

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

February 4, 2004

3:20 p.m.

MEMBERS PRESENT

Representative Tom Anderson, Chair
Representative Carl Gatto, Vice Chair
Representative Nancy Dahlstrom
Representative Bob Lynn
Representative Norman Rokeberg
Representative Harry Crawford
Representative David Guttenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 29

"An Act relating to real estate licensees and real estate transactions; and providing for an effective date."

- MOVED CSSSHB 29(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 389

"An Act relating to certain monetary advances in which the deposit or other negotiation of certain instruments to pay the advances is delayed until a later date; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 29

SHORT TITLE: REAL PROPERTY TRANSACTIONS/LICENSEES

SPONSOR(S): REPRESENTATIVE(S) ROKEBERG

01/21/03	(H)	PREFILE RELEASED (1/10/03)
01/21/03	(H)	READ THE FIRST TIME - REFERRALS
01/21/03	(H)	L&C, JUD
01/20/04	(H)	SPONSOR SUBSTITUTE INTRODUCED
01/20/04	(H)	READ THE FIRST TIME - REFERRALS
01/20/04	(H)	L&C, JUD

02/04/04

(H)

L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

PEGGY ANN McCONNOCHIE, Representative
Agency Task Force
Legislative Committee
Alaska Association of Realtors
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 29 and answered questions.

MARK KORTING, Broker
RE/MAX Properties of Anchorage, Inc.
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SSHB 29, saying he supports the position of the Alaska Association of Realtors.

PERRY UNDERWOOD, President and Broker
Coldwell Banker Fortune
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SSHB 29.

AUDREY FOLDOE, Representative
Agency Task Force
Alaska Association of Realtors
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of SSHB 29.

STEVE CLEARY, Executive Director
Alaska Public Interest Research Group (AkPIRG)
Anchorage, Alaska

POSITION STATEMENT: Commented on SSHB 29 and listed several concerns.

LINDA GARRISON, Broker
No. 1 Buyer's Agency
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SSHB 29.

DAVID GARRISON
No. 1 Buyer's Agency
Anchorage, Alaska

POSITION STATEMENT: Testified on SSHB 29.

CHRIS STEPHENS, Associate Broker
Bond, Stephens & Johnson

Anchorage, Alaska

POSITION STATEMENT: Testified in support SSHB 29 and Amendment 1.

KIRK WICKERSHAM, Owner

For Sale By Owner Assistance Program, Inc.

Anchorage, Alaska

POSITION STATEMENT: Testified on SSHB 29.

ACTION NARRATIVE

TAPE 04-09, SIDE A

Number 0001

CHAIR TOM ANDERSON called the House Labor and Commerce Standing Committee meeting to order at 3:20 p.m. Present at the call to order were Representatives Anderson, Dahlstrom, Lynn, Rokeberg, Crawford, and Guttenberg. Representative Gatto joined the meeting as it was in progress.

HB 29-REAL PROPERTY TRANSACTIONS/LICENSEES

Number 0058

CHAIR ANDERSON announced that the only order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 29, "An Act relating to real estate licensees and real estate transactions; and providing for an effective date."

The committee took an at-ease from 3:21 p.m. to 3:22 p.m.

Number 0110

REPRESENTATIVE ROKEBERG, sponsor, told members SSHB 29 addresses one section of the real estate statute that has been in dispute and legal disarray for years. He said testimony will outline the history and background of the so-called "law of agency" within the real estate licensing statute. He pointed out that about six years ago he rewrote the entire real estate law and even changed the word "agent" to "licensee", with the exception of this one provision, the so-called "396 section" of the statute.

REPRESENTATIVE ROKEBERG explained that this bill is a culmination of eight years of work by the people in the real estate industry to come to grips with 1992 legislation that implemented the concept of agency representation for both the

buyer and seller and refers to "dual agency." Representative Rokeberg said this phenomenon of the law came about in large part due to the legal community's application of the law of agency in transactions and activities related to real estate. However, he said, he believes the application of these principles has been misapplied; because of the growth, change, and dynamics of the history of the application of the law, it has created a great deal of confusion on the part of the public.

