

HB

549

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-455-3800

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

May, 1988

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

Mary Van Nimwegen

House L. 3 C:

April 12, 1988

April 14, 1988

HOUSE COMMITTEE REPORT

(7)

Date referred: 3/28/88

FURTHER REFERRALS: Judiciary

DATE: 4/14/88

The Labor & Commerce Committee has considered HB 549

"An Act relating to notice requirements on the use of a deed of trust; and providing for an effective date."

RECOMMENDS:

- replace with CS HB 549 (L+C) 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:

W. Furnace

with amendments

E. C. Boudin

SIGNING OTHER RECOMMENDATIONS:

Donch Douley (No Rec)

St. Ellis (no rec)

Vital Ferguson no rec

Donch Douley

Chairman's signature

Original sponsor: Rules by Request/House Members
of the Joint Committee on
Economic Recovery

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 549 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to notice requirements in the use of
7 a deed of trust; and providing for an effective
8 date."

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

10 * Section 1. AS 34.20 is amended by adding a new section to read:

11 Sec. 34.20.132. NOTICE OF OTHER REMEDIES. (a) When a lender
12 uses a note as evidence of an obligation secured by a deed of trust,
13 the note must affirmatively advise the trustor or borrower and any
14 other party bound by the note if the beneficiary or lender wants the
15 option to bring suit directly on the note to collect an amount owing
16 under the note without first foreclosing the deed of trust. This
17 option must be stated in writing within the note or as a separate
18 document. If a note executed after the effective date of this Act
19 fails to contain the notice specified in this section, the debt
20 secured by the deed of trust may be foreclosed under AS 09.45.170 -
21 09.45.220 or AS 34.20.070 - 34.20.135.

22 (b) If the beneficiary or lender wishes to collect an amount
23 owing under the note without first foreclosing the deed of trust, the
24 following language is sufficient in the note:

25 The trustor or borrower is personally obligated and fully
26 liable for the amount due under the note. The security
27 available to the beneficiary or lender is not limited to
28 the property identified in the deed of trust and the bene-
29 ficiary or lender has the right to sue on the note and

1 obtain a personal judgment against the trustor or borrower
2 for satisfaction of the amount due under the note either
3 before or after a judicial foreclosure of the deed of
4 trust under AS 09.45.170 - 09.45.220.

5 (c) In this section, "note" includes a rider to the note.

6 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

Original sponsor: Rules by Request/House Members
of the Joint Committee on
Economic Recovery

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 549 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to remedies available in the use of
7 a deed of trust; and providing for an effective
8 date."

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

10 * Section 1. AS 34.20 is amended by adding a new section to read:

11 Sec. 34.20.132. AVAILABILITY OF OTHER REMEDIES. When a lender
12 uses a note as evidence of an obligation secured by a deed of trust,
13 the note must affirmatively advise the trustor and any other party
14 bound by the note, in writing, of the security, recourse, and other
15 remedies, if any, that the beneficiary intends to rely on. If the
16 beneficiary wants the option of bringing suit to collect an amount
17 owing on the obligation without foreclosing the deed of trust, this
18 option must be stated in writing within the note. A beneficiary may
19 not use a remedy not specifically and clearly stated on the note
20 executed after the effective date of this Act. If a note executed
21 after the effective date of this Act fails to contain a description of
22 other security, recourse, or remedies beyond the specific property
23 stated as security for the debt, the debt secured by the deed of trust
24 may be foreclosed only under AS 34.20.070 - 34.20.135, a deficiency
25 judgment may not be entered, and no other action may be taken nor
26 judgment entered against the trustor, surety, or guarantor on the
27 obligation secured by the note. In this section, "note" includes a
28 rider to the note.

29 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

Insert at line 29 of the proposed HB 549 CS dated 4/12/88:

(b) If the beneficiary wishes to be permitted to judicially foreclose on a Deed of Trust under AS 34.20.070 - 34.20.135 or to collect an amount owing on the obligation without foreclosing the deed of trust, the following language shall be deemed sufficient in the note or as a rider attached to the note:

"The trustor (or guarantor, surety, or endorser of the note) is personally obligated and fully liable for the amount due under the note. This means that the security is not limited to the deed of trust and the beneficiary has the right to foreclose on the note and obtain a judgment against the borrower personally for satisfaction of the amount due before or after judicially foreclosing the deed of trust under AS 34.20.070 - 34.20.135."

