

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 SENATE BILL NO. 110

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIRST LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act to provide for the appointment and
7 qualification of clerks of the superior court
8 and recorders of documents, to establish their
9 functions, powers and duties, to establish
10 a recording system and to provide central
11 and borough recording districts, to set up
12 procedures for recording and indexing docu-
13 ments, and to provide fees therefor; amend-
14 ing Secs. 18-1-4, 54-4-4, 54-4-6, 53-3-1
15 ACLA 1949, and Sec. 55-9-61, ACLA 1949, as
16 amended by Ch. 52, SLA 1955, and repealing
17 Secs. 18-1-1, 18-1-2, 18-1-3, 22-3-22,
18 22-3-24, 22-3-26 and 22-3-45 ACLA 1949, and
19 Sec. 22-3-23 ACLA 1949, as amended by Ch. 9,
20 SLA 1955."

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

22 Section 1. APPOINTMENT AND REMOVAL OF CLERK OF SUPERIOR
23 COURT AND EX-OFFICIO RECORDER OF DOCUMENTS; ESTABLISHMENT OF OFFICE.
24 The presiding superior court judge in each judicial district shall
25 appoint, and at pleasure remove, a clerk of the superior court of
26 the judicial district. The clerk shall be ex-officio recorder of
27 documents and register of wills for the central recording district
28 as hereinafter provided and shall establish secure offices for the
29 safekeeping of his official records at the place appointed by law

1 for holding the court therein. He may appoint necessary deputies
2 and employ other necessary clerical assistance to aid him in the ex-
3 peditious discharge of the duties of his office and fix the com-
4 pensation of such deputies and of such clerical assistance, all
5 subject to the approval of the presiding judge.

6 Sec. 2. BOND. The clerk of the superior court and ex-
7 officio recorder of documents shall, before entering upon the
8 duties of his office, execute a bond with two or more sufficient
9 sureties who shall be residents of the judicial district, or with
10 a surety company authorized to do business in this state, to be
11 approved by the presiding judge of the district in the penalty of
12 \$20,000 for the faithful performance of his official duties, and
13 shall file the same with the clerk of the supreme court.

14 Sec. 3. WHEN NEW UNDERTAKING REQUIRED; EFFECT OF DEFAULT.
15 When it satisfactorily appears to the presiding superior court
16 judge of the district that the sureties in such bond are dead or
17 insufficient or have removed from the judicial district, the judge
18 upon reasonable notice to the clerk of the superior court, must
19 require him to give a new undertaking, with sufficient sureties,
20 In default of compliance with such order, the office is to be
21 deemed vacant.

22 Sec. 4. Sec. 54-4-4, ACLA 1949, is hereby amended to read as
23 follows:

24 Sec. 54-4-4 CLERK'S OFFICE HOURS. The clerk of
25 the superior [DISTRICT] court in each judicial district, shall
26 keep his office open for the transaction of business on every
27 judicial day from nine to twelve in the forenoon and from one
28 to five in the afternoon, except that on Saturdays such office
29 shall be closed at twelve noon.

1 Sec. 5. Sec. 54-4-6 ACLA 1949, is hereby amended to read as
2 follows:

3 Sec. 54-4-6. POWERS AND DUTIES OF CLERKS. Each ~~THE~~
4 clerk of the superior ~~DISTRICT~~ court has power to take
5 and certify the proof and acknowledgment of a conveyance of
6 real property or any other written instrument authorized or
7 required to be proved or acknowledged. It ~~AND IT~~ is the
8 duty of each such clerk to: ~~--~~

9 (1) ~~FIRST. TO KEEP~~ Keep the seal of the court and
10 affix it in all cases where he is required by law.

11 (2) ~~SECOND. TO RECORD~~ Record the proceedings of
12 the court.

13 (3) ~~THIRD. TO KEEP~~ Keep the records, files, and
14 other books and papers appertaining to the court.

