

Chapter 44.81. COMMERCIAL FISHING AND AGRICULTURE BANK

Sec. 44.81.010. Alaska Commercial Fishing and Agriculture Bank.

(a) There is established the Alaska Commercial Fishing and Agriculture Bank. The exercise by the bank of the powers conferred by this chapter is considered to be for a public purpose. In the exercise of its powers under AS 44.81.215(11), the bank is acting as an agent under the express authority and reservations of the state as the issuer of limited entry permits under AS 16.43. The bank is exempt from the provisions of AS 06.05 (Alaska Banking Code) and AS 10.15 (Alaska Cooperative Corporation Act) in its structure and operations and in the exercise of powers granted by this chapter, and the bank is exempt from AS 45.45.010 - 45.45.090 when lending money under this chapter.

(b) For the purpose of acquiring and accumulating capital of the bank, the board may issue nonvoting, preferred shares of stock in the bank and determine the value of each share. The state, through the Department of Revenue, may purchase the nonvoting, preferred shares issued by the bank. Shares purchased by the state shall be repurchased by the bank within 20 years after their purchase. If the bank fails to repurchase the shares within 20 years after their purchase by the state, the commissioner of commerce, community, and economic development may appoint a receiver to direct, manage, and operate the bank until the shares have been repurchased. Upon voluntary or involuntary liquidation of the bank, and upon repayment of all legal debts and obligations of the bank, all shares of nonvoting, preferred stock owned by the state have priority for redemption over all other forms and amounts of ownership of the bank.

(c) [Repealed, Sec. 43 ch 85 SLA 1988].

History -

(Sec. 3 ch 159 SLA 1978; am Sec. 1 ch 53 SLA 1979; am Sec. 12 ch 122 SLA 1980; am Sec. 1 ch 109 SLA 1981; am Sec. 65 ch 21 SLA 1985; am Sec. 1 ch 49 SLA 1987; am Sec. 43 ch 85 SLA 1988; am Sec. 8, 9, 27 ch 34 SLA 1996; am Sec. 1 ch 102 SLA 2000; am Sec. 1 ch 105 SLA 2002)

Revisors Notes -

Formerly AS 44.54.010. Renumbered in 1980.

In 1999, in (b) of this section, "commissioner of commerce and economic development" was changed to "commissioner of community and economic development" in accordance with Sec. 88, ch. 58, SLA 1999. In 2004, in (b) of this section, "commissioner of community and economic development" was changed to "commissioner of commerce, community, and economic development", in accordance with Sec. 3, ch. 47, SLA 2004.

Amendment Notes -

The 2000 amendment, effective August 30, 2000, made a section reference substitution near the beginning of the third sentence in subsection (a).

The 2002 amendment, effective September 26, 2002, added the language beginning "and the bank is exempt" to the end of subsection (a).

Editors Notes -

Section 28, ch. 34, SLA 1996 provides that the 1996 amendments made by that chapter to this section do not affect "a contract, cause of action, liability, penalty, or proceeding existing, incurred, or accrued on August 20, 1996," and do not affect "an action of the Alaska Commercial Fishing and Agriculture Bank taken before August 20, 1996."

Decisions -

Status for maritime foreclosure proceedings. - The Alaska Commercial Fishing and Agriculture Bank is not a state agency for purposes of maritime lien foreclosure proceedings. Alaska Com. Fishing & Agric. Bank v. O/S Alaska Coast, 715 P.2d 707 (Alaska 1986).

Sec. 44.81.020. Board of directors.

(a) The bank shall be governed by a board of directors consisting of seven to nine natural persons. The number is determined by the bank's bylaws. Two board members shall be appointed by the governor of the state. The other board members shall be elected by the members of the bank as provided in the bank's bylaws, except that at least one of the elected board members must be a resident farmer.

(b) The members of the board shall serve for terms of three years and may serve successive terms. Terms must be staggered. A member of the board who releases confidential information in violation of AS 44.81.260, commits serious ethical misconduct that relates to the member's fitness to serve as a member of the board, or maintains a chronic substandard borrowing relationship with the bank shall be removed from the board.

(c) A majority of the members of the board constitutes a quorum for the transaction of business and the exercise of the powers and duties of the board.

(d) A member of the board may not vote on a transaction of the bank under this chapter if the member is a party to the transaction.

(e) The members of the board shall annually elect from among themselves a chair and vice-chair and other board officers as may be provided in the bank's bylaws.

(f) Members of the board shall receive compensation not to exceed \$250 for each day of a board meeting if they attend the meeting. Directors may also receive compensation for personal time and efforts expended to further the bank's interests or business other than on meeting days as may be determined by the chair under the bank's bylaws.

History -

(Sec. 3 ch 159 SLA 1978; am Sec. 2 ch 53 SLA 1979; am Sec. 3 ch 51 SLA 1980; am Sec. 2 ch 49 SLA 1987; am Sec. 10 ch 34 SLA 1996)

Revisors Notes -

Formerly AS 44.54.020. Renumbered in 1980.

Amendment Notes -

The 1996 amendment, effective August 20, 1996, rewrote this section.

Sec. 44.81.030. Articles of incorporation. [Repealed, Sec. 66 ch 21 SLA 1985].

