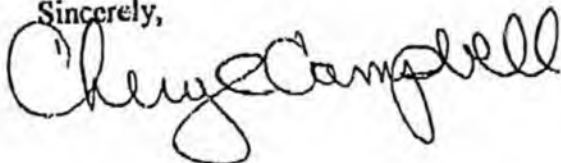
Dear Representative McGuire :

I would like to ask for your support for HP 257 relating to my profession, the real estate industry. I am especially supportive of the provision to treat an untimely agency disclosure as a conflict of interest.

I am a licensed real estate agent in the Mat-Su Valley, a member of the Valley Board of Realtors and the Alaska Association of Realtors.

Thank you for your support. If you have any questions, please feel free to contact me at 907 376-2414.

Sincerely,



4/27/03  
~~4/26/03~~

Dear Representative McGuire:

I would like to ask for your support for HP 257 relating to my profession, the real estate industry. I am especially supportive of the provision to treat an untimely agency disclosure as a conflict of interest.

I am a licensed real estate agent in the Mat-Su Valley, a member of the Valley Board of Realtors and the Alaska Association of Realtors.

Thank you for your support. If you have any questions, please feel free to contact me at 907 352-1809.

Sincerely,

*Debbie Harrison*  
Debbie Harrison

**AAR #1 Buyer's Agency®**

RESIDENTIAL • INVESTMENT PROPERTIES

PO BOX 190727

ANCHORAGE AK 99519-0727

FAX (907) 277-3443

(907) 27 BUYER

(907) 272-8937

FAX MEMORANDUM

DATE

4/26/03

TO

The Honorable Replesil McGwire

COMPANY

Chair Judiciary

FAX

907-465-6592

FROM

LINDA S. GARRISON, Broker

RE

HB257

# OF PAGES TO FOLLOW:

3

*This Bill reduces  
consumer protection and also  
blocks the public's right to legal  
remedies.*

I am very concerned that HB257 does nothing positive towards  
consumer protection; HB257 actually is negative towards the  
consumer because it limits legal remedies as a proper alternative  
in the case of violation of the statute. Consequently, the  
balances of legislative and judicial checks would not exist  
with this NB257. Note that Representative Rokeberg was the only  
person who voted Yea to pass the bill out of HL&C; others were  
NO RECOMMENDATION. I WOULD URGE THAT HB257 NOT BE PASSED OUT  
OF THE HOUSE JUDICIARY COMMITTEE. Thank you.

*PS. REALTOR & Alaska property owners  
association do NOT support HB257.*

**David A Garrison**

**From:** Alaska Property Owners Association, Inc. [akpropertyownersassoc@alaska.com]

**Sent:** Monday, April 21, 2003 11:18 AM

**To:** APOA - Lizz Barr

**Subject:** Fw: House Bill 257 - another letter draft

THIS LETTER SHOULD BE SENT VIA E-MAIL TO ALL LEGISLATORS...SENATE AND HOUSE.

I am a real estate licensee in your area. I am deeply disturbed about a bill that has been introduced into the legislature - HB 257. For these reasons:

- 1. The bill does not protect the consumer.
- 2. It has a provision that could endanger the surety fund since it is the only method of relief if a licensee does not follow the law
- 3. It allows licensees that did not follow the current law, to go to a new law rather than following the law as written. This is not good public policy.

I am requesting that if you have this bill in one of your committees or it comes to the house of senate floor that you vote NO. The current bill, as written it is bad public policy.

Thank you for considering my opinion.

4/26 Please note that  
 The Alaska Property  
 Owners Association  
 Cannot support HB257

David A. Garrison  
 (907) 272-8937

*(1)* The Honorable Representatives  
 of the House Judiciary Committee

I am writing you to ask that as a member of the House Judiciary Committee, you vote no on HB257, and please advise others of my opposition to this legislation. The following are my reasons why I oppose HB 257.

HB 257 deals with issues of consumer protection and what is acceptable professional conduct of a real estate broker/agent. I don't see anyway of compromising my current position on this bill, because I will not compromise my core professional conduct issues.

My professional association, the Alaska Association of REALTORS cannot support the following issues of HB 257:

*(1)* Required Disclosure of Conflict of Interest - Regarding dual agency, on in-house transactions, whether commercial or residential. If it can be shown that the actions of the sales agent encourages a belief that the sales agent represented the buyer/lessee/tenant, then an undisclosed, and therefore illegal, dual agency probably has been created.

Removing the requirement of disclosure is an act of fraud. How can misleading the public in issues as important as fiduciary duty be anything but fraud?

*(2)* Common Law of Agency - If these principles do not apply, then what does? The reality of abrogating common law is that the states that have attempted it, have attempted to define the duty of the agent and penalties for non compliance. No state has been successful in this endeavor, and the National Association of REALTORS does not recommend abrogation of common law. Simply, it works as a balance of consumer protection and defining acceptable professional conduct.

Fiduciary Duty - This provision is simply embarrassing to professionals that endorse the National Association of REALTORS Code of Ethics. You can interpret this as; Citizen of Alaska, I will be honest, fair, and act in good faith, but you can't trust me.

In regard to page 5, section (g) of the bill; attempting to trivialize the requirement of AS 08.88.396 as technical violation is simply absurd. Most would not consider disclosing, who you work for and how you're paid a trivial technical violation. All states classify undisclosed dual agency as fraud, deceit, and misrepresentation.

