

S

B

5

/

4

FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 696
 Title: "...married persons' rights in a family home."
 Sponsor: House Rules/Code Rev. Comm.
 Requestor: House Judiciary
 Date of Request: 3/13/84

FISCAL DETAIL

Agency Affected: Department of Law
 Program Category Affected: General Government
 Program or Subprogram(s) Affected: Legal Services Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard T. Pogues, Director Phone: 465-3672
 Division: Administrative Services Division Date: 3-13-84
 Approved by Commissioner: Richard A. Pogues/rik
Norman C. Gorsuch Date: 3-13-84
 Agency: Department of Law

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

Fiscal Note
Analysis
HB 696

March 13, 1984

This bill was requested by the Code Revision Commission to remove certain anachronisms and would repeal certain statutory provisions that cause uncertainty in titles to Alaska real property. The protections afforded a widow by the right of dower are now afforded by various options under the Uniform Probate Code, as are the protections afforded a widower under the related "curtesy" right. This bill would repeal some of the protections once afforded a married person under common law dower and curtesy. Because the bill only deals with private property rights, it will not have a fiscal impact on state government operations.

HOUSE AND SENATE JOINT
JOURNAL SUPPLEMENT

March 1, 1984

No. 21

ALASKA CODE REVISION COMMISSION



COMMISSIONERS
JOHN W. ABBOTT - CHAIRMAN
JAMES L. BALDWIN - VICE CHAIRMAN
PATRICK J. RODEY
CHARLIE RUSSELL
L. S. KURTZ, JR.
JUDGE (RET.) THOMAS B. STEWART
FREDERIC E. BROWN

ALASKA STATE LEGISLATURE
POUCH V - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4878

EXECUTIVE SECRETARY
BILLY G. BERRIER

March 1, 1984

Senator Bill Ray, Chairman
Alaska Legislative Council
Pouch V, State Capitol
Juneau, Alaska 99811

- RE: (1) a bill relating to principal and income of trusts; (HB 693/SB 511)
(2) a bill relating to administration of decedents' estates; (HB 694/SB 512)
(3) a bill relating to renunciation of rights in decedents' estates; (HB 695/SB 513)
(4) a bill relating to married persons' rights in a family home; and (HB 696/SB 514)
(5) a bill relating to the uniform disposition of certain property rights at death. (HB 697/SB 515)

Dear Senator Ray:

Pursuant to AS 24.20, the Alaska Code Revision Commission has prepared the enclosed bills and respectfully asks that they be introduced in the legislature.

They are technical bills the commission has been working on with the probate committee of the Alaska Bar Association. They relate generally to rights at death and to property arrangements that usually have their inception in death.

At its last meeting, the Legislative Council agreed to introduce the bills.

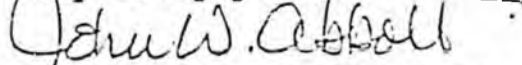
One of the bills, the bill on disposition of certain property rights at death, was previously in the legislature but received little notice. It is revived at the request of the probate committee of the Alaska Bar Association, and that

Page 2

committee has advised the commission that it will actively support the bill.

A commentary on each bill is enclosed.

Very truly yours,



John W. Abbott, Chairman
Alaska Code Revision Commission

JWA:chw

Enclosures

cc: Hon. Bill Sheffield
Hon. Edmond W. Burke, Chief Justice
Myrton R. Charney, Executive Director
Legislative Affairs Agency

-- COVERS IDENTICAL BILLS: HB 696 & SB 514 --

ALASKA CODE REVISION COMMISSION
COMMENTARY TO ACCOMPANY BILL RELATING TO
MARRIED PERSONS' RIGHTS IN A FAMILY HOME

This bill would remove certain anachronisms and would repeal certain statutory provisions that cause uncertainty in titles to Alaska real property. The principal provisions to be repealed are AS 34.15.010(b), (c) and (d), subsections that deal with conveyances of "the family home or homestead".

The other two sections to be repealed by the bill deal with dower, a common law concept that has not been recognized in Alaska in its pure form since 1900 (Bechtol v. Bechtol, 2 Alaska 397 (1905)). Its altered, statutory form was removed from Alaska law in 1963 (sec. 30, ch. 38, SLA 1963). The protections once afforded a widow by the right of dower are now afforded by various options under the Uniform Probate Code adopted in Alaska in 1972, as are the protections afforded a widower under the related "curtesy" right. The official comment to the Uniform Probate Code includes:

"The provisions of this Code replace the common law concepts of dower and curtesy and their statutory counterparts."

The main subjects of this bill, AS 34.15.010(b), (c) and (d), are subsections enacted over a period of time, apparently in a patchwork effort to approach some of the protections once afforded a married person under common law dower and curtesy.

