

HB

266

STATE OF ALASKA  
THE LEGISLATURE

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

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

*House Judiciary:*

*1-15-88*

# HOUSE COMMITTEE REPORT

(9)

Date referred: 4/10/87

FURTHER REFERRALS: Judiciary

5/11

DATE: 5/9/87

The Resources Committee has considered HB 266

"An Act relating to the recording of documents."

**RECOMMENDS:**

- replace with CS HB 266 (rev)  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(S):**

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published \_\_\_\_\_
- zero with analysis

**SIGNING DO PASS:**

Jan Gert  
Mike Narayne  
[Signature]  
[Signature]  
Cliff Davidson  
[Signature]  
Herb Sprague  
Adelheid Herrmann

**SIGNING OTHER RECOMMENDATIONS:**

Issue raised - No Rec

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Jan Gert

Chairman's signature

STATE OF ALASKA  
1988 LEGISLATIVE SESSION

BILL VERSION: CS HB 266 (Resources)

PUBLISH DATE: \_\_\_\_\_

FISCAL NOTE

REQUEST:

Revision Date: January 8, 1988  
 Title: An Act relating to the recording of documents  
 Sponsor: Ulmer  
 Requestor: House Judiciary

Agency: Natural Resources  
 BRU: Management & Administration  
 Components: Information Resource Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Clarifies certain procedures for recording of documents by the State Recording Offices. Requires that regulations be no more restrictive than the statutes unless they further a "legitimate administrative need".

Prepared by: Sharon Barton *Barton* Phone: 465-2406  
 Division: Management Date: 1/8/88

Approved by Commissioner: *Judith M. Brink* Date: 1/8/88  
 Agency: Department of Natural Resources

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

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OF COUNSEL  
 JOHN C. HUGHES  
 RICHARD O. GANTZ

March 10, 1987

REPLY TO ANCHORAGE

Honorable Fran Ulmer  
 State Representative  
 P. O. Box V  
 Juneau, Alaska 99811

Dear Representative Ulmer:

I received the enclosed memorandum from the Alaska Bar Association, as I am a member of the Natural Resources Section Executive Committee of the Bar Association.

I support the language of the attached (proposed) House Bill, "An Act relating to the recording of documents", in its entirety. I wholeheartedly support the bill and the reasoning behind it. I urge you to introduce it, and not by request.

If for no other reason, I object to the current recording regulations and support the proposed bill on the grounds that the Department of Natural Resources has no business placing unreasonable and cumbersome limitations on the public's right to record documents. If it is to be done at all, it should be done by the legislature through elected representatives and not subject the right to record documents to the discretionary, often petty and whimsical "legal" interpretations of clerks. I have personally had the experience of the Fairbanks Recording Office (initially) refusing to record documents that are required by federal mining claim regulations to be recorded with the recording district; only after strenuous argument (the clerks adjourned to a private conference on the matter while I waited an hour) was the document accepted. If the documents had not been recorded, my clients' mining claims could have been declared invalid by the United States Bureau of Land Management.

Most of my practice consists of representing small miners. As a group, these people are bright, but have little formal education; they are literally overwhelmed by the legal and regulatory climate in which they are struggling to survive. As a user group, I would wager that miners use Alaska's recording

Honorable Fran Ulmer  
March 10, 1987  
Page 2

offices more than any other single group of people. They do so for a very good reason: they must annually file documents with recording offices to preserve their possessory rights, upon pain of losing the claims to rival claimants or the government.

Unlike persons wishing to record documents who are seeking to place themselves prior in time to the interest of another party, the failure to timely record a document for a miner does not simply place that miner's interest in a position subordinate to someone who has filed ahead of him. Instead, the failure to timely file various mining documents can, and usually does, result in a total loss of the miner's rights--e.g., by an administrative declaration from BLM to the fictional effect that their claims have been "abandoned". This abandonment penalty has been sustained as lawful by the United States Supreme Court recently and BLM may take such action, despite abundant evidence that the miner did not intend to abandon the claim.

As a group, miners stand to lose more than any other group under these current recording regulations, because miners typically wait until near the annual deadlines to file their documents. At that time, should a clerk narrowly or adversely interpret any one of the host of regulatory obstacles to recording with which DNR is now armed, it will be too late for the miner to correct the situation; in many instances, the miner will simply lose his rights. Often, the failure to record cannot be cured by filing another mining claim location certificate, because the ground upon which the claim was located is now in one of Alaska's many national parks or other areas now closed to mineral entry.

Long before there were recorder's offices, there were mining districts. Each mining district (many of which were established shortly after acquisition of Alaska from Russia) had a district recorder, whose job was almost exclusively to accept mining claim recordings. It is sad and ironic that State of Alaska recorder's offices, which succeeded to the duties of mining district recorders, now seek to limit the public's right to record.

Finally, I will conclude by suggesting that some teeth be placed in the bill proposed; otherwise, even though the intention of the legislation is clear, it could still be frustrated, without penalty, by State employees. You are probably aware of the fact that some Alaska statutes provide for penalties to be assessed against an employee who violates the statute. For example, I believe there is a statutory prohibition against Department of Revenue employees divulging confidential information about taxpayers; penalties are provided for releasing the information. I can say from personal experience that this penalty provision is

Honorable Fran Ulmer  
March 10, 1987  
Page 3

terribly effective, because I have sought to obtain seemingly unrelated and harmless information and the Attorney General's Office has always advised the employee to err on the side of caution by refusing to release it. The fear of this penalty is so great that I have even had cases wherein the Attorney General gave this same advice, even though the information was requested pursuant to a lawfully issued subpoena (I was able to obtain the information, but only after persuading the taxpayer to authorize its release).

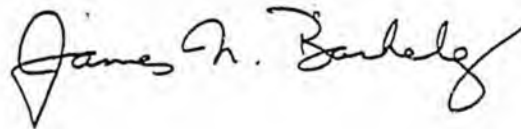
Thus, assuming a reasonable definition of "wrongful refusal to record" could be arrived at, I respectfully submit that penalties should be provided for under those circumstances--which penalties should include all losses proximately caused by the wrongful refusal--e.g., the loss of mining claims or other valuable property rights.

