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Source

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Chapter No.

45

AN ACT

Relating to real estate licensees and to the real estate surety fund; relating to the Real Estate Commission; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

Approved by the Governor: May 22, 1998

Actual Effective Date: AS 08.88.091(f) and (g), added by sec. 7, take effect
January 31, 1999; remainder of Act takes effect May 23, 1998

AN ACT

1 Relating to real estate licensees and to the real estate surety fund; relating to the Real Estate
2 Commission; and providing for an effective date.

3 _____

4 * Section 1. AS 08.67.010 is amended to read:

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

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

11 * Sec. 2. AS 08.88.051(c) is amended to read:

12 (c) The commission shall elect its officers at the first meeting of each fiscal
13 year.

14 * Sec. 3. AS 08.88.061 is amended to read:

Chapter 45

1 Sec. 08.88.061. Assistants. Notwithstanding contrary provisions of
2 AS 08.01.050, the [THE] commission may assign or designate [USE] assistants to

3 (1) issue licenses to applicants who meet the qualifications for
4 licensure established under this chapter;

5 (2) prepare questions on examinations;

6 (3) administer and [(2)] grade examinations;

7 (4) certify courses required under this chapter;

8 (5) approve instructors to teach courses required under this
9 chapter; and

10 (6) negotiate terms for payment of fines and other money due
11 under this chapter.

12 * Sec. 4. AS 08.88.071 is amended to read:

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

14 (1) determine whether [PASS ON QUALIFICATIONS OF] applicants
15 meet requirements for licenses under this chapter and issue licenses to those who
16 qualify;

17 (2) prepare and grade examinations;

18 (3) after hearing, have the authority to suspend or revoke the license
19 of a licensee or impose other disciplinary sanctions authorized under AS 08.01.075
20 on a licensee who

21 (A) with respect to a real estate transaction

22 (i) made a substantial misrepresentation;

23 (ii) made a false promise likely to influence, persuade,
24 or induce;

25 (iii) in the case of a real estate broker, pursued a
26 flagrant course of misrepresentation or made a false promise through
27 another [AN AGENT, ASSOCIATE REAL ESTATE BROKER, OR]
28 real estate licensee [SALESMAN];

29 (iv) has engaged in conduct that is fraudulent or
30 dishonest;

31 (v) violates AS 08.88.391;

1 (B) procures a license by deceiving the commission, or aids
2 another to do so;

3 (C) has engaged in conduct of [IN] which the commission had
4 no knowledge at the time the licensee was licensed demonstrating the licensee's
5 unfitness to engage in the business for which the licensee is licensed;

6 (D) knowingly authorizes, directs, connives at or aids in
7 publishing, distributing, or circulating a material false statement or
8 misrepresentation concerning the licensee's business or concerning real estate
9 offered for sale, rent, or lease, or managed in the course of the licensee's
10 business in this or any other state or concerning the management of an
11 association in the course of a licensee's business in this or another state;

12 (E) if a real estate broker, wilfully violates AS 08.88.171(d) or
13 08.88.291;

14 (F) if an associate real estate broker, claims to be a real estate
15 broker, or, if a real estate salesperson [SALESMAN], claims to be a real estate
16 broker or associate real estate broker;

17 (G) if a real estate broker, employs an unlicensed person to
18 perform activities for which a real estate license is required [ASSOCIATE
19 REAL ESTATE BROKER OR REAL ESTATE SALESMAN];

20 (H) if an employed real estate licensee of a [ASSOCIATE]
21 real estate broker [OR REAL ESTATE SALESMAN], fails immediately to turn
22 money or other property collected in a real estate transaction over to the
23 employing real estate broker;

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

26 (5) release for publication [PUBLISH, ON THREE CONSECUTIVE
27 WEEKENDS] in a newspaper of general circulation in the locale of the offending
28 person's principal office registered with the commission notice of [LICENSED
29 UNDER THIS CHAPTER,] disciplinary action taken by the commission against a
30 person licensed under this chapter;

31 (6) issue a temporary permit to the personal representative of the estate

Chapter 45

1 of a deceased real estate broker or to another [SOME OTHER] person designated by
2 the commission with the approval of the personal representative of the estate in order
3 to secure proper administration in concluding the affairs of the decedent broker's real
4 estate business;

5 (7) issue a temporary permit to the personal representative of a
6 legally incompetent real estate broker or to another person designated by the
7 commission with the approval of the personal representative of the broker in
8 order to secure proper administration in temporarily managing the real estate
9 business of the broker;

10 (8) establish and periodically revise the form of the seller's property
11 disclosure statement required by AS 34.70.010;

12 (9) have the authority to levy civil fines as established in this
13 chapter;

14 (10) revoke the license of a broker or associate broker who is
15 convicted of forgery, theft, extortion, conspiracy to defraud creditors, or a felony
16 involving moral turpitude committed while licensed under this chapter;
17 notwithstanding AS 08.88.171, a person whose license is revoked under this
18 paragraph is not qualified for a license under AS 08.88.171(a) or (b) until seven
19 years have elapsed since the person completed the sentence imposed for the
20 conviction.

21 (b) When an award is made from the real estate surety fund under this chapter
22 [IN REIMBURSEMENT OF LOSSES SUFFERED BY A CLAIMANT AS A
23 RESULT OF FRAUD, MISREPRESENTATION, DECEIT, OR CONVERSION OF
24 TRUST FUNDS ON THE PART OF A LICENSED BROKER, ASSOCIATE
25 BROKER, OR SALESMAN], the commission may suspend [CONSIDER THE
26 HEARING ON THE CLAIM TO BE A HEARING ON THE SUSPENSION OF] the
27 license of the real estate licensee whose actions formed the basis of the award
28 [BROKER, ASSOCIATE BROKER, OR SALESMAN, AND MAY SUSPEND THE
29 LICENSE OF THE BROKER, ASSOCIATE BROKER, OR SALESMAN]. A
30 suspension ordered under this subsection shall be lifted if the licensee [BROKER,
31 ASSOCIATE BROKER, OR SALESMAN] reaches an agreement with the commission

1 on terms and conditions for the repayment to the real estate surety fund of the money
2 awarded to the claimant and the costs of hearing the claim under AS 08.88.465. The
3 suspension shall be reimposed if the licensee [BROKER, ASSOCIATE BROKER, OR
4 SALESMAN] violates the terms of a repayment agreement entered into under this
5 subsection.

6 (c) For the purposes of (a)(3) of this section, the conduct of an employee is
7 [NOT] attributable to a real estate broker if [UNLESS] the real estate broker has actual
8 knowledge that the employee is going to engage in the conduct and agrees to the
9 conduct, either actively or by remaining silent, or ratifies the conduct after it is
10 engaged in.

11 * Sec. 5. AS 08.88.091(d) is amended to read:

12 (d) A person who is licensed under this chapter must complete 20 hours of
13 continuing education approved by the commission before the person's license may be
14 renewed. The commission may not establish limits that prevent a person from
15 satisfying this continuing education requirement within a two-day period.

16 * Sec. 6. AS 08.88.091(e) is amended to read:

17 (e) Except for a course described in (f)(1) or (3) of this section, in order
18 for an educational course to be recognized for credit under this section, [THE
19 COMMISSION MAY NOT APPROVE AN EDUCATION OR CONTINUING
20 EDUCATION COURSE REQUIRED UNDER THIS SECTION UNLESS THE
21 COMMISSION CERTIFIES] the course outline and [APPROVES] the instructor of the
22 course must have been approved by the commission or the commission's designee
23 before the course was [IS] conducted. A course outline or instructor is considered
24 approved if the commission or the commission's designee does not disapprove the
25 outline or instructor within 45 days after the date on which complete application
26 was made for approval. Each approved contact hour of a submitted course
27 outline constitutes one credit hour of continuing education. The fee for continuing
28 education course certification under AS 08.88.221 shall be based on the hours
29 approved for credit not hours submitted.