15 (4) ~~FOURTH. TO FILE~~ File all papers delivered to
16 him for that purpose in any action, suit or proceeding in the
17 court.

18 (5) ~~FIFTH. TO ATTEND~~ Attend the terms of the
19 court of which he is clerk, ~~TO~~ administer oaths, and re-
20 ceive the verdict of a jury in an action, suit or proceeding
21 therein, in the presence and under the direction of the court.

22 (6) ~~SIXTH. TO KEEP~~ Keep the journal of the pro-
23 ceedings of the court at its terms and under the direction of
24 the court ~~TO~~ enter its orders, ~~AND~~ judgments and decrees;
25 ~~.~~

26 (7) ~~SEVENTH. TO AUTHENTICATE~~ Authenticate, by
27 certificate or transcript, as may be required, the records,
28 files ~~,~~ or proceedings of the court, or any other paper
29 appertaining thereto, and filed with him.

1 (8) ~~EIGHTH. TO EXERCISE~~ Keep the powers and per-
2 form the duties conferred ~~AND IMPOSED~~ upon him elsewhere
3 by ~~THIS CODE OR OTHER~~ statute.

4 (9) ~~NINTH.~~ In the performance of his duties ~~TO~~
5 conform to the direction of the court.

6 Sec. 6. Sec. 53-3-1 ACLA 1949, is hereby amended to read as
7 follows:

8 Sec. 53-3-1. RECORDS ENUMERATED. The records of the
9 superior court in each judicial district ~~DISTRICT COURT~~
10 are a register, journal, judgment docket, execution docket,
11 fee book, jury book, and final record.

12 Sec. 7. RECORDING DISTRICTS. The state shall be divided
13 into four central recording districts, one for each judicial dis-
14 trict. There may be established within each central recording
15 district such borough recording districts as may be established
16 by the local boundary commission upon petition of the borough
17 assembly and subject to the approval of the legislature. Each
18 central and borough recording district shall contain one or more
19 of the present recording precincts, and the area and boundary of
20 such recording district shall be coterminous with the areas and
21 boundaries of the recording precincts contained therein.

22 Sec. 8. AREA OF CENTRAL RECORDING DISTRICT: CLERK AS
23 RECORDER. Each central recording district shall consist of the
24 recording precinct in which is located the office of the clerk
25 of the superior court and all other recording precincts of which
26 the major portion lies within the judicial district, except those
27 recording precincts which may be incorporated in borough record-
28 ing districts. The clerk of the superior court shall be the ex-
29 officio recorder of documents of the central recording district.

1 Sec. 9. AREA OF BOROUGH RECORDING DISTRICT. Each borough
2 recording district shall consist of the recording precincts lying
3 within the boundaries of the organized borough, and may also in-
4 clude recording precincts contiguous to the organized borough
5 which are not included in any other borough recording district.
6 No borough recording district shall include any recording precinct
7 in which is located the office of any clerk of the superior court.

8 Sec. 10. BOROUGH RECORDER. The assembly of the organized
9 borough shall appoint and at its pleasure remove a recorder of
10 documents of the borough recording district. It shall provide
11 adequate and secure offices in the organized borough for the safe
12 keeping of the official files and records. The compensation of
13 the borough recorder and of necessary clerical assistance to aid
14 him in the discharge of the duties of his office shall be fixed
15 by the assembly and paid by the borough. All fees and other in-
16 come received by the borough recorder shall be remitted monthly to
17 the fiscal officer of the borough.

18 Sec. 11. BOND OF BOROUGH RECORDER. The borough recorder
19 shall, before entering on the duties of his office, execute a bond,
20 with two or more sufficient sureties who shall be residents of the
21 borough, or with a surety company authorized to do business in
22 this state, to be approved by the borough assembly, in the penalty
23 of \$10,000, for the faithful performance of his official duties,
24 and shall file the same with the fiscal officer of the borough.

