

Practical Licensee Relationships Disclosure

Learning Objectives:

Upon completion of this module, the Licensee will be able to:

Define client and customer duties.

Describe neutral relationships.

Describe the Relationship Disclosures needed in a real estate transaction.

Differentiate between client-level and customer-level relationships as they relate to the seller and the buyer.

This class addresses Practical licensee relationship disclosure.

In addition to discussing licensee relationships we will address additional licensee relationship provisions and authorization of neutral licensee relationship.

We will detail the duties owed by licensees in all licensee relationships and differentiate duties owed by licensee representing a person. We will also address waiver of duties that exist in a neutral licensee relationships.

In drafting the statutes for consumers and licensees alike, the attempt was made to clarify the responsibilities for both. In doing so it was important to identify duties not owed by licensee as well as acts not amounting to adverse or detrimental acts or conflicts of interest . In establishing the designated licensee relationship, Alaska followed other states in moving the relationship from the broker down to the licensee.

Additional sections will address the requirements under the new role of licensee and help clarify the relationship. As an example, no imputation of knowledge resulting from neutral licensee relationship occurs. The statutes also address compensation disclosure requirements, duration of relationship, vicarious liability, imputed knowledge and notice, common law abrogation, causes of action, policies, guidelines, and requirements, exemptions, and definitions

The sections of the statute that address the new licensee relationship can be found in Alaska statute 08.88.600–900. We start with defining the options in relationships available to real estate professionals in Alaska.

Licensee Relationships 08.88.600 Licensee Relationships and Duties states:

- (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.

The next section addresses situations where the licensee may be dealing in multiple transactions with one party and allows them to differentiate the choice of relationship with respect to those particular transaction. Additional Licensee Relationship Provisions 08.88.605 states:

- (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.

If the real estate professional is going to be conducting themselves in a neutral licensee relationship the statute requires certain disclosures be performed at specific times. Authorization of Neutral Licensee Relationship 08.88.610 states:

- (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."

In order to assure protection for consumers in Alaska when licensees are going to be working with both parties equally there are minimum standards that define Duties Owed by Licensee in All Licensee Relationships 08.88.615 which include:

- (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."

The next section of the statute goes on to more clearly define the role of the licensee's as it relates to property information and duty to investigate property condition and events that might lead to a stigmatized property. It was written to inform the consumer specifically of any limitations in level of service as compared to an agency relationship, or to remove any potential misunderstanding because the consumer thought the licensee was going to be doing something that the licensee is not required to do, unless the licensee agreed to it in writing. And these are Duties Owed by Licensee in All Licensee Relationships 08.88.615(b)

- (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.

These events are often referred to as stigmatized property and while the statute is specific as it relates to murders and suicides other events that can cause a stigmatized property such as violent events or strange occurrences are not covered by the statute. They may be considered material facts if the buyer believes it is important because materiality is not defined in the statute and thus the Blacks Law Dictionary would be the source to define materiality which in that definition is anything that would make a difference in whether or not the buyer would be willing to buy or the prices they would be willing to pay. Not disclosing a material fact is grounds for revocation or suspension of a real estate license.

- (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.

A higher level of service, representation, goes beyond specific assistance. The Duties Owed by Licensee Representing a Person 08.88.620, 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 are required:

- (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.

Because confidentiality of the real estate client can be a significant issue is important to understand what the definition of Confidential Information is as it relates to Alaska statute which defines it as:

- (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;

The brokerage needs to employ written Policies and Procedures that defines procedures for Protecting Confidential Information. Locking File Cabinets, Restricted Access to confidential records and financial records of the company, using Restricted Rooms to hold privileged information, and defining General vs. Privileged File procedure to protect the information.

Waiver of Duties 08.88.625 this section addresses that the minimum standard that the statute requires under 08.88.615 may not be reduced by the licensee.

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).

Once again the statute is written to clarify what can assume or scans expect from real estate professionals in Alaska by defining Duties Not Owed by Licensee 08.88.630 which states:

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.