Repealed or Renumbered

Sec. 44.81.031. Officers and employees.

(a) The board shall employ a president. The president may not be a member of the board and serves at the pleasure of the board. The president is the chief executive officer of the bank.

(b) The board shall appoint those officers of the bank that are provided for in the bank's bylaws and as the board determines to be necessary for the effective operations of the bank. An executive, operating, administrative, or other salaried officer of the bank may not be a member of the board.

(c) The president may hire employees of the bank as may be determined necessary for the efficient performance of the functions of the bank. The board shall approve the compensation of the employees. Employees of the bank are not employees of the state and are not considered to be employees of a public organization for the purposes of AS 39.35.

History -

(Sec. 11 ch 34 SLA 1996)

Sec. 44.81.040. Bylaws. [Repealed, Sec. 27 ch 34 SLA 1996].

Repealed or Renumbered

Sec. 44.81.041. Structure and membership of the bank.

(a) The bank shall be structured and operated as a cooperative corporation.

(b) The board shall issue shares of membership stock in the bank in the amounts and with the value determined by the board and stated in the articles of incorporation. The membership stock may be issued under this chapter and under the bylaws of the bank to persons determined to be eligible to transact business with the bank.

(c) The board may establish one or more mechanisms by which persons or entities, or classes of persons or entities, who transact business with the bank are required to provide or establish capital ownership in the bank. The mechanisms may include the issuance of capital stock or other equity instruments or the allocation or retention of net proceeds from the operations of the bank. The mechanisms shall be established and imposed in a manner that the board determines equitably reflects the nature and amount of business transacted with the bank.

History -

(Sec. 12 ch 34 SLA 1996)

Sec. 44.81.050. Membership meetings. [Repealed, Sec. 27 ch 34 SLA 1996].

Repealed or Renumbered

Sec. 44.81.051. Bylaws.

The board may adopt bylaws for the bank for the regulation and management of the affairs of the bank, and may alter, amend, or repeal them. The bylaws shall be consistent with this chapter and other laws that apply to the bank.

History -

(Sec. 13 ch 34 SLA 1996)

Sec. 44.81.060. Membership stock. [Repealed, Sec. 27 ch 34 SLA 1996].

Repealed or Renumbered

Sec. 44.81.061. Indemnification of directors, officers, and employees.

The bank may indemnify directors, officers, and employees, or may purchase and maintain insurance on behalf of directors, officers, and employees. The indemnification and the insurance purchase and maintenance shall comply with AS 10.06.490.

History -

(Sec. 14 ch 34 SLA 1996)

Sec. 44.81.070. President; officers and employees. [Repealed, Sec. 27 ch 34 SLA 1996].

Repealed or Renumbered

Sec. 44.81.080. Exempt status. [Repealed, Sec. 10 ch 109 SLA 1981].

Repealed or Renumbered

Sec. 44.81.090. , 44.81.100I Term of office and removal; quorum. [Repealed, Sec. 27 ch 34 SLA 1996].

Repealed or Renumbered

Sec. 44.81.101. Pledge of the state.

(a) The state pledges to and agrees with any lender to the bank that the state will not limit or alter the rights and powers given to the bank by this chapter to fulfill the terms of a contract made by the bank with the lender to the bank, or in any way impair the rights and remedies of the lender to the bank. The bank is authorized to include this pledge and agreement of the state in a contract with any lender to the bank.

(b) The pledge of the state is limited to the express provisions of (a) of this section and is not a guarantee, surety, promise, undertaking, or assurance of repayment or performance of any obligation of the bank.

History -

(Sec. 15 ch 34 SLA 1996)

Editors Notes -

Section 28, ch. 34, SLA 1996 provides that the 1996 amendments made by that chapter that added this section do not affect "a contract, cause of action, liability, penalty, or proceeding existing, incurred, or accrued on August 20, 1996," and do not affect "an action of the Alaska Commercial Fishing and Agriculture Bank taken before August 20, 1996."

Decisions -

Cited in Alaska Com. Fishing & Agric. Bank v. O/S Alaska Coast, 715 P.2d 707 (Alaska 1986) (decided under former AS 44.81.160).

Sec. 44.81.110. Compensation of board members. [Repealed, Sec. 27 ch 34 SLA 1996].

Repealed or Renumbered

Sec. 44.81.120. - 44.81.150| Bonds of the bank; trust indentures and trust agreements; validity of pledges; nonliability on bonds. [Repealed, Sec. 10 ch 109 SLA 1981].

Repealed or Renumbered

Sec. 44.81.160. Pledge of the state. [Repealed, Sec. 27 ch 34 SLA 1996].

Repealed or Renumbered

Sec. 44.81.170. - 44.81.180| Exemption from taxation; bonds legal investments for fiduciaries. [Repealed, Sec. 10 ch 109 SLA 1981].

Repealed or Renumbered

Sec. 44.81.190. Conflicts of interest. [Repealed, Sec. 27 ch 34 SLA 1996].

Repealed or Renumbered

Sec. 44.81.200. Reports and publications.

The board shall publish an annual report to the bank's members. The report shall be made available to the governor, the legislature, and the public. The report must include financial statements audited by independent outside auditors, a discussion of the bank's circumstances and operations during the period covered by the report, and any other information that the board believes would be of interest to the governor, the legislature, and the public, or that the legislature requests the board to include. The board may publish other reports considered appropriate to its purposes.