*Sec. 2 This Act takes effect immediately under AS 01.10.070(c).

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

April 11, 1988

The Honorable Dave Donley
House of Representatives
State of Alaska
House Labor & Commerce Committee, Chairman
P.O. Box V
Juneau, AK 99811

Re: HB 549

Dear Representative Donley:

You have requested the Department's position on HB 549. The Department of Law has no position on the substantive portion of the bill. The effect of the bill requires lenders to change their forms if the forms do not already include the language required by the Act. The forms used by the Department of Commerce and Economic Development already include language that could be adopted by other agencies as necessary.

We do however, recommend an effective date of at least 90 days, if not longer. This period is necessary to allow lenders' notice of the new law, and time to get new forms printed and distributed.

If I may be of further assistance please let me know.

Sincerely,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By:


Joyce James
Assistant Attorney General

JJ:prm

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Econ. Dev.
 Title: An Act relating to notice BRU: _____
requirements on use of a deed of trust
 Sponsor: Rules Committee Components: Banking
 Requester: _____

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	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of dollars)

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

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Lawrence P. Carroll
 Prepared by: Lawrence P. Carroll, Acting Director
 Division: Banking, Securities & Corporations
 Approved by Commissioner: *J. Anthony Smith*
 Agency: Department of Commerce & Economic Development

Phone: 465-2521
 Date: 4/11/88
 Date: 4/12/88

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

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to notice requirements on the use of a deed of trust..."
Sponsor: House Rules
Requestor: House Labor & Commerce

Agency Affected: Department of Law
BRU: Legal Services
Components: Operations

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	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: April 11, 1988
 Approved by Commissioner: Richard I. Pegues / FOR / Grace Berg Schaible, Atty. Gen. Date: April 11, 1988
 Agency: Department of Law

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 549

This bill amends AS 34.20 by adding a new section that provides that lenders must affirmatively advise borrowers, and any other person bound by a note, of the remedies available to lenders to collect secured loans without foreclosing on the deed of trust. This notification must be in writing within a note secured by a deed of trust. Most of these transactions are between private parties, except for the secured state loan programs administered by the Department of Commerce and Economic Development. In this latter case, the Department of Law will be required to draft new note forms; however, this work will not cause a fiscal impact.



Alaska State Legislature

House

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

TO: Members of the House Labor and Commerce Committee

FROM: Representative Steve Rieger *SR*
Co-Chair, Subcommittee on Housing and Banking
for the House Joint Committee on Economic Recovery

DATE: April 11, 1988

RE: HB 549 - "An Act relating to notice requirements on the use of a deed of trust; and providing for an effective date."

* * * * *

The purpose of HB 549 is to inform the borrower that he is in fact liable for the total amount of the debt, regardless of the market value of the property, and that he signed a Note as a promise to pay for the debt. In short, it is simply a disclosure statement to the borrower of the lender's available remedies, should foreclosure actions be deemed necessary.

Both FHLMC (Federal Home Loan Mortgage Corporation) and FNMA (Federal National Mortgage Association) have provided positive endorsement for the concept of the legislation. However, due to federal government requirements, they have requested that the "notice" information be contained outside the actual document of the Note, rather than within the body of the Note. FHLMC has also recommended that we consider requiring the explanation to be spelled out in law in order to avoid future "language" problems that would develop if each lender is allowed to write their own language.

Further, the Alaska Association of Realtors endorses the concept of the legislation with an amendment that the language be included as a "rider" to the Note to avoid redrafting of standard forms now used in the industry. Testimony from various Alaska banking institutions as well as the Alaska Bankers Association has also been positive, and they are all recommending the notice language be included as a rider to the Note.

Hence, we are offering the attached bill draft as a committee substitute for HB 549 for your favorable consideration and passage.