This section basically acknowledges that common real estate practices often mean that a licensee is either representing more than one buyer in the same price range or more than one seller in the same price range in this statute recognizes that as Acts Not Amounting to Adverse or Detrimental Acts or Conflicts of Interest 08.88.635 and goes on to clarify other situations the statute finds appropriate.

- (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.

As brokerages became larger the traditional way that consumers worked with the real estate industry meant that the relationship was established at the broker level. 40 years ago when brokerages were small, a broker could monitor all of the activities because it also meant the broker was aware of the motivations of the buyers and sellers who were theoretically employing the broker, not the licensee. However, as brokerages grew in some cases to hundreds of agents this no longer made sense.

Many states before Alaska realize that establishing the relationship at the licensee level made more sense in this statute defines the Designated Licensee Relationship 08.88.640

(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 licensee employed by or under contract to the broker, or to an owner of the business employing 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.

The next section deals specifically with Duties of Neutral Licensee 08.88.645.

(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.

This next sub section radically changes the neutral licensee role and can potentially put them in conflict by favoring one side in the transaction or the other. It is so important that when giving the additional authority, it requires an additional signature granting that authority on the waiver of right to be represented. The additional authority granted below is best done with full disclosure and authority from the principal to avoid disclosing information that either consumer may later feel damaged them. While their upset may not rise to the level of a lawsuit or license action, it could damage any potential future referral business and with current social media capability the consumer may damage the licensee's relationship online.

(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.

At one point the broker was expected to know everything about every consumer in every transaction and that all of the licensee's at their company were expected to be fully briefed on all details of all client's motivations and actions throughout the entire brokerage. As brokerages grew this no longer was possible in this section addresses one of the byproducts of designated licensee distinction in as much that it defines the knowledge that is known is known but knowledge known by somebody else is not imputed across the company therefore No Imputation of Knowledge Resulting From Neutral Licensee Relationship 08.88.650 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.

This statutory requirement defines Compensation sources and requirement to disclose to consumers where the money is coming from in the transaction 08.88.655

- (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.

The statute defines when relationships begin and the Duration of the Relationship 08.88.660

(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.

Outside of the statutes additional reasons why the relationship can and includes; Death or incapacity of either party (notice of death is not necessary), Destruction or condemnation of the property by eminent domain, Expiration of the terms of the Relationship, Mutual agreement to terminate the Relationship.

Additionally legal issues can terminate the Relationship such as; Breach by one of the parties, such as abandonment by the Licensee or revocation by the principal (the breaching party might be liable for damages), By operation of law, as in a bankruptcy of the principal (since title to the property would be transferred to a court-appointed receiver), Completion or fulfillment of the purpose for which the Relationship was created

Under agency law the principal is responsible for the actions of their agent. This is known as “respondent superior” or “vicarious liability.” What are the arguments that was made to move from an agency relationship to the new licensee relationship was that under the new relationship the consumers would not be responsible for the real estate licensees action however the broker and owner would still have Vicarious Liability for their licensees actions 08.88.665

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 judgment against the licensee.

Just like other licensees are not expected to know what they have not been told, neither do the consumers have Imputed Knowledge and Notice under Alaska statute 08.88.670 which states

(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.

The legislature specifically abrogated the common law of agency by putting this section into the statute. It basically tells the judges not to impose an agency relationship in a real estate action based on the conduct of the real estate professional. The legislature specifically get away with agency and so judges need to know that it was an intentional act and therefore the judges should not impose an agency fiduciary standard on the conduct of real estate licensees in Alaska. To assure no misunderstandings Common Law was Abrogated in Alaska statute 08.88.675 which says 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.

The section says that any violations of the neutral licensee relationship rises to the level of an administrative action against the licensee. However it does not give the consumer the right to sue the licensee based upon their conduct as a licensee and that Causes of Action under 08.88.680 are not available in court.

- (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.

Policies, Guidelines, and Requirements 08.88.685 requires brokers to have a policy and procedure manual clearly outlining the duties and responsibilities of consumer representation.