REPRESENTATIVE ROKEBERG pointed out that the fundamental issue is who represents whom in a real estate transaction. Does the licensee represent the buyer or the seller, or how and in what instances do the responsibilities and duties of that particular licensee rest with the buyer, seller, or broker in a transaction in which there may be multiple levels of representation?

Number 0342

REPRESENTATIVE ROKEBERG said last year the legislature took up what he calls a "Band-Aid" bill: it merely put a small patch on the [problem] because the task force was working on the regulatory and statutory fronts in an effort to reach an agreement on a new statute. He said he thinks the [task force] did a good job and made significant compromises within the real estate community.

REPRESENTATIVE ROKEBERG emphasized that he is proud to say this bill represents a huge stride forward for consumer protection in Alaska. The legislature strives to find the balance between protecting the public and encouraging commerce within the state, he asserted. He noted that he'll ask that two amendments be considered later, but requested that the details of the bill be reviewed by Ms. McConnochie.

Number 0429

REPRESENTATIVE LYNN disclosed that he is a licensed real estate broker with a company in Anchorage.

REPRESENTATIVE ROKEBERG noted that he is also a real estate broker.

Number 0452

PEGGY ANN McCONNOCHIE, Representative, Agency Task Force, Legislative Committee, Alaska Association of Realtors, testified in support of SSHB 29. She said the association believes this

is a huge step forward in consumer protection; the industry has wanted to address [these issues] for a long time and thanks Representative Rokeberg for his efforts. Ms. McConnochie explained that the real estate industry deals with people who have never purchased property before, and is responsible for helping them; it is important to make it the best experience possible. She said the [Alaska Association of Realtors] also wants to help those individuals in the investment area to ensure that it is understood what [realtors'] rights and duties are to them and what investors can expect from [realtors].

MS. McCONNOCHIE provided background information, saying in the past the agent always worked for the seller; it was not necessarily what a person [purchasing real estate] believed was true, however. Many individuals assumed, because an agent was [helping them] to buy property, that the agent worked for the buyer. She told the committee that the first agency law provided that a seller could have an agent work for him or her. If a buyer had a realtor who worked for another company, the buyer's agent worked for him or her. However, a problem occurred when the buyers and sellers used agents who worked within the same office. She stressed the importance of [correcting this problem].

MS. McCONNOCHIE noted that the National Association of Realtors - a trade organization with almost a million members across the U.S. and the world - did a couple of surveys. In 1990, the first survey asked people who'd used an agent to either buy/sell or rent/lease the following question: Whom do you think the agent represented? In 75 percent of the responses, the people believed they were being represented. At that time, the concept of buyers' agents didn't exist. The results of this survey was surprising, she said.

Number 0638

MS. McCONNOCHIE reported that a [legal case] in Honolulu woke up everyone. In this particular case, a seller was sued for something that an agent with another company said about the property. The agent worked for the seller, but was a part of another firm. This kind of [situation] is called "vicarious liability," she added. This lawsuit really put realtors on notice that it was necessary to change the law to protect buyers and sellers from misdeeds by agents and, likewise, protect agents from misdeeds by buyers and sellers.

MS. McCONNOCHIE noted that a Federal Trade Commission (FTC) study showed the same results: in too many instances, people believed the [real estate] agent was working for them. She said there was a landslide of agency legislation throughout the United States. Ms. McConnochie said, thanks to Representative Rokeberg's efforts, Alaska was the 13th state to get agency legislation passed.

Number 0728

MS. McCONNOCHIE reported that after the legislation passed, the Alaska Association of Realtors recognized that more changes would be necessary, so the Agency Task Force began looking at how others were dealing with the concept of agency; there were divergent issues and no agreement on what should be done. In the summer of 2003, the task force began to work with the association members from all over Alaska to come to agreement. The task force looked at what Washington, Montana, Nebraska, and Colorado were doing. Some states had gone through three changes in agency laws, and one question looked at was whether the changes actually helped consumers. The task force believes that any change made must protect the public, she noted.

