

OFFICE REGISTRATION/OFFICE CHANGES

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).

12 AAC 02.360. REAL ESTATE COMMISSION. (a) The following fees are established for real estate salespersons, associate brokers, and brokers:

- (1) license fee, for all or part of the initial biennial license period, whether licensure is by examination or endorsement, \$120;
- (2) biennial license renewal fee for both active and inactive licenses, \$120;
- (3) fee for office changes, including change of broker and company name, \$120 for each license;
- (4) transfer of license fee, \$120;
- (5) application fee for initial license, \$200;
- (6) initial office registration fee, \$200;
- (7) license inactivation or reactivation fee, \$150;
- (8) duplicate license fee, \$0;
- (9) name change fee, \$0;
- (10) post-license education certification and new license document fee, \$50;
- (11) reinstatement fee for a lapsed license, \$140.

(b) The following fees are established for real estate education course certification and instructor approval:

- (1) initial course certification fee, \$50 per credit hour;
- (2) biennial course recertification fee, \$30 per credit hour;
- (3) instructor approval fee, \$200 per instructor;
- (4) temporary instructor approval fee, \$250 per instructor;
- (5) instructor approval recertification fee, \$100.

(c) The following fees are established for publications offered by the Real

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.

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....

(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.

(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.

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.

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 64.117. 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;
- (5) for maintaining confidentiality within the office for all transactions; and
- (6) for the supervision of teams, if applicable, to include a policy covering
 - (A) the usage of the consumer disclosure required under 12 AAC 64.118; and
 - (B) how consumers are represented within a team.

Authority: AS 08.88.071

AS 08.88.171

AS
08.88.685

AS 08.88.081

AS 08.88.600

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 and associate broker in charge 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; and
(3) broker and associate broker in charge 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 and an associate broker in charge includes

(1) 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 before the recording of the transaction;

(2) communicating office policies to affiliated licensees; and

(3) supervision for compliance of brokerage policies, guidelines, and requirements that are specifically listed under AS 08.88.685(a)(1) - (5).

(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
AS 08.88.081 AS 08.88.331 08.88.685

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.

E&O INSURANCE (Audit)

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.

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.

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

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(a)(1) – (3), 12 AAC 02.510(b), and 12 AAC 02.510(c)(1) and (5), 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.

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 02.530;
- (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 08.88.172

12 AAC 02.960. AUDIT OF COMPLIANCE WITH CONTINUING COMPETENCY REQUIREMENTS.

(a) Except as provided in (b) - (j) of this section, the department will audit compliance of licenses with continuing competency requirements in accordance with this section if

(1) the licensee is required to meet continuing competency requirements under AS 08 or this title;

(2) repealed 9/29/2005;

(3) repealed 9/29/2005.

(b) A licensee subject to audit under (a) of this section and applying for license renewal shall

(1) complete and sign a statement of compliance with continuing competency requirements; and

(2) submit the statement to the department with the application for license renewal.

(c) The department will audit a percentage of licensees under (a) of this section that it deems appropriate and

necessary to protect public health and safety. The department's selection of licensees for audit must be random.

(d) Repealed 1/5/2024.

(e) A licensee selected for audit under this section will be notified by the department. Within 30 days of the date on the notification, the licensee shall submit to the department documentation that verifies the licensee's completion of the continuing competency activities claimed on the statement submitted with the application for license renewal under (b) of this section. The documentation must include a valid copy of a certificate or similar verification of satisfactory completion of the continuing competency activities claimed that provides

(1) the name of the licensee;

(2) the number of continuing competency credits awarded;

(3) a description of the continuing competency activity;

(4) the dates of actual participation or successful completion; and

(5) the name and Internet address or physical mailing address of the course provider, instructor, sponsor, or

other entity that the department may contact, as needed, to verify the licensee's attendance.

(f) A licensee subject to audit under (a) of this section is responsible for maintaining adequate and detailed

records of all continuing competency activities completed and shall make the records available to the department on request. A licensee shall maintain the records until the later of

(1) four years from the date of completion of the continuing competency activity; or

(2) if the licensee was selected for audit, the date that the department notifies the licensee that the audit is

completed.

(g) The department will extend the period for providing documentation of completion of continuing competency activities if the department finds that the licensee has good cause for the need for additional time to submit the documentation required in (e) of this section.

(h) The department will notify the respective board of a licensee's failure to comply with the department's

request for records under (e) of this section.

