

Statutes and Regulations **Real Estate Commission**

January 2019



DEPARTMENT OF COMMERCE, COMMUNITY,
AND ECONOMIC DEVELOPMENT

***DIVISION OF CORPORATIONS, BUSINESS
AND PROFESSIONAL LICENSING***

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CHAPTER 88.
REAL ESTATE BROKERS AND OTHER LICENSEES.

Article

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ARTICLE 1.
REAL ESTATE COMMISSION.

Section

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Sec. 08.88.011. Creation and membership of commission. There is created a Real Estate Commission. It consists of seven members.

Sec. 08.88.031. Executive secretary of commission. The department shall, after consultation with the commission, employ a person, who is not a member of the commission, to serve as executive secretary for the commission. The executive secretary shall perform duties as assigned by the commission and may use the title "executive administrator" when performing the duties.

Sec. 08.88.037. Investigation and injunction. (a) The commission may request the department to conduct investigations to determine whether a person has violated a provision of this chapter or a regulation adopted under it, or to secure information useful in the administration of this chapter.

(b) If it appears to the department that a person has engaged in or is about to engage in an act or practice in violation of a provision of this chapter or a regulation adopted under it and that action is warranted in the public interest, the department shall notify all commission members by telephone, telegraph, or facsimile of a proposed order or action, and, if a majority of the members of the commission approve, the department may

(1) after reasonable notice of and an opportunity for a hearing is given to the person, issue an order directing the person to stop the act or practice; the department may issue a temporary order before a hearing is held; a temporary order remains in effect until a final order affirming, modifying, or reversing the temporary order is issued or until 15 days have elapsed after the person receives the notice and has not requested a hearing; a temporary order becomes final if the person to whom the notice is addressed does not request a hearing within 15 days after receiving the notice; if a hearing is requested, a hearing shall be conducted by a hearing officer within 30 days; the commission shall issue a final order within 10 days after the hearing;

(2) bring an action in superior court to enjoin the act or practice and to enforce compliance with this chapter, a regulation adopted under it, or an order issued under it;

(3) examine or have examined the books and records of a person whose business activities require licensure under this chapter and the department may require the person to pay the reasonable costs of the examination; and

(4) issue subpoenas for the attendance of witnesses, and the production of books, records, and other documents.

Sec. 08.88.041. Qualifications of commission members. (a) Five members of the commission must be real estate brokers or associate brokers who have been licensed real estate brokers or licensed associate brokers in Alaska for at least three years before appointment. Two members of the commission must be public members in accordance with AS 08.01.025.

(b) Of the five members of the commission who must be real estate brokers or associate brokers, one member shall be from the First Judicial District, one shall be from the Second Judicial District, one shall be from the Third Judicial District, one shall be from the Fourth Judicial District and one shall be from the state at large. However, if no licensed real estate broker or licensed associate broker is eligible or available for appointment from the Second Judicial District, then two licensed real estate brokers or licensed associate brokers shall be appointed from the state at large.

Sec. 08.88.051. Commission meetings and officers. (a) The commission shall hold a regular annual meeting. It may hold a special meeting at the call of the chairman or at the request of three commission members.

(b) At least two judicial districts shall be represented and at least a majority of the commission members shall be present in order to conduct business.

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

Sec. 08.88.061. Assistants. Notwithstanding contrary provisions of AS 08.01.050 , the commission may assign or designate assistants to

- (1) issue licenses to applicants who meet the qualifications for licensure established under this chapter;
- (2) prepare questions on examinations;
- (3) administer and grade examinations;
- (4) certify courses required under this chapter;
- (5) approve instructors to teach courses required under this chapter; and
- (6) negotiate terms for payment of fines and other money due under this chapter.

Sec. 08.88.071. Duties and powers of the commission; grounds for disciplinary sanctions. (a) The commission shall

(1) determine whether applicants meet requirements for licenses under this chapter and issue licenses to those who qualify;

(2) prepare and grade examinations;

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

(A) with respect to a real estate transaction

(i) made a substantial misrepresentation;

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

(iii) in the case of a real estate broker, pursued a flagrant course of misrepresentation or made a false promise through another real estate licensee;

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

(v) violates AS 08.88.391;

(vi) violates AS 08.88.396;

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

(C) has engaged in conduct of which the commission did not have knowledge at the time the licensee was licensed demonstrating the licensee's unfitness to engage in the business for which the licensee is licensed;

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

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

(F) if an associate real estate broker, claims to be a real estate broker, or, if a real estate salesperson, claims to be a real estate broker or an associate real estate broker;

(G) if a real estate broker, employs an unlicensed person to perform activities for which a real estate license is required;

(H) if an employed real estate licensee of a real estate broker, fails immediately to turn money or other property collected in a real estate transaction over to the employing real estate broker; or

(I) fails to carry and maintain errors and omissions insurance with terms and conditions established by the commission under AS 08.88.172;

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

(5) release for publication in a newspaper of general circulation in the locale of the offending person's principal office registered with the commission notice of disciplinary action taken by the commission against a person licensed under this chapter;

(6) issue a temporary permit to the personal representative of the estate of a deceased real estate broker or to another person designated by the commission with the approval of the personal representative of the estate in order to secure proper administration in concluding the affairs of the decedent broker's real estate business;

(7) issue a temporary permit to a licensee designated by the commission for the purpose of securing proper administration, temporarily managing, or concluding the affairs of the real estate business of a broker if

(A) an investigation produces substantial evidence that the broker has misappropriated trust funds;

- (B) the real estate license of the broker is suspended; or
 - (C) the broker is incapacitated because of a traumatic event or medical condition, as defined in regulations adopted by the commission;
 - (8) issue a temporary permit to the personal representative of a legally incompetent real estate broker or to another person designated by the commission with the approval of the personal representative of the broker in order to secure proper administration in temporarily managing the real estate business of the broker;
 - (9) establish and periodically revise the form of the seller's property disclosure statement required by AS 34.70.010;
 - (10) have the authority to levy civil fines as established in this chapter;
 - (11) revoke the license of a broker, associate broker, or real estate salesperson who is convicted of a felony or other crime committed while licensed under this chapter that, in the judgment of the commission, affects the ability of that person to practice as a broker, associate broker, or real estate salesperson competently and safely or who is convicted of forgery, theft, extortion, conspiracy to defraud creditors, or fraud; notwithstanding AS 08.88.171, a person whose license is revoked under this paragraph is not qualified to obtain or renew a license under AS 08.88.171(a) – (c) until seven years have elapsed since the person completed the sentence imposed for the conviction.
- (b) When an award is made from the real estate recovery fund under this chapter, the commission may suspend the license of the real estate licensee whose actions formed the basis of the award. A suspension ordered under this subsection shall be lifted if the licensee reaches an agreement with the commission on terms and conditions for the repayment to the real estate recovery fund of the money awarded to the claimant and if the licensee satisfies the requirements of AS 08.88.095. The suspension shall be reimposed if the licensee violates the terms of a repayment agreement entered into under this subsection.
- (c) For the purposes of (a)(3) of this section, the conduct of an employee is attributable to a real estate broker if the real estate broker has actual knowledge that the employee is going to engage in the conduct and agrees to the conduct, either actively or by remaining silent, or ratifies the conduct after it is engaged in.
- (d) The commission may investigate a violation of a provision of AS 08.88.600 – 08.88.695 by a real estate licensee and take administrative action under (a)(3) of this section if the commission has reason to believe that a violation has occurred.

Sec. 08.88.081. Commission regulations. The commission shall adopt regulations necessary to carry out the purposes of this chapter.

Sec. 08.88.091. Education of applicants and licensees. (a) The commission may conduct and assist in conducting real estate clinics, meetings, courses, or institutes. The commission may

- (1) assist libraries and educational institutions in sponsoring studies and programs; and
 - (2) publish informational materials for the purpose of raising the standards of the real estate business and the competency of licensees.
- (b) An applicant for licensure under AS 08.88.171(c) must complete 40 hours of education approved by the commission before the person may be licensed under that subsection.
- (c) An applicant for licensure under AS 08.88.171(a) or (b) shall complete 30 hours of education approved by the commission before the person may be licensed under either of those subsections.
- (d) A person who is licensed under this chapter must complete 20 hours of continuing education approved by the commission before the person's license may be renewed. The commission may not establish limits that prevent a person from satisfying this continuing education requirement within a two-day period.
- (e) Except for a course described in (f)(1) or (3) of this section, in order for an educational course to be recognized for credit under this section, AS 08.88.095, or 08.88.098, the course outline and the instructor of the course shall have been approved by the commission or the commission's designee before the course is conducted. A course outline or instructor is considered approved if the commission or the commission's designee does not disapprove the outline or instructor within 45 days after the date on which complete application was made for approval. Each approved contact hour of a submitted course outline constitutes one credit hour of education under (d) of this section, AS 08.88.095, or 08.88.098. The fee for continuing education course certification under AS 08.88.221 and for course certification under AS 08.88.221 to satisfy the educational requirements of AS 08.88.095 and 08.88.098 must be based on the hours approved for credit, not on the hours submitted.
- (f) The commission shall establish by regulation the educational and continuing educational requirements for licenses issued by the commission. The regulations for continuing education requirements and for educational requirements under AS 08.88.095 and 08.88.098 must allow the following types of courses to qualify for the appropriate number of credit hours, as determined by the commission:

- (1) courses that are developed by national organizations, as identified for the purpose of this paragraph in the commission's regulations, that are delivered by nationally certified instructors and that are required in order to earn professional designations from a national organization in specialized areas of licensed real estate practice; notwithstanding other provisions of this chapter, the commission may not charge a fee for these courses;
- (2) technology courses directly related to real estate practice that are designed to enhance the skills and performance of a real estate licensee; and

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

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

Sec. 08.88.095. Educational requirements after initial license. (a) In addition to the continuing educational requirements of AS 08.88.091(d), within one year after the date that the commission issues an initial license under this chapter, the licensee shall complete 30 hours of education approved by the commission under AS 08.88.091.

(b) On the document representing an initial license, the commission shall include clear and prominent language stating that the license is subject to the licensee's completion of the educational requirements within one year after the date of the issuance of the license.

(c) Within 30 days after the end of the one-year period, the licensee shall submit, on a form provided by the commission, a certification that the licensee has completed the educational requirements.

(d) After a licensee submits the completed form under (c) of this section and pays the required fee, the commission shall issue a new license document to the licensee that does not contain the language required by (b) of this section.

(e) If a licensee fails to complete the educational requirements within the one-year period or to provide the certification required by (c) of this section, the license automatically lapses 30 days after the end of the one-year period. However, the commission may reinstate the license under AS 08.88.241.

(f) Notwithstanding the other provisions of this section, an individual who is issued an initial license as a real estate broker is not required to satisfy the educational requirements for that initial license if, immediately before the issuance, the individual is licensed as an associate real estate broker under this chapter.

(g) In this section, "education requirements" means the educational requirements of (a) of this section.

Sec. 08.88.098. Educational requirements after suspension. (a) In addition to the continuing educational requirements of AS 08.88.091(d) and the educational requirements of AS 08.88.095(a), if the commission suspends a license under AS 08.01.075, the licensee shall complete the education required by the commission before the commission may reinstate the suspended license.

(b) After completing the educational requirements of (a) of this section, the licensee shall submit, on a form provided by the commission, a certification that the licensee has complete the educational requirements.

(c) The educational requirements of (a) of this section are in addition to any other conditions that the commission sets for reinstating a suspended license under this chapter.

Sec. 08.88.131. Applicability of the Administrative Procedure Act. AS 44.62 (Administrative Procedure Act) applies to regulations and proceedings under this chapter.

Sec. 08.88.141. Compensation. A commission member is entitled to transportation expenses and per diem allowances specified in AS 39.20.180.

ARTICLE 2. LICENSING.

Section

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- 165. Conduct of auctions
- 167. Civil penalty for unlicensed or unauthorized practice
- 171. Eligibility for license
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Sec. 08.88.161. License required. Unless licensed as a real estate broker, associate real estate broker, or real estate salesperson in this state, a person may not, except as otherwise provided in this chapter,

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

- (2) list real estate for sale, exchange, rent, lease, auction, or purchase;
- (3) collect rent for the use of real estate or collect fees for property management;
- (4) practice, or negotiate for a contract to practice, property management;
- (5) collect fees for community association management;
- (6) practice, or negotiate for a contract to practice, community association management;
- (7) as a business, buy, sell, or deal in
 - (A) options in real estate; or
 - (B) options in improvements to real estate;
- (8) assist in or direct the procuring of prospective buyers and sellers of real estate, communicate with prospective buyers and sellers of real estate, or assist in the negotiation of a transaction that results or is calculated to result in the sale, exchange, rent, lease, auction, or purchase of real estate;
- (9) accept or pay a fee for the performance of any of the activities listed in this section except as otherwise specifically provided in this chapter;
- (10) hold out to the public as being engaged in the business of doing any of the things listed in this section; or
- (11) attempt or offer to do any of the things listed in this section.

Sec. 08.88.165. Conduct of auctions. Notwithstanding AS 08.88.161, a person who is not licensed under this chapter may conduct an auction of real estate if

- (1) the person has completed an auctioneering program at a school certified by an agency of this or another state, and the program included a course on real estate sales; and
- (2) a real estate broker licensed under this chapter or an associate real estate broker licensed under this chapter supervises and is present during the auction.

Sec. 08.88.167. Civil penalty for unlicensed or unauthorized practice. (a) In addition to penalties prescribed by any other provision of law, if a person engages or offers to engage in an activity for which a license is required under AS 08.88.161 without being licensed or authorized to engage in the activity in accordance with the provisions of this chapter, the commission may enter an order levying a civil penalty.

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

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

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

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

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

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

Sec. 08.88.171. Eligibility for license. (a) A natural person qualifies for a real estate broker license if the person passes the brokers examination, applies for a license within six months after passing the examination, furnishes satisfactory proof of successful completion of the education requirements of AS 08.88.091, has had at least 36 months of active and continuous experience as a real estate licensee within the 60 months immediately preceding application for the broker license, is not under indictment for or seven years have elapsed since the person has completed a sentence imposed upon conviction of a felony or other crime that, in the judgment of the commission, affects the person's ability to practice as a real estate broker competently and safely or upon conviction of forgery, theft, extortion, conspiracy to defraud creditors, or fraud, and is an owner of a real estate business or employed as a real estate broker by a foreign or domestic corporation, partnership, limited partnership, or limited liability company. Unless the broker fails to satisfy the educational requirements of AS 08.88.095 or renew the license, or the broker's license is suspended or revoked, the broker's license continues in effect as long as the broker's license is active. If the broker stops being an owner of a real estate business or stops being employed as a real estate broker by a foreign or domestic corporation, partnership, limited partnership, or limited liability company, the broker's license is suspended from the time the broker stops until the broker satisfies the educational requirements of AS 08.88.098 and

(1) again becomes an owner of a real estate business or is again employed as a real estate broker by a foreign or domestic corporation, partnership, limited partnership, or limited liability company; or

(2) is employed by another broker as an associate broker, in which case the real estate broker license shall be returned to the commission by the broker, and the commission shall issue the broker an associate real estate broker license.

(b) A natural person qualifies for an associate real estate broker license if the person passes the brokers examination, applies for the license within six months after passing the examination, submits satisfactory proof of successful completion of the education requirements of AS 08.88.091, has had at least 36 months of active and continuous experience as a real estate licensee within the 60 months immediately preceding application for the license, furnishes satisfactory proof that errors and omissions insurance required under AS 08.88.172 has been obtained, is not under indictment for or seven years have elapsed since the person has completed a sentence imposed upon conviction of a felony or other crime that, in the judgment of the commission, affects the person's ability to practice as an associate real estate broker competently and safely or upon conviction of forgery, theft, extortion, conspiracy to defraud creditors, or fraud, and is employed by a licensed real estate broker as an associate real estate broker. Unless the associate broker fails to satisfy the educational requirements of AS 08.88.095 or renew the license, or the associate broker's license is suspended or revoked, the associate broker's license continues in effect as long as the associate broker is employed by a licensed real estate broker as an associate broker. If the associate broker stops being employed by a licensed real estate broker, the associate broker's license is suspended from the time the associate broker stops until the associate broker satisfies the educational requirements of AS 08.88.098 and

- (1) again is employed by a real estate broker as an associate broker; or
- (2) becomes an owner of a real estate business or is employed as a real estate broker by a foreign or domestic corporation, partnership, limited partnership, or limited liability company, in which case the associate broker's license shall be returned to the commission by the associate broker, and the commission shall issue the licensee a broker's license.

(c) A natural person qualifies for a real estate salesperson license if the person passes the real estate salesperson examination, applies for the license within six months after passing the examination, submits satisfactory proof of successful completion of the education requirements of AS 08.88.091, is at least 19 years of age, furnishes satisfactory proof that errors and omissions insurance required under AS 08.88.172 has been obtained, is not under indictment for a felony or other crime that, in the judgment of the commission, affects the individual's ability to practice as a real estate salesperson competently and safely or under indictment for forgery, theft, extortion, conspiracy to defraud creditors, or fraud, or, if convicted of such an offense, seven years have elapsed since the person completed the sentence imposed upon conviction. Unless the salesperson fails to satisfy the educational requirements of AS 08.88.095 or renew the license, or the real estate salesperson's license is suspended or revoked, a real estate salesperson's license continues in effect.

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

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

- (1) applies by January 1, 1999;
- (2) pays the required fees;
- (3) demonstrates to the commission's satisfaction that the person has engaged in the practice of community association management for at least 24 months before January 1, 1999; and
- (4) meets other requirements that may be established by the commission in its regulations for issuance of a license under this subsection.

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

Sec. 08.88.172. Errors and omissions insurance. (a) A person licensed as a real estate broker, associate real estate broker, or real estate salesperson shall, as a condition of licensing, carry and maintain errors and omissions insurance to cover activities for which licensing is required under AS 08.88.161.

(b) The department shall establish by regulation the terms and conditions of the errors and omissions insurance required by this section, including

- (1) coverage requirements;
- (2) limits of coverage;
- (3) the maximum amount of premium to be charged licensees under a master errors and omissions policy under (d) of this section; and
- (4) the method for adjusting these amounts based on the Consumer Price Index.

(c) A licensee may obtain the errors and omissions insurance required by (a) of this section by

(1) obtaining a master insurance policy that may be made available to licensees by the commission; or
(2) independently obtaining errors and omissions insurance that complies with the requirements established under (b) of this section.

(d) The commission may

(1) solicit bids for a master errors and omissions insurance policy for licensees that meets the minimum terms and conditions established under (b) of this section using a competitive sealed bid process under AS 36.30 (State Procurement Code); and

(2) charge a licensee a reasonable administration fee to recover costs incurred in connection with the solicitation made under (1) of this subsection.

(e) [Repealed, § 4 ch 39 SLA 2016.]

(f) A licensee seeking to obtain or renew a license shall certify to the commission that errors and omissions insurance has been obtained. A licensee who elects to independently obtain errors and omissions insurance shall provide a certificate of coverage with the application to obtain or renew a license.

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

(b) If a loss covered by the fidelity bond required under this section is also reimbursable from the real estate recovery fund, the owners' association that suffered the loss may not recover under the bond until the association has obtained a final judgment, final arbitration award, or settlement agreement and filed a claim for an award under AS 08.88.460.

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

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

(2) operating account of a community association unless

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

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

Sec. 08.88.181. Content and purpose of examination. (a) The real estate examinations may include questions on real estate business ethics and standards; arithmetic and accounting; elementary principles of land economics and appraisal; the general principles in state statutes relating to deeds, mortgages, real estate contracts, subdivisions, common interest communities, legal descriptions, building restrictions, real estate licensee relationships, agency law, brokerage, disclosure requirements, trust accounting requirements, and landlord and tenant law; property management ethics and standards; community association management operations, ethics, and standards; and the general provisions of this chapter and of the regulations of the commission.

(b) The real estate salesperson examination covers the same subjects as the real estate broker examination, but is less difficult.

(c) The only purpose of an examination under this chapter is to disqualify those whose lack of ability to participate in real estate transactions would create a serious risk of serious financial loss to members of the public.

Sec. 08.88.191. Administration of examination. (a) The commission shall offer written examinations at periodic intervals but at least once a year.

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

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

(2) application for an examination may be transmitted by the applicant directly to the national testing service; payment of an examination fee shall be made by the applicant directly to the national testing service's designated representative before the examination is taken by the applicant.

