

SB

408

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 4/15/88 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER:

**FISCAL NOTE(S) ATTACHED **
IN ACCORDANCE WITH AS 24.08.035
(see below)

4/19/88

DATE TURNED INTO OFFICE

5/4/88

Mr. President:

Finance

Committee considered

SSSB 408

stabilization of the real estate market; authorizing the establishment of real property liquidating organizations; efd

and recommended:

replace with

CS

SS SB 408 (Fin)

same title

attached amendment(s) and

new title

do pass

do not pass

no recommendation

individual recommendations

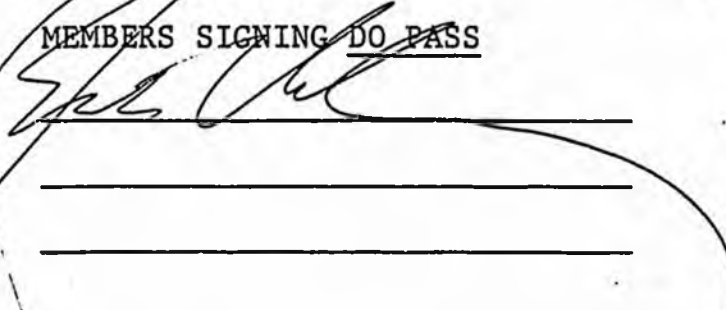
further referral to _____

letter of intent adopted and attached

** Committee attached or adopted fiscal note(s)
 zero fiscal impact \$15M

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS



Fred G. Harhoff No Rec
Dan Trick No Rec
Willie King No Rec

Rich Holford NO REC
Chairman signature and recommendation

Committee Backup Attached

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSSSSB 408 (FIN)
PUBLISH DATE: 5/2/88

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce
Title: Division of Banking Establishing BRU: _____
Real Property Liquidating Program...
Sponsor: Kelly Components: _____
Requestor: _____

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						

CAPITAL		15,000.0	0	0	0	0
---------	--	----------	---	---	---	---

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER*		15,000.0				
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The funding source to support the state's equity investment in the real property liquidation program established in CSSSSB 408 (Finance) is from the revolving fund assets of the Alaska Housing Finance Corporation.

Prepared by: Rick Halford Phone: _____
Division: Senator Rick Halford, Co-Chairman Date: 5/2/88
Senate Finance Committee

Approved by Commissioner: _____ Date: _____
Agency: _____

Distribution (by preparer):

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

Original sponsors: Kelly and Sturgulewski

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 408 (Finance)

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 the division of banking, secu-
7 rities, and corporations; establishing the real prop-
8 erty liquidating program within the division; au-
9 thorizing certain public corporations to participate
10 in the program; and providing for an effective date."

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

12 * Section 1. LEGISLATIVE FINDINGS AND INTENT. (a) The legislature
13 finds that

14 (1) there have been in the state several failures of state and
15 federally chartered financial institutions and one bank consolidation by
16 the Federal Deposit Insurance Corporation under 12 U.S.C. 1823(c);

17 (2) these financial institutions as well as other businesses and
18 state and federal agencies currently hold large portfolios of distressed
19 real estate loans and real property;

20 (3) these businesses and government agencies need to be permit-
21 ted to cooperate in administering these loans and properties to avoid fur-
22 ther adverse effects on the state's real estate markets and to stabilize
23 the state's banking system; and

24 (4) the maintenance of stable and orderly markets for the pur-
25 chase and sale of commercial and residential real estate in the state is
26 essential to the economy of the state and the welfare of its citizens, as
27 is the stability of the state's banking system.

28 (b) The legislature intends to ensure the stability of the state's
29 banking system and real estate markets and prevent a precipitous decline in

1 real estate prices by displacing competition with government regulation in
2 matters relating to the administration, management, and disposition of real
3 property in the state and loans secured by the property held by financial
4 institutions, other businesses, and state and federal agencies. By au-
5 thORIZING the creation of real property liquidating organizations and
6 mandating active state supervision of these organizations, the legislature
7 intends that each real property liquidating organization and all persons
8 and entities who subscribe or grant assets to, contribute funds or services
9 to, obtain a beneficial interest in, or participate in the management of
10 the organization will be fully immunized against potential liability under
11 federal antitrust laws and state antitrust, competition, and trade prac-
12 tices laws arising from the operation of the organization or the activities
13 of any person or entity performed in connection with the organization.

14 * Sec. 2. AS 06 is amended by adding a new chapter to read:

15 CHAPTER 50. REAL PROPERTY LIQUIDATING PROGRAM.

16 Sec. 06.50.010. RESPONSIBILITY OF DIRECTOR. (a) The real
17 property liquidating program is established in the division of bank-
18 ing, securities, and corporations. The director of the division shall
19 administer this chapter.

20 (b) By February 1 of each year the director shall submit a
21 report to the legislature summarizing activities of the division under
22 this chapter during the previous year.