25 Sec. 12. WHEN NEW UNDERTAKING REQUIRED: EFFECT OF DEFAULT.
26 When it satisfactorily appears to the assembly that the sureties
27 in such bond are dead or insufficient, or have removed from the
28 borough, the assembly, upon reasonable notice to the recorder,
29 must require him to give a new undertaking with sufficient sureties

1 In default of compliance with such order, the office is to be
2 deemed vacant.

3 Sec. 13. OFFICE HOURS OF BOROUGH RECORDER. The borough
4 recorder of documents shall keep his office open for the trans-
5 action of business from nine to twelve in the forenoon and from
6 one to five in the afternoon, except that on Saturdays such office
7 may be closed at twelve noon. The office shall no be open on
8 Sundays and legal holidays.

9 Sec. 14. MERGER OF BOROUGH RECORDING DISTRICT WITH CENTRAL
10 RECORDING DISTRICT. By action of the assembly of the organized
11 borough taken pursuant to law or the provisions of its charter,
12 a borough recording district may merge with the central recording
13 district of the judicial district in which the major portion of
14 the borough recording district is located. Upon the effective
15 date of such merger the records and files of the borough record-
16 ing district and the records and files of the former recording
17 precincts included therein, shall be delivered to and become
18 records and files of the central recording district. The recorder
19 of the borough recording district shall accept the receipt of the
20 recorder of the central recording district for such records and
21 files and file it with the borough assembly. Such receipt shall
22 be a sufficient accounting by and discharge to the borough re-
23 corder for the disposition of the records and files transferred.
24 The transferred files and records of the borough recording district
25 and of the recording precincts shall become the records and files
26 of the central recording district in the same manner and with the
27 same legal effect as if such recording precincts had been origin-
28 ally included in the central recording district and the records
29 and files originally transferred to it as provided by this Act.

1 Sec. 15. DUTIES OF RECORDER OF DOCUMENTS. The clerk of the
2 superior court as ex-officio recorder of documents and the bor-
3 ough recorder shall:

4 (1) Have the care, custody, control and maintenance of
5 documents, records, indexes, files, maps and plats affecting the
6 title to real property within his recording district.

7 (2) Record, or cause to be recorded, in a legible and
8 permanent manner, by photographic or other copying methods, in-
9 struments affecting title to real property and authorized by law
10 to be recorded, when properly acknowledged and proved, as follows:

11 (a) Deeds, mortgages of real property, trust deeds,
12 powers of attorney, leases and contracts, affecting the title
13 to real property and authorized by law to be recorded,
14 assignments, reconveyances and releases thereof and any in-
15 terest therein, when properly acknowledged and proved;

16 (b) Certificates of sale of real property under
17 execution or order of court, or assignments thereof or of any
18 interest therein when properly acknowledged or proved;

19 (c) Affidavits concerning any person owning or
20 appearing to have any interest in any land in the recording
21 district, or concerning his interest therein;

22 (d) Original or certified copies of certificates
23 of death, marriage or birth;

24 (e) Wills devising real estate which have been
25 admitted to probate, transcripts of wills and records of
26 estates administered in this state, certified to as true and
27 correct by the clerk of the court in which the estate was
28 or is being administered;

29 (f) Copies of foreign wills and of the probates

1 thereof authenticated pursuant to Sec. 61-2-8 ACLA 1949;

2 (g) Transcripts of judgments which by law are
3 made upon real estate;

4 (h) Judgments, orders and decrees affecting real
5 estate which are required to be recorded;

6 (i) Liens of mechanics, laborers, materialmen and
7 of others entitled to record liens against real property;

8 (j) Such other writings as are required or per-
9 mitted by law to be recorded.

10 (3) Record such instruments in separate suitable books
11 for deeds, real property mortgages, mechanics liens, attachments,
12 affidavits, judgment transcripts, powers of attorney, water rights,
13 tax liens, mining claims, miscellaneous records, and maps and plats.