* * * * *

When a person wants to buy a piece of property and does not have sufficient cash for the total payment, he obtains a loan. The borrower agrees to pay the lender for a debt and the lender agrees to give the borrower the funds necessary to secure the property.

A typical loan in Alaska requires the borrower to understand and sign a volume of paperwork upon closing of the loan. A Deed of Trust to secure the property is used, and usually a Note is also signed as evidence of an obligation secured by the Deed of Trust.

If the borrower defaults in paying for the property, the lender has the option of taking certain actions. The actions taken govern the remedies allowed. The lender can foreclose judicially, (through the courts), or nonjudicially, (without court assistance). If the lender decides to foreclose nonjudicially, he may:

- a. Foreclose nonjudicially on the Deed of Trust and obtain payment through sale of the property. Suit on the Note following nonjudicial foreclosure of the Deed of Trust is not allowed.
- b. Sue on the Note through judicial means and obtain payment of the debt through seizure of assets, i.e. bank accounts, other property, wages, vehicles, etc. If any debt remains after the Note remedies have been exhausted, then the lender has the option then foreclose nonjudicially on the Deed of Trust and (most likely) obtain the balance of the debt remaining.

Historically, property values had a tendency to increase over the life of a loan. If nonjudicial foreclosure was warranted, the lender simply foreclosed on the Deed of Trust, thereby extinguishing the debt owing, as the property was worth more than the loan and it was (more than) sufficient to cover the debt.

Recently, property values have dropped substantially, and the loan on the property now exceeds the actual market value of the property when purchased. When foreclosure action is taken, the suit alone on the Deed of Trust will not cover the entire debt amount, as the property is "under water" or has "negative equity". The lender has the option to foreclose judicially or nonjudicially; nonjudicial foreclosures are more typical than the judicial type, and definitely less costly.

Under a nonjudicial foreclosure, the borrower's assumption in the past had been that the lender could only sue on the Deed of Trust. However, the lender does have the option to foreclose on the Note through judicial means prior to foreclosing on the Deed of Trust (nonjudicially) in order to obtain payment of the debt, and two recent Alaska Supreme Court decisions are cases on point. (Moening v. Alaska Mutual Bank (2/26/88), Conrad v. Counsellors Investment Company (2/26/88)).

At the time of closing, the borrower did indeed sign the Deed of Trust as security for the property and also signed the Note promising to pay the amount of the debt. Yet, because there is so much involved with closing a loan, the simple facts and understandings sometimes get lost in the paper shuffle. The problem lies in the fact that borrowers were under the assumption that if they were foreclosed upon, they could just turn in the keys and walk away from the property, (thereby extinguishing the debt), and the lender could not take any personal assets as payment of the debt, unless, of course, the lender pursued judicial foreclosure, (i.e. deficiency judgment and right of redemption period). Many borrowers today seem surprised that the lender does indeed have the option to sue on the Note prior to foreclosing on the Deed of Trust.

JUDICIAL V. NONJUDICIAL FORECLOSURE PROVISIONS:

JUDICIAL FORECLOSURE -

In a judicial foreclosure, the court forecloses on the Deed of Trust, orders the property sold, and may give the lender a deficiency judgement for the difference of what they can sell the property for and what is actually owed on the property. This deficiency judgement is a personal obligation on the part of the borrower. The borrower is also given a "right of redemption" period (one year) to pay what is owed and regain possession to the property, (unless the property is sold to a bonafide purchaser and not subject to the right of redemption).

Judicial foreclosures can take a great deal of effort, are expensive, and time consuming as well.

NONJUDICIAL FORECLOSURE -

Foreclosure conducted outside the court system. No deficiency judgement or right of redemption period allowed. Lender has option to sue on the Note (by judicial means) prior to suing on the Deed of Trust, (AS 09.45.170).