30 * Sec. 7. AS 08.88.091 is amended by adding new subsections to read:

31 (f) The commission shall establish by regulation the educational and continuing

Chapter 45

1 educational requirements for licenses issued by the commission. The regulations for
2 continuing education requirements must allow the following types of courses to qualify
3 for the appropriate number of credit hours, as determined by the commission:

4 (1) courses that are developed by national organizations, as identified
5 for the purpose of this paragraph in the commission's regulations, that are delivered by
6 nationally certified instructors and that are required in order to earn professional
7 designations from a national organization in specialized areas of licensed real estate
8 practice; notwithstanding other provisions of this chapter, the commission may not
9 charge a fee for these courses;

10 (2) technology courses directly related to real estate practice that are
11 designed to enhance the skills and performance of a real estate licensee; and

12 (3) courses offered by an accredited college or university as part of a
13 real estate curriculum that are available for at least one quarter-hour or one-half
14 semester-hour of academic credit; the commission may not charge a fee for these
15 courses.

16 (g) The commission shall establish core curricula for continuing education in
17 the following areas: real estate sales, property management, community association
18 management, and commercial sales. A licensee shall complete at least one of the four
19 core curricula during each biennial licensing period as part of the licensee's continuing
20 education.

21 * **Sec. 8.** AS 08.88.161 is amended to read:

22 **Sec. 08.88.161. License required.** Unless licensed as a real estate broker,
23 associate real estate broker, or real estate salesperson in this state [SALESMAN], a
24 [NATURAL] person [, FOREIGN OR DOMESTIC CORPORATION, OR
25 PARTNERSHIP, OR LIMITED PARTNERSHIP, OR OTHER ENTITY] may not,
26 except as otherwise provided in this chapter,

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

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

29 (3) collect rent for the use of real estate or collect fees for property
30 management;

31 (4) practice, or negotiate for a contract to practice, property

1 management:

2 (5) collect fees for community association management;

3 (6) practice, or negotiate for a contract to practice, community
4 association management;

5 (7) as a business, buy, sell, or deal in

6 (A) options in real estate; or

7 (B) options in improvements to real estate;

8 (8) [(5)] assist in or direct the procuring of prospective buyers **and**
9 **sellers of real estate, communicate with prospective buyers and sellers of real**
10 **estate, or assist in** the negotiation of a transaction **that** [WHICH] results or is
11 calculated to result in the sale, exchange, rent, lease, auction, or purchase of real
12 estate;

13 (9) accept or pay a fee for the performance of any of the activities
14 listed in this section except as otherwise specifically provided in this chapter;

15 (10) [(6)] hold out to the public as being engaged in the business of
16 doing any of the things listed in this section; **or**

17 (11) [(7)] attempt or offer to do any of the things listed in this section
18].

19 (8) REPEALED].

20 * Sec. 9. AS 08.88 is amended by adding a new section to read:

21 **Sec. 08.88.167. Civil penalty for unlicensed or unauthorized practice.** (a)

22 In addition to penalties prescribed by any other provision of law, if a person engages
23 or offers to engage in an activity for which a license is required under AS 08.88.161
24 without being licensed or authorized to engage in the activity in accordance with the
25 provisions of this chapter, the commission may enter an order levying a civil penalty.

26 (b) A civil penalty levied under this section may not exceed \$5,000, or the
27 amount of gain realized plus \$5,000, whichever is greater, for each offense. In levying
28 a civil penalty, the commission shall set the amount of the penalty imposed under this
29 section after taking into account the seriousness of the violation, the economic benefit
30 resulting from the violation, the history of violations, and other facts the commission
31 considers relevant.

Chapter 45

1 (c) Before entering an order under (a) of this section, the commission shall
2 send the person written notice of the proposed order that grants the person a 30-day
3 period during which the person may request a hearing on the record.

4 (d) In connection with proceedings under (a) - (c) of this section, the
5 commission may issue subpoenas to compel the attendance and testimony of witnesses
6 and the disclosure of evidence and may request the department to bring an action to
7 enforce a subpoena.

8 (e) A person aggrieved by the levy of a civil penalty under this section may
9 file an appeal with the superior court for judicial review of the penalty under
10 AS 44.62.560.

11 (f) If a person fails to pay a civil penalty within 30 days after entry of an order
12 under (a) of this section, or within 10 days after the court enters a final judgment in
13 favor of the commission of an order stayed pending an appeal under (e) of this section,
14 the commission may initiate other action to recover the amount of the penalty.

15 (g) An action to enforce an order under this section may be combined with an
16 action for an injunction under AS 08.88.037.

17 * Sec. 10. AS 08.88.171 is amended to read:

18 **Sec. 08.88.171. Entitlement to license.** (a) A natural person qualifies [IS
19 ELIGIBLE] for a real estate broker license if the person passes the [REAL ESTATE]
20 brokers examination, [IF THE PERSON] applies for a license within six months after
21 passing the [PERSON HAS TAKEN THE REAL ESTATE BROKERS] examination,
22 [IF THE PERSON] furnishes satisfactory proof of successful completion of the
23 education requirements of AS 08.88.091, [IF THE PERSON] has had at least 24
24 months of active and continuous experience as a licensed real estate salesperson
25 within the 36 months immediately preceding application for the broker license,
26 [SALESMAN, IF THE PERSON] is not under indictment for, or seven years have
27 elapsed since the person has completed a sentence imposed upon conviction of,
28 forgery, theft, extortion, conspiracy to defraud creditors, or any other felony involving
29 moral turpitude, and [IF THE PERSON] is an owner of a real estate business or
30 employed as a real estate broker by a foreign or domestic corporation, [OR A]
31 partnership, limited partnership, or limited liability company [AND IF THAT

1 CORPORATION OR PARTNERSHIP DOES NOT HAVE AN EXISTING
2 LICENSED BROKER]. Unless the broker fails to renew the license [PAY THE
3 BIENNIAL RENEWAL FEE] or unless the broker's license is suspended or revoked
4 [UNDER AS 08.88.071(a)(3)], the [REAL ESTATE] broker's license continues in
5 effect as [SO] long as the broker's license is active [BROKER IS AN OWNER OF
6 A REAL ESTATE BUSINESS, OR THE BROKER IS EMPLOYED AS A REAL
7 ESTATE BROKER BY A CORPORATION OR A PARTNERSHIP]. If the broker
8 stops being an owner of a real estate business [,] or stops being employed as a real
9 estate broker by a foreign or domestic corporation, [OR] partnership, limited
10 partnership, or limited liability company, the broker's license is suspended from the
11 time the broker stops until

12 (1) the broker again becomes an owner of a real estate business or is
13 again employed as a real estate broker by a foreign or domestic corporation, [OR A]
14 partnership, limited partnership, or limited liability company; or

15 (2) the broker is employed by another [A LICENSED REAL
16 ESTATE] broker as an associate [REAL ESTATE] broker, in which case the real
17 estate broker license shall be [IS] returned to the commission by the broker, and the
18 commission shall issue [ISSUES] the broker an associate real estate broker license.

19 (b) A natural person qualifies [IS ELIGIBLE] for an associate real estate
20 broker license if the person passes the [REAL ESTATE] brokers examination, [IF THE
21 PERSON] applies for the [A] license within six months after passing [THE PERSON
22 HAS TAKEN] the examination, [IF THE PERSON] submits satisfactory proof of
23 successful completion of the education requirements of AS 08.88.091, [IF THE
24 PERSON] has had at least 24 months of active and continuous experience as a licensed
25 real estate salesperson within the 36 months immediately preceding application for
26 the license, [SALESMAN, IF THE PERSON] is not under indictment for, or five
27 years have elapsed since the person has completed a sentence imposed upon conviction
28 of, forgery, theft, extortion, conspiracy to defraud creditors, or any other felony
29 involving moral turpitude, and [IF THE PERSON] is employed by a licensed real
30 estate broker as an associate real estate broker. Unless the associate broker fails to
31 renew the license [PAY THE BIENNIAL RENEWAL FEE] or unless the associate

Chapter 45

1 broker's license is suspended or revoked [UNDER AS 08.88.071(a)(3)], the associate
2 [REAL ESTATE] broker's license continues in effect as [SO] long as the associate
3 broker is employed by a licensed real estate broker as an associate broker. If the
4 associate broker stops being employed by a licensed real estate broker, the associate
5 broker's license is suspended from the time the associate broker stops until

6 (1) the associate broker again is employed by a real estate broker as an
7 associate broker; or

8 (2) the associate broker becomes an owner of a real estate business or
9 is employed as a real estate broker by a foreign or domestic corporation,
10 partnership, limited partnership, or limited liability company, in which case the
11 associate broker's [ASSOCIATE REAL ESTATE BROKER] license shall be [IS]
12 returned to the commission by the associate broker, and the commission shall issue
13 [ISSUES] the licensee [ASSOCIATE BROKER] a broker's [REAL ESTATE
14 BROKER] license.