23 Sec. 06.50.020. FORMATION. (a) Three or more grantors may
24 create a real property liquidating organization by filing the orga-
25 nizational documents with the director. The director and the governor
26 shall review the documents and may approve them if they comply with
27 (c) of this section and are consistent with the purposes of this
28 chapter. Conveyance of assets to or disposition of assets by an
29 organization is not effective until the organizational documents have

1 been reviewed and approved by the director and the governor.

2 (b) At the time organizational documents are filed with the
3 director under (a) of this section, a copy shall be made available by
4 the grantors to the legislative auditor. The legislative auditor
5 shall review the documents and report to the Legislative Budget and
6 Audit Committee. The committee may recommend approval or disapproval
7 of the documents to the governor.

8 (c) The organizational documents may not provide for transfer by
9 a grantor to an organization of assets other than real property in the
10 state, loans secured by real property in the state, and cash. The
11 organizational documents must

12 (1) state the purpose of the organization;

13 (2) identify all grantors who have subscribed to the orga-
14 nization and all persons who will possess an interest in the orga-
15 nization upon its formation;

16 (3) describe the manner in which the organization will be
17 managed;

18 (4) prescribe the method under which distributions to the
19 grantors and other beneficiaries will be made;

20 (5) provide for the conveyance to the organization of all
21 or part of the grantors' portfolios of commercial and residential real
22 property in the state and real estate loans secured by real property
23 in the state;

24 (6) provide for the transfer to the organization of cash in
25 sufficient amounts to enable the organization to operate;

26 (7) ensure that each grantor contributes a reasonable
27 amount of cash to be used for operating expenses of the organization;

28 (8) ensure that all assets transferred to the organization
29 are appraised at fair market value at the time of the transfer;

1 (9) provide for the orderly disposition of the real prop-
2 erty and real estate loans of the organization at prices to be de-
3 termined by the organization under regulations adopted by the direc-
4 tor;

5 (10) provide for expenditures to manage organization assets,
6 including expenditures to preserve or enhance the value of the orga-
7 nization's properties;

8 (11) establish terms for the dissolution of an organization;
9 and

10 (12) provide for the establishment of other terms and con-
11 ditions relating to the sale or other disposition of assets that the
12 grantors consider necessary or appropriate to ensure that the orga-
13 nization will be operated in a manner that will provide for orderly
14 disposition of the organization's assets and promote stable real
15 estate markets and a stable banking system in the state.

16 Sec. 06.50.030. AUDITS AND REPORTS. (a) In addition to the
17 record keeping requirements specified in regulations adopted by the
18 director or in the organizational documents, the organization shall
19 retain a certified public accountant to annually prepare and submit to
20 the director on or before April 1 an audited balance sheet, income
21 statement, statement of principal, statement of changes in financial
22 position, schedule of all dispositions of real property, real estate
23 loans, and other assets made by the organization during the previous
24 calendar year, and letters

25 (1) certifying that all dispositions of real property, real
26 estate loans, and other assets, and all distributions during the year
27 were made in accordance with the provisions of the organizational
28 documents and this chapter, or identifying any variance; and

29 (2) with respect to the internal financial controls and

1 practices of the organization, providing recommendations the accoun-
2 tant considers appropriate.

3 (b) The organization shall prepare and file with the director
4 and the legislative auditor, on a quarterly basis, a report containing
5 the following:

6 (1) a schedule of all real property, real estate loans, and
7 other assets held by the organization;

8 (2) the sale price and all other significant terms of sale
9 for real property sold by the organization and amount of proceeds
10 received by the organization from real estate loans and other assets
11 since the date of the previous report; and

12 (3) a proposed operating plan for the next quarterly period
13 that conforms with regulations adopted under this chapter.

14 Sec. 06.50.040. REVIEW AND APPROVAL. (a) The director shall
15 review each report filed under AS 06.50.030(b) and approve or disap-
16 prove the proposed operating plan within 20 days after filing. In
17 reviewing each report and operating plan, the director shall consider
18 current market conditions. The director may approve an operating plan
19 if the director finds that the report and plan

20 (1) comply with the purposes of this chapter;

21 (2) ensure all provisions of trust agreements and agree-
22 ments between state entities and organizations are adhered to;

23 (3) provide policies that meet the requirements of law and
24 regulations, establish sound fiscal practices, and ensure proper
25 management;

26 (4) ensure state investments will not be adversely affected
27 by poor management or policies, including payment of excess compen-
28 sation or benefits to officers and employees of the organization; and

29 (5) ensure that the organization will have the amount of

1 cash necessary for operating expenses during the quarter.

2 (b) If a proposed operating plan is approved by the director, it
3 shall be submitted for approval or disapproval by the governor. The
4 legislative auditor shall review the operating plan and report to the
5 Legislative Budget and Audit Committee. The committee may recommend
6 approval or disapproval of the plan to the governor.

