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ALASKA CODE REVISION COMMISSION



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JUNEAU, ALASKA 99811
(907) 465-4878

EXECUTIVE SECRETARY
BILLY G. BERRIER

MEMORANDUM

TO: Kevin Bruce, Committee Aide
Senate Judiciary Committee

FROM: Dickerson Regan, Consultant *Dick Regan*
Alaska Code Revision Commission

DATE: March 8, 1982

RE: CSSB 78--Recording and Recordable Documents

I have checked draft CSSB 78 (Jud) against my memorandum to you dated January 4, 1982, and the two appendices attached to my memorandum.

The intention of the Legislative Affairs Agency in typing the draft CS was to make no substantive changes. The changes are matters of style, mostly changing the word "which" to "that."

The only change I question is on page 1, line 17. In my suggested change I have marked a deletion [TO THE DISTRICT RECORDER]. In the draft CS it is not deleted.

I marked it for deletion mainly because there is no title of "district recorder," and because the Department of Natural Resources has general broad authority under AS 44.37.025(a) (see p. 23 of the bill) to adopt regulations that would cover the subject matter.

Linn Asper, the staff member who prepared the draft CS bill in the Legislative Affairs Agency, says the change was inadvertent.

I recommend [TO THE DISTRICT RECORDER] be deleted on page 1, line 18, as originally proposed.

The other difference I see from the form I proposed is on page 6, line 28. The form of the phrase on that line is an improvement over my proposed form.

DR:chw

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EXECUTIVE SECRETARY
BILLY G. BERRIER

MEMORANDUM

TO: Kevin Bruce, Committee Aide
Senate Judiciary Committee

FROM: Dickerson Regan, Consultant
Alaska Code Revision Commission

DATE: March 8, 1982

RE: Draft CSSB 78 on Recording

Following are notes on the January 26, 1982 memorandum on recording of Javan Beitinger, State Recorder, that was passed on to me by DNR on February 16th.

1. Sections of the bill to and including page 6, line 16: Present technology and equipment permits recording of plats. It is desirable to get the plats into the recorded records now for the time when the remote access system is in place. It is up to the department whether to record a plat in one or several parts.

2. Page 4, lines 5 and 6: This change of "shall not" to "may not" has no meaning. Current state drafting style calls for the term "may not" to denote a prohibition. When a section is being otherwise amended in some substantive way stylistic changes such as this are also made.

3. Page 8, AS 40.17.030(c): There are documents like a master form that are nothing but standard wording that may be included by anybody in a later document and that will not then have to be rerecorded. Of itself such a form is not constructive notice. And of course recording of class B documents has no legal significance. No need for a blanket requirement of signing, sealing, etc. is apparent.

4. Page 9, AS 40.17.040(c): The idea of recording class B documents at a central place is, I think, not consistent with the wishes of the proponents of class B as a ready repository for safekeeping. When remote access is in place, recording in a central place would be consistent with ready storage and access for class B documents, but that equipment might be put into place ~~only~~ gradually over many years. Proponents of class B want a storage system that will be usable now.

The bill should not be held up for this concept of central filing for class B. It was proposed by a representative of DNR in a meeting with Senate Judiciary staff on November 25, 1981, and it was left to DNR to develop the concept if DNR wished to pursue it. I have seen no drafting proposed. Certainly, it was the concept of the Senate Judiciary staff that the drafting be provided to the committee and interested parties at a time when it could be given adequate review. That time has past if the bill is to be moved on through this legislature.

For that reason, but more importantly because the concept is inconsistent with an easy, ready storage system for public use, it should be rejected.

5. Page 12, line 9: The wording of the uniform act is that "a recorded signed document" creates the listed presumptions (Section 2-305, Uniform Simplification of Land Transfers Act). The commission narrowed the presumptions greatly by affording the presumptions only to documents that are acknowledged. The word order could be changed without changing the meaning--or it could be left as it is.

6. Page 14, line 4: Not all public officials have a seal of office. Relatively liberal use of presumptions is desirable. The word "or" should be retained. Perhaps there is confusion over what a presumption means. It does not change the burden of proof of a document.

7. Page 15, lines 15 & 16: Under (53) on page 19 a document that changes a recorded document is recorded. Under (5) on page 15 an evidenciary affidavit or certificate may be recorded. The two are different and each is needed.

8. Page 15, line 27: The old and new language are approximately the same regarding a lease or contract to purchase or option to purchase real property. "Conformed" means "exactly conformed."

9. Page 17, line 25: Reference the comment under No. 1 above.

10. Page 18, line 25: Thirty-six states now have adopted the uniform amendments to the Uniform Commercial Code. In the state of Washington the amendments go into effect July 1 of this year. I called a Washington recording official recently and was advised they will be recording financing statements and termination statements on fixtures and do not anticipate problems. Alaska should not experience problems either.

11. Page 21, line 11: These sections that provide

for recording of tax liens like other liens were cleared through the Department of Revenue and through IRS at the state and national level. The bill eliminates the requirement that the recorder hold tax liens in paper form. Savings should result.

12. Agreed.

13. Agreed. I appreciate the finding of these additional sections where the term "filed for record" should be changed.

14. Existing law on condominiums provides for recording the declaration that establishes condominium ownership and amendments to it and documents removing property from condominium ownership. Under existing law, survey maps and floor plans of a condominium are to be filed, but this bill would require that they be recorded, mainly so all documents will be in the remote access system. To accomplish this and the other like changes without greatly lengthening the bill, section 19 on pages 23 and 24 authorizes the revisor of statutes to make the change in the listed statutes. This suggested approach had been cleared with the revisors for whom I have made a collection of the listed sections marked up as required. If the committee thinks the condominium survey maps and floor plans should be filed as well as recorded there could be added to the bill a direction to the revisors of statutes to make the change by adding the words "and recorded" after the word "filed" in AS 34.07.020--34.07.050.

An error is caught in the memorandum: On page 24, line 7, delete "AS 34.20.080" and substitute "AS 34.20.090."

The other sections are right as listed in the bill. However, the suggestion made in the memorandum that the revisors conform all sections between AS 10.15.230 and AS 10.15.260 is acceptable and could be accomplished by this change:

Page 24, lines 3 and 4: Delete ", 10.15.235; 10.-15.260" and substitute "--10.15.260."

The commission thought AS 34.15.210--34.15.250 are now adequately covered by the Alaska Rules of Evidence adopted in 1979. The same is true of AS 34.15.300. As to AS 34.15.-330, there should be more flexibility in means for revoking a power of attorney than this section of existing law provides.

As you see there are three or four of the changes suggested in the DNR memorandum that I believe to be improvements or not detrimental to the bill, as listed above. On major issues, as you know, compromises were struck in the meeting with committee staff on November 25, 1981, notably

Kevin Bruce, Committee Aide
March 8, 1982
Page 4

deleting the commission's proposal that acknowledgments no longer be required on conveyances, and providing for continued filing and retention of subdivision plats.

So I think the bill now should be acceptable to all concerned.

DR:chw



Official Business

Alaska State Legislature

Senate

Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

MARCH 8, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

SB 78 - "An Act relating to filing and recording and to recordable documents; and providing for an effective date."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:40 P.M. Committee members present were: Senators Bennett, Parr, Ray, Anderson, and Rodey. Senator Bennett was absent.

030 - Chairman Rodey called the Senate Judiciary Committee to order.

034 - Mark Wittow, representing the Department of Natural Resources, and Dickerson Pegan, representing the Code Revision Commission, join the committee for discussion.

246 - Senator Ray made the motion for a language change on Page 7, Line 2, after the word "state" delete "and a person to operate the machine, device, or system;", and start a new sentence with "if". There was no objection.

302 - Senator Ray made the motion to insert the word "public" between "a" and "office" on Page 7, Line 4. There was no objection.

515 - Senator Ray made the motion to change "other" to "the most" on Page 7, Line 5, and change "means" to "manner" on Page 7, Line 6. There was no objection.

530 - Senator Ray moves to delete Sec. 6 on Page 7. There was no objection.

After brief discussion, Chairman Rodey suggests laying SB 78 on the table until more testimony could be heard. There was no objection and the meeting was adjourned at 2:25 P.M.

JOHN W. ABBOTT, CHAIRMAN
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EXECUTIVE SECRETARY
BILLY G. BERRIER

MEMORANDUM

TO: Chairman, Alaska Legislative Council

FROM: John W. Abbott, Chairman *John W. Abbott*
Alaska Code Revision Commission

DATE: January 9, 1981

RE: Bill on recording and recorded documents

Pursuant to authority granted in AS 24.20.075(c), the Alaska Code Revision Commission has prepared the attached bill on recording and recorded documents and asks that it be introduced in the legislature.

The bill was transmitted previously near the end of the 1980 session. Although the review process was completed in the Legislative Affairs Agency, the bill was not introduced. Apparently it was not practical to introduce it in the last legislature, since there was not enough time remaining for committee work and passage. It is offered now for submission to the new legislature.

Although many provisions in the bill come from, or are based upon, the Uniform Simplification of Land Transfers Act, that Act has not been adopted in any state and is not suitable for adoption as a whole.

As noted in the attached commentary, the bill gathers together and clarifies provisions on recording that are scattered throughout Alaska Statutes, and lays a suitable framework for future use of technological advances in a centralized recording system.

The state recorder, title companies, banks and bar association representatives have participated in meetings with the commission while the bill was being drafted. Many of the suggestions of these participants have been incorporated in the draft bill.