(c) An applicant who fails the written examination may request that the examination be reevaluated. The commission shall provide by regulation for a system of reevaluating examinations on request of an applicant who fails the examination. The system provided by the commission may provide for reevaluation by the testing service or by any other person.

Sec. 08.88.201. Reexamination. A person who fails an examination may apply for a subsequent examination, but shall pay the application fee with each application.

Sec. 08.88.221. Fees. The Department of Commerce, Community, and Economic Development shall set fees under AS 08.01.065 for a real estate broker, associate broker, or salesperson licensee or applicant for the following:

- (1) examination;
- (2) initial license;
- (3) renewal of an active license;
- (4) renewal of an inactive license;
- (5) amending or transferring a license;
- (6) publications offered by the commission;
- (7) seminars offered by the commission;
- (8) reinstatement of a lapsed license;
- (9) changes to registered office information;
- (10) course certification and recertification;
- (11) instructor approval and renewal of approval; and
- (12) issuance of a new license document under AS 08.88.095(d).

Sec. 08.88.241. Reinstatement of lapsed license. (a) A person whose real estate license has lapsed less than 24 months is eligible for reinstatement of the license if the person provides the required application, license fees, proof of continuing education as required by AS 08.88.091 for licensing periods during which the license was inactive or lapsed, proof of completion of the educational requirements under AS 08.88.095(a), if applicable, and any fee required under AS 08.88.221(12).

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

Sec. 08.88.251. Inactive license. (a) A real estate licensee who intends to become inactive shall return to the commission the person's license certificate and a completed inactivation form provided by the commission along with any applicable fees. The commission shall issue the person an inactive license certificate. A real estate licensee whose license lapses under AS 08.88.095(e) is not eligible for an inactive license under this subsection unless the license is reinstated under AS 08.88.241.

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

(c) A person who has an inactive license certificate under (a) of this section may reactivate the license by applying for an active license and paying the required fees. A person is eligible for change from an inactive to an active status under this subsection only if the person has been in inactive status for less than 24 months. If the person has been in inactive status for 24 months or for more than 24 months, the person is required to meet the requirements for initial licensure in order to be licensed under this chapter again.

(d) A licensee may, subject to the approval of the commission, renew an inactive license for 24 months from the anniversary date of the issuance of the initial inactive license certificate under (a) of this section.

(e) An active license that has been converted from inactive status under (c) of this section shall be issued for the remainder of the current 24-month period of the inactive license.

ARTICLE 3. MISCELLANEOUS PROVISIONS.

Section

- 263. License by endorsement**
- 281. Real estate recovery fund**
- 291. Location; contact information**
- 301. Change of location**
- 305. Multiple business operations**
- 311. Branch offices**
- 321. Possession and display of license certificates**
- 331. Making of transactions**
- 341. Listings or management contracts**
- 351. Accounts; records of transactions**
- 361. When commission is earned**
- 381. Signs**
- 391. Conflict of interest**
- 396. Licensee relationships, disclosures, and activity before January 1, 2005**
- 398. Licensed assistants**
- 401. Prohibited conduct; penalties**
- 403. Review of transactions**

405. Preparation of documents

Sec. 08.88.263. License by endorsement. A person who holds a valid active real estate license issued by another state shall be granted an equivalent Alaska real estate license if that person

- (1) passes the portion of the real estate examination which examines on Alaska law;
- (2) meets the requirements of AS 08.88.171; and
- (3) satisfies the educational requirements under AS 08.88.095(a) if the person has not held the license issued by the other state for one year or more.

Sec. 08.88.281. Real estate recovery fund. Before issuing a license to an applicant under this chapter, the commission shall ensure that the applicant has complied with the provisions of AS 08.88.455 and is covered by the real estate recovery fund established in AS 08.88.450.

Sec. 08.88.291. Location; contact information. (a) A person licensed as a real estate broker shall, by registering with the commission, inform the commission of the person's principal office and of any branch offices of the person's real estate business and include in the information the names of the real estate licensees who are employed at each office. A real estate licensee may do real estate business only through a principal office or from a branch office registered by the broker by whom the licensee is employed. Failure of a real estate broker to maintain a place of business in the state or to inform the commission of its location and the names and addresses of all real estate licensees employed at each location by the broker is grounds for the suspension or revocation of the broker's license.

(b) Each licensee under this chapter is responsible for ensuring that the commission has current contact information for the licensee for two years after the lapse, expiration, surrender, suspension, or revocation of the license.

(c) In addition to the information provided under (a) of this section, a licensee shall provide the commission with a current mailing address and, if active, the address of the broker employing the licensee.

(d) The commission shall mail all notices pertaining to a license or recovery fund action taken under this chapter or a regulation adopted under this chapter to the current address or addresses of a licensee obtained under this section. Proof of notice provided under this subsection satisfies due process notice requirements.

Sec. 08.88.301. Change of location. Before a real estate broker changes the location of the broker's principal office or of a branch office, the broker shall notify the commission of the new address and any other office changes on a form provided by the commission and pay the applicable fees.

Sec. 08.88.305. Multiple business operations. A person licensed as a real estate broker may own, operate, or be employed by multiple corporations, partnerships, or other business organizations engaging in activities for which a license is required under this chapter, provided that each business organization is registered with the commission, and that the principal offices of all of the business organizations share a single physical address.

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

(b) A branch office shall bear and be advertised only in the name of the principal office but may also indicate that it is a branch office.

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

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

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

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

Sec. 08.88.331. Making of transactions. An active real estate salesperson or associate real estate broker may perform activities for which a real estate license is required only through the real estate broker who employs or contracts with the licensee. All money or other proceeds collected in trust and related to a real estate transaction shall immediately be turned over to the broker or the broker's authorized representative.

Sec. 08.88.341. Listings or management contracts. All real estate listings or management contracts must be in writing and must be signed by the broker or associated licensee of the broker and by the client or an authorized representative of the client for whose benefit the real estate licensee will act. All real estate exclusive listings or

management contracts must have a definite expiration date that may be renewed or extended only by a written agreement signed by the client or the client's authorized representative.

Sec. 08.88.351. Accounts; records of transactions. (a) A real estate broker shall

(1) keep a complete record, for three years, of all real estate transactions in which the broker or employed licensees of the broker engaged;

(2) provide upon request to any principal in a transaction an accounting for all money or other property collected or held in the course of each transaction;

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

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

(5) make available to the commission, on request, account records and all other documents that the commission may require in order to conduct an investigation or to audit an account required under this section;

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

(b) A real estate licensee

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

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

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

(4) shall promptly deposit community association funds or proceeds from periodic community association assessments into either a community association reserve account or a community association operating account; if, at any time, the community association operating account contains more money than is estimated to be needed for budgeted expenditures for the subsequent three months, the licensee shall transfer the excess funds to the community association reserve account as soon as practicable;

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

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

(1) a listing agreement ends;

(2) a sales transaction closes or otherwise ends;

(3) a management contract ends; or

(4) another contractual or fiduciary obligation ends.

Sec. 08.88.361. When commission is earned. A commission is earned when the real estate broker fulfills the terms of a written personal services contract.

Sec. 08.88.381. Signs. A real estate broker shall maintain a sign at each of the broker's registered real estate offices prominently showing the name of the real estate business as registered with the commission. The required size, content, and location of signs under this section may be determined by the commission under regulations. The regulations must allow signs in offices located on premises with more restrictive sign requirements than would otherwise be applicable under the commission's regulations to be considered to be in compliance with the regulations if the signs meet the requirements of the premises and the licensee submits a copy of the sign requirements of the premises to the commission.

Sec. 08.88.391. Conflict of interest. (a) A real estate licensee who has a conflict of interest relating to a real estate transaction shall disclose that conflict of interest to the persons adversely affected by the conflict or their real estate licensees and confirm the conflict of interest in writing to the persons adversely affected by the conflict or their real estate licensees involved in the transaction as soon as possible after the conflict is identified. The licensee must also verbally advise the person of the conflict, and begin any written statement of the conflict of interest with these words, underlined and written in bold: "Disclosure of Conflict of Interest."

(b) The failure of a licensee to disclose a conflict of interest as required under this section does not give rise to a cause of action by a private person. However, the commission may, under AS 08.88.071, impose a disciplinary sanction for violation of this section.

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

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

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

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

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

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

Sec. 08.88.396. Licensee relationships, disclosures, and activity before January 1, 2005. (a) A person licensed under this chapter shall, when acting as a real estate licensee for a prospective seller or lessor of real estate,

(1) disclose in writing the licensee's agency relationship with the seller or lessor to each prospective buyer or lessee at the time that the licensee begins to provide specific assistance to locate or acquire real estate for the buyer or lessee, and obtain from each prospective buyer or lessee a signed acknowledgment that the buyer or lessee is aware of the agency relationship between the licensee and the seller or lessor; and

(2) include in the purchase agreement a statement of the agency relationship between the licensee and the seller or lessor.

(b) A person licensed under this chapter shall, when acting as a real estate licensee for a prospective buyer or lessee of real estate,

(1) disclose the licensee's relationship with the buyer or lessee to a prospective seller or lessor of real estate, or to the seller's or lessor's real estate licensee at the time of the initial contact between the licensee and the prospective seller or lessor or the seller's or lessor's real estate licensee, and confirm the relationship in writing as soon as possible after the initial contact;

(2) include in the purchase agreement a statement of the agency relationship between the licensee and the buyer or lessee;

(3) if the prospective seller or lessor has an unexpired exclusive listing contract for a property, present all offers to purchase that property through the seller's or lessor's real estate licensee; and

(4) disclose in writing to all parties to a transaction when the licensee's compensation as real estate licensee for the buyer or lessee is to be paid by anyone other than the buyer or lessee being represented by the licensee.

(c) A person licensed under this chapter may act as a real estate licensee for both a prospective seller or lessor and a prospective buyer or lessee of real estate only after the licensee informs both the seller or lessor and the buyer or lessee of the dual agency representation and obtains written consent to the dual agency representation from both principals.

(d) When a change occurs during a transaction that makes a prior written disclosure required by this section incomplete, misleading, or inaccurate, the licensee shall make a revised disclosure, in writing, to all parties to the transaction as soon as possible. The revised disclosure must include the date of the revision and shall be acknowledged in writing by all the parties. However, until the nature of the licensee's relationship with a party is completely established, a revised disclosure is not required under this subsection if the licensee obtains from the party a written preauthorized consent to changes before the changes occur.

(e) In a civil action for the failure of a licensee to comply with the provisions of this section, the plaintiff's remedy is limited to the recovery of actual damages. This subsection does not limit a person's ability to take any other action or pursue any other remedy to which the person may be entitled under other law.

(f) This section applies only to acts that occur before the effective date of this subsection.

Sec. 08.88.398. Licensed assistants. A licensed real estate salesperson or licensed associate real estate broker may act as a licensed assistant to another licensed salesperson or associate real estate broker only if

(1) the licensed assistant and the salesperson or associate broker are both employed by the same broker;

(2) the licensed assistant is not employed to perform activities requiring licensure under this chapter for more than one licensed real estate broker;

(3) the employment arrangement between the licensed assistant and the salesperson or associate real estate broker is in writing and conforms to the applicable state and federal regulations regarding employment;

(4) the employment of the licensed assistant is approved in writing by the broker who employs both the salesperson or associate real estate broker and the licensed assistant;

(5) the salesperson or associate real estate broker who employs the licensed assistant agrees to be responsible for paying the licensed assistant's wages and appropriate taxes and completing the appropriate state and federal tax forms; and

(6) the broker of the salesperson or associate real estate broker who employs the licensed assistant agrees to be liable for the actions of the licensed assistant.

Sec. 08.88.401. Prohibited conduct; penalties. (a) A person licensed under this chapter may not falsely represent to

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

(2) be a member or an affiliate of a professional organization; or

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

(b) A person

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

(2) who is an associate broker or a real estate salesperson licensed in this state may accept a fee or commission for performance of an act for which a license is required by this chapter only from the licensee's employing broker, except that the wages of a person who is engaged as a licensed assistant under AS 08.88.398 may be accepted by the person from the assistant's employer.

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

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

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

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

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

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

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

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

(3) contributions from a licensee to a charitable organization and advertisement of the licensee's intent to make the charitable donation.

(f) A person may not

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

(2) give false or forged evidence to the commission or to a representative of the commission in an attempt to obtain a license;

(3) impersonate an applicant under this chapter;

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

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

(g) A person who violates this section or AS 08.88.161 is guilty of a class A misdemeanor.

Sec. 08.88.403. Review of transactions. A real estate broker may contract with and pay an attorney or associate broker to assist the broker to review a real estate transaction before the transaction closes.

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

ARTICLE 4. REAL ESTATE RECOVERY FUND.

Section

- 450. Real estate recovery fund**
- 455. Payments by real estate licensees**
- 460. Claim for payment**
- 465. Consideration of application**
- 472. Fund operations; charges against fund**
- 475. Maximum liability**
- 480. Order of claim payment**
- 485. False claims or documents**
- 490. Right to subrogation**
- 495. Disciplinary action**

Sec. 08.88.450. Real estate recovery fund. (a) The real estate recovery fund is established in the general fund to carry out the purposes of AS 08.88.450 - 08.88.495. The fund is composed of payments made by real estate licensees under AS 08.88.455, filing fees retained under AS 08.88.460, income earned on investment of the money in the fund, and money deposited in the fund under (c) of this section. Money in the fund does not lapse. The commission may make payments from the fund for awards from the fund under AS 08.88.450 - 08.88.495, for hearing and legal expenses directly related to fund operations and claims, and for real estate educational purposes.

(b) The Department of Commerce, Community, and Economic Development shall provide the commission every three months with a statement of the activities of, balances in, interest earned on, and interest returned to the real estate recovery fund.

(c) If money from the real estate recovery fund is expended to prepare, print, manufacture, sponsor, produce, or otherwise provide an item or a service to a member of the public, to a real estate licensee, to a potential real estate licensee, or to another person, any money paid by the person to the commission, either directly or through an agent or contractor of the commission, to receive the item or service shall be deposited in the fund. In this subsection, "an item or a service" includes an information pamphlet, an examination preparation packet, an educational course, the certification of a real estate education course, and the approval of a real estate education instructor.

Sec. 08.88.455. Payments by real estate licensees. (a) A real estate licensee, when applying for or renewing a real estate license, in lieu of obtaining a corporate surety bond, shall pay to the commission, in addition to the license fee, a recovery fund fee not to exceed \$125. After each two-year licensing cycle, if the commission finds that the average balance in the recovery fund during the two-year licensing cycle was less than \$250,000 or more than \$500,000, the commission shall by regulation adjust the recovery fund fees so that the average balance of the recovery fund during the next two-year licensing cycle is anticipated to be an amount that is not less than \$250,000 or more than \$500,000. In this subsection, "average balance" means the average balance after taking into account anticipated expenditures for awards from the fund and legal expenses directly related to fund operations, and for real estate educational purposes.

(b) All fees collected under this section shall be paid at least once a month by the department into the general fund. These payments shall be credited to the real estate recovery fund.

Sec. 08.88.460. Claim for payment. (a) Subject to (e) of this section, a person seeking an award from the recovery fund for a loss suffered in a real estate transaction as a result of fraud, an intentional tort, deceit, or the conversion of trust funds or the conversion of community association accounts under the control of a community association manager on the part of a person licensed under this chapter shall

(1) obtain a final judgment from a court of competent jurisdiction, a final arbitration award, or a settlement agreement with a licensee that involves a person committing fraud, an intentional tort, deceit, the conversion of trust funds, or the conversion of community association accounts;

(2) submit an affidavit describing the efforts made to collect the final judgment, final arbitration award, or settlement agreement stating that the person has used due diligence to collect the amount due, stating that the judgment, arbitration award, or settlement agreement is uncollectable using reasonable efforts, and that the conduct that is the subject of the judgment, arbitration award, or settlement agreement involved an activity for which a person must obtain a license under AS 08.88.161;

(3) make a claim to the commission for an award from the recovery fund on a form furnished by the commission; in order to be eligible for an award by the commission, the claim form must be filed within two years after the date a judgment, arbitration award, or settlement agreement that is the basis for the award from the recovery fund is no longer subject to appeal; the form must be executed under penalty of unsworn falsification in the second degree and must include

(A) the name and address of each real estate licensee involved;

(B) a copy of the final judgment, final arbitration award, or settlement agreement;

(C) a copy of the affidavit asserting due diligence but lack of success in collecting the entire amount due;

(D) the amount of the final judgment, final arbitration award, or settlement agreement that remains unpaid;

(E) the name and address of the claimant; and

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

(b) The commission shall send a copy of a claim filed under (a) of this section to each real estate licensee named in (a)(3) of this section.

(c) [Repealed, § 24 ch 113 SLA 2008.]

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

(1) commission makes an award to the claimant from the real estate recovery fund; or

(2) claimant withdraws the claim.

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

Sec. 08.88.465. Consideration of application. (a) If the commission receives a claim for an award from the recovery fund that complies with the requirements of AS 08.88.450 - 08.88.495, the commission shall make an award from the recovery fund in an amount not to exceed \$15,000. Not more than \$15,000 may be paid for each transaction, regardless of the number of persons injured or the number of parcels of real estate involved in the transaction.

(b) [Repealed, § 24 ch 113 SLA 2008.]

(c) [Repealed, § 24 ch 113 SLA 2008.]

(d) [Repealed, § 24 ch 113 SLA 2008.]

(e) [Repealed, § 24 ch 113 SLA 2008.]

(f) [Repealed, § 24 ch 113 SLA 2008.]

Sec. 08.88.470. Findings and payment. [Repealed, § 24 ch 113 SLA 2008.]

Sec. 08.88.472. Fund operations; charges against fund. (a) The commission may charge the real estate recovery fund for expenses related to fund operations. The commission shall deposit into the real estate recovery fund amounts recovered for these expenses from the licensee under AS 08.88.071(b) or from other parties under AS 08.88.490.

(b) [Repealed, § 24 ch 113 SLA 2008.]

(c) [Repealed, § 24 ch 113 SLA 2008.]

(d) If the salary of an employee is entirely or partially paid for from money in the real estate recovery fund, the employee may perform administrative duties for the commission in addition to any duties the employee performs that are related to the real estate recovery fund. AS 08.88.910 does not apply to this subsection.

Sec. 08.88.474. Payment of small claims judgment. [Repealed, § 24 ch 113 SLA 2008.]

Sec. 08.88.475. Maximum liability. (a) The maximum liability of the real estate recovery fund may not exceed \$50,000 for any one real estate licensee.

(b) If the \$50,000 liability of the fund as provided in (a) of this section is insufficient to pay in full the valid claims of all persons who have obtained a final judgment, final arbitration award, or settlement agreement involving an individual licensee and have filed claims for an award from the recovery fund, the \$50,000 shall be distributed among the claimants in the ratio that their individual claims bear to the aggregate of valid claims, or in another manner that the commission considers equitable. Distribution shall be among the persons entitled to share in the recovery without regard to the order in which their claims were filed.

Sec. 08.88.480. Order of claim payment. If the money deposited in the real estate recovery fund is insufficient at a given time to satisfy a legally authorized claim against the fund, the commission shall, when sufficient money has been deposited in the fund and appropriated, satisfy unpaid claims in the order that the claims were originally filed, plus accumulated interest at the rate of eight percent a year.

Sec. 08.88.485. False claims or documents. A person who files with the commission a notice, statement, or other document required under this chapter that contains a wilful material misstatement of fact, is guilty of a misdemeanor and is punishable by imprisonment for a period of not more than one year, or a fine of not more than \$1,000, or by both.

Sec. 08.88.490. Right to subrogation. When the commission has paid to a claimant from the real estate recovery fund the sum awarded by the commission, the commission shall be subrogated to all of the rights of the claimant to the amount paid, and the claimant shall assign all right, title, and interest in that portion of the claim to the commission. Money collected by the commission on the claim shall be deposited to the real estate recovery fund.

Sec. 08.88.495. Disciplinary action. Repayment in full of all obligations to the real estate recovery fund does not nullify or modify the effect of disciplinary proceedings brought under the provisions of this chapter.

ARTICLE 5. LICENSE RELATIONSHIPS AND DUTIES.