14 Sec. 16. COPIES OF RECORDS CERTIFIED BY RECORDER AS EVIDENCE

15 A transcript of the record of any instrument duly recorded by a
16 recorder of documents under the authority of this Act, or a photo-
17 graphic or photostatic copy thereof, duly certified by the record-
18 er, under the seal of his office, may be read in evidence in any
19 court with like force and effect as the original instrument.

20 Sec. 17. SEAL OF RECORDER. There shall be provided a suita-
21 ble seal for the use of the recorder of documents.

22 Sec. 18. DEED AND MORTGAGE INDEXES.

23 (1) The recorder of documents shall keep general in-
24 dexes, direct and indirect, in his office, for the recording of
25 deeds and similar indexes, direct or indirect, for the recording
26 of mortgages, and trust deeds.

27 (2) The general direct indexes shall be divided into
28 seven columns, with heads to the respective columns as follows:

29 (a) Time of reception.

- 1 (b) Names of grantee or mortgagee.
2 (c) Nature of grantee or mortgagee.
3 (d) Nature of instrument.
4 (e) Volume and page where recorded.
5 (f) Remarks.
6 (g) Brief description of tract.

7 The recorder shall make correct entries in such general in-
8 dexes of every instrument recorded under the appropriate heading,
9 entering the names of the grantors, mortgagors, or trustors in
10 alphabetical form.

11 (3) The general indirect indexes shall be divided into
12 seven columns, with heads to the respective columns as follows:

- 13 (a) Time of reception.
14 (b) Names of grantee or mortgagee.
15 (c) Names of grantor or mortgagor.
16 (d) Nature of instrument.
17 (e) Volume and page where recorded.
18 (f) Remarks.
19 (g) Brief description of tract.

20 The recorder shall make in such general indirect indexes
21 correct entries of every instrument required by law to be entered
22 in the direct general indexes, entering the names of the grantees
23 or mortgagees, trustees and beneficiaries in alphabetical order.

24 (4) Whenever any mortgage has been assigned or re-
25 leased of record by marginal release, or by recorded assignment,
26 satisfaction or partial release, and whenever a substitution of
27 trustee, assignment of beneficial interest or reconveyance of
28 trust deed has been recorded, the recorder shall immediately note,
29 in both mortgage indexes, under column headed "remarks" and

1 opposite the appropriate entry, such assignment, satisfaction or
2 other recording.

3 Sec. 19. ADDITIONAL INDEXES REQUIRED. The recorder shall
4 also keep and maintain similar direct and indirect indexes for the
5 records of mechanics liens, judgment transcripts and miscellaneous
6 records, and shall keep and maintain direct indexes for records of
7 affidavits, tax liens, powers of attorney, water rights, mining
8 claims, and maps and plats.

9 Sec. 20. RECEPTION RECORD KEPT BY RECORDER.

10 (1) The recorder shall keep a receiving book which
11 shall be divided into several columns, with heads to the respective
12 columns as follows:

- 13 (a) Reception number.
- 14 (b) Nature of instrument.
- 15 (c) Time of receipt.
- 16 (d) Name of grantor.
- 17 (e) Name of grantee.
- 18 (f) To whom delivered.
- 19 (g) Fee received.

20 He shall make in such receiving book correct entries of every
21 instrument required by law to be recorded. Such book shall be open
22 to public inspection, and the instruments to be recorded shall be
23 open to public inspection before being recorded to those whose
24 business requires that they inspect the same.

25 (2) Whenever any instrument has been received by him
26 for record, he shall immediately indorse upon such instrument his
27 certificate, noting the day, hour and minute of its reception, and
28 fees received for recording, and, when recorded, he shall further
29 certify upon such instrument the book and page where recorded.

1 The date of record of such instrument is the date of filing.

2 (3) He shall then immediately make an entry of such
3 instrument in his receiving book, under the appropriate heading,
4 with the amount paid as fee for recording the same.

5 (4) After such instrument has been recorded, the recor-
6 der shall mail it to the person authorized to receive the same,
7 entering the name and address of the person to whom it was mailed
8 in the appropriate column.