Number 0999

MS. McCONNOCHIE told the members no change in the legislation will help without educating the public and licensees, which is why [January 1, 2005] is the effective date of the legislation. The Alaska Association of Realtors' members are volunteering to work with the Alaska Real Estate Commission [to educate] the public on how the law will change. There is a massive education component to this bill, she said. Another component is that the [Alaska Real Estate Commission] will be directed to put the statutes and regulations into a pamphlet that will be given to people before an individual enters into any sort of relationship with a real estate professional, she explained.

MS. McCONNOCHIE said the Alaska Association of Realtors believes that in order for them to work in an honest and forthright way in the business, it is important to do everything possible to protect the consumer. She said this bill will help redesign the industry and will serve the buying, selling, and leasing public. Ms. McConnochie urged members to support it.

Number 1092

REPRESENTATIVE GATTO commented that it is a "flag" to him when he hears that one agency, with different agents, can represent both the buyer and the seller. This sounds very much like the old way of doing things. He shared that he has had some experience with that sort of situation and believes it should not have occurred. He said he is concerned that the agency would receive the commission, but both the buyer and seller would not be equally represented. He asked Ms. McConnochie if that is a concern of the association.

Number 1156

MS. McCONNOCHIE responded that there is an issue of designated agencies. The way the law stands today, two agents within the same office cannot have one agent representing the buyer and one representing the seller, she said; by law, both agents would represent the seller. She explained that if one of the agents was dealing with the buyer under a buyer-agency format and one agent was the listing agent, then it would be necessary to enter into a dual-agency situation.

MS. McCONNOCHIE said realtors find this reprehensible. This bill has done what other states such as Montana, Washington, Nevada, and Colorado have done, which is to split it and call it "designated agency." It is the broker's responsibility to have on file how to deal with a designated agency, because in essence the broker will be supervising one agent who works solely for the buyer and one agent who works solely for the seller, she explained. The broker will be the neutral licensee to ensure the agents are doing the best job possible for both clients.

MS. McCONNOCHIE further explained that each broker must have rules and regulations in its policy and procedures manual, which is available to the public and states how it will deal with the protection of the client's interest. The Alaska Real Estate Commission will have to put together sample rules and procedures, and the Alaska Association of Realtors is ready to provide some sample pages. Noting that this bill replaces "dual agency" with "neutral licensee", she said when one agent deals with both the buyer and the seller, there is a written procedure detailing what the agent can and cannot do.

Number 1338

REPRESENTATIVE GATTO pointed out there is a great deal of small print that he believes consumers don't read. Usually a consumer is told in a brief summary what each page covers and is then

asked to sign on pages 4 and 9, for example. Thus the consumer won't know what is covered, and the agent will know the consumer doesn't know because he/she just signed it and handed it back to the agent. Only the agent will know what the rules are. Representative Gatto asked how there could be assurances that clients know what the rules are, and whether there will be classes, for example.

MS. McCONNOCHIE responded that Representative Gatto's point is the primary reason why education is so important. The Alaska Association of Realtors is very excited about educating licensees, she said, noting that she'll be one of the educators. One problem in Alaska is that real estate offices provide clients with a different form. With this bill, every office will provide the exact same form to clients.

Number 1509

REPRESENTATIVE GUTTENBERG told members "flags" go up when there are two agents in the same agency, with a neutral third party overseeing the agents. He pointed out that there is a clear economic interest involved and said he sees a different outcome in that case. He recalled that Representative Rokeberg and Ms. McConnochie had referred to compromises within the industry, and asked if there were consumer groups represented in this deliberation.

Number 1550

MS. McCONNOCHIE responded that [the Alaska Association of Realtors] is a consumer advocate. Realtors dealing closely with customers and clients must look after them. She emphasized that the association puts aside what is easiest for [the industry] in an effort to protect consumers. This bill will define what broker supervision is, especially in the designated-agency case.

REPRESENTATIVE GUTTENBERG offered his understanding that Ms. McConnochie was saying no outside [industry] consumer advocates were involved [in developing this bill].

MS. McCONNOCHIE replied that Representative Rokeberg and his staff were involved. Comments from the staff who are not steeped in the world of the real estate [industry] were refreshing, she remarked. She added that the consumer advocate was Representative Rokeberg.

