

LEGAL SERVICES

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MEMORANDUM

April 28, 2004

SUBJECT: Sectional summary of SCS CSSSHB 29(L&C)
(Work Order No. 23-LS0189\C)

TO: Representative Norman Rokeberg
Attn: Amanda

FROM:  Theresa L. Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill, and the bill itself is the best statement of its contents.

Section 1. Provides legislative findings and intent for the bill.

Section 2. Authorizes the real estate commission to investigate and take administrative action when there is a violation of the new article proposed by this bill.

Section 3. Requires a licensee with a conflict to disclose the conflict to persons adversely affected by the conflict and their licensees and to confirm the conflict in writing to the persons or their licensees as soon as possible after identification of the conflict. Requires a license to advise the person verbally of the conflict and to begin any written statement of the conflict with certain words.

Section 4. Limits the application of AS 08.88.396 to acts that occur before the effective date of this new subsection.

Section 5. Removes AS 08.88.396 from the list of sections whose violation triggers a misdemeanor penalty.

Section 6. Establishes a new article relating to licensee relationships and duties.

Sec. 08.88.600. Identifies the types of relationships a licensee may have with parties to real estate transactions.

Sec. 08.88.605. Allows for a licensee to have different licensee relationships with a party in separate transactions if the licensee complies with the new article when establishing the relationships.

Sec. 08.88.610. Allows a licensee to obtain preauthorization to act as a neutral licensee. Requires a licensee to obtain written consent to act as a neutral licensee in certain circumstances before the licensee shows the real estate.

Sec. 08.88.615. Identifies the duties that a licensee owes to each person to whom the licensee provides specific assistance.

Sec. 08.88.620. Identifies the duties that a licensee owes to a person whom the licensee represents.

Sec. 08.88.625. With two exceptions, prohibits a licensee or a person to whom a licensee provides specific assistance from waiving the duties identified under secs. 08.88.615 and 08.88.620.

Sec. 08.88.630. Describes the duties that a licensee does not owe to a person.

Sec. 08.88.635. Describes certain acts that do not amount to adverse or detrimental acts by a licensee, to conflicts of interest for the licensee, or breaches of the duty of confidentiality by a licensee.

Sec. 08.88.640. Provides some guidelines for the designated licensee relationship. Limits the persons to whom the duties, obligations, and responsibilities of the relationship extend and to whom knowledge is imputed. Allows a broker to have different designated licensees working for different parties in the same transaction. Allows a designated licensee to represent or provide specific assistance to the same person in different transactions even though the person has a different interest in each transaction.

Sec. 08.88.645. Identifies the duties of a neutral licensee.

Sec. 08.88.650. States that a neutral licensee's knowledge or information about one client is not imputed to other clients or to other licensees working for the same broker.

Sec. 08.88.655. Establishes certain rules relating to the compensation received by a broker. Allows a broker to be compensated by any party to a transaction, by a third party, or by parties splitting the compensation. States that payment will not be construed as establishing a relationship. In specified circumstances requires a licensee to disclose which party is anticipated to compensate the brokers. Requires the contract to indicate who is compensating the brokers.

Sec. 08.88.660. Establishes when a licensee relationship begins and ends, the effect of termination on other contractual rights, and the licensee's duties after termination.

Sec. 08.88.665. States that a seller, buyer, lessor, or lessee is not liable for an act, error, or omission of a licensee that arises out of the licensee relationship, except in two

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described circumstances.

Sec. 08.88.670. Establishes that, unless agreed to otherwise in writing, a seller, buyer, lessor, or lessee is not considered to know a fact known by the person's licensee unless the fact is actually known by the person. Establishes that, unless agreed to otherwise in writing, a licensee does not have knowledge or notice of a fact that is not actually known by the licensee.

Sec. 08.88.675. States that the new article abrogates the common law of agency in real estate transactions to the extent the common law is inconsistent with the new article.

Sec. 08.88.680. Prohibits a person from bringing an action against a neutral licensee for making a required or permitted disclosure. Addresses a plaintiff's remedy in a civil action against a licensee for failing to comply with the new article.

Sec. 08.88.685. Requires a broker to adopt a written policy identifying and describing the relationships the broker and the broker's licensees may engage in. Directs the real estate commission to adopt regulations relating to broker guidelines, the commission's pamphlet on licensee duties, and a broker's supervision of licensees. Requires brokers to produce and pay the production costs of the pamphlet.

Sec. 08.88.690. Establishes three exemptions from the article's signature requirements.

Sec. 08.88.695. Defines certain terms for the new article.

Section 7. Provides authority for the real estate commission to adopt regulations before the rest of the Act takes effect (because this section take effect before the rest of the Act; see bill sec. 9).

Section 8. Makes most of the bill effective January 1, 2005.

Section 9. Gives sec. 7 of this Act an immediate effective date.

If I may be of further assistance, please advise.

TLB:mdr
04-198.mdr