- (a) A broker shall adopt a written policy that identifies and describes 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. The broker shall make the written policy available to the commission and to members of the public on request.
- (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).

Because commercial real estate is often conducted with the assistance of attorneys the statute was drafted to recognize that more sophisticated real estate participants do not need the same level of disclosure protection often needed in residential real estate. While it is still necessary to present the AREC consumer pamphlet to people involved in real estate that meet the Exemptions found in 08.88.690 they are not required to sign.

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.

It was important in drafting the new relationship that the statute was clear about when the documentation requirements begin by clearly stating in Definitions 08.88.695 that the requirement for documentation begins at specific assistance being offered.

(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, electronic inquiries from the licensee's 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.

In presenting the AREC consumer pamphlet the timing is defined above. On the first page of the document the licensee reviews the various ways they can work with a consumer. The pamphlet reflects the statutory definition of the different levels of service which include specific assistance, representation, and neutral licensee.

Once the licensee has reviewed the options with the consumer they then decide which representation option is best for them. On the second page the licensee then selects the appropriate relationship that was decided with the consumer in both parties then sign the form and a copy is given to the consumer.

Another important disclosure that is found in another statute relates to the role of the licensee and encouraging sellers to provide the Disclosures in Residential Real Property Transfers form defined in Alaska statute 34.70. This statute helps in defining property condition clearly so that both the buyer and the seller are clear about the property condition. Misrepresentation is a leading cause of lawsuits that relate to real estate and lack of clarity of property condition is the number one cause in the suits.

There are a number of elements that relate to the disclosure that are found in that statute and include guidance in Termination of offer, Liability after disclosure, Subsequent events and approximations, Form of disclosure statement, Good faith, Effect on other required disclosures, Written amendment, Failure to comply, Waiver by agreement, Exemption for first sales, and Definitions.



ALASKA REAL ESTATE COMMISSION CONSUMER DISCLOSURE

This Consumer Disclosure, as required by law, provides you with an outline of the duties of a real estate licensee (licensee). This document is not a contract. By signing this document you are simply acknowledging that you have read the information herein provided and understand the relationship between you, as a consumer, and a licensee. (AS 08.88.600 – 08.88.695)

There are different types of relationships between a consumer and a licensee. Following is a list of such relationships created by law:

Specific Assistance

The licensee does not represent you. Rather the licensee is simply responding to your request for information. And, the licensee may "represent" another party in the transaction while providing you with specific assistance.

Unless you and the licensee agree otherwise, information you provide the licensee is not confidential.

Duties **owed** to a consumer by a licensee providing specific assistance include:

- a. Exercise of reasonable skill and care;
- b. Honest and good faith dealing;
- c. Timely presentation of all written communications;
- d. Disclosing all material information known by a licensee regarding the physical condition of a property; and
- e. Timely accounting of all money and property received by a licensee.

Representation

The licensee represents only one consumer unless otherwise agreed to in writing by all consumers in a transaction.

Duties **owed** by a licensee when representing a consumer include:

- a. Duties owed by a licensee providing specific assistance as described above;
- b. Not intentionally take actions which are adverse or detrimental to a consumer;
- c. Timely disclosure of conflicts of interest to a consumer;
- d. Advising a consumer to seek independent expert advice if a matter is outside the expertise of a licensee;
- e. Not disclosing consumer confidential information during or after representation without written consent of the consumer unless required by law; and
- f. Making a good faith and continuous effort to accomplish a consumer's real estate objective(s).

Neutral Licensee

A neutral licensee is a licensee that provides specific assistance to both consumers in a real estate transaction but does not "represent" either consumer. A neutral licensee must, prior to providing specific assistance to such consumers, secure a Waiver of Right to be Represented (form 08-4212) signed by both consumers.