REPRESENTATIVE ROKEBERG asked Ms. McConnochie to comment with respect to the dissent from various factions within the real estate industry. He said the bill defaults to the consumer's side, rather than the industry's side, almost universally. The central issue is at what point in the transaction this law would "kick in." He explained that the bill adopts the same consumer principles that are in the current law, which he believes are consumer-oriented.

REPRESENTATIVE ROKEBERG said he believes the law should not kick in until there is a contract involved, not just when an agent is showing property. However, the industry chose to come down on the side of the consumer and left the [time the law] would be applicable at the point of assistance. Saying this industry advocates for the public every day, he challenged the committee to find any other commodity or property to purchase where two different people represent a buyer. He said the entire purpose of the bill is to protect consumers from conflicts of interest or ensure their interests are properly represented. In response to Representative Guttenberg's question, he said there were no [outside consumer advocacy groups included in the process of developing this bill].

Number 1876

MARK KORTING, Broker, RE/MAX Properties of Anchorage, Inc., testified in support of SSHB 29, specifying that he supports the position of the Alaska Association of Realtors on the bill.

Number 1897

PERRY UNDERWOOD, President and Broker, Coldwell Banker Fortune, testified in support of SSHB 29. He told the members he served on the task force Ms. McConnochie referred to. Mr. Underwood acknowledged that each of the "red flags" the members had mentioned is legitimate; however, the current law does nothing but promote these red flags and continues to be a bad deal for consumers.

MR. UNDERWOOD summarized five main points of the bill. First, it requires a thorough disclosure by the licensees. Second, it eliminates the implied requirement that the licensee must act as an agent for the consumer while permitting the traditional agent/client relationship if the parties so choose. He commented that this bill gives the consumer more choices. Third, it eliminates dual agency and the problems inherent in

dual agencies, and yet it allows agencies to sell their own listings.

MR. UNDERWOOD continued, saying the fourth thing the bill does is move the relationship with the consumer to the level of licensee actually representing the consumer, rather than with the relationship being with the broker, who may never meet or have any conversation with the consumer. Yet the bill maintains brokers' requirement of supervision. Fifth, it grants consumers protection from vicarious liability that the consumer would normally assume in a traditional client-agent relationship. Mr. Underwood urged members to support this bill because it will be great for the consumers of Alaska.

Number 1990

REPRESENTATIVE LYNN asked if there has been work done on defining a "dual agency"; he expressed concern about how the courts might interpret this term.

REPRESENTATIVE ROKEBERG responded that this bill terminates common law agency and codifies the definitions. He said the legislature is within its [authority to do that].

Number 2042

AUDREY FOLDOE, Representative, Agency Task Force, Alaska Association of Realtors, testified in support of SSHB 29. She told the members that she was first licensed in Alaska in 1976 and since that time has continuously supported herself through the sale of real estate. She managed the firm she worked for from 1980 to 1990, when she purchased it. During that time, she managed up to 20 agents at one time, she added. At that time, the agents were representing the seller, when most of the buyers thought the agents were representing them.

MS. FOLDOE said she has served 8 years on the Real Estate Commission and 13 years on the Fairbanks North Star Borough. She said she doesn't believe this bill answers all of the problems the [real estate industry] has, but believes it is a big move forward. The majority of buyers and sellers are much better informed than [consumers] were a few years ago, she said. Ms. Foldoe suggested "specific assistance" is the most awkward area because the agent must begin to tell the consumer whom they are working for at the time of the specific assistance. She said it isn't defined in the present law; however, with this bill it would be clearly defined.

Number 2170

STEVE CLEARY, Executive Director, Alaska Public Interest Research Group (AkPIRG), testified on SSHB 29, noting that AkPIRG is the oldest consumer advocacy group in Alaska. He explained that he came to the meeting to testify on the other bill, but has been taking notes and educating himself, since he just purchased his first home in October.

