

CHAPTER 154

AN ACT

To license and regulate real estate brokers and salesmen; creating a Real Estate Commission; setting forth its powers and the powers of the Commissioner of Real Estate; prescribing grounds for suspension and revocation of licenses; prescribing criminal penalties; providing for hearings; repealing Chapter 113, Session Laws of Alaska 1955; authorizing an appropriation.

(C. S. for H. B. 97)

Be it enacted by the Legislature of the Territory of Alaska:

Section 1. **Definitions.** For the purpose of this Act, words and phrases shall have the following meaning, unless other meaning is apparent from the context:

(a) A "real estate broker" or "broker" is a person who, for a compensation, sells, or offers for sale, buys, or offers to buy, lists or solicits for prospective purchasers, or negotiates the purchase or sale or exchange of real estate, or negotiates loans on real estate, or leases or offers to lease, or negotiates the sale, purchase, or exchange of leases, rents, or places for rent, or collects rent from real estate, or improvements thereon for another or others.

(b) An "associate real estate broker" is a person who has qualified as a "real estate broker", who works with a designated broker, and whose license states that he is associated with a designated broker.

(c) A "real estate salesman" or "salesman" is any person, other than a corporation, copartnership or unincorporated association, who represents a real estate broker in the performance of any of the acts above set forth.

(d) The word "person" as used in this Act shall be construed to include an individual, firm, corporation, copartnership or unincorporated association, except where otherwise restricted. The use of the word "broker" shall include "associate broker", unless the context requires otherwise.

Section 2. Exclusions From Act.

The provisions of this Act shall not apply to any person who purchases, leases, or rents real property for his own use or account, nor to any person who, being the owner of property, sells, exchanges, leases, rents or otherwise disposes of the same for his account, nor to the regular employees thereof with respect to the property so owned or leased, where such acts are performed in the regular course of, or as an incident to, the management of such property and the investment therein, nor to any person other than a broker holding a duly executed power of attorney from the owner granting power to execute any instrument necessary to consummate the sale, exchange, or leasing of real estate, nor to any receiver, trustee in bankruptcy, executor, administrator or guardian, nor to any person acting under the order of any court, nor to any person selling under a deed of trust; nor to any employee of a licensed

broker who, as an incident of his employment, collects rents on behalf of his employer.

Sec. 3. Real Estate Commission: Creation. There is hereby created the Alaska Real Estate Commission, which shall be a part of, and function as a division of, the Territorial Treasurer's Office. The Territorial Treasurer shall be the Commissioner of Real Estate and all real estate functions provided for in this Act shall be conducted at the offices of the Territorial Treasurer. The Real Estate Commission shall consist of five members. Two members shall be licensed real estate brokers, two shall be public members, and the fifth member shall be the Commissioner of Real Estate, who shall be the executive officer of the Commission. Members of the Commission shall be appointed by the Governor and confirmed by the Legislature. Members shall hold office for a term of four years. Those members of the Real Estate Board shall serve as members of the Commission, for the periods for which they were appointed and confirmed under Chapter 113, SLA 1955. As the terms of the present members expire, new members shall be appointed for the full four-year term. No person shall be appointed a member of the Commission who has not been for two years a licensed real estate broker actively engaged in such business in Alaska; the public member shall be required only to have been a resident of Alaska for two years. Whenever practicable at least one member shall be appointed from each of the four Judicial Divisions of the Territory of Alaska. Neither the public member, nor the Commissioner of Real Estate or any member of his staff, shall have any interest in any busi-

ness opportunity company, business opportunity brokerage firm, real estate company or real estate brokerage firm, as either director, stockholder, officer, member agent, or employee, or act as broker or real estate salesman, or be a partner of or agent for any broker or real estate salesman. Members of the Commission shall receive such payments, per diem allowances and transportation expenses as are commensurate with those allowed and paid members of other Territorial Boards.