Duties **owed** by a neutral licensee include:

- a. Duties owed by a licensee providing specific assistance as described above;
- b. Not intentionally taking actions which are adverse or detrimental to a consumer;
- c. Timely disclosure of conflicts of interest to both consumers for whom the licensee is providing specific assistance;
- d. If a matter is outside the expertise of a licensee, advise a consumer to seek independent expert advice;
- e. Not disclosing consumer confidential information during or after representation without written consent of the consumer unless required by law; and
- f. Not disclosing the terms or the amount of money a consumer is willing to pay or accept for a property if different than what a consumer has offered or accepted for a property.

If authorized by the consumers, the neutral licensee may analyze and provide information on the merits of a property or transaction, discuss price terms and conditions that might be offered or accepted, and suggest compromise solutions to assist consumers in reaching an agreement.

Designated Licensee

In a real estate company, a broker may designate one licensee to represent or provide specific assistance to a consumer and another licensee in the same office to represent or provide specific assistance to another consumer in the same transaction.

ACKNOWLEDGEMENT:

I/We, _____ have read the information provided in this Alaska Real Estate
(print consumer's name(s))

Consumer Disclosure and understand the different types of relationships I/we may have with a real estate licensee. I/We

understand that _____ of _____
(licensee name) (brokerage name)

will be working with me/us under the relationship(s) selected below.

(Initial)

_____ **Specific assistance without representation.**

_____ **Representing the Seller/Lessor only.** (may provide specific assistance to Buyer/Lessee)

_____ **Representing the Buyer/Lessee only.** (may provide specific assistance to Seller/Lessor)

_____ **Neutral Licensee.** (must attach Waiver of Right to be Represented, form 08-4212)

Date: _____

Signature: _____
(Licensee)

Date: _____

Signature: _____
(Consumer)

Date: _____

Signature: _____
(Consumer)

THIS CONSUMER DISCLOSURE IS NOT A CONTRACT



ALASKA REAL ESTATE COMMISSION WAIVER OF RIGHT TO BE REPRESENTED

About This Form:

Occasionally, a licensee is "representing" a consumer (buyer or lessee) that has interest in acquiring a property where another consumer (seller or lessor) is also "represented" by the same licensee. Prior to showing the property, the licensee must obtain written approval from both consumers to change their working relationship from representation to providing specific assistance in a neutral capacity. AS 08.88.610

In Alaska, real estate licensees are **required by law** to provide this document, prior to providing specific assistance to the parties, in conjunction with the Alaska Real Estate Consumer Disclosure (form 08-4145), outlining the duties of a real estate licensee when acting in a neutral capacity.

Duties of a Neutral Licensee: A neutral licensee is a licensee that provides specific assistance to both consumers in a real estate transaction.

Duties **owed** by a neutral licensee include:

- a. Exercise of reasonable skill and care;
- b. Honest and good faith dealing;
- c. Timely presentation of all written communications;
- d. Disclosing all material information known by a licensee regarding the physical condition of a property;
- e. Timely accounting of all money and property received by a licensee;
- f. Not intentionally taking actions which are adverse or detrimental to a consumer;
- g. Timely disclosure of conflicts of interest to both consumers for whom the licensee is providing specific assistance;
- h. Advising a consumer to seek independent expert counsel if a matter is outside the expertise of a licensee;
- i. Not disclosing consumer confidential information during or after representation without the written consent of the consumer unless required by law; and
- j. Not disclosing the terms or the amount of money a consumer is willing to pay or accept for a property.

_____	Date	_____	Date
_____	Date	_____	Date
Real Estate Licensee	Date	Real Estate Company	Date

If authorized by consumers, the neutral licensee may analyze and provide information on the merits of a property or transaction, discuss price terms and conditions that might be offered or accepted, and suggest compromise solutions to assist them in reaching an agreement.

Additional Authorization:

I hereby authorize the "neutral" licensee to engage in the following conduct in a good faith effort to assist in reaching final agreement in a real estate transaction:

- Analyzing, providing information, and reporting on the merits of the transaction to each consumer;
- Discussing the price, terms, or conditions that each consumer would or should offer or accept; or
- Suggesting compromises in the consumer's respective bargaining positions.

_____	Date	_____	Date
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