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514

FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: SB 514  
 Title: "...married persons' rights in a family home."  
 Sponsor: Sen. Rules, Code Rev. Comm.  
 Requestor: Sen. 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)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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 I. Pegues Phone: 465-3672  
 Division: Administrative Services Division Date: 3-13-84  
 Approved by Commissioner: Richard I. Pegues/for 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)

12/1/83

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.

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

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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 The principal provisions to be repealed are AS 34.15.010(b), (c) and (d), subsections that deal with conveyances of "the family home or homestead".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

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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

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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

SB 511-575



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EXECUTIVE SECRETARY  
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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;  
(2) a bill relating to administration of decedents' estates;  
(3) a bill relating to renunciation of rights in decedents' estates;  
(4) a bill relating to married persons' rights in a family home; and  
(5) a bill relating to the uniform disposition of certain property rights at death

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



erty in question is admitted by the parties or ascertained by the court to be existing at the time of the order of sale, and the person entitled to that estate is a party to the action, the estate may be first set off out of a part of the property and a sale made of that part, subject to the unsold estate of that tenant in that part. But, if in the judgment of the court a due regard to the interest of all the parties requires the sale of that estate also, the sale may be ordered. (§ 22.20 ch 101 SLA 1962)

**Sec. 09.45.460. Compensation for sale of estate for life or years.** A person entitled to an estate for life or years in an undivided part of the property, whose estate has been sold, is entitled to receive a sum as reasonable satisfaction for the estate, the sum being based on principles of law applicable to annuities. The person so entitled shall consent to accept the sum for his estate by an instrument duly acknowledged or proved in the same manner as deeds for the purpose of record and filed with the clerk of court. (§ 22.21 ch 101 SLA 1962)

**Sec. 09.45.470. Determination of value of estate for life or years sold without consent.** If the consent is not given as provided in § 460 of this chapter, before the report of sale, the court shall determine what proportion of the proceeds of the sale, after deducting expenses, is a just and reasonable sum to be invested for the benefit of the person entitled to the estate for life or years, and shall order the sum to be deposited in court for investment. (§ 22.22 ch 101 SLA 1962)

**Sec. 09.45.480. Rules for determining value.** (a) The proportion of the proceeds of the sale to be invested as provided in § 470 of this chapter shall be determined as follows.

(1) If an estate in dower is included in the order of sale, its proportion shall be one-third of the proceeds of the sale of the property, or of the sale of the undivided share in the property on which the claim of dower existed.

(2) If an estate for life or years be included in the order of sale, its proportion shall be the whole proceeds of the sale of the property, or of the sale of the undivided share in which that estate may be.

(b) In all cases, the proportion of the expenses of the proceeding shall be deducted from the proceeds of the sale. (§ 22.23 ch 101 SLA 1962)

**Sec. 09.45.490. Protection of unknown tenants.** If the persons entitled to the estate for life or years are unknown, the court shall provide for the protection of their rights in a similar manner, as far as possible, as if they were known and had appeared. (§ 22.24 ch 101 SLA 1962)

judgment and granting him a new trial upon the payment of the costs of the action. (§ 25.08 ch 101 SLA 1962)

Sec. 09.45.710. Possession when new trial granted. If the judgment is set aside and a new trial granted as provided in § 700 of this chapter, after the plaintiff has taken possession of the property, he shall remain in possession. But if judgment is given for the defendant in the new trial, the defendant is entitled to restitution by execution as if he were plaintiff. (§ 25.09 ch 101 SLA 1962)

Sec. 09.45.720. Actions to recover possession by tenant in dower. In an action to recover the possession of real property by a tenant in dower or his successor in interest, execution on the judgment may not issue until admeasurement of dower. If the dower has not been admeasured before the commencement of the action, the dower may be admeasured after entry of the judgment, as follows.

(1) Upon motion of either party, the court shall conduct proceedings to admeasure the dower out of the real property recovered in the action in the manner provided in actions for partition unless it appears probable that a partition of the property would prejudice the interests of the other owners. If the court finds that a partition would prejudice the interests of the other owners, it shall deny the motion. The plaintiff shall then proceed for partition or sale of the real property by independent action in the manner provided in actions for partition.

(2) At any time after the confirmation of the report of the referees, the plaintiff may have execution for the delivery of the possession of the property according to the admeasurement and for the damages recovered. (§ 25.10 ch 101 SLA 1962)

Article 7. Trespass.

Section

730. Trespass by cutting or injuring trees or shrubs

Sec. 09.45.730. Trespass by cutting or injuring trees or shrubs. A person who cuts down, girdles, or otherwise injures or carries off a tree, timber, or shrub on the land of another person or on the street or highway in front of a person's house, or of a village, town, or city lot, or cultivated grounds, or on the commons or public grounds of a village, town, or city, or on the street or highway in front of them, without lawful authority, is liable to the owner of that land, or to the village, town, or city for treble the amount of damages which may be assessed in a civil action. However, if the trespass was casual or involuntary, or the defendant had probable cause to believe that the land on which the trespass was committed was his own or that of the person in whose service or by whose direction the act was done, or where the timber was taken from unenclosed woodland for the purpose of repairing a pub-

Title 9  
Code of Civil Procedure

and deliver a quitclaim deed to the former owner of the property. (§ 4 ch 17 SLA 1957; am § 2 ch 179 SLA 1959)

**Sec. 34.10.220. Repurchase by record owner or assigns.** (a) The record owner at the time of the entry of the order of foreclosure or his assigns may, at any time before sale of the foreclosed property by the state, repurchase the property and the property shall be resold by the state to the former record owner, or his assigns, for the full amount applicable to the property under the judgment and decree, with interest at the rate of eight per cent a year from the date of entry of the judgment and decree of foreclosure to the date of repurchase, together with other charges imposed on the property.