JWA/dr/chw

Enclosures

cc: Hon. Jay S. Hammond, Governor
Hon. Jay A. Rabinowitz, Chief Justice
Myrton R. Charney, Executive Director
Legislative Affairs Agency

BILL ANALYSIS

Bill Number : SB 78

Sponser: Rules Committee
(for the Code Revision Commission)

Assigned to: Division of Technical
Services

Summary

1. Program effects of bill: The Division of Technical Services thinks that the bill simplifies some present recording requirements and incorporates some new concepts that make recording laws simpler for the public. However, this Division thinks that the overall impact will require a higher degree of judgement call on the part of the recording office that necessitates more employees and a higher class of employees in order to make the judgement calls required by this bill. Technically, we think that both filing and recording should remain two conditions within the recorders office. Technically, this Division believes filing of subdivision plats and surveys plats should remain as filed documents. (This should not be recorded and subject to fraud.)
2. Comments: With no acknowledgement required on recording documents and affidavits attached to copies this Division thinks the potential for fraud is increased over today's present system. Some form of acknowledgement and only original signature documents should be recorded as Class A documents. This is in line with court cases and present court administrative rules that were developed for the recording office in years past. Recording plats would place a land title document that belongs (in our estimation) to the general public back in the hands of private individuals and should remain in the hands of the public by being filed and not recorded. We believe filing also is applicable to state and federal tax liens. The language in the bill seems to purport that the recording offices would be required to perform searches of information rather than making information available to the public and other users as is presently the practice. We believe the bill should emphasis information availability only in order to decrease the liability to the state; rather than have the recording offices make the judgement calls on types of documents to be recorded and to which category (Class A or B) they are to be recorded in. The bill should be written to reflect that the individual filing the document should state the class or type it is to be recorded under and the recording office simply make a review that it does in fact meet the requirements under 47.17.030 and is a category described in 40.17.110.
3. Proposed amendments: On page 2, Section 40.17.020(b) delete "in the state division of Forest, Land and Water Management"; the Department of Natural Resources presently follows the requirements of any private citizen for recording or filing of plats. Page 3, Section 40.17.030(a)(4) delete the words "accompanied by". Section 40.17.030(a)(5) delete the entire statement. Page 3, Section 40.17.030(c) delete the entire statement. (We believe some type of acknowledgement should be attached to a document.) Page 6, Section 40.17.090(a) delete the entire statement. Page 10,

Section 40.17.110(b)(9), (10) delete in its entirety. Page 12, Section 40.17.110(b)(35) delete in its entirety, (this we believe should be a document that is filed in the recording office). Page 13, Section 40.17.110(b)(47), (48) delete in its entirety. Page 13, Section 40.17.110(b)(50) delete in its entirety, (this is covered under the Uniform Commercial Code filings and should not be a recording document under the recording office in this bill). Page 15, Chapter 19. Recording Federal Liens. Delete in its entirety. Page 17, Section 3 amending AS 34.15.010(a), delete in its entirety. Page 18, Section 5 amending AS 34.15.150, delete in its entirety. Page 19, Section 6 amending AS 44.37.025(c) delete in its entirety, (the Division of Technical Services presently is constrained utilizing judicial employees of the court system to perform services for recording). The Division of Technical Services is presently attempting to establish recording positions in the court served areas to resolve problems utilizing court employees who are not under the direct division control and to give full support to the recording functions in these offices.

4. Fiscal Impact

~~XXXX~~ Fiscal Note Attached

5. Other Departments Effectuated: N/A

6. Related Legislation: The Department of Natural Resources has submitted a FY 82 CIP budget request to upgrade the Departments land information and distribution system. A review of this proposed SB 78 legislation and relationship to the submitted FY 82 CIP will be forthcoming within two weeks.

Prepared by: Joseph C. Burch

Director Approval _____

Commissioner's Approval _____

CODE REVISION COMMISSION



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EXECUTIVE SECRETARY
BILLY G BERRIER

MEMORANDUM

TO: Kevin Bruce, Committee Aide
Senate Judiciary Committee
Alaska State Legislature

FROM: Dickerson Regan, Consultant
Alaska Code Revision Commission *Dick Regan*

DATE: January 29, 1981

RE: Notes on DNR's Bill Analysis of SB 78 on
Recording and Recordable Documents

Following are the comments you requested on the Department of Natural Resources "Bill Analysis" for SB 78 on Recording and Recordable Documents. The numbers used in the comments tie to the numbers penciled on the DNR Bill Analysis and on a copy of the bill marked with the DNR proposed changes.

1. The main arguments for and against requiring acknowledgments are in the Alaska Code Revision Commission's (ACRC) comment on the bill at pages 17 and 18. See also on page 15 the Commissioners on Uniform State Laws' statement on the office of notary. For ready reference these sections of the comment are attached.

The ACRC took its position after a great deal of deliberation. However, realizing it would be controversial it also attached amendments to its draft bill that would remove the provision from the bill. If the legislature chooses not to follow the ACRC recommendation on acknowledgments in SB 77, it could refer to the form of amendments attached at the end of the ACRC commentary on the bill. They cover the same ground as the DNR's objections regarding pages 17-18 of SB 77.

2. Whenever the system begins to use electronic transmission of recorded documents, the person at a remote terminal should have access to the recorded official plat. If it is recorded, he will have that access even if a large plat is recorded in several smaller parts. Perhaps DNR's concern that the original plat should be retained as a public

document could be easily accommodated by an amendment to the bill requiring that plats be both filed (as at present) and recorded.

3. Retaining the paper document (filing) is no more necessary for tax liens than for other important documents (deeds, deeds of trust). The Alaska Department of Revenue and the IRS agreed when the bill was drafted, and I believe the state recorder and the then responsible department (Commerce and Economic Development) also agreed.

4. I believe DNR's concern has been addressed and that the comment refers to an earlier draft of the bill or to the Uniform Federal Lien Registration Act before changes in this bill.

5. It is my understanding that the main impetus for ACRC drafting a recording bill was to seek to clarify what documents are recordable. Much effort of the ACRC was directed to this purpose. At present (leaving aside the question of acknowledgment) the recorder records the documents referred to in the bill as "Class A" documents, and must make the same judgment calls as the bill would require. "Class B" includes all other documents. They are not recordable at present, but will be recordable for safekeeping under the bill. The unschooled person bringing a document for recording should not be required to know whether his document is recordable in Class A, any more than he is now required to know whether his document is recordable at all.

6. The proposal for amendment of the bill should be clarified. Indexing of Class A documents is left for regulation by the DNR. If information for complete tract indexing is to be required in some recording districts (as the ACRC supposed it would be) the phrase "accompanied by" would prevent some important problems. An example: Complete tract indexing would require that the complete tract description be in a document or it would be rejected for recording and could not provide constructive notice. Such documents now form important links in the chain of title. The phrase "accompanied by" would permit the document to be recorded even if the grantor were dead or could not be reached to sign a corrected document with a full "legal description" of the property.

7. The proposal for amendment of the bill should be clarified. It is not clear whether the objection is to two classes of documents, to admissibility in evidence of unacknowledged documents or whether the objection has to do with admissibility in evidence in a broader sense.

8. As to (9), since some liens, even now, are recorded, it is necessary that a release be recordable.

As to (10), the reason for the objection should be clarified.

9. Bar Association review brought the need for this subsection to the ACRC. Fixture filing is provided for in SB 77, a bill which would adopt 1972 uniform amendments to the UCC. Fixtures are part of real property and one searching title to real property should find a lien on fixtures when he searches the real property records. The permission to record will do no harm and will be necessary if the pertinent part of SB 77 is passed here as it has been in 32 other states. Reference, in SB 77 proposed sec. 45.09.313(a)(2):

(1) goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;

(2) a "fixture filing" is the filing in the office where a mortgage on the real estate would be filed or recorded of a financing statement covering goods which are or are to become fixtures and conforming to the requirements of AS 45.09.402;

10. The section is necessary in connection with section one and other parts of the bill that lay the statutory framework for future "recording" by electronic communication with one central "place of recording." It also is broad enough to be consistent with present practice.

I notice that I missed a couple of the DNR proposed changes. I've marked them 11 and 12 on the Bill Analysis.

11. At the time the bill was drafted, the records on state public lands were in a different department from state recording offices. Perhaps no problems are being experienced now with getting documents from state public land records into the recording system. Title companies may or may not see a continuing need for language similar to the questioned phrase. They may comment when they review the bill.

12. The term "accompanied by" is part of what makes this bill compatible with foreseeable technological advances in

Memorandum
January 29, 1981
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recording. A "document" is defined in proposed AS 40.17.040(5) to include not only a paper document but an electronic signal or tape that can be converted to a paper document by the recorder's machine or device. The bill is designed to be workable now and in the future. I believe the recorder needs the information this section calls for and should be asked to clarify why the section should be removed from the bill.

13. I believe this section was favored by all those who reviewed drafts of the bill. The request to remove it should be clarified.

DR:chw

Attachments

ALASKA CODE REVISION COMMISSION



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EXECUTIVE SECRETARY
 BILLY G. BERRIER

MEMORANDUM

TO: Kevin Bruce, Committee Aide
 Senate Judiciary Committee
 Alaska State Legislature

FROM: Dickerson Regan, Consultant *Dick Regan*
 Alaska Code Revision Commission

DATE: January 4, 1982

RE: SB 78--Recording and Recordable Documents

Since Legal Services in the Legislative Affairs Agency puts draft committee substitute bills behind all new pre-file bills in priority for staff time, I was informed the marked up SB 78 would not be typed until perhaps the first week of the session. However, Linn Asper, the legal staff person assigned to the bill, tells me he is in good shape now and should be getting to it. Attached is the way the bill went to him. Legislative Affairs has the mag cards for the bill so the retyping will be relatively uncomplicated.

I have made two changes from my notes at our meeting of November 23, 1981, in Anchorage. (1) In proposed AS 40.17.-020(b) I struck out " , or in the state division of forest, land and water management," and did not substitute " , in the Department of Natural Resources,". The reason for this change is that I thought in our recent meeting I was the voice against the simple deletion and I now conclude deletion is the better choice. For one thing, proposed AS 40.17.110(c) takes care of the matter adequately. (2) On page 3 I used "accompanied by or include" in proposed AS 40.17.030(a)(4), (a)(5), (a)(6) and (b) and added a (d) which provides that if the information required by (a)(4), (a)(6) or (b) is not included in the document it must be recorded with the document. I think that will meet Javan's objection. As I see it, the information will be marked on, or otherwise included in, the document in almost every instance. The terminology just adds some flexibility that the commission believed would be needed if (1) documents in forms other than paper are recorded, and (2) complete tract indexing is to be required in one or more recording districts by regulation, a possibility the commission wised to provide for.

Kevin Bruce, Committee Aide
January 4, 1982
Page 2

Since I do not know how you wish to handle communication at this point, I did not send copies of this memorandum to anybody in Natural Resources, leaving it to you whether you wished to continue dialogue at this point.