History -

(Sec. 3 ch 159 SLA 1978; am Sec. 5 ch 109 SLA 1981; am Sec. 16 ch 34 SLA 1996)

Revisors Notes -

Formerly AS 44.54.200. Renumbered in 1980.

Decisions -

Cited in Alaska Com. Fishing & Agric. Bank v. O/S Alaska Coast, 715 P.2d 707 (Alaska 1986).

Sec. 44.81.210. General powers of the bank.

The bank may

- (1) adopt, alter, and use a corporate seal;
- (2) sue and be sued in the name of the bank;
- (3) appoint officers, employees, trustees for certificate holders, and agents, and establish their powers and duties;
- (4) provide technical services to members of the bank; in this paragraph, "technical services" includes services that will enhance the ability of a member to obtain financial assistance from the bank;
- (5) participate with state departments and agencies in formulating policy and in planning for the development of commercial fishing and agriculture in the state;
- (6) engage in programs to support the efforts of resident fishers or farmers in order to enhance the further development, efficiency, stability, or profitability of commercial fishing or agriculture in the state;
- (7) make contracts and execute instruments necessary to or convenient for the exercise of its corporate powers;
- (8) issue bonds to carry out its corporate purposes and powers;
- (9) borrow money and issue secured and unsecured evidence of indebtedness for a corporate purpose or to fund, refund, pay, or discharge outstanding obligations, and enter into agreements and contracts relating to these obligations;
- (10) secure the payment of its obligations by pledge, mortgage, or other lien on its contracts, revenue, income, or property;
- (11) incur secondary liability by guaranty or endorsement of the obligations of a person, except for natural persons, when, in the judgment of the board, the action furthers the bank's corporate purposes;
- (12) acquire real or personal property by purchase, lease, bequest, devise, gift, the satisfaction of debts, or the foreclosure of mortgages, and hold, maintain, use, operate, and convey real or personal property;
- (13) sell, lease as lessor or lessee, exchange, donate, convey, or encumber in any manner by mortgage or by creation of another security interest, real or personal property owned by it, or in which it has an interest, when, in the judgment of the board, the action furthers its corporate purposes;
- (14) establish wholly-owned or majority-owned subsidiary corporations or limited liability companies to acquire, hold, operate, maintain, or liquidate property received by the bank in a foreclosure action or other loan collection process or to provide services to resident fishers or farmers, or other persons, if the services are consistent with the corporate purposes and powers expressed in this chapter;
- (15) acquire equity or other ownership interest in a domestic corporation or limited liability company if the purpose of the acquisition is to enhance the further development, efficiency, stability, or profitability of commercial fishing or agriculture in the state;

(16) enter into agreements with public or private lenders or other entities, or with state agencies or agencies of the federal government, to carry out the purposes of this chapter;

(17) do what is necessary or desirable to carry out the corporate purposes and powers expressed or implied in this chapter.

History -

(Sec. 3 ch 159 SLA 1978; am Sec. 4 ch 53 SLA 1979; am Sec. 7 - 10 ch 51 SLA 1980; am Sec. 6 ch 109 SLA 1981; am Sec. 52 ch 113 SLA 1982; am Sec. 17 ch 67 SLA 1983; am Sec. 20 ch 79 SLA 1985; am Sec. 4, 5 ch 49 SLA 1987; am Sec. 2 ch 52 SLA 1987; am Sec. 2 ch 70 SLA 1989; am Sec. 17 ch 34 SLA 1996)

Revisors Notes -

Formerly AS 44.54.210. Renumbered in 1980.

Editors Notes -

Section 28, ch. 34, SLA 1996 provides that the 1996 amendments made by that chapter to this section do not affect "a contract, cause of action, liability, penalty, or proceeding existing, incurred, or accrued on August 20, 1996," and do not affect "an action of the Alaska Commercial Fishing and Agriculture Bank taken before August 20, 1996."

Decisions -

Cited in Alaska Com. Fishing & Agric. Bank v. O/S Alaska Coast, 715 P.2d 707 (Alaska 1986).

Sec. 44.81.215. Lending powers of the bank.

The bank may

(1) make loans to individuals, including married couples, who are residents of the state and who are engaged in commercial agriculture or fishing, including harvesters, processors, suppliers, and marketers, if at least one of the primary obligors on the loan is a member of the bank;

(2) make loans to corporations, partnerships, or limited liability companies engaged in commercial agriculture or fishing if the majority interest of the corporation, partnership, or limited liability company is beneficially owned by residents of the state and a majority of the owners are residents of the state, and if at least one of the primary obligors on a loan is a member of the bank; however, the bank may not make a loan under this paragraph to a corporation, partnership, or limited liability company for the purchase of a new or existing fishing boat or for the repair or renovation of an existing fishing boat if the primary purpose of the fishing boat is to commercially harvest fishery resources, unless the corporation, partnership, or limited liability company is wholly owned and controlled by residents of the state, and unless at least one of the primary obligors on the loan is a member of the bank;

(3) make loans for limited entry permits to individuals who fish commercially if the individual is a state resident; loans made under this paragraph are subject to AS 44.81.231;

