

1 IN THE SENATE BY KELLY AND STURGULEWSKI

2 SPONSOR SUBSTITUTE FOR SENATE BILL NO. 408

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to stabilization of the real estate
7 market; authorizing the establishment of real prop-
8 erty liquidating organizations; and providing for an
9 effective date."

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

11 * Section 1. LEGISLATIVE FINDINGS AND INTENT. (a) The legislature
12 finds that

13 (1) there have been in the state several failures of state and
14 federally chartered financial institutions and one bank consolidation by
15 the Federal Deposit Insurance Corporation under 12 U.S.C. 1823(c);

16 (2) state and federal agencies currently hold large portfolios
17 of distressed real estate loans and real property;

18 (3) these financial institutions and government agencies need to
19 be permitted to cooperate in administering these properties to avoid fur-
20 ther adverse effects on the state's real estate markets and to stabilize
21 the state's banking system; and

22 (4) the maintenance of stable and orderly markets for the pur-
23 chase and sale of commercial and residential real estate in the state is
24 essential to the economy of the state and the welfare of its citizens.

25 (b) The legislature intends to ensure the stability of the state's
26 real estate markets and prevent a precipitous decline in real estate prices
27 by displacing competition with government regulation in matters relating to
28 the sale and disposition of real property held by financial institutions
29 and state and federal agencies as a result of foreclosure actions. By

1 authorizing the creation of real property liquidating organizations under
2 state supervision, the legislature intends to grant authority to the com-
3 missioner of commerce and economic development to provide by regulation
4 that persons and entities who subscribe or grant assets to, contribute
5 funds or services to, obtain a beneficial interest in, or participate in
6 the management of a real property liquidating organization will be immu-
7 nised as necessary possible against potential liability under federal
8 antitrust laws and state antitrust, competition, and trade practices laws
9 arising from the operation of the organizations.

10 * Sec. 2. AS 06 is amended by adding a new chapter to read:

11 CHAPTER 50. REAL PROPERTY LIQUIDATING ORGANIZATIONS.

12 Sec. 06.50.010. RESPONSIBILITY OF COMMISSIONER. The commis-
13 sioner shall administer this chapter and adopt regulations to carry
14 out the purposes of this chapter.

15 Sec. 06.50.020. FORMATION. (a) Three or more grantors may
16 create a real property liquidating organization by filing the orga-
17 nizational documents with the commissioner. The commissioner shall
18 review the documents and approve them if they comply with (b) of this
19 section and are consistent with the purposes of this chapter. Convey-
20 ance of assets to or disposition of real property or other assets by
21 an organization is not valid until the organizational documents have
22 been reviewed and approved by the commissioner.

23 (b) The organizational documents must

24 (1) state the purpose of the organization;

25 (2) identify all grantors who will subscribe to the orga-
26 nisation and all persons who will possess an interest in the orga-
27 nisation;

28 (3) describe the manner in which the organization will be
29 managed;

1 (4) prescribe the method under which distributions to the
2 grantors and other beneficiaries will be made;

3 (5) provide for the conveyance to the organization of all
4 or part of the grantors' portfolios of commercial and residential real
5 properties in the state or other assets;

6 (6) provide for the orderly disposition of property of the
7 organization at prices to be established in accordance with the orga-
8 nizational documents;

9 (7) provide for the expenditure of assets to manage orga-
10 nization property, including expenditures to preserve or enhance the
11 value of properties; and

12 (8) provide for the establishment of other terms and con-
13 ditions relating to the sale or other disposition of assets that the
14 grantors consider necessary or appropriate to ensure that the orga-
15 nization will be operated in a manner that will provide for orderly
16 disposition of property and promote a stable real estate market and
17 economy.

18 Sec. 06.50.030. AUDITS AND REPORTS. (a) In addition to the
19 record keeping requirements specified in regulations adopted by the
20 commissioner or in the organizational documents, the organization
21 shall retain a certified public accountant to annually prepare and
22 submit to the department on or before April 1 of each calendar year an
23 audited balance sheet, income statement, statement of principal,
24 statement of changes in financial position, and schedule of all dispo-
25 sitions of real estate assets made by the organization during the
26 year. In connection with the preparation of the financial documents,
27 the accountant shall issue letters

28 (1) certifying that all sales of real estate assets and all
29 distributions during the year were made in accordance with the

1 provisions of the organization documents and this chapter, or identi-
2 fying any variance; and

3 (2) with respect to the internal financial controls and
4 practices of the organization, providing recommendations the accoun-
5 tant considers appropriate.

