

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

501-911

Revision Date: April 2, 1984

REQUEST

Bill/Resolution No. CSHB 705 (fin)
Title: An Act relating to the real estate surety fund
Sponsor: Labor, Commerce & Finance
Requestor: Legislature
Date of Request: March 28, 1984

FISCAL DETAIL

Agency Affected: Real Estate Commission
Program Category Affected: Consumer Protection
BRU, Program or Subprogram(s) Affected: Real Estate Commission/Dept. of Comm. & Econ. Dev.

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES			[67.0]	[70.0]	[75.0]	[75.0]
200 TRAVEL			[3.0]	[5.0]	[5.0]	[6.0]
300 CONTRACTUAL			[1.0]	[1.0]	[1.2]	[1.2]
400 SUPPLIES			[0.4]	[0.5]	[0.5]	[0.7]
500 EQUIPMENT			[1.0]	-0-	-0-	-0-
600 LAND & STRUCTURES			-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS			-0-	-0-	-0-	-0-
800 MISCELLANEOUS			-0-	-0-	-0-	-0-
TOTAL OPERATING			[72.4]	[76.5]	[81.7]	[82.9]
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND			[60.0]			
FEDERAL FUNDS						
OTHER SURETY			[12.4]			
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

- NOTE: 1. Fund payments reduced by 30,000 - 70,000 per year.
2. Current case load will be handled in FY '85 under existing law. Savings will result in FY '86.

ANALYSIS: Attach a separate page for analysis

Prepared By: James L. Magowan, Executive Director Phone: 563-2169
Division: Real Estate Commission Date: _____
Approved by Commissioner: Richard A. Lyon Date: 4/2/84
Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

SB #537/ HB ~~537~~ 705
Fiscal Note Analysis

FY 85 - The commission has enough backlog of claims either in hand or that will be received between now and a time that the bill could pass that this bill would not change the funding requirements for FY 85. The funds requested would be required to complete the work on hand.

The passage of the bill would essentially eliminate the costs of contracting hearing officers since hearing officers would no longer be employed to hear claims. This would reduce hearing officer costs, payable from the general fund by \$60,000 in FY 86. Hearing costs for claims that are awarded to claimants are payable from the surety fund. Eliminating these costs would result in a saving of \$12,400 to the surety fund in FY 86.

Surety fund savings ultimately go back to the licensee as reduced surety fees unless the funds are used for educational programs by the commission if appropriated by the legislature.

In addition to the appropriated costs shown there will be an additional amount of \$30,000 to \$80,000 (estimated) per year of unappropriated funds that will not be paid from the fund to successful claimants. This amount also will return to the licensees in reduced surety fees unless appropriated and used for educational programs.

Original sponsor: Labor and Commerce
Committee

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 705 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the real estate surety fund."

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

8 * Section 1. AS 08.88.455(a) is amended to read:

9 (a) A licensed real estate broker, [OR] associate broker, or
10 salesman when obtaining or renewing a real estate license, in lieu of
11 obtaining a corporate surety bond, shall pay to the commission in
12 addition to the license fee, a surety fund [BOND] fee not to exceed
13 \$125 [, AND A LICENSED SALESMAN, WHEN OBTAINING OR RENEWING A LICENSE,
14 IN LIEU OF OBTAINING A CORPORATE SURETY BOND, SHALL PAY TO THE COMMIS-
15 SION IN ADDITION TO THE LICENSE FEE, A BOND FEE NOT TO EXCEED \$40].
16 After the fund reaches \$250,000 the commission shall by regulation
17 adjust the bond fees so that, taking into account anticipated expendi-
18 tures for claims against the fund and real estate educational pur-
19 poses, the fund is maintained at a level not less than \$250,000.

20 * Sec. 2. AS 08.88.460 is repealed and reenacted to read:

21 Sec. 08.88.460. CLAIM FOR PAYMENT. (a) A person who obtains a
22 final judgment in a court of competent jurisdiction against a person
23 licensed under this chapter, based on fraud, deceit, intentional
24 misrepresentation, or conversion of trust funds directly arising from
25 a transaction for which the judgment debtor is required to be licensed
26 under this chapter, may file an application in the court that enters
27 the judgment for an order directing payment out of the real estate
28 surety fund of an amount equal to the actual loss in the transaction
29 up to \$10,000 of the amount unpaid on the judgment.

1 (b) If a judgment under (a) of this section is a small claims
2 judgment, the judgment creditor shall file the surety fund application
3 in the district court in which the judgment was entered. That court
4 shall then make written findings to determine whether or not the small
5 claims judgment is based on facts that support a recovery under this
6 section. On a favorable determination the court may enter an order
7 directing payment of the small claims judgment from the real estate
8 surety fund.

9 (c) A copy of the application required by this section shall be
10 served on the commission and the judgment debtor by the judgment
11 creditor and proof of service shall be filed with the court.

12 (d) This section does not authorize payment from the real estate
13 surety fund based on a transaction or event involving only innocent
14 misrepresentation on the part of a real estate licensee.

15 (e) An application for payment from the real estate surety fund
16 must be made within one year after the date that the judgment becomes
17 final.

18 * Sec. 3. AS 08.88.465 is repealed and reenacted to read:

19 Sec. 08.88.465. HEARING ON APPLICATION. (a) The court shall
20 conduct a hearing on an application filed under AS 08.88.460.

21 (b) At a hearing conducted under this section the applicant is
22 required to show that the applicant

23 (1) is not the spouse of the judgment debtor, or the per-
24 sonal representative or agent of the spouse of the debtor;

25 (2) has complied with the requirements of AS 08.88.450 -
26 08.88.500;

27 (3) has obtained a judgment under AS 08.88.460, stating the
28 amount of the judgment and the amount owed on the judgment on the date
29 of the hearing;

1 (4) has made a reasonable attempt to determine whether or
2 not the judgment debtor has assets that may be used to satisfy the
3 judgment;

4 (5) has either been unable to locate assets of the judgment
5 debtor that may be used to satisfy the judgment, or has located assets
6 and has taken the necessary action to apply the assets to the judg-
7 ment, but the amount realized is not sufficient to satisfy the judg-
8 ment, stating the amount realized and the outstanding balance on the
9 judgment; and

10 (6) has diligently pursued other remedies against the
11 judgment debtor and anyone else who is liable in the transaction for
12 which recovery from the real estate surety fund is sought.

13 * Sec. 4. AS 08.88.470 is repealed and reenacted to read:

14 Sec. 08.88.470. FINDINGS OF THE COURT AND ADDITIONAL PROOF. (a)
15 When a court considers an application under AS 08.88.460 it may not
16 order payment out of the real estate surety fund unless a determina-
17 tion is made that the applicant has a valid claim under AS 08.88.460
18 and has complied with AS 08.88.465(b).

19 (b) If the judgment in favor of the applicant was obtained by
20 default, stipulation, or consent, or if the action was defended by a
21 trustee in bankruptcy, the applicant shall produce sufficient evidence
22 in the hearing on the application to prove that the cause of action
23 against the licensee was for fraud, intentional misrepresentation,
24 deceit, or conversion of trust funds.

25 * Sec. 5. AS 08.88 is amended by adding new sections to read:

26 Sec. 08.88.473. ORDER DIRECTING PAYMENT OUT OF FUND. If a court
27 finds after the hearing required by AS 08.88.465 that the real estate
28 surety fund should pay the claim, it shall enter an order directing
29 the commission to pay the claim from the real estate surety fund

1 subject to the limitations contained in AS 08.88.450 - 08.88.500.

2 Sec. 08.88.474. PRORATION OF AWARD. If a judgment under AS 08.-
3 88.460 is against more than one person licensed under this chapter and
4 the court does not prorate the judgment among the judgment debtors,
5 the commission shall prorate the award among the judgment debtors.

6 * Sec. 6. AS 08.88.475(b) is repealed and reenacted to read:

7 (b) The liability of the real estate surety fund does not exceed
8 \$10,000 for one transaction, regardless of the number of persons
9 injured, the number of licensees involved, or the number of parcels of
10 real estate involved in the transaction.

11 * Sec. 7. AS 08.88.490 is amended to read:

12 Sec. 08.88.490. RIGHT TO SUBROGATION. When the commission has
13 paid a judgment creditor [TO A CLAIMANT] from the real estate surety
14 fund [THE SUM AWARDED BY THE COMMISSION,] the commission shall be
15 subrogated to all of the rights of the judgment creditor [CLAIMANT] to
16 the amount paid and the judgment creditor [CLAIMANT] shall assign all
17 right, title and interest in that portion of the judgment [CLAIM] to
18 the commission. Amounts subsequently realized by the commission on
19 the judgment [CLAIM] shall be deposited to the real estate surety
20 fund.

21 * Sec. 8. AS 08.88.495 is repealed and reenacted to read:

22 Sec. 08.88.495. DISCIPLINARY ACTION AGAINST BROKERS AND SALES-
23 MEN. The provisions of AS 08.88.450 - 08.88.500 do not limit the
24 authority of the commission to take disciplinary action against a
25 licensee for a violation of the provisions of this chapter or of a
26 regulation adopted by the commission. Repayment in full of all obli-
27 gations to the real estate surety fund does not nullify or modify the
28 affect of a disciplinary proceeding brought under the provisions of
29 this chapter.

1 * Sec. 9. AS 08.88.500 is amended to read:

2 Sec. 08.88.500. DEFINITIONS [DEFINITION]. In this chapter,

3 (1) "commission" means the Real Estate Commission estab-
4 lished under this chapter;

5 (2) "final judgment" means a judgment that is not subject
6 to further judicial review.

7 * Sec. 10. AS 08.88.472 is repealed.
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

HB 705

Revision Date: April 2, 1984

REQUEST

Bill/Resolution No.: HB 705
Title: An Act relating to the real estate surety fund
Sponsor: Labor, Commerce & Finance
Requestor: Legislature
Date of Request: March 28, 1984

FISCAL DETAIL

Agency Affected: Real Estate Commission
Program Category Affected: Consumer Protection
BRU, Program or Subprogram(s) Affected: Real Estate Commission/Dept. of Comm. & Econ. Dev.

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES			[67.0]	[70.0]	[75.0]	[75.0]
200 TRAVEL			[3.0]	[5.0]	[5.0]	[6.0]
300 CONTRACTUAL			[1.0]	[1.0]	[1.2]	[1.2]
400 SUPPLIES			[0.4]	[0.5]	[0.5]	[0.7]
500 EQUIPMENT			[1.0]	-0-	-0-	-0-
600 LAND & STRUCTURES			-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS			-0-	-0-	-0-	-0-
800 MISCELLANEOUS			-0-	-0-	-0-	-0-
TOTAL OPERATING			[72.4]	[76.5]	[81.7]	[82.9]
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND			[60.0]			
FEDERAL FUNDS						
OTHER SURETY			[12.4]			
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

- NOTE: 1. Fund payments reduced by 30,000 - 70,000 per year.
2. Current case load will be handled in FY '85 under existing law. Savings will result in FY '86.