MR. CLEARY reminded the members that AkPIRG opposed HB 257 last year, which was the beginning of changes that Representative Rokeberg brought before the committee today in SSHB 29. He said he shares the concerns expressed by Representatives Gatto and Guttenberg with respect to the dual agency issue. There is also concern that this bill may decrease confidentiality and accountability that licensees are providing for consumers. He commented that he also has concerns about the neutral facilitator and how that neutrality is guaranteed for the consumer; he said his concern may be because he isn't completely versed on the issues.

REPRESENTATIVE ROKEBERG replied that he'll work with Mr. Cleary to ensure that he has a clear understanding of what this legislation does. He said this is an enormous step forward in consumer protection. It is his objective to have AkPIRG endorse this bill, he explained. He emphasized that this bill would eliminate dual agency issues and some associated problems. It will provide a code of conduct [to ensure] that the expectations and legal requirements for both the consumer and the licensee are set forth in statute, he explained.

Number 2312

LINDA GARRISON, Broker, No. 1 Buyer's Agency, said there has been more discussion about consumer protection in one hour of testimony on this bill than in the entire process for HB 257. Agreeing that SSHB 29 continues what HB 257 started [last year], she said Representative Gatto's question concerning consumer feedback is an important one. She cited a recent example.

TAPE 04-9, SIDE B

Number 2361

MS. GARRISON said current law has worked well for decades. If the common law of "agency" is eliminated, there no longer will be clients, because with clients there is a fiduciary duty.

This bill abrogates common law and basically eliminates an agent's or licensee's fiduciary duty, such as loyalty, accountability, and obedience. She said she feels the consumer deserves better.

MS. GARRISON shared her belief that "designated agency" is nothing more than an undisclosed dual agency. Referring to Representative Gatto's mention of the conflict there, she said those conflicts exist. For example, where there is an experienced agent [on one side] and an inexperienced agent [on the other], she asked how that benefits the consumer. She also questioned how the records would be kept confidential.

MS. GARRISON suggested "designated agency" is just a smokescreen for dual agency. She said she has a hard time understanding how a neutral licensee relationship can exist. The sellers deserve representation, she said, as do the buyers. Ms. Garrison went on to say she doesn't see a need for a pamphlet. She reported that she'd given a copy of SSHB 29 to her clients and that there were a lot of negative comments. She urged members to look at this legislation very closely. On another issue, she suggested that additional education requirements be implemented to increased to 200 hours [of education] before taking the real estate license examination.

Number 2246

DAVID GARRISON, No. 1 Buyer's Agency, testified in support of SSHB 29. He pointed out that there is such a transient population, many of whom are familiar with the "agency" concept, that it does not [make sense] to change all the rules. He told the members he supports the idea of providing a booklet [to clients] which describes a buyer's agent and seller's agent [and the rules that apply]. Mr. Garrison said he believes the neutral-facilitator idea is nothing more than "dual agency." "Specific assistance" is being defined in the new regulations by the Alaska Real Estate Commission, he said, and thus he sees no need to address that [in the bill]. On Tuesday, he noted, he brought SSHB 29 to the attention of the Alaska Association of Independent Brokers, who were unaware of it.

CHAIR ANDERSON replied that this bill was scheduled a week ago. He told Mr. Garrison he can view all scheduled hearings on legislation on BASIS [via the Internet].

MR. GARRISON, in response to a question from Representative Rokeberg, explained that the Alaska Association of Independent

Brokers has been meeting at Denny's every Tuesday for the last 20 years. These are brokers who aren't members of large firms. He invited Representative Rokeberg to join them any Tuesday.

Number 2134

CHRIS STEPHENS, Associate Broker; Bond, Stephens, & Johnson, testified in support of Amendment 1 [text provided later]. He said it provides for non-signature requirements of disclosure by businesses with sales of over \$2 million in net worth in the previous year. This is a recognition of the reality of commercial real estate in trying to get acknowledgements from organizations that are sometimes just about impossible, he said.