Applicability & Retrospectivity - This is a real slap in the face to the law abiding majority of real estate practitioners in Alaska. I have attached a copy of the Code of Ethics for your review to understand this position.

Thank you so much for considering my opinion.

Sincerely,

*(3)* *citizens do not have a right to legal protection*

*Common Law should not be abrogated.*

Michael A. Garrison  
 (907) 272-8937

Please Note  
 that HB 257 is  
 not supported by  
 REALTORS AND  
 Alaska Property Owners  
 Association

MEMORANDUM

Date : 4/25/03

To : The Honorable Representative Lesil McGuire  
Alaska House of Representatives/Chair Judiciary

The Honorable Representative Tom Anderson  
Alaska House of Representatives - Vice-Chair Judiciary

The Honorable Representative Jim Holm  
The Honorable Representative Dan Ogg  
The Honorable Representative Ralph Samuels  
The Honorable Representative Les Gara  
The Honorable Representative Max Gruenberg

From : Linda Garrison-Owner/Broker-AAR #1 Buyers Agency

RE : HB 257 - SCHEDULED FOR JUDICIARY COMMITTEE

When I originally read HB257, I will be honest and tell you that I thought someone was playing a trick. Certainly, no one could be serious about the proposals regarding commercial transactions and property management that are touted in the bill.

\*According to Representative Rokeberg, ... The Legislature finds that ...the parties to commercial transactions do not need the protection that the required disclosures provide...The disclosure requirements do not reflect the standard of practice in the commercial real estate field.

... it is the intent of the legislature that commercial real estate licensees be exempt from agency and disclosure requirements in large commercial real estate transactions because of the level of sophistication and knowledge that is typical of the parties to large commercial real estate transactions .....

The exceptions are so broad in defining commercial properties that nearly all real estate will apply:

This section does not apply to a commercial real estate transaction that involves -

- (1) the sale or lease of real estate that contains a building having four or more separate living units;
- (2) the sale of real estate that has a purchase price of \$100,000 or more in value for nonresidential use; or
- (3) the sale or lease of real estate having a gross lease revenue that exceeds \$12,000 a year.

Page 2

RE : HB257 - JUDICIARY COMMITTEE

....WHEN THE LICENSEE IS REPRESENTING BOTH BUYER AND SELLER OR BOTH THE LESSOR AND THE LESSEE,

(1) common law principles of agency do not apply to the licensee's representation and

(2) the licensee does NOT have a fiduciary duty to either the buyer or seller if representing both the buyer and seller, or to either the lessor and lessee if representing both the lessor and lessee, but shall act with honesty, fairness, and good faith when representing these persons.

.... The failure of a licensee to make a disclosure required by this section does not give a person a cause of action against the licensee for the failure.

APPLICABILITY AND RETROSPECTIVITY (A) THE PROVISIONS OF THIS ACT APPLY TO A REAL ESTATE TRANSACTION THAT OCCURS BEFORE, ON, OR AFTER THE EFFECTIVE DATE OF THIS ACT, AND TO THAT EXTENT, ARE RETROSPECTIVE UNDER AS 01.10.090. IN THIS SUBSECTION, "REAL ESTATE TRANSACTION" HAS THE MEANING GIVEN IN AS 08.88.990.

(B) IN ADDITION TO THE APPLICATION OF AS 08.88.396(g), ENACTED BY SEC. 6 OF THIS ACT, UNDER (a) OF THIS SECTION, AS 08.88.396(G) APPLIES TO AN ACTION PENDING IN A COURT IN THE STATE IN WHICH A FINAL JUDGMENT HAS NOT BEEN RENDERED BEFORE THE EFFECTIVE DATE OF THIS ACT AND, TO THAT EXTENT, IS RETROSPECTIVE UNDER AS 01.10.090.

\*Sec.8. This act takes effect immediately under AS 01.10.070(c).

To summarize my concerns -

1. I have talked with many agents and brokers that do a large number of commercial transactions, and have had many state that they view agency disclosure as an important part of the transaction.

Commercial transaction participants often demand their own representation and negotiating skills of their representative. As before, I strongly believe that dual agency under any circumstances does NOT benefit the buyer or the seller - only the agent who is a dual agent, the broker, and the company.

Page 3

RE : HB257 - JUDICIARY COMMITTEE

2. Representative Rokeberg's definition of a commercial transaction is not logical -

..... ie - Commercial would be defined as a sales price of \$100,000 .... or gross revenues of over \$12,000 a year.

These numbers might be meaningful 25 years ago. Currently, nearly all real estate is priced at \$100,000++++ (excluding perhaps beginning condos small parcels of raw land, and a few others). Gross revenues of \$12,000 per annum can be gotten from a duplex! These are not commercial properties.

3. **APPLICABILITY AND RETROSPECTIVITY** - This section is an insult to the consumer...and is a blatant attempt to protect the real estate companies from inadequate agency disclosure and undisclosed dual agency. Of course, some firms are concerned about the class action lawsuits that are forming regarding undisclosed dual agency. THIS TYPE OF RETROSPECTIVITY "FORGIVING" AN ACTION PENDING IN A COURT IN THE STATE IN WHICH A FINAL JUDGMENT HAS NOT BEEN RENDERED ...." is a industry protection strategy and flies in the face of the legislative and judicial checks and balance guards.

I believe that the correct manner to deal with this concern, is not to cover up undisclosed dual agency situations that already have occurred, but to enforce the laws that currently exist and clarify agency disclosure possibilities immediately upon contact with the consumer - be they buyer or seller.