ANALYSIS: Attach a separate page for analysis

Prepared By: James L. Magowan, Executive Director Phone: 563-2169
Division: Real Estate Commission Date: _____
Approved by Commissioner: Richard A. Lyon Date: 4/2/84
Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

M E M O R A N D U M

April 10, 1984

To: House Finance Committee Members
Representative Al Adams, Chairman

From: Karla L. Forsythe *Karla L. Forsythe*
General Counsel, Alaska Court System

Subject: HB 705, relating to the real estate surety fund

Although the court system takes no position regarding the merits of this legislation, two minor amendments will alleviate possible problems in bringing the surety fund application process back under the court.

Section three of the bill requires the court to conduct a hearing within 30 days after service of a payment application on the real estate commission. As you are aware, the court's calendar is quite crowded. Expeditious and flexible case scheduling can best be accomplished by leaving calendaring decisions in the purview of the court, as contemplated by Article IV, section 15 of the Alaska Constitution which gives the supreme court authority over matters of practice and procedures. Thus, the court system suggests deleting the last two words of line 20, page two, as well as lines 21 - 23, so that section three, paragraph (a) would read:

(a) The court shall conduct a hearing on an application filed under AS 08.88.460.

Additionally, section five of the bill establishes procedures for processing a motion to dismiss an application. Since the civil rules of court incorporate similar procedures, this section appears unnecessary, and should be deleted.

The impact of this legislation upon the court's workload appears negligible. In years prior to 1980, when fund applications were handled through the courts, very few applications were filed. However, the 1980 amendments which eliminated the necessity of obtaining a judgment have resulted in a substantial case-load for the real estate commission. Since a judgment is again required by this legislation, and since under this bill an applicant must make additional showings to the court before securing payment, it appears that the number of applications will reflect the court's experience under the pre-1980 version of the law. Although more litigants may be seeking relief against realtors since the supreme court's decision in Bevins v. Ballard, 655 P.2d 757 (1982) which held that a purchaser who relies on a innocent material misrepresentation has a cause of action against a broker, this increase should not be reflected in surety fund applications which are limited by this bill to intentional misrepresentation.

Thank you for your consideration of these comments.

Cite as, Alaska, 655 P.2d 757

an element of the relative nature of the work test. Thus, only if it is determined that Kroll acted as an employer in the course of his construction activities may Donald reasonably be said to have been engaged in work which was "a regular part of the employer's regular work." *Ostrem v. Alaska Workmen's Compensation Board*, 511 P.2d at 1063.⁵

[5] For purposes of the Act, an employer is defined as "a person employing one or more persons in connection with a business or industry coming within the scope of this chapter." AS 23.30.265(12). The Board stated in this regard:

The definition of subsection (12) 'in connection with a business or industry coming within the scope of this chapter' is interpreted to mean *all business or industry is to be considered as covered by the Act* and that interpretation would follow Larson's which includes every person in the service of another under contract. [Emphasis added.]

The Board's broad construction of AS 23.30.265(12) fails to give proper weight to the statutory limitation to employment relationships "in connection with a business or industry." In Larson's terms,⁶ the policy question is whether Kroll's construction activity, either by itself or as an element of his rental activities,⁷ was a profit-making enterprise which ought to bear the costs of injuries incurred in the business, or was the construction activity simply a cost-cutting shortcut in what was basically a *consumptive* and not a *productive* roll played by Kroll.⁸

We conclude that the Board's statement with respect to the parameters of the statu-

tory definition of an employer reflects an erroneous standard of law. As a result, the threshold issue of whether Kroll's construction activity was sufficient to establish his status as an employer must also be remanded to the Board for further consideration.⁹

REVERSED and REMANDED.



Max BEVINS and Johnson-Bevins Inc.,
d/b/a Star Realty, Appellants,

v.

David L. BALLARD and Linda K.
Ballard, Appellees.

No. 4571.

Supreme Court of Alaska.

Nov. 19, 1982.

Purchasers brought action against vendors and real estate broker alleging, in part, intentional and negligent misrepresentation in describing condition of well on property. The Superior Court, Third Judicial District, Anchorage, Eben H. Lewis, J., rendered judgment in favor of purchasers, and broker appealed. The Supreme Court, Burke, J., held that: (1) trial court's dismissal of purchasers' negligence claim against real estate broker precluded broker's liability from resting on a negligent representation

er the work being done by the claimant is a regular part of that business.

6. See 1C A. Larson, *supra* note 2, § 50.21.

7. *Id.* at § 50.24.

8. *Id.* at § 50.21, at 9-70 to 9-71 & nn. 4 and 5. *But see Donald v. Whatley*, 346 So.2d 898 (Miss.1977).

9. *Burgess Constr. Co. v. Smallwood*, 623 P.2d 312, 317 (Alaska 1981).

5. The concept of "regular work" as used in *Ostrem* as part of the test for differentiating between employees and independent contractors is a subclass of "business" as used in AS 23.30.265(12). Whether a person engages in a "business" within the meaning of AS 23.30.265(12), is relevant for purposes of determining the extent to which claimant's work is a regular part of the employer's regular work." *Ostrem*, 511 P.2d at 1063. The Board's first obligation is to ascertain the nature of the particular business enterprise in which the injury allegedly occurred, and then to determine whether

theory, even though postjudgment amendments are allowed to conform issues tried to evidence, where, subsequent to dismissal, neither party argued negligent misrepresentation in trial briefs, court and parties treated case as one involving innocent misrepresentations, and broker neither expressly nor impliedly consented to trying negligence claim, but (2) real estate broker who made material misrepresentation to purchasers as to condition of well on unimproved property was liable to purchasers, even though representation was innocently made.

Affirmed.

Connor, J., dissented in part and filed an opinion in which Rabinowitz, J., joined.

1. Negligence ⇨2

In determining whether duty exists to provide accurate information once speaker undertakes to speak, factors to consider are whether speaker had knowledge, or its equivalent, that information was desired for serious purpose and that listener intended to rely upon it, foreseeability of harm, degree of certainty that listener would suffer harm, directness of causation, and policy of preventing future harm.

2. Brokers ⇨102

In land sales context, duty to provide accurate information when real estate broker undertakes to speak can arise when broker becomes aware of suspicious facts regarding his or her representations, or when purchaser makes affirmative inquiry and broker fails to check accuracy of subsequent responding representation, or when court determines that public policy requires brokers to undertake certain functions.

3. Pretrial Procedure ⇨693

Trial court's dismissal of purchasers' negligence claim against real estate broker precluded broker's liability for misrepresentations from resting on a negligent representation theory, even though postjudgment amendments are allowed to conform issues tried to evidence, where, subsequent

to dismissal, neither party argued negligent misrepresentation in trial briefs, court and parties treated case as one involving innocent misrepresentations, and broker neither expressly nor impliedly consented to trying negligence claim.

4. Vendor and Purchaser ⇨37(1)

Vendors guilty of even innocent misrepresentation cannot hide behind doctrine of caveat emptor because vendors are presumed to know character and attributes of land conveyed and purchasers are consequently entitled to rely on vendors' reasonable representations.

5. Fraud ⇨13(2)

Owner of land must be both truthful and informed in making any representations, for fraud includes pretense of knowledge where there is none.

6. Brokers ⇨102

Policy favoring liability of real estate brokers for innocent misrepresentation is founded on recognition that purchasers should be entitled to rely on a broker's representations.

7. Brokers ⇨106

Purchaser who relies on a material misrepresentation of real estate broker, even though innocently made, has a cause of action against broker.

8. Brokers ⇨102

Real estate broker who made material misrepresentation to purchasers as to condition of well on unimproved property was liable to purchasers, even though representation was innocently made.

Fredrick P. Pettyjohn, Anchorage, for appellants.

Saul R. Friedman, Hedland, Fleischer & Friedman, Anchorage, for appellees.

Before RABINOWITZ, C.J., CONNOR, BURKE, and MATTHEWS, JJ., and DIMOND, Senior Justice.*

* Dimond, Senior Justice, sitting by assignment made pursuant to article IV, section 11 of the

Constitution of Alaska, and Alaska R.Admin.P. 23(a).

BURKE
This is
ing a re
misrepr
real esta

On F.
Ballard
dwelling
liam Fe
tain rep
the Bal
well on
Ballard
general
the ex
stalled
the ho
provide
Ballard
propert
penses
an ad

Bel
fraudu
sued t
employ
plaint
ligent
allego
check
there

1. Th
lega

(a)

(b)

(c)

inc

edu

buy

(c)

plo

of

th

kn

OPINION

BURKE, Justice.

This is an appeal from a judgment holding a real estate broker liable for certain misrepresentations made in the course of a real estate transaction.

A. Facts

On February 3, 1975, David and Linda Ballard purchased a lot with an unfinished dwelling from Josephine, Patricia, and William Ferris. Prior to their purchase, certain representations were allegedly made to the Ballards regarding the adequacy of a well on the property. The purchaser, David Ballard, who had previous experience as a general contractor, attempted to complete the existing well on the property. He installed a pump and piping from the well to the house. The well, however, failed to provide sufficient water. As a result, the Ballards were forced to haul water to their property. They subsequently incurred expenses of \$6,935.00 in deepening the well to an adequate level.

Believing themselves the victims of fraudulent misrepresentations, the Ballards sued the sellers, the broker (Bevins), and an employee of the broker (Lucas). Their complaint alleged, in part, intentional and negligent misrepresentation.¹ In addition, it alleged that Bevins and Lucas had a duty to check the well's condition, that Lucas knew there was no functional well, that Bevins

was vicariously liable for Lucas's acts, and that the Ferrises were vicariously liable for the actions of their agents, Bevins and Lucas. The complaint did not explicitly allege innocent misrepresentation.

After the close of plaintiffs' evidence, the trial court dismissed certain counts of the complaint. First, the court ruled that the broker did not have a general duty to inspect the premises. Second, it held that the broker was not vicariously liable for the acts of his employee, Lucas. In a subsequent written decision, the court further ruled that Lucas was not liable. It then held that Bevins and the sellers were jointly and severally liable, each with a right of contribution from the other for any payment in excess of a pro rata share. While both the sellers and the broker filed timely notice of appeal, only Bevins, the broker, pursues his appeal.

The basis of the broker's liability is not clear. The court found that the sellers were the source of the representation that the well was "good," i.e., capable of supplying the reasonable water needs of the residents. It ruled that the broker had a right to rely on the representations, and thus the sellers were liable (as principals) for the act of Bevins (their broker and thus their agent) who passed on the misrepresentation. The court also found that Lucas passed on the representation intending that

1. The complaint made the following factual allegations:

- (a) Bevins personally inspected the property;
- (b) sellers told Bevins that there was a well drilled on the property;
- (c) sellers failed to disclose to Bevins the incomplete nature of the well, with the knowledge and intent that Bevins would tell potential buyers there was a well;
- (d) sellers represented to the broker's employee that the well was finished, held 36 feet of standing water, and was capable of supporting the reasonable water needs of residents of the house;
- (e) sellers made those representations with the intent that Lucas would tell the buyers;
- (f) Lucas did so represent to the Ballards;
- (g) the representations were false;
- (h) Lucas made the representations with the knowledge they were false;

(i) sellers made the representations knowing they were false, for the purpose of deceiving plaintiffs and inducing them to buy;

(j) plaintiffs did rely and were induced; and,
(k) plaintiffs were unable to discover the defect until after purchase.