9 Sec. 21. Sec. 55-9-61, ACLA 1949, as amended by Ch. 52, SLA
10 1955, is hereby amended to read as follows:

11 Sec. 55-9-61. DOCKETING JUDGMENT: RECORDING TRANSCRIPT:
12 COMMENCEMENT AND DURATION OF LIEN: PROPERTY SUBJECT. Imme-
13 diately after the entry of judgment in any action the clerk
14 shall enter the same in the judgment docket, noting thereon
15 the day, hour and minute of such entry. At any time thre-
16 after, while an execution might issue upon such judgment, and
17 the same remains unsatisfied in whole or in part, the plain-
18 tiff, his assignee, or in case of his death, his representa-
19 tive, may file a certified transcript of the original judg-
20 ment docket of the case in the office of the recorder or any
21 recording district. Upon the filing of such transcript the
22 recorder shall record the same in a volume entitled Judgment
23 Transcripts, and index same accordingly. From the time DATE
24 of docketing a judgment in the judgment docket of the superior
25 or district court, such judgment shall become a lien upon all
26 the real property of the defendant within the recording dis-
27 trict wherein the superior or district court maintains such
28 judgment docket, and upon all the real property which the
29 defendant may afterwards acquire therein, during the time an

1 execution may issue thereon. From the time DATE of the
2 recording of a certified transcript of the original judgment
3 docket of the case in any recording district other than the
4 one in which the superior court DISTRICT COURT maintains
5 the original docket pertaining to said case, such judgment
6 shall become a lien upon the real property of the defendant
7 within such other recording district and upon all the real
8 property which the defendant may afterwards acquire therein,
9 during the time an execution may issue thereon.

10 Sec. 22. FEES COLLECTED BY RECORDER OF DOCUMENTS. In each
11 recording district there shall be charged and collected, in ad-
12 vance, by the recorder of documents for the benefit of the superior
13 court or of the borough, as the case may be, the following fees,
14 and no more, for the following purposes and services:

15 (1) For recording any instrument required or permitted
16 by law to be recorded, by the photographic, microphotographic,
17 photocopying or filming method of recording, and indexing the same,
18 for the first page \$2.50, and for each additional page or portion
19 of a page \$1.50, but the minimum fee shall not be less than \$4.00.

20 (2) For recording otherwise than by means of photog-
21 raphy, microphotography, photocopying or filming, and indexing any
22 instrument required or permitted by law to be recorded, for each
23 folio 50 cents, but the minimum fee shall be not less than \$4.00.

24 (3) For making and supplying to private parties copies
25 of records or files, for each page or portion of a page, \$1.50.

26 (4) For each official certificate, 50 cents.

27 (5) For recording and indexing under mining laws,
28 location certificate, affidavit of annual labor or notice of inten-
29 tion to hold, each claim \$1.75.

1 (6) For filing and indexing or renewal and indexing of
2 conditional sales contracts, chattel mortgages and tax liens of
3 the United States or the State of Alaska \$1.50.

4 (7) For marginal release of real or chattel mortgages,
5 conditional sales contracts, and tax liens of the United States or
6 the State of Alaska, \$1.25.

7 (8) For taking and certifying acknowledgment or proof
8 of execution of any instrument, \$1.25.

9 (9) For any service not enumerated in this section
10 which the recorder may be by law required to perform, such fees
11 as may favorably compare with those established by this section
12 for similar services, and as may be established by the superior
13 court of the judicial district.