The Alaska Supreme Court concluded in Moening v. Alaska Mutual Bank (2/26/88), a secured creditor may initially ignore the security, and sue on the note, absent an agreement to the contrary. Further, under Conrad v. Counsellors Investment Company (2/26/88), the Supreme Court concluded that the deed of trust does not expressly preclude a suit on the note. Under common law, (AS 34.20.100), a prior suit on the note does not preclude subsequent nonjudicial (or judicial foreclosure) of the security.

Up until recently, it was to the benefit of the lender to sue on the Deed of Trust, as the property was usually worth more than the amount owing; suit on the note was unnecessary, as the lender received the full amount of the debt upon a foreclosure sale of the property. Within the past several years, many property values have dropped significantly, and the amount owing can be more than the actual market value of the property, hence the term "negative equity" or "under water".

The Alaska lending institutions have taken the following three approaches to foreclosure:

1. If the borrower has no significant assets, the lender sues on the Deed of Trust. However, if the borrower is making a good faith effort to remedy his defaulting loan status, then the lender usually works with him to bring the loan current before taking steps to foreclose. The lenders are not interested in managing foreclosed properties.
2. If the borrower has other assets to cover the debt to the lender, but is willing to work with the lender to alleviate the debt, then the lender does not take up a suit on the note, but rather attempts to work out some arrangement for payment with the borrower.
3. If the borrower has other assets to cover the debt to the lender, and is unwilling to cooperate with the lender in working out some sort of payment arrangements, then the lender may take steps to sue on the note prior to foreclosing on the Deed of Trust.

Only in Case #3 does the lender sue on the Note, and there have been very few instances where they have been forced to sue on the Note prior to foreclosing on the Deed of trust. The recent Alaska Supreme Court decisions have not altered the way the banks do business in Alaska, and it is "business as usual". What these two cases have pointed out is that the lender does indeed have the option to sue on the Note prior to foreclosing nonjudicially on the Deed of Trust.

The lender does have the option to a judicial foreclosure, and will in some cases go this route if the lender feels that it is worth going after the holder of the deed of trust personally via a deficiency judgement issued by the courts. (In many cases, it is not worth the time, effort and expenditure to the lender to foreclose via the court system.)

* * * * *

JUDICIAL FORECLOSURE

NONJUDICIAL FORECLOSURE

-Requires Court Action

-No court action required

-Deficiency judgment may be awarded

-No deficiency judgment
-Suit on the Note is optional
prior only to nonjudicial
foreclosure on Deed of Trust

-Right of Redemption period allowed (one year)

-No Right of Redemption

* * * * *

Mortgage -

A lien on property - does not create title or estate to secure the unpaid balance of the purchase price.

(Mortgages are rarely used in the State of Alaska.)

Foreclosure proceedings can only be conducted judicially, (through the court system) with a mortgage because there is nothing in place in the mortgage document for default remedies.

Deed of Trust

Instrument used by which legal title to real property is placed in one or more trustees to secure the repayment of a sum of money, (or the performance of some other condition). Differs in form from a mortgage as it is essentially a security.

The deed of trust document has prescribed foreclosure provisions, thereby allowing the lender to foreclose outside of court, i.e. nonjudicial foreclosure proceedings. Foreclosure proceedings can be accomplished by judicial or nonjudicial means. Deficiency judgements are prohibited in a nonjudicial foreclosure; however, the lender can sue on the Note prior to a nonjudicially foreclosing on the Deed of Trust. No suit is allowed on the Note if the lender chooses to foreclose nonjudicially on the Deed of Trust first.

Note -

A unilateral instrument containing an express and absolute promise of signer to pay a specified person a definite sum of money at a specified time.

Right of Redemption - that period of time, (one year), as set by statute for the defaulting borrower to "redeem" himself and pay up on the mortgage, thereby regaining "custody" of his property. Generally, there is no right of redemption in a nonjudicial foreclosure.

HB 549 - Offered as a CS to House Labor and Commerce Committee
4/12/88

"An Act relating to notice requirements on the use of a deed of trust; and providing for an effective date."