15 (c) A natural person qualifies [IS ELIGIBLE] for a real estate salesperson
16 [SALESMAN] license if the person passes the real estate salesperson [SALESMAN]
17 examination, [IF THE PERSON] applies for the [A] license within six months after
18 passing [THE PERSON HAS TAKEN] the examination, [IF THE PERSON] submits
19 satisfactory proof of successful completion of the education requirements of
20 AS 08.88.091, [IF THE PERSON] is at least 19 years old, [IF THE PERSON] is not
21 under indictment for forgery, theft, extortion, conspiracy to defraud creditors, or any
22 other felony involving moral turpitude, or, if convicted of such an offense, the person
23 has completed the sentence imposed upon conviction, and [IF THE PERSON] is
24 employed by a real estate broker. Unless the salesperson [SALESMAN] fails to
25 renew the license [PAY THE BIENNIAL RENEWAL FEE] or unless the real estate
26 salesperson's [SALESMAN'S] license is suspended or revoked [UNDER
27 AS 08.88.071(a)(3)], a real estate salesperson's [SALESMAN'S] license continues in
28 effect as [SO] long as the salesperson [SALESMAN] is employed as a salesperson
29 [SALESMAN] by a licensed real estate broker. If the salesperson [SALESMAN]
30 stops being employed as a real estate salesperson [SALESMAN], the real estate
31 salesperson's [SALESMAN'S] license is suspended from the time the salesperson

1 [SALESMAN] stops until the salesperson [SALESMAN] again is employed as a real
2 estate salesperson [SALESMAN] by a licensed real estate broker.

3 (d) A real estate licensee shall promptly inform the commission of a change
4 in business association that affects the status of the licensee's license under this
5 section.

6 * **Sec. 11.** AS 08.88.171 is amended by adding new subsections to read:

7 (e) Notwithstanding (a) - (d) of this section, a natural person qualifies for a
8 limited license to practice community association management under (f) of this section
9 if the person

10 (1) applies by January 1, 1999;

11 (2) pays the required fees;

12 (3) demonstrates to the commission's satisfaction that the person has
13 engaged in the practice of community association management for at least 24 months
14 before January 1, 1999; and

15 (4) meets other requirements that may be established by the
16 commission in its regulations for issuance of a license under this subsection.

17 (f) A person who qualifies under (e) of this section shall be issued an associate
18 broker license if, at the time of issuance, the person is employed by a broker. A
19 person who qualifies under (e) of this section shall be issued a broker license if, at the
20 time of issuance, the person is the owner of a community association management
21 business or is employed as a community association manager by a foreign or domestic
22 corporation, partnership, limited partnership, or limited liability company. After initial
23 issuance of a license to a person under this subsection, the person is subject to the
24 same requirements that exist for other brokers and associate brokers licensed under this
25 chapter. However, notwithstanding other provisions of this chapter, under a license
26 issued under this subsection, a person may practice only community association
27 management and does not qualify as a broker or associate broker for purposes of
28 AS 08.88.161(1) - (4), (7), or (8) or 08.88.165(2). A person issued a limited license
29 to practice community association management under this section may not use the
30 terms "salesperson," "broker," or "associate broker" for any business purpose unless
31 the person is also licensed appropriately under other provisions of this chapter.

1 * **Sec. 12.** AS 08.88 is amended by adding new sections to read:

2 **Sec. 08.88.173. Fidelity bond for community association managers.** (a) If
3 the board of directors of a community association allows a broker to exercise control
4 over community association fees or other community association funds, the broker
5 must provide evidence to the commission that the broker is covered by a blanket
6 fidelity insurance bond. The bond may be in the name of the broker with the
7 association as an additional insured or in the name of the association with the broker
8 as an additional insured. The bond must cover the maximum funds that will be within
9 the control of the community association manager at any time while the bond is in
10 force. The commission may grant an exemption from the bonding requirement of this
11 subsection if the commission determines that the community association manager has
12 equivalent comparable coverage or that coverage is unavailable. The commission may
13 adopt regulations to implement this subsection, including regulations concerning the
14 minimum coverage and terms of coverage that are required and proof of bond and the
15 granting of exemptions.

16 (b) If a loss covered by the fidelity bond required under this section is also
17 reimbursable from the real estate surety fund, the owners' association that suffered the
18 loss may not recover under the bond until the association has filed a claim for
19 reimbursement under AS 08.88.460 and proceedings relating to the claim are
20 concluded.

21 **Sec. 08.88.175. Limitations on community association managers.** A
22 licensee may not, within the practice of community association management, exercise
23 control over the

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

25 (2) operating account of a community association unless

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

28 (B) duplicate financial statements concerning the account are
29 sent by the institution holding the account to the licensee and the association's
30 board of directors at separate addresses.

31 * **Sec. 13.** AS 08.88.181(a) is amended to read:

1 (a) The real estate examinations [EXAMINATION] may include [, BUT IS
 2 NOT NECESSARILY LIMITED TO,] questions on real estate business ethics and
 3 standards; arithmetic and accounting; elementary principles of land economics and
 4 appraisal; the general principles in state statutes relating to deeds, mortgages, real
 5 estate contracts, subdivisions, common interest communities, legal descriptions,
 6 building restrictions, agency, [AND] brokerage, disclosure requirements, trust
 7 accounting requirements, and landlord and tenant law; property management
 8 ethics and standards; community association management operations, ethics, and
 9 standards; and the general provisions of this chapter and of the regulations of the
 10 commission.

11 * Sec. 14. AS 08.88.191(b) is amended to read:

12 (b) If the commission authorizes the department to contract with a national
 13 testing service to prepare, administer, and grade examinations,

14 (1) the commission or its designee shall review the examination and
 15 approve its contents;

16 (2) application for an [THE] examination [, ACCOMPANIED BY THE
 17 PROPER FILING FEE,] may be transmitted by the applicant directly to the national
 18 testing service; payment of an examination fee shall be made by the applicant
 19 directly to the national testing service's designated representative before the
 20 examination is taken by the applicant.

21 * Sec. 15. AS 08.88.201 is amended to read:

22 **Sec. 08.88.201. Reexamination.** A person who fails an examination may
 23 apply for a subsequent examination, but shall pay the application fee with [FOR] each
 24 application.

25 * Sec. 16. AS 08.88.221 is amended to read:

26 **Sec. 08.88.221. Fees.** The Department of Commerce and Economic
 27 Development shall set fees under AS 08.01.065 for a real estate broker, associate
 28 broker, or salesperson [SALESMAN] licensee or applicant for the following:

29 (1) examination;

30 (2) [RECIPROCITY];

31 (3) initial license;

Chapter 45

- 1 (3) [(4)] renewal of an active license;
2 (4) [(5)] renewal of an inactive license;
3 (5) [(6)] amending or transferring a license;
4 (6) [(7)] publications offered by the commission;
5 (7) [(8)] seminars offered by the commission;
6 (8) reinstatement of a lapsed license;
7 (9) changes to registered office information;
8 (10) course certification and recertification; and
9 (11) instructor approval and renewal of approval.