Abrogation of common law is simply another industry method of avoiding/camouflaging dual agency.

Thank-you for your consideration. I would urge that HB 257 NOT be sent out of the House Labor and Commerce Committee. It is a real estate industry retroactive protection bill and does nothing to protect the consumer, and in fact, reduces remedies that the public currently has at its' disposal.

cc : Members of the House of Representatives

4/24/03

Dear Representative McGuire :

I would like to ask for your support for HP 257 relating to my profession, the real estate industry. I am especially supportive of the provision to treat an untimely agency disclosure as a conflict of interest.

I am a licensed real estate agent in the Mat-Su Valley, a member of the Valley Board of Realtors and the Alaska Association of Realtors.

Thank you for your support. If you have any questions, please feel free to contact me at 907 376-2414.

Sincerely,

*Shana Ackles*

4/24/03

Dear Representative McGuire:

I would like to ask for your support for HP 257 relating to my profession, the real estate industry. I am especially supportive of the provision to treat an untimely agency disclosure as a conflict of interest.

I am a licensed real estate agent in the Mat-Su Valley, a member of the Valley Board of Realtors and the Alaska Association of Realtors.

Thank you for your support. If you have any questions, please feel free to contact me at 907 376-2414.

Sincerely,

Sandra McMullen

4/24/03

Dear Representative McGuire :

I would like to ask for your support for HP 257 relating to my profession, the real estate industry. I am especially supportive of the provision to treat an untimely agency disclosure as a conflict of interest.

I am a licensed real estate agent in the Mat-Su Valley, a member of the Valley Board of Realtors and the Alaska Association of Realtors.

Thank you for your support. If you have any questions, please feel free to contact me at 907 376-2414.

Sincerely,

*Esther Buckner*

4/24/03

Dear Representative McGuire:

I would like to ask for your support for HP 257 relating to my profession, the real estate industry. I am especially supportive of the provision to treat an untimely agency disclosure as a conflict of interest.

I am a licensed real estate agent in the Mat-Su Valley, a member of the Valley Board of Realtors and the Alaska Association of Realtors.

Thank you for your support. If you have any questions, please feel free to contact me at 907 376-2414.

Sincerely,

*Miss B. K. [Signature]*

4/24/03

Dear Representative McBride :

I would like to ask for your support for HP 257 relating to my profession, the real estate industry. I am especially supportive of the provision to treat an untimely agency disclosure as a conflict of interest.

I am a licensed real estate agent in the Mat-Su Valley, a member of the Valley Board of Realtors and the Alaska Association of Realtors.

Thank you for your support. If you have any questions, please feel free to contact me at 907 376-2414.

Sincerely,

*Leahy Barnhart*

4/24/03

Dear Representative McGuire:

I would like to ask for your support for HP 257 relating to my profession, the real estate industry. I am especially supportive of the provision to treat an untimely agency disclosure as a conflict of interest.

I am a licensed real estate agent in the Mat-Su Valley, a member of the Valley Board of Realtors and the Alaska Association of Realtors.

Thank you for your support. If you have any questions, please feel free to contact me at 907 376-2414.

Sincerely,


Kicki Westphal

**Subject:** HB257

**Date:** Mon, 21 Apr 2003 18:36:11 -0800

**From:** Ben Lally <benlally@gci.net>

**To:** Representative\_Lesil\_McGuire@legis.state.ak.us

 <u>HB257.doc</u>	<p><b>Name:</b> HB257.doc <b>Type:</b> WINWORD File (application/msword) <b>Encoding:</b> base64 <b>Download Status:</b> Not downloaded with message</p>
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THIS LETTER SHOULD BE SENT VIA E-MAIL TO ALL  
LEGISLATORS...SENATE AND HOUSE.

I am a real estate licensee in your area. I am deeply disturbed about a bill that has been introduced into the legislature - HB 257. For these reasons:

1. The bill does not protect the consumer.
2. It has a provision that could endanger the surety fund since it is the only method of relief if a licensee does not follow the law
3. It allows licensees that did not follow the current law, to go to a new law rather than following the law as written. This is not good public policy.

I am requesting that if you have this bill in one of your committees or it comes to the house of senate floor that you vote NO. The current bill, as written is bad public policy.

Thank you for considering my opinion.

## Fax Cover Sheet

To ..... The Honorable Lesli McGuire  
Fax #..... 907-465-6592  
Date..... 04-22-03  
# Pages ..... 1

RE: HB 257

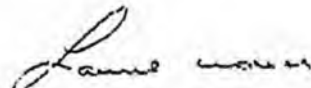
The Honorable Lesli McGuire  
House of Representatives  
Alaska State Capitol  
Juneau, AK 99801-1182

Dear Representative McGuire:

I would like to ask for your support, as a member of the House Judiciary Committee, for the passage of Representative Rokeberg's HB 257 relating to the real estate industry. I understand that HB257 has passed out of the House Labor & Commerce Committee and is scheduled for hearing by the House Judiciary Committee on approximately April 28<sup>th</sup>. I am a licensed Realtor and a member of the Anchorage Board of Realtors and the Alaska Association of Realtors. My license number is 10665.

Thank you for your support. If you have any questions, please feel free to contact me at (907) 689-6464.