14 Sec. 23. Sec. 18-1-4, ACLA 1949, is hereby amended to read
15 as follows:

16 Sec. 18-1-4. ACCOUNTING FOR FEES FOR INSTRUMENTS UN-
17 RECORDED: PENALTY: ACTION TO RECOVER. Any recorder CLERK
18 OR COMMISSIONER authorized to record any instrument who
19 having collected fees for so doing fails to record such
20 instrument shall account to his successor in office OR TO
21 SUCH PERSON AS THE COURT MAY DIRECT, for all the fees re-
22 ceived by him for recording any instrument on file and unre-
23 corded at the expiration of his official term, or at the
24 time he is required to transfer his records to another
25 officer as provided herein UNDER THE DIRECTION OF THE COURT
26 And any recorder CLERK OR COMMISSIONER who fails, neglects,
27 or refuses to so account for fees received and not actually
28 earned by the recording of instruments shall be deemed guilty
29 of a misdemeanor, and on conviction thereof shall be fined

1 not less than \$100.00 nor more than \$1,000.00, and imprisoned
2 for not more than one year, or until the fees received and
3 unearned as aforesaid shall have been properly accounted for
4 and paid over by him, as hereinbefore provided. And in addi-
5 tion such fees may be recovered from such recorder CLERK OR
6 COMMISSIONER or his THE bondsmen OF EITHER, in a civil
7 action which shall be brought by the attorney general
8 DISTRICT ATTORNEY, in the name of the State of Alaska
9 UNITED STATES; to recover the same; and the amount when re-
10 covered shall be BY THE COURT transferred to the successor
11 in office of such recorder who shall thereupon proceed to
12 record the unrecorded instruments.

13 Sec. 24. TRANSFER OF RECORDING FUNCTIONS TO CENTRAL AND
14 BOROUGH RECORDERS. Upon the determination and establishing of the
15 central and borough recording districts and the appointment and
16 qualification of the clerks as ex-officio recorders in the central
17 recording districts and of the borough recorders in the borough re-
18 cording districts, the recording functions and duties formerly
19 vested in the United States Commissioners shall be transferred to
20 and vested in the clerks as ex-officio recorders of the central re-
21 cording districts and in the recorders of documents of the borough
22 recording districts and they shall thereupon have and exercise the
23 recording duties and functions formerly vested in the United States
24 Commissioners as provided in this Act.

25 Sec. 25. TRANSFER OF RECORDS. Upon the transfer of the re-
26 cording functions and duties of the United States Commissioners to
27 the recorders of documents the United States Commissioner of each
28 recording precinct shall deliver the records and files of the re-
29 cording precinct to the recorder of documents of the recording

1 district in which such precinct lies, and shall take his receipt
2 therefor. Such receipt shall be filed by the Commissioner with
3 the United States District Court and shall be a sufficient account-
4 ing by and discharge to such Commissioner for the disposition of
5 the records and files transferred. Such records and files shall
6 thereafter be considered the records and files of the recording
7 district as to property within the former recording precincts
8 where the instruments were originally recorded or filed.

9 Sec. 26. CONSTRUCTIVE NOTICE. When the functions and duties
10 of the United States Commissioners have been transferred, and the
11 records and files of the recording precincts delivered to the re-
12 corders, the recording districts shall replace and supersede as
13 recording units the former recording precincts located therein, and
14 the subsequent recording and filing of instruments entitled there-
15 to in the recording districts in which the property affected is
16 situated will be legally equivalent to, and will provide the same
17 constructive notice as, recording or filing in the former record-
18 ing precincts of documents entitled by law to be recorded affect-
19 ing property located therein.

20 Sec. 27. FEES NOT CHARGED STATE OR AGENCIES FOR RECORDING
21 DEED OR CERTIFYING COPY. No fee shall be charged the State of
22 Alaska, or any commission or board thereof, by any recorder of
23 documents for recording any deed conveying real estate to the State
24 of Alaska or for preparing or certifying a copy thereof.

25 Sec. 28. REPEALER. The following Acts and parts thereof, or
26 any other Acts or parts thereof in conflict with this Act are here-
27 by repealed: Secs. 18-1-1, 18-1-2, 18-1-3, 22-3-22, 22-3-24,
28 22-3-26, and 22-3-45, ACLA 1949 and Sec. 22-3-23, ACLA 1949 as
29 amended by Sec. 2 of Ch. 9, SLA 1955.