

CS FOR SENATE BILL NO. 79(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered: 4/20/95

Referred: Rules

Sponsor(s): SENATOR RIEGER

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to errors in surveys of land and amending Alaska Rules of**
2 **Civil Procedure 4 and 12."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1. MANIFESTLY DEFECTIVE SURVEYS.** (a) An action in rem to determine
5 and recognize boundaries of and within a subdivision within a municipality as they presently
6 exist and to quiet title within the boundaries of the subdivision to the persons judicially found
7 entitled to title under this section may be maintained if the platted description or field location
8 of streets, tracts, and lots of or within a subdivision are manifestly defective due to a defective
9 survey so as to create sufficient uncertainty as to affect the quiet enjoyment and property
10 rights of the owners and an owner of land within the subdivision objects to the results of a
11 resurvey and preliminary plat.

12 (b) An action under (a) of this section may only be maintained

13 (1) by

14 (A) the municipality the subdivision is located within; or

1 (B) a person granted permission by the court to bring the action; and
2 (2) if
3 (A) the municipality the subdivision is located within has
4 (i) by resolution supported an action under this section for the
5 subdivision; and
6 (ii) established a special assessment district in the manner
7 provided for capital improvements under AS 29.46.010 - 29.46.140 or under
8 municipal ordinance; and
9 (B) a resurvey and preliminary plat has been completed by the
10 assessment district and one or more property owners of or within the subdivision
11 object to the results of the resurvey and filing of the preliminary plat.
12 (c) The complaint in an action under this section must include
13 (1) a statement of facts showing how this section is applicable;
14 (2) the current plat of the subdivision;
15 (3) a description of the entire real property sought to be affected by the action,
16 including a description of all improvements to the real property and any existing boundary
17 evidence along with a description of the location of all general topographic features;
18 (4) if the action is not brought by the municipality, a specification of the estate,
19 title, and interest owned and in the actual possession of the person bringing the action in
20 described parts of the entire real property affected by the defective survey;
21 (5) a specification of the estate, title, and interest in and owners of each
22 separate part of the entire real property affected by the defective survey so far as they are
23 known to the person bringing the action, and so far as they are capable of being discovered
24 by reasonably diligent search by the person bringing the action;
25 (6) a specification of the street, public, or other areas offered, or that may be
26 offered, for vacation in whole or in part for judicial equitable allocation to landowners for the
27 mitigation of the losses inflicted upon the landowners by the defective survey;
28 (7) the preliminary plat undertaken by the assessment district of the entire real
29 property affected by the defective survey, embodying the land boundaries contained within the
30 legal boundary of the defective survey.
31 (d) In addition to other notice required by applicable court rule, notice shall be

published as provided in Alaska Rule of Civil Procedure 4(e), and a copy of the notice shall be posted in a conspicuous place on each separate parcel of the entire real property described in the complaint within 20 days after the first publication of the notice.

(e) An answer to the complaint must

(1) be served within 90 days after the first publication of the notice; the court for good cause shown may allow up to an additional 180 days to answer;

(2) specifically set out in detail the way in which the answering party's estate, right, title, or interest in or to, or lien on all or any part of the property is different from, or greater than, the interest of the party as it is described in the complaint;

(3) be confined to rights based on events occurring at the time of, or since the time of, the defective survey.

(f) A claim, right, or action that a party may have against a person based upon facts or events that occurred before the action under this section, remains unaffected by the action brought under this section and may be asserted at any time and in any manner permitted by law. However, a judgment in an action under this section is final as to the consequences, with respect to land boundaries, of the replat of the defective survey.

(g) A party to an action authorized by this section may record a notice of the pendency of the action in the form and at the place and with the effects specified in AS 09.45.940.

(h) The vacating of streets, public areas, and other areas in whole or in part by the voluntary action of a municipality, for the purpose of making it possible for the court to mitigate the hardships suffered by individuals because of the defective survey, can be accomplished by the offer of the municipality expressed in the complaint followed by the court's approval of it in the action authorized in this section, without other formalities. This provision is a special substitute for the provisions contained in AS 29.40.120 - 29.40.160.

(i) In an action under this section, judgment may not be given by default, but the court shall require proof of the facts alleged in the complaint and other pleadings.

(j) The judgment must

(1) determine the land boundaries of each parcel of land located within the entire area of real property sought to be affected by the action, whether owned publicly or privately after judicial equitable allocation of land voluntarily vacated by a municipality under

1 (h) of this section;

2 (2) determine the person or persons having estates, rights, titles, interests, and
3 claims in and to each parcel, whether legal or equitable, present or future, vested or
4 contingent, or whether they consist of mortgages or liens of any description;

5 (3) approve and direct the proper filing of a new plat covering the entire area
6 of real property sought to be affected by the action, as a substitute for the plats previously
7 filed, that were based upon the defective survey;

8 (4) to the extent reasonably practicable, attempt to minimize disruption to lines
9 or boundaries of parcels or lots that are not found to be materially incorrect;

10 (5) give effect to the changes in land boundaries reflected by the resurvey and
11 preliminary plat, mitigated so far as can equitably be done by allocating to contiguous lots
12 parts of the land released by the municipality under (h) of this section.

13 (k) A judgment under this section

14 (1) is conclusive with respect to land boundaries on each person who, at the
15 commencement of the action, had or claimed an estate, right, title, or interest in or to a part
16 of the entire area of real property described in the complaint as intended to be affected by this
17 action, and upon each person claiming under any such person by title subsequent to the
18 commencement of the action;

19 (2) may not solely, by reason of the judgment or its effect, make a parcel or
20 lot ineligible for a use or development for which it was eligible before the judgment.

21 (l) The court shall assess the cost of the action under this section and the replat to the
22 assessment district.

23 (m) The person bringing the action shall record a certified copy of the judgment at
24 the expense of the assessment district with the recorder for the recording district in which the
25 land is situated.

26 (n) This section does not affect the right of a person harmed by a defective survey to
27 recover damages for the defective survey or limit the liability of the person who performed
28 the defective survey.

29 (o) The remedy provided by this section is cumulative and in addition to any other
30 remedy provided by law for quieting or establishing title to real property or the boundaries
31 of it.

1 (p) In this section, "defective survey"

2 (1) means that the original monumentation set by the surveyor of record to
3 represent the property corners, or the distance and direction calls, on a plat of public record
4 are sufficiently and manifestly erroneous so as to create gross uncertainty and ambiguity as
5 to the

6 (A) position of property lines within a subdivision; or

7 (B) location of lots, streets, and tracts of a subdivision; and

8 (2) does not include Bureau of Land Management rectangular plats, United
9 States surveys, and state rectangular plats.

10 * **Sec. 2.** An action under sec. 1 of this Act that is commenced before December 31, 1998,
11 may proceed under the provisions of sec. 1 of this Act notwithstanding the repeal of that
12 section under sec. 4 of this Act.

13 * **Sec. 3.** Section 1 of this Act has the effect of amending Alaska Rule of Civil Procedure 4
14 relating to service of process, and Alaska Rule of Civil Procedure 12, relating to answers in
15 civil actions.

16 * **Sec. 4.** Section 1 of this Act is repealed December 31, 1998.