This is not a matter involving a particularly crusty, obstructionist clerk in one recording district; this is a matter of paramount importance and is of state-wide concern.

One last note: my opinions in this letter are conveyed to you from me as an individual, and they do not necessarily constitute the opinions of the Alaska Bar Association nor of Hughes, Thorsness, Gantz, Powell & Brundin.

Very truly yours,

HUGHES, THORSNESS, GANTZ,  
POWELL & BRUNDIN



By:

James N. Barkeley

JNE/mt  
2793i

cc: Linda Nordstrand, Alaska Bar Association  
CLE Director

## DOUGLAS L. GREGG, Esq.

A PROFESSIONAL CORPORATION

ATTORNEY-AT-LAW

130 SEWARD STREET, SUITE 417

JUNEAU, ALASKA 99801

March 4, 1987

Honorable Fran Ulmer  
Representative District 4B  
State House of Representatives  
P.O. Box V  
Juneau, Alaska 99811

Re: Amendments to Recording Statute AS 34.15  
My File G-1579

Dear Representative Ulmer:

Thank you for having our bill drafted. It seems to cover all the bases. I am not certain my schedule will allow me to attend Friday's bar luncheon. As a committee member I certainly hope that you will get a bill in as quickly as possible. I keep hearing horror stories. Fred Baxter is currently having a problem getting a certified copy of a court order from Anchorage recorded down here. The reason for refusal: "It is not an original." Can you believe this?

Very truly yours,

*D. L. Gregg*  
DOUGLAS L. GREGG

DLG

cc: Fred J. Baxter, Esq.  
Larry Weeks, Esq.  
James E. Fisher, Esq.

DOUGLAS L. GREGG, Esq.

A PROFESSIONAL CORPORATION

ATTORNEY-AT-LAW

130 SEWARD STREET, SUITE 417.

JUNEAU, ALASKA 99801

January 28, 1987

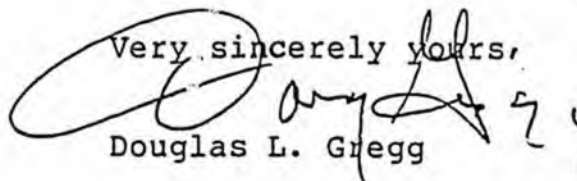
Honorable Fran Ulmer  
State Representative  
State Capitol  
P.O. Box V  
Juneau, Alaska 99811

Re: Amendments to AS 44.37.025 (Recording Documents);

Dear Fran:

I learned today that you may not have received a copy of the Juneau Bar letter and enclosures of January 7th. Here is a copy. The issue at hand may well relate to the budget in that the host of regulations which have been implemented in the last year or two cannot help but have added substantially to the work load of the recorder's offices around the state. In any event, we appreciate your assistance. We'd like to see a bill drafted to add a few amendments to the existing statute. Thank you.

Very sincerely yours,

A handwritten signature in black ink, appearing to read 'Douglas L. Gregg', written over the typed name.

Douglas L. Gregg

ENCLS:

cc: James E. Fisher, President  
Juneau Bar Association

J U N E A U B A R A S S O C I A T I O N

6645 N. Douglas Highway  
Juneau, Alaska

January 7, 1987

Honorable Jim Duncan  
State Senator  
State Capitol  
P.O. Box V  
Juneau, Alaska 99811

Honorable Fran Ulmer  
State Representative  
State Capitol  
P.O. Box V  
Juneau, Alaska 99811

Honorable Bill Hudson  
State Representative  
P.O. Box V  
Juneau, Alaska 99811

Re: Amendments to AS 44.37.025 (Recording Documents);

Dear Juneau Legislative Delegation:

There is a need for new legislation to correct a serious problem with recording documents in Alaska. In recognition of that difficulty, the Juneau Bar Association, at its regular meeting on December 5, 1986, adopted the recommendation of its Committee on the Office of the Recorder, copy enclosed. The committee was formed as the result of numerous complaints about the many new restrictions on the right to record documents that were imposed through the rule-making power of the Department of Natural Resources, which has jurisdiction over the Office of the Recorder.

In addition to amending existing legislation, we are requesting that new regulations be adopted by DNR. However, we request that a bill be drafted to provide guidelines restricting future rule-making power to those matters of legitimate concern to the Office of the Recorder. Such an amendment to the statute should make it clear that the public has a right to record legal documents and that the Office of the Recorder is not to judge the internal legal integrity of documents but simply to record them

if they meet certain minimum requirements.

As to the rule-making power of the department, six recommendations are contained within the committee's report. However, the department might well consider several other changes in its current regulations. The committee restricted itself to the most obvious areas of needed change. The regulations could be further amended to provide that the Recorder may not refuse to record or file a document because:

- it lacks a title reflecting its overall content;
- it does not contain a "return to" address;
- the individual who incurred an assessment is not named (even though the property against which the assessment is placed is described and the party claiming the assessment is identified).

The Juneau Bar Association is not opposed to all regulation of the right to record. The new regulations are, however, onerous. More importantly, they are constituting a substantial restriction on the right to place a document on the record as public notice. Many times a document serves that purpose even though the document could admittedly be improved in its context and could be more complete than it is. But the right to record and create the public notice for the protection of parties is of paramount importance. Perfection in legal documents is desirable but many people making use of the Recorder's Office are not lawyers or skilled title examiners. Failure to successfully record can have dire results when intervening filings place a party in a secondary position.

We will appreciate your assistance in correcting the problem through the amendment of AS 44.37.025 to insure that future regulations will not contravene public policy. Thank you for your cooperation in this matter.

Very sincerely yours,

*JEF*

James E. Fisher, President  
Juneau Bar Association

ENCL

COPY

REPORT OF COMMITTEE ON OFFICE OF THE RECORDER

The Committee met on August 22nd. The work of the Committee was assigned to its members, Larry Weeks, Fred J. Baxter, and Douglas Gregg. Bruce Hansen of Title Insurance Agency was invited to attend that meeting as an ex-officio member. He was requested to make inquiries of other title companies in an effort to obtain their viewpoints on the current difficulties in recording documents in Alaska. Fred Baxter spent some time outlining the essentials of a hypothetical complaint for damages. Larry Weeks explored the question whether the Office of the Recorder can, under the language of the statute requiring him to record instruments, refuse to record in reliance on the new regulations. Fred concluded that a person suffering damages by reason of the recorder's refusal to record an instrument could frame a good cause of action in many instances. Larry concluded that there would be a good chance, in a declaratory judgment action, to secure a judgment invalidating many of the regulations in question.