(4) make loans not to exceed \$500,000 to individuals, including married couples, who are residents of the state and who will use the loan proceeds to commercially engage in tourism within the state if at least one of the primary obligors on the loan is a member of the bank;

(5) make loans not to exceed \$1,000,000 to corporations, partnerships, or limited liability companies that will use the loan proceeds to commercially engage in tourism within the state if the majority interest of the corporation, partnership, or

limited liability company is beneficially owned by residents of the state and a majority of the owners are residents of the state, and if at least one of the primary obligors on the loan is a member of the bank;

(6) make loans not to exceed \$500,000 to individuals, including married couples, who are residents of the state and who will use the loan proceeds to commercially engage in the development or exploitation of natural resources within the state if at least one of the primary obligors on the loan is a member of the bank;

(7) make loans not to exceed \$1,000,000 to corporations, partnerships, or limited liability companies that will use the loan proceeds to commercially engage in the development or exploitation of natural resources within the state if the majority interest of the corporation, partnership, or limited liability company is beneficially owned by residents of the state and a majority of the owners are residents of the state, and if at least one of the primary obligors on the loan is a member of the bank;

(8) make a loan for capital investment or operating capital to a shore-based fish processor, a timber processor, or an agricultural processor or harvester who does not meet the resident ownership requirements of (1) or (2) of this section if a facility of the processor or harvester is located in the state and the majority interest in the processor or harvester is beneficially owned by residents of the United States;

(9) make a loan to a person, regardless of residency, if the board determines that the loan is necessary to preserve the value of property held by the bank as security for a loan that was made under AS 44.81.210 or this section and that is in default;

(10) make loans, as provided in (1), (2), or (4) - (8) of this section, that are secured by liens subordinate to valid first liens and security agreements granted to another creditor;

(11) accept the pledge of a limited entry permit as security for a loan made under this chapter subject to the conditions set out in AS 44.81.236 on pledges of limited entry permits;

(12) make loans in participation with other lenders as provided in (1), (2), or (4) - (8) of this section, whether or not an obligor is a member of the bank;

(13) purchase or acquire participations in loans from other lenders if the participations conform to the provisions of (1), (2), or (4) - (8) of this section, whether or not an obligor is a member of the bank;

(14) issue certificates of loan participation to members and to other individuals, corporations, partnerships, and limited liability companies, but the bank may not issue a certificate of loan participation if the certificate would allow participation by the member, individual, corporation, partnership, or limited liability company in loans that individually or cumulatively involve more than 20 percent of the commercial fishery entry permits issued for one type of gear in a specific fishery resource administrative area.

History -

(Sec. 18 ch 34 SLA 1996; am Sec. 2 ch 102 SLA 2000)

Amendment Notes -

The 2000 amendment, effective August 30, 2000, added paragraphs (4)-(7), redesignated paragraphs accordingly, and updated internal references.

Editors Notes -

Section 28, ch. 34, SLA 1996 provides that the 1996 amendments made by that chapter that added this section do not affect "a contract, cause of action, liability, penalty, or proceeding existing, incurred, or accrued on August 20, 1996," and do not affect "an action of the Alaska Commercial Fishing and Agriculture Bank taken before August 20, 1996."

Sec. 44.81.220. Transition. [Repealed, Sec. 27 ch 34 SLA 1996].

Repealed or Renumbered

Sec. 44.81.225. Small loans to nonmembers.

(a) To facilitate the development of commercial fisheries in geographic areas in which factors such as geographic considerations, uncertainties of communication, or limited demands do not encourage normal lending activities, the bank may make small loans to qualified borrowers who are not members of the bank.

(b) The provisions of this chapter apply to loans authorized by this section except that

(1) the borrower is not required to be a member of the bank at the time the loan is approved; and

(2) the principal amount of the portion of the loan made by the bank may not exceed \$25,000.

(c) The total amount of money that may be loaned under this section may not exceed eight percent of the total capital of the bank.

(d) To service loans made under this section, the bank may contract or make other arrangements with a public agency or with a legal entity that the bank determines to be responsible and competent to administer the loan.

History -

(Sec. 2 ch 39 SLA 1991)

Sec. 44.81.230. Loans for purchase of Alaska limited entry permits. [Repealed, Sec. 27 ch 34 SLA 1996].

Repealed or Renumbered

Sec. 44.81.231. Pledge of permits.

(a) A limited entry permit issued under AS 16.43 may be pledged by the holder as security for a loan authorized under AS 44.81.236 if the certificate for the pledged permit lists the bank as the legal owner of the permit and the pledger as the equitable owner of the permit.

(b) Annual permit cards issued under the pledged permit must be in the name of the equitable owner who shall be responsible for compliance with the laws that govern the permit as if the equitable owner were the holder of the permit.

(c) Co-borrowers or guarantors on a loan secured by one or more pledged permits do not have a right in the pledged permit of the equitable owner, whether by subrogation or other manner.

(d) Upon payment of the loan, the bank shall certify to the Alaska Commercial Fisheries Entry Commission that the loan has been repaid, and the commission shall amend the permit certificate to list the equitable owner as the holder, and the legal interest of the bank shall terminate.

