

HB

366

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF BANKING, SECURITIES, SMALL LOANS & CORPORATIONS

JAY S. HAMMOND, Governor

POUCH D—JUNEAU 99801

February 4, 1976

Honorable Representative Terry Gardiner
Chairman
House Judiciary Committee
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Terry:

Re: CS HB 366

Last May I had the privilege of testifying before you on the above bill. At that time I commended to the consideration of your committee comments submitted in the May 9 letter by L.S. Kurtz, Jr., an Anchorage attorney who has extensive experience representing mortgage lenders, including Alaska Bank of Commerce and Coast Mortgage Company. I am enclosing his January 21 letter to me on the same topic. I ask that your committee accord Mr. Kurtz's comments the same seriousness that I have. Mr. Kurtz informed me on January 21 that his original response to HB 366 was not at the request of any of his clients, nor did he bill them for this service. Nonetheless, his representation is predominately that of lenders.

I recall that your committee intended to make some additional substitutions in the bill as a result of the May hearing. I have not received any of your changes. What has happened?

Sincerely yours,



Miles S. Schlosberg
Director

Enclosure

cc: (With enclosure - Kurtz's letter of May 9, 1975)
Langhorne A. Motley, Commissioner
Representative Susan Sullivan
L.S. Kurtz, Jr., 825 West 8th Avenue, Anchorage, Alaska 99501

Miles

BURR, PEASE & KURTZ, INC.

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DODDRE M. PEASE, JR.
KURTZ, JR.
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E. PAGE
W. SEDWICK
DONALD H. BUSSEY
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R. E. DUERRE
CONNIE J. SIPE
LARRY MEYER

825 WEST EIGHTH AVENUE
ANCHORAGE, ALASKA 99501

TELEPHONE
AREA CODE 907
279-2411

January 21, 1976

Miles S. Schlosberg, Director
Division of Banking, Securities,
Small Loans and Corporations
Pouch D
Juneau, AK 99811

Re: Committee Substitute for House Bill No. 366

Dear Miles:

Following our discussion of House Bill 366 on Wednesday, I dug into my files and now see clearly what has happened. Enclosed are copies of the original bill, my letter to the House Judiciary Committee of May 9, and the committee substitute dated May 16. It appears that my influence has been negligible!

I still support subparagraphs (a) and (b) of the original bill, but certainly do not agree with the last sentence of subsection (b) under the committee substitute. The comments in my letter of May 9 concerning subsection (c) are still valid, and I will be happy to discuss the impact on the poor consumer of this proposed legislation with anyone. It is really brutal to the slightly delinquent house buyer who has a foreclosure started against him--he will need to come up with a lot of money for costs!

Sincerely,

BURR, PEASE & KURTZ, INC.


L. S. Kurtz, Jr.

LSK:klt

cc: R. J. Miller, Jr.
Robert C. Ely

RECEIVED

JAN 26 1976

DEPARTMENT OF COMMERCE
DIVISION OF BANKING
SECURITIES AND SMALL LOANS

TELEGRAM

1975 MAY 1

AKA ALASKA COMMUNICATIONS

PHONE: 586-6440

JUNEAU, ALASKA 99801

IPMAFUB AHG

1-0449880139 05/19/75

TLX BANKALASKA AHG

01 ANCHORAGE ALASKA MAY 19, 1975

PMS REPRESENTATIVE TERRY GARDINER

STATE CAPITOL
3325

JUNEAU ALASKA

URGENT RE HOUSE BILL 366-HEARING 5/20/75

THE ALASKA BANKERS ASSOCIATION IS OPPOSED TO HB 366, SPECIFICALLY
SECTION 34.20.070 (C) PAGE 2, LINES 4 AND 5.

THIS SERVICE OF PROCESS IS A MATERIAL CHANGE AND MAY HINDER
FINANCING NOT HELP

THE ALASKA BANKERS ASSOCIATION

R W BURGH

PRESIDENT

2229 EST

IPMAFUB AHG

IPMAFUB AHG

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May 9, 1975

Alaska State Legislature
House Judiciary Committee
State Capitol
Pouch V
Juneau, Alaska 99811

Re: House Bill No. 366

Gentlemen:

Today I received a copy of House Bill No. 366 and sincerely hope that you will modify subsection (c) of that bill before it is passed. I make this request as a practicing attorney who forecloses several deeds of trust each month, and as a private person who makes payments on eight deeds of trust each month. I think I have as much practical experience in dealing with foreclosures from both sides of the fence as any other attorney in the Anchorage area.

First, I strongly support the modifications to subsections (a) and (b) which the Bill makes. They will help prevent injustices from occurring and will not hurt creditors to any substantial degree. However, the proposed change to subsection (c) will hurt both debtors and creditors. The biggest problem I see with it is the technical impossibility of complying with it. Under Civil Rule 4(d)-(e) much more than ten days is required to accomplish service of process in many cases. The period of time can extend up to several months if the individual cannot be located, and in foreclosure situations the borrower or the party assuming from the borrower frequently cannot be located. Publication under Civil Rule 4(e) would serve no purpose whatsoever because publication is already required by the foreclosure provisions in title 34. At the present time it costs from \$125.00 to \$200.00 to publish the notice required by title 34, and this cost would roughly double whenever any of the parties named in 34.20.070(b) could not be found. The cost of serving each party holding interest in the land also will be substantial in many cases, since normal process

Alaska State Legislature
House Judiciary Committee
May 9, 1975
Page Two


serving costs at least \$10.00 per service and there often are a number of judgment holders, lien holders and other parties who must be served in a foreclosure proceeding.

As a practical matter, I think you are trying to protect parties who own land from being foreclosed out without notice, which is very important. If you feel personal service as required by Civil Rule 4(d) is necessary, please consider limiting the requirement of personal service to the record owner of the property and the parties in possession of the property, excluding lien and judgment holders and similar parties. If a process server cannot find the owner of the property in the State of Alaska after diligent search, no further service should be required other than the publication now required by title 34.

From my experience, I think virtually all of the abuses of the deed of trust and summary foreclosure procedure would be eliminated if your subsection (c) merely required service of the parties in possession of the property. Most of the abuses - have seen arose in connection with foreclosure of homes owned by individuals who could not afford legal counsel. Often such people quit picking up certified mail and thus get no actual notice of a foreclosure proceeding. While I question whether people should be protected when they refuse to pick up certified mail, personal service of such owner-occupants may be warranted. That alone will add only a few dollars to the foreclosure costs, which the owner will have to pay if he brings the debt current. He should not be saddled with the extremely high costs which will result from compliance with the present proposed subsection (c).

Sincerely,

BURR, PEASE & KURTZ, INC.


L. S. Kurtz, Jr.

LSK:klt

copies of letter
enclosed

A-440
5/13/75 Mites - please take a look
at this one. Jerry Kutz

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File with members

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