Your chairman met with Mr. Hansen on November 7th, at which time Mr. Hansen had received and compiled the results of an informal poll conducted among title insurance offices throughout the state. There were over 35 written responses (some did not answer every question.) Mr. Hansen had posed 15 questions in the poll. A simple "yes" or "no" was solicited to these questions.

The top of the poll asked whether the recipient felt that the Recorder should refuse to record or file a document when the document had certain attributes. These attributes were described in the 15 questions he selected. (Poll and results annexed.) There was near unanimity on several of the 15 items, with a more or less equal division of other items. Comments of respondents are omitted from this report. Several respondents sent letters praising Mr. Hansen for taking a personal hand in the difficulty.

A summary of the poll results shows general dissatisfaction with the system currently being employed by the Recorder in rejecting documents offered for recording.

Your committee's proposed amendments to the statute would help ensure that when new rules and regulations are adopted they will be circumscribed in such manner as to prevent unreasonable or unnecessary restrictions.

The Committee agrees that there is a need for modification in the existing regulations entirely apart from our proposed amendment to AS 44.37.025 which grants rule making power to the Department of Natural Resources. It may adopt regulations ". . . prescribing the records to be maintained and the instruments to be recorded." The statute currently lacks any restrictions or guidelines as to the scope of that power. An amendment would

help ensure that over-zealous rule-making will not in the future impair the ability of the public to make reasonable use of the Recorders' Offices.

Such an amendment to the statute could articulate a public policy. For example, it might state something along these lines:

PREAMBLE. The Legislature recognizes and therefore finds as follows:

1. The recording of legal documents of the kind customarily recorded throughout the United States is an essential State function.
2. The time and place that a document was placed of record may well be more important than the underlying sufficiency of that document from a strictly legal standpoint.
3. The Recorder's Office exists primarily for the benefit and convenience of the general public.
4. Commercial institutions, the business community, banks, and private individuals cannot safely function without the protections afforded by the right to give public notice through the ability to record their legal documents.

BE IT ENACTED etc. etc. . . . that public policy of this State is declared as follows: to maintain a convenient means of regularly recording legal documents and to obtain information concerning existing recorded documents. In the making of rules and regulations to facilitate the legitimate administrative needs of the various recording offices, reasonable doubts shall be resolved in favor of recording rather than of rejection. The Recorder shall not make judgments as to the legality of the contents of any document offered for recording. Nevertheless, the Department of Natural Resources shall adopt such rules and regulations as it requires to control indiscriminate filings of documents that do not meet certain minimum requirements. These regulations may include but shall not be limited to the requirement for a legal description, if needed, names of parties, capacity of parties, legibility and other such reasonably required information to assure that the Recorder's Office functions in a manner consistent with the needs of the citizens of this state.

The foregoing suggestions for a statutory change to control the rule-making authority of DNR is one suggestion. The second is that a request be made to DNR for proposed new amendments to the existing provisions contained in the Alaska Administrative Code relative to recording. Your Committee recommends that at least the following amendments be specifically requested of DNR:

1. All documents valid at the time they were made shall be recorded, notwithstanding that they may not meet the requirements contained in later-adopted rules and regulations.
2. A document shall not be rejected on the ground that it serves more than a single purpose nor shall it be required that a document be recorded separately for each of the

various purposes for which it may appear to stand. (This shall not preclude the multiple recording by the offering party of a document which has several purposes.)

3. A document which makes reference to an attached exhibit shall not be rejected on the ground that the exhibit does not contain a label.
4. A document shall not be rejected on the ground that it lacks the recording information contained in another document that is being amended by the one being offered.
5. An official certified document from any governmental office in this state or a sister state shall not be rejected on the ground that it is not the original provided it is legible.
6. A document shall not be rejected on the ground that it does not specify the name of the recording district provided that that information is given to the Recorder by the person offering the document, or such information is contained in a cover letter accompanying the document. (The information so received by the Recorder may be noted by the Recorder elsewhere on the document for future reference.)

CONCLUSION

It is recognized that many of the existing regulations may be desirable in the abstract. However, uncompromising loyalty to multiple details, often of questionable importance, result in the rejection of instruments and consequent delays in giving notice. Such delays can have disastrous results. All persons who are drawing legal instruments and submitting them for recording are not attorneys or title companies. The public's right to record ought to be paramount.

DATED: December 5, 1986.

Respectfully submitted,

---

Douglas L. Gregg

---

Larry Weeks

---

Fred J. Baxter

Do you feel that the recorder should refuse to record or file a document because:

YES NO

- 17 15 Contains no "return to" address.
- 30 4 Lacks trustee name on deed of trust.
- 29 8 Lacks real property description.
- 15 17 Lacks a title reflecting its overall content.
- 26 10 Document not executed entirely in English.
- 26 9 Lacks the recording information of the original document being amended, corrected, extended, modified, or released.
- 16 13 Document is larger than 8 1/2 by 14 inches.
- 29 9 Document must state in what capacity the signatory executed the document; individually, as attorney-in-fact, partner, corporate officer, executor, administrator, guardian or trustee.
- 22 11 Lacks the name of the recording district in which it is to be recorded.
- 16 14 Lacks reference to attached exhibit/Exhibit not clearly labeled.
- 26 5 Lacks attached exhibit when reference is made to such.
- 5 27 An original, recordable document may not be accepted as an attachment to another document.
- 3 32 The document serves more than one purpose. Recording fee is charged separately for each purpose.
- 19 14 Does not name person against whom assessment is placed.
- 3 29 Document is valid instrument executed prior to effective date of regulations but does not conform to current regulations.

282 217

COMMENTS:

499 RESPONSES

APPROX 35 INDIVIDUAL RESPONSES

BILL: HB 266

01:59 PM 01/13/88

NAME:

TITLE: "AN ACT RELATING TO THE RECORDING OF DOCUMENTS."