Sincerely,

  
Laurel Crouse  
Realtor

4241 "B" Street  
Anchorage, AK 99503  
Office (907) 662-6464  
Fax (907) 502-5485

16635 Centerfield Dr.  
Eagle River, AK 99577  
Office (907) 889-6464  
Fax (907) 689-6499

1365 E. Parks Hwy.  
Wasilla, AK 99654  
Office (907) 376-2414  
Fax (907) 376-5471



Prudential Vista Real Estate  
4241 B Street  
Anchorage, AK 99503  
Bus 907 562-6464  
Fax 907 562-5485  
www.prudentialvista.com

4/23/2003

Dear Representative McGuire:

I would like to ask for your support for the passage of Representative Rokeberg's HB 257 relating to the real estate industry. I am a licensed Realtor and a member of the National Association of Realtors. My license number is 15593. I would like you to support this passage in order to help stop people from having a free reign to make money off loopholes in poorly written law. Just as they have families, we have families too! Sometimes people choose to think with their pocketbooks instead of what's just and right.

Thank you for your support. If you have any questions, please feel free to contact me at 244-1876.

Sincerely,

A handwritten signature in cursive script that reads "Matthew T. Kane".

Matthew T. Kane



# Fax Cover Sheet

To ..... **The Honorable Lesli McGuire**  
Fax #..... **907-465-6592**  
Date..... **04-22-03**  
# Pages ..... **1**

**RE: HB 257**

**The Honorable Lesli McGuire**  
House of Representatives  
Alaska State Capitol  
Juneau, AK 99801-1182

Dear Representative McGuire:

I would like to ask for your support, as a member of the House Judiciary Committee, for the passage of Representative Rokeberg's HB 257 relating to the real estate industry. I understand that HB257 has passed out of the House Labor & Commerce Committee and is scheduled for hearing by the House Judiciary Committee on approximately April 28<sup>th</sup>. I am a licensed Realtor and a member of the Anchorage Board of Realtors and the Alaska Association of Realtors. My license number is 2987.

Thank you for your support. If you have any questions, please feel free to contact me at (907) 689-6464.

Sincerely,

**Lola Pederson**  
Realtor

4241 "B" Street  
Anchorage, AK 99503  
Office (907) 562-6464  
Fax (907) 562-5485

10035 Centerfield Dr.  
Eagle River, AK 99577  
Office (907) 689-6464  
Fax (907) 689-6499

1305 E. Parks Hwy.  
Wasilla, AK 99654  
Office (907) 376-2414  
Fax (907) 376-5477

**To The Honorable Lesil McGuire**

**Fax # 907-465-6592**

**Date 04-22-03**

**# Pages 1**

**RE: HB 257**

The Honorable Lesil McGuire

House of Representatives

Alaska State Capitol

Juneau, AK 99801-1182

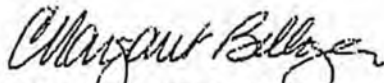
Dear Representative McGuire:

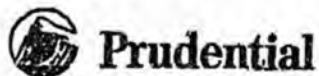
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Thank you for your support. If you have any questions, please feel free to contact me at (907) 689-6464.

---

Sincerely,

  
Margaret Billinger, Realtor



Prudential Vista Real Estate  
4241 B St  
Anchorage, AK 99513  
Bus 907 562-6464 Fax 907 562-6485  
www.prudentialvista.com

April 22, 2003

The Honorable Lesil McGuire  
House of Representatives  
Alaska State Capitol  
Juneau, Alaska 99801-1182

Dear Representative McGuire:

I am a member of your legislative district. I would like to ask for your support for the passage of Representative Rokeberg's HB 257 relating to the real estate industry. I am a licensed Realtor and a board member of the Anchorage Board of Realtors as well as a member of the Alaska Association of Realtors. My license number is 14503.

Thank you for your support. If you have any questions, please feel free to contact me at 727-9497.

Sincerely,

A handwritten signature in cursive script that reads "Patricia Baker".

Patricia Baker

**Subject:**

**Date:** Fri, 18 Apr 2003 15:32:08 -0800

**From:** "Ellen Hedges" <ellen@greatlandrealty.com>

**To:** <Representative\_Lesil\_McGuire@legis.state.ak.us>

Dear Representative McGuire,

I am writing you to ask that as a member of the House Judiciary Committee, you vote no on HB257, and please advise others of my opposition to this legislation. The following are my reasons why I oppose HB 257.

HB 257 deals with issues of consumer protection and what is acceptable professional conduct of a real estate broker/agent. I don't see anyway of compromising my current position on this bill, because I will not compromise my core professional conduct issues.

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Removing the requirement of disclosure is an act of fraud. How can misleading the public in issues as important as fiduciary duty be anything but fraud?

Common Law of Agency - If these principles do not apply, then what does? The reality of abrogating common law is that the states that have attempted it, have attempted to define the duty of the agent and penalties for non compliance. No state has been successful in this endeavor, and the National Association of REALTORS does not recommend abrogation of common law. Simply, it works as a balance of consumer protection and defining acceptable professional conduct.

Fiduciary Duty - This provision is simply embarrassing to professionals that endorse the National Association of REALTORS Code of Ethics. You can interpret this as; Citizen of Alaska, I will be honest, fair, and act in good faith, but you can't trust me.

In regard to page 5, section (g) of the bill; attempting to trivialize the requirement of AS 08.88.396 as technical violation is simply absurd. Most would not consider disclosing, who you work for and how you're paid a trivial technical violation. All states classify undisclosed dual agency as fraud, deceit, and misrepresentation.

Applicability & Retrospectivity - This is a real slap in the face to the law abiding majority of real estate practitioners in Alaska. I have attached a copy of the Code of Ethics for your review to understand this position.