Section 1. AS 34.20 is amended by adding a new section to read:

Sec. 34.20.132 NOTICE OF OTHER REMEDIES. When a lender uses a note as evidence of an obligation secured by a deed of trust, the note must affirmatively advise the trustor and any other party bound by the note, in writing [within the note], of the security, recourse, and other remedies, if any, available to the beneficiary. If it is intended to permit the beneficiary to bring suit to collect an amount owing on the obligation without foreclosing the deed of trust, this intent must be stated in writing within the note. A beneficiary may not use a remedy not specifically and clearly stated on [a] the note executed after the effective date of this Act. If a note executed after the effective date of this Act fails to contain [the] a description of other security, recourse, or remedies beyond the specific property stated as security for the debt, the debt secured by the deed of trust may be foreclosed only under AS 34.20.070-34.20.135, a deficiency judgment may not be entered, and no other action may be taken nor judgment entered against the trustor, surety, or guarantor on the obligation secured by the note.

(b) If the beneficiary wishes to be permitted to collect an amount owing on the obligation without foreclosing the deed of trust, the note or a rider attached to the note must contain the following language:

"The trustor (or guarantor, surety, or endorser of the note) is personally obligated and fully liable for the amount due under the note. This means that the security is not limited to the deed of trust and the beneficiary has the right to foreclose on the note and obtain a judgment against the borrower personally for satisfaction of the amount due before foreclosing the deed of trust under AS 34.20.070 - 34.20.135."

(c) In this section, "note" includes a rider attached to the note.

*Sec. 2 This Act takes effect immediately under AS 01.10.070(c).

1 IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST
OF THE HOUSE MEMBERS OF THE JOINT
COMMITTEE ON ECONOMIC RECOVERY

2

HOUSE BILL NO. 549

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to notice requirements on the use of
7 a deed of trust; and providing for an effective
8 date."

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

10 * Section 1. AS 34.20 is amended by adding a new section to read:

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12 note as evidence of an obligation secured by a deed of trust, the note
13 must affirmatively advise the trustor and any other party bound by the
14 note, in writing within the note, of the security, recourse, and other
15 remedies, if any, available to the beneficiary. If it is intended to
16 permit the beneficiary to bring suit to collect an amount owing on the
17 obligation without foreclosing the deed of trust, this intent must be
18 stated in writing in the note. A beneficiary may not use a remedy not
19 specifically and clearly stated on a note executed after the effective
20 date of this Act. If a note executed after the effective date of this
21 Act fails to contain the notice required by this section, the debt
22 secured by the deed of trust may be foreclosed only under AS 34.20.-
23 070 - 34.20.135, a deficiency judgment may not be entered, and no
24 other action may be taken nor judgment entered against the trustor,
25 surety, or guarantor on the obligation secured by the note.

26 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

1776 G Street NW
PO Box 37248
Washington, DC 20013
202/789.4700

**Freddie
Mac**

Owned by America's
Savings Institutions

April 9, 1988

Representative Steve Rieger
Co-Chair, Subcommittee on Housing and Banking
House Joint Economic Recovery Committee
Pouch V
State Capitol
Juneau, Alaska 99811
C/O Ann Ringstad

Dear Representative Rieger:

At Ann Ringstad's request, I am providing you with comments on H.B. 549, a bill requiring a notice on the mortgage note of the lender's remedies under Alaskan state law when a borrower defaults on a mortgage.

By way of background, the Federal Home Loan Mortgage Corporation, better known as Freddie Mac, was created by Congress in 1970 to increase the amount of funds available for mortgage lending. Freddie Mac accomplishes its mandate by purchasing residential mortgages from lenders, thereby replenishing their supply of funds to be lent to additional home buyers. Freddie Mac guarantees the payment of the mortgages and sells securities backed by the mortgages to institutional and private investors. In 1987, Freddie Mac purchased nearly \$102 million in mortgages from Alaska lenders.

Freddie Mac certainly agrees with the concept of an informed consumer. This is not only good public policy, it is good business practice. We commend the Legislature for its concern that consumers be made aware of the lender's ability to utilize several remedies, including deficiency judgements, in default situations.

