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Asper
5/24/84 ✓

Considered ~~to~~ later
amended in
cmte

Original sponsor: Labor and Commerce
Committee

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE HOUSE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 705 (L&C)

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 08.88.450 is amended to read:

9 Sec. 08.88.450. REAL ESTATE SURETY FUND. The real estate surety
10 fund is established [THERE IS CREATED A SPECIAL ACCOUNT] in the gener-
11 al fund [KNOWN AS THE REAL ESTATE SURETY FUND] to carry out the pur-
12 poses of AS 08.88.450 - 08.88.500. The fund is [SHALL BE] composed of
13 payments made by licensed real estate brokers and salesmen under
14 AS 08.88.455 and filing fees retained in accordance with AS 08.88.460.
15 The fund may not exceed \$500,000 and amounts in the fund in excess of
16 \$250,000 may be appropriated for real estate educational purposes as
17 provided in AS 08.88.091.

18 * Sec. 2. AS 08.88.455(a) is amended to read:

19 (a) A licensed real estate broker, [OR] associate broker, or
20 salesman when obtaining or renewing a real estate license, in lieu of
21 obtaining a corporate surety bond, shall pay to the commission in
22 addition to the license fee, a surety fund [BOND] fee not to exceed
23 \$125 [, AND A LICENSED SALESMAN, WHEN OBTAINING OR RENEWING A LICENSE,
24 IN LIEU OF OBTAINING A CORPORATE SURETY BOND, SHALL PAY TO THE COMMIS-
25 SION IN ADDITION TO THE LICENSE FEE, A BOND FEE NOT TO EXCEED \$40].
26 After the fund reaches \$250,000 the commission shall by regulation
27 adjust the surety fund [BOND] fees so that, taking into account anti-
28 cipated expenditures for claims against the fund and real estate
29 educational purposes, the fund is maintained at a level not less than

1 \$250,000.

2 * Sec. 3. AS 08.88.460 is amended by adding new subsections to read:

3 (c) Within seven days after receipt of notice of a claim under
4 (b) of this section the real estate broker, associate real estate
5 broker, or real estate salesman against whom the claim is made may
6 elect to defend the claim as a small claims action in district court
7 under District Court Civil Rules 8 - 22, if the claim does not exceed
8 the small claims jurisdictional limit. An election to defend a claim
9 in district court under the small claims rules may not be revoked by
10 the broker, associate broker, or salesman without the consent of the
11 claimant. Upon receipt of a valid written election under this subsec-
12 tion the commission shall dismiss the claim filed with the commission
13 and notify the claimant that the claim must be brought as a small
14 claims action in the appropriate state court.

15 (d) A claimant under this section shall pay a filing fee of \$250
16 to the commission at the time the claim is filed. The filing fee
17 shall be refunded only if the commission makes an award to the claim-
18 ant from the real estate surety fund, or if the claim is dismissed
19 under (c) of this section.

20 * Sec. 4. AS 08.88.465 is amended by adding a new subsection to read:

21 (f) The provisions of this section do not apply to a claim that
22 is dismissed under AS 08.88.460(c).

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

24 Sec. 08.88.474. PAYMENT OF SMALL CLAIMS JUDGMENT. If a claim
25 originally filed with the commission is dismissed and is heard as a
26 small claims action under AS 08.88.460(c) and the claimant prevails in
27 the small claims action against the real estate broker, associate real
28 estate broker, or salesman, the commission shall make an award from
29 the fund of any outstanding portion of the small claims judgment on

1 receipt of a copy of the final judgment and an affidavit from the
2 claimant stating that more than 30 days have elapsed since the judg-
3 ment became final and that the broker, associate broker, or salesman
4 has not satisfied the judgment during that time. After payment of a
5 small claims judgment the commission is subrogated to the claimant's
6 rights in the judgment under AS 08.88.490.
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9 When an award is made
10 under —
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STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No. SCSCSHB 705 (L&C)
Title: Real Estate Surety Fund

Sponsor: Senate L & C
Requestor: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.

Program Category Affected: _____
Consumer Protection

BRU Program or Subprogram(s) Affected: _____
Real Estate Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES			(20.0)	(20.0)	(22.0)	(24.0)
200 TRAVEL			(1.0)	(1.0)	(1.5)	(1.5)
300 CONTRACTUAL			(.2)	(.2)	(.3)	(.3)
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING			(21.2)	(21.2)	(23.8)	(25.8)

CAPITAL						
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REVENUE		10.0	10.0	10.0	10.0	10.0
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To Surety Fund

FUNDING: (Thousands of Dollars)

GENERAL FUND			(21.2)	(21.2)	(23.8)	(25.8)
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: James L. Magowan
Division: Real Estate Commission

Phone: 563-2169

Date: _____

Approved by Commissioner: Richard A. Lyon
Agency: Department of Commerce and Economic Development

Date: 5-24-84

Distribution (by Agency preparing fiscal note):

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

12/1/83

HOUSE JOURNAL SUPPLEMENT

April 25, 1984

No. 134

FISCAL NOTE

Revision Date:

Page 1 of 4

REQUEST
 Bill/Resolution No CSHB 716 (L&C)
 Title: An Act relating to the
Board of Pharmacy; & providing for
 Sponsor: Labor & Commerce Committee
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL
 Agency Affected: Commerce & Economic Dev.
 Program Category Affected: Public Protection
 an effective date _____
 BRU, Program or Subprogram(s) Affected: _____
Division of Occupational Licensing

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		46.5	49.8	53.3	57.0	61.0
200 TRAVEL		51.6	55.2	59.0	63.2	67.6
300 CONTRACTUAL		28.0	30.0	32.0	34.3	36.7
400 SUPPLIES		1.2	1.3	1.4	1.5	1.6
500 EQUIPMENT		4.2				
600 LAND & STRUCTURES		2.6	3.9	4.1	4.4	4.7
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		135.1	110.2	149.8	160.4	171.6
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		135.1	110.2	149.8	160.4	171.5
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Jennifer Strickler, Management Analyst Phone: 465-2144
 Division: Occupational Licensing Date: 4/17/84

Approved by Commissioner: Richard A. Lyon Date: 4/23/84
 Agency: Commerce & Economic Development

HB
716

CSHB 716 (L&C)

Page 2 of 4

(NOTE: 7% inflation factor projected for FY '86 through
FY '89 for operating costs)100 PERSONAL SERVICES:

1 Executive Secretary, Range 18A PX, 12 months to be located in Anchorage	46,519.88
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200 TRAVEL:

Executive Secretary	3 board meetings (2 days ea. @ \$80 per day/ per diem = \$160 x 3)	\$480.00
	Transportation - 3 board mtgs @ \$400 ea.	1,200.00

Note: There are 119 licensed pharmacies which require inspections. Assuming the Executive Secretary will be located in the Anchorage area, the following does not include the 41 pharmacies in the Anchorage area. These consist of 32 Retail, 2 Wholesale, 6 Hospital Pharmacies, and 1 Nursing Home Drug Room pharmacy.

Transportation for Inspections not in the Anchorage area, at \$400 ea. x 78	31,200.00
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Per Diem for Inspections not in the Anchorage area, at \$80 per day x 3 days ea. x 78	18,720.00
	<u>\$51,600.00</u>

300 CONTRACTUAL:

Postage, telephone, printing, publication and operating costs:	\$2,000.00
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(With the authority to investigate violations, the
following will apply:)

Legal fees: Estimated 2 investigations annually will result in disciplinary proceedings: Fees cover all costs including hearing officer fees, court costs, court recorder costs, appeals cost, witness fees, and all other related costs; (Estimated each hearing process cost is \$10,000.00 x 2)	20,000.00
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Executive Secretary leased vehicle, dry w/maintenance:

Anchorage: 1 vehicle @ \$410.00 per month x 12 months	4,920.00
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Fuel: 1 leased vehicle @ est. \$87.50 per month x 12 months	1,050.00
	<u>\$27,970.00</u>

HB
716400 COMMODITIES: CSHB 716 (L&C)

Stationery, typewriter ribbons, pens, pencils, tablets, and other miscellaneous desk top supplies	1,200.00
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500 EQUIPMENT: (one time costs only)

1 desk, double pedestal, 60" x 30" @ 568.22 ea.	568.22
1 chair, executive swivel, with arms @ \$313.30	313.30
1 typewriter, IBM correcting Selectric with dual pitch, 15.5 inch paper capacity @ \$1,369.36 ea.	1,369.36
1 typewriter table @ \$135.65 ea.	135.65
1 chair, side without arms, contour style @ \$114.60 ea.	114.60
1 recording machine, portable, Lanier @ \$775.87 ea.	775.87
1 bookcase with 3 adjustable shelves @ \$164.69 ea.	164.69
1 file cabinet, 5 drawer, legal w/lock @ \$406.91 ea.	406.91
1 calculators, desk, printing and display, 12-digit, @ \$364.66 ea.	364.66
	\$4,213.26

600 LAND & STRUCTURES:

150 sq. ft. @ \$2.00 per ft. per mo. x 12 mos.	\$3,600.00
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TOTAL OPERATING COSTS: \$135,103.14

1.	POSITION TITLE Executive Secretary			RANGE/STEP 10A	DEPT. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PX	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	HRP PRIORITY	LOCATION EBA	ELECTION DISTRICT ALL	LEG.	
3.	CONTINUATION LEVEL			ADDITION	JUSTIFICATION				
4.	TYPE OF EXPENDITURE			As requested by the House Labor & Commerce Committee in House Bill 716.					
	1	2	3						
	PERSONAL SERVICES								
5.	Salary	35.8							
6.	Benefits	5.8							
7.	Supplemental Benefits	2.2							
8.	Fixed Benefits	2.7							
9.	TOTAL PERSONAL SERVICES	01	46.5						
10.	Travel	02	51.6						
11.	Contractual	03	28.0						
12.	Commodities	04	1.2						
13.	Equipment	05	4.2						
14.	Other		3.6						
15.	TOTAL COST		135.1						
	RECEIPT CODE	FUNDING SOURCE							
16.		Federal Receipts 1002							
17.		G.F. Match 1003							
18.		General Funds 1004		135.1					
19.		I-A Receipts 1005							
20.		Program Receipts 1020							
21.		Other							
FOR B&M USE ONLY 4A KEY NUMBER _____									

-4-

13 REQUEST FOR
NEW POSITION

AGENCY Department of Commerce and Economic Development
 PROGRAM Public Protection CSHB 716 (L&C)
 GRU Occupational Licensing
 COMPONENT _____

Page 4 of 4
Revised Date _____

FY 85

Draft SCS CSHB 705 (L&C): "An Act relating to the real estate surety fund."

The Real Estate Commission and the Department of Commerce and Economic Development support the proposed changes to HB 705. Additional comments on the filing fee and the small claims procedure follow.

1. Filing fee:

The commission has advocated and requested that a filing fee be charged to file a claim against the surety fund. The commission, therefore, strongly supports this amendment.

2. Small Claims Procedure Option:

The commission urges that the bill make one further provision. Whether a claim is paid upon a small claim judgment or a hearing officer decision, the award should also be against the licensee or licensees and not just the fund. In the case of a claim paid on a hearing officer's decision, the bill should read: "If the respondent licensee does not pay the claim within _____ days, the claimant will be paid from the surety fund."

In cases in which a claim is paid by the fund, suggested language is as follows:

"When a claim is paid by the fund and the licensee does not appeal the claim within the allowable time, upon application by the commission, the Superior/District Court shall order summary judgment against the licensee for the amount paid by the fund. If the amount of the judgment is not paid within _____ days, the court shall, upon request by the commission, issue a Writ of Execution against the judgment debtor licensee."

Without something of this nature, the commission is in the position of having to spend a great deal of additional resources going through a lawsuit to recover awards paid out. The commission does not have the funding to do this and the licensee may avoid repayment.

In any case, since there is a right of appeal of a decision, if a licensee does not appeal or loses an appeal, it is costly and redundant to require another "trial" in order for the fund to recover from the licensee.

The idea that some licensees might be getting a "free ride" on the fund because the commission is unable to recover amounts paid out was one of the major items with which licensees expressed dissatisfaction at the hearing on HB 705 held by the commission. This would correct the problem.

The commission also strongly supports retaining the surety fee limit change which is in HB 705.

← This is included in CS

What this is intended to do is make the limit on both salesperson and broker surety fees the same. This will enable the commission to charge the same fee for all licensees. The reasons for this are:

1. Experience has demonstrated no actual justification for differential fees. To be fair, the fees should be equal.
2. Charging and collecting different fees is more costly in administrative work involved and leads to more errors and delays in issuing licenses. The change would lessen the administrative cost per licensee of collecting fees and issuing licenses.
3. This is not a measure to increase revenue. Current revenues are quite adequate. The fund now stands at over \$600,000. The commission will establish a fee that will bring in about the same amount as is currently being collected. The actual fee for 1986-87 is estimated to be about \$80 per licensee if the change in limit is passed.

It appears that there was a widespread misunderstanding that this change was needed to fund excessive draws on the fund. It is purely an administrative cost cutting measure.



Richard A. Lyon, Commissioner

Date: 5-24-84

RAL/wfs0008W
52484a

MEMORANDUM

State of Alaska

TO: Dick Monkman
Assistant Attorney General
Dept. of Law

DATE: March 9, 1984

FILE NO:

TELEPHONE NO:

FROM: James L. Magowan
Executive Director
Alaska Real Estate Commission

SUBJECT: Re: Attached White Paper
from Alaska Association
of Realtors

The attached "White Paper" has been presented to the Commission. The Alaska Association of Realtors favors immediate action to implement the recommendations of this paper and it has asked the Commission to join the Association in supporting inclusion of these provisions.

The Commission did not act to do this because it wanted to get more information before acting. The first action by the Commission is to request your comment and input on the recommendations of the Association.

JLM/cw/0702C9

RECEIVED
Department of Law

MAR 12 1984

Office of the Attorney General
Anchorage Branch
Anchorage, Alaska

White Paper

To: Alaska Real Estate Commission
From: Alaska Association of REALTORS
Date: March 5, 1984

This is Part 1 of the industry response to the request from the Commission at their January 1984 meeting for recommendation of needed changes in the relevant statutes, regulations and operating procedures. It addresses only the Surety Fund, and is drafted so that pages 1-11 may be lifted for use by the Commission and Association in approaching the legislature. Pages 12 & 13 are recommended as a briefing and instruction sheet for hearing officers of surety fund claims under the existing statute and regulations.

The remainder of the real estate statute and corresponding regulations will be reviewed and subsequent parts of this white paper will detail to the Commission

- 1) the content recommendations
- 2) the rationale for the recommendations
- 3) the suggested action to accomplish, i.e. propose a statute change, amend the regulations, or adopt an operating procedure.

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 & 08.38.281, .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 seeking 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.

Means to Achieve

The following is proposed to be introduced as an amendment to HB 389.

Add a Section 11: Article 5 (AS 08.88.450-500) is amended so that in its entirety it would read:

Sec. 08.88.450 Real estate surety fund. There is created a special account in the general fund known as the real estate surety fund to carry out the purposes of this chapter. The fund shall be composed of payments made by licensed real estate brokers and salesmen under AS 08.88.455. The fund may not exceed \$500,000 and amounts in the fund in excess of \$250,000 may be appropriated for real estate educational purposes as provided in AS 08.88.091. (1 ch 148 SLA 1974, am 34 ch 167 SLA 1980; AS 45.85.010)

NO CHANGE

AS 08.88.455 Payments by real estate brokers and salesmen.

(a) A licensed real estate broker, associate broker, or salesman when obtaining or renewing a real estate license, in lieu of obtaining a corporate surety bond, shall pay to the commission in addition to the license fee, a Surety Fund fee not to exceed \$125. After the fund reaches \$250,000, the commission shall by regulation adjust the bond fees so that, taking into account anticipated expenditures for claims against the fund and real estate educational purposes, the fund is maintained at a level not less than \$250,000.

Already in CSHB389 for equalization of fee structure.

(b) All fees collected under this section shall be paid at least once a month by the commission into the general fund. These payments shall be credited to the real estate surety fund. (1 ch 143 SLA 1974; am 35 ch 167 SLA 1980; AS 45.85.020)

AS 08.88.460 Claim for payment.

(a) When any aggrieved person obtains a final judgment in any court of competent jurisdiction against any person or persons licensed under AS 08.88, under grounds of fraud, deceit, intentional misrepresentation or conversion of trust funds, arising directly out of any transaction when the judgment debtor was licensed and performed acts for which a licensee is required under AS 08.88, the aggrieved person may, upon the judgment becoming final, file a verified application in the court in which the judgment was entered for an order directing payment out of the Real Estate Surety Fund of the amount of actual and direct loss in the transaction up to the sum of ten thousand dollars (\$10,000) of the amount unpaid upon the judgment.

In the case of a small claims court judgment, the aggrieved person shall file the verified application in the district court in which the judgment was entered in favor of the aggrieved person. The court shall then make a determination as to whether the small claims court judgment was based on facts constituting grounds for recovery under this section and may enter an order directing payment of the small claims court judgment out of the Real Estate Surety Fund.

A copy of the verified application shall be served upon the commission and the judgment debtor and a certificate or affidavit of that service filed with the court.

(b) Nothing in this section shall be interpreted to authorize payment from the Real Estate Surety Fund for transactions or events which solely involves innocent misrepresentation on the part of a real estate licensee.

(c) Application for payment from the fund shall be made within one year from the date that the judgment becomes final.

AS 08.88.465 Time for action by court on application for payment: required showing of person aggrieved.

NEW
(a) The court shall conduct a hearing upon such application 30 days after service of the application upon the commission. Upon petition by the commission and showing of good cause, the court may continue the hearing for such further period as it deems appropriate. At the hearing, the aggrieved person shall be required to show that:

- (1) he is not a spouse of the debtor, or the personal representative of such spouse.
- (2) he has complied with all requirements of this article.
- (3) he has obtained a judgment as set out in AS 08.88.460, stating the amount thereof and the amount owing thereon at the date of the application.

(4) he has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets, liable to be sold or applied in satisfaction of the judgment.

(5) he has discovered no personal or real property or other assets liable to be sold or applied, or that he has discovered certain of them owned by the judgment debtor and liable to be so applied, and that he has taken all necessary action and proceedings for the realization thereof, and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment.