DR:chw

Enclosure: Marked up SB 78, as provided to
Legislative Affairs

P.S. At our meeting in November, Joe Burch mentioned a concept just then occurring to him of meshing class B documents with the system of Uniform Commercial Code filings. The concept was neither accepted nor rejected, to the best of my recollection. I believe it was thought that it might be something to handle internally in Natural Resources and, in any case, that it would be left for Natural Resources to pursue should it seem practical and desirable when studied. The marked-up draft does not treat the concept. I believe it would require a major change in the UCC, so it probably will not be followed up.

MEMORANDUM
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF TECHNICAL SERVICES

State of Alaska

TO: Jim Anderson, Director
Div. of Technical Services

DATE: January 26, 1982

FILE NO:

TELEPHONE NO: 274-0142

FROM: Javan M. Beiringer
State Recorder

SUBJECT: SB 78 Revisions

TO: MARK WITTOW

I still have problems with the bill, as cost, implementation and integrity of the system are factors.

Areas of concern and suggestions:

Put in bill, where appropriate, that where record/recorded/recording is used in reference to plats on pages 1 through 6 line 15, it means when technology permits.

Page 4, Lines 5 & 6, why was shall changed to may?

Page 8, AS 40.17.030(c) - As mentioned before, I hope this will not be a problem. It seems all documents should require something.

Page 9 AS 40.17.040(c) and all areas where B type documents are mentioned. B type documents will still remain expensive to implement in each recording office, in time, programming, additional employees, equipment and space, and clutter the records with documents that do not provide constructive notice. From the P.S. in Dick Regan's memo to Kevin Bruce, dated 1-4-82, I do not believe he understood Joe Burch's proposal to have only one place within the recording system where B type documents could be recorded. This concept would cut down on the cost and problems.

Page 12, line 9, If I interpret the meaning correctly, should read A signed, acknowledged and recorded

Page 14, line 4, And should be used instead of or.

Page 15, lines 15 & 16 is covered in #53 on page 19 in a different manner.

Page 15, beginning with line 27 # (10) and continuing on page 16. Previous statute read, "An exactly conformed copy of a lease or contract or option to purchase real property when the party certifies under oath that the exactly conformed copy was received by him in the course of the transaction, that the original is not in his possession and that the instrument offered for recordation is an exact duplicate". If the law is to become so flexible as to include any class A document in this manner it should be at least as binding as the previous law. See recommended changes in draft.

Page 17, line 25 #(35), add filed and recorded when technology permits.

Page 18, line 25 #(50), I still have a problem with this, see attached memos from and to Dick Regan.

Page 2 - SB 78 Revisions

Page 21, beginning with line 11 - This will require changing the program and cost should be considered. Research and Development have problems adding abbreviations to present program, which should be a minor endeavor.

AS 09.40.050; AS 09.55.370; AS 10.30.020; AS 13.26.265; AS 23.10.047;
AS 23.20.200; AS 23.30.165; AS 27.10.020; 27.10.050; 27.10.060; 27.10.070
27.10.160; 27.10.190; AS 27.15.010; AS 32.10.010; 32.10.240; AS 34.35.065;
34.35.160; 34.35.185; 34.35.240; 34.35.250; 34.35.305; 34.35.330; 34.35.405;
34.35.440; 38.05.195; 38.05.200; 38.05.205; 38.05.210; 38.05.220; 38.05.245.
are fine for changing filed to recording.

27.10.170; 27.10.210; 27.10.230; 38.05.230 should be added to above list.

AS 34.07.020; 34.07.040; 34.07.050 should remain as is or revised to add when technology permits.

AS 34.07.070; AS 34.20.080; AS 46.15.160 need no change.

AS 10.15.230 - AS 10.15.260 should be reviewed and amended to fit recording procedures for processing and fees.

AS 34.15.210 - AS 34.15.250, Why is this being repealed. It is sometimes a useful tool where there is no notary and in court cases.

AS 34.15.300 and AS 34.15.330 seem to be useful statutes.

If the bill passes in the present form which will require new programming, equipment, space, employees etc., I cannot see how it would be possible to be ready for enactment by January 1, 1983.

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF TECHNICAL SERVICES

State of Alaska

TO:

Jim Anderson, Director
Division of Technical Services
Dept. of Natural Resources

DATE: October 12, 1981

FILE NO: 1290/1150

TELEPHONE NO: 274-0142

FROM:

Javan M. Beitinge
State Recorder

SUBJECT: SB 78

1. Effects of Bill: SB 78 incorporates some new concepts that make recording laws simpler for the public. However, the overall impact will require a higher degree of judgement call on the part of the recording office, will require re-writing the data entry program at considerable cost, will require additional employees and equipment, and lower the integrity of the system.

2. Comments: With no acknowledgement required on documents and affidavits attached to copies, the potential for fraud is increased over today's present system. The system is now in line with court cases and present court administrative rules that were developed for the recording office in past years. By recording plats, instead of filing, would place a land title document in the hands of private individuals and would not provide the public with adequate information so vital to the land records system. Tax Liens could be recorded, but would require some changes in 40.19.040(b). Recording Class B documents would be a great expense to the state in time, programming, additional employees, equipment and space, and would clutter the records with documents that do not provide constructive notice for any purpose. This concept would only cause public indignation.

3. Proposed amendments: ✓ On page 2, Section 40.17.020(b) delete "in the state division of forest, land and water management" and insert "Department of Natural Resources" (this does not include plats). Page 3, Section 40.17.030(a)(4) delete the words "accompanied by or". Page 3, Section 40.17.030(a)(6) delete "accompanied by" and insert "include"; delete "grant or". Page 3, Section 40.17.030(c) delete the entire statement. (Some type of signature, acknowledgement or verification should be on each document). Page 6, Section 40.17.090(a) Insert "and acknowledged" after signed. Page 6, Section 40.17.090(b) Insert "and acknowledged" after signed. Page 8, Section 40.17.090(10)(d) delete first "or" and insert "and". Page 9, Section 40.17.110(a) insert "and acknowledged" after signed. Page 10, Section 40.17.110(b)(10) delete in its entirety (see present statute). Page 11, Section 40.17.110(b)(18) needs clarification. Page 12, Section 40.17.110(b)(25) delete in its entirety, (this should be a document that is filed in the recording office). Page 13, Section 40.17.110(b)(47) delete in its entirety. (As there is no state tax and reference documents should be filed in present system). Page 13, Section 40.17.110(b)(48) could be recorded, but Section 40.19.040(b) would need to be revised. Page 13, Section 40.17.110(b)(50) delete in its entirety, (this is covered under the Uniform Commercial Code filings and should not be a recording document under the recording office in this bill). Page 17, Section 40.19.040(b) add "which must be noted in the contents of the document".

Page 17, Section 3 amending AS 34.15.010(a), delete in its entirety.

Page 18, Section 5 amending AS 34.15.150, delete in its entirety.

Page 19, Section 6 amending AS 44.37.025(c), consideration should be given to the Division of Technical Services assuming the responsibilities now assumed by the courts. All the ramifications should be addressed prior to making changes. Besides Glenallen, Valdez, Seward, Kodiak and Sitka where recording is done by the court, records are kept and made available to the public in Haines, Skagway, Petersburg, Wrangell, Cold Bay, Aniak, Nenana, Cordova, Dillingham and Naknek.

*

Alternative to SB 78 is to contract with someone to revise present statutes and write regulations.

I have no idea what the fiscal impact would be but enclosed herewith is an analysis prepared by Joe Burch April 4, 1981.

*

Page 19, Section 7, the following statutes should be deleted from the proposed changes.

34.07.020, 34.07.030, 34.07.040, 34.07.050 (these reference the survey maps and floor plans under the Horizontal Property Regimes Act. These documents should be filed as plats as they have been in the past).

40.15.010, 40.15.020, 40.15.040, 40.15.050, 40.15.070 (these reference subdivision plats which should be filed).

34.07.070 and 34.20.080 appear to be correct as written.

Page 19, Section 8, if acknowledgements are required 34.15.210 - 34.15.350 should not be repealed. 43.10.090 - 43.10.150 (Federal Tax Liens should be reviewed before repealing these statutes).

Page 19, Section 9, If bill is passed in its present form effective date should be extended at least until 1983.

MEMORANDUM
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF TECHNICAL SERVICES

TO: David Rogers
Special Assistant
Dept. of Natural Resources

DATE: April 4, 1981

FILE NO: 1150 (1981 Fisca' Notes)

TELEPHONE NO: 263-2213

FROM: Joseph C. Burch *JCB*
Deputy Director
Division of Technical Services

SUBJECT: SB 78 Fiscal Analysis

1) Fiscal impact with no change in existing technology:

<u>10-48-8-808</u>	<u>Recorder's Office</u>
\$20.0	Contractual funds to rewrite and publish amended and new recording procedures.
\$10.0	RSA funds to Departement of Law to resolve change over problems.
\$20.0	Adveritizing funds to inform the general public through newspapers and electronic media.

\$50.0	TOTAL

2) Fiscal impact with no change in exiting technology:

Assumption:

- a) Replac. Court System assistance in Glennallen, Valdez, Kodiak, Sitka and Seward with district recording office employees.
- b) # 1 costs above are appropriate.

<u>10-48-8-808</u>	<u>Recorder's Office</u>
\$ 50.0	# 1 above
108.3	5 positions - Recording Clerk I, range 8
5.0	travel
37.5	space, telephones, copier, etc.
60.0	general office supplies
9.0	equipment

\$269.8	TOTAL

MEMORANDUM
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF TECHNICAL SERVICES

State of Alaska

TO: David Rogers
Special Assistant
Dept. of Natural Resources

DATE: April 4, 1981

FILE NO: 1150 (1981 Fiscal Notes)

TELEPHONE NO: 263-2213

FROM: Joseph C. Burch *JCB*
Deputy Director
Division of Technical Services

SUBJECT: SB 78 Fiscal Analysis

1) Fiscal impact with no change in existing technology:

<u>10-48-8-808</u>	<u>Recorder's Office</u>
\$20.0	Contractual funds to rewrite and publish amended and new recording procedures.
\$10.0	RSA funds to Department of Law to resolve change over problems.
\$20.0	Advertising funds to inform the general public through newspapers and electronic media.