Common law dower was a life estate given a widow in one-third of the lands her husband owned at any time during the marriage. Her husband could not transfer away her right. But Alaska's statutory dower only applied to real property owned by the husband at the husband's death. Common law curtesy was similar to dower but was a right given a husband in lands of his wife. In its statutory form (sec. 482, Compiled Laws of Alaska 1913, since repealed) it applied only to lands owned by the wife at the wife's death.

To compensate for the lesser protection afforded in the statutory forms of dower and curtesy, the legislature required the signature of both spouses on every deed to "a family home or homestead" (ch. 107, SLA 1933; now AS 34.15.010(b)).

Unless both spouses' names appear on the title

documents, a purchaser down the chain of title usually will have no way of knowing whether a predecessor was married and usually will have no way of knowing whether real property was a married couple's "home or homestead". Therefore, the 1953 legislature (ch. 145, SLA 1953) engrafted further provisions on the statute in an effort to clear titles clouded by what now is AS 34.15.010(b).

The confused and contradictory state of these subsections of AS 34.15.010 can best be shown by setting them out in full:

(b) In a deed or conveyance of the family home or homestead by a married man or a married woman, the husband and wife shall join in the deed or conveyance.

(c) The requirement that a spouse of a married person join in a deed or conveyance of the family home or homestead does not create a proprietary right, title or interest in the spouse not otherwise vested in the spouse.

(d) Failure of the spouse to join in the deed or conveyance does not affect the validity of the deed or conveyance, unless the spouse appears on the title. The deed or conveyance is sufficient in law to convey the legal title to the premises described in it from the grantor to the grantee when the deed or conveyance is otherwise sufficient, and (1) no suit is filed in a court of record in the judicial district in which the land is located within one year from the date of recording of the deed or conveyance by the spouse who failed to join in the deed or conveyance to have the deed or conveyance set aside, altered, changed, or reformed, or (2) the spouse whose interest in the property is affected does not file, within one year in the office of the recorder for the recording district where the property is situated, a notice of his interest in the property.

Inconsistencies in the subsections make them extremely difficult to interpret. All that is clear is that there are title problems whenever only one person is record owner of real property, and that person conveys an interest in the property by a document that does not show whether he or she is a single person. At best, the title is clouded during the year of limbo provided under AS 34.15.010(c) and (d).

By proposing this bill, the code revision commission is suggesting (1) that any worthwhile purpose there may be in retaining AS 34.15.010(b), (c) and (d) in the law is far outweighed by the uncertainty in land titles the subsections cause, and (2) that the options afforded a married person under the Uniform Probate Code provide adequate protection.

AS 09.45.480(a)(1) relates to determining value of an "estate in dower". AS 09.45.720 relates to "actions to recover possession by a tenant in dower". The sections should be repealed because the dower right no longer exists in Alaska, as noted above.

ALASKA CODE REVISION COMMISSION



COMMISSIONERS
JOHN W. ABBOT - CHAIRMAN
JAMES L. BALDWIN - VICE CHAIRMAN
PATRICK M. RODEY
CHARLIE BUSSELL
L.S. KURTZ, JR.
JUDGE (Ret.) THOMAS B. STEWART
FREDERIC E. BROWN
MARY A. NORDALE

ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4878
OFFICE LOCATION:
ROOMS 5 AND 8
110 SEWARD ST.
JUNEAU, ALASKA 99801

EXECUTIVE SECRETARY
TAMARA BRANDT COOK

MEMORANDUM

TO: Representative Charlie Bussell, Chairman
House Judiciary Committee

FROM: Dick Regan, Research Director
Alaska Code Revision Commission

DATE: April 30, 1984

RE: SB 514 on married persons' rights in a
family home (identical to HB 696)

As you know SB 514 which passed the Senate and was referred to House Judiciary today is an identical bill to HB 696 which was passed out of the House Judiciary Committee on April 4, 1984. I trust it can go through House Judiciary promptly (or that the referral can be waived).

SB 514 passed the Senate with no dissenting vote. However, I thought there should be more background on the bill in the hands of Senator Fritz Pettyjohn who was scheduled to carry the bill on the floor, so I prepared a memorandum on the policy reasoning that went into the bill. It is enclosed.

Also enclosed is a miniature summary of the bill in case you would like to have it in hand when the bill comes up in the House.

DR:chw

Attachments: 1. Miniature summary
2. Memorandum to Sen. Pettyjohn dated 4/27/84

HB 514 ON
MARRIED PERSONS' RIGHTS IN A FAMILY HOME

Alaska's statutory form of dower, the right of a widow to use real property owned by her husband at the time of his death, was removed from state law in 1963. Compensating rights are in our Uniform Probate Code.

This bill repeals procedural sections that are based on the dower right that no longer exists in Alaska law.

One of the repealers concerns the names of husband and wife on conveyances. Repeal is desirable because (1) the remedy for failure to comply with the statute is based upon the dower right and therefore is obsolete and unusable; and (2) the section creates clouds on title to property that it was never intended to affect.