Section

- 600. Licensee relationships
- 605. Additional licensee relationship provisions
- 610. Authorization of neutral licensee relationship
- 615. Duties owed by licensee in all licensee relationships
- 620. Duties owed by licensee representing a person
- 625. Waiver of duties
- 630. Duties not owed by licensee
- 635. Acts not amounting to adverse or detrimental acts or conflicts of interest
- 640. Designated licensee relationship
- 645. Duties of neutral licensee
- 650. No imputation of knowledge resulting from neutral licensee relationship
- 655. Compensation
- 660. Duration of relationship
- 665. Vicarious liability
- 670. Imputed knowledge and notice

- 675. Common law abrogated
- 680. Causes of action
- 685. Policies, guidelines, and requirements
- 690. Exemptions
- 695. Definitions for AS 08.88.600 – 08.88.695

Sec. 08.88.600. License relationships. (a) A real estate licensee who provides real estate services to one party in a real estate transaction represents only that party unless the parties to the transaction agree otherwise in writing.

(b) A real estate licensee may not provide real estate services to more than one party in the same real estate transaction, except that

- (1) a licensee may represent one party to the transaction while providing specific assistance to an unrepresented party to the transaction;
- (2) a licensee may act as a neutral licensee under (c) of this section;
- (3) a licensee may also, with the written consent of the parties, be a party to the transaction; or
- (4) the parties to the transaction may agree otherwise in writing, except as provided by AS 08.88.625.

(c) A real estate licensee may provide specific assistance to both the seller and buyer, or both the lessor and lessee, in the same real estate transaction as a neutral licensee if the licensee complies with AS 08.88.610.

(d) A real estate licensee who works for a real estate broker may represent or provide specific assistance to a person in a real estate transaction even if the broker or another licensee who is working for the broker represents or provides specific assistance to another person in the same transaction. The broker shall designate which licensee, including the broker, is the designated licensee for the seller or lessor and which licensee, including the broker, is the designated licensee for the buyer or lessee.

Sec. 08.88.605. Additional licensee relationship provisions. (a) A real estate licensee may provide real estate services to a party in separate real estate transactions under different licensee relationships if the licensee complies with AS 08.88.600 – 08.88.695 when establishing the relationship for each transaction.

(b) The authorization under (a) of this section includes acting as a real estate licensee for a party in one real estate transaction and at the same time not representing that party in a different real estate transaction involving that party.

Sec. 08.88.610. Authorization of neutral licensee relationship. (a) Before a real estate licensee begins acting as a neutral licensee, the real estate licensee may obtain preauthorization from a person to act as a neutral licensee in the person's real estate transaction by obtaining the written consent of the person.

(b) If preauthorization is not obtained under (a) of this section, when a buyer or lessee expresses an interest to the licensee in acquiring or leasing real estate and the licensee is representing the seller or lessor of the property, the licensee shall obtain written consent to act as a neutral licensee before the licensee shows the real estate.

(c) A written consent under this section must be provided on a separate form, may not be contained in another writing, and must be entitled "Waiver of Right To Be Represented."

Sec. 08.88.615. Duties owed by licensee in all licensee relationships. (a) Unless additional duties are agreed to in a written document signed by the person, and regardless of the type of licensee relationship in which the real estate licensee is acting, a real estate licensee owes the following duties to each person to whom the licensee provides specific assistance:

- (1) the exercise of reasonable skill and care;
- (2) honest and good faith dealing;
- (3) the presentation of all written offers, written notices, and other written communications to and from the person in a timely manner regardless of whether the real estate is subject to an existing contract for sale or lease or the person is already a party to an existing contract to buy or lease real estate;
- (4) except as provided in (b) of this section, the disclosure of all material information known by the licensee regarding the physical condition of real estate if the information substantially adversely affects the real estate or a person's ability to perform the person's obligations in the real estate transaction or if the information would materially impair or defeat the purpose of the real estate transaction;
- (5) accounting in a timely manner for all money and other property received from or on behalf of the person;
- (6) before the licensee provides specific assistance to the person, or when entering into a contract with the person to provide specific assistance, providing a copy of the pamphlet established under AS 08.88.685(b)(2) and produced under AS 08.88.685(c) that outlines the duties of the types of licensee relationships identified under AS 08.88.600;
- (7) before the licensee provides specific assistance to the person, obtaining from the person a document signed by the person that discloses the licensee's relationship with the person;
- (8) in addition to the document provided under (7) of this subsection, providing to the person when the person signs an offer in a real estate transaction handled by the licensee a written statement that states whether the licensee represents the buyer, represents the seller, represents the lessee, represents the lessor, or provides specific assistance to both the buyer and the seller or both the lessee and the lessor as a neutral licensee; the statement must be contained in a separate paragraph entitled "Licensee Relationships" in the contract between the buyer and seller or

the lessee and lessor, or in a separate document entitled "Licensee Relationships."

(b) The disclosure requirements of (a)(4) of this section may not be construed to imply a duty to

(1) investigate a matter that

(A) the licensee has not agreed to investigate; or

(B) is not known by the seller, prospective buyer, lessor, prospective lessee, or licensee; or

(2) disclose, unless otherwise provided by law, events that have occurred on the real estate that might affect whether a person wants to buy or lease the real estate.

(c) Notwithstanding (b)(2) of this section, before a buyer makes or accepts an offer in a real estate transaction, a real estate licensee shall disclose to the buyer that a murder or suicide occurred on the real property that is the subject of the real estate transaction if

(1) the murder or suicide occurred within one year before the date that the licensee first showed the real estate to the buyer; and

(2) the licensee is aware that the murder or suicide occurred on the real estate.

Sec. 08.88.620. Duties owed by licensee representing a person. Unless additional duties are agreed to in a written document signed by the person represented by the licensee, a real estate licensee who represents the person owes the person the following duties in addition to the other duties imposed by AS 08.88.615:

(1) not taking action that the licensee knows is adverse or detrimental to the interest of the represented person in a real estate transaction;

(2) disclosure of a conflict of interest to the represented person in a timely manner;

(3) advising the represented person to obtain expert advice on a matter that relates to the real estate transaction that is beyond the licensee's expertise;

(4) not disclosing confidential information from or about the represented person without written consent, except under a subpoena or another court order, even after termination of the licensee's relationship with the represented person;

(5) if the represented person is a seller or a lessor, unless otherwise agreed to in writing, making a good faith and continuous effort to find a buyer or lessee for the real estate of the seller or lessor, except that a licensee is not required to seek additional offers to buy or lease the real estate while the real estate is subject to an existing contract for sale or lease; and

(6) if the represented party is a buyer or a lessee, unless otherwise agreed to in writing, making a good faith and continuous effort to find real estate for the buyer or lessee, except that a licensee is not obligated to

(A) seek additional real estate to buy or lease for the buyer or lessee while the buyer or lessee is a party to an existing contract to buy or lease real estate; or

(B) show to the buyer or lessee real estate for which there is not a written agreement to pay compensation to the licensee.

Sec. 08.88.625. Waiver of duties. A real estate licensee or a person to whom a licensee provides specific assistance may not waive the duties identified under AS 08.88.615 and 08.88.620, except as otherwise allowed under AS 08.88.620(5) and (6).

Sec. 08.88.630. Duties not owed by licensee. Unless agreed otherwise, a real estate licensee does not owe a duty to a person with whom the licensee has established a licensee relationship to

(1) conduct an independent inspection of the real estate that is the subject of the licensee relationship;

(2) conduct an independent investigation of a person's financial condition; or

(3) independently verify the accuracy or completeness of a statement made by a party to a real estate transaction or by a person reasonably believed by the licensee to be reliable.

Sec. 08.88.635. Acts not amounting to adverse to detrimental acts or conflicts of interest. (a) If a licensee shows real estate not owned or leased by the seller or lessor to prospective buyers or lessees or lists competing properties for sale or lease, this activity does not by itself constitute action that is adverse or detrimental to the seller or lessor or create a conflict of interest under AS 08.88.391.

(b) The representation of more than one seller or lessor by the same licensee or by different licensees working for the same real estate broker in competing transactions involving the same buyer or lessee does not by itself constitute action that is adverse or detrimental to the sellers or lessors or create a conflict of interest under AS 08.88.391.

(c) If a licensee shows real estate in which the buyer or lessee is interested to other prospective buyers or lessees, this activity does not by itself constitute action that is adverse or detrimental to the buyer or lessee or create a conflict of interest under AS 08.88.391.

(d) The representation of more than one buyer or lessee by the same licensee or by different licensees working for the same real estate broker in competing transactions involving the same seller or lessor does not by itself constitute action that is adverse or detrimental to the sellers or lessors or create a conflict of interest under AS 08.88.391.

(e) Acting as a neutral licensee in compliance with AS 08.88.600 – 08.88.695 does not by itself constitute action that is adverse or detrimental to a seller, lessor, buyer, or lessee or create a conflict of interest under AS 08.88.391.

(f) A real estate licensee who discloses confidential information to the licensee's broker for the purpose of seeking advice or assistance for the benefit of the person to whom the licensee is providing specific assistance does not breach the licensee's duty of confidentiality to the person, but the licensee's broker has a duty to maintain the confidentiality of the information.

Sec. 08.88.640. Designated licensee relationship. (a) Unless the broker is the designated licensee, the relationship, including the duties, obligations, and responsibilities of the relationship, established between a person and a designated real estate licensee does not extend to the real estate broker for whom the designated licensee is working, to another real estate licensee who works for the same real estate broker, or to an owner of the business that employs the real estate broker. The extent or limitations of the relationship between the broker with the designated licensee shall be disclosed to the parties to a real estate transaction.

(b) A real estate broker may have a different designated licensee working for a seller or lessor and for the buyer or lessee in the same real estate transaction. Having a different designated licensee working for a seller or lessor and for the buyer or lessee in the same real estate transaction does not create dual agency or a conflict of interest for the real estate broker or for a licensee employed by the same real estate broker.

(c) A designated real estate licensee may represent or provide specific assistance to a person who is a seller or lessor in one real estate transaction while representing or providing specific assistance to the person as a buyer or lessee in another real estate transaction.

(d) Unless the broker is the designated licensee, when a designated licensee represents or provides specific assistance as a designated licensee to a person in a real estate transaction, the knowledge received by the designated licensee while representing or providing specific assistance to the person is not imputed to the real estate broker for whom the designated licensee works, to another real estate licensee employed by or under contract to the broker, or to an owner of the business that employs the real estate broker.

(e) This section may not be construed to limit the responsibility of a real estate broker, or of an owner of a business that employs the real estate broker, to supervise designated licensees who work for the broker or who work for the business that employs the broker, or to shield the broker or business from vicarious liability for the acts of the designated licensees.

Sec. 08.88.645. Duties of neutral licensee. (a) Unless additional duties are agreed to in a written document signed by the neutral licensee and the seller, buyer, lessor, or lessee, the duties of a neutral licensee are limited to the duties established for real estate licensees under AS 08.88.615 and the following duties:

(1) not to take action that the neutral licensee knows is adverse or detrimental to the interest of the persons to whom the neutral licensee provides services in the real estate transaction;

(2) to disclose a conflict of interest in a timely manner to all parties to whom the licensee provides specific assistance;

(3) to advise all parties to whom the licensee provides specific assistance for the transaction to obtain expert advice on a matter relating to the transaction that is beyond the expertise of the neutral licensee;

(4) not to disclose without written consent confidential information from or about any of the parties to whom the licensee is providing specific assistance to another party to whom the licensee is providing specific assistance in the transaction, except under a subpoena or another court order, even after the relationship with the party terminates;

(5) not to disclose without the consent of the person to whom the information relates

(A) that the buyer or lessee is willing to pay more than the price offered for the real estate;

(B) that the seller or lessor is willing to accept less than the asking price for the real estate; or

(C) that the seller, buyer, lessor, or lessee will agree to financing terms other than those terms offered.

(b) A neutral licensee does not violate the duties of a neutral licensee if, with written consent, the neutral licensee engages in the following conduct in a good faith effort to assist in reaching final agreement in a real estate transaction:

(1) analyzing, providing information on, or reporting on the merits of the transaction to each party;

(2) discussing the price, terms, or conditions that each party would or should offer or accept; or

(3) suggesting compromises in the parties' respective bargaining positions.

Sec. 08.88.650. No imputation of knowledge resulting from neutral licensee relationship. In a neutral licensee relationship, the knowledge or information of the licensee about one client is not imputed to other clients or to other licensees who work for the same real estate broker.

Sec. 08.88.655. Compensation. (a) A real estate broker may be compensated by any party to a real estate transaction, by a third party, or by one or more of the parties to the transaction splitting or sharing the compensation.

(b) The payment of compensation to a real estate broker may not be construed to establish a relationship between the broker and the party who pays the compensation.

(c) If a real estate licensee provides specific assistance or enters into a personal services contract to act as a real estate licensee for a person, or if a seller and buyer, or a lessor and lessee, enter into a contract to sell, buy, or lease real estate, the real estate licensee shall disclose which party the licensee anticipates will be paying compensation to the real estate brokers in the real estate transaction.

(d) A real estate licensee shall include in a contract to sell, buy, or lease real estate a statement indicating which

party is paying compensation to the real estate brokers in the real estate transaction.

Sec. 08.88.660. Duration of relationship. (a) A licensee relationship with a buyer, lessee, seller, or lessor begins when the licensee represents or provides specific assistance to the buyer, lessee, seller, or lessor and continues until the earliest of the following events occurs:

- (1) the licensee completes the representation or specific assistance;
- (2) the relationship term agreed on by the buyer, lessee, seller, or lessor terminates;
- (3) the licensee and the parties to the relationship terminate the relationship by mutual agreement; or
- (4) a party to the relationship terminates the relationship by giving notice to the other party.

(b) The termination of a relationship under (a)(3) or (4) of this section only terminates the licensee relationship and does not affect other contractual rights of the parties to the licensee relationship.

(c) Except as otherwise agreed to in writing, a licensee does not owe a further duty to a buyer, lessee, seller, or lessor after termination of the licensee relationship, except for the duties of accounting for all money and other property received during the relationship and not disclosing confidential information.

Sec. 08.88.665. Vicarious liability. A seller, buyer, lessor, or lessee is not liable for an act, error, or omission of a real estate licensee that arises out of the licensee relationship,

- (1) unless the seller, buyer, lessor, or lessee participated in or authorized the act, error, or omission and then only to the extent of the participation or authorization; or
- (2) except to the extent that the seller, buyer, lessor, or lessee benefited from the act, error, or omission, and a court determines that it is highly probable that the person claiming damages for the act, error, or omission would be unable to enforce a judgement against the licensee.

Sec. 08.88.670. Imputed knowledge and notice. (a) Unless otherwise agreed to in writing, a seller, buyer, lessor, or lessee is not considered to have knowledge or notice of a fact known by a real estate licensee of the seller, buyer, lessor, or lessee unless the fact is actually known by the seller, buyer, lessor, or lessee.

(b) Unless otherwise agreed to in writing, a real estate licensee does not have knowledge or notice of a fact that is not actually known by the licensee.

Sec. 08.88.675. Common law abrogated. The common law of agency related to real estate licensee relationships in real estate transactions is expressly abrogated to the extent inconsistent with AS 08.88.600 – 08.88.695.

Sec. 08.88.680. Causes of action. (a) A person may not bring an action against a neutral licensee for making a disclosure that is required or permitted under this chapter.

(b) In a civil action for the failure of a licensee to comply with the provisions of AS 08.88.600 – 08.88.695, the plaintiff's remedy is limited to the recovery of actual damages. This subsection does not limit a person's ability to take any other action or pursue any other remedy to which the person may be entitled under other law.

Sec. 08.88.685. Policies, guidelines, and requirements. (a) A broker shall adopt written policies and procedures available to the commission and to members of the public on request that

- (1) require real estate licensees to comply with all real estate laws;
- (2) require real estate licensees to act fairly and honestly in all dealings;
- (3) require real estate licensees to notify the broker or a broker designee of any legal dispute or allegation of wrongdoing from a seller, buyer, lessor, or lessee;
- (4) require real estate licensees to maintain regular communication with the broker or a broker designee; and
- (5) identify and describe the relationships in which the broker and the real estate licensees who work for the broker may engage with a seller, buyer, lessor, or lessee.

(b) The commission shall adopt regulations that establish

- (1) guidelines to assist a broker to adopt the written policy required by (a) of this section;
- (2) the contents and format of the pamphlet to be provided by a licensee under AS 08.88.615(a)(6); and
- (3) requirements for a broker's supervision of the real estate licensees who work for the broker.

(c) Based on the content and format for the pamphlets established under (b)(2) of this section, a real estate broker shall produce and pay the costs to produce the actual pamphlets to be provided by licensees in the broker's business under AS 08.88.615(a)(6).

Sec. 08.88.690. Exemptions. A real estate licensee is exempt from the signature requirements of AS 08.88.600 – 08.88.695 when the licensee provides specific assistance to

- (1) a corporation that issues publicly traded securities;
- (2) a business that has a net worth in the previous calendar year of \$2,000,000 or more, if the business requests the exemption from the licensee; or
- (3) a governmental agency; in this paragraph, "governmental agency" means a department, division, public agency, political subdivision, or other public instrumentality of the state or federal government, including the

University of Alaska, the Alaska Railroad Corporation, the Alaska Housing Finance Corporation, the Alaska Industrial Development and Export Authority, and other public corporations.

Sec. 08.88.695. Definitions for AS 08.88.600 – 08.88.695. In AS 08.88.600 – 08.88.695,

- (1) “compensation” includes a commission;
- (2) “confidential information” means information from or concerning a person that
 - (A) the licensee acquired during the course of the licensee’s relationship as a licensee with the person;
 - (B) the person reasonably expects to be kept confidential;
 - (C) the person has not disclosed or authorized to be disclosed to a third party;
 - (D) would, if disclosed, operate to the detriment of the person; and
 - (E) the person is not obligated to disclose to the other party in a real estate transaction;
- (3) “designated licensee” means
 - (A) a real estate licensee who works for a real estate broker and represents or provides specific assistance to a person in a real estate transaction when another licensee who is working for the same broker represents or provides specific assistance to an unrepresented person in the same transaction; or
 - (B) a real estate broker who represents or provides specific assistance to a person in a real estate transaction when another licensee who is working for the broker represents or provides specific assistance to another person in the same transaction;
- (4) “neutral licensee” means a real estate licensee who
 - (A) provides specific assistance to both the buyer and the seller, or both the lessor and the lessee, in a real estate transaction; and
 - (B) does not represent either party;
- (5) “personal services contract” includes a listing, a fee agreement between brokers and sellers, buyers, lessors, or lessees, a management contract with property owners, or any other agreement by which a broker agrees to perform a duty with respect to real estate for an agreed upon fee or commission;
- (6) “real estate services” means services related to a real estate transaction;
- (7) “represent” means to provide real estate services to a person if the services are not limited to specific assistance;
- (8) “specific assistance”
 - (A) means
 - (i) asking questions regarding confidential information for a real estate transaction;
 - (ii) showing pieces of real estate selected for a buyer’s or lessee’s specific needs or desires;
 - (iii) preparing a written offer for a real estate transaction; or
 - (iv) entering into a personal services contract;
 - (B) does not include
 - (i) hosting an open house;
 - (ii) casual conversation regarding real estate;
 - (iii) receiving calls or electronic inquires from the licensees’ signs, advertisements, or Internet site;
 - (iv) providing information regarding a piece of real estate;
 - (v) setting an initial appointment to show a piece of real estate
 - (vi) receiving unsolicited information from a buyer or lessee before or after disclosure of a real estate relationship.