(6) he has diligently pursued his remedies against all the judgment debtors and all other persons liable to him in the transaction for which he seeks recovery from the Real Estate Surety Fund.

(7) he is making said application no more than one year after the judgment becomes final.

AS 08.88.470 Order of Court; grounds; defense of actions; burden of proof; presumption; dismissals; compromise of claims.

(a) Whenever the court proceeds upon an application as set forth in AS 08.88.465 it shall order payment out of the Real Estate Surety Fund only upon a determination that the aggrieved party has a valid cause of action within the purview of AS 08.88.460 and has complied with the provisions of AS 08.88.465.

If the judgment in favor of the applicant was by default, stipulation, or consent, or if the action against the licensee was defended by a trustee in bankruptcy, the applicant shall have the burden of proving that the cause of action against the licensee was for fraud, intentional misrepresentation, deceit, or conversion of trust funds. Otherwise the judgment shall create a rebuttable presumption of the fraud, intentional misrepresentation, deceit, or conversion of trust funds by the licensee, which presumption shall affect the burden of producing evidence.

The commission may move the court at any time to dismiss the application when it appears there are no triable issues and the petition is without merit. The motion may be supported by affidavit of any person or persons having knowledge of the facts, and may be made on the basis that the petition, and the judgment referred to therein, does not form the basis for a meritorious recovery claim within the purview of AS 08.88.460; provided, however, that the commission shall give written notice at least 10 days before such motion.

AS 08.88.471 Defense of actions: conclusive adjudications of issues.

(a) If the judgment is found against more than one individual licensed under AS 08.88 for performance of acts for which a license is required under that chapter, it shall be the responsibility of the commission, in the absence of proration by the court, to prorate the award charges among the said judgment debtors.

NEW

AS 08.88.477 Order directing payment out of fund: limitation of liability.

NEW

If the court finds after the hearing that the claim should be levied against the Real Estate Surety Fund, the court shall enter an order directed to the commission requiring payment from the Real Estate Surety Fund of the amount payable upon the claim pursuant to the provisions of and in accordance with the limitations contained in this chapter.

Notwithstanding any other provisions of this chapter, the liability of the Real Estate Surety Fund for the purposes of this chapter shall not exceed ten thousand dollars (\$10,000) for any one transaction for which the cause of action occurred, regardless of the number of persons injured, the number of licensees involved, or the number of parcels of real estate involved in the transaction.

NO CHANGE

Sec. 08.99.475 Maximum liability. (a) The maximum liability of the real estate surety fund does not exceed \$50,000 for any one broker or salesman.

NO CHANGE

Sec. 08.88.480. Order of claim payment If the money deposited in the real estate surety fund is insufficient at a given time to satisfy a duly authorized claim against the fund, the commission shall, when sufficient money has been deposited in the fund and appropriated, satisfy unpaid claims in the order that the claims were originally filed, plus accumulated interest at the rate of eight percent a year. (1 ch 143 SLA 1974; am ch 167 SLA 1980; AS 45.85.070)

AS 08.88.490. Right to Subrogation.

Substantive
Change

When upon the order of the court, the commission has paid from the Real Estate Surety Fund any sum to the judgment creditor, the commission shall be subrogated to all of the right of the judgment creditor and the judgment creditor shall assign all his right, title and interest in the judgment to the commission. Any amount and interest recovered by the commission on the judgment shall be deposited in the Real Estate Surety Fund.

AS 08.88.495. Disciplinary action against brokers and salesmen.

Nothing contained herein shall limit the authority of the commission to take disciplinary action against any licensee for a violation of any of the provisions of AS 08.88 or the regulations promulgated by the commission. The repayment in full of all obligations to the Real Estate Surety Fund by any licensee does not nullify or modify the effect of disciplinary proceeding brought under the provisions of AS 08.88.

NO CHANGE

Sec. 08.88.500. Definition. In this chapter a commission means the Real Estate Commission established under this chapter. (40 ch 167 SLA 1980; AS 45.85.120)

NEW

(a) "final judgment" means a judgment not subject to further judicial review.

Observations of Julian Mason:

1. At such time as the first version of suggested changes may be enacted by the legislature, the commission as a matter of housekeeping should rescind the Surety Fund regulations which would no longer be relevant.
2. To my knowledge, no other regulatory body in the state can award damages to a third party without a jury trial. They can fine and/or assess losers to pay attorney fees.
3. Small claims court defendants can opt for district court in order to have a jury trial.

Recommended Hearing Officer Briefing and Instructions

The 1974 legislations which provided for the creation of a surety fund, starting with fees collected in the 1976 license renewal cycle, was the culmination of joint efforts of the commission and the industry to more adequately protect the public from illegal actions of licensees. Its intended purpose was two-fold:

(1) to provide indemnification up to \$10,000/transaction and \$50,000/Licensee 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.

When the 1980 amendments to the statute removed the necessity of a court judgment to access the fund, it shifted the responsibility for providing a fair and impartial hearing and a decision based on facts to our arena. It is this hearing, held in accordance with the Administrative Procedures Act, and a proposed decision with its accompanying rationale that we, the Alaska Real Estate Commission, require of you.

It is worthy of note that most states which have similar recovery funds provide some means of attempting to collect from the wrongdoer-licensee prior to considering a claim against their respective funds. Other provisions common to many states require proof of fraud, intentional misrepresentation, or intentional improper actions; most states do not support collection based on negligence, and this commission has reservations about awards based on reasons other than intentional misrepresentation.

It is the policy of this commission to stay proceedings pursuant to AS 08.88.465 (a) when a court action is pending.

When writing your findings on an assigned case, please use the following format for submitting the proposed decision to the commission.

1. Case file number
2. Identity of Claimant and Respondent
3. Summary paragraph which includes:
 - a) claimant's requested amount
 - b) respondent licensee's alleged violation, i.e. fraud, deceit, misrepresentation, or conversion of trust funds.
 - c) Dates--of the transaction, of the claim, and of the hearing
4. Any other pertinent introductory material should be in a second paragraph.
5. Findings of fact elicited in the hearing.
6. Conclusions of law with rationale and case precedent as needed.
7. Recommendation:
 - a) to pay in total
 - b) to pay in part
 - c) to deny payment
8. If more than one licensee is named as respondent and payment is recommended, specify which licensee(s) were actually guilty of the fraud, deceit, misrepresentation, or conversion of trust funds.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

April 24, 1984

James L. Magowan, Executive Director
Alaska Real Estate Commission
3601 C Street Suite 722
Frontier Building
Anchorage, AK 99503

Re: Alaska Association of Realtors
"White Paper" on the surety
fund

Dear Mr. Magowan:

At your request on behalf of the Real Estate Commission, we have reviewed the White Paper dated March 5, 1984, by the Alaska Association of Realtors pertaining to the real estate surety fund. Some of the comments and concepts advanced by the Alaska Association of Realtors in the White Paper are now embodied in proposals before the 13th Legislature, specifically HB 705 and SB 537.

The current real estate surety fund claims program as outlined in AS 08.88.450 et seq. has benefited hundreds of Alaskan consumers and real estate professionals since it was enacted in 1980. The program has provided a swift, inexpensive, and fair method of resolving many real estate sales disputes. It has allowed hundreds of consumers to bring their grievances before a qualified, impartial tribunal without the frustration, delay and high cost of going to court. In our view, the program has given a measure of protection to consumers while providing real estate professionals with a full and fair opportunity to contest the merits of any claim made against the surety fund. The existing surety fund has done much to enhance the public trust and confidence in the real estate profession in general, a goal we support and encourage.

To be sure, the surety program could be improved in some respects. I agree with the point made by the Alaska Association of Realtors that some means must be found to reduce frivolous claims against the surety fund. It is my belief that frivolous claims can be essentially halted by imposing a significant

James L. Magowan, Executive Director
Alaska Real Estate Commission

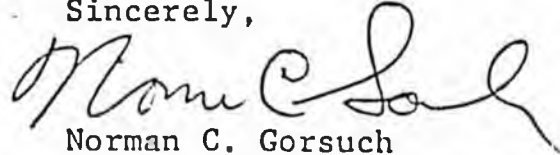
April 24, 1984
Page 2

filing fee, perhaps up to \$150, to be paid by each claimant prior to processing a claim against the surety fund. If the claimant does not prevail, then the filing fee would be lost. Such a filing fee would most likely chill frivolous claims without unnecessarily impeding valid claims made against the fund.

I recognize that this is a policy call rather than a legal determination. I would therefore simply urge the commission to carefully weigh the effects of the approach taken in the White Paper and by the two pending bills and carefully consider their effects on both the real estate consumers and on the real estate profession. As a general rule, I am not enamored with placing more disputes in our already overworked judicial system. Of course, any aggrieved party from a real estate surety fund proceeding does and ought to have the ability to appeal the findings and award to a superior court.

If we can be of additional assistance to the commission concerning any aspect of the surety fund, please contact us.

Sincerely,



Norman C. Gorsuch
Attorney General

NCG:eer

cc: The Honorable Dick Elaison ✓
Senator

The Honorable Jalmar Kerttula
President of the Senate

The Honorable Joe Hayes
Speaker of the House

Ray Gillespie
Special Staff Assistant
to the Governor

The Honorable Dick Lyon, Commissioner
Department of Commerce and Economic Development

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE SUPREME COURT OF THE STATE OF ALASKA

STATE OF ALASKA, REAL ESTATE)	
COMMISSION,)	
)	
Appellant,)	File No. 7826
)	
v.)	<u>O P I N I O N</u>
)	
MYRNA JOHNSTON and EVA LOKEN,)	
)	
Appellees.)	[No. 2825 - May 4, 1984]
)	

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Milton Souter, Judge.

Appearances: Richard D. Monkman, Assistant Attorney General, Anchorage, Norman C. Gorsuch, Attorney General, Juneau, for Appellant. W. Richard Fossey, Bankston & McCollum, Anchorage, and Peggy Alayne Roston, Anchorage, for Appellees. Lewis Gordon, Baily & Mason, Anchorage, for Alaska Association of Realtors, Amicus Curiae.

Before: Burke, Chief Justice, Rabinowitz, Compton and Moore, Justices. [Matthews, Justice, not participating]

PER CURIAM.

Supreme Court decision re: surety fund

This appeal presents a first impression question as to the scope and applicability of Alaska's Real Estate Surety Fund.¹ The issue raised is one of statutory construction, namely, whether the Real Estate Surety Fund provides recovery to claimants who, in the context of real estate transactions, suffer losses due to innocent misrepresentations made by real estate brokers or agents.

I. FACTS

Newly arrived in Alaska the Mulhollands sought to purchase a home and contacted Eva Loken, a sales person with Area Realtors. In August of 1981, Loken showed the Mulhollands Larry Gross' home located near Eagle River. The following day the Mulhollands made an offer on the house to which the owner counter-offered. On August 10, 1981, the parties entered into an earnest money agreement and the Mulhollands tendered one thousand dollars in earnest money to Loken.

Subsequent to the initial earnest money agreement the Mulhollands contemplated rescinding on the purchase agreement and signing an earnest money agreement on another home; they were distraught over what they perceived as

1. AS 08.88.450-500.

apparent misrepresentations made by Loken concerning mid-winter sunlight and driveway accessibility. Eventually, after discussions with Loken and Myrna Johnston, an associate broker with Area Realtors, the Mulhollands decided to go through with the deal and they signed an extension to the earnest money agreement.

On October 14, 1981, the Mulhollands were asked to accept an "as-built" survey of the property; however, because the survey failed to depict the driveway the Mulhollands refused to sign or accept the survey. Johnston ordered an updated survey. The updated survey revealed that the driveway encroached upon neighboring land to the extent of ten feet by thirty feet.

Having contacted the seller, Larry Cross, to discuss alternative solutions to the encroachment problem, Johnston informed Loken, who in turn contacted the Mulhollands. During the phone conversation between Loken and the Mulhollands a meeting was arranged for October 23, 1981 -- the day the earnest money agreement expired.

At the October 23rd meeting between the Mulhollands and Johnston, the Mulhollands terminated the transaction and signed a rescission agreement which provided that the earnest money would be returned. Johnston, however, on the advice of Area Realtors' attorney, never executed the rescission agreement; the Area Realtors'

attorney felt that the encroachment was a curable defect which did not render title to the property unmarketable.

In December 1981, the Mulhollands filed a claim with the Real Estate Commission for the reimbursement of their earnest money deposit. Thereafter, a Real Estate Commission hearing examiner conducted a hearing on the Mulhollands' reimbursement claim. The hearing examiner concluded that Loken and Johnston had innocently misrepresented the boundaries of the Gross property. The misrepresentation of fact, according to the hearing officer's finding, "consisted of the implied assertion that the driveway was included in the boundaries of the Gross property." Concluding that the Real Estate Surety Fund provided recovery for innocent misrepresentations of this nature the hearing officer recommended that the Fund reimburse the Mulhollands' earnest money deposit.

The Real Estate Commission adopted the recommended decision and awarded the Mulhollands the equivalent of their earnest money deposit. The Commission's decision was then appealed to the superior court. The superior court reversed the award, holding that the Surety Fund did not provide recovery for innocent misrepresentation. The State of Alaska Real Estate Commission now brings this appeal.

II. THE REAL ESTATE SURETY FUND DOES NOT PROVIDE REIMBURSEMENT TO CLAIMANTS FOR INNOCENT MISREPRESENTATIONS MADE BY MEMBERS OF THE REAL ESTATE PROFESSION.

As indicated at the outset, the principal issue presented in this appeal is whether the Real Estate Surety Fund is obligated to reimburse claimants for innocent misrepresentations made by members of the real estate profession. In relevant part AS 08.88.460(a) provides as follows:

Claim for payment. (a) A person seeking reimbursement for a loss suffered in a transaction as a result of fraud, misrepresentation, deceit, or the conversion of trust funds on the part of a real estate broker . . . shall make a claim to the commission for reimbursement. . . . 2/

2. The full text of AS 08.88.460(a) and (b) reads as follows:

(a) A person seeking reimbursement for a loss suffered in a transaction as a result of fraud, misrepresentation, deceit, or the conversion of trust funds on the part of a real estate broker, associate real estate broker, or real estate salesman licensed under this chapter shall make a claim to the commission for reimbursement on a form furnished by the commission. The form shall be executed under penalty of perjury, and information required to be supplied shall include the following:

(1) the name and address of the real estate broker, associate real estate broker, or real estate salesman;

(2) the amount of the alleged loss;

(footnote continued)

The superior court concluded that "misrepresentation" as used in AS 08.88.460(a) was intended to encompass only intentional wrongdoing, not innocent or negligent wrongdoing. More particularly the superior court reasoned as follows:

I think the term misconduct as used in Section (b) of the statute implies intentional-type wrongdoing, not negligent or innocent wrongdoing. And I think the statute's use of the phrase fraud, deceit, misrepresentation or conversion, particularly with the term misrepresentation coming sandwiched between fraud and deceit and coming as it does amidst a group of intentional-type wrongdoings, coupled with the presence of the word misconduct in subsection (b), all indicate that the proper construction of this statute lies in construing it as including among its terms only intentional-type wrongdoing, not innocent or negligent but

(footnote continued)

(3) the date or period of time during which the alleged loss occurred;

(4) the date upon which the alleged loss was discovered;

(5) the name and address of the claimant; or [sic?]

(6) the general statement of facts relative to the claimant.

(b) A copy of a claim filed with the commission under (a) of this section shall be sent to the real estate broker, associate real estate broker, or real estate salesman alleged to have committed the misconduct resulting in losses, as well as a real estate broker employing an associate real estate broker or real estate salesman alleged to have committed the conduct resulting in losses, at least 20 days before any hearing held on the claim by the commission.

nonreckless wrongdoing. And I think that that's squarely in line with the comments of the chairman of the commerce committee. Furthermore, it seems to me that with a real estate fund limited by law to only \$500,000.00, if we're going to open the flood gates to innocent and negligent misrepresentation claims being made against this fund, there very likely soon wouldn't be any fund to collect for dishonest-type actions on the part of the real estate profession. So I'm going to reverse the real estate commission and award judgment in this case in favor of the appellants.

In our view, the superior court correctly analyzed the question, and thus we affirm the superior court's construction of AS 08.88.460.³

Prior to the establishment of the Real Estate Surety Fund in 1974, real estate brokers were required to obtain a real estate bond. This corporate bond was made payable to the state and was breached if the licensee injured another by a wrongful act or default in the conduct of the business for which the license was issued. In 1974 the legislature created the Real Estate Surety Fund. AS 45.85.010. [§ 1 Ch. 143 SLA 1974] As originally enacted the Real Estate Surety Fund functioned similarly to the surety bond requirement. In relevant part the Surety Fund

3. The applicable standard of review here is one of independent judgment. *Wien Air Alaska, Inc. v. Dept. of Revenue*, 647 P.2d 1087, 1090 (Alaska 1982).

Act provided that a licensed real estate broker when obtaining or receiving a real estate license, in lieu of obtaining a corporate surety bond, had to pay a bond fee to the commissioner. [AS 45.85.020(a)] Recovery from the newly established surety fund was conditioned upon the claimant first obtaining "a final judgment in a court against a real estate broker" If judgment was not satisfied within thirty days from the court order, the claimant could apply for a post-judgment order directing payment out of the Real Estate Surety Fund.

In 1980 the Real Estate Surety Fund Act was amended, providing for a simpler recovery process. [AS 08.88.450 - .500] The 1980 amendment obviated the requirement that the claimant first obtain a civil judgment before filing a claim for reimbursement; instead, the Real Estate Commission was remolded to function in a quasi-judicial role, adjudicating the merits of Surety Fund claims in administrative hearings. [§ 34-36 Ch. 167 SLA 1980] Procedures governing the Real Estate Commission's administration of Surety Fund claims are provided for in 12 AAC 64.280-.330.