Thank you so much for considering my opinion.

Sincerely,

Ellen Hedges

Great Land Realty

907-694-9125

Fax: 907-694-9125

ellen@greatlandrealty.com

**Subject: HB 257**

**Date: Fri, 18 Apr 2003 15:50:39 -0800**

**From: Trevor Roehl <trevorroehl@gci.net>**

**To: Representative\_Lesil\_McGuire@legis.state.ak.us**

Dear Representative McGuire,

I am writing you to ask that as a member of the House Judiciary Committee, you vote no on HB257, and please advise others of my opposition to this legislation. The following are my reasons why I oppose HB 257.

HB 257 deals with issues of consumer protection and what is acceptable professional conduct of a real estate broker/agent. I don't see any way of compromising my current position on this bill, because I will not compromise my core professional conduct issues.

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Applicability & Retrospectivity - This is a real slap in the face to the law abiding majority of real estate practitioners in Alaska.

Thank you so much for considering my opinion.

Sincerely,

Trevor Roehl  
Marketing Associate/Property Manager

Powell Realty, Inc., GMAC Real Estate  
PH (907)789-3888 Fax (907)789-7038

**Subject: Hb 257**

**Date:** Fri, 18 Apr 2003 15:57:53 -0800

**From:** Ruth Blackwell <ruth@aukelake.com>

**Reply-To:** ruthlb@aukelake.com

**Organization:** Ruth Blackwell

**To:** Representative\_Lesil\_McGuire@legis.state.ak.us

**CC:** Representative\_Norman\_Rokeberg@legis.state.ak.us

Dear Representative McGuire;

I am writing you to ask that as a member of the House Judiciary Committee, you vote no on HB257, and please advise others of my opposition to this legislation. The following are my reasons why I oppose HB 257.

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Applicability & Retrospectivity - This is a real slap in the face to the law abiding majority of real estate practitioners in Alaska. I have attached a copy of the Code of Ethics for your review to understand this position.

Thank you so much for considering my opinion.

Sincerely,

Ruth Blackwell  
Powell Realty/GMAC  
9040 Glacier Highway  
Juneau, Alaska 99801  
907-789-3888 work  
907-789-7038 work fax  
907-789-0582 home  
907-789-2835 home fax  
907-321-0615 cell

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**Subject: House Bill 287**

**Date:** Fri, 18 Apr 2003 16:13:17 -0800

**From:** Hal Jackson <haljackson@alaska.com>

**To:** Representative\_Lesil\_McGuire@legis.state.ak.us

I oppose House Bill 287.

I have been a Realtor for 15 years and oppose this course of action.

Hal Jackson  
Eagle River, Ak.

Dear Representative,

I am writing you to ask that as a member of the House Judiciary Committee, you vote no on HB257, and please advise others of my opposition to this legislation. The following are my reasons why I oppose HB 257.

HB 257 deals with issues of consumer protection and what is acceptable professional conduct of a real estate broker/agent. I don't see anyway of compromising my current position on this bill, because I will not compromise my core professional conduct issues.

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Applicability & Retrospectivity - This is a real slap in the face to the law abiding majority of real estate practitioners in Alaska. I have attached a copy of the Code of Ethics for your review to understand this position.

Thank you so much for considering my opinion.

Sincerely,

Clair E. Dalton  
Anita Dalton

Dear Representative \_\_\_\_\_,

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Thank you so much for considering my opinion.

Sincerely,

Debbie A. White  
Associate Broker  
RE/MAX of Juneau

**Subject: Representative Rokeberg's Proposed HB 257**

**Date:** Sat, 19 Apr 2003 19:06:15 -0800

**From:** "anniew" <anniew@xyz.net>

**To:** <Representative\_Lesil\_McGuire@legis.state.ak.us>,  
<Representative\_Tom\_Anderson@legis.state.ak.us>,  
<Representative\_Jim\_Holm@legis.state.ak.us>, <Representative\_Dan\_Ogg@legis.state.ak.us>,  
<Representative\_Ralph\_Samuels@legis.state.ak.us>,  
<Representative\_Les\_Gara@legis.state.ak.us>,  
<Representative\_Max\_Gruenberg@legis.state.ak.us>,  
<Representative\_Norman\_Rokeberg@legis.state.ak.us>

Dear Representative Rokeberg and House Judiciary Members:

I am writing this letter to you all in opposition of HB 257, which I find to be ill-conceived and disingenuous.

First let me say that I appreciate Representative Rokeberg's attempt at clarifying agency relationships between sellers, buyers and real estate agents. He has worked with us for a long time and has shown admirable patience as our work on Agency issues has dragged on. Many of us from the outlying boards have spent hours participating in Agency Task Force meetings, and he would not be alone in feeling some impatience at the length of this process. However, that impatience is part of the process of a large group struggling with a very important issue.

HB 257, as written, denies consumers protection when they are participating in the purchase/sale of a property very loosely defined as "commercial" by this bill. Removing the requirement to disclose to clients exactly whom is being represented opens Pandora's box and can mislead the public. Although I understand that in large commercial transactions it is felt by some that both buyers and sellers are knowledgeable and sophisticated and don't need agency disclosures, some of the definitions of "commercial" are very loose and could apply to very modest properties and would be owned and/or purchased by less than sophisticated buyers.