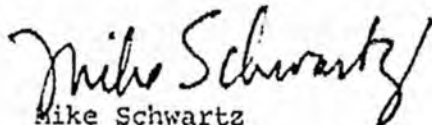
We are concerned about your method for informing the consumer. Adding more information to the note or deed may defeat your intent by making the document too complicated, wordy and intimidating. Also, making Alaska mortgage documents less uniform from notes in other states runs counter to the national trend toward uniform documents. As the mortgage finance industry becomes more reliant on the secondary mortgage market and its investors, uniform documents take on increasing importance.

Representative Steve Rieger
April 9, 1988
Page two

We recommend that you consider requiring an explanation of lenders' remedies on a separate piece of paper which both borrower and lender would sign at closing time. The language of this explanation should be spelled out in the law in order to avoid a different explanation from each lender.

I hope this information is helpful to you and that you will call whenever you have questions on this or other issues of mutual interest.

Sincerely,



Mike Schwartz
Legislative Director

MS:mcf



ALASKA ASSOCIATION OF REALTORS, INC.[®]
1836 West Northern Lights Blvd. • Anchorage, Alaska 99517
Telephone 907-278-0856

Representative Steve Rieger
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

April 7, 1988

Dear Representative Rieger,

The Alaska Association of REALTORS[®], after careful consideration, is supporting the passage of HB 549. The full disclosure to all parties involved in real estate transactions can only benefit the public. The Association would suggest however, that the disclosure be accomplished through a "rider" to other documents. This would serve the purpose without a complete redrafting of the standard forms.

We enthusiastically support passage of HB 549.

Sincerely,

A handwritten signature in cursive script that reads 'Dea Turner'.

Dea Turner
Executive Vice President



NOTE

See # 8 + 6(c)

....., 19....., Alaska
(City)

.....
[Property Address, Add Borrower's Post Office Address, if Different]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$..... (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is..... I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of principal has been paid. I will pay interest at a yearly rate of.....%

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making payments every month.

I will make my monthly payments on the..... day of each month beginning on..... 19..... I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My monthly payments will be applied to interest before principal. If, on..... I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "maturity date."

I will make my monthly payments at..... or at a different place if required by the Note Holder

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$.....

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment." When I make a prepayment, I will tell the Note Holder in writing that I am doing so.

I may make a full prepayment or partial prepayments without paying any prepayment charge. The Note Holder will use all of my prepayments to reduce the amount of principal that I owe under this Note. If I make a partial prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the principal I owe under this Note or by making a direct payment to me. If a refund reduces principal, the reduction will be treated as a partial prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payments by the end of..... calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be.....% of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is delivered or mailed to me.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

9. WAIVERS

I and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

10. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED

..... (Seal)
Borrower

..... (Seal)
Borrower

..... (Seal)
Borrower

[Sign Original Only]

APL 09 '89 09:02 L10 - FAIRBANKS

P. 2

\$ _____, Alaska, _____, 19 _____ No. _____

For value received, we jointly and severally promise to pay to the order of

DENALI STATE BANK at its office in _____, Alaska,

_____ DOLLARS

with interest from _____ at the rate of _____ per cent per annum until this note is fully paid.

Principal and interest payable \$ _____ per month _____ on the _____ day of each month, beginning _____, and continuing until this note is paid in full.

The amount of interest due on this note is to be paid at the same time the principal installments are paid. If any such installments of principal or interest is not paid when due, the whole sum of principal and interest shall at the option of the holder become immediately due and payable. Principal and interest are payable only in Legal Currency of the United States of America. For value received each and every party signing or endorsing this note hereby waives presentment, demand, protest, and notice of non-payment, any release or discharge arising from any extension of time, discharge of a prior party, or from any cause other than actual payment in full hereof, binds himself hereon as a principal, not as surety, and promises, if this note is not paid at maturity and is placed in the hands of an attorney for collection, or suit is brought hereon, to pay all costs of collection including reasonable attorney's fees.

Security _____

Mailing Address _____

Living Address _____

FHA FORM NO. 9197A
Revised 1/71

This form is used in connection with deeds of trust insured under the one-to-four-family provisions of the National Housing Act.