Sec. 4. Powers and Duties of the Commission. (a) It shall be the duty of the Commission, acting in its own behalf and through the Commissioner of Real Estate, to enforce all laws, rules, and regulations relating to the licensing and actions of real estate brokers and salesmen. It shall issue such rules and regulations as may be necessary to effectuate the purposes of this Act.

(b) The Commission shall meet for the transaction of business at least once annually at such place within the Territory as may be designated by the Commissioner after consulting with the other members of the Commission. Notice of said meeting shall be given by the Commissioner or his agent at least ten (10) days prior thereto, except that shorter notice may be given with the concurrence of a majority of the Commission.

(c) A majority of the Commission shall constitute a quorum for the purpose of transacting all business and for the exercise of any power or authority of the Commission. A majority of the Commission must vote in favor of any motions for such motion to properly carry. A vacancy in the Commission, not

constituting a lack of a quorum, shall in no wise impair the rights, duties and powers of the remaining members of the Commission.

(d) The Commission shall have, but not by way of limitation, the power to refuse to issue a license, to revoke or suspend an existing license, to apply to the District Court for an injunction to temporarily restrain any violation of this Act, or any rule or regulation issued pursuant thereto, to conduct investigations with full power of subpoena of alleged violations of said Act, rules, or regulations, and to perform any other act necessary to the effectuation of the purposes of this Act. All actions of the Commission shall be subject to judicial review as hereinafter provided.

(e) Any power or duty of the Commission may be delegated to the Real Estate Commissioner, provided a majority of the Commission concurs in the delegation of such authority.

(f) The Commission shall approve the issuance of all original licenses, provided, however, that the Commissioner may renew existing licenses under Section 6 (e) hereof.

Sec. 5. Powers and Duties of Commissioner. (a) The Real Estate Commissioner shall be the Executive Officer of the Commission, and shall have the power to administer this Act in accordance with the provisions thereof. He shall adopt a seal bearing the words "Real Estate Commission, Territory of Alaska", for the authentication of proceedings of the Commission and of the official documents thereof.

(b) He shall reproduce the laws relating to licensing of real estate brokers and salesmen, rules

and regulations adopted by the Commission and any matter connected therewith which he may deem appropriate or a bulletin containing information relating to the Commission, and secure the publication of similar matter in such established publication as he may deem best fitted for the dissemination of information to licensees and to the public. The Commissioner shall publish or cause to be published on or about the first day of June of each year a directory or list of licensed brokers and salesmen and shall therewith publish such matters as he may deem pertinent to the general purposes of this Act. He shall mail one copy of such directory to each licensed broker and salesman, and to other persons upon request. He shall also publish and sell at cost a manual covering the fundamentals of real estate law and practice as defined in the laws of Alaska after approval of same by the Attorney General.

(c) The Commissioner shall prepare and conduct examinations of applicants for licenses and certify the results to the commission for final approval of the issuance of licenses.

(d) The Commissioner shall have the power to issue temporary licenses and to renew or transfer existing licenses.

(e) The Commissioner shall, at the request of the Commission, or upon a complaint of any other person, or of his own volition, investigate any violations of this Act, or of any rule, regulation, or order issued pursuant to this Act, and report the results of his investigation to the Commission. He shall have the power to subpoena witnesses, to compel by subpoena duces tecum the production of any and all books,

documents, and papers in the possession of any person alleged to have violated the provisions of this Act, or of any rule, regulation, or order issued pursuant thereto, and to take the testimony of any person by deposition in the same manner as prescribed by law for the taking of depositions in civil actions. He shall have the power to administer oaths. The processes issued by the Commissioner may be served by any person authorized to serve process under the laws of the Territory of Alaska.

(f) The Commissioner shall appoint and fix the compensation of a secretary and such deputies, clerks and assistants as may be necessary to conduct the business of his office. No deputy or assistant shall be appointed by the Commissioner without the approval of a majority of the Commission.

(g) All powers and duties conferred upon the Real Estate Commissioner under this Act may be delegated by him to the individual members of the Commission.