PRIME SPONSOR: ULMER

CURRENT STATUS: (H) JUD

STATUS DATE: 05/11/87

04/10/87	(H)	810	READ THE FIRST TIME - REFERRAL(S)
04/10/87	(H)	810	RESOURCES, JUDICIARY
05/11/87	(H)	1304	RES RPT CS(RES) BDP INR
05/11/87	(H)	1304	ZERO FISCAL NOTE/ANALYSIS 5/11/87
05/11/87	(H)	1304	REFERRED TO JUDICIARY

BILL: HB 266

05:00 PM 01/13/88

NAME:

TITLE: "AN ACT RELATING TO THE RECORDING OF DOCUMENTS."

PRIME SPONSOR: ULMER

CURRENT STATUS: (H) JUD

STATUS DATE: 05/11/87

04/10/87	(H)	810	READ THE FIRST TIME - REFERRAL(S)
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05/11/87	(H)	1304	ZERO FISCAL NOTE/ANALYSIS 5/11/87
05/11/87	(H)	1304	REFERRED TO JUDICIARY

# HOUSE COMMITTEE REPORT

(7)

Date referred: 5/11/87

FURTHER REFERRALS:

DATE: 1-15-88

The Judiciary Committee has considered HB 266

"An Act relating to the recording of documents."

**RECOMMENDS:**

- replace with \_\_\_\_\_  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Co. mittee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(S):**

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published \_\_\_\_\_
- zero with analysis

**SIGNING DO PASS:**

*[Signature]*  
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*[Signature]*  
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**SIGNING OTHER RECOMMENDATIONS:**

\_\_\_\_\_  
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*[Signature]*  
 \_\_\_\_\_  
 Chairman's signature

STATE OF ALASKA



REPRESENTATIVE  
FRAN ULMER

P.O. Box V  
JUNEAU, ALASKA 99811  
(907) 465-4947

HOUSE OF REPRESENTATIVES

M E M O R A N D U M

January 15, 1988

TO: All Representatives  
FROM: Representative Fran Ulmer  
SUBJECT: House Bill 266

I introduced House Bill 266, "An Act relating to the recording of documents", to bring consistency to the policies governing what documents should be recorded by the Recording Offices throughout the State of Alaska. House Bill 266 has received widespread support from the Alaska Miners Association, title companies and attorneys.

Section 1 is a statement of facts explaining the underlying purpose of the bill.

Section 2 adds a new section to AS 34.15 outlining recording criteria. When determining whether a document may be recorded, the recorder could not consider whether the contents of the document are legally sufficient to achieve the purposes of the document. Reasonable doubts would be resolved in favor of recording.

The bill also sets forth several instances when a document may not be rejected.

The recorder could not require that a document which serves more than one purpose be recorded separately for each of the purposes. This would not prevent the multiple recording of a document if the person requests that it be recorded for more than one purpose.

Finally, in Section 3, the bill amends AS 44.37.025 so that a regulation of the department could not impose a restriction on document recording unless the restriction is required by statute, or furthers a legitimate administrative need of the recorder.

Thank you for your support of HB 266.

STATE OF ALASKA



REPRESENTATIVE  
FRAN ULMER

HOUSE OF REPRESENTATIVES

P.O. Box 4  
JUNEAU, ALASKA 99811  
(907) 435-4947

MEMORANDUM

May 2, 1987

TO: House Resources Committee

FROM: Representative Fran Ulmer

SUBJECT: HB 266, An Act relating to the recording of documents

---

House Bill 266 was introduced at the request of the Juneau Bar Association. The bill adds a new section to AS 34.15 and amends AS 44.37.025.

After the Department of Natural Resources adopted regulations during the past year, the requirements for recording documents have become increasingly more onerous for Alaskans who need these services. These regulations have not been uniformly interpreted or applied by the staff in the various recording offices throughout the state.

My aide and I have had several meetings with staff from the Division of Management, Department of Natural Resources to discuss this bill. In addition to numerous communications favorable to the bill, these meetings have confirmed the need for legislative policy to address the recording of documents.

As you know from public response to the proposed budget cuts that would have closed some of the recording offices, Alaskans need and want the services provided by these recording offices. HB 266 proposes to clarify the requirements for recording documents and to make these services more equitable throughout the state.

I am hopeful that we can work together to pass a bill that will address the problems associated with the recording of documents and will improve these public services.



# ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, AK 99503 (907) 276-0347

April 17, 1987

RECEIVED 4 22 1987

Honorable Fran Ulmer  
Alaska State Legislature  
P.O. Box V (MS 3100)  
Juneau, Alaska 99811

Re: House Bill No. 266

Dear Rep. Ulmer:

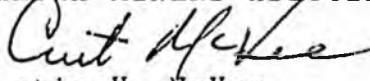
The Alaska Miners Association supports House Bill No. 266 and its passage this session of the legislature.

Since the majority of mining operations in Alaska are conducted by "small miners", in remote and unsurveyed areas of the state, and since the penalty for failure to timely file or record documents relating to mining claims can be loss of the claims, it is imperative that procedural or technical niceties do not preclude their recordation, as long as the intent of the documents is fairly stated.

We believe that House Bill No. 266 goes a long way toward accomplishing those objectives, and congratulate you for introducing that bill.

Sincerely,

ALASKA MINERS ASSOCIATION

  
Curtis V. McVee  
Executive Director

**TIA** TITLE  
INSURANCE  
AGENCY

Main Office  
201 N. Franklin St.  
Juneau, AK 99801  
(907) 586-6445

Valley Branch  
9110 Glaciers Hwy.  
Juneau, AK 99801  
(907) 789-1671

April 17, 1987

Representative Fran Ulmer  
Pouch V  
Juneau, AK 99811

Dear Fran:

Your introduction of House Bill 266 is commendable. This type of legislation is long overdue.

The recording system has been kind of a step child for as long as I can remember, being administered according to the whims of various departments it has been in. It's encouraging to see an attempt to stabilize the system.