In addition, the following legal allegations were made:

(1) Bevins owed plaintiffs a duty to investigate the accuracy of the sellers' representations, and breached that duty (this count was dismissed at the close of plaintiffs' evidence);

(2) Lucas (broker's employee) owed plaintiffs a duty to investigate, and breached that duty;

(3) Bevins was vicariously liable for acts of his employee Lucas (this count was dismissed at the close of plaintiffs' evidence); and,

(4) sellers were vicariously liable for the acts of their agents, Bevins, the broker, and his employee, Lucas.

it be relied upon; Bevins admitted to the same intent. The court further found that the Ballards did so rely, and that their reliance was justified.

Although the court earlier concluded that Bevins had no general duty to inspect, it subsequently held that a duty of inquiry arose when Lucas asked Bevins, on behalf of the Ballards, about the adequacy of the well. The court concluded that Bevins acted unreasonably by simply assuring Lucas that it was a "good well" rather than by investigating. Thus Bevins' liability appears to rest on a negligence theory.

Certain facts are not contested:

1. The listing mentioned a 100 foot well.
2. The well proved to be incomplete, i.e., inadequate to support reasonable water needs.
3. Bevins, the broker, testified that the listing of a well would reasonably lead buyers to assume the well was "good," i.e., adequate.
4. The Ballards relied on the listing and representations that the well was "good."
5. Both Lucas and Bevins intended that the Ballards so rely.

As to the source of the misrepresentation, Bevins testified that he would not have written it on the listing unless it came from the sellers. The sellers, however, denied telling him about it; they testified that Bevins must have misunderstood. The court believed Bevins, concluding that the sellers were the original source of the representation.

B. The Broker's Liability

There are three types of misrepresentations: intentional, negligent, and innocent. While the Ballards did assert an intentional misrepresentation claim against the sellers, they did not do so against Bevins or Lucas.

2. Bevins' liability could be based on a vicarious liability for the acts of his employee Lucas. As we noted in *Black v. Dahl*, 625 P.2d 876, 879 n. 3 (Alaska 1981), a real estate broker can be liable under the doctrine of respondeat superior for the acts of his or her sales-people. However, two of the rulings below preclude resting liability on such a basis. First, at the close of

Thus, we need address only the negligent and innocent misrepresentation claims in this appeal. Bevins' liability to be sustained, must rest on one of these two theories.²

1. Negligent Misrepresentation

The Ballards' third claim for relief stated a cause of action for negligence against Bevins. That claim alleged that Bevins had a duty to "take reasonable steps to determine whether or not the well . . . was a completed well" and had sufficient capacity to support a purchaser's reasonable water needs, that Bevins breached that duty, and that as a direct and proximate result of Bevins' breach the Ballards purchased the property believing the well was completed. As noted, the trial court subsequently dismissed that claim, and the Ballards did not appeal. In its final opinion, however, the trial court imposed liability on grounds that Bevins had a "duty to inquire of the sellers whether the well was, in fact, 'a good well.'" Bevins argues that the court thus held him negligent even though negligence was dismissed from the case and, further, that he was prejudiced thereby because dismissal of the third claim led him to forego a negligence defense.

[1, 2] We recognized the tort of negligent misrepresentation in *Transamerica Title Insurance Co. v. Ramsey*, 507 P.2d 492 (Alaska 1973), and *Howarth v. Pfeifer*, 443 P.2d 39 (Alaska 1968). Under this theory, Bevins could have been liable for breaching his duty to provide accurate information once he undertook to speak. In determining whether such a duty exists, one must consider: (a) whether the defendant had knowledge, or its equivalent, that the information was desired for a serious purpose and that the plaintiff intended to rely upon it; (b) the foreseeability of harm; (c) the degree of certainty that plaintiff would suf-

fer harm; and (e) the harm. Howarth v. Pfeifer, 443 P.2d 39 (Alaska 1968). See *Transamerica Title Insurance Co. v. Ramsey*, 507 P.2d 492 (Alaska 1973). In *Black v. Dahl*, 625 P.2d 876, 879 n. 3 (Alaska 1981), we noted that a real estate broker can be liable under the doctrine of respondeat superior for the acts of his or her sales-people. However, two of the rulings below preclude resting liability on such a basis. First, at the close of the Ballards' evidence, the trial court dismissed the eighth claim for relief, which had asserted that Bevins was vicariously liable. Second, in its written opinion, the trial court found in favor of Lucas, the salesman. Thus there is no underlying liability for which Bevins could be held vicariously responsible. The Ballards have not appealed these rulings.

fer harm; and (e) the harm. Howarth v. Pfeifer, 443 P.2d 39 (Alaska 1968). See *Transamerica Title Insurance Co. v. Ramsey*, 507 P.2d 492 (Alaska 1973). In *Black v. Dahl*, 625 P.2d 876, 879 n. 3 (Alaska 1981), we noted that a real estate broker can be liable under the doctrine of respondeat superior for the acts of his or her sales-people. However, two of the rulings below preclude resting liability on such a basis. First, at the close of

[3] We court's dismissal of the eighth claim for relief, which had asserted that Bevins was vicariously liable for the acts of his or her sales-people. However, two of the rulings below preclude resting liability on such a basis. First, at the close of

3. In *Transamerica Title Insurance Co. v. Ramsey*, 507 P.2d 492 (Alaska 1973), we recognized the tort of negligent misrepresentation. Under this theory, Bevins could have been liable for breaching his duty to provide accurate information once he undertook to speak. In determining whether such a duty exists, one must consider: (a) whether the defendant had knowledge, or its equivalent, that the information was desired for a serious purpose and that the plaintiff intended to rely upon it; (b) the foreseeability of harm; (c) the degree of certainty that plaintiff would suf-

In *Black v. Dahl*, 625 P.2d 876, 879 n. 3 (Alaska 1981), we noted that a real estate broker can be liable under the doctrine of respondeat superior for the acts of his or her sales-people. However, two of the rulings below preclude resting liability on such a basis. First, at the close of

4. The claim for relief, which had asserted that Bevins was vicariously liable for the acts of his or her sales-people. However, two of the rulings below preclude resting liability on such a basis. First, at the close of

for harm; (d) the directness of causation; and (e) the policy of preventing future harm. *Howarth v. Pfeifer*, 443 P.2d at 42; *Transamerica Title Insurance Co. v. Emmer*, 507 P.2d at 494-95.³ In the land sales context, such a duty can arise when a broker becomes aware of suspicious facts regarding his or her representations, or when a buyer makes an affirmative inquiry and the broker fails to check the accuracy of his subsequent responding representation, or when a court determines that public policy requires brokers to undertake certain functions. See, e.g., *First Church of the Open Bible v. Cline J. Dunton Realty, Inc.*, 19 Wash.App. 275, 574 P.2d 1211 (1978).

[3] We believe, however, that the trial court's dismissal of Ballards' third claim for relief, which was their only negligence claim against Bevins, precludes the broker's liability from resting on a negligent misrepresentation theory.⁴ While Alaska Rule of Civil Procedure 15(b) allows post-judgment amendments to conform the issues tried to

the evidence, and further provides that the failure to so amend "does not affect the result of the trial" on those issues, the rule sets as a threshold the requirement that such issues be "tried by express or implied consent of the parties." We do not believe that this condition was met in the case at bar. Subsequent to the dismissal neither party argued negligent misrepresentation in their trial briefs. The court and parties treated the case as one involving innocent misrepresentations. Bevins neither expressly nor impliedly consented to trying a negligence claim. Accordingly, Bevins' liability cannot rest on a negligent misrepresentation theory.

2. Innocent Misrepresentation

The case went forward against Bevins on an apparent theory of innocent misrepresentation, evidenced by the colloquy quoted in note 4 and the arguments advanced in the trial briefs.⁵ The tort of innocent mis-

3. In *Transamerica Title*, we upheld submitting the negligence issue to the jury where a title insurance company failed to inform a client that a power of attorney, upon which she was relying in asserting her authority to sell the property, had been revoked. Although the title company was unaware of the revocation, that information was readily available to it. We concluded that the title insurer knew that the seller, its client, desired information about her legal capacity to sell the land, that she intended to rely on that information, and that there was foreseeable harm to her should she be poorly advised. We concluded that the jury could find that the title company had a "duty to speak carefully." We rejected any distinction between the nonfeasance of the title company and the misfeasance in the *Howarth* case. 507 P.2d at 494-95.

In *Howarth*, a vendor sought damages for the alleged negligent misrepresentation by the defendant insurer that a purchaser of vendor's property had obtained fire insurance on the property. We held that assuming the presence of the essential factors establishing a duty of care, those engaged in the insurance business are required to speak with reasonable care.

4. That the court intended to dismiss negligence claims from the case is further evidenced by the following colloquy:

THE COURT: ... I feel that it's the third claim for relief that you seek thereby to impose upon realtors a burden that does not exist except in extraordinary circumstances.

That is when there's been—when there has been evidence adduced as to the duty of a realtor to inquire arising from some circumstances directing the attention of a reasonable prudent realtor to some—some—something unusual. In this case it seems to me that this was just an ordinary transaction. That it's rural property, most of which does require that it be serviced by a well. It is incomplete, and if I accept the evidence as it now stands, that it was represented that there was a good well, that that's the end of the matter, that there's no duty on the realtors to go further and inquire whether that is the actual fact. You know, there's nothing unusual about that well that would alert the ordinary prudent realtor of the need to do something about it. To check it out.

MR. FRIEDMAN: Well, if the court finds that there was no duty, then they can't obviously be negligent. But I still ask the court

THE COURT: They—well, they still can be—the defendants still could be—they made the representation, which is—facts show was not true.

MR. FRIEDMAN: Correct.

THE COURT: So that they can be—they can be held liable for having made the same. But not on—not on—(indiscernible) negligence—or negligence theory.

5. The elements of innocent misrepresentation were alleged to a sufficient degree. Paragraph 3 of the Ballards' first claim for relief makes

representation is defined by section 552C(1) of the Restatement (Second) of Torts (1977) as follows:

One who, in a sale, rental or exchange transaction with another, makes a misrepresentation of a material fact for the purpose of inducing the other to act or to refrain from acting in reliance upon it, is subject to liability to the other for pecuniary loss caused to him by his justifiable reliance upon the misrepresentation, even though it is not made fraudulently or negligently.

Id. The Restatement leaves open the question of whether such a cause of action lies against real estate brokers. *Id.* § 552C, Comment g.

[4, 5] We have recognized a cause of action against the owner of realty who innocently misrepresents its condition to the purchaser. *Cousineau v. Walker*, 613 P.2d 603 (Alaska 1980). In *Cousineau*, we granted rescission and restitution to a purchaser where the seller made false statements concerning the highway frontage and gravel content of the purchased land. In so doing, we held that an owner guilty of even innocent misrepresentation could not hide behind the doctrine of caveat emptor. *Id.* at 614-16. This is so because owners are presumed to know the character and attributes of the land conveyed and buyers are consequently entitled to rely on the seller's reasonable representations. See *Sorenson v. Adams*, 98 Idaho 708, 571 P.2d 769, 776 (1977), quoted in *Cousineau v. Walker*, 613 P.2d 608, 615 n. 14 (Alaska 1980). The owner of land must therefore be both truthful and informed in making any representations, for fraud includes the pretense of knowledge where there is none. *Spargna-*

the necessary allegation concerning Bevins' scienter. Paragraph 2 of the fifth claim for relief alleged that Bevins' agent passed on the representation with the intent to cause action in reliance thereon. Finally, paragraph 15 of the first claim for relief alleged actual reliance. In light of this, plus the court's and the parties' arguments concerning Section 552 of the Restatement, we conclude that Bevins was "adequately notified" that the Ballards were asserting a cause of action based on innocent misrepresentations. See *Clary Ins. Agency v. Doyle*, 620 P.2d 194, 201 (Alaska 1980).

piani v. Wright, 110 A.2d 82, 84 (D.C.App. 1954).