Sec. 6. Applications for Licenses; Qualifications for Examinations; Issuance of Licenses.

(a) **Fees and Bonds.** An applicant for a broker's, associate broker's or real estate salesman's license shall make application therefor to the Commissioner on such application forms as shall be prescribed by the Commission. With such application, the applicant shall:

(1) Pay a license fee as follows:

For a broker's license — \$50.00

For an associate broker's license
— \$35.00

For a real estate salesman's
license — \$25.00

For inactive licenses of all types, the fee shall be one-half of the fee charged for an active license. The license year shall be for a one year period from date issued. The fee for a license renewal shall be the same as for an original license. If any licensee shall become inactive, he shall not be entitled to a refund of his license fee for the balance of the license year. He may thereafter obtain active license at any time during the unexpired license period at no additional charge.

Where the applicant is required to take a written examination, he shall forward \$15.00 as a fee for the salesman's examination, and \$25.00 as a fee for the broker's examination.

All fees prescribed herein or under this Act shall be paid to the Commissioner who shall transmit them to the Treasurer's Office for deposit in the General Fund of the Territory of Alaska.

(2) Deliver to the Commissioner a bond to the Territory of Alaska in a form and of a type approved by the Commission in the sum of \$5,000.00 for a broker's or associate broker's license and in the sum of \$1,000.00 for a salesman's license guaranteeing the faithful accounting and proper remission of all funds entrusted to the broker or salesman. No bond shall be required of an inactive licensee.

(3) If a corporate applicant, deliver to the Commissioner a list of its officers and directors, and their addresses, or if the applicant is a partnership or an unincorporated association, deliver a list of the names of the partners or members of the association, together with their addresses.

(b) **Qualifications.** Applicants for

licenses shall have the following qualifications:

(1) All applicants shall be at least 21 years of age.

(2) All applicants shall be citizens of the United States.

(3) An applicant for a broker's, associate broker's or salesman's license shall have been a bona fide resident of the Territory of Alaska for at least ninety days immediately prior to the date of his application.

No license shall be issued to any person who, within five years next preceding his application for an original license, has been convicted of a felony or of any other crime involving moral turpitude or of dishonest dealing, or of a violation of any real estate act, in Alaska or elsewhere.

(c) **Examinations.**

(1) All applicants for licenses except applicants who hold valid brokers' or salesmen's licenses from other jurisdictions (who may be licensed without examination as hereinafter provided), shall successfully pass a written examination prepared by the Commission and conducted by the Commissioner. The scope of the examinations for brokers shall include, but shall not be limited to, questions relating to real estate financing and conveyancing, land laws, real estate appraisals, land economics, land contracts, deeds, mortgages, leases, sanitation laws, the law of agency, construction practices, principles of real estate practices, codes of business ethics and mathematics. Examinations for salesmen shall contain different questions than the brokers' examination and may include some

of the subjects listed above but it shall not be as exacting as the examination for brokers.

(2) The holder of a valid broker's or real estate salesman's license from any state, Territory or the District of Columbia, may be issued a permanent broker's or real estate salesman's license without a written examination, under such regulations as the Commission may promulgate, after he has been a bona fide resident of the Territory of Alaska for at least ninety days immediately prior to his application to the Commission for such salesman's license. He shall meet all other requirements for such license, except that of taking the written examination. He shall offer proof, to the satisfaction of the Commission, that he holds such broker's or salesman's license from another jurisdiction. He shall apply for such license not later than one year after he has established residence in the Territory of Alaska.

(3) When the holder of a permanent salesman's license fails to pass an examination for a broker's license, he may thereafter continue to operate under his salesman's license.