As the superior court correctly emphasized, nothing in the historical development of the Real Estate Surety Fund directly indicates legislative intent as to the scope of the Fund's coverage. Given this background, we

think a textual analysis of AS 08.88.460 is controlling.⁴ The apposition of the term "misrepresentation" to the terms "fraud," "deceit," and "conversion" persuades us that misrepresentation should be limited to only wrongful misrepresentations. A widely applied tenet of statutory interpretation is that if "the legislative intent or general meaning of a statute is not clear, the meaning of doubtful words may be determined by reference to their association with other associated words and phrases." 2A C. Sands, Sutherland Statutory Construction, § 47.16 at 101 (4th ed. 1973); in accord: United States v. Raynor, 302 U.S. 540, 82 L.Ed. 413 (1938); State v. Taylor, 425 P.2d 1014, 1021 (Hawaii 1967); Heathman v. Giles, 374 P.2d 839, 840 (Utah 1962). Similarly: Matter of Hutchinson's Estate, 577 P.2d 1074, 1075 (Alaska 1977) (all sections are to be construed together so that all have meaning and no section conflicts with another); City of Anchorage v. Scavenius, 539 P.2d 1169, 1174 (Alaska 1975) (each part of a statute should be construed with every other part or section so as to produce a harmonious whole).

4. In State v. Alex, 646 P.2d 203, 209 n.4 (Alaska 1982), we held that the plainer the statute's language, the more convincing contrary legislative history must be. See also City of Homer v. Gangl, 650 P.2d 396, 400 n.4 (Alaska 1982); see gen. North Slope Borough v. Sohio (footnote continued)

In short, we hold that innocent misrepresentations are not within the ambit of the term "misrepresentation" as that term is employed in AS 08.88.460(a). In reaching this conclusion we have carefully considered each of the state's arguments pertaining to legislative history, policy considerations, and textual analysis and have found none of them persuasive.⁵ Thus we affirm the superior court's construction of AS 08.88.460(a) and (b).⁶

AFFIRMED.

(footnote continued)

Petroleum Corp., 585 P.2d 534, 540 (Alaska 1978) (where we first adopted this sliding scale approach).

5. We think it appropriate to further note that when the Surety Fund was first established in 1974 and amended in 1980, Alaska did not recognize a cause of action for innocent misrepresentation. In *Bevins v. Ballard*, 655 P.2d 757 (Alaska 1982), this court first recognized a cause of action against a real estate broker for innocent misrepresentation.

6. The amicus has attempted to raise the question of whether on this record any innocent misrepresentation was made. In the procedural context of this case this issue is not properly before us and thus will not be addressed.

HB 705

SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL 705 (L & C) IS A COMPROMISE BILL WHICH ADDRESSES MANY CONCERNS EXPRESSED BY ALASKA REALTORS WHILE NOT JEOPARDIZING THE PUBLIC INTEREST. UNDER THIS LEGISLATION, IF A CLAIM IS FILED WITH THE ALASKA REAL ESTATE COMMISSION AGAINST A REALTOR, THE REAL ESTATE AGENT CAN ELECT TO DEFEND THE CLAIM AS A SMALL CLAIMS ACTION IF THE CLAIM DOES NOT EXCEED THE SMALL CLAIMS JURISDICTIONAL LIMIT. IF THE CLAIM EXCEEDS THE SMALL CLAIMS LIMIT, THE REAL ESTATE COMMISSION WILL EXECUTE THE SETTLEMENT THROUGH THE EXISTING HEARING OFFICER PROCEDURE.

UNDER THIS PROPOSED LEGISLATION, A CLAIMANT SHALL PAY A FILING FEE OF \$250.00 AT THE TIME THE CLAIM IS FILED WITH THE COMMISSION. THIS FEE SHALL BE REFUNDED ONLY IF THE CLAIMANT PREVAILS. SUCH A FILING FEE WILL DISCOURAGE FRIVOLOUS CLAIMS WITHOUT UNNECESSARILY IMPEDING VALID CLAIMS.

THIS COMMITTEE SUBSTITUTE SETS UP A MECHANISM TO INSURE THAT THE REAL ESTATE COMMISSION CAN EFFECTIVELY ENFORCE REPAYMENT TO THE SURETY FUND IF THIS FUND IS USED TO REIMBURSE A CLAIM BROUGHT FORTH BECAUSE OF A REALTOR'S ACTIONS.

THIS BILL HAS THE SUPPORT OF THE ALASKA REAL ESTATE COMMISSION, AND THE ALASKA ASSOCIATION OF REALTORS. I RECOMMEND PASSAGE OF SCS CSHB 705 (L & C).

ADDITIONAL INFORMATION

1) JUSTIFICATION FOR THE FILING FEE - SINCE THE AVERAGE COST OF EXECUTING A CLAIM, WHETHER IT IS A VALID CLAIM OR NOT, IS \$400 - \$600. THIS FEE DOES NOT SEEM EXCESSIVE.

2) SECTION 1 SETS UP THE MECHANISM FOR REPAYMENT. THE HEARING ON A CLAIM FILED AGAINST A REALTOR IS CONSIDERED A HEARING FOR SUSPENSION. THE SUSPENSION IS LIFTED WHEN A REPAYMENT SCHEDULE IS DETERMINED.

3) ALL REALTORS WILL PAY THE SAME AMOUNT TO THE SURETY FUND.

4) IF A REALTOR SELECTS THE SMALL CLAIMS COURT, DISTRICT COURT CIVIL RULES 8-22 MUST PREVAIL. THIS ASSURES THAT THE COMPLEX PROCEDURE WILL NOT BE ALLOWED.

A M E N D M E N T #1

Offered in the SENATE

By V. Fischer

TO: SCS CSHB 705(L&C)

Page 3, line 3: after "if" insert "(1)"

Page 3, line 4: after "fund", delete ", or if" and insert "; (2)"

Page 3, line 5: after "section", insert "; or (3) the claim is withdrawn by the claimant before the commission holds a hearing on the claim"

MEMORANDUM

State of Alaska

TO: Richard A. Lyon
Commissioner
Dept. of Commerce and
Economic Dev.

DATE: April 26, 1984

FILE NO:

TELEPHONE NO:

FROM: James L. Magowan
Executive Director
Alaska Real Estate Commission

SUBJECT: Real Estate Commission
Hearing on HB 705 &
SB 537

The commission held a public meeting on April 24 in Anchorage. The meeting was scheduled from 2 to 5 P.M. and from 7 to 10 P.M. There were 20 to 40 people in attendance most of the time. We estimate 50 to 70 members of the public, at least, attended the meeting.

Licenses were there in greater numbers than non-licenses, however, both licensed and unlicensed members of the public attended in significant numbers.

Public testimony ran until after 9:00 P.M.

After the testimony was heard, it was the definite opinion of the commission that important issues and questions have been raised by both licensees and non-licensees. Many of these are not adequately dealt with under the current statute and must be addressed.

The commission determined that these concerns are also not adequately resolved by the current bills (HB 705 - SB 537).

It was, therefore, the commission's decision that it does not support the passage of HB 705 or its companion, SB 537. The commission hopes that it will be given the chance to work with the industry and the public to come up with recommendations for legislation that it can support, legislation that will resolve the existing problems without introducing new problems of at least equal concern.

It is the commission's intention to have alternate legislative recommendations ready for the next session.

This is a high priority with the commission.

The commission has asked that copies of its minutes of the meeting and its decision be passed on to Chairman John G. Fuller, House Rules Committee, Chairman Richard A. Eliason, Senate Labor and Commerce Committee and Carol Derfner, Special Assistant, Boards and Commissions. These copies are attached.

Attachments

JLM/cw/0702C50

DRAFT/April 26, 1984

ALASKA REAL ESTATE COMMISSION

April 24, 1984

Anchorage, Alaska

Call to Order

By authority of AS 03.88.051, and in accordance with AS 44.62, the Alaska Real Estate Commission was called to order by Vice Chairman Ribacchi at 2:10 on 24th of April 1984. He welcomed the presence of visitors and called the meeting to order as a public hearing.

Vice Chairman Ribacchi acknowledged the absence of Chairman Hill due to the illness of her father, Earl Silberer, a former commissioner, and one of the originators of the real estate commission as well as a long time practitioner in the real estate industry. Vice Chairman Ribacchi stated that the purpose of the public hearing was to obtain a feel from the public as well as the industry regarding two bills that have been introduced into the Legislature, HB 705 and SB 537. These bills would significantly amend the current procedure in filing a claim against the surety fund. The following commissioners were in attendance:

Dave Ribacchi, Vice Chairman, Broker-At-Large
Karen Morris, Broker
John Benson, Broker
LaVerne Collins, Public Member
Gil Serrano, Broker

Absent:

Ed Anders, Public Member
Chairman Hill, Broker

Commission staff present:

James L. Magowan, Executive Director
Joseph P. Koss, Investigator/Auditor
Lois B. Waugh, License Examiner

Before proceeding, Commissioner Ribacchi asked each of the commissioners if they would like to make a comment. At this particular time, none of the commissioners wished to make a comment. Commissioner Ribacchi then asked for the public to present testimony regarding the bills.

S. B. Medford

Mr. Medford stated that he was opposed to SB 705 and HB 537. Mr. Medford stated that the general public do not have access to unlimited funds. These bills, if enacted, would require hiring an attorney and going through a court process which could take up to six years before the case would be settled. The practical effect would be to deprive the claimant of ready access to justice. Mr. Medford suggested that the commission, if they decided to approve the present legislation, increase the surety fund from \$10,000 to a \$100,000 limit and that the commission strengthen their position in order to obtain more evidence and that more funds be appropriated to the investigative staff.

Commissioner Morris read a letter for the record which is addressed to Commissioner Hill from Gary Wilken, former Chairman, Commissioner and Public Member. (Letter attached to the minutes.)

Commissioner Collins read a letter for the record which is from the Department of Law, Norman Gorsuch, Attorney General. (Letter attached to the minutes.)

Janet Mischler, Claimant

Ms. Mischler spoke against changing the surety fund procedures. She related to the commission her past history in which she was injured monetarily in a real estate transaction. Her first step was to go through the courts. She incurred \$8,000 in indebtedness to an attorney and has spent over \$20,000 on the problem, which is still not corrected. Her land is deemed unsellable. She stated that she would support a filing fee for the surety fund and that she believed that the surety fund and the commission were there to assist the public.

George Oliver, Associate Broker

Mr. Oliver, Associate Broker since 1974, asked the commission to support the two legislative bills before the house and the senate. He asked the commission to make a bold decision in favor of the legislation which would give a clear message to the Governor and the Administration that there should be a change in the surety fund procedures. He stated that the commission was not equipped to handle the number of surety claims before them and that it had become a burden. He said that the majority of the Realtors were in favor of the present legislation because it is necessary to change the present surety fund procedures before the surety fund is depleted due to an overabundance of claims having been made.

Vice Chairman Ribacchi asked that there be a distinction made between a real estate licensee and the professional organization, REALTORS. Not all licensees are Realtors. Commissioner Ribacchi also stated that five of the members have served for less than six months, and that the majority may not be familiar with the history of the surety fund, and asked that the public look upon the commission as a new body with their own ideas.

Cary Vlahovich, President, Anchorage Board of Realtors

Mr. Vlahovich, President of the Anchorage Board of Realtors which has a membership of 1400, stated that the Realtors have a very strict Code of Ethics and these ethics are served by an arbitration board, which is open to the Realtors and individuals who have dealt with the Realtors to arbitrate any problems they may have. Mr. Vlahovich stated that the majority of the membership of the Anchorage Board of Realtors are discontented with the present surety fund and the hearing officer process. He stated that due process is not provided by the present procedure. It is believed by many Realtors that they not only face a surety fund hearing but will also face civil proceedings simultaneously, before or after a surety fund hearing has concluded. The real estate licensees believe that the present system is not equitable. The state makes no effort in recovering the losses to the surety fund, therefore, the licensees have to bear the burden in fees to the surety fund to maintain its present state. The hearing officer's decisions are most dissatisfying. They do not provide a full check and balance system as well the participation of the commission, therefore, due process is not given to all involved in the surety fund process.

Maureen Kennedy, Alaska Public Interest Research Group (AKPIRG)

Ms. Kennedy spoke representing Alaska Public Interest Research Group (AKPIRG), which has a membership of 400. Ms. Kennedy is not in support of the present legislation. Ms. Kennedy stated the surety fund is effective self-policing of the industry. The present Common Law allows the consumer to argue for innocent representation. She believes that a \$50.00 filing fee is adequate, that any amount above that, could cause unnecessary hardship for the consumer. Not only the consumer, but the licensees, should be concerned about going through the courts, because it would increase the cost to the consumer as well as to the licensee. If the surety fund does not bear the burden of the hearing officer procedure, then the courts would bear the burden of the costs which would also increase the cost to the State.

Julian Mason, Attorney

Julian Mason, representing the Alaska Association of Realtors and the Anchorage Board of Realtors, spoke supporting the proposed legislation. One of his main concerns is the damage to the licensee's reputation through adverse publicity. Mr. Mason stated that if the present surety fund system is not changed, the following things could happen:

1. The Bevins/Ballard decision from the Supreme Court establishes that the Real Estate licensee may now be held liable for in "innocent misrepresentation". The Supreme Court, in its decision, invites the Real Estate licensees' to include in listing agreements provisions which require the seller to indemnify the agents if claims are made against them. This is on page sixteen of the advance opinion. The result would be that the licensee would tender his defense to the seller, the seller will then sue the buyer. The seller would then use one form to bring all parties of the transaction together. He suggested that this would not be an easier system but one that would be made more difficult and time consuming.

2. Mr. Mason stated that the present surety fund system is bogged down by surety claims and will continue to be so because of the easy access to the fund.
3. The claimant will eventually bear the cost of the administrative time of the hearing officer procedure. This is now a trend in the State government.

In conclusion, Mr. Mason stated that time is not a problem in the court system, that it takes less time and is less costly than the present surety fund proceedings. The main positive reason for supporting the legislation is that it will provide a neutral forum to handle cases. It is a form by which one is not judged by one's peers or by a hearing officer who is hired by the commission which gives the appearance of unfairness. It is important to have an independent system to judicate claims against Realtors and that system is the judiciary. It is not the function of the real estate commission to compensate without finding fault.

David LeBlond, Assistant Attorney General

David LeBlond, Assistant Attorney General for the Department of Law spoke, responding to Mr. Mason's comments.

Mr. LeBlond urged the commission to inquire from staff as to what has been the record of the surety fund, what the current status of the fund is and how many claims have been paid. He suggested this due to comments made by previous speakers that the fund is possibly being depleted by paying out claims.

Mr. LeBlond addressed the notion that there is something fundamentally unfair about the surety fund process, that it denies due process and that the adjudicating official is biased. The commission and the commission's hearing officer are judges, in essence, of the surety fund claims. The hearing officers are not part of the proceedings, they are not one of the parties. There is a claimant and a respondent. The hearing officers are all licensed attorneys with at least two years experience in the practice of law in the State of the Alaska. The commission reviews and adopts the hearing officer's findings of fact pursuant to the Administrative Procedures Act. The APA is well established. It is not considered an unfair procedure.

The last point Mr. LeBlond wished to make was in regard to the liability of the licensee. He said this has been well established through the Bevins/Ballard case. Under common law the licensee is liable for innocent misrepresentation.

Bob Arwezon

Bob Arwezon, Realtor, an Associate Broker since 1967, spoke in favor of the present legislation. Mr. Arwezon wanted to inform the commission of HB 561 which would increase small claim limits from \$2,000 to \$5,000. Mr. Arwezon feels this would be an avenue to adjudicate most real estate disputes in which the liability is \$5,000 or less. Mr. Arwezon submitted a copy of an article which appeared in the Anchorage Times and was written by Annette Taylor. The title of the article is "State Opts Out of Trailer Owner Maker Suits". The essence of the article is that the proposed bill would allow

homeowners to bring suit in civil court on the bond itself whenever a dispute should arise in regards to a mobile home transaction.

Mr. Arwezon expressed concern about "double jeopardy" on the part of the real estate licensee. By "double jeopardy" he meant that a claim could be made against the surety fund and at the same time a civil law suit could be filed. He expressed concern that the licensee would be liable to pay a double amount. He said that there was dissatisfaction with the present surety system, that the original intent in 1974 had never been changed and that if the intent was to be changed, the legislature should readdress the fund as its intent for the fund. The surety fund was originally to act only in place of bonds to be an indemnity when a licensee was either bankrupt or out of state.

Julian Mason, Attorney

Julian Mason, representing the Alaska Association of Realtors and the Anchorage Board of Realtors again addressed the commission to clarify his statements in regard to the hearing officer's appearance of impropriety. He said that he was not saying the hearing officers showed unfairness but they appeared to the public as being unfair because they actually work with the real estate commission, of which five members are real estate licensees. Mr. Mason wanted to point out that the real estate commission is the only agency through which the Administrative Procedures Act actually awards damages. Mr. Mason also wanted to say that the hearing officer procedure through the APA does not meet the standards of the court system.

Joseph Dygess

Mr. Dygess, private citizen, spoke in opposition to the surety fund legislation. The purpose of the real estate commission is to perform a service for the public as well as for the licensee. Passage of the legislation would be de facto deregulation of the industry. The real estate commission must decide if it wants to regulate the industry and perform an adjudication service. If it does not wish to do so, then what is the merit of having a commission that is not performing a public service.

Frank Austin

Frank Austin, former Public Member of the Alaska Real Estate Commission, resident of the Anchorage area for twenty-five years, spoke in opposition to HB 705 and SB 537. Mr. Austin stated that he supported the written testimony by Elizabeth Johnson, Attorney-At-Law, submitted to the House Labor and Commerce Committee. Mr. Austin is not in support of the present legislation. He wished the commission to consider the following:

1. Is the surety fund serving the purpose for which it was originally intended?
2. What problems does the surety fund now have?

Mr. Austin said that less than 20% of the claimants claims are being paid. The present hearing officers do have the necessary experience. Their findings of fact are only recommendations to the commission. It is the commission that

makes the final decision. It is a process which can be appealed back to the commission and then on to the Superior Court if necessary. There has been a statement that the real estate commission does not have the experience and background to make a decision. These are the same peers that will judge a license action. The original intent of the fund was not for it to be an insurance policy. When a loss is due to the action on the part of the licensee, the fund is the proper form of redress. Mr. Austin proposed that the commission consider the establishment of a filing fee and also a method by which claims can be recovered and repaid to the fund. He suggested a \$50 fee or 10% of claim fee, whichever is greater with a maximum \$250 fee.

Ms. Johnson's letter, referred to by Mr. Austin, is to be attached to the minutes.

Charles Bauer

Mr. Bauer does not support the present legislation. Mr. Bauer had filed a claim, went through the surety fund hearing proceedings and was awarded \$10,000. He believes the procedure is fair and just. He stated that without the fund he would have been unable to afford to sue. He would have simply lost \$10,000.