**ARTICLE 6.
GENERAL PROVISIONS.**

Section

900. Exceptions

910. Application to independent contractors

990. Definitions

Sec. 08.88.900. Exceptions. (a) Except as provided in (b) of this section, this chapter does not apply to

- (1) a person who is not licensed under this chapter who manages or makes a real estate transaction with respect to real estate the person owns or is seeking to own so long as the compensation the person receives does not include any portion of the commission or other compensation paid to a real estate licensee in the transaction;
- (2) an attorney in fact under a power of attorney authorizing the consummation of a specific real estate transaction; an attorney in fact may not act as such under this paragraph for more than two transactions in a calendar year;
- (3) a lawyer performing duties as a lawyer;
- (4) a public official in the conduct of official duties;
- (5) a person acting as receiver, trustee, administrator, executor, or guardian;

- (6) a person acting under court order;
 - (7) a person acting under the authority of a will or trust instrument;
 - (8) a person dealing in mineral rights transactions;
 - (9) an employee of a domestic or foreign corporation, general or limited partnership, or limited liability company when performing an act described in AS 08.88.161 incidental to the regular course of business when the act relates to the management, sale, or other disposition of real estate owned by the foreign or domestic corporation, general or limited partnership or limited liability company; the exemption under this paragraph does not apply to a person employed by a foreign or domestic corporation, partnership, limited partnership, or limited liability company who performs an act described in AS 08.88.161 either
 - (A) as a vocation; or
 - (B) for compensation if the amount of the compensation is dependent upon or directly related to the value of the real estate with respect to which the act is performed;
 - (10) a person performing duties as a resident manager;
 - (11) a bookkeeper or accountant performing bookkeeping or accounting functions;
 - (12) a secretary or receptionist in a real estate office accepting rent or association fees and providing a written receipt for the rent or fees when a tenant or community association member delivers the rent or fees to the real estate office;
 - (13) tradesmen or vendors of services performing maintenance and repair functions;
 - (14) an employee of a real estate firm or of a property owner delivering or accepting a real estate contract or application, or a related amendment, to or from another person;
 - (15) an individual assisting in the performance of real estate activities only by carrying out administrative, clerical, or maintenance tasks;
 - (16) the management of a total of four or fewer residential units by a natural person for other persons;
 - (17) community association management for property organized under AS 34.07 or AS 34.08 by a resident owner of a unit in the property if the owner is a member of a self-managed community association for the property;
 - (18) community association management by a developer of property organized under AS 34.07 or AS 34.08 during the period that the developer retains control of at least 51 percent of the property;
 - (19) an attorney in fact who, for a relative, acts under a power of attorney that authorizes the consummation of a specific real estate transaction; in this paragraph, "relative" means a spouse or a great grandparent, grandparent, parent, uncle, aunt, sibling, child, nephew, niece, grandchild, or great grandchild by the whole or half blood or by marriage but does not include a relative who is only related through a step relationship, such as a stepbrother or the child of a stepbrother, except that "relative" includes a stepchild;
 - (20) a mobile home dealer; or
 - (21) the management by a natural person of property for another person without a fee other than the reimbursement of expenses.
- (b) Notwithstanding that, under this section, a person is exempt from this chapter, AS 08.88.401 (d)(1) prohibits a licensee from knowingly paying to that person any part of a fee, commission, or other compensation received by the licensee in buying, selling, exchanging, leasing, auctioning, or renting real estate.

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

Sec. 08.88.990. Definitions. In this chapter,

- (1) "commission" means the Real Estate Commission except where the context indicates that "commission" refers to a fee paid for personal services;
- (2) "community association management" means an activity undertaken for an owners' association with regard to property organized under either AS 34.07 or AS 34.08 under an agreement in exchange for a fee, commission, or other valuable consideration, including the following activities: preparing budgets and other financial documents, collecting, controlling, or disbursing funds, obtaining insurance for the association, contracting for maintenance and repair to association property, and supervising the day-to-day operations of the association under the direction of the association's board of directors;
- (3) "community association operating account" means an account in a financial institution maintained in the name of a specific community association that contains money used for day-to-day operation and not for other uses;
- (4) "community association reserve account" means an account in a financial institution maintained in the name of a specific community association that contains money reserved for the expected replacement cost of improvements within the community association or for other future uses;
- (5) "initial license"
 - (A) means the first
 - (i) real estate broker license that the commission issues to a person, even if the person previously received an associate real estate broker license or real estate salesperson license under this chapter;
 - (ii) associate real estate broker license that the commission issues to a person, even if the person previously received a real estate broker license or a real estate salesperson license under this chapter;

(iii) real estate salesperson license under this chapter that the commission issues to a person, even if the person previously received a real estate broker license or an associate real estate broker license under this chapter;

(iv) issuance of a license to an individual after the individual's license has been revoked under AS 08.01.075;

(B) does not include the reinstatement of a license under AS 08.88.241(b);

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

(7) "lease" includes a lease that is a part of another transaction;

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

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

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

(11) "real estate transaction"

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

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

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

(12) "resident manager" means a person who resides on rented or leased real property or on contiguous property owned by the same owner, manages the property for the benefit of another person, and is either employed by the owner of the real estate or employed by, or under contract with, a real estate licensee;

(13) "final arbitration award" means an arbitration award for which there is no further right to appeal;

(14) "final judgment" means a judgment for which there is no further right to appeal.

**CHAPTER 64.
REAL ESTATE COMMISSION.**

Article

1. **Examinations (12 AAC 64.010 – 12 AAC 64.050)**
2. **Licensing (12 AAC 64.059 – 12 AAC 64.100)**
3. **Place of Business (12 AAC 64.110 – 12 AAC 64.128)**
4. **Prohibited Conduct (12 AAC 64.130 – 12 AAC 64.175)**
5. **Trust Accounts (12 AAC 64.180 – 12 AAC 64.271)**
6. **Recovery Fund Claims (12 AAC 64.280 – 12 AAC 64.330)**
7. **Real Estate Education Standards (12 AAC 64.400 – 12 AAC 64.470)**
8. **Continuing Education Requirements (12 AAC 64.500 – 12 AAC 64.510)**
9. **Property Management (12 AAC 64.550 – 12 AAC 64.580)**
10. **Errors and Omissions Insurance (12 AAC 64.600 – 12 AAC 64.650)**
11. **General Provisions (12 AAC 64.900 – 12 AAC 64.990)**

**ARTICLE 1.
EXAMINATIONS.**

Section

10. **Examination**
20. **(Repealed)**
30. **(Repealed)**
40. **Admission to examination**
50. **(Repealed)**

12 AAC 64.010. EXAMINATION. (a) A person may apply for the real estate salesperson or broker examination with the commission. If a testing service is authorized by the commission under AS 08.88.191, a person may also apply for the examination with the testing service.

(b) Deadlines for registration for the examination will be published with the registration information or will be available from the commission. Deadlines for registration will not be less than three days before the examination.

(c) Registration fees for the written examination are not refundable.

(d) An applicant for licensure shall pass a written examination, approved by the commission, before applying for a license as a real estate broker, associate real estate broker, or real estate salesperson. The written examination consists of a general part and a state part. An applicant must sit for both parts of the written examination during the same examination session.

Authority: AS 08.88.051 AS 08.88.081 AS 08.88.191
AS 08.88.071 AS 08.88.171

Editor's note: Information regarding the examination described in 12 AAC 64.010 may be obtained by writing or calling the commission at Real Estate Commission, 550 W. 7th Avenue, Suite 1500, Anchorage, Alaska, 99501-3567, Phone: (907) 269-8162, Fax: (907) 269-8196 or the testing service at Promissor, 3 Bala Plaza West, Suite 300, Bala Cynwyd, Pennsylvania 19004, Phone: (800) 274-5992, Fax: (888) 204-6291.

12 AAC 64.020. TIME AND PLACES. (a) Repealed 8/22/79.
(b) Repealed 7/1/89.

12 AAC 64.030. METHOD OF CONDUCTING. Repealed 8/9/72.

12 AAC 64.040. ADMISSION TO EXAMINATION. (a) Before the scheduled examination date, an applicant who has registered to sit for the examination will be sent an admission ticket from the commission that specifies the time and place of the examination. If a testing service is authorized by the commission under AS 08.88.191, the applicant will be sent a confirmation notice or receive a confirmation number by telephone from the testing service that specifies the time and place of the examination.

(b) An applicant who has not registered for the examination by the deadline described in 12 AAC 64.010(b) will not be admitted to the examination.

Authority: AS 08.88.081 AS 08.88.111 AS 08.88.191

12 AAC 64.050. RESCORING. Repealed 4/24/09.

**ARTICLE 2.
LICENSING.**

Section

- 59. Review of license applications**
- 60. Applications for licensure**
- 61. License by endorsement**
- 62. (Renumbered)**
- 63. Minimum education requirements for licensure**
- 64. Education requirements after initial license**
- 65. License required for employees, directors, agents, and officers**
- 68. Legal entities**
- 70. (Repealed)**
- 71. License renewal**
- 73. Recovery fund fee**
- 75. Employment and transfer**
- 77. Broker authorization or license applications**
- 78. Temporary absence of broker of record**
- 80. Suspension and revocation of active licenses**
- 85. Suspended or revoked out-of-state license**
- 90. Surrender of suspended or revoked licenses**
- 95. Real estate activities of unlicensed persons**
- 99. Application or reissuance application for licensure after revocation or suspension**
- 100. Reissuance of suspended license**

12 AAC 64.059. REVIEW OF LICENSE APPLICATIONS. (a) An applicant who meets the requirements on the relevant checklist set out in this section has demonstrated the necessary qualifications for the license applied for. An applicant who does not meet the requirements on that checklist or whose responses on the form for application do not clearly show that the applicant is qualified to receive a license will not be issued a license unless the commission further reviews the application and determines that the applicant meets the qualifications in AS 08.88 and this chapter for that license.

(b) The following checklist is established by the commission for review of an application for a salesperson license; a salesperson license will be issued to an applicant who

- (1) submits a completed form for application under this chapter, including
 - (A) the applicant's name, mailing address, and telephone number;
 - (B) the applicant's date of birth that shows the applicant is at least 19 years old;
 - (C) the applicant's employing broker's name, current and active license number, business name, telephone number, mailing address, and signature;
 - (D) "no" answers to all questions on the form dealing with felony indictments or convictions and license actions; and
 - (E) the applicant's notarized signature certifying that the information on the form is true and correct to the best of the applicant's knowledge;
- (2) has passed the examination for real estate salespersons;
- (3) files the completed form for application with the division within six months of passing the examination for real estate salespersons as calculated under 12 AAC 64.060(e);
- (4) submits a prelicensing education certificate or a transcript from a college or university registrar verifying 40 hours of prelicensing education approved by the commission;
- (5) pays the application and initial license fees established in 12 AAC 02.360; and
- (6) pays the recovery fund fee established in 12 AAC 64.073.

(c) The following checklist is established by the commission for reviewing an application for a salesperson license by endorsement; a salesperson license by endorsement will be issued to an applicant who

- (1) meets the requirements in (b)(1), (b)(5), and (b)(6) of this section;
- (2) has passed the state law portion of the examination for real estate salespersons;
- (3) files the completed form for application with the division within six months of passing the state law portion of the examination for real estate salespersons as calculated under 12 AAC 64.060(e);
- (4) provides a license history from the licensing authorities in all other states in which the applicant holds a real estate license that shows the applicant meets the requirements in 12 AAC 64.061(c) for a valid and active license;
- (5) submits documentation that the applicant met education requirements that covered the topics and hours listed in 12 AAC 64.063(c)(1) - (c)(6) and (c)(8) to obtain a license in another jurisdiction; and
- (6) submits evidence of completing six contact hours of course work on Alaska real estate license law as required in 12 AAC 64.063(c)(7).

(d) The following checklist is established by the commission for reviewing an application for an associate broker license; an associate broker license will be issued to an applicant who

- (1) submits a completed form for application, including
 - (A) the applicant's name, mailing address, and telephone number;
 - (B) the applicant's date of birth that shows the applicant is at least 21 years old;
 - (C) the applicant's employing broker's name, current and active license number, business name, telephone number, mailing address, and signature;
 - (D) "no" answers to all questions on the form dealing with felony indictments or convictions and license actions; and
 - (E) the applicant's notarized signature certifying that the information on the form is true and correct to the best of the applicant's knowledge;
 - (2) has passed the examination for real estate brokers;
 - (3) files the completed application with the division within six months of passing the real estate broker examination as calculated under 12 AAC 64.060(e);
 - (4) submits a broker training education certificate or a transcript from a college or university registrar verifying 15 hours of broker training education approved by the commission;
 - (5) submits a statement, signed by the brokers who employed the applicant, verifying that the applicant has at least 24 months of active and continuous experience as a real estate licensee within the 36 months before the date of application for an associate broker license; and
 - (6) pays the transfer of license fee established in 12 AAC 02.360.
- (e) The following checklist is established by the commission for review of an application for a broker license; a broker license will be issued to an applicant who
- (1) meets the requirements of (d)(1) - (d)(5) of this section or is currently licensed in the state as an associate broker;
 - (2) submits a completed office registration form that includes the information required in 12 AAC 64.110(e); and
 - (3) pays the office registration fee and transfer of license fee established in 12 AAC 02.360.
- (f) The following checklist is established by the commission for review of an application for an associate broker license by endorsement. An associate broker license by endorsement will be issued to an applicant who
- (1) meets the requirements in (d)(1) of this section;
 - (2) has passed the state law portion of the examination for real estate brokers;
 - (3) files the completed form for application with the division within six months of passing the state law portion of the examination for real estate brokers as calculated under 12 AAC 64.060(e);
 - (4) provides a license history from the licensing authorities in all other states in which the applicant holds a real estate license that shows the applicant meets the requirements in 12 AAC 64.061(c) for a valid and active license;
 - (5) submits documentation that the applicant met education requirements that covered the topics and hours listed in 12 AAC 64.063(b) to obtain a broker or associate broker license in another jurisdiction;
 - (6) submits documentation that the applicant has completed six contact hours of course work on Alaska real estate license law and Alaska landlord tenant law as required in 12 AAC 64.063(c);
 - (7) pays the application and initial license fees established in 12 AAC 02.360; and
 - (8) pays the recovery fund fee established in 12 AAC 64.073.
- (g) The following checklist is established by the commission for review of an application for a broker license by endorsement. A broker license by endorsement will be issued to an applicant who
- (1) meets the requirements of (f) of this section;
 - (2) submits a completed office registration form that includes the information required in 12 AAC 64.110(e); and
 - (3) pays the office registration fee established in 12 AAC 02.360.
- (h) Notwithstanding the requirements of (b) – (g) of this section, a license will not be issued to an applicant whose license history on the application form is incomplete or shows a license disciplinary action or investigation taken or pending. Applications showing a disciplinary action or investigation shall be referred to the commission for further review.

Authority: AS 08.88.071 AS 08.88.091 AS 08.88.263
 AS 08.88.081 AS 08.88.171

12 AAC 64.060. APPLICATIONS FOR LICENSURE. (a) An applicant for licensure to practice as a real estate broker, associate broker, or salesperson shall submit, within six months after the individual has taken the examination required for licensure,

- (1) a completed application on the form provided by the department, including all necessary attachments;
- (2) the license fee established in 12 AAC 02.360;
- (3) the recovery fund fee established in 12 AAC 64.073; and
- (4) documentation that the applicant has satisfied the education requirements of AS 08.88.091 and 12 AAC 64.063.

(b) The applicant may be required to furnish information in addition to that set forth on the application if it is relevant to the applicant's qualifications to do business under this chapter. An applicant who has been required to

submit additional information may not be issued a license until the required information is received and evaluated and the commission approves the application.

(c) If the commission determines that an applicant is not eligible for licensure, the applicant will be given a statement of issues in accordance with AS 44.62.370.

(d) The department will not process an application if the fees required in (a)(2) and (a)(3) of this section were paid by a check that is returned to the department by the banking institution due to insufficient funds. If the license is issued before the check is returned to the department, failure to pay the fees required in (a)(2) and (a)(3) of this section and the returned check fee required in 12 AAC 02.105 within three months of the applicant's receipt of the department's first notice of the returned check is grounds for revocation of the license.

(e) In this section and in AS 08.88.171, "within six months after the individual has taken the examination" means within the period that begins on the date the applicant passed the examination and ends on the same calendar day of the month that is six months after that examination date.

(f) If a licensee who holds an associate broker license limited to practice community association management becomes an owner of a community association management company, or is hired by a corporation, partnership, limited partnership, or limited liability company to be a broker of a community association management office, the licensee shall return the associate broker license to the commission. After receiving the associate broker license, the commission will issue a broker license to the licensee limited to practice community association management.

(g) A licensee who holds a broker or associate broker license limited to practice community association management may obtain a broker or associate broker license that is not limited as described in (f) of this section, by complying with the requirements of AS 08.88.171 and this chapter.

(h) An applicant applying for licensure by examination shall provide a license history, including any disciplinary action or investigation taken or pending, sent directly to the department from all jurisdictions where the applicant holds or has ever held a real estate license.

Authority: AS 08.88.071 AS 08.88.171 AS 08.88.191
AS 08.88.081

12 AAC 64.061. LICENSE BY ENDORSEMENT. (a) A license which has lapsed, been suspended, been surrendered by a licensee for disciplinary reasons, or a license which has been limited in any way for disciplinary reasons is not considered valid and active for purposes of licensure by endorsement.

(b) A licensee who requests licensure by endorsement must have a certification of license status sent directly to the commission from the other licensing authority.

(c) For purposes of licensure by endorsement, a valid and active license is a real estate license that is issued by another state and is equivalent to a license issued by this state. For the license to be considered active, the applicant for a license in this state must have met standards of activity and license status in the other state that are equivalent to the standards in this state for active licensure as provided in 12 AAC 64.080, 12 AAC 64.110, and AS 08.88.171. The applicant must have worked as a real estate licensee as a principal occupation. Within the six months immediately preceding application under AS 08.88, an applicant applying for a

(1) broker license or associate broker license must submit an affidavit that states that the applicant has, within those six months

(A) owned a real estate business;

(B) been employed as a broker by a corporation or partnership; or

(C) been an actively licensed broker or associate broker under another broker; the commission may

(i) determine that the applicant must provide additional information regarding the applicant's active status by furnishing a report of listings and sales accomplished by the applicant during two or more years within the last three years of licensure immediately preceding application in order to verify that the applicant meets the requirements of this subparagraph; the report must be certified as correct by the broker with whom the applicant has been associated; if due to conditions outside of the control of the applicant, a broker is not reasonably available to certify the report, an applicant may request and receive approval from the commission for an alternative manner to provide verification that the report is correct;

(ii) require additional investigation and inquiry relating to the applicant's qualifications under this subparagraph;

(2) salesperson license must submit an affidavit that states that the applicant has, within those six months, been employed by or affiliated with a broker as a salesperson; the commission may require the applicant to submit listings, sales records, or proof of other licensed activities to verify that the applicant meets the requirements of this subsection.

Authority: AS 08.88.071 AS 08.88.081 AS 08.88.263

12 AAC 64.062. CURRENT ADDRESS. Renumbered as 12 AAC 64.920.

12 AAC 64.063. MINIMUM EDUCATION REQUIREMENTS FOR LICENSURE. (a) All real estate education courses used to qualify for initial licensure must

(1) meet the requirements of 12 AAC 64.400 - 12 AAC 64.470 and this section; and

(2) have been completed within the 18 months immediately preceding the date of application, except that the real estate education courses used to qualify for initial licensure by endorsement must have been completed within the 24 months immediately preceding the date of application.

(b) To meet the real estate education requirements for licensure under AS 08.88.171(a) or (b), an applicant for a broker or associate broker license must document completion of the following contact hours of education in the following topics:

- (1) broker supervision requirements and record keeping - four contact hours;
- (2) trust accounting procedures - three contact hours;
- (3) organizing and managing a real estate office - three contact hours;
- (4) property management – two contact hours; and
- (5) broker-level education to understand the applicability of the following areas covered previously in the applicant’s initial education course to receive a real estate salesperson license:

- (A) licensee relationships, disclosure, and conflict of interest – three contact hours;
- (B) forms of ownership - two contact hours;
- (C) property law, public and private rights and limitations - two contact hours;
- (D) forms of conveyances and recording of documents - two contact hours;
- (E) contracts and transaction documents - two contact hours;
- (F) financing instruments and accounting principles - two contact hours;
- (G) Alaska real estate license law and Alaska landlord tenant law - three contact hours; and
- (H) federal fair housing and Real Estate Settlement Procedures Act (RESPA) laws - two contact hours.

(c) To meet the real estate education requirements for licensure under AS 08.88.171(c), an applicant for an initial real estate license shall document completion of the following topics and hours:

- (1) licensee relationships, disclosure, and conflict of interest - six contact hours;
- (2) forms of ownership - four contact hours;
- (3) property law, public and private rights and limitations - four contact hours;
- (4) forms of conveyances and recording of documents - four contact hours;
- (5) contracts and transaction documents - eight contact hours;
- (6) financing instruments and accounting principles - six contact hours;
- (7) Alaska real estate license law and Alaska landlord tenant law - six contact hours; and
- (8) federal fair housing and RESPA laws - two contact hours.

(d) To document the real estate education received, an applicant shall list on the application form the following information:

- (1) course title and commission course approval number, if applicable;
- (2) course sponsor;
- (3) number of contact hours; and
- (4) instructor of the course.

(e) An associate broker who has met the education requirements in (b) of this section does not need to repeat those requirements when upgrading to a broker license.

