



LAWS OF ALASKA

1966

Source:

CSHB 427

Chapter No.:

80

AN ACT

Relating to establishment of land boundaries affected by earthslides; and providing for an effective date.

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

* Section 1. PURPOSES. (a) This Act is enacted as an exercise of the police power of the state, for the purpose of serving the public welfare of the people of Alaska by

(1) making fully available for new constructions the entire area owned by each entity, either public or private, which purpose can only be served by a re-establishment of certainty as to the present location of land boundaries;

(2) facilitating the sale, mortgage or lease of land parcels in the state;

(3) confirming and establishing the exact areas available for public uses in streets and other public ways;

(4) minimizing the losses suffered by land owning entities, which have been caused by an earthslide, by allocating to adjacent owners areas of land released by the narrowing or vacating of streets owned by a municipality, with the consent of the municipality, given for the promotion of the general welfare

of the people of Alaska, thus reducing in an equitable manner the number of landowners having losses, caused by an act of God, in the square footage of land owned before the earthslide;

(5) correcting existing public records, consisting of land plats, which no longer are accurate, so that a substitute plat, judicially found to be in accordance with existing boundaries as fixed by the earthslide, which was an act of God, and filed subsequent to judicial approval will accurately represent the existing land boundaries;

(6) permitting these ends to be accomplished in a single action in rem, brought with respect to a large area affected by an earthslide, rather than in numerous separate actions;

(7) safeguarding the due process of the remedial procedure in rem, established by the provisions of this Act by allowing deviations from the rules of civil procedure wisely established by the Supreme Court of Alaska for all other actions and proceedings of a civil nature, legal, equitable or otherwise. It is expressly declared to be the purpose of the legislature to change these established rules to the extent, but only to the extent, authorized in this Act, and only in the conduct of the actions authorized in this Act.

(b) The legislature finds that the attainment of each of the objectives enumerated in this section will significantly promote the welfare of all the people in the state.

* Sec. 2. AS 09.45 is amended by adding new sections to read:

ARTICLE 10. EARTHSLIDE RELIEF ACT.

Sec. 09.45.800. PREREQUISITE EARTHSLIDE CHANGING LAND BOUNDARIES. If the boundaries of land, owned either by public or by private persons have been moved by an act of

God, consisting of an earthslide, so that they are in a location different from that at which, by solar survey, they were located before the earthslide, an action in rem to recognize the boundaries as they presently exist and to quiet title within the boundaries in the persons judicially found entitled to title under secs. 800 - 880 of this chapter, is authorized, maintainable by the persons and with the procedures in secs. 800 - 880 of this chapter for the handling of the emergencies dealt with in this chapter.

Sec. 09.45.805. PARTIES. (a) An action authorized by secs. 800 - 880 of this chapter may be commenced by

(1) a borough with the joinder of a city or cities included in the borough;

(2) a city not included within the boundaries of a borough, if the earthslide has affected land in the city, or land outside the city as to which outside land the city has statutory power to approve a land map;

(3) a school district which has statutory power to approve a land map; or

(4) any other entity or person, granted permission by the court to bring the action.

(b) In an action authorized by secs. 800 - 880 of this chapter every person in actual and peaceable possession of, or having an estate or interest in any of the land affected by the action, whose possession or evidence of estate or interest is either recorded or known to the plaintiffs, must be designated in the complaint of the action, and given notice in the manner required by secs. 800 - 880 of this chapter and the court rules of civil procedure.

(c) All unknown parties, including owners, claimants, heirs, devisees, legatees or assigns, may be described in the caption and complaint as "all persons claiming any interest in or lien upon, the real property herein described or any part of it".

Sec. 09.45.810. SEPARATE ACTIONS AS TO SEPARATE SLIDE AREAS. An entity which is a permissible plaintiff under sec. 805 of this chapter, may, in its discretion, bring a separate action under secs. 800 - 880 of this chapter with respect to each separate slide area located within its boundaries and its decision regarding the desirability of the separate action, and regarding the area to be dealt with in each action is final.

Sec. 09.45.815. COMPLAINT. The complaint shall substantially include

- (1) a statement of the facts making the provisions in secs. 800 - 880 of this chapter applicable;
- (2) a description of the entire real property sought to be affected by the action;
- (3) a specification of the estate, title and interest owned, and in the actual possession of the plaintiff or plaintiffs in described parts of the entire real property sought to be affected by the action;
- (4) a specification of the estate, title and interest, so far as they are known to the plaintiffs or either of them, and so far as they are capable of being discovered by reasonably diligent search by the plaintiff or plaintiffs, in each separate part of the entire real property sought to be affected by the action;

(5) a specification of the street areas offered by the plaintiff, or plaintiffs, to be vacated in whole or in part for judicial equitable allocation to landowners for the mitigation of the losses inflicted upon the landowners by the act of God consisting of the earthslide;

(6) a proposed replatting of the entire real property sought to be affected by the action, embodying the land boundaries as fixed by the act of God, except as these have been liberalized by judicially directed use of the vacated lands.