(i) For professions licensed by the department, the department will consider the licensee's failure to comply

with the department's request for records under (e) of this section as grounds for imposition of disciplinary sanctions to the extent allowed under AS 08 and this title.

(j) In this section, “successful completion” means the date that credit for the continuing competency activity is awarded by the instructor, sponsor, or other verifier for completion of the activity.

(k) If individual student attendance cannot be verified upon attempt by the department, the department will determine the continuing education credit to be invalid and will not award it.

(l) The department or applicable board will consider the licensee's failure to comply with the continuing education audit under this section as grounds for imposition of disciplinary sanctions to the extent allowed under AS 08 and this title.

Authority: AS 08.01.050 AS 08.01.087 AS 08.01.100 AS 08.01.080

12 AAC 02.965. FAILURE TO MEET CONTINUING EDUCATION REQUIREMENTS FOR RENEWAL AND REINSTATEMENT OF LICENSE.

(a) Except as otherwise provided in AS 08 or this title, a license issued under AS 08 will not be renewed or reinstated if the applicant for renewal or reinstatement has not earned the required number of continuing education credits during the concluding licensing period. With the appropriate board or department approval, an applicant for renewal or reinstatement of a lapsed license may earn the required number of credits after the expiration date of the license.

Continuing education credits earned to reinstate or renew a lapsed license may not be used to satisfy the continuing education requirements for a future renewal or reinstatement. Credits submitted to satisfy the continuing education requirements under this section must be approved under AS 08 and this title by the department or the applicable board.

(b) For the purposes of this section, “continuing education credits” includes continuing competency, contact hours, continuing education units, and credit hours.

Authority: AS 08.01.050 AS 08.01.080 AS 08.01.100

Broker Supervision

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, either by electronic mail or regular United States mail, a notice of employment of the individual and the individual's completed broker notice to real estate commission of licensee termination form 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 must complete the broker notice to real estate commission of licensee termination form, provide a copy of the completed form to the licensee, and submit the completed form to the commission, either by electronic mail or regular United States mail, not later than 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 completed broker notice to real estate commission of licensee termination form 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 not 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 completed broker notice to real estate commission of licensee termination form 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 the commission's receipt, either by electronic mail or regular United States mail, 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 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 the Employing Broker Information form of the application signed by the registered broker and the associate broker in charge of the branch office. This form may be signed digitally and may be submitted either by electronic mail or regular United States mail.

(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.

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 64.117. 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;
- (5) for maintaining confidentiality within the office for all transactions; and the supervision of teams, if applicable, to include a policy covering
 - (A) the usage of the consumer disclosure required under 12 AAC 64.118; and
 - (B) how consumers are represented within a team.

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

12 AAC 64.125. SUPERVISION.

(a) Failure of a broker and associate broker in charge 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; and
- (3) broker and associate broker in charge 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 and an associate broker in charge includes (1) 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 before the recording of the transaction;
- (2) communicating office policies to affiliated licensees; and
- (3) supervision for compliance of brokerage policies, guidelines, and requirements that are specifically listed under AS 08.88.685(a)(1) - (5).
- (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.

TRANSACTION COORDINATORS

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. 08.88.398. 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.

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 64.140. 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

COMMUNITY ASSOCIATIONS (HOA?)

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. 08.88.173. 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. 08.88.351. 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.

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 08.88.391
	AS 08.88.161	AS 08.88.351	AS 08.88.615
	AS 08.88.171		

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) "final arbitration award" means an arbitration award for which there is no further right to appeal;
- (6) "final judgment" means a judgment for which there is no further right to appeal;
- (7) "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);
 - (8) "knowingly" has the meaning given in AS 11.81.900(a);
 - (9) "lease" includes a lease that is a part of another transaction;
 - (10) "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;
 - (11) "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;
 - (12) "real estate licensee" is a person who holds a license under this chapter; the term includes a broker unless the context clearly excludes brokers;
 - (13) "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;
 - (14) "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.

TRUST ACCOUNTS

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.

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 64.078. 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.

(d) 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.

(e) 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 64.135. INSPECTIONS OR AUDITS OF RECORDS AND ACCOUNTS.

(a) The commission or 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 earnest money agreements, listing agreements, trust account records, disbursement records, broker or licensee 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

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
AS 08.88.081 AS 08.88.351 08.88.401

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

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. 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.

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

(f) 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