(f) A licensee is responsible for maintaining adequate and detailed records, including course certificates or transcripts, showing completion of education courses claimed, and shall make the records available to the commission upon request. Records must be retained for three years after the date a course was taken.

(g) For the purposes of this section and AS 08.88.091,

- (1) one contact hour equals a minimum of 50 minutes of instruction;
- (2) one academic semester credit hour equals 15 contact hours;
- (3) one academic quarter credit hour equals 10 contact hours.

Authority: AS 08.88.081 AS 08.88.091 AS 08.88.171

12 AAC 64.064. EDUCATION REQUIREMENTS AFTER INITIAL LICENSE. (a) In addition to the education requirements of 12 AAC 64.063 for an initial license and the continuing education requirements under 12 AAC 64.500 for license renewal, within one year after the date that the commission issues an initial license to a real estate licensee under this chapter, the licensee shall complete 30 hours of education that meets the applicable requirements of (b) or (c) of this section.

(b) After initial licensure as a salesperson, to meet the real estate education requirements of AS 08.88.095 and this section, the salesperson must complete the following course modules:

- (1) contracts and agreements: 10 contact hours covering
 - (A) purchase and sale agreements;
 - (B) addendum and amendments;
 - (C) counteroffers;
 - (D) contingencies;
 - (E) multiple offers;
 - (F) back up offers;
 - (G) differences between residential, land, and commercial transactions;
 - (H) personal service agreements;

- (I) negotiation and counseling; and
 - (J) lease purchase options;
 - (2) property management: four contact hours covering
 - (A) landlord tenant act;
 - (B) rental, lease, and occupancy of residential and commercial properties;
 - (C) associations;
 - (D) cooperatives;
 - (E) personal service agreements, management agreements, and lease listing agreements;
 - (F) security deposit statements;
 - (G) trust accounting and statute requirements; and
 - (H) notices and evictions;
 - (3) licensee law: six contact hours covering
 - (A) consumer pamphlet and waiver;
 - (B) ethics;
 - (C) recovery fund;
 - (D) confidentiality;
 - (E) conflict of interest; and
 - (F) statutes and regulations;
 - (4) paperwork and risk management: six contact hours covering
 - (A) mandatory and area specific property disclosure;
 - (B) environmental issues;
 - (C) zoning;
 - (D) covenants, conditions, and restrictions;
 - (E) title reports;
 - (F) resale certificates and public offering statements;
 - (G) home inspections and repair negotiations;
 - (H) surveys and easements;
 - (I) record keeping and documentation; and
 - (J) client and personal safety;
 - (5) evaluation and pricing: two contact hours covering
 - (A) competitive market analysis and appraisals;
 - (B) showing property;
 - (C) marketing to buyers and sellers; and
 - (D) property research;
 - (6) financing to closing: two contact hours covering
 - (A) the importance and differences of pre-approval letters and pre-qualifications, good faith estimates, and loan types, including Internet lending programs;
 - (B) review of settlement statements, security deposit transfers, rent prorations, seller net proceeds, and variations in loan costs;
 - (C) the closing process;
 - (D) good funds law; and
 - (E) predatory lending practices.
- (c) Except for a person issued an initial license as a real estate broker as described in AS 08.88.095(f) after initial licensure as a broker or associate broker, to meet the real estate education requirements of AS 08.88.095 and this section, the broker or associate broker must complete the following course modules:
- (1) recovery fund, trust account, and general accounts: seven contact hours covering
 - (A) recovery fund issues, including case studies on misrepresentation, conversion of trust fund, fraud, and deceit;
 - (B) trust accounts, different types of accounts, and how to set up and manage trust accounts;
 - (C) general accounts; and
 - (D) the importance of good record keeping;
 - (2) practical office management: eight contact hours covering
 - (A) setting up an office, including types of ownership, office procedures, checklists, general office policy, file review and management, compliance with state law requirements, and licensee relationships manual; and
 - (B) the importance of regulation and statute changes, fair housing and diversity issues, employment contracts with licensees, how to handle complaints, risk management and legal liability, and errors and omissions insurance;
 - (3) practical supervision: eight contact hours covering
 - (A) broker responsibilities;
 - (B) state requirements;
 - (C) office policy and procedures manual (state required and practical application);

- (D) communication;
- (E) transaction management;
- (F) final file review;
- (G) licensee safety;
- (H) checklists;
- (I) disclosures, including property, licensee relationship, consumer pamphlet and waiver, and buying or selling the licensee's own property; and
- (J) strategic alliance and business relationships in compliance with the law;
- (4) risk management: seven contact hours covering
 - (A) basic office procedures for risk management; and
 - (B) supervision failure, complaints, licensee relationships, confidentiality issues, and conflict of interest.
- (d) Within 30 days after the end of the one-year period specified in (a) of this section, a real estate licensee must submit
 - (1) certification on a form provided by the department, that the licensee has completed the applicable educational requirements of (b) or (c) of this section; and
 - (2) the post-license education certification and new license document fee established in 12 AAC 02.360.
- (e) A licensee who uses a course to meet the education requirements of this section may not use the same course hours to meet the continuing education requirements of 12 AAC 64.500. However, an applicant for renewal of a real estate license who is not subject to the requirements of this section may receive continuing education credit for completion of a course listed under this section.
- (f) For the purposes of AS 08.88.095 and this section,
 - (1) one contact hour equals a minimum of 50 minutes of instruction;
 - (2) one academic semester credit hour equals 15 contact hours;
 - (3) one academic quarter credit hour equals 10 contact hours.
- (g) A licensed salesperson issued an initial license as a broker or associate broker who fails to meet the educational requirements under (a) of this section, shall upon application and payment of the required fees, be reissued a salesperson's license provided that the licensee continues to be eligible for a salesperson's license.

Authority: AS 08.88.071 AS 08.88.091 AS 08.88.095
 AS 08.88.081

12 AAC 64.065. LICENSE REQUIRED FOR EMPLOYEES, DIRECTORS, AGENTS, AND OFFICERS.

- (a) Repealed 2/11/95.
- (b) A broker acting on behalf of a business, corporation, or organization shall be authorized to act by a resolution of the policy making body of that business, corporation, or organization. The resolution must be a permanent part of the records of that business, corporation, or organization and must show that the broker has exclusive authority over and responsibility for
 - (1) employing and terminating the employment of licensees;
 - (2) maintaining and examining all trust accounts for real estate transactions;
 - (3) authorizing payment of all commissions, salaries, finder's fees, or other compensation for activities for which a license is required and indicating on the payment record the specific reason for the payment;
 - (4) maintaining the records of all real estate transactions and assuring their accessibility to the department; and
 - (5) directing and supervising all real estate business activities for which a license is required and all activities necessary for full compliance with AS 08.88 and this chapter.
- (c) When a broker who is authorized to act on behalf of a business, corporation, or organization loses an active broker license for any reason, the business, corporation, or organization shall stop engaging in real estate transactions until the broker's license is renewed or reinstated, or until a new broker is employed.

Authority: AS 08.88.071 AS 08.88.161 AS 08.88.900
 AS 08.88.081

12 AAC 64.068. LEGAL ENTITIES. A real estate broker licensed under this chapter may do business as a legal entity when organized under the law of this state.

Authority: AS 08.88.071 AS 08.88.081 AS 08.88.161

12 AAC 64.070. LICENSE BIENNIUM. Repealed 7/1/89.

12 AAC 64.071. LICENSE RENEWAL. (a) Except as provided in (g) of this section, all licenses lapse January 31 of every even-numbered year unless renewed under this section and in accordance with AS 08.88.091, 08.88.171,

and 08.88.251. A renewal reminder document will be provided to each licensee with a current expiration date at least 60 days before the renewal date.

(b) An applicant for renewal of an active license shall submit to the department, by the date the license lapses,

(1) a completed renewal application on the form provided by the department;

(2) the license renewal fee established in 12 AAC 02.360;

(3) the recovery fund fee established in 12 AAC 64.073; and

(4) certification that the applicant has satisfied the continuing education requirements of AS 08.88.091(d) and 12 AAC 64.500.

(c) An applicant for renewal of an inactive license shall submit to the department, on or before the date the license lapses,

(1) a completed renewal application on the form provided by the department;

(2) the license renewal fee established in 12 AAC 02.360; and

(3) certification that the applicant has satisfied the continuing education requirements of AS 08.88.091(d) and 12 AAC 64.500.

(d) A license lapses if an application for renewal either has not been received by the department or is not complete by the date the license is to lapse.

(e) A lapsed license will be reinstated only as an active license according to the provisions of this section.

(f) A licensee may be inactive for an entire licensing period and reactivate without paying the recovery fund fee established in 12 AAC 64.073 if the licensee's inactive license dates coincide exactly with the dates of a biennial licensing period.

(g) Except for an initially-issued license that has lapsed under (a) of this section, an initially-issued license lapses 395 days after issuance unless the real estate licensee meets the requirements of 12 AAC 64.064.

Authority: AS 08.88.081 AS 08.88.095 AS 08.88.251
AS 08.88.091 AS 08.88.171

12 AAC 64.073. RECOVERY FUND FEE. In addition to the required license or renewal fee, an applicant for licensure or for renewal of a license issued under AS 08.88 shall submit with the application a fee for the recovery fund established under AS 08.88.455 in the amount of \$30.

Authority: AS 08.88.081 AS 08.88.455

12 AAC 64.075. EMPLOYMENT AND TRANSFER. (a) An individual may not be involved in activities requiring licensure under AS 08.88 until the individual's employing broker signs and delivers to the commission a notice of employment of the individual and the individual's license certificate is delivered to the broker by the licensee or the commission.

(b) When a licensee requests a license transfer from one broker to another, the terminating broker shall sign and date the front of the license certificate, provide a copy to the licensee, and submit the original to the commission within five days from the date of the licensee's request for a license transfer. The licensee shall provide the new employing broker with a copy of the signed license certificate and provide the commission with a completed application for license transfer and the fees established in 12 AAC 02.360. The commission will mail an amended license certificate directly to the new employing broker.

(c) After applying for a license transfer, the licensee may work in the office of the new employing broker for no more than 30 days while waiting for an amended license certificate. The new employing broker shall keep a copy of the licensee's signed application for license transfer and a copy of the signed license certificate described in (b) of this section until the amended license certificate is received.

(d) The commission's designee shall review and approve a license transfer if the transfer

(1) allows a licensee to resume licensed practice under AS 08.88.171(a)(1), (a)(2), (b)(1), or (b)(2), or after being re-employed as a licensed real estate salesperson for purposes of AS 08.88.171(c); and

(2) does not require further review by the commission.

(e) Failure of the licensee to notify the commission of a transfer or status change within 15 days after written notice by the commission to the licensee of the commission's receipt of notice from the licensee's terminating broker interrupts the licensee's period of active and continuous experience.

Authority: AS 08.88.081 AS 08.88.171 AS 08.88.251

12 AAC 64.077. BROKER AUTHORIZATION OF LICENSE APPLICATIONS. (a) Except as provided in (c) of this section, only the registered broker of an office may employ or terminate a licensed associate broker or salesperson.

(b) An applicant applying to work in a branch office shall submit to the commission an application signed by the registered broker and the associate broker in charge of the branch office.

(c) When the registered broker of an office notifies the commission office in advance of an absence from the office, the broker or an associate broker designated by the registered broker to supervise transactions or licensees during the broker of record's absence may sign for the broker of record on a license application.

Authority: AS 08.88.081 AS 08.88.291 AS 08.88.311
AS 08.88.171

12 AAC 64.078. TEMPORARY ABSENCE OF BROKER OF RECORD. (a) When a broker of record is temporarily absent from an office, the broker of record may supervise transactions, trust accounts, or licensees by computer, modem, facsimile, or telephone communications.

(b) When a broker of record is temporarily absent from an office and is unable to supervise transactions, trust accounts, or licensees

(1) in offices where an associate broker is available, the broker of record may designate an associate broker to supervise transactions, trust accounts, or licensees including creating and signing transaction documents during the broker of record's absence;

(2) in offices where an associate broker is not available, the broker of record may enter into a written contract with another broker to supervise transactions, trust accounts, or licensees including creating and signing transaction documents during the broker of record's absence; the broker temporarily substituting for the broker of record shall remain employed at that person's registered office.

(c) Under (b)(1) or (2) of this section, the broker of record shall notify the commission on a form approved by the commission, of the name of the associate broker or broker designated to supervise transactions, trust accounts, or licensees during the broker of record's absence. Both the broker of record and the designated associate broker or broker must sign this form.

Authority: AS 08.88.081 AS 08.88.331 AS 08.88.341

12 AAC 64.080. SUSPENSION AND REVOCATION OF ACTIVE LICENSES. (a) An active license is a license which has been issued by the commission for the purposes expressed in AS 08.88.161 and which has not lapsed nor been placed on inactive status, revoked, or suspended.

(b) Upon the suspension or revocation of a real estate broker's license, the license of each associate broker and real estate salesperson employed by that broker is automatically and simultaneously suspended. The commission will notify all licensees of the suspension or revocation of their employing broker's license after the order is served on the employing broker.

(c) Any lapse, suspension, revocation, or inactivation of a licensee's license which results from or occurs in connection with a violation of or noncompliance with any provision of the licensing statutes and regulations constitutes an interruption in the licensee's active and continuous experience.

Authority: AS 08.88.071 AS 08.88.081

12 AAC 64.085. SUSPENDED OR REVOKED OUT-OF-STATE LICENSE. If an Alaskan licensee also holds an out-of-state broker's, associate broker's, or salesperson's license or certificate and it is revoked, suspended, or in any way restricted, the licensee shall inform the commission within five calendar days of receiving notification of this action.

Authority: AS 08.88.071 AS 08.88.081

12 AAC 64.090. SURRENDER OF SUSPENDED OR REVOKED LICENSES. (a) A suspended or revoked license and the pocket part of the license must be immediately surrendered by the employing broker to the commission. If the license and pocket part are not in the possession of a broker, they must be immediately surrendered to the commission by the licensee. A license and pocket part are considered surrendered when they have been placed in the United States mail, registered with postage prepaid, and properly addressed to the commission, or when they have been otherwise delivered to the commission.

(b) When a real estate broker surrenders the broker's license, the licenses of all licensees employed by the broker who are not subject to an order of suspension or revocation must be returned to the licensees; the broker shall execute and send to the commission a notice of termination for each of the licensees employed by the broker. Within 15 days of receipt of the returned license, licensees whose licenses are returned shall submit to the commission a properly executed notice of employment or a request for inactivation. Failure to follow the requirements of this section will result in automatic suspension of the employee's license and interruption in the licensee's active status beginning on the date of the broker's suspension or revocation and continuing until a properly executed employment notice or request for inactive status is received by the commission.

(c) When an associate real estate broker or real estate salesperson is discharged or released from a broker's employ for violating the provisions of AS 08.88 or this chapter, the broker shall notify the commission, in writing, of the release or discharge circumstances and reasons for the broker's action. Failure to immediately notify the commission constitutes ratification of the acts of the associate broker or salesperson by the broker.

(d) No refund of the license fee will be made by the commission when a license is surrendered.

(e) A licensee whose license has been suspended or revoked may not engage in any of the activities authorized by AS 08.88 until the license has been reissued.

Authority: AS 08.88.081 AS 08.88.161

12 AAC 64.095. REAL ESTATE ACTIVITIES OF UNLICENSED PERSONS. (a) A real estate licensee may not employ an unlicensed person to perform activities for which a real estate license is required under AS 08.88 and this chapter. A real estate licensee may not employ an unlicensed person to perform any of the activities in AS 08.88.161, including one or more of the following:

- (1) hosting an open house, kiosk, or home show booth;
- (2) showing a property;
- (3) explaining or interpreting a
 - (A) contract of purchase and sale; or
 - (B) listing contract or property management contract, or any other form of service agreement.

(b) A real estate licensee may employ an unlicensed person to perform administrative, bookkeeping, clerical, and maintenance tasks related to real estate for which a real estate license is not required under AS 08.88 and this chapter, including

- (1) to answer the phone, take messages, and forward calls to the licensee;
- (2) to schedule appointments for the licensee; activities allowed under this paragraph do not include telephonic solicitation, or soliciting business on behalf of the licensee;
- (3) to obtain public information from a courthouse, municipality, or other source of public information;
- (4) to place or remove signs on property;
- (5) to input data for listings and changes to a multiple listing service as approved by the licensee;
- (6) to have keys made for property listed by the licensee;
- (7) to unlock a property so that it may be viewed or shown by a licensee, remain during the viewing or showing, and relock the property;
- (8) to draft advertising copy, promotional materials, and correspondence for approval by the licensee;
- (9) to place advertising;
- (10) to act as a courier;
- (11) to fill in contract forms with business and factual information as directed by the licensee;
- (12) to witness signatures;
- (13) to assemble file documents;
- (14) to follow up on a transaction after a contract has been signed by arranging access to property for an appraiser, contractor, inspector, or other service provider as needed;
- (15) to record and deposit trust funds, including transaction deposits, security deposits, and rents;
- (16) to compute commission checks;
- (17) to monitor licenses and personnel files;
- (18) to perform office filing;
- (19) to order items needed for routine repair;
- (20) to perform or supervise maintenance, repair, or building trades work, and answer questions about that work; and
- (21) to provide security services.

Authority: AS 08.88.071 AS 08.88.161 AS 08.88.900
AS 08.88.081

12 AAC 64.099. APPLICATION OR REISSUANCE APPLICATION FOR LICENSURE AFTER REVOCATION OR SUSPENSION. (a) An applicant whose real estate license has been revoked or suspended in any state, province, or territory shall inform the commission of the circumstances of the revocation or suspension when applying for licensure. Failure to inform the commission of any prior revocation or suspension is grounds for denial or revocation of the license.

(b) A license will not be issued to a person who has had a license suspended or revoked until the commission has reviewed the application at a commission meeting. The commission will, in its discretion, conduct an investigation into the circumstances of the suspension or revocation and will determine whether or not an applicant whose license has been suspended or revoked may be licensed in Alaska.

Authority: AS 08.88.071 AS 08.88.081 AS 08.88.211

12 AAC 64.100. REISSUANCE OF SUSPENDED LICENSE. A license which has been suspended and surrendered, together with its pocket part, will be reissued, without charge, for the unexpired balance of the license period when the conditions imposed in the suspension order have been met and the suspended licensee otherwise qualifies for licensure.

Authority: AS 08.88.071(3) AS 08.88.171 AS 44.33.020(1)
AS 08.88.081 AS 08.88.181(a)

**ARTICLE 3.
PLACE OF BUSINESS.**

Section

- 110. Requirements for establishing and maintaining an office**
- 111. Closing an office**
- 112. Registration of business name**
- 115. (Repealed)**
- 117. Broker's written policy**
- 118. Consumer Disclosure**
- 119. Waiver of right to be represented**
- 120. Branch offices**
- 125. Supervision**
- 126. (Repealed)**
- 127. Office signs**
- 128. Home offices**

12 AAC 64.110. REQUIREMENTS FOR ESTABLISHING AND MAINTAINING AN OFFICE. (a) A real estate broker holding an active license shall establish and maintain a principal office in this state. The office in which the broker works and maintains the broker's license is the principal office of the broker.

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

(c) Repealed 12/6/81.

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

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

- (1) broker's name and license number;
- (2) business name under which the broker will operate and advertise as required by 12 AAC 64.112;
- (3) mailing address of the business and all branch offices;
- (4) physical location of the office and all branch offices;
- (5) bank account numbers of all real estate trust accounts maintained by the broker;
- (6) name and license number of all licensees employed by the broker at that office;
- (7) name of the associate broker in charge of each branch office;
- (8) telephone and facsimile number and, if available, an e-mail address of the office;
- (9) type of business organization, such as a sole proprietorship, corporation, partnership, limited partnership, or limited liability company;
- (10) all types of business activity practiced, such as sales, property management, community association management, and commercial sales.

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

(g) A real estate broker holding an active license shall

- (1) maintain within this state one or more trust accounts and records of all real estate transactions conducted in this state as required by AS 08.88.351 and 12 AAC 64.220; and
- (2) provide for acceptance of legal service at the business address registered with the commission.

Authority: AS 08.88.081 AS 08.88.311 AS 08.88.351
AS 08.88.291 AS 08.88.321

12 AAC 64.111. CLOSING AN OFFICE. (a) Before closing an office or branch office, a broker shall submit to the commission

- (1) a completed form for closing an office as prescribed by the commission;
- (2) a bank statement showing a zero balance in the trust accounts or appropriate trust funds documentation;
- (3) the name, address, and phone number of the custodian of records and the location where the transaction record of brokerage for the last three years may be accessed; and
- (4) a completed form for license transfer or change of status as required under AS 08.88.301 and 12 AAC 64.075.