(d) **Issuance of Licenses.** A license issued hereunder shall authorize only the licensee named therein, and no other, to perform any act mentioned in Section 1 of this Act: provided, that whenever a license is applied for and issued under the provisions of this Act to a corporation, it shall be issued to a person to be named by said corporation in its application for said license, who shall qualify as any other broker and if the designated broker severs his business relationship with the corporation he shall retain his

broker's license and the corporation shall engage another person who shall qualify the same as any other broker. Provided, further, that whenever a license is issued under the provisions of this Act to a copartnership or unincorporated association, said license shall be issued to one member of said copartnership to be named by said copartnership in its application for said license who shall qualify the same as any other agent to act as a real estate broker on behalf of said copartnership without the payment of additional license fees and if the designated broker severs his business relationship with the copartnership or unincorporated association, he shall retain his broker's license and the copartnership or unincorporated association shall engage another person who shall qualify the same as any other broker; provided, further, that no licensed real estate broker or salesman shall operate under any name other than the one under which said license is issued unless he shall have first obtained the written consent of the Commission to do so.

(e) **License Renewal.** The holders of real estate broker's and salesman's licenses issued pursuant to this Act shall be entitled to have their licenses renewed for successive years without examination.

(f) **Inactive Licenses.** Permanent broker's and salesman's licenses held by persons who are no longer active in their profession shall be surrendered to the Commissioner, who shall thereafter issue inactive licenses to such brokers and salesmen, upon payment of the fees set forth in Section 6 (a) (1).

(g) **Branch Offices.** Branch offices under the same name as the main

office may be opened and maintained by any broker upon the payment of a \$5.00 license fee for each such office, which fee shall be paid each year. All branch offices shall be in charge of and operated by a licensed broker or a licensed associate broker.

(h) **Custody and Display of Licenses; Change of Address.** All licenses, including branch office licenses, shall be displayed in the office where the licensee is engaged in business. Brokers shall be responsible for the custody and display of all licenses issued to persons in their employ. The change of a business address of any licensee shall be furnished the Commission within ten (10) days of such change.

(i) **Surrender of Licenses.** When any real estate salesman or associate broker shall cease to represent his broker his license shall thereupon become invalid. Notice of the termination of the salesman's or associate broker's representation shall be given promptly to the Commissioner and such notice shall be accompanied by the license of the terminated salesman or associate broker. Upon application to the Commissioner of the salesman or associate broker and the payment of \$1.00, the Commissioner shall issue a new license for the unexpired term, if such applicant is otherwise entitled thereto. Whenever any real estate salesman's or associate broker's service shall be terminated by his broker for a violation of any of the provisions of Section 8 of this Act, or for any other cause, a written statement of the fact surrounding such termination shall be promptly forwarded by the broker to the Commissioner.

(j) **Credit of Fees Against Busi-**

ness License Tax. Real estate license fees may be credited against the initial fee for the Alaska Business License by submitting to the Department of Taxation a receipt for payment of the required real estate license tax.

Sec. 7. Requirement of Actively Engaging in Business; Place of Business; Display of Firm Name. Each person licensed as an active real estate broker under the provisions of this Act shall be required to be actively engaged as a real estate broker and shall maintain a definite place of business in the Territory. The firm name of the broker shall be prominently displayed outside the broker's place of business.

Sec. 8. Grounds for Revocation or Suspension of License. Commission of any of the following acts by any licensee shall constitute grounds for the suspension or revocation of his license:

(a) Obtaining a license by means of fraud, misrepresentation, concealment, or through the mistake or inadvertence of the Commission.

(b) The violation of any provisions of this Act, or of any rule, regulation, or order issued pursuant thereto by the Commission.

(c) Conviction, during the period he holds his license or during a period of five years next preceding his application for an original license, of a felony or of any other crime involving moral turpitude or dishonest dealing, or of a violation punishable by fine or imprisonment, or both, of any real estate act, in Alaska or in any other jurisdiction.

(d) Making, printing, publishing or distributing, or causing, authorizing, or knowingly permitting another to make, print, publish, or

distribute, any false statement, description or promise relating to real property sold or offered for sale by the licensee, which said false statement, description, or promise may reasonably be calculated to induce any person to act to his damage or injury, where the licensee knew, or by the exercise of reasonable care, could have known, such statement, description or promise to be false.