\$50.0	TOTAL

2) Fiscal impact with no change in exiting technology:

Assumption:

- a) Replace Court System assistance in Glennallen, Valdez, Kodiak, Sitka and Seward with district recording office employees.
- b) # 1 costs above are appropriate.

<u>10-48-8-808</u>	<u>Recorder's Office</u>
\$ 50.0	# 1 above
108.3	5 positions - Recording Clerk I, range 8
5.0	travel
37.5	space, telephones, copier, etc.
60.0	general office supplies
9.0	equipment

\$269.8	TOTAL

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 78
 Title An act relating to recording and recordable documents
 Requested by Rules Committee (for Code Revision Commission) Date 5-11-81

II. FISCAL DETAIL

Agency Affected Department of Natural Resources
 Program Category Affected Department of Natural Resources Management and Administration
 BRU, Program, or Subprogram(s) Affected Management & Administration; Information/Records Mgmt
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES	0	0				
200 TRAVEL	0	0				
300 CONTRACTUAL	50.0	0				
400 COMMODITIES	0	0				
500 EQUIPMENT	0	0				
600 LAND & STRUCTURES	0	0				
700 GRANTS, CLAIMS, ETC.	0	0				
TOTAL	50.0	0				

FUNDING (Thousands of Dollars)

GENERAL FUND	50.0	0				
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME	0	0				
PART TIME						
TEMPORARY						

III. ANALYSIS. (See Fiscal Note Preparation Instructions, Section III)

The contractual funds request are to rewrite and publish amended procedures and new recording regulations for Class A and B documents. This includes funds for the Department of Law to resolve change over problems and review of new regulations to be promulgated.

Additionally are funds for advertising costs associated with adopting regulations, informing the public of new laws for recording, and publishing a handout summary of new recording procedures and requirements.

IV. DATE 5-11-81 PREPARED BY Claud M. Hoffman
 AGENCY DNR, Division of Technical Services
 PHONE 263-2200

Original: Legislative Finance
 cc: Budget and Management
 ?prime Sponsor (First Legislator Named)



TITLE INSURANCE AND TRUST
PIONEER NATIONAL TITLE INSURANCE

February 8, 1980

Mr. Robert J. Whisman
Senior Vice President
Alaska Title Guaranty Company
500 Sixth Avenue
Anchorage, Alaska 99501

RE: Alaska Code Revisions

Dear Mr. Whisman:

The Alaska proposal to revise the recording laws appears to be one of many studies being made in the various states. The National Conference of Commissioners on uniform state laws in 1977 drafted a proposal to modernize and unify legislation in all states in regard to land titles. As of this date no state has adopted any of the provisions thereof.

The above proposal was closely followed in the background study in California prepared by James L. Blawie of Santa Clara Law School. The intention of his study was to chart out the specific matters that might be covered in the project and suggest the approach the California Code Revision Commission should take. They are proceeding slowly on this study and are considering a "marketable title act" as their first area of interest. On January 21, 1980, this proposal was forwarded to all title company counsel for their suggestions as to alternate approaches in dealing with the various matters discussed in the background study.

The proposals all seem to recommend the use of a system located in a central place with facilities for a tract index system with computer access points in each county recorder's office. It is assumed they will transmit the documents by means of a tele-copier or something similar thereto. At the present time our company is unaware of any system that would transfer documents satisfactorily and in volume and that could be relied upon to operate on a day-to-day basis without breakdowns. If a system is available at present or in the immediate future it might prove successful in Alaska because of the low volume of recordings and the remoteness of some recording districts. We are not totally convinced as to the reliability of such a system or the need for it at the present

Robert J. Whisman
February 8, 1980

Page 2

time in Alaska. If, however, the documents can be recorded in the local recording office as is the practice now, the fact that they will be transferred by telecopier to a central office should have no damaging effect as long as the local recording office has a copy thereof.

This system does not seem too practical in a high volume county like Los Angeles as it would necessitate transmitting 1800 documents to the central office daily. This figure added to the recordings of other California counties would entail a lot of daily transmissions. It appears to be a duplication having all documents in one central place and these same documents stored in the various recording districts also.

Paragraph 5, Section 40.17.030 of the Alaska proposal requires the name of the person who presents the document for recording and the name of the person in whose behalf it is to be recorded. It would seem that the information "recorded at the request of" would be sufficient.

Section 40.17.030

Paragraph 6 requires the mailing addresses for all parties who require an interest under the conveyance document. This could prove cumbersome if there are a number of grantees and would necessitate the adding of an additional page to the document. It is assumed that paragraph (6) requires that the mailing addresses be recorded with and be part of the conveyance document. The statements printed on the document "after recording mail to" and "send tax statements to" would accomplish more.

No attempt has been made to determine if the list of Class "A" documents in Section 40.17.110 is complete but deeds of trust, mortgages, release of mortgages and reconveyance do not appear to be listed therein. The necessity of listing Class "A" documents should be re-evaluated.

Section 40.17.120 contains the information necessary for a memorandum of lease to be recorded but it did not mention the necessary operative words to create a lease. The following matters should be in the memorandum of lease:

1. The names of the lessor and the lessee and addresses
2. Operative words of lease from lessor to lessee
3. A description of the property leased
4. A recital indicating the transfer from lessor to lessee is made subject to the terms, covenants and conditions of:
 - a. A lease of specified date existing between the parties

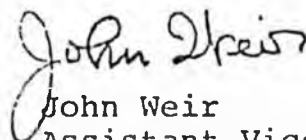
Robert J. Whisman
February 8, 1980

Page 3

The other items listed therein relating to commencement, termination, right to extend, renew, right to purchase or right to purchase the property, would all appear in the unrecorded lease and would defeat the purpose of the memorandum. It would seem that the rental is as necessary a requisite as the term of the lease and that if the memorandum must contain one it must also include the other. The apparent intent of the lessee in a memorandum of lease is to disclose as little as possible of record to their competitor and is entirely logical.

These are the only comments we wish to make at the present time and would only suggest that Alaska proceed slowly on such an encompassing change. As mentioned above, most of the states are considering change but not in such a drastic fashion.

Very truly yours,



John Weir
Assistant Vice President
Underwriting Practices

JW/bhb

cc:JSW 3-12-80



PIONEER NATIONAL
TITLE INSURANCE

Richard C. Mohler
Senior Vice President
Manager Northwest Region

February 8, 1980

Mr. Dickerson Regan, Consultant
Code Revision Commission
Alaska State Legislature
Pouch Y - State Capitol
Juneau, Alaska 99811

Dear Mr. Regan:

We have previously conversed by phone, concerning the revision of the Alaska recording laws as proposed by the Alaska Code Revision Commission. As I indicated in that conversation, I have primarily two comments, the first relating to the deletion of the requirement that instruments or conveyances be acknowledged to be eligible for recording and second, the desirability of including a specific provision that no instruments or conveyances shall impart, constructive notice with respect to land in Alaska, unless recorded as a Class A document, as provided by the new Chapter 17.

As to the elimination of the requirement that conveyances be acknowledged, I think that all title companies will be dismayed at the prospect of insuring titles through documents that are not acknowledged or proved in some manner. As you know, a title insurance policy covers numerous off record risks including forgery and impersonation. The notary's certificate of acknowledgment is about the only assurance we have that the signature or execution of any conveyance is authentic. We have no practical way of determining the authenticity of documents which have been recorded prior to our examination of title. Our policy also insures against incompetency of parties and while the notary's certificate and acknowledgment by the grantor are no proof of competency, they do provide some safeguard

NORTHWEST REGION

Mr. Dickerson Regan
February 8, 1980
Page Two

against physical or mental disabilities which would prevent a grantor from appearing before the notary. Presumably, most notaries and other officers taking acknowledgments would be reluctant to certify the acknowledgment of a person who was obviously mentally incompetent.

The presumptions in 40.17.090 are valuable but will be of little assistance to any title insurer defending an insured title once evidence has been presented that execution of a conveyance is invalid or defective. As we read the statute, the presumptions cannot be relied upon by a bona fide purchaser.

The acknowledgment of the execution of a deed or other conveyance before a notary public or other official adds solemnity to a transaction that should not be entered into lightly or casually. A homeowner engaged in a poker game will find it difficult to execute a deed to his home and throw it into the pot if an acknowledgment of his signature is necessary. The requirement of an acknowledgment makes it much more difficult to procure signatures by fraud or coercion, especially where the party is sick, elderly, or under the influence of alcohol.

We concede that in many cases certificates of acknowledgment have not been the protection that they should be, and on occasion, notaries have been particularly careless about establishing the identity of the person acknowledging a signature. We have had many forgery losses where the acknowledgment was in proper form, but where the notary was negligent. There are, of course, a few cases where the notary's signature has been forged, as well as that of the party executing the document.

It is our opinion that the proper solution to the problem is to increase the responsibilities of the officers taking acknowledgments in order that third persons, as well as title insurance companies, may have some reasonable assurance that the execution of the document is authentic. In Alaska, especially in the remote areas, there are numerous transactions where a purchaser does not have the protection of title insurance. We therefore believe it desirable, as a

Mr. Dickerson Regan
February 8, 1980
Page Three

protection to the citizens of the state, that they be able to deal in real property with some assurance that documents of record are genuine. It seems to us that one of the best ways to accomplish this is to require a certificate of acknowledgment and make the notaries and other officers responsible for proper performance of their duties, either by bonding requirements, civil or criminal penalties, or otherwise. A number of states, including California, have in the past few years passed laws increasing the duties and responsibilities of officers taking acknowledgments. We therefore strongly recommend that the acknowledgment requirement be retained in the law and that the function and responsibility of the notary public be increased rather than eliminated.

It appears to me, from reading the statute, especially Sec. 40.17.080, that the underlying theory and purpose of the statute is to require all conveyances to be recorded in accordance with the statute, if they are to provide constructive notice as to third parties. I had previously suggested a provision to make it clear that no instrument would be constructive notice as to third parties, unless recorded in accordance with the provisions of the statute. At that time, I of course, had in mind the Federal Register problem where unrecorded public land orders and other documents published in the Federal Register apparently provide constructive notice as to Alaska real estate. For a number of reasons, which I will not go into here, I believe that such a result is neither logical nor desirable. It must be remembered that, while we are talking about the Federal Register, there might well be other publications, under state or federal law, which might be held to be constructive notice under the same reasoning as used in the Hahn case which held the Federal Register was a public record giving notice. We are therefore presented with a situation where no one in Alaska can be sure that he can identify all records or publications which impart constructive notice with respect to Alaska land. I therefore strongly recommend that the new Act contain a clearer definition and enumeration of all documents and conveyances which impart constructive notice and recommend that they be limited to those documents and instruments recorded pursuant to the new Act. It seems to me that the new Act with its very broad definition of the term "conveyance", is very close to that position, as presently written.