Sincerely,



Glen A. Prince  
Executive Vice President

GAP:bjk

RECEIVED APR 21 1987

RECEIVED  
RECEIVED APR 6 1987

DORIS LOENNIG  
A PROFESSIONAL CORPORATION  
ATTORNEY AT LAW

SUITE 120, 515 SEVENTH AVENUE - FAIRBANKS, ALASKA 99701  
907 452-2005

April 1, 1987  
(Dictated 3-31-87)

Representative Fran Ulmer  
P.O. Box V  
Juneau, Alaska 99811

Dear Mrs. Ulmer:

I received a memorandum March 9, 1987 from members of the Natural Resources and Real Estate Sections of the Alaska Bar Association asking me to review a proposed amendment to the Recording Act. I apologize for not responding more promptly, but I do want to advise you that I am strongly in favor of the amendment.

As is so often the case as governmental bodies develop, there is a tendency to draft laws and regulations that benefit the bureaucrats while not particularly serving the public. The Recorder's Office has become extremely stringent in what they will accept for recording with the result that vital documents are being denied recording. For instance, I am involved in a situation where a Deed necessary to the chain of title was damaged by flood water. It is readable, but the Recorder's Office will not record it because the microfilm record would not be readable. The solution would be to type an exact copy of the deed, certify it as a copy of the original and then record both the original and the certified copy. By the Recorder's Office refusal to record the document, there is a break in the chain of title which will require an expensive suit to quiet title.

Also, recently I had a very difficult time getting a certified copy of an Alaska State Patent recorded. The original Patent had not been

Mrs. Fran Ulmer  
Re: Recording of Documents

April 1, 1987  
Page two

recorded when issued, and had been lost. The present owner of the property was required to convey a marketable, insurable title, which he could not do without completing the chain of title by the recording of the Alaska State Patent. There should never have been raised any objection to the recording of the certified copy.

Very truly yours,

DORIS LOENNIG, P.C.

By: 

---

DORIS LOENNIG

DL:dcm

STATE OF ALASKA



REPRESENTATIVE  
FRAN ULMER

P.O. Box V  
JUNEAU, ALASKA 99811  
(907) 465-4947

HOUSE OF REPRESENTATIVES

MEMORANDUM

May 2, 1987

TO: House Resources Committee

FROM: Representative Fran Ulmer

SUBJECT: HB 266, An Act relating to the recording of documents

---

House Bill 266 was introduced at the request of the Juneau Bar Association. The bill adds a new section to AS 34.15 and amends AS 44.37.025.

After the Department of Natural Resources adopted regulations during the past year, the requirements for recording documents have become increasingly more onerous for Alaskans who need these services. These regulations have not been uniformly interpreted or applied by the staff in the various recording offices throughout the state.

My aide and I have had several meetings with staff from the Division of Management, Department of Natural Resources to discuss this bill. In addition to numerous communications favorable to the bill, these meetings have confirmed the need for legislative policy to address the recording of documents.

As you know from public response to the proposed budget cuts that would have closed some of the recording offices, Alaskans need and want the services provided by these recording offices. HB 266 proposes to clarify the requirements for recording documents and to make these services more equitable throughout the state.

I am hopeful that we can work together to pass a bill that will address the problems associated with the recording of documents and will improve these public services.

STATE OF ALASKA



REPRESENTATIVE  
FRAN ULMER

HOUSE OF REPRESENTATIVES

P.O. Box V  
JUNEAU, ALASKA 99811  
(907) 465-4947

ULMER

ANALYSIS - COMMITTEE SUBSTITUTE FOR HOUSE BILL 266 (RES)

"An Act relating to the recording of documents"

Section 1 is a statement of facts explaining the underlying purpose of the bill.

Section 2 adds a new section to AS 34.15 outlining recording criteria. When determining whether a document may be recorded, the recorder could not consider whether the contents of the document are legally sufficient to achieve the purposes of the document. The recorder would have to resolve reasonable doubts about whether the document is eligible for recording in favor of recording the document.

The recorder could not reject a document because: it does not satisfy the current requirements for recording if it satisfied requirements for recording that existed at the time it was executed; serves more than one purpose; does not state the name of the recording district if the name is given to the recorder at the time the document is recorded, or if the name is contained in a cover letter; references an attached exhibit that is not labelled; is a certified copy of an official document from a governmental office in this or another state.

The recorder could not require that a document that serves more than one purpose be recorded separately for each of the purposes. This would not prevent the multiple recording of a document, if the person offering the document requests that it be recorded for more than one of its purposes.

Finally, in Section 3, the bill amends AS 44.37.025 so that a regulation of the department could not impose a restriction on document recording unless the restriction is required by statute, or furthers a legitimate administrative need of the recorder.

RECEIVED  
RECEIVED APR 6 1987

DORIS LOENNIG  
A PROFESSIONAL CORPORATION  
ATTORNEY AT LAW

SUITE 120, 515 SEVENTH AVENUE - FAIRBANKS, ALASKA 99701  
907 452-2005

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(Dictated 3-31-87)

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P.O. Box V  
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Mrs. Fran Ulmer  
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April 1, 1987  
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Very truly yours,

DORIS LOENNIG, P.C.

By:



---

DORIS LOENNIG

DL:dcm

RECEIVED MAR 1 1987

# HUGHES THORSNESS GANTZ POWELL & BRUNDIN

ATTORNEYS AT LAW

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GORDON J. TANS  
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 ROBERT L. MANLEY  
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 TIMOTHY R. BYRNES  
 JAMES M. SEEDORF  
 RONALD E. NOEL\*  
 FREDERICK J. JOSEN  
 MICHAEL L. LESSMEIER\*\*  
 STEVEN S. TERVOOREN  
 MATTHEW K. PETERSON  
 JOSEPH R. O. LOESCHER  
 KENNETH D. LOUGEE\*  
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 MARILYN MAY  
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 ANN S. BROWN\*  
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 JAMES N. BARKELEY  
 THOMAS R. LUCAS  
 TIMOTHY R. REDFORD  
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 TELEX 090-26378 (DENALI)

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 SUITE 103  
 JUNEAU, ALASKA 99801-2400  
 TELEPHONE (907) 586-5912  
 TELECOPIER (907) 483-3020

590 UNIVERSITY AVENUE  
 SUITE 200  
 FAIRBANKS, ALASKA 99709-3652  
 TELEPHONE (907) 479-3161

200 CENEGA STREET  
 P.O. BOX 767  
 VALDEZ, ALASKA 99886-0767  
 TELEPHONE (907) 835-2970

OF COUNSEL  
 JOHN C. HUGHES  
 RICHARD O. GANTZ

March 10, 1987

REPLY TO ANCHORAGE

Honorable Fran Ulmer  
 State Representative  
 P. O. Box V  
 Juneau, Alaska 99811

Dear Representative Ulmer:

I received the enclosed memorandum from the Alaska Bar Association, as I am a member of the Natural Resources Section Executive Committee of the Bar Association.