The question presented in this case is whether or not liability for innocent misrepresentation should extend to the owner's agent, the real estate broker, where that party serves as a conduit for the owner's misinformation. Most courts addressing this issue recognize a cause of action by the purchasers of property against the broker for the latter's innocent misrepresentation.⁶

An illustrative case is *Spargnapani v. Wright*, 110 A.2d 82 (D.C.App.1954). There, both the seller and broker were held liable for representing that a house could be heated for a little more than \$100.00 per year, when a defect in the boiler made it impossible to heat the house at all. *Id.* at 85. The broker had merely passed on the seller's information, and neither defendant had knowledge of a defect. Nevertheless, the court sustained liability:

If the broker innocently represented that the heating plant was in workable condition and was mistaken in that representation, or made the representation without knowing whether it was true or false, the injured party may recover in an action for fraud.

... We may assume that the broker was guilty of no deliberate deception and had no actual knowledge of the concealed defect. But on defendants' own evidence their selling agent did not disclaim such knowledge The representation . . . was flagrantly inaccurate, since the defect . . . made it impossible to heat the house at all "Fraud includes the

6. *Sodai v. French*, 35 Colo.App. 16, 531 P.2d 972, 973 (1974); *Spargnapani v. Wright*, 110 A.2d 82, 85 (D.C.App.1954); *Pumphrey v. Quillen*, 165 Ohio St. 343, 135 N.E.2d 328, 331 (1956); *Berryman v. Riegert*, 286 Minn. 270, 175 N.W.2d 438, 442 (1970); *Lawlor v. Schepfer*, 232 S.C. 94, 101 S.E.2d 269, 271 (1957); *Polk Terrace, Inc. v. Harper*, 386 S.W.2d 588, 593 (Tex.App.1965). *Contra Lyons v. Christ Episcopal Church*, 71 Ill.App.3d 257, 27 Ill.Dec. 559, 389 N.E.2d 623, 625 (1979).

pretense
where a
110 A.2d 82-
[5] The
innocent mis-
representation
to rely on
one's agent.
Real
estate
broker
does not
know
defect
and
that
estate
that
real
estate
App.3d
625 (197
[7]
Parties
by do
broker
ing su
sell an
Prospe
partie
sents
to rely
beau
purch
broker
would
statem
main
main
repre
7. S
tion
by f
rece

pretense of knowledge when knowledge there is none."

Id. at 83-84 (citations omitted).

[6] The policy favoring liability for innocent misrepresentation is found on a recognition that purchasers should be entitled to rely on a broker's representations. As our opinion notes:

Real estate brokers and their agents hold themselves out to the public as having specialized knowledge with regard to housing, housing conditions and related matters. The public is entitled to and does rely on the expertise of real estate brokers in the purchase and sale of its homes. Therefore there is a duty on the part of real estate brokers to be accurate and knowledgeable concerning the product they are in the business of selling—that is, homes and other types of real estate. Courts have held in many cases that purchasers are entitled to rely on real estate brokers' statements.

Lyons v. Christ Episcopal Church, 71 Ill. App.3d 257, 27 Ill.Dec. 559, 389 N.E.2d 623, 628 (1979) (dissenting opinion).

[7] We find this reasoning persuasive. Parties to real estate transactions frequently do not deal on equal terms. Real estate brokers are licensed professionals, possessing superior knowledge of the realty they sell and the real estate market generally. Prospective purchasers recognize this expertise and tend to rely on a broker's representations. Just as purchasers are entitled to rely on an owner's representations, *Cousineau v. Walker*, 613 P.2d 608 (Alaska 1980), purchasers should be entitled to rely on the broker's representations. Any other rule would permit brokers to use misleading statements in selling the property, yet remain immune from liability by simply remaining ignorant of the property's true characteristics. Accordingly, we hold that a purchaser who relies on a material misrepresentation, even though innocently

7. Some listing agreements contain indemnification provisions, entitling the broker to indemnity from the owner should the broker's communication of the owner's representations engen-

der liability. *See, e.g., Barnes v. Lopez*, 25 Ariz.App. 477, 544 P.2d 694, 698-99 (1976).

made, has a cause of action against the broker originating or communicating the misrepresentation. *See* Restatement (Second) of Torts § 552C(1) (1977).

In our view, the consequences of recognizing a cause of action in this situation are entirely beneficial. The presence of a cause of action against the broker would tend to lessen the likelihood of transactions tainted by misinformation and confusion. Additionally, recognizing a cause of action against the broker would provide another source of recovery to the purchaser of defective property. Frequently, the owners may move away, leaving the broker as the only reachable defendant. As between the broker who communicated the misrepresentation, and the purchaser whose only fault was to rely on the broker, we think it preferable that the broker bear any loss caused by misrepresentation. Brokers, in turn, can protect themselves from liability by investigating the owner's statements, or by disclaiming knowledge, by requiring the seller to sign at the time of listing a statement setting forth representations which will be made, certifying that they are true and providing for indemnification if they are not.⁷ *See Goldman v. Hart*, 134 Ga. App. 422, 214 S.E.2d 670 (1975).

[8] Having determined that a cause of action in innocent misrepresentation exists, it is apparent that the judgment below must be affirmed. Bevins does not contest that the listing he prepared mentioned a 100 foot well, that this listing would reasonably lead buyers to assume the well was good, that the Ballards so relied, and that the well was, in actuality, inadequate. These facts establish liability under an innocent misrepresentation theory. *See* Restatement (Second) of Torts § 552C(1) (1977). The decision below is therefore AFFIRMED.⁸

COMPTON, J., not participating.

8. This case is distinguishable from *Stepanov v. Gavrilovich*, 594 P.2d 30 (Alaska 1979), where-

STATE OF ALASKA
THE LEGISLATURE

POUCH Y. STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 9, 1984

SUBJECT: Sectional Analysis of HB 705

TO: Representative Al Adams
Chairman, House Finance Committee

FROM: *LH* Linn H. Asper
Legislative Counsel

You have asked for a sectional analysis of HB 705, relating to the real estate surety fund.

Section 1 makes technical changes in the provisions for payments by real estate licensees to the real estate surety fund and adds real estate salesmen to the list of people who must contribute to the fund.

Section 2 changes the procedure for making a claim against the real estate surety fund so that the claim is brought in court rather than before the real estate commission. Under the new language an award may not be made if a claim is based only on an innocent misrepresentation by a real estate licensee.

Section 3 provides for a court hearing on a claim made against the real estate surety fund and states elements of the claim that the claimant must establish.

Section 4 establishes what the court has to find after the hearing in order to make an award against the fund and establishes a higher burden of proof for a claimant in certain limited circumstances.

Section 5 allows the real estate commission to move to dismiss the claim if the commission believes that a claim is without merit.

Section 6 adds new sections that allow the court to make an award from the fund and allow the ~~commission~~ ^{commission} to prorate the award among judgment debtors if the court does not do so.

Representative Al Adams

Page 2

April 9, 1984

Section 7 moves the \$10,000 per transaction award limit from AS 08.88.470 to 08.88.475(b).

Section 8 makes technical changes in AS 08.88.490 to reflect the fact that claims against the real estate surety fund are to be made in court proceedings rather than before the real estate commission.

Section 9 enacts language to make it clear that the fact that an award is made from the real estate surety fund to a claimant does not absolve the real estate licensee who is involved in the claim from responsibility in a disciplinary action brought by the real estate commission.

Section 10 adds a definition of "final judgment" for purposes of judicial proceedings on real estate surety fund claims.

Section 11 repeals AS 08.88.472, relating to costs of hearings before the commission.

LHA:ojb
J6/012

Industry advocated '74 Legislation
Realized bonds were inadequate
Indemnity vs. E & O

California Model -- Key elements

Judgment	Proof of Recovery Attempt	Surety Fund Payment
↑	↑	
'80 amendment replaced this	'74 Leg. omitted this	
3-year experiment that is unacceptable.		
Alaska \$300,000 to 50 parties since inception		4000± licensees
Virginia 340,000 to 84 parties		35,000± licensees
Alaska \$100,000 to 20 parties in 1983		4000± licensees
California \$200,000 to 31 in 1983		190,000± licensees

Judgment

32 states with surety fund--only 4 leave decision solely in hands of REC.

21 require court judgment; 18 have bonds

Validates the claim hearing officers have recommended denial of 70%

Ensures due process

Issues not fully argued by opposing a Horney's with neutral judge to decide pts. c.
State entity removed from position of being both judge and jury
proposed bill -- "rationale" law

SB 497- Mobile Home Manufacturers' Bond, an A G supported concept

No other agency in the state awards 3rd party damages without jury trial

Double jeopardy--defending on multiple fronts--would be eliminated

REC = laymen H.D = legal prof -- hard for laymen to overturn points of law.

Proof of Recovery Attempt

Wrongdoer should be the one to pay

Claims now are "no-risk, no-cost incurred"

Only 3 other states can pay legal costs from their surety funds

Indemnifications

Surety Fund represents the industry's willingness to indemnify the unrecoverable judgments and thus relieve the consumer from suffering a loss because of the illegal actions of a licensee.

Late in session, but documented and clear cut, essential to restore the intent & integrity of the funds, and in best interests of all Alaskans.

We urge you to pass this out of committee as introduced.



HB
705

ALASKA ASSOCIATION OF REALTORS[®]

1318 W. Northern Lights Blvd., Suite 104 • Anchorage, Alaska 99503
Telephone 907-272-8016

Attached is a summary of a problem area of vital concern to the real estate industry. The ALASKA ASSOCIATION OF REALTORS is suggesting content for a bill which will address the issue. We seek your consideration and support.

History

From its creation in 1964, as reflected in AS 08.88, the Real Estate Commission's primary purpose has been the protection of the public through the examining and licensing of real estate practitioners. Through 1975, the public's guarantee of monetary relief was a required bond in the amount of \$1000/Salesman and \$5000/broker.

Through the early '70's there were few claims against the bonds; however, the industry realized that the bonding level was not adequately protecting the public's interests. Following the example of twelve other states, (Footnote: 1974 NARELLO Report, page 25) the industry together with the Real Estate Commission actively lobbied for the 1974 legislation (Attachment A: 45.85.010-110 & 08.88.281, .071, & .401) to create a surety fund with a two-fold purpose:

1) to provide indemnification up to \$10,000/transaction for judgments awarded by the courts to persons who suffered financial loss because of a licensee's actions that involved fraud, deceit, misrepresentation, or conversion of trust funds, and

2) to provide funding for real estate education of both the public and the licensees from funds collected in excess of the specified \$250,000 minimum balance in the fund.

The 1974 legislation, which was patterned after the California model, required court action and a judgment against a licensee prior to any disbursement of Surety Fund dollars. However, Alaska's enacted version did not require an attempt to collect money from or attach the assets of the named licensee, nor did it provide for any review by the Commission prior to payment from the fund.