(b) No right of repurchase attaches to property, after the termination of the redemption period, which has been sold by the state or which is held by the state for and devoted to a public purpose authorized by law and upon which improvements have been constructed in accordance with the public purpose. (§ 5 ch 17 SLA 1957; added by § 4 ch 179 SLA 1959)

**Sec. 34.10.230. Definitions.** In this chapter (1) "department" means the Department of Natural Resources;

(2) "real property" includes patented land and other land in which the owner has a fee simple title. (§ 7 ch 135 SLA 1955)

**Sec. 34.10.240. Short title.** This chapter may be cited as the Land Registration Law. (§ 1 ch 134 SLA 1953)

## Chapter 15. Conveyances.

### Article

1. Form and Effect (§§ 34.15.010 — 34.15.140)
2. Acknowledgment and Proof (§§ 34.15.150 — 34.15.250)
3. Recording (§§ 34.15.260 — 34.15.350)

### Article 1. Form and Effect.

Section	Section
10. Manner of executing conveyances	90. Covenant not implied in mortgage
20. [Repealed]	100. Conveyance of lands held adversely
30. Form of warranty deed	110. Conveyances construed as creating tenancy in common
40. Form of quitclaim deed	120. Remedy of tenant in common
50. Effect of quitclaim	130. Joint tenancy abolished
60. Passage of fee	140. Tenancy by the entirety
70. Passage of grantor's entire estate	
80. Covenants not implied	

**Sec. 34.15.010. Manner of executing conveyances.** (a) A conveyance of land, or of an estate or interest in land, may be made by deed, signed and sealed by the person from whom the estate or interest is intended to pass, who is of lawful age, or by his lawful agent or attorney, and acknowledged or proved, and recorded as directed in this chapter, without any other act or ceremony whatever.

Title 31  
Oil and Gas

Title 32  
Partnership

Title 33  
Probation, Prisons,  
and Prisoners

Title 34  
Suzerainty, Harbors  
and Islands

Title 34  
Property

(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. (§ 22-3-1 ACLA 1949; am § 1 ch 145 SLA 1953)

This section authorizes the conveyance of land without recitation or proof of consideration. *Halleck v. Halleck*, 216 Ore. 23, 337 P.2d 330 (1959), construing the Oregon statute.

**Construction of deeds.** — A deed must be construed according to its legal construction, effect, and operation apparent on its face, or with the aid of any such evidence as is admissible by the rules of law to explain it. *Valdez Bank v. Von Gunther*, 3 Alaska 657 (1909).

**And reformation thereof.** — Courts of equity will reform deeds made to carry into effect contracts and agreements, according to their original intentions, notwithstanding any defect in the execution of the instrument adopted. *Valdez Bank v. Von Gunther*, 3 Alaska 657 (1909).

**Conveyance may be valid between parties without being properly executed and recorded.** — An instrument in writing, signed by the parties, may serve as one step in the conveyance of real estate, although it is neither witnessed, acknowledged, or recorded. Such an instrument, containing apt words to convey, when made, signed, and delivered to the grantee, and followed by acts constituting estoppel, becomes sufficient, as between grantor and grantee, to convey the legal title. *Morency v. Floyd*, 2 Alaska 194 (1904).

As between the parties themselves, a conveyance is good without record.

*Wooldridge v. Williams*, 5 Alaska 149 (1914).

As to validity of conveyances without two witnesses, see AS 34.15.150. As to validity of unrecorded instruments, see AS 34.15.290. — Ed. Note.

**Or may be treated as contract to convey.** — A document purporting to be a deed conveying land, unwitnessed and unrecorded, is ineffective as a conveyance under this section and AS 34.15.150, although it is valid as a contract to convey. *Whitehead v. Foxlund*, 13 Alaska 726, 105 F. Supp. 966 (D. Alas. 1952).

**But action may not be maintained on defectively executed lease.** — Where a statute requires a lease for a term of years to be under seal, witnessed, acknowledged, or recorded, to be valid, an action of covenant, on a lease not executed with these formalities, cannot be maintained, though the lessees enter under the lease. *Rolando v. Zesch*, 7 Alaska 437 (1926).

**A homestead interest under this section is not a restriction on alienation and only as it regards rights to occupancy will it be treated as such.** *Spracher v. Spracher*, 17 Alaska 698 (1958).

**It is only a right to occupancy.** — The homestead right was created to protect the family from total loss of its abode due to judgments and executions on unsatisfied debts. It was not enacted, as this section clearly states, to create any new right, title or interest other than the right of occupancy in property used as a

Public Buildings, Works,  
and Improvements

Title 35  
Public Contracts

Title 37  
Public Finance