MR. STEPHENS said some organizations find it equally difficult, but don't happen to be publicly traded. He noted that he'd sat on the committee that worked on this bill and was impressed with the tremendous amount of cooperation and work to bring forth a bill that tried to recognize all the elements of the [real estate] industry. Mr. Stephens said his company specializes in commercial real estate, which is very different from residential real estate, so there was an effort to accommodate [that difference] as best as possible. He added that Representative Rokeberg's amendment is a small change in the [language]. In response to a question from Chair Anderson, Mr. Stephens said he supports the bill with or without Amendment 1, but believes it would be much better with it.

Number 2025

KIRK WICKERSHAM, Owner, For Sale By Owner Assistance Program, Inc., read the following into the record:

This bill deals with the legal and practical relationship between real estate licensees and the consuming public, between real estate licensees and their clients, and between each other. It abolishes the common law of agency as applied to real estate licensees and their clients, and replaces it with a term called "representation."

MR. WICKERSHAM said representation handles 90 percent to 95 percent of the comments made by Ms. Garrison. He opined that the bill will improve relationships between the licensed professionals and the public in what is normally the largest and most significant transaction in someone's life - the purchase of a home.

MR. WICKERSHAM noted that he is a lawyer, real estate broker, and former chairman of the Alaska Real Estate Commission, and served on the task force [that developed this legislation]. He said his company is a licensed real estate firm, but doesn't have agents, so he has no dog in this fight. Saying he was testifying as a person who has devoted a lot of time in the last two years working on this issue, he continued to read the following testimony:

In the early 1980s, a series of state supreme court cases [were heard in which] ... a real estate agent owed his or her client fiduciary duties similar to the duties a lawyer owed a client in a litigation situation - or similar to the duties an attorney in fact owes to his or her principal. The legal structure of a real estate transaction was adversarial.

At that time, all agents, including those working with the buyer, were legally working for the seller. This created a huge clash between perception and reality, and Alaska, along with the rest of the country, discovered that the consuming public expected and demanded that the agent working with the buyer be working for the buyer. This gave rise to exclusive buyers' agents, and as a result there are buyer agents operating today in all the major markets in the state.

Number 1938

MR. WICKERSHAM continued:

Large firms, however, with many agents, had many listings and represented many buyers. These firms quickly ran into conflicts. The concept of dual agency, in which the company and sometimes the individual agent represented both the buyer and the seller, took hold. Today, 40 or 50 percent of agent transactions involve dual agency.

I was a lawyer long before I was a realtor, and the notion of dual agency is alien to me. However, the consuming public is apparently used to this arrangement, and relatively few problems have actually come up over the years, considered in the light of billions of dollars of transactions each year. In

fact, the amount of litigation by consumers against real estate licensees is a fraction of what it was 15 years ago. And this is good.

Dual agency is specifically provided for in Alaska statutes. But it has inherent problems under Alaska court decisions. Under Alaska case law, an agent has duties to his client - among other things - to divulge to his client confidential information about his bargaining adversary, and to try to get the best possible price and terms for his client. These two duties are impossible when one is a dual agent, working for both parties.

Most licensees are probably dual agents. Despite the fact that transactions seem to go smoothly, agency disclosures are made, and consumers seem to understand how dual agents operate, these conflicting legal duties and loyalties have given the industry significant heartburn over the years.

The realtor task force began by considering reforms to the legal concept and duties involved with dual agency, but soon came to the conclusion that the entire legal notion of agency - the notion of the licensee as a hired combatant for his or her client in an adversarial conflict - simply does not reflect the way real estate is bought and sold.

It never has. Real estate transactions are not like lawsuits where the parties are adversarial from start to finish. They are basically cooperative ventures in which conflicts can arise. In other words, in a real estate transaction, unlike a lawsuit, each party needs what the other offers, so both can "win" at the conclusion.

Number 1872

MR. WICKERSHAM continued:

This proposal, at its simplest, brings the law into conformance with this actual practice. The realtor who helps a family find a house is not a predator looking to exploit an advantage; he or she is a helper. The concept of the agent's bargaining [with

an] adversary is replaced with the concept of the consuming public.

Likewise, the concept of agency - trying to discover weaknesses on the other side and exploit them - is replaced with the concept of representation - being a good, solid advocate for the client.