6 (b) The organization shall prepare and file with the commission-
7 er, on a quarterly basis, a report containing the following:

8 (1) a schedule of all real property held by the organiza-
9 tion;

10 (2) the sale price and all other significant terms of sale
11 for real property sold since the date of the previous report; and

12 (3) a proposed operating plan for the next quarterly period
13 that conforms with regulations adopted by the commissioner.

14 Sec. 06.50.040. REVIEW AND APPROVAL BY COMMISSIONER. (a) The
15 commissioner shall review each report filed under (b) of this section
16 and approve or disapprove the proposed operating plan within 20 days
17 after filing. In reviewing the operating plan, the commissioner shall
18 consider current market conditions. Before approving the plan, the
19 commissioner must find that the plan complies with the purpose of this
20 chapter.

21 (b) Within five days after the department notifies an organiza-
22 tion of its intention to inspect business records, all business re-
23 cords maintained by the organization shall be available for review and
24 examination by the department at the organization's principal place of
25 business, during regular business hours. The commissioner shall
26 examine the business records of an organization on a regular basis at
27 least twice each calendar year.

28 (c) If the commissioner disapproves the proposed operating plan
29 or concludes, after examination, that the organization is being

1 administered contrary to statute or regulation, the commissioner shall
2 notify the organization and all grantors in writing, specifying all
3 deficiencies and prescribing appropriate remedies. If the organiza-
4 tion fails to remedy deficiencies in accordance with the commis-
5 sioner's prescriptions within 60 days after receipt of the notice, the
6 commissioner may commence proceedings under AS 06.01.030.

7 (d) The expenses of the department reasonably incurred in re-
8 viewing and approving a proposed operating plan or conducting an
9 examination under this section shall be charged to and paid by the
10 organization in accordance with AS 06.01.010.

11 Sec. 06.50.050. PREEMPTION. If the commissioner determines that
12 the exemption is necessary to carry out the purposes of this chapter,
13 the commissioner may by regulation exempt real property liquidating
14 organizations from any state law other than this chapter or from any
15 regulation other than one adopted under this chapter.

16 Sec. 06.50.100. DEFINITIONS. In this chapter,

17 (1) "commissioner" means the commissioner of commerce and
18 economic development;

19 (2) "department" means the Department of Commerce and
20 Economic Development;

21 (3) "grantor" means a federally or state chartered finan-
22 cial institution, federal or state agency, licensed insurer, or fi-
23 nancing company that conveys assets to, and thereby obtains a benefi-
24 cial interest in and the right to participate in the management of, a
25 real property liquidating organization;

26 (4) "real property liquidating organization" or "organiza-
27 tion" means a corporation, trust, fund, partnership, joint venture, or
28 other legal entity created to acquire, maintain, manage, market, sell,
29 or otherwise dispose of real property in the state and to distribute

1 to the beneficiaries, in accordance with the provisions of the orga-
2 nization documents, the proceeds derived from the sale or disposition
3 of the property.

4 * Sec. 3. AS 18.56 is amended by adding a new section to read:

5 Sec. 18.56.210. MARKET STABILIZATION POWERS. The corporation
6 may take appropriate action to stabilize the market price of and
7 demand for residential housing in the state. To accomplish the pur-
8 poses of this section, the corporation may

9 (1) enter into agreements with state and federally char-
10 tered financial institutions, state or federal agencies, insurers, and
11 financing companies for the cooperative management and disposal of
12 real property owned by the corporation, financial institutions, agen-
13 cies, or other contracting parties; and

14 (2) convey real property and other assets to, and acquire a
15 beneficial interest in, a real property liquidating organization
16 established under AS 06.50.

17 * Sec. 4. AS 44.88.080 is amended by adding a new paragraph to read:

18 (25) to convey real property and other assets to, and ac-
19 quire a beneficial interest in, a real property liquidating orga-
20 nization established under AS 06.50.

21 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).