(e) In anticipation of a possible foreclosure under AS 44.81.241 - 44.81.250, the equitable owner of a permit that is pledged as security for the loan may nominate a person to whom the permit may be transferred if the pledge is foreclosed under AS 44.81.245.

History -

(Sec. 19 ch 34 SLA 1996)

Revisors Notes -

In 2004, in subsection (d), "Alaska" was inserted before "Commercial" to correct a manifest error.

Editors Notes -

Section 28, ch. 34, SLA 1996 provides that the 1996 amendments made by that chapter that added this section do not affect "a contract, cause of action, liability, penalty, or proceeding existing, incurred, or accrued on August 20, 1996," and do not affect "an action of the Alaska Commercial Fishing and Agriculture Bank taken before August 20, 1996."

Decisions -

Cited in *Anderson v. Anderson*, 736 P.2d 320 (Alaska 1987) (decided under former AS 44.81.230).

Sec. 44.81.235. Limitations on pledge of permits. [Repealed, Sec. 27 ch 34 SLA 1996].

Repealed or Renumbered

Sec. 44.81.236. Limitations on the pledge of permits.

A loan may not be secured by the pledge of a limited entry permit unless the proceeds of the loan are used for

(1) the purchase of a permit;

(2) the purchase or lease of quota shares, individual fishing quotas, or another license, permit, or other grant of commercial fisheries harvesting entitlements that is issued and regulated under state or federal law;

(3) the purchase, construction, maintenance, repair, or improvement of commercial fishing boats, sites, gear, or equipment;

(4) working capital, including insurance premiums, supplies, food, fuel, bait, boat storage, and boat launching;

(5) the payment of obligations whose status places the permit of a borrower in jeopardy of sale as a result of United States Internal Revenue Service enforcement action;

(6) the purchase of the bank's stock or other equity instruments and loan costs; or

(7) refinancing of debts incurred for a purpose listed in (1) - (4) or (6) of this section.

History -

(Sec. 20 ch 34 SLA 1996)

Editors Notes -

Section 28, ch. 34, SLA 1996 provides that the 1996 amendments made by that chapter that added this section do not affect "a contract, cause of action, liability, penalty, or proceeding existing, incurred, or accrued on August 20, 1996," and do not affect "an action of the Alaska Commercial Fishing and Agriculture Bank taken before August 20, 1996."

Sec. 44.81.240. Default and foreclosure of certain loans secured by limited entry permits. [Repealed, Sec. 27 ch 34 SLA 1996].

Repealed or Renumbered

Sec. 44.81.241. Initial notice of default.

If there is a default on a loan secured by a permit pledged under AS 44.81.231, the bank shall notify the borrowers and guarantors on the loan of the default and of the right to cure the default by sending a notice by certified mail to their last known address or addresses on file with the bank. The notice must include

- (1) the date of the notice;
- (2) a description of the security given for the loan, including the number assigned by the commission and the name of the equitable owner of each permit pledged to secure the loan;
- (3) the date and nature of the default;
- (4) the amount of arrearages as of the date of the notice;
- (5) the total indebtedness, including interest, penalties, and costs of collection, remaining owing on the loan as of the date of the notice;
- (6) the amount of daily interest to accrue from the date of the notice;
- (7) a statement that the costs of collection of the loan incurred by the bank after the date of the notice will be added to the total amount of the indebtedness owing on the loan;
- (8) a statement that the default may be cured within 60 days from the date of the notice or within an extended time period that is specified in an extension notice provided by the bank within the 60-day period under AS 44.81.249;
- (9) the place where payment of arrearages or other cure may be made; and
- (10) a statement in at least 10 point bold type stating:

"IMPORTANT: UNLESS YOU CURE THE LOAN DEFAULT WITHIN THE TIME SPECIFIED BY THIS NOTICE, THE TOTAL INDEBTEDNESS OWING ON THE LOAN SHALL BE IMMEDIATELY DUE AND PAYABLE TO THE BANK WITHOUT FURTHER NOTICE TO YOU. ALSO, THE BANK SHALL THEN BE ENTITLED TO TAKE ANY LEGAL ACTION AGAINST YOU TO COLLECT THE LOAN, INCLUDING THE INSTITUTION OF LAWSUITS AND THE FORECLOSURE OF THE PLEDGE OF ANY PERMIT PLEDGED TO SECURE THIS LOAN."

History -

(Sec. 21 ch 34 SLA 1996)

Editors Notes -

Section 28, ch. 34, SLA 1996 provides that the 1996 amendments made by that chapter that added this section do not affect "a contract, cause of action, liability, penalty, or proceeding existing, incurred, or accrued on August 20, 1996," and do not affect "an action of the Alaska Commercial Fishing and Agriculture Bank taken before August 20, 1996."

Sec. 44.81.243. Bank remedies after failure to cure.

If the borrowers and guarantors on a loan secured by a permit pledged under AS 44.81.231 fail to cure a default within the time stated in the notice given under AS 44.81.241, the total indebtedness owing on the loan immediately becomes due and payable to the bank, and the bank shall be entitled to take any legal action to collect the loan, including the foreclosure under AS 44.81.245 of the permit pledge that secures the loan and the institution of legal action. If the bank forecloses the permit pledge, the bank may proceed in the order the bank selects, whether before, after, or concurrent with other action taken to collect the loan.