Thus from the 1976 license renewal cycle when the first fees were paid into the surety fund, judges were able to order payment directly from the fund to satisfy a judgment.

These conditions were in effect until 1980 when the statute was amended, initiated by the Legislative Audit Committee during the Sunset Review, to charge the Real Estate Commission with the responsibility to both hear cases and award payments, but without ensuring the full protection of due process and judicial precedent (Attachment B).

The use of hearing officers (as allowed by the Administrative Procedures Act) starting in January 1982 and the regulations adopted by the Commission in December 1982 (effective April 1983) have further attempted to work within the current statute (Attachment C).

- Attachments: A) 1974 Surety Fund Statute
B) 1980 Amended Surety Fund Statute
C) 1982 Surety Fund Regulations

Current Situation

The real estate industry in Alaska consists of some 4000 licensees who support sensible legislation to regulate the industry and to protect the public against illegal real estate practices. This sense of professional responsibility has not changed throughout the 20-year historical summary period outlined above.

Currently there are no filing fees or costs if a claim is denied, nor is the claimant required to exhaust other remedies before receiving satisfaction from the Surety Fund. Thus, the "no-risk" and "no-costs incurred" status of claimants simply encourages claims. Further, the state entity, either contracted or appointed, is in the position of being both judge and jury.

It is the consensus of the industry that a concentrated effort must be made immediately to restore the integrity of the surety fund, both in concept and in actual administration.

Points to Achieve

1. Ensure the rights of all parties to due process through the court system with the determination of a claim's validity and resultant damage assessment in the courts.
2. Maintain the Surety Fund as a resource to be drawn upon only when funds are not collectable from the judgment debtor by any other means.
3. Charge the Real Estate Commission with the responsibility of timely license action on the licensee whose action has resulted in a draw from the Fund.
4. Direct the Real Estate Commission to provide quality education programs to licensees and the public as to licensees' responsibilities under the real estate statutes and regulations.

ALASKA ASSOCIATION OF REALTORS


RITA JO SHOULTZ
President

THE MEAD CORPORATION, DAYTON O. 45402

ACCURACY DATA PWD NO. 58 1J04

1 2 3 80 4 81 5 6 82 7 8 83 9 10 84 11/2/29

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

Total filed	2	57	93	122	30
Withdrawn		10	13	5	
Hearings	2	47	80	117	28
Denied		20 (\$109,000)	36 (\$154,500)	13 (\$53,400)	
Proposed Deny					2 (\$11,000)
Paid/Recov		5 (\$26,225)	3 (\$2800)		
Paid/Unrecov	2 (\$1700)	15 (\$6,900)	17 (\$69,800)	2 (\$20,000)	
Proposed App.				3 (\$18,000)	
App. but Unpd.				2 (\$10,500)	
Undecided \$		\$40,400	\$118,200	\$569,600	\$172,100

D

02-24-84 SURETY CLAIM INVENTORY LIST 8963L

Date filed

Claim

Accounting Costs

PAID--UNRECOVERED COSTS

Gene Tenny	James Pitts	S- 801200-001*	P-JF-05/82	2,710.00	1,031.25
Charles Heaton	James Sullivan	S- 801200-003	P-JF-05/82	5,000.00	243.75
E. Floyd Ross	Tony Calvo	S- 810100-004	P-12/82	0.00	997.10
Darion Powell	Gail McCormick	S- 810100-005	P-JF-05/82	0.00	0.00
Gladys Foris	Daniel Lankford	S- 810100-007	P-Com.	1,693.00	
Keith Hunter	James Sullivan	S- 810100-008	P-JF-05/82	5,000.00	243.75
Louis Sherman	Elbert Patton	S- 810100-009	P-Com.	10,000.00	
Kenneth McDonald	Jerry Woodworth	S- 810100-011	P-Com.	250.00	
James Schmidt	Rod Dunn	S- 810400-024	P-04/83	2,500.00	225.00
Russell Gross	Thomas Hoey	S- 810500-028	P-Com.	0.00	
Ruby Ketola	Gary Motonaga	S- 810600-029	P-Com.	0.00	
Thomas Winter	Mina Odell	S- 810800-037	P-JK-04/82	0.00	1,066.30
Nelson Brown	Robert York	S- 811026-039	P-JK-03/82	500.00	583.57
Alice Corpuz	Judy Rowland	S- 811203-044	P-12/82	3,642.65	542.72
Phillip-Aguirre	Mary Peterson	S- 811204-046	P-04/83	1,500.00	1,348.71
Martin Mulholland	Myrna Johnston	S- 811228-049	P-	1,000.00	1,965.45
Walter Moody	Tom Krenik	S- 811228-051	P-08/83	1,000.00	1,354.27
Marianne Kaemerer	Jonas Arnbrister	S- 820114-002	P-12/82	10,000.00	1,092.15
Josephine Stoll	James Sullivan	S- 820219-011	P-12/82	8,552.00	592.50
Bonnie Yoshitomi	James Sullivan	S- 820330-022	P-04/83	4,700.00	132.37
Leon Erickson	Mary Shelley	S- 820421-028	P-04/83	5,290.00	243.75
Charles Wood	Jerry Jones	S- 820514-032	P-12/82	0.00	406.05
Patrick Hickey	Al Ruzkowski	S- 820514-033	P-12/82	0.00	105.00
Darrell Carpenter	Taylor Gamblin	S- 820517-035	P-04/83	3,634.35	
Leo/Betty Blum	Robert Rink	S- 820603-042	P-12/82	0.00	210.00
Janis Spradlin	Daniel Lankford	S- 820617-043	P-04/83	4,712.24	345.00

Barbara Pearcy	Ginger Cassel	S- 820618-044	P-12/82	500.00	180.00
Karen Leis	Paul Palmer	S- 820629-046	P-12/82	625.00	452.50
Roger Harapat	Dan Grant	S- 820706-049	P-04/83	6,092.00	532.50
Jennifer Shannon	Roy Charlton	S- 821019-073	P-06/83	4,573.00	259.40
Edgar Sipple	Barry Shennum	S- 821021-074	P-06/83	1,000.00	222.50
Randy Burnham	Harry Lewis	S- 821025-075	P-06/83	500.00	615.00
Kenneth Lewis	Robert York	S- 821101-078	P-06/83	10,000.00	326.05
Rita Trombley	Harold Johnson	S- 821202-083	JL-01/83	10,000.00	592.50
Charles Bauer	William Price	S- 830202-011	TB-04/83	10,000.00	466.80
Roy Burkhardt	Michael Buss	S- 830204-013	TB-04/83	10,000.00	242.50

124,974.24## 16,618.44##

PAID--RECOVERED COSTS

E Floyd Ross	Tony Calvo	S-810100-004	P-12/82	10,000.00	
Darion Powell	Gail McCormick	S-810100-005	JF-05/82	10,000.00	1,275.00
Russell Gross	Thomas Hoey	S-810500-028	AREC	1,000.00	0.00
Ruby Ketola	Gary Motonaga	S-810600-029	AREC	4,225.00	0.00
Thomas Winter	Mina Odell	S-810800-037	JK-04/82	1,000.00	0.00
Charles Wood	Jerry Jones	S-820514-032	12/82	800.00	0.00
James Hickey	Alvin Ruszkowski	S-820514-033	12/82	1,000.00	0.00
Leo Blum	Robert Rink	S-820603-042	12/82	1,000.00	0.00

29,025.00## 1,275.00##

APPROVED--UNPAID

Walter Martin	Harold Johnsen	S- 830427-040	JK-01/84	10,000.00
Thomas Bohannon	Anne Weik	S- 830210-017	TB-10/83	500.00

10,500.00##

PROPOSED DECISION--APPROVE: .

John Lymer	Gerald Sudkamp	S- 830117-005	KV-03/83	5,890.00
Jackie Woolf	Michael Buss	S- 830330-030	DP-09/83	2,122.00
W.Keith Graham	Ed Gentile	S- 830412-032	JK-07/83	10,000.00
				18,012.00##

DENIED

Jon Meyer	Donald LeMaster	S- 811200-002	D-12/82	3,600.00	204.70
Daniel Breault	Jennie Wasey	S- 810100-010	Denied	1,500.00	187.50
Odean Lee	Bob Booth	S- 810200-013	Denied	10,000.00	0.00
Lucian Dancaescu	Jack Vandenberg	S- 810300-015	D-12/82	10,000.00	333.60
John King	Jerry Woodworth	S- 810300-018	D-12/82	3,962.58	121.65
Harry Helfner	Gloria Church	S- 810300-019	Denied	10,000.00	0.00
James Foster	Marigal Compton	S- 810300-020	Denied	8,020.00	0.00
Glynn Behrend	Louise Severson	S- 810300-021	Denied	1,500.00	0.00
Tracy Belieu	Nancy Porter	S- 810400-025	JK-03/82	500.00	830.35
David Klingbiel	Onita Higgins	S- 810600-031	Denied	10,000.00	396.25
Allen Price	F. G. Nugent	S- 810600-032	D-12/82	1,949.62	408.88
Terry Eastlake	Porter Kearton	S- 810800-034	Denied	709.85	0.00
Roy Troberg	Ben Shennum	S- 810800-035	Denied	10,000.00	615.07
Florence Elliott	Sherrie Ace	S- 810800-036	Denied	2,000.00	0.00
Robert Steel	Radley Hastings	S- 811103-040	Denied	2,000.00	0.00
Betty Freed	Walter Wood	S- 811110-041	Denied	5,941.35	0.00
William Smith	Eleanor Becker	S- 811117-042	D-09/82	8,995.00	180.06
FedAlaska FCU	Bernd Vockner	S- 811215-047	D-05/83	10,000.00	443.45
John Hazen	Barry Shennum	S- 811215-048	JK-02/83	6,890.00	705.85
Allen Smith	Marilyn Warren	S- 811231-052	D-12/82	1,500.00	171.69
Kurt McAlister	Mason Anderson	S- 820113-001	D-09/82	10,000.00	18.75
Betty Evans	Gloria Beckley	S- 820108-004	D-09/82	10,000.00	112.50
Gene Blair	Mark Phillips	S- 820125-005	D-09/82	3,213.00	75.25
Jose Prado	Rusty Harrington	S- 820127-006	(2)	10,000.00	0.00
Barbara Wilson	Mary Moore	S- 820129-007	JK-02/83	0.00	0.00