10 * Sec. 17. AS 08.88.241 is repealed and reenacted to read:

11 **Sec. 08.88.241. Reinstatement of lapsed license.** (a) A person whose real
12 estate license has lapsed less than 24 months is eligible for reinstatement of the license
13 if the person provides the required application, license fees, proof of continuing
14 education as required by AS 08.88.091 for licensing periods during which the license
15 was inactive or lapsed.

16 (b) A real estate licensee whose license has been lapsed for more than 24
17 months is not eligible for reinstatement of the license and is eligible for the license
18 only by meeting the qualifications applicable to initial licensure under AS 08.88.171.

19 * Sec. 18. AS 08.88.251 is amended to read:

20 **Sec. 08.88.251. Inactive license.** (a) A real estate licensee who intends to
21 [PERSON LICENSED BY THE COMMISSION MAY] become inactive shall return
22 [BY RETURNING] to the commission the person's license certificate and a completed
23 inactivation form provided by the commission along with any applicable fees. [IN
24 THE FORM, THE PERSON SHALL STATE THE DATE ON WHICH THE PERSON
25 INTENDS TO BECOME INACTIVE. THE PERSON'S INACTIVE STATUS
26 BEGINS ON THE DATE STATED.] The commission shall issue the person an
27 inactive license certificate.

28 (b) An inactive licensee may not attempt or offer to do any of the activities
29 listed in AS 08.88.161, but may receive commissions or other payments from the
30 broker who previously contracted with or employed the licensee for services
31 performed while actively licensed [EXCEPT AS OTHERWISE ALLOWED FOR

1 UNLICENSED PERSONS UNDER AS 08.88.165].

2 (c) A person who has an [IS] inactive license certificate under (a) of this
 3 section may reactivate the license [BECOME ACTIVE] by applying for an active
 4 license and paying the required fees. [IN THE APPLICATION FORM THE PERSON
 5 SHALL STATE THE DATE ON WHICH THE PERSON INTENDS TO BECOME
 6 ACTIVE. THE PERSON'S ACTIVE STATUS BEGINS ON THE DATE STATED.
 7 THE COMMISSION SHALL SEND THE PERSON A LICENSE CERTIFICATE.]
 8 A person is eligible for change from an inactive to an active status under this
 9 subsection only [WITHOUT EXAMINATION] if the person has [NOT] been in
 10 inactive status for less [MORE] than 24 months [TWO YEARS]. If the person has
 11 been in inactive status for 24 months or for more than 24 months [TWO YEARS],
 12 the person is required to meet the requirements for initial licensure in order to be
 13 licensed under this chapter again [TAKE AN EXAMINATION].

14 * Sec. 19. AS 08.88.281 is amended to read:

15 **Sec. 08.88.281. Real estate surety fund.** Before issuing a license to an
 16 applicant under this chapter, the commission shall ensure [DETERMINE] that the
 17 applicant has complied with the provisions of AS 08.88.455 and is covered by the real
 18 estate surety fund established in AS 08.88.450.

19 * Sec. 20. AS 08.88.291 is amended to read:

20 **Sec. 08.88.291. Location.** A person licensed as a real estate broker shall, by
 21 registering with the commission, inform the commission of the person's
 22 [BROKER'S] principal office and of any branch offices of the person's real estate
 23 business and include in the information the names of the real estate licensees who
 24 are employed at each office. A [BROKER HAS. THE BROKER AND THE
 25 ASSOCIATE] real estate licensee [BROKERS AND REAL ESTATE SALESMEN
 26 THE BROKER EMPLOYS] may do real estate business only through a [IN OR OUT
 27 OF THE BROKER'S] principal office or from a [AND THE BROKER'S] branch
 28 office registered by the broker by whom the licensee is employed [OFFICES].
 29 Failure of a real estate broker to maintain a place of business or to inform the
 30 commission of its location and the names and addresses of all real estate licensees
 31 employed at each location by the broker is [UNDER THE BROKER'S

Chapter 45

1 JURISDICTION AT THE LOCATION ARE] grounds for the suspension or revocation
2 of the broker's license.

3 * Sec. 21. AS 08.88.301 is amended to read:

4 **Sec. 08.88.301. Change of location.** **Before** [IF] a real estate broker changes
5 the location of the broker's principal office or of a branch office, the broker shall
6 [IMMEDIATELY] notify the commission **of the new address and any other office**
7 **changes on a form provided by the commission and pay the applicable fees.**

8 * Sec. 22. AS 08.88.311 is amended to read:

9 **Sec. 08.88.311. Branch offices.** (a) A branch office shall be under the direct
10 supervision of a real estate **associate** broker whose principal place of business is that
11 office and who is licensed under this chapter. An associate [REAL ESTATE] broker
12 may serve in the capacity of direct supervisor at **only** one office [ONLY].

13 (b) **A** [ALL] branch **office** [OFFICES] shall bear and be advertised only in the
14 name of the principal office but may **also** indicate that **it is a** [THEY ARE] branch
15 [OFFICES OF THE PRINCIPAL] office.

16 * Sec. 23. AS 08.88.321 is repealed and reenacted to read:

17 **Sec. 08.88.321. Possession and display of license certificates.** (a) The
18 license certificate of a real estate broker shall be displayed in the broker's principal
19 office.

20 (b) The license certificate of each licensee working in the broker's principal
21 office shall be displayed in that office.

22 (c) The license certificate of the designated associate broker who is in charge
23 of a branch office and the certificate of each licensee working in a branch office shall
24 be displayed in the branch office indicated as the office of the licensees' employment
25 in the registration required under AS 08.88.291.

26 (d) Certificates displayed under this section must be displayed where they are
27 available for public clients and customers to verify the current active status of licensees
28 working in the office.

29 * Sec. 24. AS 08.88.331 is amended to read:

30 **Sec. 08.88.331. Making of transactions.** **An active** [A] real estate
31 **salesperson** [SALESMAN] or associate real estate broker may **perform activities for**

1 which a real estate license is required [MAKE A REAL ESTATE TRANSACTION]
 2 only through the real estate broker who employs or contracts with the licensee
 3 [REAL ESTATE SALESMAN OR ASSOCIATE REAL ESTATE BROKER]. All
 4 money or other proceeds collected in trust and related to a real estate transaction
 5 [ON BEHALF OF THE BROKER] shall immediately be turned over to the broker or
 6 the broker's authorized representative [AGENT. ALL TRANSACTIONS IN REAL
 7 ESTATE BY A REAL ESTATE SALESMAN OR ASSOCIATE REAL ESTATE
 8 BROKER SHALL BE PROCESSED THROUGH THE REAL ESTATE
 9 SALESMAN'S OR THE ASSOCIATE REAL ESTATE BROKER'S EMPLOYING
 10 REAL ESTATE BROKER'S OFFICE, WHETHER THE TRANSACTIONS ARE FOR
 11 THE REAL ESTATE SALESMAN'S OR ASSOCIATE REAL ESTATE BROKER'S
 12 OWN USE OR THE USE OF A CLIENT].

13 * Sec. 25. AS 08.88.341 is amended to read:

14 **Sec. 08.88.341. Listings or management contracts.** All real estate listings
 15 or management contracts must be in writing and must be signed by the broker
 16 [SELLER] or associated licensee [BY AN AGENT] of the broker and by the client
 17 or an authorized representative of the client for whose benefit the real estate
 18 licensee will act [SELLER]. All real estate exclusive listings or management
 19 contracts must have a definite expiration date that may be renewed or extended
 20 only by a written agreement signed by the client or the client's authorized
 21 representative.