(b) A broker shall maintain a trust account until the broker has distributed all the money due to be received to the proper person or entity or until the transaction, for which money is due to be received, is transferred to another brokerage.

Authority: AS 08.88.081 AS 08.88.301

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

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

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

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

Authority: AS 08.88.081 AS 08.88.111 AS 08.88.311

12 AAC 64.115. MINIMUM REQUIREMENTS FOR MAINTAINING AN OFFICE. Repealed 4/24/09.

12 AAC 64.117. BROKER'S WRITTEN POLICY. A broker shall adopt a written policy manual that addresses guidelines and procedures

- (1) to determine the designated licensee;
- (2) that establish a policy for when the broker becomes a designated licensee;
- (3) for neutral licensees;
- (4) for a single real estate licensee representing one party in a transaction while providing specific assistance to an unrepresented party in the same transaction; and
- (5) for maintaining confidentiality within the office for all transactions.

Authority: AS 08.88.071 AS 08.88.171 AS 08.88.685
AS 08.88.081 AS 08.88.600

12 AAC 64.118. CONSUMER DISCLOSURE. Before a real estate licensee provides specific assistance to a person, or when entering into a contract with the person to provide specific assistance, the real estate licensee shall provide the person with a copy of the commission's *Alaska Real Estate Commission Consumer Disclosure*, dated February 2015, and adopted by reference.

Authority: AS 08.88.071 AS 08.88.171 AS 08.88.685
AS 08.88.081

Editor's note: Copies of the *Alaska Real Estate Commission Consumer Disclosure*, adopted by reference in 12 AAC 64.118, may be obtained from the Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, Real Estate Commission, 550 W. 7th Avenue, Suite 1500, Anchorage, AK 99501-3567; phone: (907) 269-8162.

12 AAC 64.119. WAIVER OF RIGHT TO BE REPRESENTED. A written consent that a neutral licensee obtains under AS 08.88.610 must be provided on the commission's form entitled *Alaska Real Estate Commission Waiver of Right to Be Represented*, dated February 2015, and adopted by reference.

Authority: AS 08.88.071 AS 08.88.171 AS 08.88.610
AS 08.88.081

Editor's note: Copies of the *Alaska Real Estate Commission Waiver of Right to Be Represented*, adopted by reference in 12 AAC 64.119, may be obtained from the Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, Real Estate Commission, 550 W. 7th Avenue, Suite 1500, Anchorage, AK 99501-3567; phone: (907) 269-8162.

12 AAC 64.120. BRANCH OFFICES. (a) Before establishing a branch office in addition to the principal office, a broker must register the branch office with the commission and provide the information required in 12 AAC 64.110(e) for the branch office.

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

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

Authority: AS 08.88.311 AS 44.33.020(1)

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

(1) employing broker;
(2) associate broker designated by the broker to manage a branch office; or
(3) broker or associate broker designated by the broker of record to supervise transactions or licensees during the broker of record's absence.

(b) Adequate supervision of a licensee by a broker or an associate broker includes

(1) before recording of the transaction, providing for the review of files for completeness and accuracy and ensuring all required real estate related documents are on file, including all applicable local, state, and federal forms; and

(2) communicating office policies to affiliated licensees.

(c) Repealed 7/16/94.

(d) Repealed 7/16/94.

(e) Computer, modem, electronic mail, telephone, or facsimile communications may be used to supervise licensees and to review and approve documents of licensees. All transaction records must be maintained in the real estate office where the supervised licensee is registered with the commission.

Authority: AS 08.88.071 AS 08.88.171 AS 08.88.685
AS 08.88.081 AS 08.88.331

12 AAC 64.126. SUPERVISION OF LICENSEES IN REMOTE AREAS. *Repealed 3/27/2008.*

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

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

Authority: AS 08.88.081 AS 08.88.381

12 AAC 64.128. HOME OFFICES. (a) A broker in charge of a principal office who permits an associate broker or a salesperson under the supervision of the broker to work out of a home office that is not a principal office or a branch office, must comply with supervision requirements of 12 AAC 64.125.

(b) An associate broker in charge of a branch office who permits another associate broker or a salesperson under the supervision of the associate broker to work out of a home office that is not a principal office or a branch office, must comply with supervision requirements of 12 AAC 64.125.

(c) An associate broker or salesperson working out of a home office that is not a principal office or a branch office may not

(1) give the appearance or impression that the home office is a principal office or a branch office;

(2) display a sign at the home office showing the name of the real estate business; or

(3) use the address of the home office in any form of advertising, business letterhead, or business cards for the real estate business; the address of the principal office or branch office from which the associate broker or salesperson conducts real estate business must be used in the advertising, business letterhead, or business cards for the real estate business.

Authority: AS 08.88.291 AS 08.88.311

ARTICLE 4. PROHIBITED CONDUCT.

Section

130. Grounds for revocation or suspension

135. Inspections or audits of records and accounts

140. Employment of unlicensed personnel

150. (Repealed)

160. False or misleading statements

170. (Repealed)

175. Investigation of complaints or violations

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

(1) acting or failing to act as specified in AS 08.88.071(a)(3);

- (2) representing more than one party in a real estate transaction;
- (3) failing to account for, remit, or surrender any money, documents, or other property of value coming into the possession or control of the licensee in the course of a real estate transaction or unreasonably delaying the accounting for or disbursal of money, documents, or other property held by or which is the responsibility of the broker for parties in a real estate transaction;
- (4) failing to disclose information as required in 12 AAC 64.940;
 - (A) the listing contract;
 - (B) repealed 1/9/2014;
 - (C) the settlement statement;
- (5) being found guilty of forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or other similar offenses committed while licensed under this chapter; for the purpose of this paragraph, "being found guilty" means a guilty verdict by a judge or jury or pleading nolo contendere or guilty to any of these acts or having a hearing officer find that the licensee participated in these at a hearing held in accordance with AS 44.62 (Administrative Procedure Act);
- (6) advertising a property for sale, lease, or rent without first obtaining the written authority of the owner or the owner's authorized agent to sell, lease, or rent the property;
- (7) paying referral fees, sharing commissions, or otherwise compensating a person who is prohibited from receiving compensation under AS 08.88.401(b);
- (8) advertising to buy, sell, rent, lease or exchange any real estate without including in the advertisement the broker's business name registered with the department; this paragraph applies to all real estate advertised to the public including that owned by the licensee;
- (9) failing to disclose to all parties in a real estate transaction the fact that the licensee is licensed or failing to disclose the name of the broker or company under whom the licensee is licensed;
- (10) employing or using a third-party purchaser, purchasing through corporations, partnerships, or other entities or working through friends, relatives, or business associates in a way that profits the licensee with the effect, in whole or in part, of concealing the profit and the name of the interested licensee;
- (11) acting in violation of the provisions of AS 08.88;
- (12) accepting as earnest money anything other than cash unless the offered non-cash substitute is communicated to the owner before accepting the offer to purchase, and the acceptance of the non-cash substitute is identified as a non-cash substitute on the earnest money receipt;
- (13) failing to submit to the seller or the seller's agent all written bona fide offers received before the seller accepts another offer in writing and the broker has knowledge of the acceptance;
- (14) failing to disclose to a prospective buyer a known material defect regarding the condition of, or a known legal defect pertaining to, the offered real estate or interest in real estate;
- (15) engaging in or committing any act which is grounds for denying a license;
- (16) for a broker, permitting another person to use the broker's license, whether for compensation or not, to enable someone other than the broker to establish or carry on a business for which a real estate license is required;
- (17) for a broker, allowing a salesperson to operate a real estate business without retaining control as the employing broker for the business;
- (18) establishing or carrying on a real estate business without a broker's supervision as required by 12 AAC 64.125;
- (19) being found guilty of violating local, state, or federal fair housing laws.

Authority: AS 08.88.071 AS 08.88.081 AS 08.88.401

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

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

Authority: AS 08.88.081 AS 08.88.351 AS 44.33.020(1)

12 AAC 64.140. EMPLOYMENT OF UNLICENSED PERSONNEL. (a) Grounds for revocation or suspension of licenses for employment of unlicensed personnel are as follows:

(1) retaining the services of any person as a real estate salesperson or an associate real estate broker who is not licensed under AS 08.88;

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

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

- (1) discussing a listing or property management agreement with an owner or with licensees;
- (2) showing any property available for sale or rental;
- (3) negotiating or discussing the terms of a sale or rental;
- (4) having a prospective buyer or lessee sign an offer to purchase or lease;
- (5) presenting an offer to a seller;
- (6) making prospecting calls or visits; and
- (7) reading prepared information in response to inquiries about properties.

Authority: AS 08.88.071 AS 08.88.161 AS 08.88.401
AS 08.88.081

12 AAC 64.150. FAILURE TO MAINTAIN A PLACE OF BUSINESS. Repealed 8/22/79.

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

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

Authority: AS 08.88.081 AS 08.88.401

12 AAC 64.170. INVESTIGATION BY COMMISSION. Repealed 7/16/94.

12 AAC 64.175. INVESTIGATION OF COMPLAINTS OR VIOLATIONS. (a) Licensees shall cooperate with the department and the commission during the investigation of complaints or alleged violations of licensing statutes or regulations. When a licensee is requested to respond to a complaint, the licensee shall do so within the time period specified; however, the specified response period must allow at least 10 days from the date of the receipt of the request.

(b) Repealed 7/1/89.

Authority: AS 08.88.037 AS 08.88.071 AS 08.88.081

**ARTICLE 5.
TRUST ACCOUNTS.**

Section

- 180. Establishment of trust account**
- 190. Trust funds exempt from attachment, other process**
- 200. Deposit to trust account**
- 210. Trust account interest**
- 220. Record of trust account transactions**
- 230. Other trust funds**
- 240. Broker's commission**
- 250. Prohibited trust account activity**
- 260. Violation**
- 270. (Repealed)**
- 271. Non-cash deposit**

12 AAC 64.180. ESTABLISHMENT OF TRUST ACCOUNT (a) Every real estate broker shall establish one or more trust accounts in a federally insured bank authorized to do business in this state, and the name of the account so established must include the words "trust account" or "trustee account."

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

(c) The broker who establishes the account shall be trustee of the account and responsible for all signatories to

that account.

(d) If maintenance expenses are charged against a trust account, the broker shall deposit a sum of money not exceeding \$100 to the trust account for the purpose of paying the maintenance expenses of the account and shall make additional deposits when necessary, but not to exceed \$100 on deposit.

(e) All trust accounts must be demand accounts only.

Authority: AS 08.88.081 AS 08.88.351

12 AAC 64.190. TRUST FUNDS EXEMPT FROM ATTACHMENT, OTHER PROCESS. No provision may be made for a bank to withhold issue of funds from a trust account except upon a court order.

Authority: AS 08.88.081 AS 08.88.351

12 AAC 64.200. DEPOSIT TO TRUST ACCOUNT. All money deposited with the broker or person employed by or affiliated with the broker as trustee in real estate transactions must be deposited in or mailed to the appropriate trust account within five days following receipt unless factors such as geographical location, weather conditions, or transportation facilities make such depositing impossible or unreasonable.

Authority: AS 08.88.081 AS 08.88.351

12 AAC 64.210. TRUST ACCOUNT INTEREST. If a trust account bears interest, that fact and the rate of interest must be disclosed to the trustor. To avoid commingling funds, interest earned does not belong to the broker.

Authority: AS 08.88.081 AS 08.88.351

12 AAC 64.220. RECORD OF TRUST ACCOUNT TRANSACTIONS. (a) A broker shall assign a transaction code and establish a transaction ledger for each written offer to purchase real estate. This ledger must include

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

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

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

(c) A broker shall establish a separate ledger to account for any funds deposited to a trust account to cover service charges in accordance with 12 AAC 64.180(d).

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

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

- (1) transaction ledgers;
- (2) records of deposit showing the date, transaction code, amount of the deposit, and trustor's name
- (3) all disbursement records, including voided checks written on the trust account, showing the date, payee,

and transaction code;

- (4) all cancelled checks, bank statements, and monthly reconciliations; and
- (5) all transaction contracts and supporting documents.
- (f) Trust accounts must be reconciled monthly by completing a
 - (1) reconciliation of the bank statement with the check register;
 - (2) reconciliation of the monthly deposits and expenditures with the independent transaction ledger for each transaction; and
 - (3) cross-check of the bank balance with the sum of the transaction ledgers.

Authority: AS 08.88.081 AS 08.88.351

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

(b) Repealed 7/16/94.

Authority: AS 08.88.081 AS 08.88.351

12 AAC 64.240. BROKER'S COMMISSION. (a) Each withdrawal of a broker's commission from a trust account must be separate and identified as to the specific transaction.

(b) A broker shall withdraw his or her commission from a trust account within 15 days after the date that the transaction has been closed or otherwise settled.

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

(d) A broker licensed under AS 08.88 may pay a commission to a person who does not hold a license under AS 08.88, but is licensed to perform real estate activities in another licensing jurisdiction, for assistance to the broker licensed under AS 08.88 in the performance of an act for which a license is required under AS 08.88. The broker licensed under AS 08.88 must obtain, and retain for a period of three years,

(1) a request from the person licensed to perform real estate activities in another licensing jurisdiction for payment of the commission; and

(2) a copy of an active, current real estate license for the person requesting the commission from the jurisdiction where the person is licensed to perform real estate transactions.

(e) Subject to AS 08.88.401(b), a real estate broker licensed under this chapter may pay a fee or commission directly to an associate broker or real estate salesperson licensed in this state or associate broker or real estate salesperson doing business as a legal entity, organized and validly existing under the laws of this state, provided the ownership of the legal entity is an associate broker or salesperson employed by the broker.

Authority: AS 08.88.071 AS 08.88.331 AS 08.88.401
AS 08.88.081 AS 08.88.351

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

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

Authority: AS 08.88.071 AS 08.88.081 AS 08.88.351

12 AAC 64.260. VIOLATION. Failure to comply with 12 AAC 64.180 - 12 AAC 64.271 or failure to turn over to the commission, upon the request of the commission, records that are required by this chapter is considered fraudulent and dishonest conduct within the meaning of AS 08.88.071(a)(3)(A)(iv).

Authority: AS 08.88.071 AS 08.88.081 AS 08.88.351

12 AAC 64.270. HOLDING TRUST PROPERTY. Repealed 7/16/94.

12 AAC 64.271. NON-CASH DEPOSIT. When a non-cash deposit is approved by the seller to bind an offer,

control over the item deposited must be surrendered to the broker, and the broker shall inform the principal parties of the measures taken to safeguard it.

Authority: AS 08.88.081

**ARTICLE 6.
RECOVERY FUND CLAIMS.**

Section

- 280. Scope**
- 285. Claims**
- 290. Notification of claim**
- 295. (Repealed)**
- 300. Current address of claimants**
- 305. (Repealed)**
- 310. Role of involved licensee**
- 315. Withdrawal of claim**
- 320. (Repealed)**
- 325. Findings and conclusions**
- 330. (Repealed)**

12 AAC 64.280. SCOPE. The provisions of 12 AAC 64.280 - 12 AAC 64.325 govern the procedures relating to claims for reimbursement from the real estate recovery fund under AS 08.88.450 - 08.88.495.

Authority: AS 08.88.081

12 AAC 64.285. CLAIMS. Claims for payment from the real estate recovery fund must

- (1) be submitted on a form provided by the commission;
- (2) be for a loss suffered in a real estate transaction by the claimant as a result of fraud, an intentional tort, deceit, the conversion of trust funds, or the conversion of community association accounts by an involved licensee;
- (3) include all the information required by AS 08.88.460(a) and by the claim form itself;
- (4) be accompanied by the documents required by AS 08.88.460(a)(3)(B) and (C); and
- (5) be executed under penalty of unsworn falsification.

Authority: AS 08.88.081 AS 08.88.460

12 AAC 64.290. NOTIFICATION OF CLAIM. (a) Upon receipt of a claim for reimbursement filed under AS 08.88.460, the commission will mail a copy of the claim, and any documentary material filed with the claim to all involved parties.

(b) Repealed 5/31/2012.

(c) The commission will mail all documents in (a) of this section by certified mail, return receipt requested.

Authority: AS 08.88.081 AS 08.88.460

12 AAC 64.295. DEADLINES. Repealed 7/3/94.

12 AAC 64.300. CURRENT ADDRESS OF CLAIMANTS. A claimant shall keep a current mailing address and telephone number on file with the commission until the claim is resolved. Failure to maintain a current mailing address and telephone number on file with the commission while a claim is pending may result in dismissal of the claim.

Authority: AS 08.88.081 AS 08.88.460

12 AAC 64.305. HEARINGS. Repealed 5/31/2012.

12 AAC 64.310. ROLE OF INVOLVED LICENSEE. (a) The commission will send a notice of a claim to an involved licensee under 12 AAC 64.290.

(b) The real estate broker supervising an involved licensee at the time the claim is filed will be notified by the commission that an involved licensee is a named party in a claim filed under AS 08.88.460.

Authority: AS 08.88.081 AS 08.88.460 AS 08.88.465

12 AAC 64.315. WITHDRAWAL OF CLAIM. (a) A claimant may withdraw a claim filed under

AS 08.88.460 at any time before the proposed decision is filed with the commission.

(b) Withdrawal of a claim by the claimant does not preclude disciplinary proceedings by the commission against an involved licensee under the provisions of AS 08.88.

Authority: AS 08.88.081 AS 08.88.460

12 AAC 64.320. MOTION FOR RECONSIDERATION. Repealed 5/31/2012.

12 AAC 64.325. FINDINGS AND CONCLUSIONS. (a) After consideration of a claim, the commission will make written findings and conclusions in accordance with the provisions of AS 08.88.465.

(b) The claimant may not receive payment of a claim unless the commission finds that

(1) the claimant filed a claim that complies with 12 AAC 64.285 within the time limit provided under AS 08.88.460;

(2) the court judgment, arbitration award, or settlement agreement with a licensee submitted by the claimant is no longer subject to appeal and establishes that the claimant suffered a loss in the manner described in AS 08.88.460(a); and

(3) the claimant used due diligence to collect the amount due under the court judgment, arbitration award, or settlement agreement and that the amount due is uncollectable using reasonable efforts.

(c) The commission will furnish a copy of its findings and conclusions to

(1) the claimant;

(2) the claimant's legal representative, if applicable;

(3) each licensee named in the claim;

(4) the licensee's legal representative, if applicable; and

(5) the real estate broker supervising an involved licensee at the time the commission makes its written findings and conclusions, if applicable.

(d) If interest is ordered to be paid on a claim of less than \$15,000, the interest will be calculated from the date of loss until the date of payment of the claim. Total payment from the fund may not exceed \$15,000 per transaction, whether principal or a combination of principal and interest.

(e) When the commission awards payment of a claim from the real estate recovery fund, the following information will be added to the license file of each licensee named in the findings and conclusions as responsible for the loss:

(1) a copy of the findings and conclusions and the order adopted by the commission; and

(2) proof of payment from the real estate recovery fund to the claimant.

(f) If, as a result of the commission's findings and conclusions, the commission suspends a licensee's license, the commission will require proof of reimbursement of the real estate recovery fund by the licensee or an agreement between the licensee and the commission on the terms and conditions for reimbursing the real estate recovery fund under AS 08.88.071(b) before reinstating the license. The proof of reimbursement or agreement for reimbursement will be added to the licensee's license file.

Authority: AS 08.88.071 AS 08.88.081

12 AAC 64.330. WAIVER OF PROVISIONS. Repealed 7/3/94.

**ARTICLE 7.
REAL ESTATE EDUCATION STANDARDS.**

Section

400. Purpose of course certification and instructor approval

405. (Expired)

410. Minimum course requirements

420. Application for course certification

430. Correspondence courses

440. Instructor approval

450. Temporary instructor approval

460. Withdrawal or denial of instructor approval

470. Withdrawal or denial of course certification

12 AAC 64.400. PURPOSE OF COURSE CERTIFICATION AND INSTRUCTOR APPROVAL. The commission certifies real estate education courses and approves course instructors for the purpose of

(1) establishing uniform high standards for real estate educational offerings;

(2) assuring that only those courses that cover current and relevant information are certified; and

(3) assuring that instructors meet minimum education and experience requirements.