ALASKA CODE REVISION COMMISSION



COMMISSIONERS
JOHN W. ABBOT - CHAIRMAN
JAMES L. BALDWIN - VICE CHAIRMAN
PATRICK M. RODEY
CHARLIE BUSSELL
L.S. KURTZ, JR.
JUDGE (Ret.) THOMAS B. STEWART
FREDERIC E. BROWN
MARY A. NORDALE

ALASKA STATE LEGISLATURE
POUCH 1 Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4878
OFFICE LOCATION:
ROOMS 5 AND 8
110 SEWARD ST.
JUNEAU, ALASKA 99801

EXECUTIVE SECRETARY
TAMARA BRANDT COOK

MEMORANDUM

TO: Senator Fritz Pettyjohn
Alaska State Legislature

FROM: Dick Regan, Research Director *Dick Regan*
Alaska Code Revision Commission

DATE: April 27, 1984

RE: SB 514 on married persons' rights in
a family home

I see ~~SB~~ 514 is scheduled for second reading in the Senate today.

House and Senate Joint Journal Supplement No. 21, dated March 1, 1984, explains the bill. A copy is attached.

In Senate HESS Senator Josephson raised some questions about repeal of AS 34.15.010(b), (c) and (d). I leave to your discretion whether, after reading this further discussion of the bill, you wish to pass a copy on to Senator Josephson. Perhaps it would answer his questions.

~~SB~~ 514 was developed by the code revision commission with representatives of the bar's probate committee. It originated with a request from the Attorney General's representative on the commission.

The journal supplement explains the background of the bill. Here I set out more on the pro and con practical questions that come up in deciding whether AS 34.15.010(b), (c) and (d) should be repealed. In committee hearings we pointed out that repeal of AS 34.15.010(b), (c) and (d) involves a policy choice. In the Judiciary Committee the legal flaws in (b), (c) and (d) were discussed, but we did not dwell on policy. This, therefore, can supplement that discussion.

The subsections cause clouds on title to vacant land, business property and residential property that has never been the home of the owner or the owner's spouse. They cause clouds on title transferred by persons who have never been married but neglect to provide on their deeds that they are single persons.

The problem is that the documents in the recorder's office don't show much. A property description on a conveyance looks the same whether property is an ancestral home or a gas station.

Title to most family homes of married persons has been transferred to them as tenants by the entirety. Their names appear on the conveyance. AS 34.15.010(b), (c) and (d) have no meaning for tenants by the entirety. Whether or not (b), (c) and (d) are repealed, when persons are named in the conveyance by which they receive title, the same persons will have to sign any document that transfers an interest in the property (a deed, mortgage, lease, option, etc.).

AS 34.15.010(b), (c) and (d) must be read together. In spite of confusing language, it is clear that a spouse who did not join in a conveyance of the family home is given apparent remedies in (d) that must be employed within one year after the conveyance. No one the code revision commission could locate had seen anyone even try to use the remedies since dower was removed from Alaska law in 1963. The commission believes there is no longer a legal basis for either of the remedies in (d). Since dower and curtesy rights no longer exist in Alaska, we know of no clear interest that could be claimed in a suit filed under (d)(1) or that could be claimed in an affidavit under (d)(2).

Even though the remedies in (d) probably have no life as remedies, they do have a continuing effect: Title companies will not certify clear title during the year in which there is a remote possibility that a conveyance could be defeated under (d).

The result is that financing or resale of property is delayed or stopped when only one name is on a conveyance as grantor, unless the conveyance shows on its face that the grantor is a single person. (The term "grantor" is used here to include the person who is selling, mortgaging, lease, contracting to sell, or giving an option or any other interest in real property.)

Because the title company's report will list an exception to clear title, the parties involved must find the original grantor to get a corrected conveyance showing on its face that the grantor is single, or, if the grantor is married, getting the other spouse included in the conveyance.

There may be times when the statute causes second thoughts by the grantor and when it has a desirable effect of permitting each spouse to stop a transaction that affects the family home. This, even though the legal remedies in the statute are obsolete and unworkable.

Most of the time, though, when the statute comes into play it is only an impediment to legitimate transactions. It can defeat a transaction because of the delay it causes, or it can block development of land that has been purchased because the original grantor cannot be located or is reluctant to sign more papers to correct title defects. It can be used as a basis for harassment when husband and wife are feuding or separated and the property involved has never been a family home. And it can be an annoyance in the relatively common situation where one party to a marriage owns a home before the marriage, and the parties wish the marriage to have no effect on that ownership.

On balance, the code revision commission saw many reasons for repealing the subsections and few for retaining them, especially since the remedy for violation of the subsections is now no more than a fiction.

DR:chw

Attachment