Sec. 09.45.820. PUBLICATION AND POSTING OF NOTICE.

The notice required by Rule 4(e)(5) of the court rules of civil procedure shall be published as provided in the rules 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.

Sec. 09.45.825. PROCEDURE APPLICABLE. Except as otherwise provided in secs. 800 - 880 of this chapter, the court rules of civil procedure shall apply to actions authorized by secs. 800 - 880 of this chapter.

Sec. 09.45.830. JURISDICTION. Upon the completion of the service, publication and posting of the summons, as may be required by secs. 800 - 880 of this chapter and the court rules of civil procedure, the court has complete jurisdiction over the parties plaintiff or plaintiffs and the entire real property described in the complaint as intended to be affected by the action and over the person of everyone having or claiming an estate, right, title or interest in or to, or

lien upon, all or any part of the property and shall be considered to have obtained the possession and control of the property for the purposes of the action with complete jurisdiction to render the judgment provided for in secs. 800 - 880 of this chapter.

Sec. 09.45.835. ANSWER. (a) An answer to the complaint must be served within 90 days after the first publication of the notice, or such further time not exceeding 30 days, as the court for good cause may grant.

(b) An answer must

(1) specifically set out the particulars in which the claimant's estate, right, title, or interest in or to, or lien upon all or any part of the property is different from, or greater than, the interest of the claimant as it is described in the complaint;

(2) be confined to rights based on events occurring at the time of, or since the time of the act of God, consisting of the earthslide.

(c) To whatever extent, if at all, the answering party has rights against anyone whatsoever, based upon facts or events which occurred before the earthslide, the claims shall remain unaffected by the action brought under secs. 800 - 880 of this chapter and shall be assertable subsequent to the conclusion of the action at any time and in any manner permitted by law, notwithstanding the judgment granted in this action, recognizing however the finality of this judgment as to the consequences, with respect to land boundaries, of the earthslide.

Sec. 09.45.840. LIS PENDENS. A party to an action

authorized by secs. 800 - 880 of this chapter may file a notice of the pendency of the action in the form and at the place and with the effects specified in sec. 790 of this chapter.

Sec. 09.45.845. VACATING OF STREETS IN WHOLE OR IN PART. The vacating of streets 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 change in land boundaries caused by the act of God, consisting of an earth-slide, 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 secs. 800 - 880 of this chapter, without other formalities. This provision is a special emergency substitute for the provisions contained in AS 40.15.140 - 40.15.180.

Sec. 09.45.850. PROOF OF FACTS. In an action of the type authorized in secs. 800 - 880 of this chapter, judgment shall not be given by default, but the court must require proof of the facts alleged in the complaint and other pleadings.

Sec. 09.45.855. SCOPE OF JUDGMENT. The judgment shall

- (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 lands voluntarily vacated by a municipality under sec. 845 of this chapter;

- (2) determine the person or persons having estates,

rights, titles, interests and claims in and to each parcel, whether legal or equitable, present or future, vested or contingent, or whether they consist of mortgages or liens of any description;

(3) approve and direct the proper filing of a new plat map covering the entire area of real property sought to be affected by the action, as a substitute for the plat maps previously filed, but rendered inaccurate by the act of God consisting of an earthslide.

Sec. 09.45.860. STANDARDS FOR JUDGMENT. In reaching the conclusions called for by sec. 855 of this chapter the court shall give effect to the changes in land boundaries caused by the earthslide, mitigated, however, so far as can equitably be done, by allocating to contiguous lots parts of the land released by a municipality by its voluntary vacation of areas formerly constituting public ways, which vacatings of streets shall be approved in this judgment.

Sec. 09.45.865. EFFECT OF JUDGMENT. The judgment shall be conclusive with respect to land boundaries upon every person who at the commencement of the action had or claimed an estate, right, title or interest in or to a part of the entire area of real property described in the complaint as intended to be affected by this action, and upon every person claiming under any such person by title subsequent to the commencement of the action.

Sec. 09.45.870. RECORDING OF JUDGMENT. A certified copy of the judgment shall be recorded, at the expense of the plaintiff or plaintiffs in the action, in the office of the recorder of the recording district in which the affected

land is situated.

Sec. 09.45.875. CUMULATIVE REMEDIES. The remedies provided for by secs. 800 - 880 of this chapter are cumulative and in addition to any other remedy provided by law for quieting or establishing title to real property or the boundaries of it.

Sec. 09.45.880. SHORT TITLE. Secs. 800 - 880 of this chapter may be cited as the Earthslide Relief Act.

* Sec. 3. DEVIATION FROM COURT PROCEDURE. This Act provides for deviations from the court Rules of Civil Procedure and therefore the Act must receive an affirmative vote of at least two-thirds of the full membership of each house in order to be effective.

* Sec. 4. EFFECTIVE DATE. This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.