Mark Chapman	Harold Newcomb	S- 820216-008	D-12/82	8,000.00	233.40
Max Rabinowitz	James Kuntz	S- 820216-009	Denied	867.17	0.00
James Medcoff	Jodie Thomas	S- 820219-010	Denied	1,000.00	0.00
Michael McBride	Edward Pawelek	S- 820225-013	D-12/82	10,000.00	0.00
Blythe Baker	Tom Hoey	S- 820308-015	D-09/82	527.50	264.75
Steve Day	Peggy Bowen	S- 820308-016	D-09/82	2,000.00	204.30
D. Walls	Rita Shoultz	S- 820312-017	D-12/82	0.00	0.00
George Sampleton	Dana Bachner	S- 820311-018	D-09/82	9,000.00	356.70
Dale Lane	James Suddeth	S- 820311-019	D-09/82	10,000.00	129.75
Danny Simmons	Grace Brown	S- 820316-020	EJ-05/82	7,356.97	446.70
Ross Crane	Greg Cartwright	S- 820322-021	D-12/82	10,000.00	18.75
Albert Devincenu	Paul Palmer	S- 820407-023	D-02/83	3,000.00	117.35
Stan/Sara Smith	James Morrill	S- 820330-024	D-02/83	750.00	75.00
Artell Whitaker	Maurice Matthews	S- 820414-025	D-02/83	3,234.00	157.95
Chris Waterbury	Lee Walker	S- 820505-031	D-04/83	1,000.00	377.10
Brian Millis	Jess Holiday	S- 820525-036	D-12/82	9,600.00	348.00
Mir Javid Karchay	Charles Tanner	S- 820712-053	JK-09/82	3,600.00	37.50
Peter Lyse	Walter Wood	S- 820719-054	D-09/82	6,000.00	452.75
Gene Tenny	James Pitts	S- 820802-058	D-02/83	2,739.43	474.50
Leonard Walker	D Peck/ Beal, Terry	S- 820802-059	D-04/83	507.00	1,030.43
Theodore Glover	Red Mueller	S- 820817-063	HG-10/82	500.00	185.77
Anne Joseph	MaryDee Henderson	S- 820827-065	D-05/83	10,000.00	1,109.40
Patrick Maitland	Brent Heleker	S- 820831-066	D-10/82	9,440.00	0.00
Shirley Summer	Jorgen Lilliebjerg	S- 820907-069	D-02/83	708.00	234.50
Susan Fleming	Beth Allard	S- 821004-070	EJ-02/83 (3)		290.40
Daniel Neil	Jean Butterfield	S- 821014-071	D-04/83	270.00	37.50
Robert Dewees	Jim Jacobs	S- 821019-072	D-04/83	2,035.48	52.50

Clyde Stoker	Barry Shennum	S- 821015-076	D-04/83	1,998.60	153.70
James Henderson	Jim Thomas	S- 821101-077	D-04/83	300.00	37.50
Dan Nicoll	Betty Greely	S- 821112-079	D-04/83	682.50	191.30
Robert MacGill	Curtis Kutil	S- 821117-080	D-04/83	6,707.55	318.50
James Kohler	Richard Erickson	S- 830103-001	PG-01/84	5,290.00	
Jeffery Wesley	Clyde Lower	S- 830202-010	TB-01/84	3,676.00	290.00
Randy Helgeson	Harry Lewis	S- 830208-014	D-11/83	1,240.80	293.50
Ronald Raasch	Ray Walker	S- 830216-019	D-11/83	1,046.20	218.50
Gregory Thomason	Bob Barbutti	S- 830429-037	JK-01/84	10,000.00	318.75
Michael Alley	Bruce Cook	S- 830202-009	D/04/83	10,000.00	298.85
Jerry Henry	Evan Tobler	S- 830210-016	D/04/83	3,200.00	309.70
Mark Heirigs	Pat Wilson	S- 830413-034	D/07/83	6,582.21	
Daniel Painter	Lotti Buscemi	S- 830208-018	D-11/83	1,757.96	32.15
Sally Benedrix	Gail Haunold	S- 830412-033	D-11/83		39.60
Nancy Inglis	Cher Brown	S- 830425-038	D-11/83	10,000.00	18.75
Ruth Dawson	Bill Schlegel	S- 820604-037	EJ-08/82	1,000.00	
Louis Maggio	Dawson Lindbloom	S- 820802-060	HG-10/82(3)		339.21

317,898.77## 14,300.56##

PROPOSED DECISION--DENY:

McFall

Willy Sherman

S-820831-067

HG-02/84

10,000.00

Willie Taylor

Sally Mummy

S- 830427-039

JK-07/83

1,000.00

11,000.00## ##

HEARINGS

Jerry Gallagher	Mary Buness	S- 810100-006	-02/82	4,234.98	
Charles Hobbs	Jan Brechan	S- 810300-016	BS-0 /82	1,105.00	18.75
Randall Rogers	Kenneth Jones	S- 810300-017	RP-02/82	10,000.00	18.75
Joseph Thomas	Les Pace	S- 810500-027	TB-08/83	10,000.00	
Max Bivens	James Anthony	S- 810500-033	JF-02/82	10,000.00	243.75
John Curtis	James Suddeth	S- 811000-038	JK-02/82	3,642.65	154.10
Phillip Aguirre	Mary Peterson	S- 811204-046	AP-04/83	1500.00	1348.71
Leon Chandler	Peter Kinneen	S- 820416-027	JK-08/82	10,000.00	37.50
Douglas McBride	Carol Black	S- 820423-029	JL-08/82	4,290.00	234.50
James DeFrank	Nadene Thorne	S- 820517-034	KV-11/82	10,000.00	112.50
Marilyn Campbell	Nadene Thorne	S- 820607-038	KV-11/82	7,302.00	
Kenneth Ray	George Barth	S- 820609-039	EJ-08/82	1,000.00	
Harold Neese	John Gross	S- 820610-040	EJ-08/82	500.00	57.40
John Faulkner	Nadene Thorne	S- 820610-041	KV-08/82	10,000.00	
Barry Auf der Heide	Debbie Wise	S- 820629-047	KV-11/82	5,213.45	
James Welsch	Nadene Thorne	S- 820630-048	KV-11/82	10,000.00	
Teva Marrow	John Gross	S- 820610-050	Hearing	500.00	
Lowell Mueller	Jackie Dahl	S- 820708-051	JK-09/82	6,979.27	76.75
Virginia Giles	Nancy Richardson	S- 820721-056	BS-09/82	6,372.00	18.75
Joyce Eischen	Russell Briard	S- 820729-057	BS-09/82	5,000.00	
Patrick Stidmon	C Curly, Bogle, Gail	S- 820812-062	HG-10/82	1,000.00	352.97
Roy McFall	Willy Sherman	S- 820831-067	HG-10/82	10,000.00	109.85
William Mulnix	Tom Hoey	S- 821129-082	MB-01/83	1,000.00	
James Estes	Daniel Lankford	S- 821202-085	JL-01/83	9,640.00	37.50
Gary Vanderbrug	Tom Mungle	S- 821206-086	MB-01/83	5,000.00	

Malcolm Miner	Harold Johnsen	S- 821207-087	JL-01/83	10,000.00	
Stacey Lawrence	Carol Syzmanski	S- 821206-089	JL-01/83	1,000.00	
Margaret Cunningham	Andre Marrow	S- 821208-090	JL-01/83	1,000.00	
Peter Burton	Wayne Bass	S- 821208-091	JL-01/83	1,000.00	
John O. Elgee	Ben Hardwick	S- 821221-092	JL-01/83	1,510.90	
Karen Hodge	William Price	S- 821118-093	JL-01/83 (3)		300.00
Rasmus Anderson	Mary Peterson	S- 830112-003	KV-03/83	5,950.00	
Jesse Prince	L.A. Hansen	S- 830117-004	KV-03/83	8,730.00	
Rick McConnell	Pat Ramsey	S- 830117-006	KV-03/83	10,000.00	
Bryl Eddy	Barry Shennum	S- 830117-007	KV-03/83	5,000.00	
William Thompson	Karen Berg	S- 830127-008	KV-03/83	5,000.00	
Charles Lamb	Pat Stephans	S- 830204-012	TB-04/83	7,343.32	383.90
Raymond Aubin	Ike Prieto	S- 830222-020	TB-04/83	1,500.00	316.00
James Pearce	Linda Spencer	S- 830301-021	PW-10/83	800.00	
Alice Hunter	Joseph Jackson	S- 830301-022	PW-10/83	10,000.00	320.50
Robert Huppert	Neal Hausan	S- 830308-023	PW-10/83	10,000.00	
Elisabeth Vischer	Peter Kineen	S- 830308-024	JK-10/83	3,000.00	
Terry Madison	Daniel Twitchell	S- 830314-025	PW-10/83	10,000.00	
Douglas Rowe	Janice Brechan	S- 830314-026	PW-10/83	10,000.00	
LeRoy Mitchell	Gail Haunald	S- 830314-027	PW-10/83	10,000.00	
Johnnie Powell	Hal Bancroft	S- 830318-028	PW-10/83	7,250.00	548.90
Richard Richart	Michael Buss	S- 830412-031	JK-07/83		18.75
Susan Wade	Linda Smith	S- 830414-035	JK-07/83	10,000.00	
Joseph Wall	Don Girvan	S- 830506-041	DM-08/83		
Stanley David	Ken Calhoon	S- 830516-042	BS-09/83	500.00	
Erwin Davis	Karen Smithson	S- 830525-043	DM-08/83	1,583.79	
Elizabeth Lumpkin	Barb Bowden	S- 830525-044	BS-09/83	4,000.00	

John Nixon ...	Ben Waldrop	S- 830601-045	DM-08/83	4,053.86	
Delroy Keller	Patsy Daily	S- 830606-046	DM-08/83	5,000.00	
Jo Rhoades	Linda Boemmel	S- 830606-047	DM-08/83	1,000.00	
Doug Stark	Jim Thomas	S- 830610-048	DM-08/83	9,000.00	1
John Chya	Mary Peterson	S- 830615-049	BS-09/83		
Karen Brown	Mike Tapley	S- 830622-050	DM-08/83	4,000.00	
Pam Hennessey	Paul Wilson	S- 830623-051	BS-09/83	10,000.00	
Barbara Loomis	Dan Rodey	S- 830627-052	DM-08/83	1,000.00	
Robert Faro	Dan Canoy	S- 830629-053	DM-08/83	1,619.50	
Ron Romph	Louis Forstner	S- 830701-054	DM-08/83	5,610.00	
Bryan Horton	Barbara Bowden	S- 830705-055	DM-08/83	1,000.00	
Robert Ameen	Eugene Johnson	S- 830711-056	BS-09/83	10,000.00	
Carl Loschiavo	Robin Bernard	S- 830713-057	BS-09/83	3,500.00	
Marcia Freedman	Brooke Marston	S- 830713-058	BS-09/83	10,000.00	
Steve Bugni	Mary Peterson	S- 830721-059	BS-09/83	10,000.00	
Don Caswell	Phillis Goodman	S- 830721-060	BS-09/83	10,000.00	
William Pallis	Mary Osborn	S- 830801-061	BS-09/83	1,000.00	
D. W. Haas	Mary Buness	S- 830801-062	BS-09/83	1,860.00	
Dawian Kirlin	Michael Buss	S- 830405-063	BS-09/83	625.00	
Lowell Rudder	Max Bevins	S- 830804-064	EJ-10/83	2,500.00	
Suzanne Thompson	Alta Schmidt	S- 830805-065	EJ-10/83		
Glendon Hardman	Marty Margensen	S- 830805-066	EJ-10/83	10,000.00	
Leroy Phillips	Russell Briard	S- 830418-067	JK-10/83	10,000.00	
Franklin Price	Diane Christ	S- 830815-068	JS-09/83	4,000.00	
William Graves	Daniel Lankford	S- 830815-069	TB-09/83	5,000.00	
Suzanne Kincaid	Ken Calhoon	S- 830815-070	JS-09/83	10,000.00	
Roger Multvedt	Helen Morgan	S- 830815-071	JS-09/83	10,000.00	