History -

(Sec. 21 ch 34 SLA 1996)

Editors Notes -

Section 28, ch. 34, SLA 1996 provides that the 1996 amendments made by that chapter that added this section do not affect "a contract, cause of action, liability, penalty, or proceeding existing, incurred, or accrued on August 20, 1996," and do not affect "an action of the Alaska Commercial Fishing and Agriculture Bank taken before August 20, 1996."

Sec. 44.81.245. Foreclosure.

The bank may foreclose on a permit pledge that secures a loan by sending to the equitable owner of the permit pledged and any other borrowers and guarantors on the loan a notice of foreclosure. The notice shall be sent by certified mail to their last known address or addresses on file with the bank and must include

- (1) the date of the notice;
- (2) a statement that the total indebtedness owing on the loan became due and payable to the bank because the loan default was not cured within the time specified in the notice of default and right to cure provided under AS 44.81.241, and that as a result the bank is entitled to take legal action to collect the loan, including the forfeiture of a permit pledge that secures the loan and the institution of legal action;
- (3) a description of the permit pledge that is being foreclosed by the notice, including an identification of the permit by the number assigned by the commission and the name of the equitable owner;
- (4) the amount of the total indebtedness owing as of the date of the notice;
- (5) the amount of daily interest that accrues from the date of the notice;
- (6) a statement that the costs of collection of the loan incurred by the bank after the date of the notice will be added to the total amount of the indebtedness due on the loan;
- (7) a statement that to avoid forfeiture of all rights of the equitable owner of the permit identified in the notice, the loan must be paid in full within 60 days from the date of the notice or within an extended time period that is specified in an extension notice provided by the bank within the 60-day period under AS 44.81.249;

(8) a statement that once a forfeiture of all rights of the equitable owner of a permit described in the notice occurs, the permit may not be redeemed;

(9) a statement of the right of the equitable owner to nominate a person to assume the loan under AS 44.81.250(c);

(10) the place where payment in full may be made; and

(11) a notice in at least 10 point bold type stating:

"IMPORTANT: IF THE LOAN IS NOT PAID IN FULL BY THE DATE SPECIFIED, ALL RIGHTS OF THE EQUITABLE OWNER TO THE PERMIT IDENTIFIED IN THIS NOTICE WILL BE FORFEITED WITHOUT FURTHER NOTICE TO YOU. IN THAT EVENT, THERE WILL NOT BE A RIGHT OF REDEMPTION OF THE PERMIT. IN ADDITION, THE BANK MAY NOW TAKE OTHER ACTION TO COLLECT THE LOAN, INCLUDING THE INSTITUTION OF LEGAL ACTION AGAINST YOU AND THE FORECLOSURE OF OTHER PERMIT PLEDGES THAT SECURE THE LOAN."

History -

(Sec. 21 ch 34 SLA 1996; am Sec. 21 ch 22 SLA 2001)

Amendment Notes -

The 2001 amendment, effective May 10, 2001, updated a section reference in paragraph (9).

Editors Notes -

Section 28, ch. 34, SLA 1996 provides that the 1996 amendments made by that chapter that added this section do not affect "a contract, cause of action, liability, penalty, or proceeding existing, incurred, or accrued on August 20, 1996," and do not affect "an action of the Alaska Commercial Fishing and Agriculture Bank taken before August 20, 1996."

Sec. 44.81.247. Termination of permit interest.

(a) If a loan is not paid in full within the time specified by the notice provided for the loan under AS 44.81.245, the equitable interest in the permit identified in the notice terminates by operation of law without further notice. The commission shall cancel an entry permit card issued to the equitable owner of the permit immediately upon receipt by the commission of a certificate of termination containing a copy of the notices required by AS 44.81.241 and 44.81.245.

(b) If a limited entry permit that has been pledged as security under AS 44.81.231 is revoked under AS 16.43.970, the debtor's interest in the permit is terminated by operation of law without further notice as of the date that the revocation takes effect.

History -

(Sec. 21 ch 34 SLA 1996; am Sec. 10 ch 110 SLA 1998)

Editors Notes -

Section 28, ch. 34, SLA 1996 provides that the 1996 amendments made by that chapter that added this section do not affect "a contract, cause of action, liability, penalty, or proceeding existing, incurred, or accrued on August 20, 1996," and do not affect "an action of the Alaska Commercial Fishing and Agriculture Bank taken before August 20, 1996."

Sec. 44.81.249. Cancellation, extension, and delivery of notices.

(a) The bank may cancel a notice provided under AS 44.81.241 or 44.81.245 by delivering a written notice of cancellation to the persons who were given the cancelled notice. The notice shall be given in the same manner as is required for the cancelled notice.

(b) The bank may extend the 60-day period for curing a default under AS 44.81.243 and the period before a forfeiture occurs under AS 44.81.247 by giving a written notice of extension to the persons who were given the notice. The notice shall be given in the same manner as is required for the giving of the notice being extended.

(c) The bank may give a notice required to be provided in AS 44.81.241, 44.81.245, or 44.81.247 by personal delivery instead of by certified mail.