Mr. Dickerson Regan
February 8, 1980
Page Four

Again, let me point out the fact that many transactions in Alaska do not have the protection of title insurance. It seems inconceivable to me that a bona fide purchaser of land in Alaska can lose his title even though the records maintained by the State do not disclose the adverse interest. In my view this makes a mockery of Section 40.17.080.

We appreciate the opportunity to comment on the proposed legislation and hope our comments will be of assistance.

Very truly yours,



John S. Williamson
Vice President and
Senior Title Counsel

JSW/mm

cc: Bob Whisman, Anchorage

West's
ANNOTATED
CALIFORNIA CODES

GOVERNMENT CODE

Sections 27200 to 32199

Volume 34A

Cumulative Pocket Part

For Use In 1979

Replacing prior Pocket Part in back of volume

Includes laws through the 1978 portion
of the 1977-1978 Regular Session
and the First Extraordinary
Session (1978)

See Section 27285

grantee evidenced by its resolution of acceptance attached to the deed or grant. A political corporation or governmental agency by a general resolution may authorize an officer or agent to consent to such deeds or grants. In that event the required consent of the grantee may be evidenced by the written acceptance of the officer or agent attached to the deed or grant, together with a certified copy of the resolution conferring authority upon the officer or agent."

The 1957 amendment rewrote the section.

The 1959 amendment in the first sentence inserted "or resolution," and in the second sentence inserted "if a" in lieu of "the," and inserted "is used, it."

The 1959 amendment also inserted the parenthetical material in the body of the proposed form, not that placed under blanks, and deleted the former concluding sentence which required a certified copy of

a resolution authorizing appointment of an officer or agent to be recorded.

Validation: Section 2 of Stats.1959, c. 433, p. 2371, provided as follows: "Any deed or grant conveying any interest in or encumbrance upon real estate to a political corporation or governmental agency for public purposes to which is attached a resolution of acceptance by the grantee and which has been accepted for recordation during the period from September 11, 1957 to the effective date hereof, is hereby validated as being a document entitled to recordation provided that any such deed or grant was in other respects acceptable for recordation. Any such deed or grant that has been so recorded during such period shall impart and shall be deemed to have imparted from the date of recordation, notice of its contents to subsequent purchasers and encumbrancers."

Derivation: Civ.C. § 1153, amended by Stats.1921, c. 143, p. 143.

Library References

Deeds ☞ 83.

C.J.S. Deeds § 75.

Notes of Decisions

1. In general

Parks in a subdivision were not dedicated to public use under Stats.1901, c. 288, requiring filing of map showing lands reserved for public purposes and providing for dedication of streets, roads, alleys, and highways after indorsement of acceptance by governing body, where map filed in office of county recorder failed to show supervisors' acceptance of land in tract for park or any other public purpose, or to show any land set aside for park purposes, and supervisors merely accepted map, which did not constitute acceptance of dedicated lands, since none was shown on face of map. *People v. Rio Nido Co.* (1923) 85 P.2d 461, 29 C.A.2d 486.

In suit to compel carrying out of trust under which city received tidelands, judgment requiring city to accept conveyance

of groynes and strips of land was erroneous. *Muchenberger v. City of Santa Monica* (1929) 275 P. 803, 206 C. 635.

Where, under contract of sale of land, grantee was to pay 1922-1923 taxes, but before delivery of deed in escrow grantor paid first installment of taxes, and in escrow instructions directed escrow holder to hold \$43.55 for "tax adjustments," and grantee did not comply therewith, but undertook to settle tax "outside of escrow," delivery of deed to grantee for acceptance required by Civ.C. § 1153 (repealed 1947. Now this section), was insufficient to pass title and, there being no other delivery, deed never took effect. *Los Angeles City High School Dist. of Los Angeles County v. Quinn* (1925) 234 P. 313, 103 C. 377.

§ 27282. Documents recordable without acknowledgment; constructive notice

(a) The following documents may be recorded without acknowledgment, certificate of acknowledgment, or further proof:

(1) A judgment affecting the title to or possession of real property, authenticated by the certificate of the clerk of the court in which the judgment was rendered.

(2) A notice of location of mining claim.

(3) Certificates of amounts of taxes, interest and penalties due and extensions thereof executed by the state, county, or city taxing agencies or officials pursuant to Sections 2191.3, 2191.4, 6757, 7872, 8996, 10099, 11495, 16063, 16064, 18881 through 18883, inclusive, 26161 and 30322 of the Revenue and Taxation Code, and Section 1703 of the Unemployment Insurance Code, and releases or subordinations executed pursuant to Sections 2191.4, 6758, 6759, 7873, 8997, 10100, 11496, 14307, 14308, 16066, 16067, 18884, 18885, 26162, 30323 and 30324 of the Revenue and Taxation Code, and Sections 1704 and 1705 of the Unemployment Insurance Code.

(b) Any document described in this section, from the time it is filed with the recorder for record, is constructive notice of the contents thereof to subsequent purchasers and mortgagees. (Added Stats.1947, c. 424, p. 1160 § 1, as amended Stats.1963, c. 1645, p. 3234, § 1; Stats. 1965, c. 413, p. 1728, § 1.)

Historical Note

As originally enacted, this section read: "A judgment affecting the title to or possession of real property, authenticated by the certificate of the clerk of the court in which the judgment was rendered, and a notice of location of mining claim may be recorded without acknowledgment, certificate of acknowledgment, or further proof."

The 1963 amendment rewrote the section.

In subd. (3), the words "or subordinations" and section numbers "14307, 14308" of the Unemployment Insurance Code were inserted by the 1963 amendment.

Derivation: Civ.C. § 1159, amended by Stats.1897, c. 94, p. 97, § 1.

Cross References

- Acknowledgment of instruments, see Civil Code § 1160 et seq.
- Certificate of acknowledgment, see Civil Code §§ 1188, 1189.
- Judgment for possession of real property, see Civil Code § 3375.
- Judgments generally, see Code of Civil Procedure § 674.
- Judgments, manner of giving and entering, see Code of Civil Procedure § 664 et seq.
- Mining claims,
 - Locating, generally, see Public Resources Code § 2301 et seq.
 - Recording of notice of location, see Public Resources Code § 2313.

Law Review Commentaries

1965 amendment. Rev. of 1965 Code Leg. (Cont.Educ. of Bar, 1965) page 138.

Library References

Mines and Minerals ⇨22 C.J.S. Mines and Minerals § 56.

Notes of Decisions

In general 1
Mining claims 2

putting title of bona fide purchaser from husband as record owner, absent constructive notice of pending divorce suit. Stout v. Gill (1930) 294 P. 446, 110 O.A. 445.

1. In general
Wife, adjudged separate owner of realty in divorce decree, was estopped from dis-

Divorce decree adjudging certain realty separate property of wife, not recorded where land was situated, could not affect

rights of the side purchaser from husband as recorded owner. *Id.*

2. Mining claims

Where conditional sales contract for purchase of mining claims contained agreement that contracting purchaser should retain title to machinery and equipment subsequently installed as his own personalty with privilege of removal, instrument was duly acknowledged and recorded, and machinery and equipment were not on property when irrigation district's lien for assessments vested, district was charged with constructive notice of terms of reservation of title to machinery and equipment and was bound by the agreement. *Oroville-Wyandotte Irr. Dist. v. Ford* (1941) 118 P.2d 340, 47 C.A.2d 531.

Where plaintiff leased mining machinery to be attached to realty under written rental agreement to mining company, subsequently owners of realty on which machinery was placed took machinery from mining company and executed a deed of trust covering real property, together with "all mining machinery, equipment and fixtures, in or about said real proper-

ty", and grantees in deed of trust had no knowledge of plaintiff's claim to machinery, by recorded notice or otherwise, plaintiff's title to machinery would be subject to lien created by the deed of trust. *Western Machinery Co. v. Graetz* (1941) 108 P.2d 711, 42 C.A.2d 296.

It being the duty of the county recorder, under Stats.1897, p. 484, § 120, to record writings "permitted" by law to be recorded, and the recording of notices of mining locations and proofs of labor thereon being authorized by Civ.C. § 1159, as amended by Stats.1897, p. 97 (repealed 1947. Now this section), the recorder must account for the fees therefor. *Kern County v. Lee* (1900) 61 P. 1124, 129 C. 361.

A county recorder is not liable to the county for fees earned in recording notices of location of mining claims, the work being outside his official duties, such records not being known to the statute, being regulated entirely by the mining districts; and a county recorder is not compelled to keep them. *San Bernardino County v. Davidson* (1890) 44 P. 659, 112 C. 503.

§ 27283. Effect of recording of notices of location of mining claims prior to March 9, 1897

The record of all notices of location of mining claims made prior to March 9, 1897 in the proper office without acknowledgment, or certificate of acknowledgment, or other proof, has the same force and effect for all purposes as if the notices had been duly acknowledged or proved and certified as required by law. (Added Stats.1947, c. 424, p. 1160, § 1.)

Derivation: Civ.C. § 1159, amended by Stats.1897, c. 94, p. 97.

Cross References

Mining claims,

Locating, generally, see Public Resources Code § 2301 et seq.

Recording of notice of location, see Public Resources Code § 2313.

§ 27284. Affidavits of work on mining claims

Affidavits showing work or posting of notices upon mining claims may be recorded in the recorder's office of the county where the mining claims are situated. (Added Stats.1947, c. 424, p. 1160, § 1.)

Derivation: Civ.C. § 1159, amended by Stats.1897, c. 94, p. 97.

Cross References

Affidavits of work performed, filing, see Public Resources Code § 2315.

Notice of location of mining claim, see Public Resources Code §§ 2301, 2303.