I support the language of the attached (proposed) House Bill, "An Act relating to the recording of documents", in its entirety. I wholeheartedly support the bill and the reasoning behind it. I urge you to introduce it, and not by request.

If for no other reason, I object to the current recording regulations and support the proposed bill on the grounds that the Department of Natural Resources has no business placing unreasonable and cumbersome limitations on the public's right to record documents. If it is to be done at all, it should be done by the legislature through elected representatives and not subject the right to record documents to the discretionary, often petty and whimsical "legal" interpretations of clerks. I have personally had the experience of the Fairbanks Recording Office (initially) refusing to record documents that are required by federal mining claim regulations to be recorded with the recording district; only after strenuous argument (the clerks adjourned to a private conference on the matter while I waited an hour) was the document accepted. If the documents had not been recorded, my clients' mining claims could have been declared invalid by the United States Bureau of Land Management.

Most of my practice consists of representing small miners. As a group, these people are bright, but have little formal education; they are literally overwhelmed by the legal and regulatory climate in which they are struggling to survive. As a user group, I would wager that miners use Alaska's recording

Honorable Fran U. mer  
March 10, 1987  
Page 2

offices more than any other single group of people. They do so for a very good reason: they must annually file documents with recording offices to preserve their possessory rights, upon pain of losing the claims to rival claimants or the government.

Unlike persons wishing to record documents who are seeking to place themselves prior in time to the interest of another party, the failure to timely record a document for a miner does not simply place that miner's interest in a position subordinate to someone who has filed ahead of him. Instead, the failure to timely file various mining documents can, and usually does, result in a total loss of the miner's rights--e.g., by an administrative declaration from BLM to the fictional effect that their claims have been "abandoned". This abandonment penalty has been sustained as lawful by the United States Supreme Court recently and BLM may take such action, despite abundant evidence that the miner did not intend to abandon the claim.

As a group, miners stand to lose more than any other group under these current recording regulations, because miners typically wait until near the annual deadlines to file their documents. At that time, should a clerk narrowly or adversely interpret any one of the host of regulatory obstacles to recording with which DNR is now armed, it will be too late for the miner to correct the situation; in many instances, the miner will simply lose his rights. Often, the failure to record cannot be cured by filing another mining claim location certificate, because the ground upon which the claim was located is now in one of Alaska's many national parks or other areas now closed to mineral entry.

Long before there were recorder's offices, there were mining districts. Each mining district (many of which were established shortly after acquisition of Alaska from Russia) had a district recorder, whose job was almost exclusively to accept mining claim recordings. It is sad and ironic that State of Alaska recorders offices, which succeeded to the duties of mining district recorders, now seek to limit the public's right to record.

Finally, I will conclude by suggesting that some teeth be placed in the bill proposed; otherwise, even though the intention of the legislation is clear, it could still be frustrated, without penalty, by State employees. You are probably aware of the fact that some Alaska statutes provide for penalties to be assessed against an employee who violates the statute. For example, I believe there is a statutory prohibition against Department of Revenue employees divulging confidential information about taxpayers; penalties are provided for releasing the information. I can say from personal experience that this penalty provision is

- Honorable Fran Ulmer  
March 10, 1987  
Page 3

terribly effective, because I have sought to obtain seemingly unrelated and harmless information and the Attorney General's Office has always advised the employee to err on the side of caution by refusing to release it. The fear of this penalty is so great that I have even had cases wherein the Attorney General gave this same advice, even though the information was requested pursuant to a lawfully issued subpoena (I was able to obtain the information, but only after persuading the taxpayer to authorize its release).

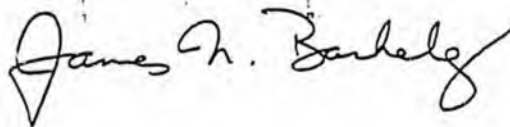
Thus, assuming a reasonable definition of "wrongful refusal to record" could be arrived at, I respectfully submit that penalties should be provided for under those circumstances--which penalties should include all losses proximately caused by the wrongful refusal--e.g., the loss of mining claims or other valuable property rights.

This is not a matter involving a particularly crusty, obstructionist clerk in one recording district; this is a matter of paramount importance and is of state-wide concern.

One last note: my opinions in this letter are conveyed to you from me as an individual, and they do not necessarily constitute the opinions of the Alaska Bar Association nor of Hughes, Thorsness, Gantz, Powell & Brundin.

Very truly yours,

HUGHES, THORSNESS, GANTZ,  
POWELL & BRUNDIN



By:

James N. Barkeley

JNE/mt  
2793i

cc: Linda Nordstrand, Alaska Bar Association  
CLE Director



# ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, AK 99503 (907) 276-0347

April 17, 1987

RECEIVED APR 23 1987

Honorable Fran Ulmer  
Alaska State Legislature  
P.O. Box V (MS 3100)  
Juneau, Alaska 99811

Re: House Bill No. 266

Dear Rep. Ulmer:

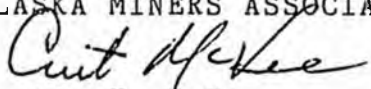
The Alaska Miners Association supports House Bill No. 266 and its passage this session of the legislature.

Since the majority of mining operations in Alaska are conducted by "small miners", in remote and unsurveyed areas of the state, and since the penalty for failure to timely file or record documents relating to mining claims can be loss of the claims, it is imperative that procedural or technical niceties do not preclude their recordation, as long as the intent of the documents is fairly stated.

We believe that House Bill No. 266 goes a long way toward accomplishing those objectives, and congratulate you for introducing that bill.

