

MEMORANDUM

Date: October 29, 2020

To: Alaska Real Estate Commission

From: Kassandra Taggart, Chair, Property Management Committee

RE: Best Practice – Property Management Contracts and Disclosures

The Property Management Committee is requesting the Alaska Real Estate Commission to review and approve the Best Practice – Property Management Contracts and Disclosures listed below. Once approved, the Property Management Committee is requesting submitting this best practice document to the list serve and add this to the Best Practices list on the AREC – PM section of the public website.

This best practice document is regarding generally accepted practices in the property management industry around the topic of Contracts and Disclosures for any or all parties involved in property management contracts.

The Property Management Committee completed a brainstorming activity to work on the AREC approved Goal #1 – Clarity and best practices on security deposits and management of client accounts.

It was determined that there are several different types of management of properties causing a disconnect between parties on what is expected in the transaction. As a result, it is recommended to document some generally accepted practices to strengthen the defined duties and relationships between licensees and the public.

BEST PRACTICE

Date: October 29, 2020

Adopted: December 16, 2020; All in Favor

Title: Best Practice – Brokerage & Property Management Contracts and Disclosures

To: Alaska Real Estate License Practicing Property Management for Commercial, Residential, or Association Management and Alaska Real Estate Trainers

From: Alaska Real Estate Commission & Property Management Committee

Statute Reference:

Sec. 08.88.341 - Listings or Management Contracts

Sec. 08.88.351 - Accounts; Records of Transaction

Sec. 08.88.361 - When Commission is Earned

Sec. 08.88.695 - Definitions for AS 08.88.600 – 08.88.695

Sec. 08.88.405 – Preparation of Documents

Sec. 08.88.90 – Exceptions

Regulation Reference:

12 AAC 64.095 – Real Estate Activities of Unlicensed Persons

12 AAC 64.117 – Broker’s Written Policy

12 AAC 64.125 – Supervision

12 AAC 64.140 – Employment of Unlicensed Personnel

12 AAC 64.240 – Broker’s Commission

12 AAC 64.570. – Property Management of Real Property

12 AAC 64.250 – Prohibited Trust Account Activity

Purpose: To provide guide best practices to assist any and all parties in property management transactions regarding what is generally accepted ways of handling contracts and disclosures.

Disclosure: All parties in a property management transaction should familiarize themselves with the latest Alaska Real Estate Commission Statutes and Regulations prior to taking on any action affecting your or another person's rights or understanding of this best practice document. This publication is not the law.

Statement:

1. Broker/Licensee Policy Handbooks and/or Contracts:
 - a. Define the handling of the management contracts.
 - i. *Examples can include: Who creates, prepares, and reviews management and lease contracts, who is allowed to sign the contracts, timeline of when a management contract is provided to the broker for review, and how to secure and properly file the information for the required number of years*
 - b. Should define the required experience and/or training prior to allowing a licensee to manage different types of property management contracts.
 - c. In addition to 12 AAC 64.095 and 12 AAC 64.140, Encourages a policy for unlicensed personnel.
 - i. *Examples: Process of hiring, payment of services, their duties in the realm of property management, and who is the supervisor*
 - d. Should define what specific types of property management are allowed or not in the brokerage.
 - i. *Examples: Furnished Short-Term, Multi-Family, Residential, Commercial, and Homeowners Association*
 - e. Define how and what insurances will be required and maintained.
 - i. *Examples: What the requirements will be for all parties, how additional insured/interests will be listed, coverage amounts what will be provided, and how to follow up to enforce any insurance requirements*
 - ii. *It is recommended to consider coverages around the following topics: employee theft, money mismanagement, bank fraud, wire fraud, cybercrime, breach of private information, data, Board of Director coverages, workmans comp, how additional insured/interest, vehicle insurance of owned or non-owned vehicles for business, maintenance vendors, discrimination insurance, etc.*