22 * Sec. 26. AS 08.88.351 is amended to read:

23 **Sec. 08.88.351. Accounts; records of transactions** [RECORD OF
 24 TRANSACTION]. A real estate broker shall

25 (1) keep a complete record, [OF ALL REAL ESTATE
 26 TRANSACTIONS MADE BY THE BROKER OR EMPLOYEES OF THE BROKER]
 27 for [AT LEAST] three years, of all real estate transactions in which the broker or
 28 employed licensees of the broker engaged;

29 (2) provide upon request to any principal in a transaction an
 30 [MAKE A CLOSING STATEMENT SHOWING DISBURSEMENTS AND]
 31 accounting for all money or other property collected or held in the course of each

Chapter 45

1 transaction;

2 (3) keep a separate trust account in a bank [,] into which the broker
3 shall deposit all earnest money deposits, [AND] purchase money, security deposits,
4 contingency funds, collected rental money, rental receipts, or other money
5 collected in trust until it is appropriate [PROPER] for the broker to distribute the
6 money to the proper persons;

7 (4) if authorized by the board of directors of a community
8 association to collect, control, or disburse association funds, keep a separate
9 account in a financial institution for the funds;

10 (5) make available to the commission, on request, account records and
11 all other documents [RELATING TO TRANSACTIONS UNDER (3) OF THIS
12 SECTION] that the commission may require in order to conduct an investigation or
13 to [A COMPLETE] audit an account required under this section;

14 (6) if records are delivered to a partnership, corporation, or
15 business entity other than another licensed broker upon termination of
16 employment, ensure by contract the maintenance and availability of those records
17 for a minimum of three years in accordance with this section [OF TRUST
18 ACCOUNTS].

19 * Sec. 27. AS 08.88.351 is amended by adding new subsections to read:

20 (b) A real estate licensee

21 (1) shall keep, for a minimum of three years, a complete record of all
22 real estate transactions in which the licensee was a principal;

23 (2) who maintains records concerning management or sale of the
24 licensee's own properties or the licensee's client properties separate from the broker's
25 file, shall retain those records for a minimum of three years;

26 (3) shall make available to the commission, on request, records and
27 other documents that the commission may require to conduct an investigation;

28 (4) shall promptly deposit community association funds or proceeds
29 from periodic community association assessments into either a community association
30 reserve account or a community association operating account; if, at any time, the
31 community association operating account contains more money than is estimated to be

1 needed for budgeted expenditures for the subsequent three months, the licensee shall
 2 transfer the excess funds to the community association reserve account as soon as
 3 practicable;

4 (5) may not commingle funds of a community association with funds
 5 of another community association or with the licensee's funds.

6 (c) For the purposes of this section, the three-year requirement for records
 7 maintenance begins at the initiation of a transaction and continues, as applicable, until
 8 three years after the date

9 (1) a listing agreement ends;

10 (2) a sales transaction closes or otherwise ends;

11 (3) a management contract ends; or

12 (4) another contractual or fiduciary obligation ends.

13 * Sec. 28. AS 08.88.381 is amended to read:

14 **Sec. 08.88.381. Signs.** A [LICENSED] real estate broker shall maintain a sign
 15 at each of the [REAL ESTATE] broker's registered real estate offices [,] prominently
 16 showing the name of the real estate [BROKER'S] business as registered with the
 17 commission. The required size, content, and location of signs under this section
 18 may be determined by the commission under regulations. The regulations must
 19 allow signs in offices located on premises with more restrictive sign requirements
 20 than would otherwise be applicable under the commission's regulations to be
 21 considered to be in compliance with the regulations if the signs meet the
 22 requirements of the premises and the licensee submits a copy of the sign
 23 requirements of the premises to the commission.

24 * Sec. 29. AS 08.88.391 is amended to read:

25 **Sec. 08.88.391. Conflict of interest.** A [LICENSED] real estate licensee
 26 [BROKER, ASSOCIATE REAL ESTATE BROKER, OR REAL ESTATE
 27 SALESMAN] who has a conflict of interest relating to [PERSONAL FINANCIAL
 28 INTEREST IN] a real estate transaction shall disclose that conflict of interest at the
 29 time of initial substantive contact with the principals or agents of the principals
 30 and confirm the conflict of interest in writing to the principals or agents of the
 31 principals [EVERY PERSON] involved in the transaction as soon as possible after

Chapter 45

1 **the initial substantive contact.**

2 * **Sec. 30.** AS 08.88.391 is amended by adding new subsections to read:

3 (b) The failure of a licensee to disclose a conflict of interest as required under
4 this section does not give rise to a cause of action by a private person. However, the
5 commission may, under AS 08.88.071, impose a disciplinary sanction for violation of
6 this section, and a claim may be filed by a private person under AS 08.88.460 if the
7 violation constituted fraud, misrepresentation, or deceit and the person suffered a loss
8 as a result of the violation.

9 (c) In this section, "conflict of interest" is when a licensee

10 (1) has a present ownership or leasehold interest in the property that
11 is the subject of a transaction;

12 (2) is whole or part owner of a business interest in the property being
13 marketed or considered for purchase or lease;

14 (3) represents a relative, as defined in AS 08.88.900(19), or a person
15 with whom the licensee has a financial relationship if the relative or person has a
16 present financial interest in the property being marketed or considered for purchase or
17 lease;

18 (4) receives compensation from someone other than a party to the
19 contract or another party having a financial interest in the transaction; or

20 (5) receives compensation for community association management
21 while simultaneously engaged as a property manager for a unit within the community
22 association.

23 * **Sec. 31.** AS 08.88.396 is amended to read:

24 **Sec. 08.88.396. Disclosure of agency to prospective buyers and sellers.** (a)

25 A person **licensed** [HOLDING A LICENSE] under this chapter shall, when acting as
26 an agent for a prospective seller of real estate,

27 (1) disclose in writing the **licensee's** [PERSON'S] agency relationship
28 with the seller to each prospective buyer at the time that the **licensee** [PERSON]
29 begins to provide specific assistance to locate or acquire real estate for the buyer, and
30 obtain from each prospective buyer a signed acknowledgement that the buyer is aware
31 of the agency relationship between the **licensee** [PERSON LICENSED UNDER THIS

1 CHAPTER] and the seller; and

2 (2) include in the purchase agreement a statement of the agency
3 relationship between the licensee [PERSON LICENSED UNDER THIS CHAPTER]
4 and the seller.

5 (b) A person licensed [HOLDING A LICENSE] under this chapter shall, when
6 acting as an agent for a prospective buyer of real estate,

7 (1) disclose the licensee's [PERSON'S] relationship with the buyer to
8 a prospective seller of real estate, or to the seller's agent, at the time of the initial
9 contact between the licensee [PERSON LICENSED UNDER THIS CHAPTER] and
10 the prospective seller or the seller's agent, and confirm the relationship in writing as
11 soon as possible after the initial contact;

12 (2) include in the purchase agreement a statement of the agency
13 relationship between the licensee [PERSON LICENSED UNDER THIS CHAPTER]
14 and the buyer;

15 (3) if the prospective seller has an unexpired exclusive listing contract
16 for a property, present all offers [AN OFFER] to purchase that property through [TO]
17 the seller's agent; and

18 (4) disclose in writing to all parties to a transaction when the licensee's
19 [PERSON'S] compensation as agent for the buyer is to be paid by anyone other than
20 the buyer being represented by the licensee [PERSON].

21 (c) A person licensed under this chapter may [NOT] act as an agent for both
22 a prospective seller and a prospective buyer of real estate only after [UNLESS] the
23 licensee [PERSON] informs both the seller and the buyer of the dual agency and
24 obtains written consent to the dual [JOINT] agency from both principals.

25 (d) When a change occurs during a transaction that makes a prior written
26 disclosure required by this section incomplete, misleading, or inaccurate, the licensee
27 [PERSON LICENSED UNDER THIS CHAPTER] shall make a revised disclosure, in
28 writing, to all parties to the transaction as soon as possible. The revised disclosure
29 must include the date of the revision and shall be acknowledged in writing by all the
30 parties.