Thomas Sparks	Ken Calhoon	S- 830818-072	JS-09/83	10,000.00
Marjorie Asiter	Henry Warren	S- 830822-073	JS-09/83	10,000.00
Koeta Imhof	Pat Kruger	S- 830823-074	JS-09/83	3,000.00
Daniel Sheehan	Mary Peterson	S- 830824-075	BS-09/83	5,000.00
Eve Lenfestey	Mickey Sleeper	S- 830825-076	JS-09/83	1,000.00
Mitko Dalkovski	Gail Glad	S- 830826-077	RH-09/83	10,000.00
Chris Monagle	Chris Foster	S- 830826-078	DP-09/83	2,000.00
Daniel Stevens	Bruce Pfau	S- 830816-079	JS-09/83	3,394.21
Carol Duncan	Ken Calhoon	S- 830829-080	JS-09/83	6,000.00
Scott Roland	John Gross	S- 830830-081	JS-09/83	500.00
Eldon Spradling	William Schlegal	S- 830830-082	JS-09/83	10,000.00
Robert Whisenlunt	Gary Munson	S- 830830-083	EJ-1283	
Kenneth Wert	Lola Pederson	S- 830908-083B	EJ-1283	
Thomas Ward	Harold Johnsen	S- 830914-084	EJ-1283	
Patrick Curron	Helen Buss	S- 830914-085	EJ-1283	3,000.00
William Berg	Earlene Hanifen	S- 830928-086	EJ-1283	500.00
Curtis Classon	Hal Hume	S- 830928-087	EJ-1283	3,000.00
James Smith	Gary Cotton	S- 830928-088	EJ-1283	
Sandra Vonda	Gloria Bondi	S- 831007-089	EJ-1283	8,780.00
Hoffman, Roslyn	Calhoon/Boudreaux	S- 831010-090	EJ-1283	1,000.00
Beach, David	Morgan/Burns/Burns	S- 831012-091A	EJ-1283	10,000.00
Ollestad, Onnalee	Palmer/Shennum	S- 831013-092	EJ-1283	1,000.00
Onstatt, Richard	Shennum/Bowden	S- 831013-093	EJ-1283	
Boots, Michael	Chasten/Wood	S- 831004-094	EJ-1283	2,750.00
Beach, David	Morgan/Burns	S- 831004-095B	EJ-1283	10,000.00
Grange, Ray B.	Morgan/Burns/Burns	S- 831017-096	EJ-1283	10,000.00
Chabernaude, Simone	Morgan/Burns	S- 831014-097C	EJ-1283	10,000.00

Nowak, Johannes	John Burns	S- 831019-098D	EJ-1283	10,000.00
Barbara Mauro	John Burns	S- 831020-099E	EJ-1283	10,000.00
Veda Bell	John Burns	S- 831020-100F	EJ-1283	10,000.00
Patrick Bell	John Burns	S- 831020-101G	EJ-1283	10,000.00
Mischler, Janet	Rochon/Taplin	S- 831104-103	HOR	30,000.00+
Maura, Barbara	Morgan/Burns/Burns	S- 831107-105	HOR	10,000.00
Meyer, Elida	Sullivan/Kruger	S- 831107-104	HOR	2,562.00+
Douville, Richard	Rhines, Esther	S- 831208-106A	HOR	500.00
Armstrong	Shennum/Williams	S- 831110-106B	HOR	2,332.00
Davids, Richard	George Barth, Sr	S- 831110-107	HOR	1,150.00
Nowak, Johanne	Morgan/Burns/Burns	S- 831114-108	HOR	5,500.00
Smith, James	Cotton/Lincoln	S- 831116-109	HOR	1,575.00+
Fejes, Claire	Cotton/Cotton/Calh	S- 831116-110	HOR	10,000.00
Knedlik, Stanley	Morgan/Burns	S- 831117-111	HOR	20,675.00
Mudzaid, Resad	Morgan/Burns/Weik	S- 831121-112	HOR	15,000.00
Graves, Wilford	Lankford/Dennis	S- 831122-113	HOR	6,000.00
Belander/Foster	Warner/Pace/Girvan	S- 831130-114	HOR	3,700.00
Watkins, Robert	Johnston, William	S- 831130-115	HOR	1,000.00
Bren, Kenneth	Fowler, Gary	S- 831208-116	HOR	1,232.08
Jones, Kendall	Padgett/Bowden	S- 831209-119	HOR	2,145.00
Morrell, Gary/Bev	Chasten, Clark	S- 831212-120	HOR	4,880.00+
Hadley, Judith	Gay, Don	S- 831216-121	HOR	10,000.00
Williford, Stephen	Bernard/Holliday	S- 831227-123	HOR	20,000.00
<hr/>				
Lentfer, Jack	Valkama, Ralph	S- 840105-001	HOR	3,200.00
Perry, Michael	Jones/Snowden	S- 840105-002	HOR	500.00
Murphy, John	Gaughan/Gaughan	S- 840105-003	HOR	1,000.00
Holderman, David	Jacobs/Coffey	S- 840105-004	HOR	1,000.00

Sparaga, John.	Lastufka/Houston	S- 840105-005	HOR	21,000.00
Smith, William	Priest, Jan	S- 840105-007	HOR	1,000.00
Halle, Louis	Hulce, Violet	S- 840105-008	HOR	10,000.00
Lawyers Title Ins.	Buss, Michael	S- 840105-009	HOR	10,000.00
Godfrey, John	Harold Johnsen	S- 840105-010	HOR	10,000.00
Chotiner, Andrew	Kinneen, Peter	S- 840105-011	HOR	10,000.00
Painter, Michael	Blanchard, Ralph	S- 840105-012	HOR	1,867.00
Burton, Mark	Grundeland, Roy	S- 840105-013	HOR	435.00
Engelke/Scaletta	Schoultz, Rita Jo	S- 840106-014	HOR	10,000.00
Mabey, Raymond	Lilliebjerg, J	S- 840106-015	HOR	10,000.00
Throne, Homer	Ward, Thomas	S- 840111-016	HOR	3,300.00
Michael/Black	Peterson, Mary	S- 840111-017	HOR	10,000.00
Williams, Gary	Divens/Thorson	S- 840117-019	HOR	10,000.00
Upton, Herbert	Palma, Vince	S- 840201-020	HOR	10,000.00
JRK Construction	Cullip, Dale	S- 840201-021	HOR	3,000.00
Dillion, Thomas	Yoshimura, Connie	S- 840201-022	HOR	10,000.00
Craig, Earl	Backus, Donna	S- 840201-025	HOR	605.00
Mullaly, William	Palmer, Lou	S- 840201-028	HOR	10,000.00
Hickle, James	Burns, Helen	S- 840201-029	HOR	10,000.00
Banning, Roger	Burns, John	S- 840210-030	HOR	8,405.00
Dorsher, Roseileen	DiBene, John	S- 840210-031	HOR	629.38
Thompson, Beverly	Augestad, Al	S- 840215-032	HOR	1,000.00
Mullaly, William	Lipson, Ann	S- 840215-033	HOR	4,925.00
Shelley, George	Kruger/Geraci	S- 840215-034	HOR	400.00

WITHDRAWN

Walter Green	Marlene Mungle	S- 810928-003	Withdrawn	917.74	
Rhonda Sleighter	Lars Ekstrand	S- 810200-012	Withdrawn	10,000.00	
James Cone	Walter Bolling	S- 810200-014	Withdrawn	10,000.00	
Lilly Lake	Jerry Woodworth	S- 810400-022	Withdrawn (3)		
Clyde Munn	Jim Ford	S- 810400-023	Withdrawn	10,000.00	
Frank Dahl	Richard Black	S- 810500-026	Withdrawn	10,000.00	
John Wreggit	Clark Chasten	S- 810600-030	Withdrawn	10,000.00	
Roberta Chevalier	Michael George	S- 811202-043	Withdrawn	10,000.00	
Brad Acord	Glen Wilcox	S- 811203-045	Withdrawn	10,000.00	
Lewis Olson	Matt Matthews	S- 811222-050	Withdrawn	631.50	
Lynn Wegener	Bob Conte	S- 820225-012	Withdrawn	99.13	
Leana Culley	Kurt Knecht	S- 820301-014	EJ-05/82	1,245.00	534.00
Maryalyce Sagen	James Arnold	S- 820414-026	Withdrawn	1,000.00	
Charles Wehner	Rita Jo Shoultz	S- 820426-030	Withdrawn	1,000.00	
Donald Sanders	Eleanor Parker	S- 820628-045	Withdrawn	500.00	
Neil Murakami	Nadene Thorne	S- 820712-052	BS-09/82	6,874.00	
Jerrold Larson	Mary Psenak	S- 820719-055	Withdrawn	429.00	56.82
Jean Case; M. Andrew	Bob Monson	S- 820805-061	Withdrawn	1,300.00	190.30
Michael Setzer	Everett Honegger	S- 820816-064	Withdrawn	6,062.88	273.95
John Whitford	Jack Daley	S- 820902-068	Withdrawn	1,000.00	114.00
Lavorne Brunson	Pat Craig	S- 821122-081	DIS-01/84	1,000.00	
Charles Biastoch	Mary Bunes	S- 821202-084	Withdrawn	819.00	
Stacey Lawrence	Bruce Crawford	S- 821208-088	Withdrawn	1,000.00	
Paul Swenning	Carl Wallace	S- 830103-002	KV-03/83	10,000.00	

Alaska USA FCU	Clark Chasten	S- 830208-015	Withdrawn	1,000.00	
Joyce Story	Virginia Kohfield	S- 830323-029	PW-11/83	10,000.00	
Noreeta Clark	Ann Lipson	S- 830419-036	JK-07/83	10,000.00	56.25
Griggs, Robert	Mack/Sleeper	S- 831020-102	HOR	10,000.00	

134,878.25## 1,225.32##

Total Undecided	901,657.39	58.2%
Paid, Unrecovered	124,974.24	8.1%
Paid, Recovered	29,025.00	1.9%
Approved/Unpaid	10,500.00	.7%
PD-Approved	18,012.00	1.2%
Denied	317,898.97	20.5%
PD-Denied	11,000.00	.7%
Withdrawn	134,878.25	8.7%
Appealed	<u>(10)</u>	<u> </u>
Total Decided	<u>646,288.46</u>	<u>41.8%</u>
Total Filed	<u>1,547,945.85</u>	<u>100.0%</u>

- | | Hearing Officers |
|---|--|
| (1) Properly completed form not yet received. | |
| (2) Awaiting clarification of claim by claimant. | T Beebe P Nash |
| (3) Amount not stated. | H Gazaway D Pope |
| (4) PD-Approved: Proposed Decision-Approved. | P Grant R Preston |
| (5) HOR: Hearing Officer requested. | R Holl B Sherman |
| (6) PD-Denied: Proposed Decision-Denied. | E Johnson J Stanley |
| (7) Appealed. | J Katz K Vasser |
| (8) The Mulholland case, S-122881-049, though appealed, was not stayed, so payment was made. The Appeals Court reversed the decision of the Commission, and the award is not recoverable. | J Lohff P Wilcox
D Maloney |
| (9) The undecided total is the sum of the cases with Hearing Officers requested and those with notes 1,2,3, and 5. | |
| (10) The Aguirre-Peterson case, S-811204-046, was paid. Though it has | |

Letters to the editor

Real estate sales legislation

Dear Editor:

As a former public member of the Alaska Real Estate Commission (1976-82), I am concerned about changes being proposed to the laws governing the Real Estate Surety Fund.