Other parts of this bill appears to trivialize the requirement of AS08.88.396, which is just plain wrong. Since when is disclosing to a client who you work for and how you're paid trivial? Right now every state classify undisclosed dual agency as fraudulent misrepresentation I believe.

The most abhorrent part of this proposed legislation has to do with the Retrospectivity elements. As an associate broker who works very hard to obey both the law and the Realtor Code of Ethics, I find it reprehensible that legislation would retroactively prohibit consumers who feel themselves wronged to have their day in court. How convenient for those huge companies who can't (or don't want to) keep track of what their agents are doing. It's a huge slap in the face to the rest of us, and the real estate consumer, to remove the ability for redress if a wrong has been/is being committed.

It seems to me a better approach would be to define "agency" as it actually applies to the real estate profession, rather than by it's broad Common Law present definition and make practical the applications of **when** and **how** the agency relationship must be disclosed to a buyer and a seller. **THEN**, if you want to eliminate **some** commercial transactions (say for properties over \$500,000 or some other fairly high sales amount, then that might be appropriate.

The way this bill is presently written, there's not much to my mind that IS appropriate about it. I don't want to be painted with the "used car salesman" brush. The general public is going to see this as a bunch of slimy salesmen trying to weasel out of something. I work too hard to let this happen.

Thank you for your time and attention.

Sincerely,

Anne C. Whitney, Associate Broker  
AAR Board of Directors Member

**Subject: HB 257**

**Date: Mon, 21 Apr 2003 10:26:11 -0800**

**From: Shel Hensley <realestate@gci.net>**

**To: Representative\_Lesil\_McGuire@legis.state.ak.us**

<?xml:namespace prefix = o ns = "urn:schemas-microsoft-com:office:office" />

Dear Representative Lesil McGuire,

I am writing you to ask that as a member of the House Judiciary Committee, you vote no on HB257, and please advise others of my opposition to this legislation.

HB 257 is a real slap in the face to the law abiding majority of real estate practioners in Alaska. Norm Rokeberg's association with Prudential Jack White Co., and Prudential Vista Real Estate is well known within the real estate industry. To think that HB 257 arrives at such a time as one of Prudential Jack White Co.,'s star agents is facing licensing issues due to lack of disclosure in a previous real estate transaction is insulting to our trade, to say the least. The fact that a potential class action suit against Prudential Vista Real Estate would also be halted adds insult to injury. These two incidents are *exactly* why the State of Alaska must stand firm with regulations that will protect the public and force disclosure of agency in all real estate transactions.

I find a comment in the Sunday Anchorage Daily News by Chris Stephens, a commercial real estate agent, to be most alarming. Obviously he has missed the point entirely when he says that Commercial real estate agents should not be required to disclose agency since about half of their transactions are "dual agency" situations. Representing the Seller and the Buyer within the same firm eliminates the ability to give "full" or fiduciary service to either party. Helping the Seller receive the highest dollar for the property and assisting the Buyer to receive the lowest price for the property. The same being true when a real estate agent lists a property for sale and then writes the offer on that property for the Buyer.

Every homeowner and potential home buyer deserves the opportunity to decide what type of representation is appropriate for them. In order to make this decision they have to first be given notice, or disclosure, as to what level of representation is available to them. It is highly unlikely

that the vast majority would accept anything other than a fiduciary relationship if made fully aware of the implications.

HB 257 deals with issues of consumer protection and what is acceptable professional conduct of a real estate broker/agent. I don't see anyway of compromising my current position on this bill, because I will not compromise my core professional conduct issues.

My professional association, the Alaska Association of REALTORS cannot support the following issues of HB 257:

Required Disclosure of Conflict of Interest – Regarding dual agency, on in-house transactions, whether commercial or residential. If it can be shown that the actions of the sales agent encourages a belief that the sales agent represented the buyer/lessee/tenant, then an undisclosed, and therefore illegal, dual agency probably has been created.

Removing the requirement of disclosure is an act of fraud. How can misleading the public in issues as important as fiduciary duty be anything but fraud?

Common Law of Agency - If these principles do not apply, then what does? The reality of abrogating common law is that the states that have attempted it, have attempted to define the duty of the agent and penalties for non compliance. No state has been successful in this endeavor, and the National Association of REALTORS does not recommend abrogation of common law. Simply, it works as a balance of consumer protection and defining acceptable professional conduct.

Fiduciary Duty - This provision is simply embarrassing to professionals that endorse the National Association of REALTORS Code of Ethics. You can interpret this as; Citizen of Alaska, I will be honest, fair, and act in good faith, but you can't trust me.

In regard to page 5, section (g) of the bill; attempting to trivialize the requirement of AS 08.88.396 as technical violation is simply absurd. Most would not consider disclosing, who you work for and how you're paid a trivial technical violation. All states classify undisclosed dual agency as fraud, deceit, and misrepresentation.

Thank you so much for considering my opinion.

Sincerely,

Shel Hensley  
[realestate@shelhensley.com](mailto:realestate@shelhensley.com)

**Subject: HB 257**

**Date: Mon, 21 Apr 2003 11:03:21 -0800**

**From: "Barb Nord" <barbnord@acsalaska.net>**

**To: <Representative\_Lesil\_McGuire@legis.state.ak.us>**

Dear Representative McGuire,

I am writing you to ask that as a member of the House Judiciary Committee, you vote no on HB257, and please advise others of my opposition to this legislation. The following are my reasons why I oppose HB 257.