31 * Sec. 32. AS 08.88 is amended by adding a new section to read:

Chapter 45

1 **Sec. 08.88.398. Licensed assistants.** A licensed real estate salesperson or
2 licensed associate real estate broker may act as a licensed assistant to a real estate
3 licensee other than the broker who employs the salesperson or associate broker if

4 (1) the employment arrangement between the licensed assistant and the
5 other licensee is in writing and conforms to the applicable state and federal regulations
6 regarding employment;

7 (2) the employment of the licensed assistant is approved in writing by
8 the broker of the licensee who employs the assistant;

9 (3) the licensee who employs the assistant agrees to be responsible for
10 paying the licensed assistant's wages and appropriate taxes and completing the
11 appropriate state and federal tax forms;

12 (4) the broker of the licensee who employs the assistant agrees to be
13 liable for the actions of the licensed assistant.

14 * **Sec. 33.** AS 08.88.401 is amended to read:

15 **Sec. 08.88.401. Prohibited conduct.** (a) A person licensed under this chapter
16 may not falsely represent to

17 (1) have been awarded a degree or other designation;

18 (2) [OR TO] be a member or an affiliate of a professional organization;

19 or

20 (3) be a member of a franchise or other business association.

21 (b) A person

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

28 (2) who is an associate broker or a real estate salesperson
29 [SALESMAN] licensed in this state may [NOT] accept a fee or commission for
30 performance of an act for which a license is required by this chapter only from
31 [UNLESS ACCEPTANCE IS AUTHORIZED BY] the licensee's employing broker,

1 except that the wages of a person who is engaged as a licensed assistant under
2 AS 08.88.398 may be accepted by the person from the assistant's employer [WHO
3 EMPLOYS THE SALESMAN].

4 (c) A person licensed under this chapter may not knowingly make, authorize,
5 direct, or aid in the publication of a false statement or misrepresentation concerning
6 land or a subdivision or other real estate offered for sale, [OR] lease, or rent or
7 concerning an association being managed.

8 (d) A person who violates [A PROVISION OF] this section, AS 08.88.161,
9 or 08.88.396 is guilty of a class A misdemeanor.

10 * Sec. 34. AS 08.88.401 is amended by adding new subsections to read:

11 (e) A person licensed under this chapter may not knowingly pay any part of
12 a fee, commission, or other compensation received by the licensee in buying, selling,
13 exchanging, leasing, auctioning, or renting real estate to

14 (1) a person who is not licensed under this chapter, except as provided
15 in (f) of this section;

16 (2) another licensee, except through the licensee's responsible broker;
17 or

18 (3) another licensee knowing that the other licensee intends to pay all
19 or a portion of that which is received to a person who is not licensed under this
20 chapter.

21 (f) The prohibition of (e)(1) of this section does not prohibit

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

25 (2) payments from a real estate licensee to a principal as part of the
26 resolution of a dispute regarding the terms of a transaction or regarding the property
27 transferred.

28 (g) A person may not

29 (1) use or attempt to use a license issued under this chapter that was
30 issued to another person;

31 (2) give false or forged evidence to the commission or to a

Chapter 45

1 representative of the commission in an attempt to obtain a license;

2 (3) impersonate an applicant under this chapter;

3 (4) knowingly use or attempt to use an expired, suspended, revoked,
4 or nonexistent license; or

5 (5) falsely claim to be licensed and authorized to practice under this
6 chapter.

7 * **Sec. 35.** AS 08.88.450 is amended to read:

8 **Sec. 08.88.450. Real estate surety fund.** The real estate surety fund is
9 established in the general fund to carry out the purposes of AS 08.88.450 - 08.88.500.
10 The fund is composed of payments made by [LICENSED] real estate licensees
11 [BROKERS AND SALESMEN] under AS 08.88.455 and filing fees retained under
12 [IN ACCORDANCE WITH] AS 08.88.460. The fund may not exceed \$500,000 and
13 amounts in the fund in excess of \$250,000 may be appropriated for real estate
14 educational purposes as provided in AS 08.88.091.

15 * **Sec. 36.** AS 08.88.455 is amended to read:

16 **Sec. 08.88.455. Payments by real estate licensees [BROKERS AND**
17 **SALESMEN].** (a) A [LICENSED] real estate licensee, [BROKER, ASSOCIATE
18 BROKER, OR SALESMAN] when applying for [OBTAINING] or renewing a real
19 estate license, in lieu of obtaining a corporate surety bond, shall pay to the commission
20 in addition to the license fee, a surety fund fee not to exceed \$125. After the fund
21 reaches \$250,000, the commission shall by regulation adjust the surety fund fees so
22 that, taking into account anticipated expenditures for claims against the fund and real
23 estate educational purposes, the fund is maintained at a level not less than \$250,000.

24 (b) All fees collected under this section shall be paid at least once a month by
25 the department [COMMISSION] into the general fund. These payments shall be
26 credited to the real estate surety fund.

27 * **Sec. 37.** AS 08.88.460 is amended to read:

28 **Sec. 08.88.460. Claim for payment.** (a) Subject to (e) of this section, a [A]
29 person seeking reimbursement for a loss suffered in a real estate transaction as a result
30 of fraud, misrepresentation, deceit, or the conversion of trust funds or the conversion
31 of community association accounts under the control of a community association

1 manager on the part of a licensee [REAL ESTATE BROKER, ASSOCIATE REAL
 2 ESTATE BROKER, OR REAL ESTATE SALESMAN] licensed under this chapter
 3 shall make a claim to the commission for reimbursement on a form furnished by the
 4 commission. In order to be eligible for reimbursement by the commission, the
 5 claim form must be filed within two years after the occurrence of the fraud,
 6 misrepresentation, deceit, or conversion of trust funds or the conversion of
 7 community association accounts under the control of a community association
 8 manager claimed as the basis for the reimbursement. The form shall be executed
 9 under penalty of unsworn falsification [,] and must include the following:

10 (1) the name and address of each [THE] real estate licensee involved
 11 [BROKER, ASSOCIATE REAL ESTATE BROKER, OR REAL ESTATE
 12 SALESMAN];

13 (2) the amount of the alleged loss;

14 (3) the date or period of time during which the alleged loss occurred;

15 (4) the date upon which the alleged loss was discovered;

16 (5) the name and address of the claimant; and

17 (6) a general statement of facts relative to the claim.

18 (b) A copy of a claim filed with the commission under (a) of this section shall
 19 be sent to each [THE] real estate licensee [BROKER, ASSOCIATE REAL ESTATE
 20 BROKER, OR REAL ESTATE SALESMAN] alleged to have committed the
 21 misconduct resulting in losses, to the principal [AS WELL AS A] real estate broker
 22 employing a licensee [AN ASSOCIATE REAL ESTATE BROKER OR REAL
 23 ESTATE SALESMAN] alleged to have committed the conduct resulting in losses, and
 24 to any other real estate licensee involved in the transaction at least 20 days before
 25 any hearing held on the claim by the commission.

26 (c) Within seven days after receipt of notice of a claim under (b) of this
 27 section, each [THE] real estate licensee [BROKER, ASSOCIATE REAL ESTATE
 28 BROKER, OR REAL ESTATE SALESMAN] against whom the claim is made may
 29 elect to defend the claim as a small claims action in district court under District Court
 30 Civil Rules 8 - 22 [,] if the claim does not exceed the small claims jurisdictional limit.
 31 An election to defend a claim in district court under the small claims rules may not

Chapter 45

1 be revoked by the real estate licensee [BROKER, ASSOCIATE BROKER, OR
2 SALESMAN] without the consent of the claimant. Upon receipt of a valid written
3 election under this subsection, the commission shall dismiss the claim filed with the
4 commission and notify the claimant that the claim must be brought as a small claims
5 action in the appropriate state court.

6 (d) A claimant under this section shall pay a filing fee of \$250 to the
7 commission at the time the claim is filed. The filing fee shall be refunded [ONLY]
8 if

9 (1) the commission makes an award to the claimant from the real estate
10 surety fund;

11 (2) the claim is dismissed under (c) of this section; or

12 (3) the claim is withdrawn by the claimant before the commission holds
13 a hearing on the claim.