Mary Anne Kaemerer

Ms. Kaemerer was a claimant. Ms. Kaemerer is not in support of the present legislation. Before filing a claim against the surety fund, Ms. Kaemerer went through the court system. She was awarded a judgement of \$38,400.00 but as of today, she has not received any of the awarded money. Her attorney fees were \$3,000 approximately. In December of 1981, she filed her claim to the surety fund and one year later, her claim was awarded in the amount of \$10,000.00. She feels the system is fair and just.

David LeBlonde, Assistant Attorney General

David LeBlond, Assistant Attorney General for the Department of Law spoke again. He said that the procedure is unlike the typical administrative procedure. It is a unique judicial proceeding in which private individuals are assembled and an award is made. The surety fund pays a claim based on findings of fact to which the law is applied by a hearing officer. He stated that because the hearing officer procedures are not identical to the court system doesn't mean that they are unfair in any aspect. In order to receive reimbursement from the licensees whose claims have been paid to a claimant, the commission must go to court for a judgement against the licensee. The court requires additional formality. The court will not just "rubber stamp" the commission's decision. That does not mean that the commission's decision was unfair and not equitable. The court will take into consideration all the facts and then make a decision as to a judgement being awarded back to the surety fund.

Jeff Kennedy

Mr. Kennedy, a resident of the State of Alaska, spoke stating he is not in favor of the present legislation. Mr. Kennedy believes the consumer

" will have more problems collecting from a real estate licensee, that it will require more procedures to go through, which would be more costly to the consumer.

The public hearing was recessed at 5 P.M. for dinner.

The public hearing was reconvened by Vice Chairman Ribacchi at 7:00 P.M. Vice Chairman Ribacchi asked the commission if they were going to consider specific action in regard to HB 705 and the SB 537. It was decided unanimously that the commission would take a position before the evening ended.

All commissioners with the exception of Chairman Hill and Commissioner Ed Anders were in attendance.

Jacqueline Stoll

Jacqueline Stoll, a real estate licensee, a real estate claimant to the surety fund, spoke against the present legislation. Ms. Stoll believes the real estate surety fund should remain as is and that it is a good avenue to settle disputes. She would have been unable to recover her money from a licensee who was convicted and jailed, if the fund had not been available.

Kenneth Brown

Kenneth Brown, a broker for nine years, spoke in favor of the present legislation. Mr. Brown said there are several vehicles for the claimant to use as opposed to the surety fund. He said that there is a Professional Standards Committee of the Board of Realtors, an individual make go to a Small Claims Court or an individual make actually take his claim through other judicial courts.

Ruth Edmondson

Ruth Edmondson, Broker spoke in favor of the present legislation. Ms. Edmondson believes that there are relatively few "black sheep" in the industry and that most of the licensees are having to pay into the surety fund for these few "black sheep". She spoke of "cronyism" by the hearing officers and stated that she believes that the hearings are held in "star chamber" conditions.

Ellen R. Malapanes

Ellen R. Malapanes, an Associate Broker, spoke in favor of HB 705 and SB 537. She believes that the present surety fund system does not give "due process" and that the court system would be more equitable.

Ted Kosack

Ted Kosack, Anchorage resident, spoke not in favor of the present legislation. Mr. Kosack is now having a personal experience in which he, as an injured party, in regards to a condominium associaton. He believes that the surety fund is both fair to the consumer and the licensee.

Glenda Straube

Glenda Straube, representing the Fairbanks Board of Realtors, spoke in support of HB 705 and SB 537. She stated two points:

1. The present surety fund system lacks due process.
2. She stated that there is a lack of concern on the part of the Attorney General's Office, Department of Law, to collect from the guilty party. She further stated it is the perception of many that the surety fund is an easy fund to collect from.

Mark Korting

Mark Korting, a Broker since 1976, spoke in support of HB 705/SB 537. Mr. Korting stated that the intent of HB 705/SB 537, is not to eliminate the Consumer Protection aspect but to put it back into the Court System, where it originally was. Mr. Korting stated that the real estate industry is concerned about the consumer and, in many instances, tries to settle out-of-court. Mr. Korting indicated that the Realtor State membership consists of 1,958 members. The commission is noted that there are over 4,000 licensees in Alaska.

DeeAnn Gleason

DeeAnn Gleason, a Broker since 1975, spoke in support of HB 705/SB 537. She believes the present claims filed against the surety fund would not hold up in court. Ms. Gleason also believes that the commission does not have the experience nor willingness to process the surety claims and that the hearing officer proceeding is unfair.

Gene Bates

Gene Bates, a licensed real estate agent since 1972, presently an Associate Broker, spoke in favor of HB 705/SB 537. Mr. Bates spoke in regard to the licensee being subjected to "double jeopardy" and not recently "due process" from their peers.

Connie Sipe, Assistant Attorney General

Connie Sipe, Assistant Attorney General, Consumer Protection Division, Department of Law spoke against HB 705/SB 537. Ms. Sipe believes the real estate commission, if they supported HB 705/SB 537 would be effectively retreating from the consumer's interest. The public has put trust in the commission and the public respects the commission's professionalism. The public believes the commission is a leader of the state. There is a trend in the industry for arbitration and the commission has gone one step beyond arbitrating to paying claims. The commission is in the forefront, one of the leaders.

Ms. Sipe suggested that there may be a problem. Many real estate licensees may take a "back lash" by the problems created by contractors. She asked the real estate industry to support legislation that would tighten the licensing requirements for contractors. Ms. Sipe also stated

that the present courts, through Common Law, recognize innocent misrepresentation. Ms. Sipe stated that there are a number of reasons why one would not want to go through the court judicial system. All lawsuits are reported to the credit bureau and would be part of one's credit rating. Also, it is not easy to go through Small Claims. She believes that the present legislation retreats beyond the original bonds and last, but not least, she believes the public would not be impressed by the real estate commission making the surety fund more remote.

She believes that the present surety fund system does provide due process and that one is allowed the opportunity to appeal the decision if they wish. In most instances, when taking a case through the court system, it is judge tried, not jury tried. Ms. Sipe explained the "double jeopardy" in the language of law means "tried for the same crime twice", it does not apply in instances of civil court action where an individual may be sued by other parties dealing with the same case. An individual may choose whatever entity is available to them to adjudicate a civil court action.

Grayce Oakley

Grayce Oakley, Broker, who has been licensed since 1971, spoke representing the Anchorage Board of Realtors in support of HB 705/SB 537. Ms. Oakley said that today that many licensees would not take listings from contractors unless they are bonded and licensed by the regulatory agency. Many licensees believe that they are in "double jeopardy" because they have to defend themselves multiple times through the surety system as well as the courts. The burden of proof, when going through the surety system, is on the claimant. Ms. Oakley does not believe the licensees are given "due process", in effect, the hearing officer is both a judge and a jury. In the court system, a jury hears evidence directly. The benefits from HB 705/SB 537 would be that a judgement would go against the offender or person who has to pay and after it is proven that the individual cannot pay or they are uncollectable, then the claimant may tap the surety fund. In the present surety fund system, the hearing officer makes a proposed decision, forwards it on to the commission and, in essence, the commission authorizes a check to be paid. This is the prevailing view of the Alaska Association of Realtors. It is the belief that the commission does not have before it all the findings of fact and therefore, at times, cannot make a proper decision.

Elizabeth Johnson

Elizabeth Johnson, Attorney-At-Law, Hearing Officer, for the Alaska Real Estate Commission spoke against HB 705/SB 537. Ms. Johnson stated that there are problems with the surety fund but they can be addressed by amending the present statutes as opposed to completely "revamping" the surety fund as suggested in HB 705/SB 537. Ms. Johnson stated that the licensee, as well as the claimants, are given "due process" and that there is another example, in which claims are paid, claims which are larger than the surety fund. This is the Worker's Compensation Board, under the Administrative Procedures Act and worker compensation claims are paid, awarded to claimants. She stated that there is a problem in the backlash in regards to contractors, who are

perhaps at fault. There must be some way in which to make the contractor responsible. At the present time, there does not seem to be an effective way. She realizes the unhappiness of the industry in regard to the court's decision surety fund legislation will not eliminate the liability of the licensee for innocent misrepresentation.

Commissioner Ribacchi closed the meeting to public testimony. The meeting was recessed for five minutes.

The session reconvened. Vice Chairman Ribacchi stated that the commission, through the day, had procedurally been run informally, but now would be back in formal session, operating under its own commission procedures.

A motion was made by Commissioner Collins, and seconded by Commissioner Serrano, not to support the proposed legislation of HB 705 and SB 537.

The commission voted not to support the present legislation with one dissenting vote.

Commissioner Ribacchi	Aye
Commissioner Collins	Aye
Commissioner Serrano	Aye
Commissioner Morris	Aye
Commissioner Benson	Nay

Commissioner Collins further stated that the commission has a new direction to address after hearing the public testimony but does not believe it is now the time to change the surety fund procedures.

Commissioner Serrano stated that he believes that the industry should look out for the consumer and that it is good public relations to do so. At the moment he is opposed to the present legislation since there are no other alternatives at this time, he would like to leave the surety fund proceedings "as is".

Commissioner Benson stated that he believes the bills are a step forward and there are benefits in it for the industry.

Commissioner Morris stated that it is the leaders of the industry that support and have promoted the present legislation, that they do not necessarily speak for all the licensees. She further stated that the surety fund needs some amendments but it is doing a good job in its present position.

Commissioner Ribacchi stated as an individual, that many things are "over regulated" and that more regulation is not always in the benefit of the industry or the public. He stated that there are some conflicts and discrepancies in the real estate statute and that it can be improved but at the present time the surety fund should remain in its present form.

After listening to testimony, Commissioner Ribacchi, feels that there are many misunderstandings of the commission's functions and that the commission should take into consideration how these misunderstandings can be reversed.

Vice Chairman Ribacchi asked that letters be sent to Commissioner Lyon and the Administration informing them of the commission's decision as well as to the Alaska Association of Realtors and soliciting suggestions for amendments and ways to revise the real estate surety fund.

It was decided by the commission that the next commission meeting would be held on May 24th and 25th instead of May 17th and 18th as previously announced.

Commissioner Collins asked the Realtors to prepare a supplement to the Phase I, White Paper and forward it to the commission for their review at the next commission meeting. She also asked if they would be willing to pursue other avenues of improvement of surety fund procedures.

It was moved by Commissioner Serrano, seconded and unanimously passed for the commission meeting to adjourn.

The meeting was ajourned.

STATE OF ALASKA

RECEIVED

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

APR 26 1984

AK. REAL ESTATE COMM.

April 24, 1984

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

James L. Magowan, Executive Director
Alaska Real Estate Commission
3601 C Street Suite 722
Frontier Building
Anchorage, AK 99503

Re: Alaska Association of Realtors
"White Paper" on the surety
fund

Dear Mr. Magowan:

At your request on behalf of the Real Estate Commission, we have reviewed the White Paper dated March 5, 1984, by the Alaska Association of Realtors pertaining to the real estate surety fund. Some of the comments and concepts advanced by the Alaska Association of Realtors in the White Paper are now embodied in proposals before the 13th Legislature, specifically HB 705 and SB 537.

The current real estate surety fund claims program as outlined in AS 08.88.450 et seq. has benefited hundreds of Alaskan consumers and real estate professionals since it was enacted in 1980. The program has provided a swift, inexpensive, and fair method of resolving many real estate sales disputes. It has allowed hundreds of consumers to bring their grievances before a qualified, impartial tribunal without the frustration, delay and high cost of going to court. In our view, the program has given a measure of protection to consumers while providing real estate professionals with a full and fair opportunity to contest the merits of any claim made against the surety fund. The existing surety fund has done much to enhance the public trust and confidence in the real estate profession in general, a goal we support and encourage.

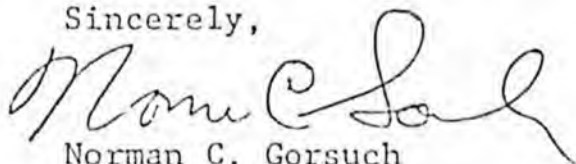
To be sure, the surety program could be improved in some respects. I agree with the point made by the Alaska Association of Realtors that some means must be found to reduce frivolous claims against the surety fund. It is my belief that frivolous claims can be essentially halted by imposing a significant

filing fee, perhaps up to \$150, to be paid by each claimant prior to processing a claim against the surety fund. If the claimant does not prevail, then the filing fee would be lost. Such a filing fee would most likely chill frivolous claims without unnecessarily impeding valid claims made against the fund.

I recognize that this is a policy call rather than a legal determination. I would therefore simply urge the commission to carefully weigh the effects of the approach taken in the White Paper and by the two pending bills and carefully consider their effects on both the real estate consumers and on the real estate profession. As a general rule, I am not enamoured with placing more disputes in our already overworked judicial system. Of course, any aggrieved party from a real estate surety fund proceeding does and ought to have the ability to appeal the findings and award to a superior court.

If we can be of additional assistance to the commission concerning any aspect of the surety fund, please contact us.

Sincerely,



Norman C. Gorsuch
Attorney General

NCG:eer

cc: The Honorable Dick Elaison
Senator

The Honorable Jalmar Kerttula
President of the Senate

The Honorable Joe Hayes
Speaker of the House

Ray Gillespie
Special Staff Assistant
to the Governor

The Honorable Dick Lyon, Commissioner
Department of Commerce and Economic Development

Mrs. Barb Hill

Please accept the attached letter
as my testimony for the public
hearing regarding HB 705.

I respectfully request that the
testimony be read into the record.

Thanks for the opportunity to
participate.

Sincerely yours,



Gary Wilken

April 24, 1984

TO: Alaska Real Estate Commission

RE: Testimony: HB 705 and SB 537

Rec'd
24 Apr 84
JDR

For Record

Regarding the existing surety fund structure, I have had the opportunity to read both the State Association's position paper and the corresponding pending legislation to which this testimony is addressed.

My first concern is the broad brush method by which the legislation would apply to the existing Surety Fund. One does not, when one's automobile requires a tune-up, replace the entire engine. Instead, one performs the required adjustments to continue on. The analogy appears to be very appropriate to HB 705 in regard to the Surety Fund. The legislation would replace the heart of the system when indeed only a tune-up is required.

I am sympathetic to the Association's concerns and claims of frivolous and/or vindictive claims being filed against licensed real estate agents. I believe this to be a legitimate concern and one that must be addressed. When the current Surety Fund system was formulated in 1979-1980, the experience of a significant number of less than valid claims was not fully anticipated.

The concept of a filing fee is a step in the right direction for remedy. The suggestion that it be \$50 to \$100 is good, however, in my opinion the amount is not sufficient. I am in favor of a filing fee of some greater amount, perhaps \$250-\$500, a portion of which is refundable if the plaintiff prevails in his argument. As we have seen, there must be some consideration on the part of the plaintiff as to their liability in filing a claim against the Surety Fund. If a plaintiff understands from the outset that a substantial fee is required to file, and that if unsuccessful, the fee is considered a cost of litigation, the vast majority of those people now filing frivolous or vindictive claims will be markedly reduced.

This concept embodies two factors. First, the plaintiff understands that there will be a filing fee that will not be refundable, let us say \$100 out of the deposit. Secondly, the plaintiff must consider the remaining amount to be a "gamble", if you will, that he will prevail. In brief, the large filing policy requires some serious economic forethought on the part of the complainant.

My second concern centers around the numerous references to innocent misrepresentation which appears to exclude such action from the protection of the Fund. I think back to the lady in Wasilla that, upon closing a deal for her new country residential acreage, discovered that when it came time to build, half of her property was over a cliff and she had purchased a wonderful set of mud flats. The agent had flagged the corners incorrectly. He did not mean to. He really believed he was selling her the correctly staked land and told her so. He did not do his job properly and consequently, the lady's property was worth one-half of what she paid for it.

I recall the family in Juneau that purchased a previously occupied house with the assurance from the selling agent that the foundation was high and dry. Reality surfaced when a high tide increased the water level to the point it flooded the basement and created a difficult problem with the potential rotting of the supporting members. The agent had represented the house to be free of flooding problems and he really believed it was because he did not do his job as well as he should have: he never inspected the crawl space and the supports for existing water damage and potential of same.

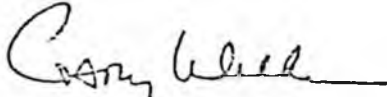
Should the lady in Wasilla or the family in Juneau suffer economic hardships on what could well be the biggest financial transaction of their lives because two agents did not do their job as completely as they should have? I do not believe so. The agent or the industry, must provide a vehicle to make these two people whole and a reasonable accessible Surety Fund is that vehicle. The buyers in these instances, are the last people that should suffer due to what would be termed innocent misrepresentation.

Thirdly, it has been suggested a small claims court action may be utilized to resolve a dispute. While this may appear on the surface to be viable, even with the existing \$2000 limit or with an increase thereof, one who has worked within the small claims system knows that a simple checkmark in the proper box on the defendants reply form turns a small claims proceeding into a full district court case. Thus the benefits of the small claims system are easily lost.

In summary, it is my opinion the proposed changes are a backward step in the protection of the public from damage incurred in a real estate transaction. The judgement method, used prior to the existing Surety Fund method has proven itself to be totally ineffective from both a time and money standpoint in dealing with alleged wrongs on the part of real estate agents. It is difficult to consider returning to that system as a means to remedy the current ills of the Surety fund.

I urge the Commission to propose other means to address the concerns of the Association and other licensees. I urge the Commission, when considering HB 705 and the Surety Fund system, not to throw out the baby with the bath water.

Respectfully submitted,



Gary Wilken

Past Member Alaska Real Estate Commission
1977-1983

cas words

Panel submits real estate bill to end simplified surety fund rule

by ALBETTE TAYLOR
Times Business Writer

The House Labor and Commerce Committee this week introduced a bill that would require victims of shoddy real estate transactions to win their case in court before tapping the surety fund for compensation.

The Alaska Association of Realtors proposed the legislation to rectify the current system in which members believe they are exposed to double jeopardy.

Under the current system, victims of fraud, deceit or misrepresentation by licensed agents can be awarded surety fund claims — for which the realty is billed — and then can sue the agents in court.

In surety fund claims, the procedure

involves both parties presenting their case before a hearings officer, who then makes a recommendation to the Alaska Real Estate Commission. The maximum award is \$10,000.