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757, 7872, 8996,
ative, 26161 and
1703 of the Un-
nations executed
7, 10100, 11496,
and 30324 of the
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e of the contents
Added Stats.1947,
3234, § 1; Stats.

ent rewrote the sec-

words "or subordina-
a numbers "14307,
employment Insurance
by the 1965 amend-

§ 1159, amended by
17, § 1.

edure § 664 et seq.

2313.

1965) page 130.

Minerals § 50.

na side purchaser from
owner, absent construc-
ing divorce suit. *Stout*
P. 446, 110 C.A. 445.

adjudging certain realty
of wife, not recorded
situated, could not affect

Notes of Decisions

1. In general

It being the duty of the county recorder, under Stats.1897, p. 484, § 120, to record writings "permitted" by law to be recorded, and the recording of notices of mining locations and proofs of labor

thereon being authorized by Civ.C § 1159 (repealed. See, now, §§ 27280-27284), the recorder must account for the fees therefor. Kern County v. Lee (1900) 61 P. 1124, 129 C. 361.

§ 27285. Enumeration of documents that may be recorded without acknowledgments; effect of record

The following documents may be recorded without acknowledgment or further proof:

(a) Letters patent from the United States or from the State, executed and authenticated pursuant to existing law.

(b) Leases for the development and extraction of minerals, including oil and gas, in which the United States is the lessor, executed on behalf of the United States by the Secretary of the Interior or by any other properly authorized officer or officers.

(c) Copies of interdepartmental letters or decisions of the Department of the Interior or of any duly authorized officer or employee thereof approving assignments or surrenders of such leases or incumbrances thereon or canceling any such leases, certified by the Director of the Bureau of Land Management of the Department of the Interior, or by any duly authorized officer or employee having the custody of such letters of decisions.

(d) Copies of documents filed with the General Land Office of the Department of the Interior or in any district land office executed and acknowledged in a manner which would entitle them to be recorded and by which any interest in such leases or in the production thereunder is conveyed, assigned, encumbered or quitclaimed, certified by the officer or employee of the Department of the Interior having the custody of such documents.

When a copy of any document so certified is recorded, the record has the same force and effect as though it were the record of the original document. (Added Stats.1947, c. 424, p. 1160, § 1, as amended Stats.1951, c. 511, p. 1659, § 1.)

Historical Note

The 1951 amendment changed subs. (c) and (d) which previously read:

"(c) Copies of interdepartmental letters of the Department of the Interior approving surrenders of or canceling such leases, certified by the Commissioner of the Gen-

eral Land Office of the Department of the Interior.

"(d) Copies of instruments filed with the Commissioner of the General Land Office, executed and acknowledged in a manner which would entitle them to be

recorded and by which any interest in such leases or in the production thereunder is conveyed or quitclaimed, certified by the Commissioner of the General Land Office.

"When a copy of any documents so certified is recorded, the record has the same

force and effect as though it were of the original instrument."

Derivation: Stats. 1850, c. 101, p. 251, § 18; Civ.C. § 1160, amended by Code Am. 1877-78, c. 615, p. 85; Stats. 1945, c. 834, p. 1532.

Cross References

Evidence, proof of public record, see Evidence Code §§ 1451, 1453, 1507, 1520-1532, 1600.

Proof and acknowledgment of instruments, generally, see Civil Code § 1150 et seq.

Record of patents, see § 27264.

Library References

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C.J.S. Records § 10.

Notes of Decisions

1. In general

Every instrument required to be recorded, with the exception of those belonging to the class mentioned in Civ.C. §§ 1159, 1160 (repealed. See, now, §§ 27282-27284 and this section), cannot be recorded, unless execution is acknowledged by the person executing it, and an acknowledgment taken before a grantee or one standing in the position of a beneficiary under a conveyance or other instrument is void. *Ramsey v. California Packing Corp.* (1921) 201 P. 481, 51 C.A. 517.

A patent from the United States for land may be recorded without acknowledgment and consequently the record thereof is evidence of its contents. *Saecker v. Cohn* (1919) 179 P. 893, 180 C. 151.

A receipt although constituting a certificate of purchase of land from the United States is not a patent within the rule that a patent from the United States for land may be recorded without acknowledgment. *Id.*

Where a copy of a patent to land certified by the commissioner of the general

land office was recorded in the county where the land was located, a certified copy of such record was admissible without a showing that the original patent could not be produced. *Preston v. Hirsch* (1907) 90 P. 985, 5 C.A. 485.

In the case of *People v. Harrold* (1890) 24 P. 100, 84 C. 557, the court said: "Section 1160, Civil Code [repealed. Now this section], cited by respondent, has no application. It relates only to the recording of letters patent affecting the title or possession of real property."

Under Pol.C. § 4237 (repealed) sheriff's certificate of sale of real estate, filed and recorded, imparts notice although unacknowledged. *Foorman v. Wallace* (1888) 17 P. 680, 75 C. 552.

A patent for land, issued by the United States, could be proved by producing from the recorder's office the book in which it is recorded, without proof of loss of the original. *Vance v. Kohlberg* (1875) 50 C. 340.

§ 27286. Transcript of letters patent; effect of recording

If letters patent have been lost or are beyond the control of any party deraining title from them, or if for any reason they remain unrecorded, any person claiming title thereunder may cause a transcript of the copy of such letters patent kept by the government issuing them, duly certified by the officer or individual having lawful custody of the copy, to be recorded in lieu of the original, and the recorded copy has prima facie the same force and effect as the original for title or for evidence, until the original letters patent are recorded. (Added Stats. 1947, c. 424, p. 1160, § 1.)

Historical Note

Derivation: Stats.1850, c. 101, p. 251, § 18; Civ.C. § 1160, amended by Code Am. 1877-78, c. 615, p. 85; Stats.1945, c. 834, p. 1532.

Cross References

Evidence, proof of public record, see Evidence Code §§ 1451, 1453, 1507, 1530-1532, 1600. Record of patents, see § 27264.

Notes of Decisions

1. In general

Since a patent from the United States for land may be recorded without acknowledgment under Civ.C. § 1160 (repealed. Now, this section), the record thereof is evidence of its contents, under C.C.P. §§ 1910, 1951 (repealed). *Saecker v. Cohn* (1919) 179 P. 890, 180 C. 151.

Where a copy of a patent to land certified by the Commissioner of the General Land Office was recorded in the county where the land was located, a certified copy of such record was admissible without a showing that the original patent could not be produced. *Preston v. Hirsch* (1907) 90 P. 965, 5 C.A. 435.

§ 27287. Acknowledgment of execution or proof by subscribing witness required before recording

Unless it belongs to the class provided for in either Sections 27282 to 27286, inclusive, or Sections 1202 or 1203, of the Civil Code, or is a fictitious mortgage or deed of trust as provided in Sections 2952, or 2963, of the Civil Code, or is a fictitious oil and gas lease as provided in Section 1219 of the Civil Code, before an instrument can be recorded its execution shall be acknowledged by the person executing it, or if executed by a corporation, by its president or secretary or other person executing it on behalf of the corporation, or proved by subscribing witness or as provided in Sections 1198 and 1199 of the Civil Code, and the acknowledgment or proof certified as prescribed by law. (Added Stats.1947, c. 424, p. 1160, § 1, as amended Stats.1947, c. 1497, p. 3098, § 2; Stats.1951, c. 512, p. 1660, § 1; Stats.1955, c. 1541, p. 2825, § 2.)

Historical Note

The words "or is a fictitious mortgage or deed of trust as provided in Section 2952 of the Civil Code" were inserted by the 1947 amendment.

The 1951 amendment substituted "instrument" in lieu of "document."

The 1955 amendment inserted "or 2963" referring to the Civil Code and "or is a

fictitious oil and gas lease as provided in Section 1219 of the Civil Code."

Derivation: Civ.C. § 1141, amended by Code Am. 1873-74, c. 612, p. 226, § 136; Stats.1901, c. 157, p. 396, § 279; Stats. 1905, c. 444, p. 602, § 1; Stats.1941, c. 1013, p. 2649, § 1; Stats.1945, c. 292, p. 750, § 1.

Cross References

Certificate of acknowledgment, corporation, see Civil Code § 1190, 1190.1. Proof and acknowledgment of instruments, see Civil Code § 1180 et seq. Subscribing witness, establishment of identity of, see Civil Code § 1190.

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Notes of Decisions

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3. Purpose of acknowledgment

Acknowledgment of a deed is not essential to its validity, but is merely evidentiary in character and is required only to entitle it to be recorded so as to render it competent evidence of conveyance without further proof. *Kirsch v. Barnes* (D.C. 1957) 153 F.Supp. 260; *Osterberg v. Osterberg* (1945) 156 P.2d 40, 63 C.A.2d 254.

Deed is not invalid between parties merely because not acknowledged by grantor; purpose of acknowledgment being evidentiary in character and required to entitle instrument to record or to render it competent evidence without further proof. *Williston v. Yuba City* (1934) 30 P.2d 445, 1 C.A.2d 166.

Purpose of an acknowledgment to a mortgage on real estate is merely to obviate proof of its execution when it is offered in evidence and to entitle it to be recorded. *Williams v. Nieto* (1929) 277 P. 513, 99 C.A. 615.

The only object of an acknowledgment is that the instrument may be recorded unless the acknowledgment is by statute made essential to the validity of the instrument. *Farmers' Exchange Bank of San Bernardino v. Purdy* (1900) 62 P. 733, 130 C. 455.

The object of an acknowledgment is to entitle the instrument to be used as evidence without further proof and to enable it to be recorded. *Gordon v. City of San Diego* (1895) 41 P. 301, 103 C. 264.

4. Acknowledgment, generally

Under California law, an acknowledgment certified by a notary is a prerequisite to recordation of underlying instrument. *Kirsch v. Barnes* (D.C.1957) 153 F.Supp. 260.

No acknowledgment was involved where purported subscribing witness sought recordation of purportedly sworn deed of trust. *People v. Walker* (1907) 55 Cal. Rptr. 726, 217 C.A.2d 554, certiorari denied 88 S.Ct. 60, 389 U.S. 824, 19 L.Ed.2d 77.

In quiet title suit wherein plaintiff attacked validity of deed from her husband to husband's son by former marriage, evidence was insufficient to sustain finding that husband had not acknowledged the deed, but disclosed an affirmative acknowledgment. *Goldman v. Goldman* (1953) 253 P.2d 474, 116 C.A.2d 227.