(e) Accepting the services of, or continuing in a representative capacity, any broker or salesman who has not been granted a license, or whose license has been revoked or suspended.

(f) Converting any money, contract, deed, note, mortgage, or abstract, or any other evidence of title, to his own use, or to the use of another, when such money or instrument has been delivered to him in trust or upon condition; and failure to return any money, contract, deed, note mortgage, or abstract or other evidence of title, to any party who shall be entitled to the possession thereof and who has made written demand therefor shall be prima facie evidence of conversion.

(g) Failing or refusing, upon the demand of the Commission or the Commissioner, to disclose any information, or produce any document, book or record in his possession, and not privileged, when such demand is made under the authority of this Act.

(h) Advertising in any manner without including the name of the licensed firm or the licensee in such advertisement.

(i) Accepting, without the written concurrence of the owner, anything other than cash, or its equivalent, as earnest money.

(j) Accepting, taking or charging any undisclosed commission or direct profit, or giving cash gifts or other things of value on services rendered or expenditures made for a principal.

(k) Accepting employment or compensation in any form for the appraisal of real property contingent upon reporting a predetermined value known to the licensee.

(l) Issuing an appraisal report upon any real property in which the broker or salesman has an interest unless such interest is clearly stated in said report.

(m) Misrepresentation of membership in any local, Territorial or national real estate association.

(n) Offering real estate for sale, trade or lease (1) without the written authorization from the owner, or (2) under an authorization which does not contain all terms of the agreement.

(o) Commingling with his own money or property, the money or property of others.

(p) Claiming, demanding or receiving a fee, compensation or commission under any exclusive agreement authorizing or employing a licensee to sell, buy or exchange real estate for compensation or commission where such agreement does not contain a definite specified date of final and complete termination.

(q) Willfully designating himself a "realtor" without having the legal right to do so.

(r) Payment by any broker of any part of a commission or other compensation received in his capacity as a real estate broker to any per-

son who is not a licensed real estate broker, or to a real estate salesman or associate broker not licensed to do business for such broker; or the payment by any licensed salesman of any part of a commission or other compensation received in his capacity as a real estate salesman to any person whether licensed or not, except through his broker.

(s) Failure of a broker to notify the Commissioner of the termination of a salesman's or associate broker's employment or representation and failure to surrender to the Commissioner said salesman's or broker's license, as required by Section 8 of this Act.

(t) Any act or conduct which constitutes or demonstrates bad faith, incompetency or untrustworthiness, or dishonest, fraudulent or improper dealings.

Sec. 9. Engaging in Real Estate Business Without License; Penalty. Any person who acts as a real estate broker, associate real estate broker, or salesman, as defined in Section 1 of this Act, without a valid license, as herein provided, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be imprisoned for not more than three months or fined not more than \$500.00 or both. Nothing herein shall prevent or supersede prosecution under any other criminal statute in force in Alaska.

Sec. 10. Hearing and Appeals. (a) **When Hearing Held.** A hearing shall be held by the Commission in any of the following situations:

(1) When an applicant for a broker's, associate broker's or salesman's license, or any licensee under this Act, shall feel himself aggrieved by any ruling, order or other action of the Commission.

(2) When the Commission, acting upon a verified complaint filed by any party, or, upon its own motion, deems that a prima facie case exists showing a violation by any licensee, or by any person acting without a valid license, of any provision of this Act or of any rule, regulation or order issued by the Commission pursuant thereto.

(b) **Request for Hearing by Applicant or Licensee.** In the case of any hearing requested under Section 10 (a) (1), an applicant or licensee shall file a notice of a request for a hearing within twenty (20) days after his notification by the Commission of its action, ruling or order. The Commission shall, upon receipt of the applicant's or licensee's notice of a request for hearing, set a date for such hearing which shall fall not later than ninety (90) days after the receipt of said notice. The hearing shall be held in either the city of Anchorage, Juneau, Ketchikan, Nome or Fairbanks, whichever is closest to the residence of the applicant or licensee.