Instead of dual agency, the bill creates the role of a neutral middleman, a professional who just helps the parties come together and close the transaction without advocating for either side. This, too, is just common sense. The bill acknowledges for the first time that within the same firm, one realtor can adequately represent the buyer and another can adequately represent the seller. The bill clarifies and strengthens the licensee's requirement to disclose his or her relationship to the parties.

What's in it for the real estate industry? They can exhale for the first time in about 15 years, because the law will reflect the practice. What's in it for the consumer? Greater clarity, a better level of service, and common sense. Likewise, the law will reflect the public's expectations. Also, the law eliminates a strange and harsh element of agency law: the client's vicarious liability for his realtor's transgressions.

Number 1818

MR. WICKERSHAM referred to Ms. McConnochie's testimony about a case in Hawaii. He said an Alaska Supreme Court case holds a client liable for the misrepresentations of his/her agent. It was actually an agent in another firm, he added. Mr. Wickersham said it isn't appropriate. He continued to read his testimony into the record:

There is one final point I would like to raise. This bill does not define the only possible relationships between the realtor and his/her client. For instance, my company would not fit into the bill's concept of conventional representation. Other real estate firms also offer a nontraditional mix of services. All this enhances consumer choice.

This bill ensures that innovation and consumer choice, as represented by my company and others, will be preserved. The realtor task force has been clear from the very start that it wants to preserve consumer choice. Please ensure that this remains in the bill as it moves forward to adoption.

Number 1728

REPRESENTATIVE ROKEBERG moved to adopt Amendment 1, labeled 23-LS0189\W.2, Bannister, 1/21/04, which read:

Page 11, line 27, through page 12, line 3:

Delete all material and insert:

"Sec. 08.88.690. Exemptions. 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."

Number 1694

REPRESENTATIVE GUTTENBERG objected for purposes of discussion.

REPRESENTATIVE ROKEBERG explained that Amendment 1 basically exempts commercial real estate transactions from this law. Subsection (2) allows for the business to take the action of requesting an exemption from the licensee. A high-net-worth individual wouldn't qualify under this; it would have to be a business. This amendment exempts [the commercial real estate industry] from the issue of representation under the bill.

REPRESENTATIVE ROKEBERG pointed out that this bill is to protect the public, but large, sophisticated investors do not need consumer protection. He said a tremendous amount of logistical

business issues arise from having to do paperwork to ensure the consumer is protected when it is actually superfluous and burdens a commercial transaction.

Number 1593

REPRESENTATIVE GUTTENBERG asked for examples of other public agencies [as written on page 1, line 10].

REPRESENTATIVE ROKEBERG responded that they'd include the [U.S. Securities and Exchange Commission (SEC)], which makes differentiations in terms of the sophistication of buyers. There are requirements like net worth to enter into memberships and limited partnerships. This is not an uncommon type of threshold issue where a threshold is codified for membership into a certain class or not, he said. He summarized that this is saying there is sufficient money or sophistication that would reflect that [consumer] protection would not be necessary.

Number 1559

REPRESENTATIVE GUTTENBERG removed his objection. [No further objection was stated, and Amendment 1 was treated as adopted.]

Number 1471

REPRESENTATIVE ROKEBERG moved to adopt Amendment 2, labeled 23-LS0189\W.3, Bannister, 2/3/04, which read:

Page 8, line 17:
Delete "whom the neutral licensee represents or"

Page 8, line 20:
Delete "whom the licensee represents or"

Page 8, line 21:
Delete "whom the licensee represents or"

Page 10, line 3, following "licensee":
Insert "represents or"

Page 10, line 6, following "completes the":
Insert "representation or"

CHAIR ANDERSON objected for purposes of discussion.

REPRESENTATIVE ROKEBERG explained that the word "represents" is not appropriate; under the bill, the neutral licensee does not represent either party. This clarifies the meaning of the bill.

Number 1460

CHAIR ANDERSON removed his objection. There being no further objection, he announced that Amendment 2 was adopted.

Number 1449

REPRESENTATIVE LYNN moved to report SSHB 29, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSSSHB 29(L&C) was reported from the House Labor and Commerce Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:30 p.m.