12 AAC 64.405. TEMPORARY COURSE CERTIFICATION AND INSTRUCTOR APPROVAL.
(In effect 10/8/90 – 2/4/91, by em adop.,)

12 AAC 64.410. MINIMUM COURSE REQUIREMENTS. (a) Except as provided in (f) and (g) of this section, only real estate education courses certified by the commission, or the commission's designee, meet the requirements of AS 08.88.091 and 08.88.095. To be certified, a course must meet the following minimum requirements:

(1) the course must add to the practical knowledge required to perform the duties of a real estate practitioner in areas identified in 12 AAC 64.063, 12 AAC 64.064, and 12 AAC 64.500;

(2) the course content must be applicable to all areas of the state, but may also include consideration of unique local circumstances;

(3) repealed 6/28/97;

(4) the course must be taught by an instructor approved by the commission to teach that course topic;

(5) a guest instructor who is not approved may be used to present a specialized portion of a course if an approved instructor for the course topic is also present;

(6) students must be required to adhere to a strict attendance policy in order to receive credit for the course;

(7) students must complete a course and instructor evaluation on a form required by the commission; the commission will provide a master copy of the form to each course sponsor;

(8) a certificate of completion shall be given to each student who attends and participates in the course and completes the evaluation, showing the

(A) name of student;

(B) city where course was held;

(C) course title and course approval number;

(D) date the course was delivered;

(E) number of contact hours awarded;

(F) signature of the course instructor or sponsor; and

(G) name of the course instructor.

(b) A transcript from a college or university registrar may substitute for the certificate of completion required in (a)(8) of this section.

(c) Regardless of the number of courses taken in a single day, a student may not receive credit for more than

(1) 10 hours of instruction per day to meet the continuing education requirements of AS 08.88.091 and 12 AAC 64.500; or

(2) eight hours of instruction per day to meet the education requirements of AS 08.88.095 and 12 AAC 64.064.

(d) The commission will maintain a list, updated quarterly, of approved courses that are open to any licensee. The commission will make the list available at the division's office in Anchorage, in the commission newsletter, through a publicly accessible electronic medium, and by other appropriate methods.

(e) A course outline submitted to the commission in compliance with 12 AAC 64.420(a)(3)(D) is the property of the author or course sponsor.

(f) Courses developed by a national organization that issues professional designations in specific areas of licensed real estate practice, and that are required to earn or maintain a nationally recognized professional designation, will be recognized for credit if

(1) the course is taught by an instructor certified by the national organization to deliver the course; and

(2) the national organization provides

(A) a list of the designations offered and the courses required for each designation to the commission annually; and

(B) a certificate of successful course completion.

(g) Courses in the subject areas identified in 12 AAC 64.500 offered by an accredited college or university will be recognized for credit. To determine the number of credit hours to be granted, the licensee must

(1) submit a syllabus of the course; and

(2) arrange for and ensure the submission of an official transcript directly from the college or university where the course was offered.

(h) for a course recognized under (f) or (g) of this section,

(1) a course approval fee will not be charged; and

(2) credit will be recognized equal to the number of hours of actual class time, excluding examinations, up to a maximum of 12 hours per course.

12 AAC 64.420. APPLICATION FOR COURSE CERTIFICATION. (a) To apply for commission certification of a real estate course, a course sponsor shall submit

- (1) a completed application on a form provided by the department;
- (2) the fees required in 12 AAC 02.360;
- (3) the following information:
 - (A) title of course;
 - (B) the number of contact hours requested;
 - (C) the name of the sponsor and designated contact person;
 - (D) a detailed course outline that identifies the course content and objectives and includes text materials, sample handouts, and a sample examination, if any;
 - (E) a copy of the attendance policy and a description of the procedures used for keeping a record of attendance;
 - (F) provisions for offering the course by correspondence, if any; and
 - (G) the policy for allowing a student to make up missed class time, if any.

(b) A completed application for course certification or biennial recertification must be filed 45 days before the first offering date of the course. A course may not be advertised as being certified under this chapter until the applicant has received written certification from the commission.

(c) A course certified by the commission may be offered for credit from the date the commission certifies the course until January 31 of the next even-numbered year, except that a course that is certified by the commission from October 15 of an odd-numbered year through January 31 of an even-numbered year may be offered for credit from the date that the commission certifies the course until January 31 of the following even-numbered year. The commission will provide course sponsors with applications for course recertification by October 15 of odd-numbered years.

(d) Repealed 6/28/97.

(e) Any change in the content or materials used in a certified course may be implemented immediately if it is based on a United States Supreme Court or Alaska Supreme Court decision or a change in the policy of a financial institution or government agency that has been documented by a public memorandum or press release from that institution or agency and that has a specific effective date. A change made under this subsection related to a change in the policy of a financial institution or government agency must be reported to the commission within 15 days after receipt of the public memorandum or press release. Any substantive change other than one described in this section must be submitted as an amendment to an approved course outline according to the schedule set out in (b) of this section.

(f) A course certified by the commission, or the commission's designee, under this section to meet the education requirements of AS 08.88.095 and 12 AAC 64.064 is also certified to meet the continuing education requirements of 12 AAC 64.500 in the approved subject areas.

Authority: AS 08.88.081 AS 08.88.091 AS 08.88.095

12 AAC 64.430. CORRESPONDENCE COURSES. (a) To obtain certification of a correspondence course a sponsor must

- (1) meet the requirements of 12 AAC 64.420;
- (2) submit a copy of the complete course materials that will be provided to participants, including any published texts and audio-cassette or videotapes; and
- (3) submit the written instructions for completing each lesson.

(b) All courses taken by correspondence must include an examination, or a project activity, to be turned into the course sponsor for grading. The project activity must be submitted along with the course material to the commission for prior approval.

Authority: AS 08.88.081 AS 08.88.091

12 AAC 64.440. INSTRUCTOR APPROVAL. (a) Except as provided in 12 AAC 64.410(f) and (g), only a course taught by an instructor who is approved by the commission, or the commission's designee, to teach a course on that topic meets the education requirements of AS 08.88.091, AS 08.88.095, and this chapter. A national instructor must obtain approval from the commission, or the commission's designee, in the appropriate topic area before teaching any course other than a course required to qualify a licensee for a professional designation in licensed real estate practice from a national organization.

- (b) An applicant for instructor approval must apply to the commission by submitting
- (1) a completed application on a form provided by the department;
 - (2) the fees required in 12 AAC 02.360;
 - (3) a list of topics the applicant is seeking approval to teach; and
 - (4) a resume indicating the education and experience of the applicant in the requested topic areas, including the experience and education required in (c) of this section.

(c) To be approved as an instructor, an applicant must have experience teaching or training adults, and at least one of the following:

- (1) a bachelor's degree in real estate or a related field;
- (2) five years of experience as a real estate licensee with documented experience in the topic area the applicant is seeking approval to teach;
- (3) another combination of experience and education that establishes the applicant's credentials in the requested topic area;
- (4) be listed as an approved instructor by a national organization that offers professional real estate courses that have been approved by the commission for continuing education credit under 12 AAC 64.420.

(d) Successful completion of an instructor workshop sponsored by the Association of Real Estate License Law Officials (ARELLO), the National Association of Realtors (NAR), the Real Estate Educators' Association (REEA), the International Right of Way Association (IRWA), the Community Association Institute (CAI), or other national organization determined to be comparable by the commission, or the commission's designee, may be substituted for the teaching experience or training required in (c) of this section.

(e) If necessary to verify or substantiate the qualifications of an applicant for instructor approval, the commission, or its designee, will interview an applicant for instructor approval. If the commission requests division staff to conduct the interview, the division staff shall conduct the interview using the standards for instructor approval set out in this section. The division staff shall prepare a report on the interview and provide it to the commission for further action.

(f) An instructor approval expires on April 1 of years ending in 0 and 5. An initial instructor approval issued under (b) of this section from January 1 through March 31 of a year ending in 0 or 5 will expire on April 1 of the next year that ends in a 0 or 5. An applicant for renewal of an instructor approval must submit to the department

- (1) a completed application for renewal on a form provided by the department;
- (2) the instructor approval recertification fee specified in 12 AAC 02.360; and
- (3) evidence of completion during the biennial licensing period for real estate licensee's immediately preceding the date of application, or the current biennial licensing period if in progress at the date of application, of
 - (A) at least two hours of continuing education in each topic area for which the instructor is applying for recertification;
 - (B) teaching a course in the topic area for which the instructor is applying for recertification; or
 - (C) practical experience in the topic.

(g) *Repealed 06/22/2008.*

(h) An applicant for initial instructor approval that wishes to substitute completion of an instructor workshop in (d) of this section for teaching experience or training required in (c) of this section, must apply for instructor approval not later than six months after completing an approved instructor workshop.

Authority: AS 08.88.061 AS 08.88.091 AS 08.88.095
AS 08.88.081

Editor's note: Information on workshops described in 12 AAC 64.440 may be obtained from the applicable organizations at the following addresses: Association of Real Estate License Law Officials (ARELLO), P.O. Box 129, Centerville, UT 84014-0129; National Association of Realtors (NAR), 430 North Michigan Ave., Chicago, IL 60611; Real Estate Educator's Association (REEA), 10565 Lee Highway, Suite 104, Fairfax, VA 22030-3135; International Right of Way Association (IRWA), 13650 South Gramercy Place, Gardena, CA 90249; Community Association Institute (CAI), 1630 Duke Street, Alexandria, VA 22314.

12 AAC 64.450. TEMPORARY INSTRUCTOR APPROVAL. (a) A course sponsor may request the temporary approval of a person to teach a course if the sponsor

- (1) is unable to find an instructor approved by the commission to teach that course topic for credit; or
- (2) chooses to use a qualified instructor from another state.

(b) The commission, or its designee, will, in its discretion, issue a five-day temporary instructor approval to a person who

- (1) is currently certified by a nationally recognized organization that requires similar instructor standards; or
- (2) has experience in the specific subject area to be covered by that course.

Authority: AS 08.88.061 AS 08.88.081 AS 08.88.091

12 AAC 64.460. WITHDRAWAL OR DENIAL OF INSTRUCTOR APPROVAL. (a) The commission may withdraw instructor approval or deny an application for approval under 12 AAC 64.440 if

- (1) disciplinary action is taken or pending by the commission or another licensing jurisdiction against that instructor's practitioner license;
- (2) the instructor is no longer providing satisfactory instruction based upon
 - (A) poor student evaluations; or
 - (B) the findings of a classroom audit conducted by the commission or its designee;
- (3) the instructor offers a course for credit that has not received prior written approval from the commission;
- (4) the instructor teaches a course in a subject area that the instructor has not been approved to teach; or
- (5) the instructor provides fraudulent information or documentation to a licensee or to the commission.

(b) If instructor approval is withdrawn or an application for instructor approval is denied, the commission will provide a written notice of withdrawal or denial of approval, stating the reasons for the withdrawal or denial. Withdrawal of instructor approval is effective 30 days after the date of the written notice of withdrawal unless the instructor files a written request to petition the commission at its next regularly scheduled meeting.

Authority: AS 08.88.081 AS 08.88.091 AS 08.88.095

12 AAC 64.470. WITHDRAWAL OR DENIAL OF COURSE CERTIFICATION. (a) The commission may withdraw course certification or deny an application for course certification under 12 AAC 64.420 if the commission, or the commission's designee, finds that the course no longer meets the standards adopted by the commission in 12 AAC 64.410, as evidenced by

- (1) the findings of a classroom audit; or
- (2) review of the course content at the time of recertification under 12 AAC 64.420(c).

(b) If course certification is withdrawn or an application for course certification is denied, the commission will provide a written notice of withdrawal or denial of certification stating the reasons for the withdrawal or denial. Withdrawal of course certification is effective 30 days after the date of the written notice of withdrawal unless the sponsor of the course files with the commission an acceptable revision of the course outline.

(c) The commission, or its designee, will, in its discretion, audit a certified course at any time.

Authority: AS 08.88.081 AS 08.88.091 AS 08.88.095

ARTICLE 8. CONTINUING EDUCATION REQUIREMENTS.

Section

500. Continuing Education requirements

510. Approved online courses

12 AAC 64.500. CONTINUING EDUCATION REQUIREMENTS. (a) For the purposes of AS 08.88.091(d), the commission will accept only those continuing education courses that meet the real estate education standards of 12 AAC 64.400 - 12 AAC 64.470, including courses in the following subject areas:

- (1) licensee relationships;
- (2) closing transactions;
- (3) common interest ownership and resale certificates required under AS 34.08.590;
- (4) communications, negotiations, and real estate counseling skills;
- (5) repealed 6/28/97;
- (6) contracts;
- (7) energy conservation;
- (8) health, safety, and environmental issues, and compliance with 42 U.S.C. 12101 - 12213 (Americans with Disabilities Act of 1990);
- (9) fair housing and equal opportunity laws;
- (10) financing real estate;
- (11) foreclosure, judgments, and bankruptcy;
- (12) international real estate transactions;
- (13) land use, planning, zoning, and building codes;
- (14) legal descriptions;
- (15) listing responsibilities;
- (16) marketing property;
- (17) new construction;
- (18) prohibited conduct;
- (19) property disclosure and inspections;
- (20) residential property management;
- (21) property valuation;
- (22) real estate brokerage management;
- (23) real estate investment analysis;
- (24) real estate property law;
- (25) real estate license law;
- (26) securities;
- (27) title insurance and lien law;
- (28) trust account management;
- (29) trusts, estates, and probate;
- (30) ethical decision-making in real estate transactions;
- (31) community association management;

- (32) community association documents;
- (33) risk management;
- (34) Alaska landlord tenant law;
- (35) customer client service;
- (36) commercial property management;
- (37) tax law and exchanges;
- (38) broker disclosure responsibility;
- (39) broker supervision;
- (40) broker trust account responsibility; and
- (41) organizing and managing real estate offices.

(b) An applicant for renewal of a broker, associate broker, or salesperson license must complete the following continuing education contact hours during the concluding licensing period:

(1) an eight-hour continuing education core curriculum, identified by the commission, that stresses current trends in real estate practices and changes in state, federal, and case law in the areas of real estate sales, property management, community association management, or commercial sales; and

(2) 12 contact hours of continuing education in elective topics that meet the requirements in (a) of this section.

(c) At least 120 days before the beginning of each licensing period, the commission will identify topics in which all licensees will be required to obtain eight contact hours of continuing education credit under (b)(1) of this section during the next licensing period.

(d) By October 1 of each odd-numbered year, the commission will, or the division staff at the commission's direction shall notify course sponsors of the topics that satisfy the requirements in (b)(1) of this section for the next renewal period.

(e) While useful to the practice of real estate, the following types of training do not meet the continuing education standards of the commission:

(1) mechanical office or business skills, including typing, speed-reading, or use of a calculator or computer, unless related to one of the subject areas listed in (a) of this section;

(2) office sales meetings;

(3) orientation courses by professional organizations;

(4) instructor development courses;

(5) prospecting;

(6) repealed 2/12/99.

(f) No more than 12 contact hours of credit from any one course content area may be accrued toward license renewal in a single licensing period.

(g) An applicant for license renewal who creates a new course that is approved for credit under 12 AAC 64.410 may earn continuing education credit equal to the number of hours approved for the course.

(h) An applicant for renewal may not accrue continuing education contact hours for taking the same, or substantively identical, course more than once during a licensing period.

(i) An applicant for renewal may not earn real estate continuing education contact hours for courses taken before the applicant was originally licensed.

(j) An applicant for renewal who, at the time the license is due to lapse, has been licensed

(1) more than 90 days must complete 20 contact hours of continuing education consisting of the eight designated contact hours in topics identified by the commission under (b)(1) of this section;

(2) 90 days or less is not required to meet continuing education requirements.

(k) Repealed 7/16/94.

(l) Repealed 7/16/94.

(m) For the purposes of this section and AS 08.88.091

(1) one contact hour equals a minimum of 50 minutes of instruction;

(2) one academic semester credit hour equals 15 contact hours;

(3) one academic quarter credit hour equals 10 contact hours.

(n) Notwithstanding the provisions of 12 AAC 64.420 – 12 AAC 64.450, a licensee who has taken a course offered outside of this state, or that is required to earn a professional designation, by a nationally recognized real estate education provider during a licensing period that has not otherwise been certified under 12 AAC 64.410 and 12 AAC 64.420 may apply to the commission under this subsection for continuing education credit under this section for the licensee's attendance at that course. To be considered for approval by the commission, not later than 60 days after completing the course but not less than 60 days before the end of the licensing period, the licensee must submit to the department

(1) an application on a form provided by the department;

(2) all materials provided as part of the class, including

(A) materials promoting or describing the class;

(B) evidence that the real estate education provider is nationally recognized; and

(C) proof of attendance including time of instruction.

Authority: AS 08.88.081

AS 08.88.091

12 AAC 64.510. APPROVED ONLINE COURSES. To be approved by the commission to meet the continuing education requirements of 12 AAC 64.400 – 12 AAC 64.470, the primary purpose of an online course must be directly related to the topics listed in 12 AAC 64.500(a).

Authority: AS 08.88.081 AS 08.88.091

**ARTICLE 9.
PROPERTY MANAGEMENT.**

Section

- 550. Property management transactions**
- 560. Compliance with Uniform Residential Landlord and Tenant Act**
- 570. Property management of real property**
- 580. Licensee who performs community association management**

12 AAC 64.550. PROPERTY MANAGEMENT TRANSACTIONS. (a) A licensee engaged in property management shall conduct property management activity in the registered name of the real estate company with which the licensee is affiliated.

(b) A licensee may not conduct property management activity for another person without a prior written property management contract. At a minimum, a property management contract must include the

- (1) specific responsibilities of the property manager;
- (2) authority and powers given by the property owner to the property manager;
- (3) period of the agreement; and
- (4) management fee.

(c) A licensee acting as a property manager may transfer funds between two or more accounts maintained for the same property owner if the licensee has written authorization from the property owner. The licensee shall make entries fully identifying the transaction in each of the ledger accounts affected.

(d) The sale or exchange of a property that is subject to an existing property management contract must be authorized by specific language in the property management contract or by a separate listing agreement.

(e) A licensee that owns rental real property shall disclose in writing to all tenants and prospective tenants of that property that the licensee holds a real estate license and the name of the company with which the licensee is affiliated.

Authority: AS 08.88.081 AS 08.88.331 AS 08.88.351

12 AAC 64.560. COMPLIANCE WITH UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT. Failure of a licensee engaged in property management to deposit prepaid rents or security deposits in a trust account as required by AS 34.03 (Uniform Residential Landlord and Tenant Act) is considered fraudulent or dishonest conduct within the meaning of AS 08.88.071(a)(3)(A)(iv).

Authority: AS 08.88.071 AS 08.88.081 AS 08.88.331

12 AAC 64.570. PROPERTY MANAGEMENT OF REAL PROPERTY. (a) A licensee who has sole ownership of rental property either may manage the property through the licensee's employing broker or may employ another broker or property manager to perform those management duties. Notwithstanding 12 AAC 64.550, the licensee or the owner's broker is not required to keep records or files of rental agreements or rental transactions, if the files or records are kept by the licensee being employed.

(b) In addition to the duties set out in AS 08.88.615, a licensee who owns real property described in (a) of this section must also

- (1) disclose to each prospective lessee or tenant
 - (A) the items described in AS 08.88.615(a)(6) – (8); and
 - (B) the licensee's ownership in accordance with AS 08.88.391; and
- (2) provide the licensee's broker with the following information for each property owned by the licensee:
 - (A) ownership position and percentage;
 - (B) copies of all financial records and rental agreements;
 - (C) an update for the broker when a change occurs to the information required to be provided under this subsection;

(D) security deposits and prepaid rents to be held in the broker's trust account in compliance with 12 AAC 64.200 or held in a licensee's privately owned trust account to which the broker has access for oversight and review purposes; in this subparagraph, "prepaid rent"

(i) means that amount of money demanded by the landlord at the initiation of the tenancy for the purpose of ensuring that rent will be paid;

- (ii) does not include the first month's rent or money received as security for damage;
- (E) written documentation to refund a security deposit or deduct money from a security deposit.
- (c) Notwithstanding 12 AAC 64.200, rents and other incidental income may be paid directly to the licensee as the lessor and need not be deposited in the broker's trust account.
- (d) The duration of the relationship between the licensee and the lessee must meet the requirements of AS 08.88.660.
- (e) The commission may, under AS 08.88.071, impose a disciplinary sanction for violation of this section. A claim under AS 08.88.460 may be filed by a person if the claim is based on a violation of fraud, misrepresentation, or deceit and the person suffered a loss as a result of the violation.
- (f) If the property is owned by a partnership, corporation, limited liability company, or other such legal entity in which a licensee has an interest, the licensee must disclose a licensee's ownership position and ownership entity to the broker. If one or more licensees combined have a controlling interest or participate in the day-to-day operation or management of the subject property, the licensees are subject to this section except for (b)(2)(B) of this section. In lieu of compliance with (b)(2)(B) of this section, the financial records and copies of rental agreements for the property must be made available to the licensee's broker for oversight and review.