14 * Sec. 38. AS 08.88.460 is amended by adding a new subsection to read:

15 (e) If the claim is for a loss incurred as a result of acts or omissions occurring
16 in the course of the licensee's practice of community association management, only the
17 owners' association for which the real estate licensee practices community association
18 management may file a claim under this section.

19 * Sec. 39. AS 08.88.465(b) is amended to read:

20 (b) A certified or authenticated copy of a record, including a transcript of
21 testimony, of a hearing held under AS 08.88.071(a)(3) in which fraud,
22 misrepresentation, deceit, or conversion of trust funds or the conversion of
23 community association accounts under the control of a community association
24 manager on the part of a [LICENSED BROKER, ASSOCIATE BROKER, OR] real
25 estate licensee [SALESMAN] is established [,] may constitute sufficient evidence to
26 support a finding that a claim should be paid.

27 * Sec. 40. AS 08.88.465(c) is amended to read:

28 (c) Before the commission finds that payment should be made from the real
29 estate surety fund, each [THE] real estate licensee against whom the claim is made
30 [BROKER, ASSOCIATE BROKER, OR REAL ESTATE SALESMAN] shall be
31 afforded an opportunity to file with the commission, within 10 days after receipt of

1 notification of the claim under AS 08.88.460(b), either a written statement in
2 opposition to the claim or an application for the presentation of additional evidence.

3 * **Sec. 41.** AS 08.88.465(d) is amended to read:

4 (d) The claimant bears the burden of proof of establishing that the claimant
5 suffered losses in a real estate transaction as a result of fraud, misrepresentation,
6 deceit, or the conversion of trust funds or the conversion of community association
7 accounts under the control of a community association manager on the part of a
8 real estate licensee [BROKER, ASSOCIATE REAL ESTATE BROKER, OR REAL
9 ESTATE SALESMAN] and the extent of those losses. All facts shall be established
10 by a preponderance of the evidence.

11 * **Sec. 42.** AS 08.88.470 is amended to read:

12 **Sec. 08.88.470. Findings and payment.** At the conclusion of the
13 commission's consideration of a claim made under AS 08.88.460, it shall make written
14 findings and conclusions on the evidence. If the commission finds that the claimant
15 has suffered a loss in a real estate transaction as a result of fraud, misrepresentation,
16 deceit, or the conversion of trust funds or the conversion of community association
17 accounts under the control of a community association manager on the part of a
18 real estate licensee [BROKER, ASSOCIATE BROKER, OR SALESMAN], the
19 commission may award a claimant reimbursement from [OUT OF] the real estate
20 surety fund for the claimant's loss up to \$10,000. Not [HOWEVER, NOT] more than
21 \$10,000 may be paid for each transaction regardless of the number of persons injured
22 or the number of parcels of real estate involved in the transaction.

23 * **Sec. 43.** AS 08.88.472(a) is amended to read:

24 (a) The [WHEN AN AWARD IS MADE FROM THE REAL ESTATE
25 SURETY FUND UNDER AS 08.88.470, THE] commission may charge to the real
26 estate surety fund the costs of a hearing on a claim for reimbursement held under
27 AS 08.88.465. The commission shall deposit into the real estate surety fund
28 amounts [AS 08.88.071 OR 08.88.465. AMOUNTS SUBSEQUENTLY] recovered
29 [BY THE COMMISSION] for these costs from the licensee under AS 08.88.071(b) or
30 from other parties under AS 08.88.490 [SHALL BE DEPOSITED TO THE REAL
31 ESTATE SURETY FUND].

Chapter 45

1 * Sec. 44. AS 08.88.474 is amended to read:

2 **Sec. 08.88.474. Payment of small claims judgment.** If a claim originally
3 filed with the commission is dismissed and is heard as a small claims action under
4 AS 08.88.460(c) and the claimant prevails in the small claims action against a [THE]
5 real estate licensee [BROKER, ASSOCIATE REAL ESTATE BROKER, OR
6 SALESMAN], the commission shall make an award from the fund of any outstanding
7 portion of the small claims judgment on receipt of a copy of the final judgment and
8 an affidavit from the claimant stating that more than 30 days have elapsed since the
9 judgment became final and that the judgment has not yet been satisfied by the
10 licensee determined responsible [BROKER, ASSOCIATE BROKER, OR
11 SALESMAN HAS NOT SATISFIED THE JUDGMENT DURING THAT TIME].
12 After payment of a small claims judgment, the commission is subrogated to the
13 claimant's rights in the judgment under AS 08.88.490.

14 * Sec. 45. AS 08.88.475 is amended to read:

15 **Sec. 08.88.475. Maximum liability.** (a) The maximum liability of the real
16 estate surety fund may not exceed \$50,000 for any one real estate licensee [BROKER
17 OR SALESMAN].

18 (b) If the \$50,000 liability of the fund as provided in (a) of this section is
19 insufficient to pay in full the valid claims of all persons who have filed claims against
20 an individual licensee [ONE BROKER OR SALESMAN], the \$50,000 shall be
21 distributed among the claimants in the ratio that their individual claims bear to the
22 aggregate of valid claims, or in another manner that the commission considers
23 equitable. Distribution shall be among the persons entitled to share in the recovery [,]
24 without regard to the order [OF PRIORITY] in which their claims were filed.

25 * Sec. 46. AS 08.88.490 is amended to read:

26 **Sec. 08.88.490. Right to subrogation.** When the commission has paid to a
27 claimant from the real estate surety fund the sum awarded by the commission, the
28 commission shall be subrogated to all of the rights of the claimant to the amount paid,
29 and the claimant shall assign all right, title, and interest in that portion of the claim to
30 the commission. Money collected [AMOUNTS SUBSEQUENTLY REALIZED] by
31 the commission on the claim shall be deposited to the real estate surety fund.

1 * Sec. 47. AS 08.88.900 is amended to read:

2 **Sec. 08.88.900. Exceptions. (a) Except as provided in (b) of this section,**
 3 **this [THIS] chapter does not apply to**

4 (1) a person who is not licensed under this chapter who **manages or**
 5 **makes a real estate transaction with respect to real estate the person owns or is seeking**
 6 **to own so long as the compensation the person receives does not include any**
 7 **portion of the commission or other compensation paid to a real estate licensee in**
 8 **the transaction** [ON THE PERSON'S OWN BEHALF, UNLESS THE
 9 TRANSACTION INVOLVES LAND DEFINED IN AS 34.55.044(7) THAT IS NOT
 10 IN ALASKA];

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

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

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

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

18 (6) a person acting under court order;

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

20 (8) a person dealing in mineral rights transactions;

21 (9) **an** [A DOMESTIC OR FOREIGN CORPORATION, A GENERAL
 22 OR LIMITED PARTNERSHIP, OR A PARTNER OR REGULAR] employee of a
 23 domestic or foreign corporation, [OR A] general or limited partnership, **or limited**
 24 **liability company** when performing an act described in AS 08.88.161 **incidental to**
 25 [IN] the regular course **of business when the act relates** [, OR AS AN INCIDENT]
 26 to [,] the management, sale, or other disposition of real estate owned by the **foreign**
 27 **or domestic** corporation, **general** or **limited** partnership **or limited liability company**;
 28 the exemption **under** [PROVIDED IN] this paragraph does not apply to a person
 29 **employed by a foreign or domestic corporation, partnership, limited partnership,**
 30 **or limited liability company** who performs an act described in AS 08.88.161 [,
 31 UNLESS ALLOWED FOR UNLICENSED PERSONS UNDER AS 08.88.165.] either