HB 257 deals with issues of consumer protection and what is acceptable professional conduct of a real estate broker/agent. I don't see anyway of compromising my current position on this bill, because I will not compromise my core professional conduct issues.

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Applicability & Retrospectivity - This is a real slap in the face to the law abiding majority of real estate practitioners in Alaska. I have attached a copy of the Code of Ethics for your review to understand this position.

Thank you so much for considering my opinion.

Sincerely,

Tracey Ricker  
Owner/Broker  
Ricker & Associates Real Estate, Inc.

**Subject: HB 257**

**Date: Mon, 21 Apr 2003 16:20:29 -0800**

**From: Carole Winton <taku@ptialaska.net>**

**To: Representative\_Lesil\_McGuire@legis.state.ak.us**

Dear Representative McGuire,

I am writing you to ask that as a member of the House Judiciary Committee, you vote no on HB257, and please advise others of my opposition to this legislation. The following are my reasons why I oppose HB 257.

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Fiduciary Duty - This provision is simply embarrassing to professionals that endorse the National Association of REALTORS Code of Ethics. You can interpret this as; Citizen of Alaska, I will be honest, fair, and act in good faith, but you can't trust me.

In regard to page 5, section (g) of the bill; attempting to trivialize the requirement of AS 08.88.396 as technical violation is simply absurd. Most would not consider disclosing, who you work for and how you're paid a trivial technical violation. All states classify undisclosed dual agency as fraud, deceit, and misrepresentation.

Applicability & Retrospectivity - This is a real slap in the face to the law abiding majority of real estate practitioners in Alaska. I have attached a copy of the Code of Ethics for your review to understand this position.

Thank you so much for considering my opinion.

Sincerely,

Carole J. Winton  
President, Alaska Association of Realtors

**Subject: HB 257**

**Date:** Mon, 21 Apr 2003 16:23:47 -0800

**From:** Janice Lobaugh <jlobaugh@gci.net>

**To:** Representative\_Lesil\_McGuire@legis.state.ak.us,  
 Representative\_Tom\_Anderson@legis.state.ak.us,  
 Representative\_Jim\_Holm@legis.state.ak.us, Representative\_Dan\_Ogg@legis.state.ak.us,  
 Representative\_Ralph\_Samuels@legis.state.ak.us,  
 Representative\_Les\_Gara@legis.state.ak.us,  
 Representative\_Max\_Gruenberg@legis.state.ak.us,  
 Representative\_Norman\_Rokeberg@legis.state.ak.us

Dear Representative:

I am writing you to ask that as a member of the House Judiciary Committee, you vote no on HB257, and please advise others of my opposition to this legislation. The following are my reasons why I oppose HB 257.<?xml:namespace prefix = o ns = "urn:schemas-microsoft-com:office:office" />

HB 257 deals with issues of consumer protection and what is acceptable professional conduct of a real estate broker/agent. I don't see anyway of compromising my current position on this bill, because I will not compromise my core professional conduct issues.

My professional association, the Alaska Association of REALTORS cannot support the following issues of HB 257:

Required Disclosure of Conflict of Interest – Regarding dual agency, on in-house transactions, whether commercial or residential. If it can be shown that the actions of the sales agent encourages a belief that the sales agent represented the buyer/lessee/tenant, then an undisclosed, and therefore illegal, dual agency probably has been created.

Removing the requirement of disclosure is an act of fraud. How can misleading the public in issues as important as fiduciary duty be anything but fraud?

Common Law of Agency - If these principles do not apply, then what does? The reality of abrogating common law is that the states that have attempted it, have attempted to define the duty of the agent and penalties for non compliance. No state has been successful in this endeavor, and the National Association of REALTORS does not recommend abrogation of common law. Simply, it works as a balance of consumer protection and defining acceptable professional conduct.

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In regard to page 5, section (g) of the bill; attempting to trivialize the requirement of AS 08.88.396 as technical violation is simply absurd. Most would not consider disclosing, who you work for and how you're paid a trivial technical violation. All states classify undisclosed dual agency as fraud, deceit, and misrepresentation.

Applicability & Retrospectivity - This is a real slap in the face to the law abiding majority of real estate practitioners in <?xml:namespace prefix = st1 ns = "urn:schemas-microsoft-com:office:smarttags" />Alaska. I have attached a copy of the Code of Ethics for your review to understand this position.

Thank you so much for considering my opinion.

Sincerely,

Janice Lobaugh

Realtor

**Subject: HB257**

**Date:** Mon, 21 Apr 2003 16:27:37 -0800

**From:** "Evelyn P. Rohr" <erohr@matnet.com>

**To:** <Representative\_Lesil\_McGuire@legis.state.ak.us>

Dear Representative McGuire,<?xml:namespace prefix = o ns = "urn:schemas-microsoft-com:office:office" />

I am writing you to ask that as a member of the House Judiciary Committee, you vote no on HB257, and please advise others of my opposition to this legislation. The following are my reasons why I oppose HB 257.

HB 257 deals with issues of consumer protection and what is acceptable professional conduct of a real estate broker/agent. I don't see anyway of compromising my current position on this bill, because I will not compromise my core professional conduct issues. There are enough Real Estate agents who take liberties with the code of ethics as it is, without making it easier for those who are inclined to be dishonest and in essence, give them a license to do it.

My professional association, the Alaska Association of REALTORS cannot support the following issues of HB 257:

Required Disclosure of Conflict of Interest – Regarding dual agency, on in-house transactions, whether commercial or residential. If it can be shown that the actions of the sales agent encourages a belief that the sales agent represented the buyer/lessee/tenant, then an undisclosed, and therefore illegal, dual agency probably has been created.