Sincerely,

ALASKA MINERS ASSOCIATION

  
Curtis V. McVee  
Executive Director

**TIA** TITLE  
INSURANCE  
AGENCY

Main Office  
201 N. Franklin St.  
Juneau, AK 99801  
(907) 586-6445

Valley Branch  
9110 Glacier Hwy.  
Juneau, AK 99801  
(907) 789-1671

April 17, 1987

Representative Fran Ulmer  
Pouch V  
Juneau, AK 99811

Dear Fran:

Your introduction of House Bill 266 is commendable. This type of legislation is long overdue.

The recording system has been kind of a step child for as long as I can remember, being administered according to the whims of various departments it has been in. It's encouraging to see an attempt to stabilize the system.

Sincerely,



Glen A. Prince  
Executive Vice President

GAP:bjk

RECEIVED APR 21 1987

**DOUGLAS L. GREGG, Esq.**

A PROFESSIONAL CORPORATION  
ATTORNEY-AT-LAW  
130 SEWARD STREET, SUITE 417  
JUNEAU, ALASKA 99801

March 4, 1987

Honorable Fran Ulmer  
Representative District 4B  
State House of Representatives  
P.O. Box V  
Juneau, Alaska 99811

Re: Amendments to Recording Statute AS 34.15  
My File G-1579

Dear Representative Ulmer:

Thank you for having our bill drafted. It seems to cover all the bases. I am not certain my schedule will allow me to attend Friday's bar luncheon. As a committee member I certainly hope that you will get a bill in as quickly as possible. I keep hearing horror stories. Fred Baxter is currently having a problem getting a certified copy of a court order from Anchorage recorded down here. The reason for refusal: "It is not an original." Can you believe this?

Very truly yours,

*D. L. Gregg*  
DOUGLAS L. GREGG

DLG

cc: Fred J. Baxter, Esq.  
Larry Weeks, Esq.  
James E. Fisher, Esq.

## DOUGLAS L. GREGG, Esq.

A PROFESSIONAL CORPORATION

ATTORNEY-AT-LAW

130 SEWARD STREET, SUITE 417.

JUNEAU, ALASKA 99801

January 28, 1987

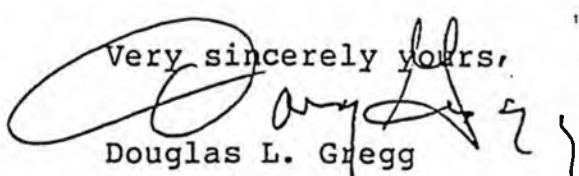
Honorable Fran Ulmer  
State Representative  
State Capitol  
P.O. Box V  
Juneau, Alaska 99811

Re: Amendments to AS 44.37.025 (Recording Documents);

Dear Fran:

I learned today that you may not have received a copy of the Juneau Bar letter and enclosures of January 7th. Here is a copy. The issue at hand may well relate to the budget in that the host of regulations which have been implemented in the last year or two cannot help but have added substantially to the work load of the recorder's offices around the state. In any event, we appreciate your assistance. We'd like to see a bill drafted to add a few amendments to the existing statute. Thank you.

Very sincerely yours,

  
Douglas L. Gregg

ENCLS:

cc: James E. Fisher, President  
Juneau Bar Association

J U N E A U B A R A S S O C I A T I O N

6645 N. Douglas Highway  
Juneau, Alaska

January 7, 1987

Honorable Jim Duncan  
State Senator  
State Capitol  
P.O. Box V  
Juneau, Alaska 99811

Honorable Fran Ulmer  
State Representative  
State Capitol  
P.O. Box V  
Juneau, Alaska 99811

Honorable Bill Hudson  
State Representative  
P.O. Box V  
Juneau, Alaska 99811

Re: Amendments to AS 44.37.025 (Recording Documents);

Dear Juneau Legislative Delegation:

There is a need for new legislation to correct a serious problem with recording documents in Alaska. In recognition of that difficulty, the Juneau Bar Association, at its regular meeting on December 5, 1986, adopted the recommendation of its Committee on the Office of the Recorder, copy enclosed. The committee was formed as the result of numerous complaints about the many new restrictions on the right to record documents that were imposed through the rule-making power of the Department of Natural Resources, which has jurisdiction over the Office of the Recorder.

In addition to amending existing legislation, we are requesting that new regulations be adopted by DNR. However, we request that a bill be drafted to provide guidelines restricting future rule-making power to those matters of legitimate concern to the Office of the Recorder. Such an amendment to the statute should make it clear that the public has a right to record legal documents and that the Office of the Recorder is not to judge the internal legal integrity of documents but simply to record them

if they meet certain minimum requirements.

As to the rule-making power of the department, six recommendations are contained within the committee's report. However, the department might well consider several other changes in its current regulations. The committee restricted itself to the most obvious areas of needed change. The regulations could be further amended to provide that the Recorder may not refuse to record or file a document because:

- it lacks a title reflecting its overall content;
- it does not contain a "return to" address;
- the individual who incurred an assessment is not named (even though the property against which the assessment is placed is described and the party claiming the assessment is identified).

The Juneau Bar Association is not opposed to all regulation of the right to record. The new regulations are, however, onerous. More importantly, they are constituting a substantial restriction on the right to place a document on the record as public notice. Many times a document serves that purpose even though the document could admittedly be improved in its context and could be more complete than it is. But the right to record and create the public notice for the protection of parties is of paramount importance. Perfection in legal documents is desirable but many people making use of the Recorder's Office are not lawyers or skilled title examiners. Failure to successfully record can have dire results when intervening filings place a party in a secondary position.

We will appreciate your assistance in correcting the problem through the amendment of AS 44.37.025 to insure that future regulations will not contravene public policy. Thank you for your cooperation in this matter.

Very sincerely yours,

*JEF*  
James E. Fisher, President  
Juneau Bar Association

ENCL

COPY

REPORT OF COMMITTEE ON OFFICE OF THE RECORDER

The Committee met on August 22nd. The work of the Committee was assigned to its members, Larry Weeks, Fred J. Baxter, and Douglas Gregg. Bruce Hansen of Title Insurance Agency was invited to attend that meeting as an ex-officio member. He was requested to make inquiries of other title companies in an effort to obtain their viewpoints on the current difficulties in recording documents in Alaska. Fred Baxter spent some time outlining the essentials of a hypothetical complaint for damages. Larry Weeks explored the question whether the Office of the Recorder can, under the language of the statute requiring him to record instruments, refuse to record in reliance on the new regulations. Fred concluded that a person suffering damages by reason of the recorder's refusal to record an instrument could frame a good cause of action in many instances. Larry concluded that there would be a good chance, in a declaratory judgment action, to secure a judgment invalidating many of the regulations in question.