DEED OF TRUST NOTE

FHA CASE NO.

§

, Alaska.
, 19

FOR VALUE RECEIVED, the undersigned promise(s) to pay to the order of

the principal sum of
Dollars

(\$), with interest from date at the rate of
per centum (%) per annum on the balance remaining from time to time unpaid. The
principal and interest shall be payable at the office of

in
or at such other place as the holder hereof may designate, in writing, in monthly installments of
Dollars

(\$), commencing on the first day of , 19 , and on the
first day of each month thereafter, until the principal and interest are fully paid except that the final
payment of the entire indebtedness evidenced hereby, if not sooner paid, shall be due and payable on
the first day of

If default be made in the payment of any installment under this note, and if such default is not made
good prior to the due date of the next such installment, the entire principal sum and accrued interest
shall at once become due and payable at the option of the holder of this note. Failure to exercise this
option shall not constitute a waiver of the right to exercise the same in the event of any subsequent de-
fault. If any suit or action is instituted to collect this note or any part thereof the undersigned promi-
se(s) and agree(s) to pay, in addition to the costs and disbursements provided by statute, a reasonable
sum as attorney's fees in such suit or action.

The undersigned, whether principal, surety, guarantor, endorser, or other party hereto, agrees to be
jointly and severally bound, severally hereby waive any homestead or exemption right against said debt,
waive demand, protest and notice of demand, protest and nonpayment, and expressly agree that this note
or any payment thereunder may be extended from time to time and consent to the acceptance of further
security, including other types of security, all without in any way affecting the liability of such parties.

This note is secured by a Deed of Trust, of even date herewith, to
as Trustee, on real estate situated in the Recording Precinct,
State of Alaska, and this note is to be construed according to the laws of the State of Alaska.

NOTICE: THIS LOAN IS NOT ASSUMABLE WITHOUT THE APPROVAL OF THE VETERANS ADMINISTRATION OR ITS AUTHORIZED AGENT.

\$ _____, Alaska
_____ 19 _____

FOR VALUE RECEIVED, the undersigned jointly and severally, promise to pay to the order of

the principal sum of

Dollars

(\$ _____), with interest from date at the rate of _____ per centum (_____ %) per annum on the unpaid balance until paid. The said principal and interest shall be payable at

or at such other place as the holder may designate in writing delivered or mailed to the debtor, in monthly installments of

Dollars

(\$ _____), commencing on the _____ day of _____, 19 _____, and continuing on the _____ day of each month thereafter, until this note is fully paid, except that, if not sooner paid, the final payment of principal and interest shall be due and payable on the _____ day of _____.

Privilege is reserved to prepay at any time, without premium or fee, the entire indebtedness or any part thereof not less than the amount of one installment, or one hundred dollars (\$100.00), whichever is less. Prepayment in full shall be credited on the date received. Partial prepayment, other than on an installment due date, need not be credited until the next following installment due date or thirty days after such prepayment, whichever is earlier.

If any deficiency in the payment of any installment under this note is not made good prior to the due date of the next such installment, or if there be failure to comply with any of the agreements contained in the Deed of Trust securing the Note, the entire principal sum and accrued interest shall at once become due and payable without notice at the option of the holder of this note. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default. In the event of default, the undersigned promise(s) and agree(s) to pay necessary expenses as may be incurred in collection, including reasonable attorney's fee.

This note is secured by a Deed of Trust of even date executed by the undersigned on certain property described therein and represents money actually used for the acquisition of said property or the improvements thereon.

The undersigned agree to be jointly and severally bound, severally hereby waive demand, protest and notice of demand, protest and nonpayment, and expressly agree that this note or any payment thereunder may be extended from time to time and consent to the acceptance of further security, including other types of security, all without in any way affecting the liability of such parties.

I HEREBY CERTIFY that this is the note described in and secured by a Deed of Trust of even date herewith and in the same principal amount as herein stated and secured by real estate in the _____ Recording District, State of Alaska. Dated this _____ day of _____, 19 _____.

My commission expires

Notary Public in and for the State of Alaska