History -

(Sec. 21 ch 34 SLA 1996)

Editors Notes -

Section 28, ch. 34, SLA 1996 provides that the 1996 amendments made by that chapter that added this section do not affect "a contract, cause of action, liability, penalty, or proceeding existing, incurred, or accrued on August 20, 1996," and do not affect "an action of the Alaska Commercial Fishing and Agriculture Bank taken before August 20, 1996."

Sec. 44.81.250. Transfer of entry permits after foreclosure.

(a) Upon foreclosure of a pledge of an entry permit under AS 44.81.241 - 44.81.249 or the termination of a debtor's interest in an entry permit under AS 44.81.247(b), the bank shall determine if the permit is subject to a buy-back program under AS 16.43.290 - 16.43.330 and, if it is subject to a buy-back program, shall offer the permit to the commission at a price equal to the outstanding indebtedness on the loan.

(b) If the permit is not subject to a buy-back program, or if the commission fails to buy back the permit within 30 days after the commission receives the offer, the bank shall sell the permit to a person who qualifies as a transferee of an entry permit under AS 16.43 and the regulations adopted by the commission. The bank shall give preference to an offer to purchase a permit made by a state resident if the price offered is equal to or greater than the price offered by a nonresident. If the proceeds of the sale of a permit exceed the amount necessary to pay the indebtedness in full, the bank shall remit the excess to the borrower.

(c) At any time before foreclosure of a pledge of a permit, or within 30 days following foreclosure of a pledge of a permit, the equitable owner or former equitable owner may nominate a person to assume the loan. A person nominated must qualify as a transferee of the permit under AS 16.43 and must qualify to assume the loan under the requirements of the bank. If the person qualifies, the permit shall be transferred to the nominee upon the nominee's assumption of the loan.

(d) This section does not affect the right of the bank to institute legal actions against the borrowers, guarantors, or other sureties for performance to collect the indebtedness owing on the loan and to take other legal action on the collateral securing the loan.

History -

(Sec. 5 ch 53 SLA 1979; am Sec. 15 - 17 ch 51 SLA 1980; am Sec. 6 - 8 ch 70 SLA 1989; am Sec. 6 ch 39 SLA 1991; am Sec. 37 ch 30 SLA 1992; am Sec. 22 ch 34 SLA 1996; am Sec. 11 ch 110 SLA 1998)

Revisors Notes -

Formerly AS 44.54.250. Renumbered in 1980.

Editors Notes -

Section 28, ch. 34, SLA 1996 provides that the 1996 amendments made by that chapter to this section do not affect "a contract, cause of action, liability, penalty, or proceeding existing, incurred, or accrued on August 20, 1996," and do not affect "an action of the Alaska Commercial Fishing and Agriculture Bank taken before August 20, 1996."

Sec. 44.81.260. Confidentiality of records.

(a) The records of the bank that are identified with, or identifiable as being derived from the records of, a specific borrower, member of the bank, or applicant for a loan are confidential and may not be disclosed by the bank or by its directors, officers, employees, or agents to a person other than the directors, officers, employees, or agents of the bank, except

(1) when required by a federal or state statute;

(2) under AS 44.81.270;

(3) under a search warrant issued under federal law or the law of this state;

(4) under a subpoena or court order issued in a civil action under federal law or the law of this state;

(5) under a subpoena or court order issued in connection with a proceeding before a federal grand jury or grand jury of this state;

(6) under a summons or subpoena issued by an agency or a department of the United States or this state, or an officer, employee, or agent of the agency or department;

(7) under a request by a financial institution, if the request is solely for the stated written purpose of determining the credit worthiness of a member or borrower as an applicant for credit, and if the information disclosed by the bank pertains only to the payment history of the member or borrower;

(8) under a request by a lender that has extended or is considering extending credit to the bank if the credit is or may be secured by the pledge of a loan by the bank;

(9) when disclosed to the attorney general of the United States or to a law enforcement agency of this state if the records may be relevant to a report or investigation of a possible violation of federal law or a law of this state.

(b) The records of the bank that are not subject to (a) of this section may be kept confidential by the bank, subject to the exceptions listed in (a)(1) - (5) of this section.

(c) Notwithstanding (a) - (b) of this section, a borrower, a member of the bank, or an applicant for a loan may authorize the bank in writing to disclose records provided to the bank by the borrower, member, or applicant.

(d) In this section,

(1) "member" includes past and present members;

(2) "records" means financial and other records, including information known to have been derived from the records, in any form, including original documents and copies.

History -

(Sec. 8 ch 109 SLA 1981; am Sec. 1 ch 15 SLA 1991)

Sec. 44.81.270. Audits and examinations of bank.

(a) The legislative auditor may cause the bank to be audited in the manner and under the conditions established by AS 24.20.271 for audits performed by the legislative audit division. The legislative audit division has free access to all books and papers of the bank that relate to the business of the bank and books and papers kept by a director, officer, or employee relating to or upon which a record of the business of the bank is kept. The legislative audit division may summon witnesses and administer oaths or affirmations in the examination of directors, officers, or employees of the bank or another person in relation to the affairs, transactions, and conditions of the bank, and may require and compel the production of records, books, papers, contracts, or other documents by court order if not voluntarily produced. At the direction of the Legislative Budget and Audit Committee under AS 24.20.271, the legislative auditor may conduct an audit of the bank.