Real estate agents want the procedure changed back to the way it was before 1980, when people had to go to court before having access to the surety fund. The 1980 legislature simplified the procedure to save people the time and expense of going through the court system.

The proposed legislation also would require people who have won their court cases to exhaust all remedies for getting their money back from the guilty agents or brokers before being allowed to tap the fund.

Real estate agents said the current

system penalizes all licensed agents who pay into the fund rather than focusing on the wrong-doer. Although the real estate commission bills the guilty agents, there is no legal mechanism to enforce payments, agents said.

The surety fund is a special account set up by the legislature to reimburse people who have been defrauded or misled by licensed agents in real estate transactions.

Agents pay up to \$125 into the fund in lieu of obtaining private bonds. The amount they pay is based on how much money is in the fund. The fund cannot exceed \$500,000, half of which is designated for education.

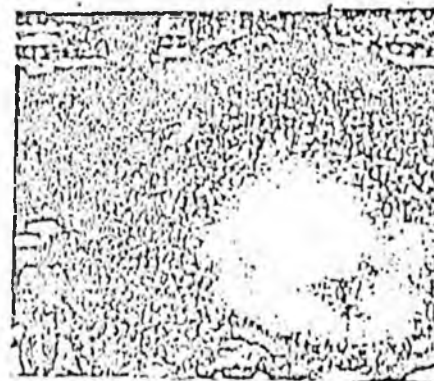
*Understand
18/11/84
211 AM
JTC
DRR
AFCB*

Campbell to switch from tin to plastic

Associated Press

Camden, N.J. — The Campbell Soup can will be replaced by a plastic container to consumer prefer-

own cans in 1984, has become the third largest manufacturer in the business, turning out about 4 billion tin cans in 1983 — behind American Can Co. and



~~star-chamber~~
star-chamber----adj[Star Chamber], a court existing in England from the 15th century until 1641 that exercised wide civil and criminal jurisdiction under rules of procedure well suited to the purposes of absolutist sovereigns; 1: of, relating to, constituting, or in the manner of a secret oppressive or irresponsible judicial body (it took centuries of bloody struggle to outlaw star-chamber sessions, and the principle which requires judicial proceedings to be conducted in public still must be vigorously defended---(San Francisco, Calif. News).) 2: of, relating to, constituting, or in the manner of a legislative or executive body that holds closed meetings (star-chamber sessions of city councils and school boards-- Fortnight)

WEBSTER'S Third New International Dictionary
Unabridged

Include in
Recover

24 APRIL 84
JST
AD&C

Include in Record

24 APRIL 84

State opts out of trailer owner, maker suits

by Annette Taylor
Times Business Writer

Owners of defective mobile homes may sue directly for the manufacturers' surety bond if a bill proposed by the attorney general's office is passed by the legislature.

Mobile home owners now must present their case at an administrative hearing before they can tap the bond to repair or replace defective trailers or faulty appliances covered by warranties.

But the state may choose not to conduct a hearing because of time or money required to investigate a sin-

gle complaint, said Brad Parker, an investigator with the consumer protection division.

The attorney general's proposed bill would eliminate the state's role and would allow homeowners to bring suit in civil court on the bond itself.

"This allows consumers to seek their own justice and takes the state out of the position of being judge and jury," Parker said.

State law requires manufacturers to maintain surety bonds on warranties for two years after their last mobile home is delivered to the state.

The state began requiring surety bonds in 1990 because of ongoing problems consumers have dealing with Outside firms. A consumer might win his case but cannot locate the firm or its assets to get his money back, Parker said.

"If the manufacturer is in Tennessee, the consumer would have to get an attorney there to get another court judgment to get his money," Parker said. "That can get very costly and complicated. Many people just give up."

The proposed bill would give con-

sumers "something here to attack — the bond — rather than having to look for the assets of the manufacturer," he said.

If a mobile home owner is successful in court and is awarded the entire bond amount, the manufacturer must post another one before he can continue doing business in Alaska, Parker said.

Under current law and the proposed amendment, a mobile home owner has one year and 10 days from date of purchase to file a claim on the surety bond.



Elizabeth I. Johnson

Counsellor and Attorney at Law

540 L Street Suite 304
Anchorage, Alaska 99501
0077 277-3025

April 9, 1984

RECEIVED

APR 20 1984

Representative John Cowdery; Chairperson
House Labor and Commerce Committee
Alaska State Legislature
Pouch B
Juneau, Alaska 99811

AK REAL ESTATE COMM.

RE: House Bill 705, Senate Bill 537
Relating to the Real Estate Surety Fund

Dear Representative Cowdery:

Enclosed please find a summary of my oral testimony before the House Labor and Commerce Committee last Tuesday. I understand that the Bill was passed out of the Committee unanimously.

As you will recall I am adamantly opposed to not only the concept of House Bill 705 but to specific provisions. I am sending copies of this letter to other legislators in the hope that they will review the legislation more carefully.

I thank you for the opportunity to testify but believe there has been inadequate public comment on this bill and that it deserves more attention from both the House and Senate.

Sincerely,

Elizabeth I. Johnson

EIJ/kkr

WRITTEN COMMENTS
REGARDING HOUSE BILL 705 AND SENATE BILL 537
RELATING TO THE REAL ESTATE SURETY FUND

Since 1980 a fund created by the Alaska Real Estate Commission has allowed payment up to \$10,000.00 per transaction to consumers who have suffered financial loss because of a real estate licensee's action that involved fraud, deceit, misrepresentation, or conversion of trust funds. The fund is maintained by payment of a yearly surety fee not to exceed \$125.00 for each licensee. After the fund reaches \$250,000.00 the Real Estate Commission adjusts the fees so that the fund is maintained at a level not less than \$250,000.00.

Prior to 1980 persons making a claim against the fund had to first secure a court judgment against the licensee. In 1980 after Sunset review of the legislation, the requirement of a judgment was dropped and the Real Estate Commission set up a procedure whereby complainants could make a claim directly against the fund.

Once a complaint is received an administrative hearing is held. The hearing consists of presentations by the claimant and the licensee or licensees. The Administrative Hearing Officer has the power to subpoena evidence including documents and to require the attendance of witnesses. Both parties are allowed counsel if they so choose.

At the conclusion of the hearing, Findings of Fact and Conclusions of Law are entered with a recommendation to the Real Estate Commission on whether the claim should be paid.

It should be noted that once a Hearing Officer has made a recommended decision the Real Estate Commission reviews the case and decides whether the claim should be paid. After the final decision, the licensee still has the option to appeal to the Superior Court.

Attached is a summary of the claims paid since the inception of the administrative proceedings in 1980.

House Bill No. 705 and Senate Bill No. 537 substantially amend the current procedure to again require that members of the public obtain a judgment against the licensee prior to making a claim against the fund. The legislation then requires a second hearing by the court to determine that the judgment creditor has no other assets available and that payment from the fund is proper. The proposed legislation also restricts the type of claims which are paid from the fund.

Written Comments Regarding
House Bill 705 and Senate Bill
537 Relating to the Real
Estate Surety Fund

It is my opinion after having reviewed approximately 100 of these cases that the Surety Fund, with minor exceptions, works well in protecting the public interest. The present legislation will effectively preclude anyone with a small monetary claim (under \$5000.00) from pursuing an action against the licensee because it will simply be too expensive to prosecute the claim through District or Superior Court. The present tremendous backlog in the courts means that even if one files a case today, one could not reasonably expect a trial for two to three years.

The decided trend in judicial administration in Alaska and throughout the United States is to try to take claims out of the civil court system and to handle them through mediation, arbitration, or through an administrative process. The Surety Fund is a good example of the way in which certain claims are being screened from the court system. The administrative hearing process provides all of the due process protections with the exception of a jury trial that are afforded through the civil court system. The Rules of Evidence are somewhat relaxed although as a practical matter most of the evidence which is presented in administrative hearings would be allowed in a regular civil proceeding.

Objections to House Bill No. 705

Section 2 AS 08.88.460 repealed and reenacted -- object generally to requiring consumers to obtain a judgment prior to making a claim against fund.

(a) Page 1, lines 23 and 24 -- allow a claim against fund on fraud, deceit, intentional misrepresentation or conversion of trust funds. Differs from current interpretation of statute by Real Estate Commission and Administrative Hearing Officers that statute allows claims for innocent misrepresentation or negligent misrepresentation. The Alaska Supreme Court in interpreting common law theory of misrepresentation has allowed recovery against licensees on the theory of innocent or negligent representation. See Bevins v. Ballard, 655 P.2d 757 (Alaska 1982). Enactment of this bill would lead to the curious result that a consumer could sue the licensee in state court under the common law theory of negligent misrepresentation, recover a judgment on that basis, and not be able to obtain payment from the Surety Fund.

(b) Page 2, lines 1-8 -- court must hold a "mini trial" after a judgment has been entered on whether the judgment supports recovery against the Surety Fund. This imposes twice as much work on the court as a regular civil proceeding.

Written Comments Regarding
House Bill 705 and Senate Bill
537 Relating to the Real
Estate Surety Fund

(d) Page 2, lines 12-14 -- specifically prohibits payment on claims for innocent misrepresentation.

Section 3, page 2, AS 08.88.465 requires a second hearing after entry of a judgment and before amount is paid from Surety Fund.

(a) Page 2, lines 20 and 21 -- requirement of hearing within 30 days is virtually impossible to enforce administratively with the current backlog in the court system.

(b)(4) Page 3, lines 4-6 -- What is a "reasonable attempt"? Open to judicial interpretation and "mini trial" on attempt to find judgment creditor and determine assets.

(b)(5) Page 3 -- requires a separate court hearing on whether creditor has been able to locate assets and has taken the "necessary action" to apply the assets to the judgment. What is "necessary action"?

(b)(6) Page 3, lines 13-16 -- requires the court to make an independent determination that the claimant has "diligently pursued other remedies." What is meant by this phrase? Requires a separate showing that there is no other person that could be liable in the transaction -- in other words the claimant could obtain a judgment against licensee A and during the hearing under this section, a different judge could conclude that licensee B is responsible and deny payment from the fund. This is a peculiar provision which could result in contradictory findings by judges with regard to the same transaction, thereby allowing licensees to shift responsibility and avoid payment from the fund.

Section 4 AS 08.88.470 repealed and reenacted:

(a) Page 3, lines 17-21 -- requires a separate court hearing and in effect a "mini trial" on the validity of the claim.

(b) Page 3, lines 22-27 -- requires the claimant to prove his case twice. Note that if the action was defended by a Trustee in Bankruptcy there has to be an entirely new hearing, although many times there will have already been a complete trial in Bankruptcy Court.

Written Comments Regarding
House Bill 705 and Senate Bill
537 Relating to the Real
Estate Surety Fund

Section 7 AS 08.88.475(b):

(b) Page 4, lines 16-20 -- there is no definition of "transaction." This section appears to read that no matter how many people are involved nor how much money is lost, if the licensee can claim that there was only one "transaction" then the \$10,000.00 limit applies. For example, in the case of the sale of shares in a limited partnership, if the licensee makes fraudulent sales to 50 people, obtains \$5,000.00 from each, and takes the money, is this construed as "one transaction" where the \$10,000.00 limit would apply?

Comments:

Suggestion for changes in current statute and administrative proceedings.

Some of the primary complaints I've heard about the Surety Fund can be solved easily within the context of the present procedure administered by the Real Estate Commission by making changes to the current statute.

1. Elimination of "frivolous" claims. Some licensees have complained that they are burdened with responding to "frivolous" claims which are then denied. It has been my experience that there are very few "frivolous" claims. Many claims are settled or withdrawn prior to hearing or during the hearing process. If there is a problem with inadequate initial screening of complaints, I would suggest the following:

a. Establish a mandatory filing fee of perhaps \$50.00 to discourage those persons who feel the fund is a source of free money.

b. Allow the staff of the Real Estate Commission to do an initial screening of the complaint. If the complaint is not recommended for an administrative hearing and the claimant wishes to go forward, they must post a bond of \$250.00 to secure payment of hearing cost and partial attorney's fees to the licensee if the claim is denied.

2. Denial of Due Process -- there have been some feelings by claimants that because they are not entitled to a jury trial, the administrative proceeding denies them due process. No administrative proceeding provides for a jury trial and as a practical matter all the rights and privileges accorded in a court hearing are preserved in the administrative procedure process. The only exception is the relaxed standard for the rules of evidence. This has not been a significant problem in any case I have handled, in which either an attorney appeared or in which licensees represented themselves.

Written Comments Regarding
House Bill 705 and Senate Bill
537 Relating to the Real
Estate Surety Fund

If this is perceived as a problem, the current statute can be amended to provide for de novo review by the Superior Court as is done in school employment cases.

3. Allowance of claims based on innocent or negligent misrepresentation. Some of the most vociferous opposition to the Surety Fund has been to claims which have been allowed on the basis of innocent or negligent misrepresentation. This theory of recovery is consistent with the holdings of the Alaska Supreme Court. Thus, licensees are going to continue to be held responsible for mistakes which are innocently made regardless of the status of the Surety Fund.

In short, with the above-noted exceptions, the Surety Fund works well in protecting the public interest and insuring that licensees receive a fair hearing. In addition, the administration of the Surety Fund over the past three years has caused the industry to "self police" to a great degree. The problems with the fund can be more readily addressed by amending the current procedure than requiring consumers to prosecute claims through civil court.

9. Surety Claim Recovery:

Hoey, Thomas	Recovery complete.	1,000
Congdon, Renwick	Recovery complete 030381.	1,139
Lankford, Daniel	Billed 011883, no response.	
McCormick, Gail	Recovery complete 052683.	11,275
Motonaga, Gary	Recovery complete.	4,225
Calvo, Tony	Claim repaid; hearing costs unpaid.	10,000
Odell, Mina	Claimant paid, hearing costs unpaid.	1,000
McCourt, James	Billed 830713; no response.	
Jones, Jerry	Claimant paid, hearing costs unpaid.	800
Ruszkowski, Alvin	Claimant paid, hearing costs unpaid.	1,000
Rink, Robert	Claimant paid, hearing costs unpaid.	1,000
		<u>31,429</u>

10. Surety claims statistics:

	Fiscal Year		Calendar Year	
	Filed	Paid	Filed	Paid
1981	31	0	52	\$ 11,943
1982	70	13 \$ 41,853	93	18 62,612
1983	99	20 80,346	123	14 67,644
1984	97	3 30,000	29	1 10,000
Totals to date	<u>297</u>	<u>36</u> <u>\$152,199*</u>	<u>297</u>	<u>36</u> <u>\$152,199*</u>

* This amount includes paid claims that have since been recovered from the licencees, and therefore differs from the total that is stated on the Surety Claim Case summary and as shown below.

Surety claim totals:	Numbers of claims		Dollar amounts of claims	
Paid, unrecovered	37	12.5%	\$ 124,974.24	8.1%
Paid, recovered*	*	*	29,025.00	1.9%
PD-Approved	3	1.0%	18,012.00	1.2%
Denied	69	23.2%	317,898.97	20.5%
FD-Denied	1	0.3%	11,000.00	0.7%
Withdrawn	30	10.1%	134,878.25	8.5%
In process	157	52.9%	901,657.39	58.2%
Total filed	<u>297</u>	<u>100.0%</u>	<u>\$1,547,945.85</u>	<u>100.0%</u>

Decided claims:	Numbers of claims		Dollar amounts of claims	
Paid, unrecovered	37	26.4%	\$124,974.24	19.3%
Paid, recovered	*	*	29,025.00	4.5%
PD-Approved	3	2.1%	18,012.00	2.8%
Denied	69	49.4%	317,898.97	50.8%
PD-Denied	1	0.7%	11,000.00	1.7%
Withdrawn	30	21.4%	134,878.25	20.9%
Total decided claims	<u>140</u>	<u>100.0%</u>	<u>\$646,288.46</u>	<u>100.0%</u>

* These numbers are included in the paid, unrecovered, category because there is overlap where the hearing costs are outstanding after repayment of the claim.

NOTE REGARDING THE FOLLOWING FRAME(S) ON MICROFILM:
COMPLETE DOCUMENT IS AVAILABLE IN ORIGINAL FILES.
TITLE PAGE ONLY HAS BEEN FILMED.

ALASKA
SMALL CLAIMS
HANDBOOK

Prepared by the
Forms Committee
Alaska Court System

Fifth Edition: Revised January 1982

NOTE REGARDING THE FOLLOWING FRAME(S) ON MICROFILM:
COMPLETE DOCUMENT IS AVAILABLE IN ORIGINAL FILES.
TITLE PAGE ONLY HAS BEEN FILMED.

A PERFORMANCE REVIEW OF THE
REAL ESTATE COMMISSION

June 4, 1981

Audit Control Number
08-101-1037-R

Commissioner, Department of
Commerce and Economic Development

Charles R. Webber

Deputy Commissioner, Department of
Commerce and Economic Development

Pete Jeans

Deputy Commissioner, Department of
Commerce and Economic Development

Vacant

Members of the
Real Estate Commission

Chairperson
Member
Member
Member
Member
Member
Member

Lance Youngquist
Karen Morris
Barbara Hill
Frank Austin
Gary Wilken
Ken Calhoon
Gail Glad

5/11/84

To: Dick

Re: Surety Fund for realators

I talked to Jim Magowan, Ex Dir. of the Real Estate Csmn & he provided the following information:

The recent Supreme Court ruling states that innocent misrepresentations are not covered by the Surety fund. Willful misrepresentation, fraud, & deceit are covered by this fund. Currently 30% of the claims filed ~~will~~ receive payments i.e. the csmn decides in favor of the claimant.

With this new court decision, it is estimated that 80-100 claims a yr will be received by the csmn. A full time hearing officer has been budgeted for & Jim is looking to a period of 3-4 mths to finalize claims

~~The~~ average claim is for \$4,000 with approximately 25% of the claims under

\$2000. A problem with a claimant going to small claims involves the realtors right to "check the box" which indicates the desire to go "to court" instead. This action would certainly discourage the claimant from proceeding further action

It was Jim's opinion that when attorney fees are awarded it is only 15-40% of the actual cost involved. So the consumer would have to fit the bill.

Jim's Suggestions

1) Set a filing fee of a minimum of \$50 ~~with~~ or 5% of claim which ever is greater to a maximum of \$250. This fee would be returned if the claimant wins.

2) Allow the csmn to establish a "summary dismissal procedure" so that obvious unfounded cases could be dismissed.