On April 3, the House Labor Committee held a teleconference hearing on HB-705, "an act relating to the real estate surety fund." This bill will make substantial changes to the process used to reimburse individuals who are damaged monetarily in a real estate sales transaction when a licensee is involved.

The bill will also change the law so that an individual will only be able to claim damages if the loss is due to intentional misrepresentation. At present the licensee is held responsible even if the misrepresentation is unintentional.

Also, an individual will have to get a judgment in court before a claim against the surety fund can be filed. At present an administrative hearing is required. These are major changes to the law that should have a great deal of public discussion before they are enacted.

I was surprised and then shocked by the action of the House Labor Committee on this bill. It was introduced by the committee on March 28. Eight days later the committee held a teleconference hearing and at the end of the hearing passed the bill from the committee. I understand that it was a unanimous do-pass by the members of the committee present.

Other than the testimony by Elizabeth Johnson, an attorney who has conducted many of the administrative hearings on surety fund claims, the most distinguishing feature of the hearing was what I would describe as the committee's lack of understanding of the bill. I think this will be supported by the report of the hearing if one is prepared.

During the hearing several of the committee members asked that those testifying provide them with written comments so that they could better under-

stand the relations between the comments and the bill. Their action in passing the bill out of the committee with a do-pass recommendation makes these requests ludicrous.

Why was the bill moved so fast? The following is my guess. The language in the bill was developed by the Alaska Association of Realtors. I understand that it was first presented to the state Real Estate Commission for consideration at its last meeting.

I was also told by a current public member on the commission that the commission decided to study the proposal and determine what action it would take on the proposal at the next meeting. This is not an unusual action for the commission.

The proposal next surfaced as HB-705 and a companion bill in the Senate. However before this happened the state Realtors association held its annual cocktail party for legislators in Juneau.

I have seen no problem with the Labor Committee's introduction of HB-705. I also see no problem with the legislators attending the Realtors' annual cocktail party. Realtors are constituents and deserve no less. However, I am shocked that a bill with such potential impact on the public would be moved from the committee with so little regard for public input.

The record will show that of the persons in attendance at the teleconference hearing (persons attended at Fairbanks, Homer and Anchorage), less than 10 per-

cent were not real estate licensees. The hearing was scheduled so fast that it was not even listed on the weekly list of hearings mailed out by the Legislative Affairs office.

Why is the association so interested in getting HB-705 passed? Testimony at the hearing indicated that they think that the surety fund is paying out too many claims under the present system. A comparison was made between the claims paid by the California fund and our fund to emphasize this. They feel that the hearing office is responsible for this.

This is also ludicrous since the hearing office presents findings to the commission (five real estate brokers and two public members) who can adopt, change or reject the findings. Also, so far less than 30 percent of the claims filed against the fund have been paid. The present process gets the job done in less than six months. If HB-705 passes the process will go back to the civil courts and have to compete with other matters on the court calendar.

These proposed changes have the potential of affecting every person who buys or sells real estate in Alaska. It should have much more public discussion. I would also suggest that it is important enough for the state real estate commission to hold a special meeting to hold a public hearing on the changes.

Frank Austin
3839 Apollo Drive

Quotes

"Even if sometimes peace-loving rhetoric is heard from Washington, it is impossible, however hard one tries, to discern behind it any whatsoever signs of readiness to back up these words with practical deeds. In other words, the introduction of new words does not mean a new policy."

— Soviet leader Konstantin J. Chernenko, in a statement in today's Pravda.

"An outstanding man in his time. He contributed tremendously to this state and the world."

— Former Idaho Gov. Cecil Andrus, speaking of former Sen. Frank Church, D-Idaho, who died Saturday.

Offered: 3/26/84
Referred: Labor & Commerce
and Finance

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2

HOUSE BILL NO. 705

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the real estate surety fund."

7

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

8

* Section 1. AS 08.88.455(a) is amended to read:

9

(a) A licensed real estate broker, [OR] associate broker, or

10

salesman when obtaining or renewing a real estate license, in lieu of

11

obtaining a corporate surety bond, shall pay to the commission in

12

addition to the license fee, a surety fund [BOND] fee not to exceed

13

\$125 [, AND A LICENSED SALESMAN, WHEN OBTAINING OR RENEWING A LICENSE,

14

IN LIEU OF OBTAINING A CORPORATE SURETY BOND, SHALL PAY TO THE COMMIS-

15

SION IN ADDITION TO THE LICENSE FEE, A BOND FEE NOT TO EXCEED \$40].

16

After the fund reaches \$250,000 the commission shall by regulation

17

adjust the bond fees so that, taking into account anticipated expendi-

18

tures for claims against the fund and real estate educational pur-

19

poses, the fund is maintained at a level not less than \$250,000.

20

* Sec. 2. AS 08.88.460 is repealed and reenacted to read:

21

Sec. 08.88.460. CLAIM FOR PAYMENT. (a) A person who obtains a

22

final judgment in a court of competent jurisdiction against a person

23

licensed under this chapter, based on fraud, deceit, intentional

24

misrepresentation, or conversion of trust funds directly arising from

25

a transaction for which the judgment debtor is required to be licensed

26

under this chapter, may file an application in the court that enters

27

the judgment for an order directing payment out of the real estate

28

surety fund of an amount equal to the actual loss in the transaction

29

up to \$10,000 of the amount unpaid on the judgment.

1 (b) If a judgment under (a) of this section is a small claims
2 judgment, the judgment creditor shall file the surety fund application
3 in the district court in which the judgment was entered. That court
4 shall then make written findings to determine whether or not the small
5 claims judgment is based on facts that support a recovery under this
6 section. On a favorable determination the court may enter an order
7 directing payment of the small claims judgment from the real estate
8 surety fund.

9 (c) A copy of the application required by this section shall be
10 served on the commission and the judgment debtor by the judgment
11 creditor and proof of service shall be filed with the court.

12 (d) This section does not authorize payment from the real estate
13 surety fund based on a transaction or event involving only innocent
14 misrepresentation on the part of a real estate licensee.

15 (e) An application for payment from the real estate surety fund
16 must be made within one year after the date that the judgment becomes
17 final.

18 * Sec. 3. AS 08.88.465 is repealed and reenacted to read:

19 Sec. 08.88.465. HEARING ON APPLICATION. (a) The court shall
20 conduct a hearing on an application filed under AS 08.88.460 within 30
21 days after service of the application on the commission. If the
22 commission petitions the court and shows good cause, the court may
23 continue the hearing.

24 (b) At a hearing conducted under this section the applicant is
25 required to show that the applicant

26 (1) is not the spouse of the judgment debtor, or the
27 personal representative or agent of the spouse of the debtor;

28 (2) has complied with the requirements of AS 08.88.450 -
29 08.88.500;

1 (3) has obtained a judgment under AS 08.88.460, stating the
2 amount of the judgment and the amount owed on the judgment on the date
3 of the hearing;

4 (4) has made a reasonable attempt to determine whether or
5 not the judgment debtor has assets that may be used to satisfy the
6 judgment;

7 (5) has either been unable to locate assets of the judgment
8 debtor that may be used to satisfy the judgment, or has located assets
9 and has taken the necessary action to apply the assets to the
10 judgment, but the amount realized is not sufficient to satisfy the
11 judgment, stating the amount realized and the outstanding balance on
12 the judgment; and

13 (6) has diligently pursued other remedies against the
14 judgment debtor and anyone else who is liable in the transaction for
15 which recovery from the real estate surety fund is sought.

16 * Sec. 4. AS 08.88.470 is repealed and reenacted to read:

17 Sec. 08.88.470. FINDINGS OF THE COURT AND ADDITIONAL PROOF. (a)
18 When a court considers an application under AS 08.88.460 it may not
19 order payment out of the real estate surety fund unless a determina-
20 tion is made that the applicant has a valid claim under AS 08.88.460
21 and has complied with AS 08.88.465(b).

22 (b) If the judgment in favor of the applicant was obtained by
23 default, stipulation, or consent, or if the action was defended by a
24 trustee in bankruptcy, the applicant shall produce sufficient evidence
25 in the hearing on the application to prove that the cause of action
26 against the licensee was for fraud, intentional misrepresentation,
27 deceit, or conversion of trust funds.

28 * Sec. 5. AS 08.88 is amended by adding a new section to read:

29 Sec. 08.88.471. MOTION TO DISMISS APPLICATION. The commission

1 may move the court to dismiss the application if it appears that the
2 petition is without merit. A motion made under this subsection may be
3 supported by affidavits. The commission shall give written notice to
4 the applicant at least 10 days before a hearing on a motion made under
5 this section.

6 * Sec. 6. AS 08.88 is amended by adding new sections to read:

7 Sec. 08.88.473. ORDER DIRECTING PAYMENT OUT OF FUND. If a court
8 finds after the hearing required by AS 08.88.465 that the real estate
9 surety fund should pay the claim, it shall enter an order directing
10 the commission to pay the claim from the real estate surety fund
11 subject to the limitations contained in AS 08.88.450 - 08.88.500.

12 Sec. 08.88.474. PRORATION OF AWARD. If a judgment under AS 08.-
13 88.460 is against more than one person licensed under this chapter and
14 the court does not prorate the judgment among the judgment debtors,
15 the commission shall prorate the award among the judgment debtors.

16 * Sec. 7. AS 08.88.475(b) is repealed and reenacted to read:

17 (b) The liability of the real estate surety fund does not exceed
18 \$10,000 for one transaction, regardless of the number of persons
19 injured, the number of licensees involved, or the number of parcels of
20 real estate involved in the transaction.

21 * Sec. 8. AS 08.88.490 is amended to read:

22 Sec. 08.88.490. RIGHT TO SUBROGATION. When the commission has
23 paid a judgment creditor [TO A CLAIMANT] from the real estate surety
24 fund [THE SUM AWARDED BY THE COMMISSION,] the commission shall be
25 subrogated to all of the rights of the judgment creditor [CLAIMANT] to
26 the amount paid and the judgment creditor [CLAIMANT] shall assign all
27 right, title and interest in that portion of the judgment [CLAIM] to
28 the commission. Amounts subsequently realized by the commission on
29 the judgment [CLAIM] shall be deposited to the real estate surety

1 fund.

2 * Sec. 9. AS 08.88.495 is repealed and reenacted to read:

3 Sec. 08.88.495. DISCIPLINARY ACTION AGAINST BROKERS AND SALES-
4 MEN. The provisions of AS 08.88.450 - 08.88.500 do not limit the
5 authority of the commission to take disciplinary action against a
6 licensee for a violation of the provisions of this chapter or of a
7 regulation adopted by the commission. Repayment in full of all obli-
8 gations to the real estate surety fund does not nullify or modify the
9 effect of a disciplinary proceeding brought under the provisions of
10 this chapter.

11 * Sec. 10. AS 08.88.500 is amended to read:

12 Sec. 08.88.500. DEFINITIONS [DEFINITION]. In this chapter,

13 (1) "commission" means the Real Estate Commission estab-
14 lished under this chapter;

15 (2) "final judgment" means a judgment that is not subject
16 to further judicial review.

17 * Sec. 11. AS 08.88.472 is repealed.