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Applicability & Retrospectively - This is a real slap in the face to the law abiding majority of real estate practitioners in Alaska. I have attached a copy of the Code of Ethics for your review to understand this position.

Thank you so much for considering my opinion. We in the Real Estate industry do strive for the highest form of ethics and if bill were to pass, it would seriously undermine our efforts. To make allowances and laws for a select few is setting a dangerous precedence.

Sincerely,

Evelyn P. Rohr GRI

Next Home Real Estate

**Subject: HB 257**

**Date: Mon, 21 Apr 2003 20:50:16 -0700**

**From: Robert Stanton <rstanton@gci.net>**

**To: Representative\_Lesil\_McGuire@legis.state.ak.us**

Dear Representative McGuire:

I have been a licensed realtor in Anchorage since 1975 and I urge you to support Representative Rokeberg's efforts with with the passage of HB 275. It is imperative that immediate steps be taken to resolve this issue and reduce the exposure to all within the real estate industry. If you have any questions, please feel free to contact me at (907) 240 2560. Thank you.

Sincerely,

Robert J. Stanton, Jr.  
License Number 3803

**Subject: HB257**

**Date:** Mon, 21 Apr 2003 20:54:37 -0800

**From:** Grayce Oakley <goakley@gci.net>

**To:** Representative\_Lesil\_McGuire@legis.state.ak.us,  
Representative\_Tom\_Anderson@legis.state.ak.us,  
Representative\_Jim\_Holm@legis.state.ak.us, Representative\_Dan\_Ogg@legis.state.ak.us,  
Representative\_Ralph\_Samuels@legis.state.ak.us, Representative\_Les\_Gara@legis.state.ak.us,  
Representative\_Max\_Gruenberg@legis.state.ak.us

I urge you to take no action and thus let this bill die in the Judiciary Committee.

I consider it a serious abuse of legislative power and privilege to shape a bill with the primary intent of affecting the outcome of litigation already underway.

I also do not believe there should be any exemption for commercial transactions. Please note that until last year, the precedent setting dual agency cases in Alaska were Black vs. Dahl and Foster vs. Cross, both of which were based on commercial transactions.

I offer this opinion based on 27 years in the real estate business, with 12 of those years as the Executive Administrator for the Alaska Real Estate Commission. I was involved with numerous bills and regulation projects in the state, and also with "agency forums and task forces" with the National Association of Realtors while a broker and with the Association of Real Estate License Law Officials while I was with the Commission.

For the good of the professionals who truly wish to provide a service to the consumers they serve, please do not pass HB 257.

Grayce Oakley

2458 Sprucewood St

Anchorage, AK 99508

**Subject: HB 257**

**Date: Mon, 21 Apr 2003 23:00:48 -0800**

**From: Viki Kaas <viki@gci.net>**

**To: Representative\_Lesil\_McGuire@legis.state.ak.us**

This bill is poor legislation. Please do not support it. Professionals in the real estate industry do not.

Viki Kaas, CRS, GRI, Broker

Homes Unlimited, Inc

517 West 12th Ave

Anchorage, AK 99501

727-5555

346-4111

viki@gci.net

**Subject: HB 257**

**Date: Tue, 22 Apr 2003 11:13:40 -0800**

**From: Carole Winton <taku@ptialaska.net>**

**To: Representative\_Lesil\_McGuire@legis.state.ak.us**

Dear Representative McGuire,

I am writing you to ask that as a member of the House Judiciary Committee, you vote no on HB257, and please advise others of my opposition to this legislation. The following are my reasons why I oppose HB 257.

HB 257 deals with issues of consumer protection and what is acceptable professional conduct of a real estate broker/agent. I don't see anyway of compromising my current position on this bill, because I will not compromise my core professional conduct issues.

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Thank you so much for considering my opinion.

Sincerely,

Carole Winton  
President, Alaska Association of Realtors

**Subject: HB257**

**Date: Tue, 22 Apr 2003 16:05:46 EDT**

**From: PLumetta@aol.com**

**To: Representative\_Lesil\_McGuire@legis.state.ak.us**

DEAR REPRESENTATIVE McGUIRE,

I WOULD LIKE TO ASK FOR YOUR SUPPORT OF HB257, REP. ROKEBERG'S RELATING TO THE REAL ESTATE INDUSTRY. I AM A MEMBER OF THE ANCHORAGE BOARD OF REALTORS AS WELL AS THE ALASKA ASSOC. OF REALTORS (LIC. #14223). THANKS FOR YOUR SUPPORT.

SINCERELY

PETER LUMETTA

**Subject: HB257****Date:** Tue, 22 Apr 2003 12:37:16 -0800**From:** "Debbie Barnhardt" <debbie@nexthomealaska.com>

**To:** <Representative\_Lesil\_McGuire@legis.state.ak.us>,  
 <Representative\_Tom\_Anderson@legis.state.ak.us>,  
 <Representative\_Jim\_Holm@legis.state.ak.us>, <Representative\_Dan\_Ogg@legis.state.ak.us>,  
 <Representative\_Ralph\_Samuels@legis.state.ak.us>,  
 <Representative\_Les\_Gara@legis.state.ak.us>,  
 <Representative\_Max\_Gruenberg@legis.state.ak.us>,  
 <Representative\_Norman\_Rokeberg@legis.state.ak.us>

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