(b) The legislative auditor and the auditor's employees may not disclose information acquired by them in the course of an audit of the bank concerning the particulars of the business or affairs of a borrower of the bank or another person, unless the information is required to be disclosed by law or under a court order.

(c) The bank shall be audited annually by independent outside auditors. The legislative auditor may confer with the outside auditors and review the work papers of the audit. The board shall engage the outside auditors, who shall be responsible to the board. The bank shall submit copies of each report of the outside auditors to the legislative auditor within 30 days of the report by the bank.

(d) [Repealed, Sec. 2 ch 27 SLA 2003].

History -

(Sec. 8 ch 109 SLA 1981; am Sec. 7 ch 49 SLA 1987; am Sec. 40, 41 ch 85 SLA 1988; am Sec. 23 ch 34 SLA 1996; am Sec. 2 ch 27 SLA 2003)

Amendment Notes -

The 2003 amendment, effective July 1, 2003, repealed subsection (d).

Editors Notes -

Section 28, ch. 34, SLA 1996 provides that the 1996 amendments made by that chapter to this section do not affect "a contract, cause of action, liability, penalty, or proceeding existing, incurred, or accrued on August 20, 1996," and do not affect "an action of the Alaska Commercial Fishing and Agriculture Bank taken before August 20, 1996."

Decisions -

Cited in Alaska Com. Fishing & Agric. Bank v. O/S Alaska Coast, 715 P.2d 707 (Alaska 1986).

Sec. 44.81.280. Prohibition on disclosure. [Repealed, Sec. 27 ch 34 SLA 1996].

Repealed or Renumbered

Sec. 44.81.300. Unclaimed distributions, redemptions, or payments.

The bank may revoke a distribution of net proceeds by the bank or a redemption of or payment based upon an allocation of proceeds or upon capital stock issued by the bank if the distribution, redemption, or payment remains unclaimed six years after

the date authorized for payment, redemption, or retirement. The amount revoked may revert to an unallocated capital account of the bank if, at least six months before the declared date of revocation, the bank has mailed to the last known address of the person shown by the bank's records to be entitled to the amount a notice that the payment is available to the person; if the address is unknown, the bank shall publish the notice as provided by law for the publication of a summons. A distribution, redemption, or payment subject to this section is not subject to AS 34.45.110 - 34.45.780.

History -

(Sec. 24 ch 34 SLA 1996)

Editors Notes -

Section 28, ch. 34, SLA 1996 provides that the 1996 amendments made by that chapter that added this section do not affect "a contract, cause of action, liability, penalty, or proceeding existing, incurred, or accrued on August 20, 1996," and do not affect "an action of the Alaska Commercial Fishing and Agriculture Bank taken before August 20, 1996."

Sec. 44.81.350. Definitions.

In this chapter,

(1) "bank" means the Alaska Commercial Fishing and Agriculture Bank;

(2) "commercial agriculture" includes commercially related activity in connection with producing, harvesting, processing, or marketing an agricultural, maricultural, or horticultural commodity, including the breeding, raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, shellfish, and fur-bearing animals and wildlife, and the planting, cultivating, caring for, harvesting, or processing of forest products on a sustained yield basis;

(3) "commission" means the Alaska Commercial Fisheries Entry Commission under AS 16.43.020;

(4) "member of the bank" includes

(A) a holder of a share of membership stock of the bank; or

(B) a patron of the bank with retained patronage earnings, or other form of capital ownership in the bank, of \$2,500 or more to the patron's credit;

(5) "natural resources" includes water, coal or other minerals, oil or gas, and geothermal systems; in this paragraph,

(A) "coal" means all forms of coal, including lignite;

(B) "gas" includes all natural gas and all hydrocarbons produced at the wellhead that are not oil;

(C) "geothermal system" means a stratum, pool, reservoir, or other geologic formation containing geothermal resources;

(D) "oil" includes crude petroleum oil and other hydrocarbons regardless of gravity that are produced at the wellhead in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas;

(E) "other minerals" means clay, stone, sand, gravel, metalliferous and non-metalliferous ores, and other solid materials or substances of commercial value excavated in solid form from natural deposits on or in the earth; "other minerals" does not include coal or minerals that occur naturally in liquid or gaseous forms;

(6) "permit" means a limited entry permit issued under AS 16.43;

(7) "resident farmer" means a person who is a resident of the state and who is engaged in commercial agriculture in the state;

(8) "resident fisher" means a person who is a resident of the state and who is engaged in commercial fishing in the state;

(9) "supplier" means a person whose main source of income is from providing goods or services that are directly related to commercial fishing or agriculture to individuals, corporations, partnerships, or joint ventures engaged in commercial fishing or agriculture;

(10) "tourism" means the provision or presentation of goods, supplies, equipment, food and food stuffs, accommodations, entertainment, cultural practices and attractions, natural resource access, or transportation for Alaska tourists;

(11) "water" has the meaning given in AS 46.15.260.

History -

(Sec. 18 ch 51 SLA 1980; am Sec. 25, 26 ch 34 SLA 1996; am Sec. 3 ch 102 SLA 2000)

Revisors Notes -

Formerly AS 44.54.260. Renumbered in 1980.

Reorganized in 1996 and 2000.

Amendment Notes -

The 2000 amendment, effective August 30, 2000, added paragraphs (5), (10), and (11).