1. In general

Actual effect of forged deed on record title of land registered under Torrens Title Law was immaterial in prosecution for forgery; gist of offense being offering forged deed for record. *People v. Standley* (1932) 15 P.2d 180, 126 C.A. 759.

Deed of conveyance cannot be held to give grantees notice of contents of any instrument not entitled to record. *Du Ross v. Trainor* (1932) 10 P.2d 763, 122 C.A. 732.

Plaintiff's notice of defendant's land contract or of facts sufficient to provoke inquiry after recordation of conveyance to plaintiff cannot affect plaintiff's rights. *Mayhew v. Burke* (1929) 274 P. 517, 206 C. 396.

A chattel mortgage is deemed of record when it is properly executed and accompanied by the affidavit required and deposited in recorder's office, and error in recording did not affect its validity nor prevent its operation as a lien. *Meherin v. Oaks* (1885) 7 P. 47, 67 C. 57.

Mortgages and conveyances which are not under seal, are not entitled to be recorded. *Racoullat v. Sansonain* (1867) 32 C. 376, 1 P.L.M., pt. 2, 195.

2. Instrument defined

A copy of a water appropriation notice, required to be recorded by Civ.C. § 1415, was not an instrument within § 1101 (repealed. Now this section), providing that before an instrument can be recorded, unless it belongs to certain excepted classes, not including such a notice, it must be acknowledged, and hence no acknowledgment is necessary in order to entitle a copy of such a notice to record. *Wolfskill v. Smith* (1907) 89 P. 1001, 5 C.A. 175.

The word instrument, as used in the Codes, invariably means some written paper or instrument signed and delivered by one person to another, transferring the title to, or giving a lien on, property, or giving a right to debt or duty. *Hoag v. Howard* (1880) 33 C. 564.

5; Stats.1945, c. 534.

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patent to land certifier of the General located in the county was admissible with the original patent *L. Preston v. Hirsch* A. 485.

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er Sections 27282 Civil Code, or is a Sections 2952, or lease as provided t can be recorded cutting it, or if ex- or other person subscribing wit- vil Code, and the by law. (Added , c. 1497, p. 3098, 1, p. 2825, § 2.)

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§ 1101, amended by 612, p. 226, § 130; 396, § 230; Stats. § 1; Stats.1941, c. Stats.1945, c. 292, p.

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To "acknowledge" is to admit, affirm, declare, testify, avow, confess, or own as genuine an execution of a document. *Favello v. Bank of America Nat. Trust & Savings Ass'n* (1938) 74 P.2d 1057, 24 C.A.2d 342.

Record of instrument acknowledged by two of 23 signers constituted constructive notice of its execution by such two only. *Du Ross v. Trainor* (1932) 10 P.2d 763, 122 C.A. 732.

Under Civ.C. § 1161 (repealed. Now this section), as to acknowledgment as condition precedent to recording, recordation of a contract of sale was not constructive notice thereof to grantees and mortgagees of the vendor, unless acknowledged by him, and acknowledgment by the vendee was insufficient. *Keese v. Beardley* (1923) 213 P. 500, 190 C. 435, 23 A.L.R. 1538.

Under Civ.C. § 1161, (repealed. Now this section), requiring that the execution of an instrument be acknowledged by the person executing it before recording it, the record of a chattel mortgage acknowledged by only one of two or more mortgagors was constructive notice of its execution by him only. *Bell v. Sage* (1923) 212 P. 464, 60 C.A. 149.

Affidavit of good faith required by chattel mortgagor is not a due acknowledgment of execution entitling the mortgage to be recorded. *Id.*

Contract to furnish water, covenanted to run with the land, was only required to be acknowledged by the incumbrances of the land to render it capable of recordation, and the record thereof was sufficient notice to subsequent purchasers of the land. *Fresno Canal & Irr. Co. v. Rowell* (1889) 22 P. 53, 80 C. 114, 13 Am.St.Rep. 112.

Under Pol.C. § 4237 (repealed) sheriff's certificate of sale of real estate, filed and recorded, imparts notice although unacknowledged. *Footman v. Wallace* (1888) 17 P. 680, 75 C. 552.

The statute required the seal of the officer taking the acknowledgment as a preliminary to the fitness of the deed for registration, and without conforming strictly to the statute the registration would not be constructive notice. *Hastings v. Vaughn* (1855) 5 C. 315.

In an action to recover possession of real property, where defendant relied on a deed so defectively acknowledged as not to entitle it to registration, it was properly admissible in evidence, with an instruction as to its effect in giving notice to third persons. *Id.*

County recorder should refuse to receive for record an improper and defective acknowledgment. *Fogarty v. Finlay* (1857) 1 Lab. 59.

5. Certificate of acknowledgment

Certificate of acknowledgment of chattel mortgage executed by a partnership in the general form provided by statute for certificates of acknowledgment unless otherwise provided, was not substantially in the form provided by Civ.C. § 1190a for certificate of acknowledgment of an instrument executed by a partnership and hence chattel mortgage was not entitled to recordation and, though recorded it, it did not constitute notice to attaching creditors. *Rolando v. Everett* (1946) 165 P.2d 33, 72 C.A.2d 629.

Where chattel mortgage executed by partnership, though recorded, lacked valid certificate of acknowledgment by partnership, judgment creditor purchasing chattels included in mortgage at execution sale on judgment against partnership based on indebtedness owing judgment creditor before mortgage was executed, became owner of such chattels unencumbered by lien of mortgage, regardless of whether judgment creditor had actual notice of mortgage and even though mortgagee in action to foreclose mortgage had caused a keeper to be placed in charge of mortgaged chattels before execution sale. *Id.*

Certificate of acknowledgment which identified the persons who made the acknowledgment as being the persons whose names were subscribed to the instrument was not sufficient, under Civ.C. § 1159, to entitle instrument to be recorded under § 1161 (repealed. Now this section). *People v. Webber* (1920) 186 P. 406, 44 C.A. 120.

The record of a deed defectively acknowledged does not impart constructive notice, under Civ.C. § 1161 (repealed. Now this section), providing that before it can be recorded, an instrument must be acknowledged, and the acknowledgment certified, as required by law. *Emeric v. Alvarado* (1891) 27 P. 356, 90 C. 444.

6. Execution

Although an instrument charging a trust upon lands in California be unacknowledged, yet it may be recorded upon proof of its execution. *Whittle v. Vanderbilt Mining & Milling Co.* (C.C.1897) 83 F. 48.

Every instrument required to be recorded, with the exception of those belonging to the class mentioned in Civ.C. §§ 1159, 1160 (repealed. See, now, §§ 27282-27284 and this section), and Civ.C. §§ 1202, 1203, cannot be recorded unless ex-

should refuse to receive proper and defective acknowledgment. *Fogarty v. Finlay* (1857)

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acknowledgment of chattel by a partnership is provided by statute for acknowledgment unless otherwise not substantially in the Civ.C. § 1190a for acknowledgment of an instrument a partnership and hence was not entitled to record. If recorded it, it did notice to attaching creditors. *Everett* (1946) 105 P.2d

1 mortgage executed by which recorded, lacked valid acknowledgment by partner-creditor purchasing chattel mortgage at execution sale trust partnership based on judgment creditor because executed, became owners unencumbered by lien regardless of whether judgment actual notice of mortgage had caused a keeper change of mortgaged chattel sale. *Id.*

of acknowledgment which persons who made the instrument being the persons whose described to the instrument instrument, under Civ.C. § 1180, to not to be recorded under § (Now this section). *Peo.* (1920) 186 P. 406, 44 C.A.

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instrument charging a trust in California be unacknowledged may be recorded upon proof of acknowledgment. *Whittle v. Vanderbilt* (C.C.1907) 83 F. 48. acknowledgment required to be record-exception of those belonging mentioned in Civ.C. §§ 1159, 1160. See, now, §§ 27282-27284 (this section), and Civ.C. §§ cannot be recorded unless exe-

cuting it, and an acknowledgment taken before a grantee or one standing in the position of a beneficiary under a conveyance or other instrument is void, and does not entitle an instrument to be recorded. *Ramsey v. California Packing Corporation* (1921) 201 P. 481, 51 C.A. 517.

A person not claiming under a grantor cannot object that deeds from him were not properly acknowledged or recorded, there being no question as to their due execution. *Rick v. Reed* (1862) 19 C. 551.

County recorder must see that acknowledgments are properly executed before putting them on record. *Fogarty v. Finlay* (1857) 1 Lab. 59.

7. Defectively acknowledged instruments

A defectively acknowledged instrument, although not entitled to record, and thus

not capable of imparting constructive notice, is valid as between parties to instrument and all those having actual notice of its existence. *Kirsch v. Barnes* (D.C. 1957) 153 F.Supp. 280.

Irregular acknowledgment of deed out of presence of grantors was immaterial except for purpose of determining whether grantors intended presently to convey title to land therein described when deed was handed to grantee's attorney for delivery to grantee. *Williston v. Yuba City* (1934) 36 P.2d 445, 1 C.A.2d 166.

Where a deed has two acknowledgments, one of which is good, and the other defective, and only the defective one is recorded, subsequent judgment creditors of the vendor cannot take advantage of the defect in the record, as the registry act was not intended to protect them. *Pixley v. Huggins* (1860) 15 C. 127.

§ 27288. Execution, acknowledgment and proof of agreements affecting realty

If the instrument is an agreement for sale, lease, option agreement, deposit receipt, commission receipt, or affidavit which quotes or refers to an agreement for sale, lease, option agreement, deposit receipt, commission receipt, or lease and such instrument claims to, or affects any interest in real property, it shall be executed and acknowledged or proved as provided in Section 27287 by the party who appears by the instrument to be the party whose real property is affected or alienated thereby. (Added Stats.1947, c. 424, p. 1161, § 1, as amended Stats. 1949, c. 289, p. 567, § 1.)

Historical Note

The 1949 amendment inserted, the first time it appears, the word "lease." Derivation: See Derivation under § 27287.

Cross References

Proof and acknowledgment of instruments, see Civil Code § 1180 et seq.

Notes of Decisions

C. In general

Where transfer is of an interest in realty, assignment is entitled to recordation, which is constructive notice to subsequent assignees. *Central Const. Co. v. Hartman* (1935) 47 P.2d 484, 7 C.A.2d 703.

