

- (c) *[Repealed, Sec. 24 ch 113 SLA 2008.]*
- (d) *[Repealed, Sec. 24 ch 113 SLA 2008.]*
- (e) *[Repealed, Sec. 24 ch 113 SLA 2008.]*
- (f) *[Repealed, Sec. 24 ch 113 SLA 2008.]*

**Sec. 08.88.470. Findings and payment.** *[Repealed, Sec. 24 ch 113 SLA 2008.]*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- (b) *[Repealed, Sec. 24 ch 113 SLA 2008.]*
- (c) *[Repealed, Sec. 24 ch 113 SLA 2008.]*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 Payment of small claims judgment.** *[Repealed, Sec. 24 ch 113 SLA 2008.]*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;