Your chairman met with Mr. Hansen on November 7th, at which time Mr. Hansen had received and compiled the results of an informal poll conducted among title insurance offices throughout the state. There were over 35 written responses (some did not answer every question.) Mr. Hansen had posed 15 questions in the poll. A simple "yes" or "no" was solicited to these questions.

The top of the poll asked whether the recipient felt that the Recorder should refuse to record or file a document when the document had certain attributes. These attributes were described in the 15 questions he selected. (Poll and results annexed.) There was near unanimity on several of the 15 items, with a more or less equal division of other items. Comments of respondents are omitted from this report. Several respondents sent letters praising Mr. Hansen for taking a personal hand in the difficulty.

A summary of the poll results shows general dissatisfaction with the system currently being employed by the Recorder in rejecting documents offered for recording.

Your committee's proposed amendments to the statute would help ensure that when new rules and regulations are adopted they will be circumscribed in such manner as to prevent unreasonable or unnecessary restrictions.

The Committee agrees that there is a need for modification in the existing regulations entirely apart from our proposed amendment to AS 44.37.025 which grants rule making power to the Department of Natural Resources. It may adopt regulations ". . . prescribing the records to be maintained and the instruments to be recorded." The statute currently lacks any restrictions or guidelines as to the scope of that power. An amendment would

help ensure that over-zealous rule-making will not in the future impair the ability of the public to make reasonable use of the Recorders' Offices.

Such an amendment to the statute could articulate a public policy. For example, it might state something along these lines:

PREAMBLE. The Legislature recognizes and therefore finds as follows:

1. The recording of legal documents of the kind customarily recorded throughout the United States is an essential State function.
2. The time and place that a document was placed of record may well be more important than the underlying sufficiency of that document from a strictly legal standpoint.
3. The Recorder's Office exists primarily for the benefit and convenience of the general public.
4. Commercial institutions, the business community, banks, and private individuals cannot safely function without the protections afforded by the right to give public notice through the ability to record their legal documents.

BE IT ENACTED etc. etc. . . . that public policy of this State is declared as follows: to maintain a convenient means of regularly recording legal documents and to obtain information concerning existing recorded documents. In the making of rules and regulations to facilitate the legitimate administrative needs of the various recording offices, reasonable doubts shall be resolved in favor of recording rather than of rejection. The Recorder shall not make judgments as to the legality of the contents of any document offered for recording. Nevertheless, the Department of Natural Resources shall adopt such rules and regulations as it requires to control indiscriminate filings of documents that do not meet certain minimum requirements. These regulations may include but shall not be limited to the requirement for a legal description, if needed, names of parties, capacity of parties, legibility and other such reasonably required information to assure that the Recorder's Office functions in a manner consistent with the needs of the citizens of this state.

The foregoing suggestions for a statutory change to control the rule-making authority of DNR is one suggestion. The second is that a request be made to DNR for proposed new amendments to the existing provisions contained in the Alaska Administrative Code relative to recording. Your Committee recommends that at least the following amendments be specifically requested of DNR:

1. All documents valid at the time they were made shall be recorded, notwithstanding that they may not meet the requirements contained in later-adopted rules and regulations.
2. A document shall not be rejected on the ground that it serves more than a single purpose nor shall it be required that a document be recorded separately for each of the

various purposes for which it may appear to stand. (This shall not preclude the multiple recording by the offering party of a document which has several purposes.)

3. A document which makes reference to an attached exhibit shall not be rejected on the ground that the exhibit does not contain a label.
4. A document shall not be rejected on the ground that it lacks the recording information contained in another document that is being amended by the one being offered.
5. An official certified document from any governmental office in this state or a sister state shall not be rejected on the ground that it is not the original provided it is legible.
6. A document shall not be rejected on the ground that it does not specify the name of the recording district provided that that information is given to the Recorder by the person offering the document, or such information is contained in a cover letter accompanying the document. (The information so received by the Recorder may be noted by the Recorder elsewhere on the document for future reference.)

CONCLUSION

It is recognized that many of the existing regulations may be desirable in the abstract. However, uncompromising loyalty to multiple details, often of questionable importance, result in the rejection of instruments and consequent delays in giving notice. Such delays can have disastrous results. All persons who are drawing legal instruments and submitting them for recording are not attorneys or title companies. The public's right to record ought to be paramount.

DATED: December 5, 1986.

Respectfully submitted,

\_\_\_\_\_  
Douglas L. Gregg

\_\_\_\_\_  
Larry Weeks

\_\_\_\_\_  
Fred J. Baxter

Do you feel that the recorder should refuse to record or file a document because:

YES 10

- 17 15 Contains no "return to" address.
- 30 4 Lacks trustee name on deed of trust.
- 29 8 Lacks real property description.
- 15 17 Lacks a title reflecting its overall content.
- 26 10 Document not executed entirely in English.
- 26 9 Lacks the recording information of the original document being amended, corrected, extended, modified, or released.
- 16 13 Document is larger than 8 1/2 by 14 inches.
- 29 9 Document must state in what capacity the signatory executed the document; individually, as attorney-in-fact, partner, corporate officer, executor, administrator, guardian or trustee.
- 22 11 Lacks the name of the recording district in which it is to be recorded.
- 11 14 Lacks reference to attached exhibit/Exhibit not clearly labeled.
- 26 5 Lacks attached exhibit when reference is made to such.
- 5 27 An original, recordable document may not be accepted as an attachment to another document.
- 3 32 The document serves more than one purpose. Recording fee is charged separately for each purpose.
- 19 14 Does not name person against whom assessment is placed.
- 3 29 Document is valid instrument executed prior to effective date of regulations but does not conform to current regulations.

282 217

COMMENTS:

499 RESPONSES

APPROX 35 INDIVIDUAL RESPONSES