(c) **Notice of Hearing at Instance of Commission.** In the case of hearings held under Section 10 (a) (2), the Commission shall set a date for the hearing which shall fall not later than sixty (60) days after the respondent shall have been given notice thereof. The Commission shall, by registered or certified mail, notify the respondent of the place, date and time of hearing, and the notice shall specify the particular section or sections of this Act, or regulation, rule, or order of the Commission, which the respondent is alleged to have violated.

(d) **Hearings; Procedures.** At the

hearing, the applicant, licensee or respondent shall be entitled to present such evidence, written or oral, as may be pertinent to the inquiry, but the Commission or any other party shall not be bound by the usual rules of evidence. The applicant, licensee or respondent shall have the right to counsel, who may examine and cross-examine witnesses. All witnesses shall be duly sworn by any member of the Commission, and any party to the hearing may at his own expense cause the proceedings to be stenographically reported. If the hearing is so reported, any party to the hearing may obtain a copy of the transcript by tendering the cost therefor to the party which has arranged for such reporting. Nothing herein, however, shall be construed to require the Commission or any other party to have the hearing reported.

(e) **Findings of Fact and Conclusions of Law; Orders.** At the conclusion of the hearing, the Commission shall enter findings of fact and conclusions of law, and enter an order based thereupon. Any member of the Commission may certify said findings of fact and conclusions of law, and any order of the Commission. A copy of the findings of fact and conclusions of law and the order based thereupon shall be served upon the applicant, licensee or respondent by sending a copy thereof, by registered or certified mail, to him at his last known address. In the case of a licensee, the Commission may order the revocation, or suspension for a limited time, of his license, or may enter such other order as may appear to be in the public interest.

(f) **Appeal.** Such order shall be final when in favor of the applicant, licensee, or the respondent. When an order is unfavorable to the

applicant, licensee, or respondent, he may appeal such order to the District Court of the judicial division in which he resides by serving upon the Real Estate Commissioner and the Attorney General of Alaska, a written notice of his intention to appeal within ten (10) days of the receipt by him of a copy of the findings of fact and conclusions of law and order based thereupon. Such notice may include a written demand for copies of all papers, documents, and transcripts in the possession of the Commission, and the Commission, within thirty (30) days of the receipt of said notice and demand, and after the respondent has tendered the cost therefor, shall furnish the applicant or respondent with certified copies of all such matters in its possession. After the receipt of all such papers, documents and transcripts by the applicant, licensee or respondent, the matter shall be set for hearing by the District Court, and the cause shall be given priority on the Court calendar. Upon the hearing of such appeal, the burden of proof shall be on the applicant, and the Court shall receive and consider any pertinent evidence, whether documentary or oral, concerning the ac-

tions of the Commission from which the appeal is taken. The hearing of the appeal shall not be a trial de novo of the cause; the Court shall be limited solely to a consideration and determination of the question of whether there has been an abuse of discretion on the part of the Commission in entering such order.

Sec. 11. Existing Licenses. No holder of a permanent broker's, associate broker's, or real estate salesman's license, issued in accordance with any previous law, shall be required to obtain a new original license by reason of this Act. Existing licenses shall be renewed yearly as hereinabove provided.

Sec. 12. Repeal of Chapter 113, 1955 Session Laws of Alaska. Chapter 113, 1955 Session Laws of Alaska is hereby repealed.

Sec. 13. Severability. The fact that any section, subsection, sentence, clause, or phrase in this Act is declared invalid for any reason shall not affect the remaining portions of this Act.

Sec. 14. Appropriation. Funds to carry out the provisions of this Act may be appropriated in the General appropriation Bill of the Alaska Legislature.

Approved April 2, 1957

CHAPTER 155

AN ACT

To provide for the systematic collection, recording and distribution of hydrological data.

(H. B. 179)

Be it enacted by the Legislature of the Territory of Alaska:

Section 1. Systematic collection, recording, evaluation, and distribu-