- f. Encourages a policy on who is accountable or allowed to perform property management bookkeeping.
 - i. *Examples: Only the broker, the property manager, a third-party with a particular insurance coverage, accounting department, or employee of a broker or licensee*
 - g. Define financial activities managed or reviewed by the licensee.
 - i. *Examples: Broker or licensee signs checks, two signers on checks, depositing of funds, collections of funds, association only signs check, business clients sign checks or not, etc*
 - ii. *See Sec. 08.88.351(4) for association financial activity*
 - h. Define bank account policies.
 - i. *Examples: Title of the bank account, signers of the bank account, reconciliation procedures, programs utilized, customer owned bank accounts, trust accounts with interest allowed or not, or copies of the bank statements, and who can hold security deposit funds*
 - ii. *It is recommended for the brokerage to review State, Federal, and FDIC requirements when determining the name of the trust account for proper protection for each transaction*
 - 1. *Reference: (<https://www.fdic.gov/regulations/laws/rules/4000-3710.html>)*
 - i. Define proper handling of commissions paid to licensee.
 - i. *Examples: The transfer of the funds between the trust account, manager operating account, association accounts, and brokerage trust accounts*
 - ii. *Examples: Licensee as an employee vs an independent contractor and how they are compensated*
 - j. Encourages a definition of handling of maintenance as a service.
 - i. *Examples: Can licensee perform maintenance and be compensated? Disclosures of maintenance revenues, vendor verification, communication standards, use of the client's contractor, negotiation of contractor rates and bids, bid requirements, maintenance tasks, and records of maintenance and vendor information*
 - k. Encourages broker to define handling and disclosures of licensee owned properties.
2. Management Contracts:
- a. Encourages a clarification on what financial duties will or will not be performed by the property manager and/or broker regarding income and/or expenses related to the real property.

- i. Examples: Utility bills, property tax, property insurance, property liens, HOA costs, third-party billings, customer provided invoices, rental income, marketing, leasing, reserve management, investment accounts, storage, parking, fines, coin-op washing machines, and third-party maintenance*
- b. Recommend a statement on how a licensee, client, or other third party can make a request for property management transaction information and what information should be provided by a reasonable deadline.
 - i. Examples: Certified Public Accountant, family member of a client, board member of the corporation, lawyer of a client, another real estate licensee working for the client, or a homeowner that is a member of the association*
- c. Define bank account requirements and financial activities in those accounts.
 - i. Bank Account Requirement Examples: Customer owned bank accounts, trust accounts with interest allowed or not, or copies of the bank statements*
 - ii. Financial Activities Examples: Broker or licensee signs checks, two signers on checks, depositing of funds, collections of funds, association only signs checks, Business Clients sign checks or not, etc*
 - iii. See Sec. 08.88.351(4) for association financial activity*
- d. Encourages a clarification on who the responsible party is for remitting of funds for certain operational expenses including any of the items listed in (d)(i).
 - i. Including utility bills, HOA costs, third-party billings, customer provided invoices, rental income, marketing, leasing, reserve management, investment accounts, storage, parking, fines, and coin machines*
- e. Recommend clarity around all monies collected and paid as a form of commission(s).
 - i. Examples: Management, collections, leasing, marketing, violations, applications, "mark-ups" of any kind, maintenance, administrative, banking, postings/notices, legal, insurance, record retention, and record requests*
 - ii. Additional services to be determined between broker and/or property manager and the customer*
- f. Encourages a clarification on what third party management duties will or will not be performed by the Property manager and/or Broker regarding income and/or expenses related to the real property.
 - i. Examples: Vendor 1099 documents, vendor Insurance verification, utility forms and documents, how HOA matters will be communicated, and who manages the exterior care*

- g. Encourages a statement about insurance requirements per the brokers policy or professional recommendations.
 - h. Encourages a clarification on maintenance duties and fees for these duties performed by the property manager and/or broker in regard to income and/or expenses related to the real property.
 - i. *Examples: Approvals, communications, large projects, insurance projects, in-house technicians, out-sourced technicians, sub-contracted, confirmation of insurance, licensed and bonded, who will sign approved work agreements with third-parties, bidding, emergency, etc*
 - i. Disclosure at termination of management contract with a “no later than” date on when the customer will be receiving information.
 - i. *Examples: Final financial documents and funds, tenant information/documents (if applicable), contracts, property records, physical access materials, unpaid invoices, passwords/login Information where feasible, security deposit, client funds, pro-rated rents, bank authority removed, etc*
3. Management Contract Disclosures:
- a. Any type of maintenance income/revenue that may be collected and retained by the broker and/or property manager as a form of commission.
 - b. Broker and/or property manager has a potential financial benefit derived from a reciprocity agreement with other companies.
 - c. Disclosure of other companies, divisions, and subsidiaries with financial interest.
4. Lease Contracts/Disclosures:
- a. Disclosure of what tenant information will be shared with landlords or third parties. This is in reference to the Federal Credit Reporting Act, Privacy Laws, and Data Protection laws.
 - b. Encourages the listed parties to a lease be landlord/tenant and not licensee/tenant.
 - i. *Example could be to simply disclose the duties/authority the licensee has to negotiate and/or sign on behalf of the landlord*
 - c. Disclosure of the landlord being a licensee.
 - d. Disclosure of which party is holding the security deposit.
 - e. Lease contracts might have additional disclosures in addition to the lease.
 - ii. *Examples: Lead Base, utility, association, and property information disclosures*