3) Explore possibility of a full-time

hearing officer with a volunteer
3 member jury panel. This system would
relieve the concern of the realtors
as far as being heard by only one
individual.

B 705 TITLE 3 SPONSOR SUMMARY 17:18 2/24/94 PAGE 1 OF 3

RENDED TITLE: SC60SHB 705 LAC/AM 3
ACT RELATING TO THE REAL ESTATE SURETY FUND

LINE SPONSOR: HOUSE LABOR/LOCAL COMMITTEE

3-SPONSORS:

CURRENT STATUS: 5/31/94 (H) CONCURRD (S) AM

B 705 HOUSE ACTION 17:18 2/24/94 PAGE 2 OF 3

DATE	SEQ	PAGE	LEGISLATIVE ACTION
3/26/94	01	3057	FIRST READING -- COMMITTEE REPORTS
4/03/94	02	3103	LAC -- DP05
4/03/94	03	3100	LAC F/NOTE HSE SUPPL #122
4/12/94	04	3305	FIN -- CS02, HR06, OTHER01
4/12/94	05	3305	FIN F/NOTE HSE SUPPL #127
5/04/94	06	3653	SECOND READING
5/04/94	07	3653	FIN CS ADOPTED BY UNAN CONSENT
5/04/94	08	3657	AM01 WITHDRAWN
5/04/94	09	3659	ADVANCED TO 3RD READING BY UNAN CONSENT
5/04/94	10	3657	THIRD READING
5/04/94	11	3655	PASSED BY DIV 25-12-02
5/04/94	12	3656	NOTICE OF RECONSIDERATION GIVEN
5/05/94	13	3692	PASSED ON RECONSIDERATION BY DIV 27-12-01
5/31/94	24	4054	CONCURRD IN SENATE AND BY DIV 32-00-00
***	**	**	*** **

B 705 SENATE ACTION 17:18 2/24/94 PAGE 3 OF 3

DATE	SEQ	PAGE	LEGISLATIVE ACTION
5/08/94	14	2959	FIRST READING -- COMMITTEE REPORTS
5/25/94	15	3271	LAC -- CS95
5/25/94	16	3271	DEPT COMMERCE F/NOTE SEN SUPPL #91
5/29/94	17	3325	LAC -- LAC CS95, OTHER05
			TAKEN UP IMMEDIATELY
5/28/94	18	3354	POSTPONED UNTIL 05/29/94 BY UNAN CONSENT
5/29/94	19	3351	SECOND READING
5/29/94	20	3317	LAC CS ADOPTED BY UNAN CONSENT
5/29/94	21	3352	AM01 ADOPTED BY UNAN CONSENT
5/29/94	22	3352	AM02 ADOPTED BY UNAN CONSENT
5/29/94	23	3352	ADVANCED TO 3RD READING BY UNAN CONSENT
5/29/94	24	3352	THIRD READING
5/29/94	25	3352	PASSED BY DIV 29-00-00
****	**	**	*** **

COMMITTEE REPORT

SENATE

FURTHER:

Date 4/2/19

Mr. President

The Committee on ARMY AND NAVAL APPROPRIATIONS considered CONF. REPORT

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for 25 H.R. 925 (100)
- new title
- same title and recommends 100-1-150
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

Chairman

do pass
Chairman recommendation

MSG 84-00048432 PRTY 1 5/24/84 15:17:19 ORIG: 119 IN= 0008 OUT= 0010
FROM: ANCHORAGE TO: TOM/FINAL STATS
TARGET: LJVH SUBJ: (S) LABOR & COMMERCE, T/C, 5/24

LEGISLATIVE TELECONFERENCE NETWORK SIGN-IN SHEET

DATE: MAY 24, 1984
SITE: ANCHORAGE
SPONSOR/SUBJECT: (S) LABOR & COMMERCE, HB 705, 716, 720

.. 4..TESTIFIED *****T/C STARTED: 1:30
..10..OBSERVED *****T/C ENDED: 3:00
..14..TOTAL

TESTIFIED

1. CHUCK RUSH/PHARMACY, 1345 W. 11TH AVE., 99501, 272-6431
2. BARB HILL/REAL ESTATE, 1343 C STREET, 276-7909
3. GRAYCE OAKLEY/REAL ESTATE, 2408 SPRUCEWOOD, 272-5151
4. JIM MAGOWAN/REAL ESTATE, 563-2169

OBSERVED

1. JOY DONELSON/PHARMACY, 903 R., 561-1964
2. BILL JANSON/PHARMACY, SRA BOX 562, 345-7606
3. BETTY LOU CIPRIN/REAL ESTATE, 2002 E. 37TH, 99500, 561-1171
4. JOHN BENSON/REAL ESTATE, KETCHIKAN, 225-9651
5. LAVERNE F. COLLINS, P.O. BOX 102751, 276-1299
6. KAREN MORRIS/REAL ESTATE, 2061 AIRPORT WAY, 452-1978 (FAIRBANKS?)
7. GIL SERRANO, 606 E. NORTHERN LIGHTS, 278-9607
8. JEAN A. MILLER/REAL ESTATE, 563-2169
9. DAVE RIBACCONI/REAL ESTATE, 2531 BANBURY, 99504, 337-7238
10. GEORGE OLIVER/REAL ESTATE, 8411 E. 12 COURT, 333-1247

MSG 84-00048490 PRTY 1 5/24/84 16:35:39 ORIG: L:20 IN= 0004 OUT= 0011
FROM: LYNDA/FBX TO: JNO T/C
TARGET: LJVH SUBJ: FINAL STATE - SEN L & C 5/18

LEGISLATIVE TELECONFERENCE NETWORK SIGN-IN SHEET

MAY 24, 1984 _____ : DATE
FAIRBANKS _____ : SITE/LOCATION
SENATE LABOR & COMMERCE _____ : SPONSOR/SUBJECT
HB'S 705, 716, 720

TESTIFIED/PARTICIPATED:

OBSERVED:

1. JEFF COOK, AK ASSOC. OF REALTORS, PO BOX 2134, FBX, AK 99707 #456-5670

-----STATS-----
-0-___TESTIFY/ED *****T/C STARTED: _____
-1-___OBSERVE/ED *****T/C ENDED: _____
-1-___TOTAL

=====EOM

MSG 94-00048568 PRTY 1 05/25/84 09:52:46 ORIG: LM01 IN= 0001 QUR= 0003
FROM: MARTIE/HATSU TO: TOM/JUNEAU TELECONFERENCE
TARGET: LHMV SUBJ: SEN. L&C

LEGISLATIVE TELECONFERENCE NETWORK SIGN-IN SHEET

-MAY 24- : DATE
-MATSU LIO- : SITE/LOCATION
-SEN. LABOR AND COMMERCE- : SPONSOR/SUBJECT
-02- TESTIFY/ED *****T/C STARTED ADT
-00- OBSERVE/ED *****T/C ENDED ADT
-02- TOTAL

NAME/REPRESENTING	ADDRESS/PHONE	TESTIFY	GENITIVE
1. KENNETH R. BROWN/PO BOX 870642/WASILLA	376-2226	TESTIFY	
2. ELEANOR O. MALAPANES/PO BOX 872040/WASILLA	376-5131	TESTIFY	



OFFICIAL BUSINESS

ALASKA STATE LEGISLATURE - SENATE
COMMITTEE ON LABOR AND COMMERCE

SENATOR RICHARD I. ELIASON
CHAIRMAN

POUCH V • JUNEAU, ALASKA 99811
(907) 465-3844

MEMORANDUM

TO: Senator Don Bennett, Co-chair
Senator John Sackett, Co-chair
Senate Finance Committee

FROM: Senator Dick Eliason

DATE: May 23, 1984

RE: HB 561 - "An Act relating to the small claims jurisdictional
limitation"

The above - referenced legislation increases the maximum limit for small claims from \$2,000 to \$5,000. This raise will allow more Alaskans to use the small claims court to settle disputes which otherwise would have to be handled in a more complex and expensive manner. As the maximum limit has not changed since 1978, the \$5,000 ceiling seems appropriate considering the current value of money.

A work draft for SCS CSIB 705 (L & C) allows claims against the real estate surety fund to be settled in small claims if the claim falls within the appropriate limits. Passage of HB 561 will allow more claims to be settled in this fashion.

I recommend passage of this legislation. A zero fiscal note accompanies HB 561.

Enc.



OFFICIAL BUSINESS

ALASKA STATE LEGISLATURE - SENATE

COMMITTEE ON LABOR AND COMMERCE

SENATOR RICHARD I. ELIASON
CHAIRMAN

POUCH V • JUNEAU, ALASKA 99811
(907) 465-3844

TO: Senator Jalmar Kerttula

FROM: Senator Dick Eliason, Chair
Senate Labor and Commerce Committee

RE: HB 705 - An Act relating to the real estate surety fund

DATE: May 12, 1984

The above-mentioned legislation would require a claim against the real estate surety fund to be processed through the court system instead of the current procedure involving a hearing officer under the jurisdiction of the Real Estate Commission. The Alaska Association of Realtors view the passage of this legislation as the answer to their concerns regarding the number of frivolous claims filed against the surety fund as well as the length of time required to settle the disputes. However, since the introduction of HB 705 the Alaska Supreme Court issued an opinion regarding the Alaska Real Estate Surety Fund. The Court ruled that this surety fund cannot be used for claims involving "innocent" misrepresentation. The fund can only cover payment to claims resulting from "willful" misrepresentation, fraud, or deceit on the part of the realtor. The immediate result of this decision will be to substantially reduce the number of claims filed by the public as well as the number of claims honored by payment from the surety fund. Jim Magowan, Executive Director of the Real Estate Commission, estimates that approximately half of the justifiable claims stem from innocent misrepresentation.

As a result of this Supreme Court decision, Jim estimates that the Commission will receive approximately 80-100 claims annually. These claims will be handled by a full-time hearing officer under the direction of the Commission. This new position has just recently been approved by both the Senate and the House. It is estimated that all claims should be finalized within a 3-4 month period of time.

The Supreme Court decision and the approval of the full-time hearing officer appears to have answered two main concerns expressed by the realtors. An additional disincentive to file frivolous claims would be to impose a significant filing fee to be paid by each claimant prior to processing a claim against the surety fund. If the claimant does not prevail, then the filing fee would be lost. A filing fee could be set at a \$50.00 minimum or 5% of the claim whichever is greater to a maximum of

\$250.00. Such a filing fee would most likely chill frivolous claims without unnecessarily impeding valid claims made against the fund.

Individuals who voice opposition to HB 705 are concerned that court proceedings are time consuming and expensive. Jim Magowan has indicated that the average claim against the surety fund is \$4,000, with approximately 25% of claims being \$2,000 or less. If an individual had to turn to the court system to regress, the costs involved would be prohibitive for these relatively small claims. Unfortunately, the small claims court is not a guaranteed answer as each party involved in the suit has the right to require that the "formal rules of civil procedure" prevail which would necessitate involving the district court. This action could increase the costs and time involved in finalizing the claim. Karla Forsythe, General Counsel, Alaska Court System, estimates that a standard civil law suit in Anchorage could take a least one year to finalize.

The Alaska Real Estate Commission held a public hearing on April 24, 1984 in Anchorage. After five hours of public testimony, it was the opinion of the Commission that important issues and questions had been raised by licensees and non-licensees. However, it was felt that HB 705 did not adequately resolve the issues and further review and input was necessary to address all concerns. The Commission recognized the importance of recommending alternative legislation next session and stated that this area of need would be a high priority.

As the need for this legislation does not seem to be as great as at the time of introduction, possibly the legislature should consider postponing any action in this area until the Real Estate Commission formulates its position.



105 ADAK, FAIRBANKS, ALASKA 99701
Area Code (907) 452-5186

March 31, 1984

Senator Eliason
Pouch V
Juneau, Alaska 99811

Dear Senator Eliason:

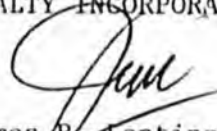
I am writing to express my approval of House Bill 705 and Senate Bill 537 regarding the Real Estate Surety Fund.

I feel that these bills would provide for a more equitable use of this fund than the system presently in effect.

For further comments, I can be reached at 452-5186.

Sincerely,

REALTY INCORPORATED



James R. Lentine
Vice President

JRL/kw

THE REALTY COMPANY OF ALASKA, INC.

Letter of Support (Received approx 30)



BAY REALTY INC.
RESIDENTIAL AND COMMERCIAL
P.O. BOX 3365
HOMER, ALASKA 99603
TELEPHONE 907-235-8386



May 15, 1984

Senator Dick Eliason, Chairman
Senate Labor & Commerce Committee
Pouch V
Juneau, AK 99811
465-4916

Dear Senator Eliason:

Every other profession in the State of Alaska gets their day in court when a claim is filed against them.

Why are realtors singled out in such an unfair fashion? We, as every other profession, rightfully deserve our day in a court of law. We should not be tried and hung in the kangaroo court fashion that is presently being used by the Alaska Real Estate Commission.

We, as every other licensed practicing professional in the State of Alaska, should be judged by the same legal system as the rest of the professionals.

I strongly support SB 537 and HB 705 (Real Estate Surety Funds).

Sincerely,

Jim Tice
Realtor

JT/js

CC Senator Don Gilman

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 23. 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

Letter to Editor



Elizabeth I. Johnson
Counsellor and Attorney at Law

540 "L" Street Suite 304
Anchorage, Alaska 99501
(907) 277-3025

April 20, 1984

Senator Richard Eliason
Capitol Room 417
State Capitol
Pouch V
Juneau, Alaska 99811

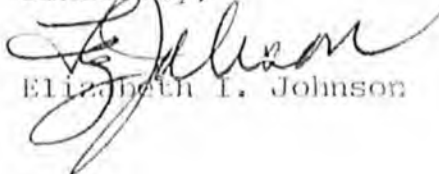
Re: House Bill 705, Senate Bill 537
Relating to the Real Estate Surety Fund

Dear Senator Eliason:

Enclosed please find a letter I wrote earlier to Representative Cowdery regarding Senate Bill 537. I ask that you consider this as written commentary on the bill pending in your committee. After having done approximately 100 Surety Fund Claims I feel that the present system is, by and large, effective. The few changes that need to be made can be easily done by amending the present statute.

Thank you for your attention to this matter.

Sincerely,



Elizabeth I. Johnson

Encl.

EIJ/pjm



Elizabeth I. Johnson
Counsellor and Attorney at Law

Gill

540 "L" Street Suite 304
Anchorage, Alaska 99501
(907) 277-3025

April 9, 1984

Representative John Cowdery, Chairperson
House Labor and Commerce Committee
Alaska State Legislature
Pouch B
Juneau, Alaska 99811

RE: House Bill 705, Senate Bill 537
Relating to the Real Estate Surety Fund

Dear Representative Cowdery:

Enclosed please find a summary of my oral testimony before the House Labor and Commerce Committee last Tuesday. I understand that the Bill was passed out of the Committee unanimously.

As you will recall I am adamantly opposed to not only the concept of House Bill 705 but to specific provisions. I am sending copies of this letter to other legislators in the hope that they will review the legislation more carefully.

I thank you for the opportunity to testify but believe there has been inadequate public comment on this bill and that it deserves more attention from both the House and Senate.

Sincerely,

Elizabeth I. Johnson
Elizabeth I. Johnson

EIJ/kkr

WRITTEN COMMENTS
REGARDING HOUSE BILL 705 AND SENATE BILL 537
RELATING TO THE REAL ESTATE SURETY FUND

Since 1980 a fund created by the Alaska Real Estate Commission has allowed payment up to \$10,000.00 per transaction to consumers who have suffered financial loss because of a real estate licensee's action that involved fraud, deceit, misrepresentation, or conversion of trust funds. The fund is maintained by payment of a yearly surety fee not to exceed \$125.00 for each licensee. After the fund reaches \$250,000.00 the Real Estate Commission adjusts the fees so that the fund is maintained at a level not less than \$250,000.00.

Prior to 1980 persons making a claim against the fund had to first secure a court judgment against the licensee. In 1980 after Sunset review of the legislation, the requirement of a judgment was dropped and the Real Estate Commission set up a procedure whereby complainants could make a claim directly against the fund.

Once a complaint is received an administrative hearing is held. The hearing consists of presentations by the claimant and the licensee or licensees. The Administrative Hearing Officer has the power to subpoena evidence including documents and to require the attendance of witnesses. Both parties are allowed counsel if they so choose.

At the conclusion of the hearing, Findings of Fact and Conclusions of Law are entered with a recommendation to the Real Estate Commission on whether the claim should be paid.

It should be noted that once a Hearing Officer has made a recommended decision the Real Estate Commission reviews the case and decides whether the claim should be paid. After the final decision, the licensee still has the option to appeal to the Superior Court.

Attached is a summary of the claims paid since the inception of the administrative proceedings in 1980.

House Bill No. 705 and Senate Bill No. 537 substantially amend the current procedure to again require that members of the public obtain a judgment against the licensee prior to making a claim against the fund. The legislation then requires a second hearing by the court to determine that the judgment creditor has no other assets available and that payment from the fund is proper. The proposed legislation also restricts the type of claims which are paid from the fund.

It is my opinion after having reviewed approximately 100 of these cases that the Surety Fund, with minor exceptions, works well in protecting the public interest. The present legislation will effectively preclude anyone with a small monetary claim (under \$5000.00) from pursuing an action against the licensee because it will simply be too expensive to prosecute the claim through District or Superior Court. The present tremendous backlog in the courts means that even if one files a case today, one could not reasonably expect a trial for two to three years.

The decided trend in judicial administration in Alaska and throughout the United States is to try to take claims out of the civil court system and to handle them through mediation, arbitration, or through an administrative process. The Surety Fund is a good example of the way in which certain claims are being screened from the court system. The administrative hearing process provides all of the due process protections with the exception of a jury trial that are afforded through the civil court system. The Rules of Evidence are somewhat relaxed although as a practical matter most of the evidence which is presented in administrative hearings would be allowed in a regular civil proceeding.

Objections to House Bill No. 705

Section 2 AS 08.88.460 repealed and reenacted -- object generally to requiring consumers to obtain a judgment prior to making a claim against fund.