Authority: AS 08.88.071 AS 08.88.391 AS 08.88.615
AS 08.88.081 AS 08.88.460 AS 08.88.660

12 AAC 64.580. LICENSEE WHO PERFORMS COMMUNITY ASSOCIATION MANAGEMENT. In addition to the requirements in AS 08.88.615, a licensee engaged in community association management must

- (1) comply with the provisions of AS 08.88.341, and must include the
 - (A) services provided;
 - (B) fees charged;
 - (C) timeframe of the relationship between the licensee and the entity;
 - (D) consumer pamphlet as provided for in 12 AAC 64.118;
- (2) comply with local, state, and federal laws;
- (3) disclose any conflict of interest as outlined in AS 08.88.391;
- (4) collect funds to comply with 12 AAC 64.180 – 12 AAC 64.271; and
- (5) provide the resale certificate within 10 days of written request under AS 34.08.510 – 34.08.700.

Authority: AS 08.88.081 AS 08.88.341 AS 08.88.615
AS 08.88.161 AS 08.88.351 AS 08.88.391
AS 08.88.171

**ARTICLE 10.
ERRORS AND OMISSIONS INSURANCE.**

Section

- 600. Insurance required**
- 610. Time for filing certification of equivalent coverage**
- 620. Suspension of license for nonpayment of premium**
- 630. Surrender of license for failure to provide proof of insurance**
- 640. Proof of insurance required to activate suspended license**
- 650. Authenticity of coverage**

12 AAC 64.600. INSURANCE REQUIRED. Subject to AS 08.88.172, a person licensed as a real estate broker, associate real estate broker, or real estate salesperson, as a condition of licensing, renewal, or reinstatement of a license must submit proof of errors and omission insurance coverage through the master insurance policy made available by the commission under AS 08.88.172(d) or through certification of equivalent coverage. "Equivalent coverage" has the meaning given in 12 AAC 02.590.

Authority: AS 08.88.071 AS 08.88.171 AS 08.88.172
AS 08.88.081

12 AAC 64.610. TIME FOR FILING CERTIFICATION OF EQUIVALENT COVERAGE. (a) A licensee that obtains equivalent coverage under AS 08.88.172(c) must file a certification of insurance showing equivalent coverage with the commission with the application to obtain or renew a license.

(b) A licensee substituting coverage under the master insurance policy made available by the commission under AS 08.88.172(c) with equivalent coverage or substituting an equivalent coverage policy with another policy must

file a certification of equivalent coverage with the commission prior to 5:00 p.m. on the date the licensee cancels coverage under the master insurance policy made available by the commission, or cancels coverage under the equivalent insurance policy that is being substituted for another equivalent coverage policy.

(c) If the certification is not filed as required by this section, the commission will deny the application to obtain or renew a license, or suspend the existing license.

Authority: AS 08.88.071 AS 08.88.171 AS 08.88.172
AS 08.88.081

12 AAC 64.620. SUSPENSION OF LICENSE FOR NONPAYMENT OF PREMIUM. If a licensee's insurance company or master insurance policy issuer notifies the commission that a licensee has not paid a premium resulting in termination of coverage, the commission shall suspend any license under AS 08.88.161 held by that licensee as of the date of termination of coverage.

Authority: AS 08.88.071 AS 08.88.171 AS 08.88.172
AS 08.88.081

12 AAC 64.630. SURRENDER OF LICENSE FOR FAILURE TO PROVIDE PROOF OF INSURANCE. When a licensee receives a notice of license suspension for failure to provide proof of insurance, the licensee shall immediately surrender any license required under AS 08.88.161 to the commission.

Authority: AS 08.88.071 AS 08.88.171 AS 08.88.172
AS 08.88.081

12 AAC 64.640. PROOF OF INSURANCE REQUIRED TO ACTIVATE SUSPENDED LICENSE. A licensee whose license has been suspended for failure to provide proof of errors and omissions insurance may not conduct any activities for which a license is required until proof of obtaining a certificate of insurance has been provided to the commission and the license has been activated.

Authority: AS 08.88.071 AS 08.88.171 AS 08.88.172
AS 08.88.081

12 AAC 64.650. AUTHENTICITY OF COVERAGE. A licensee may not willfully or knowingly cause or allow a certificate of coverage to be filed with the commission that is false, fraudulent, or misleading.

Authority: AS 08.88.071 AS 08.88.171 AS 08.88.172
AS 08.88.081

ARTICLE 11. GENERAL PROVISIONS.

Section

- 900. Violation**
- 905. Exceptions to requirements for real estate license**
- 910. (Repealed)**
- 920. (Repealed)**
- 930. Property disclosure form**
- 940. Disclosure of compensation**
- 950. (Renumbered)**
- 960. Payment of associate broker or salesperson**
- 961. Personal real estate transaction of real estate licensee**
- 970. Commission member absences**
- 980. Documents submitted by facsimile**
- 990. Definitions**

12 AAC 64.900. VIOLATION. Violation of or failure to comply with the provisions of this chapter constitutes grounds for the suspension or revocation of a license.

Authority: AS 08.88.081 AS 44.33.020(1)

12 AAC 64.905. EXCEPTIONS TO REQUIREMENTS FOR REAL ESTATE LICENSE. The exceptions to the requirements of AS 08.88 listed in AS 08.88.900 are limited to the roles or activities specified, and do not allow a person to perform other activities for which a license under AS 08.88.161 is required.

Authority: AS 08.88.081 AS 08.88.161 AS 08.88.900

12 AAC 64.910. FEES. Repealed 1/1/91.

12 AAC 64.920. CURRENT ADDRESS. Repealed 10/27/99.

12 AAC 64.930. PROPERTY DISCLOSURE FORM. (a) The form titled *Residential Real Property Transfer Disclosure Statement*, dated July 2008, is adopted by reference. This form, prepared by the Real Estate Commission, presents the information required by AS 34.70 that a transferor of an interest in residential real property must disclose to a prospective transferee of the property before the transferee makes a written offer. Use of this form also complies with AS 34.70.050 regarding notice to the transferee to conduct investigations regarding convicted sex offenders residing in the neighborhood and whether there is an agricultural facility or operation in the vicinity.

(b) For the purposes of this section, "residential real property" has the meaning given to the term in AS 34.70.200.

Authority: AS 08.88.071 AS 08.88.615 AS 34.70.050
AS 08.88.081

Editor's note: Copies of the *Residential Real Property Transfer Disclosure Statement*, adopted by reference in 12 AAC 64.930, may be obtained from the Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, Real Estate Commission, 550 W. 7th Avenue, Suite 1950, Anchorage, AK 99501-3567; phone: (907) 269-8162.

12 AAC 64.940. DISCLOSURE OF COMPENSATION. (a) In a real estate sales transaction, a broker shall disclose in writing to the broker's principal the dollar amount or percentage of transaction amount of any rebate, compensation, or fee paid to another broker in connection with that transaction.

(b) The provisions of (a) of this section do not require a broker to disclose the payment of a franchise fee, an internal office operating cost, or compensation to a licensee within the broker's office.

(c) As used in this section, "real estate sales transaction" means the sale or purchase of real property, but does not include a rental, lease, or other transaction involving real property.

(d) A disclosure required of a broker to the broker's principal under (a) of this section shall be made when

- (1) the listing contract is signed; and
- (2) the settlement statement is signed.

(e) The disclosure requirement in (a) of this section is a continuing obligation that is not extinguished by the transfer of title in a real estate transaction.

Authority: AS 08.88.071 AS 08.88.081 AS 08.88.351

12 AAC 64.950. DEFINITIONS. Renumbered as 12 AAC 64.990, 10/8/90.

12 AAC 64.960. PAYMENT OF ASSOCIATE BROKER OR SALESPERSON. A broker may pay a former associate broker or salesperson a commission for services performed while the associate broker or salesperson was actively licensed under AS 08.88 regardless of the license status of the associate broker or salesperson at the time the commission is payable.

Authority: AS 08.88.081

12 AAC 64.961. PERSONAL REAL ESTATE TRANSACTION OF REAL ESTATE LICENSEE. In order to meet the requirements of AS 08.88.331, a real estate licensee is not precluded from using the services of a licensee from another brokerage to represent or give specific assistance in a personal real estate transaction of the real estate licensee.

Authority: AS 08.88.071 AS 08.88.331

12 AAC 64.970. COMMISSION MEMBER ABSENCES. (a) The commission will, in its discretion, recommend to the governor that a member be removed from the commission if that member has three or more unexcused absences from regularly scheduled commission meetings.

(b) Before the close of each regularly scheduled commission meeting, the commission will determine whether a member's absence from that meeting is excused or unexcused. An absence will be considered excused if it is pre-approved by the chairperson of the commission or due to an emergency.

Authority: AS 08.01.020 AS 08.88.081

12 AAC 64.980. DOCUMENTS SUBMITTED BY FACSIMILE. (a) *Repealed 12/7/2011.*

(b) An applicant or licensee may submit a document to the commission by facsimile if the commission does not require

- (1) the applicant or licensee to submit a fee with the document; or
- (2) a notarized signature on the document.

Authority: AS 08.88.071 AS 08.88.081 AS 08.88.460

12 AAC 64.990. DEFINITIONS. (a) In AS 08.88.171, 12 AAC 64.059(d), and 12 AAC 64.075(e), "active and continuous experience" means that, notwithstanding 12 AAC 64.080(c), the licensee holds a current active license with no single break of current active status of more than 30 days due to the licensee's failure to affiliate with an employing broker and file the appropriate completed application with the division.

(b) In this chapter, unless the context requires otherwise,

- (1) "commission" means the real estate commission established by AS 08.88.011;
- (2) "contact hour" means a minimum of 50 minutes of instruction;
- (3) "sponsor" means a person, school, college, or professional association that provides, or wishes to provide, courses in real estate education under this chapter;
- (4) "real estate transaction" means a transaction for which a real estate broker must maintain records under AS 08.88.331 - 08.88.351 and 12 AAC 64.220;
- (5) "commingle" means a licensee depositing the licensee's own funds in the account where the funds of others are held in trust, except as allowed in 12 AAC 64.180(d);
- (6) "salesperson" means the same as "salesman" in AS 08.88;
- (7) "division" means the division of corporations, business and professional licensing in the Department of Commerce, Community, and Economic Development;
- (8) "listing" means a personal services contract or agreement, in which the listing licensee agrees to find, locate, secure, or promote obtaining a buyer or tenant for a specific property at a certain price and terms.

(c) In 12 AAC 64.280 - 12 AAC 64.325,

- (1) "claim" means a claim for reimbursement filed with the commission under AS 08.88.460 and 12 AAC 64.280 - 12 AAC 64.325;
- (2) "claimant" means a person who properly files a claim with the commission under AS 08.88.460 and 12 AAC 64.280 - 12 AAC 64.325;
- (3) "involved licensee" means an individual described in AS 08.88.460(b) and, if applicable, a cooperating broker and any affiliated licensees who participated in the transaction upon which the claim is based;
- (4) "involved party" means any licensee, whether named or unnamed by the claimant, involved in a transaction that is the subject of a claim, and the employing broker or brokers of all involved licensees at the time of the transaction, and all principals to the transaction.

(d) In AS 08.88, "personal service contracts" include listings, fee agreements between brokers and buyers or sellers, management contracts with property owners, or other agreements by which a broker agrees to perform a duty with respect to real estate for an agreed upon fee or commission.

(e) In AS 08.88.900(a), "public official"

- (1) means
 - (A) an appointed or elected state or municipality officer; or
 - (B) a state or municipality employee;
- (2) does not include a subcontractor of the state or a municipality.

Authority: AS 08.88.081 AS 08.88.091

REAL ESTATE ERRORS AND OMISSIONS INSURANCE.

Section

- 510. Minimum standards
- 520. Exceptions to coverage
- 530. Standards for equivalent coverage
- 540. Notification required for cancellation
- 550. Maximum amount of premium
- 560. Method of adjustment
- 590. Definitions

12 AAC 02.510. MINIMUM STANDARDS. (a) The master errors and omissions insurance policy must provide to each individual licensee, at a minimum, the following terms of coverage:

(1) not less than \$100,000 limit of liability for each licensee per covered wrongful act or per covered claim depending on the policy form used by the insurer; claims expenses including the cost for investigation or defense must be in addition to the limit of liability; if the limit of liability is on a

(A) covered wrongful act basis, two or more claims arising out of a single wrongful act or a series of related wrongful acts may be considered one claim;

(B) covered claim basis, two or more related wrongful acts may be considered one claim;

(2) an annual aggregate limit of liability of not less than \$300,000 per licensee;

(3) a deductible amount for each covered wrongful act of not more than \$5,000 for every \$300,000 annual aggregate limit of liability; an additional deductible for investigation and defense costs may be considered;

(4) an extended reporting period of 90 days and an option to purchase an additional three years extended reporting period for a premium not to exceed 200 percent of the premium charged for the last year of the terminating coverage;

(5) the ability of a licensee, upon payment of an additional premium, to obtain higher limits of coverage or to purchase additional coverages from the group insurer as may be available from the insurer;

(6) the coverage provided under the master errors and omissions insurance policy must be individual and specific to the licensee and must cover the licensee regardless of changes in real estate broker or changes in the business relationship between a real estate broker and the licensee; and

(7) prior acts coverage must be offered to a licensee who has maintained the same or similar coverage, continually in-force until the date and the time that coverage begins under the master errors and omissions insurance policy coverage.

(b) The master errors and omissions insurance policy must contain a provision requiring the consent of the insured to settle a claim except that the insured may not unreasonably withhold consent.

(c) The insurer that is selected to provide the master errors and omissions insurance policy shall

(1) maintain an A.M. Best rating of "B+" or better and financial size category of class VI or higher;

(2) maintain a certificate of authority issued under AS 21.09 by the director of insurance to transact insurance business in this state and be in compliance with AS 21;

(3) provide the master errors and omissions insurance policy after notification by the Real Estate Commission that it is the successful bidder of a competitive bidding process under AS 36.30;

(4) enter into contract to provide the master errors and omissions insurance policy in conformity with AS 08.88.172, 12 AAC 02.510 – 12 AAC 02.590, and AS 21; and

(5) collect premiums, maintain records, and report to the Real Estate Commission the names of those insured and prior claims experience if known, date of claim, amount paid, nature of claim, and claims information on a quarterly basis or an annual basis or on request by the Real Estate Commission.

Authority: AS 08.88.172

12 AAC 02.520. EXCEPTIONS TO COVERAGE. Except as provided in this section, the master errors and omissions insurance policy may not exclude coverage for claims brought against the insured licensee arising out of a wrongful act by the licensee when performing a professional service for which a real estate license is required. The policy may limit or exclude coverage for claims brought against a licensee that arise as follows:

(1) out of claims or lawsuits made or brought by any insured person against any other insured person within the same firm or from compensation disputes between licensees;

(2) out of loss assumed under a contract or an agreement, except for liability the insured would have had in the absence of the agreements;

(3) from a criminal, dishonest, fraudulent, or intentional act or omission; this exclusion does not apply to an insured person who did not personally participate in committing the act or omission and who, upon having knowledge of the act or omission, reported it to the Real Estate Commission, or appropriate law enforcement authorities;

(4) from unlawful discrimination committed by or for the insured person;

(5) from fines or penalties imposed by a tribunal or other governmental agency;

(6) from bodily injury, personal injury, advertising injury, or property damage;

- (7) from related business activities for which a license is not required under AS 08.88;
- (8) from the presence of or the actual, alleged, or threatened discharge, dispersal, release, or escape of hazardous materials, nuclear materials, or pollutants;
- (9) from prior wrongful acts unless specific prior wrongful acts coverage is provided;
- (10) from any violation of 15 U.S.C. 77a – 77aa (Securities Act of 1933) or 15 U.S.C. 78a – 78mm (Securities Exchange Act of 1934) or any state blue sky or securities law or similar state or federal statutes; or
- (11) other standard exclusions that are typical in a professional liability insurance policy and that have been approved by the director of insurance under AS 21.42;
- (12) from the insolvency of an insured person;
- (13) from any injury or damage that the insured had reason to expect; or
- (14) from the conversion, misappropriation, commingling, or defalcation of funds or other property.

Authority: AS 08.88.172

12 AAC 02.530. STANDARDS FOR EQUIVALENT COVERAGE. An insurer issuing equivalent coverage under AS 08.88.172(c)(2) shall hold a certificate of authority issued under AS 21.09. All activities contemplated under AS 08.88.172 must be covered. The insurance must meet the minimum coverage standards of 12 AAC 02.510, except that

(1) a policy with a higher deductible amount or self-insured retention will qualify as equivalent coverage for purposes of AS 08.88.172(c)(2) if, when applying to obtain or renew the license, the insured licensee provides the Real Estate Commission with

(A) an affidavit certifying that the insured licensee has the financial resources in set-aside funds to pay the higher deductible amount or self-insured retention; and

(B) a certificate of insurance from the insured licensee's insurer; and

(2) a broker employing other real estate licensees may comply with the requirements of 12 AAC 02.510(a)(1) and (2) by obtaining insurance with coverage of a minimum of \$300,000 per wrongful act and \$1,000,000 aggregate, if all licensees associated with the broker are covered.

Authority: AS 08.88.172

12 AAC 02.540. NOTIFICATION REQUIRED FOR CANCELLATION. If equivalent insurance coverage obtained by a licensee under AS 08.88.172(c)(2) is to lapse or not be renewed, the insurer shall notify the Real Estate Commission of the intent to lapse or not to renew a minimum of 30 days before the expiration date of the term. It is the responsibility of the broker or licensee, as applicable, to instruct the insurer to provide the notice required by this section to the Real Estate Commission with named licensees covered.

Authority: AS 08.88.172

12 AAC 02.550. MAXIMUM AMOUNT OF PREMIUM. The maximum amount of premium to be charged a licensee annually under the master errors and omissions insurance policy may not exceed \$2,500.

Authority: AS 08.88.172

12 AAC 02.560. METHOD OF ADJUSTMENT. Every three years after the initial procurement of the master errors and omissions insurance policy, the department may adjust the amount of coverage under 12 AAC 02.510(a). The department will not make an adjustment if the department finds the adjustment will significantly reduce the number of insurers willing to bid on a contract to offer the master errors and omissions insurance policy. An adjustment in the limits of liability under 12 AAC 02.510(a) must be an increment of no less than \$25,000. The department will give notice of the adjustments under this section by posting the amounts on its Internet website. An adjustment under this section does not take effect until the renewal or the issuance of a new master errors and omissions insurance policy.

Authority: AS 08.88.172

12 AAC 02.590. DEFINITIONS. In this chapter, unless the context requires otherwise,

(1) "aggregate limit" means the maximum liability of an insurer regardless of the number of claims during the policy term;

(2) "director of insurance" means the person appointed under AS 21.06.010 to head the division of insurance of this state;

(3) "equivalent coverage" means errors and omissions insurance coverage obtained independently of the master errors and omissions insurance policy available from the Real Estate Commission and that complies with the requirements, terms, and conditions as set out in 12 AAC 02.510 – 12 AAC 02.590;

(4) "errors and omissions insurance" means professional liability insurance that provides coverage to holders of active real estate brokers, associate brokers, and salespersons licensed in this state for wrongful acts made during

the course of real estate transactions, subject to the coverages, limitations, and exclusions of one or more specific insurance policies in place;

(5) "extended reporting period" means a designated period of time after an errors and omissions insurance policy has expired during which a claim may be made and coverage triggered as if the claim has been made during the policy period;

(6) "master errors and omissions insurance policy" means the policy obtained by the Real Estate Commission under AS 08.88.172 that meets the requirements of 12 AAC 02.510 – 12 AAC 02.590.

(7) "prior acts coverage" means the insurance policy provides coverage for claims that are made during a current policy period, but one or more acts causing the claim or injuries for which the claim is made occurred before the inception of the current policy period;

(8) "wrongful act" means a negligent act, error, or omission.

Authority: AS 08.88.081 AS 08.88.172