Record of acknowledgment of instrument excluding colored occupancy of premises acknowledged by two of the twenty-three signers thereof constituted

constructive notice of execution by such two persons only. *Du Rosa v. Trainor* (1932) 10 P.2d 763, 122 C.A. 732.

Since on acknowledged instrument carries with it the proof of its due execution by persons acknowledging it, it must be acknowledged by the person whose rights in the property are alienated or encumbered thereby, such as the grantor, mortgagor or vendor. *Keenan v. Leadsley*



TITLE INSURANCE AND TRUST
PIONEER NATIONAL TITLE INSURANCE

February 8, 1980

Mr. Robert J. Whisman
Senior Vice President
Alaska Title Guaranty Company
500 Sixth Avenue
Anchorage, Alaska 99501

RE: Alaska Code Revisions

Dear Mr. Whisman:

The Alaska proposal to revise the recording laws appears to be one of many studies being made in the various states. The National Conference of Commissioners on uniform state laws in 1977 drafted a proposal to modernize and unify legislation in all states in regard to land titles. As of this date no state has adopted any of the provisions thereof.

The above proposal was closely followed in the background study in California prepared by James L. Blawie of Santa Clara Law School. The intention of his study was to chart out the specific matters that might be covered in the project and suggest the approach the California Code Revision Commission should take. They are proceeding slowly on this study and are considering a "marketable title act" as their first area of interest. On January 21, 1980, this proposal was forwarded to all title company counsel for their suggestions as to alternate approaches in dealing with the various matters discussed in the background study.

The proposals all seem to recommend the use of a system located in a central place with facilities for a tract index system with computer access points in each county recorder's office. It is assumed they will transmit the documents by means of a tele-copier or something similar thereto. At the present time our company is unaware of any system that would transfer documents satisfactorily and in volume and that could be relied upon to operate on a day-to-day basis without breakdowns. If a system is available at present or in the immediate future it might prove successful in Alaska because of the low volume of recordings and the remoteness of some recording districts. We are not totally convinced as to the reliability of such a system or the need for it at the present

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time in Alaska. If, however, the documents can be recorded in the local recording office as is the practice now, the fact that they will be transferred by telecopier to a central office should have no damaging effect as long as the local recording office has a copy thereof.

This system does not seem too practical in a high volume county like Los Angeles as it would necessitate transmitting 1300 documents to the central office daily. This figure added to the recordings of other California counties would entail a lot of daily transmissions. It appears to be a duplication having all documents in one central place and these same documents stored in the various recording districts also.

Paragraph 5, Section 40.17.030 of the Alaska proposal requires the name of the person who presents the document for recording and the name of the person in whose behalf it is to be recorded. It would seem that the information "recorded at the request of" would be sufficient.

Section 40.17.050

Paragraph 6 requires the mailing addresses for all parties who require an interest under the conveyance document. This could prove cumbersome if there are a number of grantees and would necessitate the adding of an additional page to the document. It is assumed that paragraph (6) requires that the mailing addresses be recorded with and be part of the conveyance document. The statements printed on the document "after recording mail to" and "send tax statements to" would accomplish more.

No attempt has been made to determine if the list of Class "A" documents in Section 40.17.110 is complete but deeds of trust, mortgages, release of mortgages and reconveyance do not appear to be listed therein. The necessity of listing Class "A" documents should be re-evaluated.

Section 40.17.120 contains the information necessary for a memorandum of lease to be recorded but it did not mention the necessary operative words to create a lease. The following matters should be in the memorandum of lease:

1. The names of the lessor and the lessee and addresses
2. Operative words of lease from lessor to lessee
3. A description of the property leased
4. A recital indicating the transfer from lessor to lessee is made subject to the terms, covenants and conditions of:
 - a. A lease of specified date existing between the parties

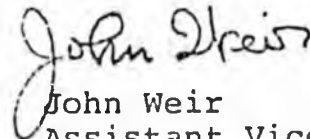
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The other items listed therein relating to commencement, termination, right to extend, renew, right to purchase or right to purchase the property, would all appear in the unrecorded lease and would defeat the purpose of the memorandum. It would seem that the rental is as necessary a requisite as the term of the lease and that if the memorandum must contain one it must also include the other. The apparent intent of the lessee in a memorandum of lease is to disclose as little as possible of record to their competitor and is entirely logical.

These are the only comments we wish to make at the present time and would only suggest that Alaska proceed slowly on such an encompassing change. As mentioned above, most of the states are considering change but not in such a drastic fashion.

Very truly yours,



John Weir
Assistant Vice President
Underwriting Practices

JW/bhb

cc:JSW 3-12-80



PIONEER NATIONAL
TITLE INSURANCE

Richard C. Mohler
Senior Vice President
Manager Northwest Region

February 8, 1980

Mr. Dickerson Regan, Consultant
Code Revision Commission
Alaska State Legislature
Pouch Y - State Capitol
Juneau, Alaska 99811

Dear Mr. Regan:

We have previously conversed by phone, concerning the revision of the Alaska recording laws as proposed by the Alaska Code Revision Commission. As I indicated in that conversation, I have primarily two comments, the first relating to the deletion of the requirement that instruments or conveyances be acknowledged to be eligible for recording and second, the desirability of including a specific provision that no instruments or conveyances shall impart, constructive notice with respect to land in Alaska, unless recorded as a Class A document, as provided by the new Chapter 17.

As to the elimination of the requirement that conveyances be acknowledged, I think that all title companies will be dismayed at the prospect of insuring titles through documents that are not acknowledged or proved in some manner. As you know, a title insurance policy covers numerous off record risks including forgery and impersonation. The notary's certificate of acknowledgment is about the only assurance we have that the signature or execution of any conveyance is authentic. We have no practical way of determining the authenticity of documents which have been recorded prior to our examination of title. Our policy also insures against incompetency of parties and while the notary's certificate and acknowledgment by the grantor are no proof of competency, they do provide some safeguard

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against physical or mental disabilities which would prevent a grantor from appearing before the notary. Presumably, most notaries and other officers taking acknowledgments would be reluctant to certify the acknowledgment of a person who was obviously mentally incompetent.

The presumptions in 40.17.090 are valuable but will be of little assistance to any title insurer defending an insured title once evidence has been presented that execution of a conveyance is invalid or defective. As we read the statute, the presumptions cannot be relied upon by a bona fide purchaser.

The acknowledgment of the execution of a deed or other conveyance before a notary public or other official adds solemnity to a transaction that should not be entered into lightly or casually. A homeowner engaged in a poker game will find it difficult to execute a deed to his home and throw it into the pot if an acknowledgment of his signature is necessary. The requirement of an acknowledgment makes it much more difficult to procure signatures by fraud or coercion, especially where the party is sick, elderly, or under the influence of alcohol.

We concede that in many cases certificates of acknowledgment have not been the protection that they should be, and on occasion, notaries have been particularly careless about establishing the identity of the person acknowledging a signature. We have had many forgery losses where the acknowledgment was in proper form, but where the notary was negligent. There are, of course, a few cases where the notary's signature has been forged, as well as that of the party executing the document.

It is our opinion that the proper solution to the problem is to increase the responsibilities of the officers taking acknowledgments in order that third persons, as well as title insurance companies, may have some reasonable assurance that the execution of the document is authentic. In Alaska, especially in the remote areas, there are numerous transactions where a purchaser does not have the protection of title insurance. We therefore believe it desirable, as a

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protection to the citizens of the state, that they be able to deal in real property with some assurance that documents of record are genuine. It seems to us that one of the best ways to accomplish this is to require a certificate of acknowledgment and make the notaries and other officers responsible for proper performance of their duties, either by bonding requirements, civil or criminal penalties, or otherwise. A number of states, including California, have in the past few years passed laws increasing the duties and responsibilities of officers taking acknowledgments. We therefore strongly recommend that the acknowledgment requirement be retained in the law and that the function and responsibility of the notary public be increased rather than eliminated.

It appears to me, from reading the statute, especially Sec. 40.17.080, that the underlying theory and purpose of the statute is to require all conveyances to be recorded in accordance with the statute, if they are to provide constructive notice as to third parties. I had previously suggested a provision to make it clear that no instrument would be constructive notice as to third parties, unless recorded in accordance with the provisions of the statute. At that time, I of course, had in mind the Federal Register problem where unrecorded public land orders and other documents published in the Federal Register apparently provide constructive notice as to Alaska real estate. For a number of reasons, which I will not go into here, I believe that such a result is neither logical nor desirable. It must be remembered that, while we are talking about the Federal Register, there might well be other publications, under state or federal law, which might be held to be constructive notice under the same reasoning as used in the Hahn case which held the Federal Register was a public record giving notice. We are therefore presented with a situation where no one in Alaska can be sure that he can identify all records or publications which impart constructive notice with respect to Alaska land. I therefore strongly recommend that the new Act contain a clearer definition and enumeration of all documents and conveyances which impart constructive notice and recommend that they be limited to those documents and instruments recorded pursuant to the new Act. It seems to me that the new Act with its very broad definition of the term "conveyance", is very close to that position, as presently written.

Mr. Dickerson Regan
February 8, 1980
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Again, let me point out the fact that many transactions in Alaska do not have the protection of title insurance. It seems inconceivable to me that a bona fide purchaser of land in Alaska can lose his title even though the records maintained by the State do not disclose the adverse interest. In my view this makes a mockery of Section 40.17.080.

We appreciate the opportunity to comment on the proposed legislation and hope our comments will be of assistance.

Very truly yours,



John S. Williamson
Vice President and
Senior Title Counsel

JSW/mm

cc: Bob Whisman, Anchorage ✓

JB 78

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Called 2-26-82

February 19, 1982

Kevin Bruce
Senate Judiciary Committee
Capitol Office Building,
Room 125
Juneau, Alaska

Dear Mr. Bruce:

I spoke with you over the telephone on Friday regarding Senate Bill 78. This letter is to confirm our understanding that you will inform me when any hearings are scheduled on this bill. Please write or telephone me if anything is scheduled on this bill.

Thank you for your assistance in the matter.

Yours very truly,

GROH, EGGERS, ROBINSON,
PRICE & JOHNSON

David W. Carney
David W. Carney

DWC:sg

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its interest &*