(a) Page 1, lines 23 and 24 -- allow a claim against fund on fraud, deceit, intentional misrepresentation or conversion of trust funds. Differs from current interpretation of statute by Real Estate Commission and Administrative Hearing Officers that statute allows claims for innocent misrepresentation or negligent misrepresentation. The Alaska Supreme Court in interpreting common law theory of misrepresentation has allowed recovery against licensees on the theory of innocent or negligent representation. See Bevins v. Ballard, 655 P.2d 757 (Alaska 1982). Enactment of this bill would lead to the curious result that a consumer could sue the licensee in state court under the common law theory of negligent misrepresentation, recover a judgment on that basis, and not be able to obtain payment from the Surety Fund.

(b) Page 2, lines 1-8 -- court must hold a "mini trial" after a judgment has been entered on whether the judgment supports recovery against the Surety Fund. This imposes twice as much work on the court as a regular civil proceeding.

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Written Comments Regarding
House Bill 705 and Senate Bill
537 Relating to the Real
Estate Surety Fund

(d) Page 2, lines 12-14 -- specifically prohibits payment on claims for innocent misrepresentation.

Section 3, page 2, AS 08.88.465 requires a second hearing after entry of a judgment and before amount is paid from Surety Fund.

(a) Page 2, lines 20 and 21 -- requirement of hearing within 30 days is virtually impossible to enforce administratively with the current backlog in the court system.

(b)(4) Page 3, lines 4-6 -- What is a "reasonable attempt"? Open to judicial interpretation and "mini trial" on attempt to find judgment creditor and determine assets.

(b)(5) Page 3 -- requires a separate court hearing on whether creditor has been able to locate assets and has taken the "necessary action" to apply the assets to the judgment. What is "necessary action"?

(b)(6) Page 3, lines 13-16 -- requires the court to make an independent determination that the claimant has "diligently pursued other remedies." What is meant by this phrase? Requires a separate showing that there is no other person that could be liable in the transaction -- in other words the claimant could obtain a judgment against licensee A and during the hearing under this section, a different judge could conclude that licensee B is responsible and deny payment from the fund. This is a peculiar provision which could result in contradictory findings by judges with regard to the same transaction, thereby allowing licensees to shift responsibility and avoid payment from the fund.

Section 4 AS 08.88.470 repealed and reenacted:

(a) Page 3, lines 17-21 -- requires a separate court hearing and in effect a "mini trial" on the validity of the claim.

(b) Page 3, lines 22-27 -- requires the claimant to prove his case twice. Note that if the action was defended by a Trustee in Bankruptcy there has to be an entirely new hearing, although many times there will have already been a complete trial in Bankruptcy Court.

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537 Relating to the Real
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Section 7 AS 08.88.475(b):

(b) Page 4, lines 16-20 -- there is no definition of "transaction." This section appears to read that no matter how many people are involved nor how much money is lost, if the licensee can claim that there was only one "transaction" then the \$10,000.00 limit applies. For example, in the case of the sale of shares in a limited partnership, if the licensee makes fraudulent sales to 50 people, obtains \$5,000.00 from each, and takes the money, is this construed as "one transaction" where the \$10,000.00 limit would apply?

Comments:

Suggestion for changes in current statute and administrative proceedings.

Some of the primary complaints I've heard about the Surety Fund can be solved easily within the context of the present procedure administered by the Real Estate Commission by making changes to the current statute.

1. Elimination of "frivolous" claims. Some licensees have complained that they are burdened with responding to "frivolous" claims which are then denied. It has been my experience that there are very few "frivolous" claims. Many claims are settled or withdrawn prior to hearing or during the hearing process. If there is a problem with inadequate initial screening of complaints, I would suggest the following:

a. Establish a mandatory filing fee of perhaps \$50.00 to discourage those persons who feel the fund is a source of free money.

b. Allow the staff of the Real Estate Commission to do an initial screening of the complaint. If the complaint is not recommended for an administrative hearing and the claimant wishes to go forward, they must post a bond of \$250.00 to secure payment of hearing cost and partial attorney's fees to the licensee if the claim is denied.

2. Denial of Due Process -- there have been some feelings by claimants that because they are not entitled to a jury trial, the administrative proceeding denies them due process. No administrative proceeding provides for a jury trial and as a practical matter all the rights and privileges accorded in a court hearing are preserved in the administrative procedure process. The only exception is the relaxed standard for the rules of evidence. This has not been a significant problem in any case I have handled, in which either an attorney appeared or in which licensees represented themselves.

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Written Comments Regarding
House Bill 705 and Senate Bill
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Estate Surety Fund

If this is perceived as a problem, the current statute can be amended to provide for de novo review by the Superior Court as is done in school employment cases.

3. Allowance of claims based on innocent or negligent misrepresentation. Some of the most vociferous opposition to the Surety Fund has been to claims which have been allowed on the basis of innocent or negligent misrepresentation. This theory of recovery is consistent with the holdings of the Alaska Supreme Court. Thus, licensees are going to continue to be held responsible for mistakes which are innocently made regardless of the status of the Surety Fund.

In short, with the above-noted exceptions, the Surety Fund works well in protecting the public interest and insuring that licensees receive a fair hearing. In addition, the administration of the Surety Fund over the past three years has caused the industry to "self police" to a great degree. The problems with the fund can be more readily addressed by amending the current procedure than requiring consumers to prosecute claims through civil court.

9. Surety Claim Recovery:

Hoey, Thomas	Recovery complete.	1,000
Congdon, Renwick	Recovery complete 030383.	1,139
Lankford, Daniel	Billed 011883, no response.	
McCormick, Gail	Recovery complete 052683.	11,275
Motonaga, Gary	Recovery complete.	4,225
Calvo, Tony	Claim repaid; hearing costs unpaid.	10,000
Odell, Mina	Claimant paid, hearing costs unpaid.	1,000
McCourt, James	Billed 830718; no response.	
Jones, Jerry	Claimant paid, hearing costs unpaid.	800
Ruszkowski, Alvin	Claimant paid, hearing costs unpaid.	1,000
Rink, Robert	Claimant paid, hearing costs unpaid.	1,000
		<u>31,429</u>

10. Surety claims statistics:

	Fiscal Year			Calendar Year		
	Filed	Paid		Filed	Paid	
1981	31	0		52	3	\$ 11,943
1982	70	13	\$ 41,853	93	18	62,612
1983	99	20	80,346	123	14	67,644
1984	97	3	30,000	29	1	10,000
Totals to date	<u>297</u>	<u>36</u>	<u>\$152,199*</u>	<u>297</u>	<u>36</u>	<u>\$152,199*</u>

* This amount includes paid claims that have since been recovered from the licencees, and therefore differs from the total that is stated on the Surety Claim Case summary and as shown below.

Surety claim totals:	Numbers of claims		Dollar amounts of claims	
Paid, unrecovered	37	12.5%	\$ 124,974.24	8.1%
Paid, recovered	*	*	29,025.00	1.9%
PD-Approved	3	1.0%	18,012.00	1.2%
Denied	69	23.2%	317,898.97	20.5%
PD-Denied	1	0.3%	11,000.00	0.7%
Withdrawn	30	10.1%	134,878.25	8.5%
In process	157	52.9%	901,657.39	58.2%
Total filed	<u>297</u>	<u>100.0%</u>	<u>\$1,567,945.85</u>	<u>100.0%</u>

Decided claims:	Numbers of claims		Dollar amounts of claims	
Paid, unrecovered	37	26.4%	\$124,974.24	19.3%
Paid, recovered	*	*	29,025.00	4.5%
PD-Approved	3	2.1%	18,012.00	2.8%
Denied	69	49.4%	317,898.97	50.8%
PD-Denied	1	0.7%	11,000.00	1.7%
Withdrawn	30	21.4%	134,878.25	20.9%
Total decided claims	<u>140</u>	<u>100.0%</u>	<u>\$646,288.46</u>	<u>100.0%</u>

* These numbers are included in the paid, unrecovered, category because there is overlap where the hearing costs are outstanding after repayment of the claim.

MEMORANDUM

State of Alaska

TO: Richard D. Monkman
Assistant Attorney General
Anchorage AGO

DATE: April 25, 1984

FILE NO:

TELEPHONE NO:

276-3550

FROM:

SUBJECT: Surety Fund Public
Hearings

By:

Karen
Karen M. Procter
Paralegal Assistant
Commercial Section-Anchorage

I attended the afternoon session of the Real Estate Commission's public hearings on HB 705 and SB 537 held yesterday. Dave Ribacchi chaired the hearing. Commissioners present were John Benson, Gil Serrano, and Karen Morris, industry members, and LaVerne Collins, the public member. Jim Magowan and Joe Koss attended, and Dave LeBlond represented our office. The hearing room was at near capacity and was composed largely of licensees.

Norm Gorsuch's letter to Jim Magowan of April 24 was read into the record at Ribacchi's direction, and copies were distributed to the audience. A copy is attached.

The licensees had some serious misunderstandings about the Surety Fund and the changes their bill would effect. They simply do not understand the hearing officer system and feel that it is less than legal. They think the hearing officer is not as "experienced" (competent) as a judge and that a hearing officer decision does not carry any real weight because collection against the individual licensee requires a court judgment. The licensees think the Fund is running out of money because all claims are paid, no matter how frivolous. Their misuse of terms such as "double jeopardy" helps confuse them further.

The legitimate concerns of the licensees are pretty simple: that the number of frivolous claims be reduced, and that the State attempt to recover monies paid out by the Fund from the liable licensee. These concerns could better be resolved by the simple addition of a filing fee requirement, and recovery of fund monies could be handled by our office.

Testimony proceeded briefly as follows:

S. B. Mitford, public. Adamantly opposes the bill. Says that after buying their realty, most complainants to the

Fund are poor; the present system allows them a means of obtaining damages without the expense of an attorney, and takes far less time than a court action. He feels the purpose of the bills is to deny the public ready access to the Fund. His recommendations included increasing the licensees' indemnity to \$100,000; strengthening the inquiry procedure; and asking the legislature for more money to investigate complaints.

Gary Wilkins, past public member and Commission chairman. (This was written testimony.) Feels that frivolous claims are a serious problem but do not necessitate complete obliteration of the Fund. He recommended a nonrefundable filing fee instead. Doesn't feel buyers should suffer economic hardship because of innocent misrepresentation, and that the buyers should be the last to suffer. He stated that a small claims action is turned into a district court case by a simple request for formal procedure, and that application for relief to the court instead of the Commission won't solve anything.

Janet Mischler, public. (Currently awaiting a hearing date on a claim.) She is against the bill and thinks the Fund should be maintained as it is because it resolves conflicts more rapidly than the court system can, and at a lower cost to the public.

George Oliver, real estate broker. Never thought the Fund would work in the first place. Says the Fund is running out of money; the system is being overused; it's too easy to file a claim; and the hearing officers are too lenient toward the claimants. He wants the claims to proceed through the court system.

Cary Vlahovich, President, Anchorage Board of Realtors. Thinks the licensees are denied due process by the hearing officer system, and that the "quality of justice" provided by a hearing officer is not equal to that provided by the courts. Says the hearing officer process is "intimidating," and that the legal opinion of the hearing officer can't be questioned. He feels that the burden of Fund payments is borne by 99.9% of the licensees who are not causing problems.

Maureen Kennedy, Director, Alaska Public Interest Research Group. Her group is opposed to the bill. Says the Surety Fund is a good example of self-policing by an industry. It avoids the cost and delay inherent in the court system, and betters the industry's image to the consumer. The changes proposed by the bill would increase the cost to the consumer and to the State. Her group feels that this bill has been "greased,"

that there has been inadequate notice to the public, and they are concerned about the way it is being handled.

Julian Mason, attorney representing Alaska Association of Realtors and the Anchorage Board of Realtors. Says the bill isn't perfect, but the Fund must be changed. He thinks the costs of the agency procedure is as high or higher than going into the courts. Says the Real Estate Commission is the only State agency that levies damages. Stated that the licensees are in effect becoming the guarantors. He supports the bill.

Joseph Digus, public. The purpose of the Commission is to protect the public, and this bill will remove the teeth from the Commission's ability to do so. Wants the Legislature to decide if it wants to serve the public in this way. If it wants to reduce State costs, it can simply do away with the Commission. If it wants to regulate the industry, protect the public, and adjudicate these claims, then the Fund should stand as it is. He feels the bill is against the public.

Frank Austin, past public member of the Commission. He supports Liz Johnson's written testimony. Feels the Fund serves the purpose it was intended to serve. He rebuts the industry's reasoning: they offer no facts to support their contention that the Fund pays out too much money; hearing officers have just as much and sometimes more experience than judges; a hearing officer's recommendations are only that, because the Commission makes the decisions; the Commission has the competency to resolve issues; and the Fund is the correct forum when fraud, deceit, or misrepresentation are involved. Feels the real problems are recovery and the institution of a filing fee. Says present process serves both the public and the licensee. Adamant that the public has not been given enough input on the bill.

Charles Bauer, public (a successful claimant to the Fund). When no satisfaction could otherwise be obtained from the licensee, he went to the Fund. The present system saved him \$2,000-\$3,000 to hire an attorney and go into the courts which, as a new homebuyer, he could not have afforded. Feels strongly that the Fund serves the public.

Marianne Kaemerer, public (a successful claimant). She went to an attorney, spent one and one-half years in court, was awarded a court judgment of \$31,000, and incurred about \$3,000 in attorney fees. She has been unable to collect. She went to the Fund on her own, and was awarded the maximum in damages. This took less than a year. Without the award, she feels she would have lost her home.

Mr. (?) Kennedy, public. The bill will add an extra layer of bureaucracy to the consumer's application for relief from the Fund. It would be like having to prove one's case twice. He is opposed to the changes.

LeBlond clarified the hearing officer process and defined legal terms being tossed around. He explained the Bevins ruling regarding innocent misrepresentation liability, and rebutted much of what Julian Mason had said. He explained that these are not civil damages actions before the Commission and that the State hasn't failed to meet "judicial standards" because the Commission's decision has to be turned into court judgment in order to execute.

I think the Commissioners present were not convinced to support the bill. Connie Sipe attended the evening session and had the same impression.

KMP:ihr

cc: Dave LeBlond
Pete Froehlich

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
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POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

April 24, 1984

James L. Magowan, Executive Director
Alaska Real Estate Commission
3601 C Street Suite 722
Frontier Building
Anchorage, AK 99503

Re: Alaska Association of Realtors
"White Paper" on the surety
fund

Dear Mr. Magowan:

At your request on behalf of the Real Estate Commission, we have reviewed the White Paper dated March 5, 1984, by the Alaska Association of Realtors pertaining to the real estate surety fund. Some of the comments and concepts advanced by the Alaska Association of Realtors in the White Paper are now embodied in proposals before the 13th Legislature, specifically HB 705 and SB 537.

The current real estate surety fund claims program as outlined in AS 08.88.450 et seq. has benefited hundreds of Alaskan consumers and real estate professionals since it was enacted in 1980. The program has provided a swift, inexpensive, and fair method of resolving many real estate sales disputes. It has allowed hundreds of consumers to bring their grievances before a qualified, impartial tribunal without the frustration, delay and high cost of going to court. In our view, the program has given a measure of protection to consumers while providing real estate professionals with a full and fair opportunity to contest the merits of any claim made against the surety fund. The existing surety fund has done much to enhance the public trust and confidence in the real estate profession in general, a goal we support and encourage.

To be sure, the surety program could be improved in some respects. I agree with the point made by the Alaska Association of Realtors that some means must be found to reduce frivolous claims against the surety fund. It is my belief that frivolous claims can be essentially halted by imposing a significant

filing fee, perhaps up to \$150, to be paid by each claimant prior to processing a claim against the surety fund. If the claimant does not prevail, then the filing fee would be lost. Such a filing fee would most likely chill frivolous claims without unnecessarily impeding valid claims made against the fund.

I recognize that this is a policy call rather than a legal determination. I would therefore simply urge the commission to carefully weigh the effects of the approach taken in the White Paper and by the two pending bills and carefully consider their effects on both the real estate consumers and on the real estate profession. As a general rule, I am not enamored with placing more disputes in our already overworked judicial system. Of course, any aggrieved party from a real estate surety fund proceeding does and ought to have the ability to appeal the findings and award to a superior court.

If we can be of additional assistance to the commission concerning any aspect of the surety fund, please contact us.

Sincerely,

Norman C. Gorsuch
Attorney General

JWG:eer

cc: The Honorable Dick Elaison
Senator

The Honorable Jalmar Kerttula
President of the Senate

The Honorable Joe Hayes
Speaker of the House

Ray Gillespie
Special Staff Assistant
to the Governor

The Honorable Dick Lyon, Commissioner
Department of Commerce and Economic Development

M E M O R A N D U M

April 10, 1984

To: Senate Labor and Commerce Committee
Senator Richard Eliason, Chairman

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

Subject: HB 537, 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.

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-

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 whether the 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

the 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 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

or 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)

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 \S 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 \S 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 \S 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 \S 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 \S 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 \S 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 \S 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 \S 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)

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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 \$6,350.00 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-

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.

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for harm; (d) the directness of causation; and (e) the policy of preventing future harm. *Howarth v. Pfeifer*, 443 P.2d at 42; see *Transamerica Title Insurance Co. v. Dunney*, 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 representations, 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.*, 53 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 8 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 608 (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 *Clay Ins. Agency v. Doyle*, 620 P.2d 194, 201 (Alaska 1980).

puni 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. *Sodal 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. Cullen*, 165 Ohio St. 343, 135 N.E.2d 328, 331 (1956); *Berryman v. Riepert*, 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).

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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 the 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-

dered, 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.

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

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

CONNOR, Justice, with whom RABINOWITZ, Justice, joins, dissenting in part.

I dissent from the holding that an action for innocent misrepresentation should be permitted against the real estate broker.

When a realtor acts as a mere conduit for passing on information supplied by the seller, he should be under no duty independently to verify that information unless he has reason to believe the information to be false. See *Lyons v. Christ Episcopal Church*, 71 Ill.App.3d 257, 27 Ill.Dec. 559, 389 N.E.2d 623, 625 (1979). Allowing an innocent misrepresentation action against the broker in such circumstances is quite close to imposing strict liability. There is no reason to make the broker the "insurer" of the seller's representation.