Chapter 45

- 1 (A) as a vocation; or
2 (B) for compensation if the amount of the compensation is
3 dependent upon or directly related to the value of the real estate with respect
4 to which the act is performed;
- 5 (10) a person performing duties as a resident manager;
6 (11) a bookkeeper or accountant performing bookkeeping or
7 accounting functions;
8 (12) a secretary or receptionist in a real estate office accepting rent
9 or association fees and providing a written receipt for the rent or fees when a
10 tenant or community association member delivers the rent or fees to the real
11 estate office;
12 (13) tradesmen or vendors of services performing maintenance and
13 repair functions;
14 (14) an employee of a real estate firm or of a property owner
15 delivering or accepting a real estate contract or application, or a related
16 amendment, to or from another person;
17 (15) an individual assisting in the performance of real estate
18 activities only by carrying out administrative, clerical, or maintenance tasks;
19 (16) the management of a total of four or fewer residential units by
20 a natural person for other persons;
21 (17) community association management for property organized
22 under AS 34.07 or AS 34.08 by a resident owner of a unit in the property if the
23 owner is a member of a self-managed community association for the property;
24 (18) community association management by a developer of property
25 organized under AS 34.07 or AS 34.08 during the period that the developer
26 retains control of at least 51 percent of the property;
27 (19) an attorney in fact who, for a relative, acts under a power of
28 attorney that authorizes the consummation of a specific real estate transaction;
29 in this paragraph, "relative" means a spouse or a great grandparent,
30 grandparent, parent, uncle, aunt, sibling, child, nephew, niece, grandchild, or
31 great grandchild by the whole or half blood or by marriage but does not include

1 a relative who is only related through a step relationship, such as a stepbrother
2 or the child of a stepbrother, except that "relative" includes a stepchild;

3 (20) a mobile home dealer licensed under AS 08.67 performing
4 within the scope of the dealer's license; or

5 (21) the management by a natural person of property for another
6 person without a fee other than the reimbursement of expenses [OF RENTED
7 REAL ESTATE IF THE RESIDENT MANAGER'S DUTIES ARE LIMITED TO
8 THE NEGOTIATION OF LEASES AND RENTAL AGREEMENTS AND THE
9 COLLECTION OF RENT FOR THE USE OF THE REAL ESTATE AND IF THE
10 RESIDENT MANAGER IS

11 (A) EMPLOYED BY THE OWNER OF THE REAL ESTATE;

12 OR

13 (B) EMPLOYED BY, OR ENGAGED UNDER CONTRACT
14 WITH, A LICENSED REAL ESTATE BROKER].

15 * Sec. 48. AS 08.88.900 is amended by adding a new subsection to read:

16 (b) Notwithstanding that, under this section, a person is exempt from this
17 chapter, AS 08.88.401(e)(1) prohibits a licensee from knowingly paying to that person
18 any part of a fee, commission, or other compensation received by the licensee in
19 buying, selling, exchanging, leasing, auctioning, or renting real estate.

20 * Sec. 49. AS 08.88 is amended by adding a new section to read:

21 **Sec. 08.88.910. Application to independent contractors.** The provisions of
22 this chapter that apply to employment relationships and employees also apply to
23 contracting relationships and independent contractors.

24 * Sec. 50. AS 08.88.990(1) is amended to read:

25 (1) "commission" means the Real Estate Commission except where the
26 context indicates that "commission" refers to a fee paid for personal services;

27 * Sec. 51. AS 08.88.990(3) is amended to read:

28 (3) "real estate" means an interest or estate in land, corporeal or
29 incorporeal, except that it does not include a unit in a hotel, motel, boarding house,
30 rooming house, or other transient lodging facility, or a unit in a warehouse, mini-
31 storage facility, or other facility the function of which is limited to warehousing

Chapter 45

1 **purposes;**

2 * **Sec. 52.** AS 08.88.990(4) is amended to read:

3 (4) "resident manager" means a person who resides on **rented or leased**
4 **real property or on contiguous property owned by the same owner,** [AND] manages
5 **the property** [IT] for the benefit of another person, **and is either employed by the**
6 **owner of the real estate or employed by, or under contract with, a real estate**
7 **licensee.**

8 * **Sec. 53.** AS 08.88.990 is amended by adding new paragraphs to read:

9 (5) "community association management" means an activity undertaken
10 for an owners' association with regard to property organized under either AS 34.07 or
11 AS 34.08 under an agreement in exchange for a fee, commission, or other valuable
12 consideration, including the following activities: preparing budgets and other financial
13 documents, collecting, controlling, or disbursing funds, obtaining insurance for the
14 association, contracting for maintenance and repair to association property, and
15 supervising the day-to-day operations of the association under the direction of the
16 association's board of directors;

17 (6) "community association operating account" means an account in a
18 financial institution maintained in the name of a specific community association that
19 contains money used for day-to-day operation and not for other uses;

20 (7) "community association reserve account" means an account in a
21 financial institution maintained in the name of a specific community association that
22 contains money reserved for the expected replacement cost of improvements within the
23 community association or for other future uses;

24 (8) "knowingly" has the meaning given in AS 11.81.900(a);

25 (9) "property management" is an activity undertaken for another with
26 regard to real property under an agreement in exchange for a fee, commission, or other
27 valuable consideration, including the following activities: marketing, leasing,
28 contracting for physical, administrative, or financial maintenance, performance of
29 overall management of real property, and the supervision of these actions;

30 (10) "real estate licensee" is a person who holds a license under this
31 chapter; the term includes a broker unless the context clearly excludes brokers;

1 (11) "real estate transaction"

2 (A) in sales, means the transfer or attempted transfer of an
3 interest in a unit of real property, an act conducted as a result of or in pursuit
4 of a contract to transfer an interest in a unit of real property, or an act
5 conducted in an attempt to obtain a contract to market real property;

6 (B) in property management, means the lease or rental of a unit
7 of real property, including collection of rent from a tenant of a unit of rented
8 or leased real property, an attempt to rent or lease a unit of real property, an
9 attempt to collect rent from a tenant of rented or leased real property, or an act
10 conducted as a result of or in pursuit of a contract to manage a unit of leased
11 or rented real property;

12 (C) in community association management, means the collection
13 or attempted collection of dues from a unit owner or an activity conducted as
14 a result of or in pursuit of a contract with a community association to manage
15 the affairs of a community association.

16 * Sec. 54. AS 34.70.050 is amended to read:

17 Sec. 34.70.050. **Form of disclosure statement.** The Real Estate Commission
18 established under AS 08.88.011 shall establish the form of the disclosure statement
19 required by AS 34.70.010. **The disclosure statement must include a provision that**
20 **notifies transferees**

21 **(1) that they are responsible for determining whether a person who**
22 **has been convicted of a sex offense resides in the vicinity of the property that is**
23 **the subject of the transferee's potential real estate transaction; and**

24 **(2) where information about the location of convicted sex offenders**
25 **can be obtained.**

26 * Sec. 55. AS 08.88.111 is repealed.

27 * Sec. 56. TRANSITIONAL PROVISION. Notwithstanding AS 08.88.161(5) and (6),
28 added by sec. 8 of this Act, a person may practice, or negotiate a contract to practice,
29 community association management and may collect fees for community association
30 management without a license issued under AS 08.88 until January 1, 1999.

31 * Sec. 57. REGULATIONS. Notwithstanding sec. 59 of this Act, the Real Estate

Chapter 45

1 Commission may proceed to adopt regulations necessary to implement AS 08.88.091(f) and
2 (g), added by this Act. The regulations take effect under AS 44.62 (Administrative Procedure
3 Act), but not before January 31, 1999.

4 * **Sec. 58.** REVISOR'S INSTRUCTION. Wherever in the Alaska Statutes and the Alaska
5 Administrative Code the term "salesman" is used in a context relating to real estate salesmen
6 licensed under AS 08.88, it shall be read as "salesperson" when to do so would be consistent
7 with changes made by this Act. Under AS 01.05.031, the revisor of statutes shall implement
8 this section in the statutes, and, under AS 44.62.125, the regulations attorney shall implement
9 this section in the administrative code.

10 * **Sec. 59.** AS 08.88.091(f) and (g), added by sec. 7 of this Act, take effect January 31,
11 1999.

12 * **Sec. 60.** Except as provided in sec. 59 of this Act, this Act takes effect immediately
13 under AS 01.10.070(c).