Although we recognized a claim based on innocent misrepresentation in *Cousineau v. Walker*, 613 P.2d 608 (Alaska 1980), that case is distinguishable from a case between a buyer and a broker. Sellers who make representations about their property should be held to the accuracy of the representations, as they are normally in the best position to know the facts. But a broker often has little personal knowledge of the property which he offers for sale. I see no reason to make the broker the guarantor of representations emanating from the seller. I would hold that innocent misrepresentation is not available as a cause of action by the buyer against the broker. Thus, I would reverse the judgment of the superior court. I agree with the balance of the majority opinion.



in we affirmed a judgment in favor of a small "subdivider," in a damage action founded upon the subdivider's innocent failure to disclose undetected permafrost conditions in lots sold to the plaintiffs.

Subdividers are subject to, and protected by, the Alaska Land Sales Practices Act, AS 34.55. Under the act, a subdivider is liable for material misrepresentations or omissions affecting the land, "unless in the case of an untruth or omis-

Laureen BAILEY, Appellant and Cross-Appellee,

v.

Dennis J. HAAS, Appellee and Cross-Appellant.

Nos. 6177, 6688.

Supreme Court of Alaska.

Dec. 3, 1982.

Cross appeals were taken from a decision of the Superior Court, Third Judicial District, Kenai, James A. Hanson, J., which was entered in an action brought pursuant to the Uniform Reciprocal Enforcement of Support Act. The Supreme Court, Connor, J., held that: (1) failure of petition to include a prayer for arrearages did not justify dismissal of the claim where respondent had notice of the claim for arrearages at the very latest by time motion for an order of support was filed, and (2) request for arrearages in child support need not be reduced to judgment by petitioning state prior to recovering such arrearages in an Uniform Reciprocal Enforcement of Support Act action.

Reversed and remanded.

1. Parent and Child §3.4(2)

Failure of petition to initiate support proceedings under Uniform Reciprocal Enforcement of Support Act, to include a prayer for arrearages did not justify dismissal of the claim where respondent had notice of the claim for arrearages at the very latest by time motion for an order of support was filed. AS 25.25.010-25.25.270.

sion it is proved that . . . the person offering or disposing of subdivided land did not know and in the exercise of reasonable care could not have known of the untruth or omission." AS 34.55.030(a). Thus, a "subdivider" is not liable for innocent misrepresentations. Such liability is barred by the statute. This protection, however, is not available to the defendants in the case at bar, since they are not "subdividers."

2. Parent and Child §3.4(2) Request for arrearages need not be reduced to judgment by petitioning state prior to recovering such arrearages in an action brought pursuant to the Uniform Reciprocal Enforcement of Support Act. AS 25.25.270.

3. Parent and Child §3.4(2) Civil rule regarding a fee award and value of time where no fee criteria applicable to the Uniform Reciprocal Enforcement of Support Act. Rules Civ. Pr. 40-25.25.270.

4. Parent and Child §3.4(2) Father's recovery in an action for arrearages and therefore of attorney fees.

Donald V. Anchorage, Gen., Juneau, etc.

Phil N. cross-appell.

Before I CONNOR, JJ.

CONNOR This appeal pursuant to the Uniform Reciprocal Enforcement of Support Act. (RESA)

Laureen Bailey Haas to Connor

1. AS

CONNOR, Justice, with whom RABINOWITZ, Justice, joins, dissenting in part.

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3 Parent and Civil rule regarding a fee award and value of services where the fee criteria applicable to the Uniform Support Act Rules Civ.Pr. 410-25.25.270.

4 Parent and Father's duty in recovery in and therefore of attorney fees.

Donald Anchorage Gen., June 1982

Phil N. cross-appel

Before I CONNOR JJ.

CONNOR This action pursuant to the Uniform Reciprocal Enforcement of Support Act. Laureen Haas vs. Dennis J. Haas 1 month.

1. AS 2

	80	81	82	83	84 ^{2/24}
Total filed	2	57	93	122	30
Withdrawn		10	13	5	
Hearings	2	47	80	117	28
Denied		20 (\$109,000)	36 (\$104,500)	13 (\$53,400)	
Proposed Deny					2 (\$11,000)
Paid/Recov		5 (\$26,225)	3 (\$2800)		
Paid/Unrecov.	2 (\$1700)	15 (\$26,900)	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

Undecided includes the rest of the claims —

Provided by Grayce Oakley,
Alaska Assoc of Realtors

Info re: claims

Industry advocated '74 Legislation

Realized bonds were inadequate

Indemnity vs. E & O

California Model -- Key elements

Judgment	Proof of Recovery Attempt	Surety Fund Payment
↑	↑	
	'74 Leg. omitted this	
'80 amendment replaced this		
3-year experiment that is unacceptable.		

Alaska \$300,000 to 50 parties since inception	4000± licenses
Virginia 340,000 to 84 parties	35,000± licenses
Alaska \$100,000 to 20 parties in 1983	4000± licenses
California \$200,000 to 31 in 1983	190,000± licenses

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 Hearing's with neutral judge + decide pts. of law
 State entity removed from position of being both judge and jury
 SB 497- Mobile Home Manufacturers' Bond, an A G *proposed bill -- "rationale" 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.O. = 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.

D.

02-24-84 SURETY CLAIM INVENTORY LIST 8963L

PAID--UNRECOVERED COSTS

Date filed

claim

Heating 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- 320330-022	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	326.65
Rita Trombley	Harold Johnsen	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 Burkhart	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 Ruskowski	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	395.25
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. Wallis	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-07/84

10,000.00

Willie Taylor

Sally Mummy

S- 830427-039

JK-07/83

1,000.00

11,000.00## ##

HEARINGS

Jerry Gallagher	Mary Bunes	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-C2/82	10,000.00	18.75
Joseph Thomas	Les Pace	S- 810500-027	TB-08/83	10,000.00	
Max Bivens	James Anthony	S- 810800-033	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- 820706-051	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 Bunes	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 Schlegel	S- 830830-082	JS-09/83	10,000.00
Robert Whisenlunt	Gary Munson	S- 830830-083A	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
Dauids, 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 | |

(9) each of the following:

(A) a domestic or foreign corporation, or a general or limited partnership; or

(B) a partner or regular employee of a domestic or foreign corporation or a general or limited partnership, when performing an act described in AS 08.88.161 in the regular course, or as an incident to, the management, sale or other disposition of real estate owned by the corporation or partnership; the exemption provided in this subparagraph does not apply to a person who performs an act described in AS 08.88.161 either as a vocation or for compensation if the amount of the compensation is dependent upon or directly related to the value of the real estate with respect to which the act is performed.

(10) a resident manager of rented real estate if the resident manager's duties are limited to the negotiation of leases and rental agreements and the collection of rent for the use of the real estate and if the resident manager is

(A) employed by the owner of the real estate; or

(B) employed by, or engaged under contract with, a licensed real estate broker. (§ 1 ch 95 SLA 1964; am § 1 ch 38 SLA 1969; am § 19 ch 28 SLA 1974; am §§ 29—31 ch 167 SLA 1980)

Effect of amendments. — The 1980 amendment substituted "who is not licensed under this chapter who makes" for "making" near the beginning of paragraph (1); added "which is not in Alaska" at the end of paragraph (1); in paragraph (9), restructured the paragraph into present subparagraphs (A) and (B), added the introductory phrase, "each of the following", inserted "or a" preceding "general" in subparagraph (A), substituted a semicolon for a comma following "limited partnership" at the end of subparagraph (A), substituted "a domestic or foreign corporation or a general or limited partnership" for "one of these," and "an

act" for "acts", deleted "however" following "the corporation or partnership", inserted "exemption provided in this subparagraph does not apply to a", and substituted "who performs an act described in AS 08.88.161 either" for "may not perform these acts", all near the middle of subparagraph (B), and substituted "act is" for "acts are" at the end of subparagraph (B); and added paragraph (10).

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, S.A. 1982.

Sec. 08.88.431. Definitions. In this chapter

- (1) "real estate" means an interest or estate in land, corporeal or incorporeal;
- (2) "commission" means the Real Estate Commission;
- (3) Repealed by § 42 ch 167 SLA 1980.
- (4) "lease" includes a lease that is a part of another transaction.
- (5) "resident manager" means a person who resides on real property and manages it for the benefit of another person. (§ 1 ch 95 SLA 1964; am § 58 ch 218 SLA 1976; am §§ 32, 42 ch 167 SLA 1980)

Effect of amendments. — The 1980 amendment repealed paragraph (3), and added paragraph (5).

Article 5. Real Estate Surety Fund.

Section	Section
450. Real estate surety fund	475. Maximum liability
455. Payments by real estate brokers and salesmen	480. Order of claim payment
460. Claim for payment	485. False claims or documents
465. Consideration of application	490. Right to subrogation
470. Findings and payment	495. Disciplinary action against brokers and salesmen
472. Hearing costs	500. Definition

Editor's notes. — The sections contained in this article, except for AS 08.88.472, derive from AS 45.85.010 — 45.85.120 and were renumbered by the revisor of statutes pursuant to AS 01.05.031.

Collateral references. — 12 Am. Jur. 2d, Brokers, §§ 23-29.
12 C.J.S., Brokers, §§ 8-13.

Sec. 08.88.450. Real estate surety fund. There is created a special account in the general fund known as the real estate surety fund to carry out the purposes of this chapter. The fund shall be composed of payments made by licensed real estate brokers and salesmen under AS 08.88.455. The fund may not exceed \$500,000 and amounts in the fund in excess of \$250,000 may be appropriated for real estate educational purposes as provided in AS 08.88.091. (§ 1 ch 143 SLA 1974; am § 34 ch 167 SLA 1980; AS 45.85.010)

Effect of amendments. — The 1980 amendment substituted "\$500,000" for "\$300,000" near the beginning of the third sentence.

Sec. 08.88.455. Payments by real estate brokers and salesmen. (a) A licensed real estate broker or associate broker, when obtaining or renewing a real estate license, in lieu of obtaining a corporate surety bond, shall pay to the commission in addition to the license fee, a bond fee not to exceed \$125, and a licensed salesman, when obtaining or renewing a license, in lieu of obtaining a corporate surety bond, shall pay to the commission in addition to the license fee, a bond fee not to exceed \$40. After the fund reaches \$250,000 the commission shall by regulation adjust the bond fees so that, taking into account anticipated expenditures for claims against the fund and real estate educational purposes, the fund is maintained at a level not less than \$250,000.

(b) All fees collected under this section shall be paid at least once a month by the commission into the general fund. These payments shall be credited to the real estate surety fund. (§ 1 ch 143 SLA 1974; am § 35 ch 167 SLA 1980; AS 45.85.020)

Effect of amendments. — The 1980 amendment substituted "commission" for "commissioner of commerce" near the beginning of subsection (a) and for "commissioner" wherever else it appears throughout the section.

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Sec. 08.88.460. Claim for payment. (a) A person seeking reimbursement for a loss suffered in a transaction as a result of fraud, misrepresentation, deceit, or the conversion of trust funds on the part of a real estate broker, associate real estate broker, or real estate salesman licensed under this chapter shall make a claim to the commission for reimbursement on a form furnished by the commission. The form shall be executed under penalty of perjury, and information required to be supplied shall include the following:

- (1) the name and address of the real estate broker, associate real estate broker, or real estate salesman;
- (2) the amount of the alleged loss;
- (3) the date or period of time during which the alleged loss occurred;
- (4) the date upon which the alleged loss was discovered;
- (5) the name and address of the claimant; or
- (6) the general statement of facts relative to the claimant.

(b) A copy of a claim filed with the commission under (a) of this section shall be sent to the real estate broker, associate real estate broker, or real estate salesman alleged to have committed the misconduct resulting in losses, as well as a real estate broker employing an associate real estate broker or real estate salesman alleged to have committed the conduct resulting in losses, at least 20 days before any hearing held on the claim by the commission. (§ 36 ch 167 SLA 1980; AS 45.85.031)

Sec. 08.88.465. Consideration of application. (a) Upon receipt of a claim for reimbursement, the commission may, in considering whether a claim should be granted,

- (1) take and hear evidence pertaining to the claim;
- (2) administer oaths and affirmations;
- (3) compel, by subpoena, the attendance of witnesses and the production of books, papers and documents pertaining to the claim;
- (4) engage the services of an investigator, accountant, or other expert necessary to process the claim.

(b) A certified or authenticated copy of a record, including a transcript of testimony, of a hearing held under AS 08.88.071(a)(3) in which fraud, misrepresentation, deceit, or conversion of funds on the part of a licensed broker, associate broker, or real estate salesman is established, may constitute sufficient evidence to support a finding.

(c) Before the commission finds that payment should be made from the real estate surety fund, the real estate broker, associate broker, or real estate salesman shall be afforded an opportunity to file with the

commission, within 10 days after receipt of notification of the claim under AS 08.88.460(b), either a written statement in opposition to the claim or an application for the presentation of additional evidence.

(d) The claimant bears the burden of proof of establishing that the claimant suffered losses in a transaction as a result of fraud, misrepresentation, deceit, or the conversion of trust funds on the part of a real estate broker, associate real estate broker, or real estate salesman and the extent of those losses. All facts shall be established by a preponderance of the evidence.

(e) The commission may postpone consideration of a claim until after a hearing under AS 08.88.071(a)(3) or until after a pending or contemplated court proceeding is completed. (§ 36 ch 167 SLA 1980; AS 45.85.041)

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Sec. 08.88.470. Findings and payment. At the conclusion of the commission's consideration of a claim made under AS 08.88.460, it shall make in writing findings and conclusions on the evidence. If the commission finds that the claimant has suffered a loss in a transaction as a result of fraud, misrepresentation, deceit, or the conversion of trust funds on the part of a real estate broker, associate broker, or salesman, the commission may award a claimant reimbursement out of the real estate surety fund for the claimant's loss up to \$10,000. However, not more than \$10,000 may be paid for each transaction regardless of the number of persons injured or the number of parcels of real estate involved in the transaction. (§ 36 ch 167 SLA 1980; AS 45.85.051)

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Sec. 08.88.472. Hearing costs. (a) When an award is made from the real estate surety fund under AS 08.88.470, the commission may charge to the fund the costs of a hearing held under AS 08.88.071 or 08.88.465. Amounts subsequently recovered by the commission for these costs from the licensee under AS 08.88.071(b) or from other parties under AS 08.88.490 shall be deposited to the real estate surety fund.

(b) An amount charged to the fund by the commission for costs under (a) of this section may not be considered in determining the maximum reimbursement to be awarded under AS 08.88.470 or in determining the maximum liability of the real estate surety fund under AS 08.88.475. (§ 6 ch 96 SLA 1982)

Sec. 08.88.475. Maximum liability. (a) The maximum liability of the real estate surety fund does not exceed \$50,000 for any one broker or salesman.

(b) If the \$50,000 liability of the fund as provided in (a) of this section is insufficient to pay in full the valid claims of all persons who have filed claims against one broker or salesman, the \$50,000 shall be distributed among the claimants in the ratio that their individual claims bear to the aggregate of valid claims, or in another manner that the commission considers equitable. Distribution shall be among the persons entitled to share in the recovery, without regard to the order of priority in which their claims were filed. (§ 1 ch 143 SLA 1974; AS 08.45.85.060; am § 11 ch 59 SLA 1982)

Effect of amendments. — The 1982 amendment, in subsection (b), substituted "commission" for "court" in the first sentence, and, in the second sentence, deleted "their judgments for obtained or" following "priority in which" and inserted "were" preceding "filed."

Sec. 08.88.480. Order of claim payment. If the money deposited in the real estate surety fund is insufficient at a given time to satisfy a duly authorized claim against the fund, the commission shall, when sufficient money has been deposited in the fund and appropriated, satisfy unpaid claims in the order that the claims were originally filed, plus accumulated interest at the rate of eight percent a year. (§ 1 ch 143 SLA 1974; am § 37 ch 167 SLA 1980; AS 45.85.070)

Effect of amendments. — The 1980 amendment substituted "commission" for "commissioner."

Sec. 08.88.485. False claims or documents. A person who files with the commission a notice, statement or other document required under this chapter which contains a wilful material misstatement of fact, is guilty of a misdemeanor and is punishable by imprisonment for a period of not more than one year, or a fine of not more than \$1,000, or by both. (§ 1 ch 143 SLA 1974; am § 38 ch 167 SLA 1980; AS 45.85.080)

Effect of amendments. — The 1980 amendment substituted "commission" for "commissioner."

Sec. 08.88.490. Right to subrogation. When the commission has paid to a claimant from the real estate surety fund the sum awarded by the commission, the commission shall be subrogated to all of the rights of the claimant to the amount paid and the claimant shall assign all right, title and interest in that portion of the claim to the commission. Amounts subsequently realized by the commission on the claim

shall be deposited to the real estate surety fund. (§ 1 ch 143 SLA 1980; am § 39 ch 167 SLA 1980; AS 45.85.090)

Effect of amendments. — The 1980 amendment substituted "commission" for "commissioner" wherever it appears throughout the section except the second time in the first sentence where it is substituted for "court", substituted "claimant" for "judgment creditor" wherever it appears throughout the section, inserted "surety" and substituted "awarded" for "ordered" near the beginning of the first

sentence, substituted "claim" for "judgment" near the end of the first sentence and near the middle of the second sentence, and inserted "real estate surety" at the end of the section.

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Sec. 08.88.495. Disciplinary action against brokers and salesmen. Repayment in full of all obligations to the real estate surety fund does not nullify or modify the effect of disciplinary proceedings brought under the provisions of this chapter. (§ 1 ch 143 SLA 1974; AS 45.85.110)

Revisor's notes. — References to AS 45.85 were removed and the section was rearranged by the revisor of statutes, in

conjunction with the relocation of the material in AS 08.88.

Sec. 08.88.500. Definition. In this chapter, "commission" means the Real Estate Commission established under this chapter. (§ 40 ch 167 SLA 1980; AS 45.85.120)

Chapter 92. Concert Promoters.

Section	Section
10. Registration required	50. Injunction
20. Fees	60. Violations
30. Bond or cash deposit required	70. Exemption
35. Re. and caption required	80. Regulations
40. Denial, revocation, and suspension of registration	90. Definitions

Collateral references. — 58 Am. Jur. 2d, Occupations, Trades and Professions, §§ 1-23.

53 C.J.S., Licenses, §§ 32-45.

Sec. 08.92.010. Registration required. A person may not engage in the business of promoting concerts in this state without first obtaining and holding a current and valid promoter's certificate of registration issued by the department. To remain valid, a certificate of registration must be renewed on or before a date set by the department.