7 (c) Within five days after the director notifies an organization
8 of its intention to inspect business records, all business records
9 maintained by the organization shall be available for review and
10 examination by the division of banking, securities, and corporations
11 at the organization's principal place of business, during regular
12 business hours. The director shall examine the business records of an
13 organization on a regular basis at least twice each calendar year to
14 determine whether they demonstrate

15 (1) proper endorsements of loans and agreements;
16 (2) perfection of interests in collateral;
17 (3) proper appraisals and other determinations of value;
18 (4) proper assessment of the financial position of gran-
19 tors, investors, or borrowers; and

20 (5) other matters the director considers necessary.

21 (d) If the governor or director disapproves a proposed operating
22 plan or the director concludes, after an inspection of business re-
23 cords, that the organization is being administered materially contrary
24 to statute, regulation, or a previously approved operating plan, the
25 director shall notify the organization and all grantors in writing,
26 specifying all deficiencies and prescribing appropriate remedies. If
27 the organization fails to remedy deficiencies in accordance with the
28 director's prescriptions within 60 days after receipt of the notice,
29 the director may commence proceedings under AS 06.01.030. A revised

1 operating plan is also subject to approval by the director and the
2 governor and shall be made available for review by the legislative
3 auditor.

4 (e) The expenses of the division of banking, securities, and
5 corporations reasonably incurred in reviewing and approving a proposed
6 operating plan or inspecting business records under this section shall
7 be charged to and paid by the organization. Receipts shall be depos-
8 ited into the general fund and may be appropriated to the Department
9 of Commerce and Economic Development for costs of administering this
10 chapter.

11 Sec. 06.50.050. LEGISLATIVE AUDITS. (a) The legislative audi-
12 tor shall audit each organization at least once each year. The legis-
13 lative audit division has free access to all books and papers of an
14 organization that relate to its business and books and papers kept by
15 a director, officer, or employee relating to or upon which a record of
16 its business is kept, and may summon witnesses and administer oaths or
17 affirmations in the examination of the directors, officers, or employ-
18 ees of the organization or any person in relation to its affairs,
19 transactions, and conditions, and may require and compel the produc-
20 tion of records, books, papers, contracts, or other documents by court
21 order if not voluntarily produced.

22 (b) The legislative auditor and the auditor's employees may not
23 disclose information acquired by them in the course of an audit of an
24 organization concerning the particulars of the business or affairs of
25 a person unless the information is required to be disclosed by law or
26 under a court order. However, the legislative auditor shall prepare a
27 report summarizing findings of an audit conducted under this section
28 for the president of the senate, the speaker of the house of represen-
29 tatives, and the Legislative Budget and Audit Committee. Upon

1 approval of the Legislative Budget and Audit Committee, a report pre-
2 pared under this section shall be made public.

3 Sec. 06.50.060. EXEMPTION. (a) If the director determines that
4 the exemption is necessary to carry out the purposes of this chapter,
5 the Department of Commerce and Economic Development may by regulation
6 exempt transactions under this chapter by organizations from any fee,
7 authorization, permit, filing, or registration requirement of or
8 administered by the department.

9 (b) Each organization is exempt from AS 45.50.562 - 45.50.596.
10 Activities in connection with an organization of a person or entity
11 that subscribes, contributes real property, real estate loans, or cash
12 to, obtains a beneficial interest in, or participates in the manage-
13 ment of the organization are exempt from AS 45.50.562 - 45.50.596.

14 Sec. 06.50.100. DEFINITIONS. In this chapter

15 (1) "director" means the director of the division of bank-
16 ing, securities, and corporations;

17 (2) "grantor" means a federally or state chartered finan-
18 cial institution, federal or state agency, municipality, licensed
19 insurer, or financing company that conveys real property in the state,
20 loans secured by real property in the state, and cash to, and thereby
21 obtains a beneficial interest in and the right to participate in the
22 management of, a real property liquidating organization;

23 (3) "real property liquidating organization" or "organiza-
24 tion" means a corporation, trust, fund, partnership, joint venture, or
25 other entity created to acquire, maintain, manage, market, administer
26 and sell, liquidate, or otherwise dispose of real property in the
27 state or loans secured by real property in the state and to distribute
28 the proceeds to its beneficiaries, in accordance with organizational
29 its documents.

1 * Sec. 3. AS 18.56.090 is amended by adding a new paragraph to read:

2 (29) convey real property in the state, loans secured by
3 real property in the state, and cash in an amount not to exceed
4 \$15,000,000 to, acquire a beneficial interest in, and participate in
5 the management of, a real property liquidating organization estab-
6 lished under AS 06.50 if

7 (A) state corporations and agencies are granted pri-
8 ority to the assets of the organization over other grantors; and

9 (B) the corporation will realize a rate of return of
10 at least five percent in its total investment in the organiza-
11 tion.

12 * Sec. 4. AS 44.33 is amended by adding a new section to read:

13 Sec. 44.33.027. DIVISION OF BANKING, SECURITIES, AND CORPORA-
14 TIONS. The division of banking, securities, and corporations is
15 established in the department. The director of the division of bank-
16 ing, securities, and corporations shall be appointed by the governor
17 and serve a four-year term or until a successor is appointed. The
18 director serves at the pleasure of the governor. The director

19 (1) must be a United States citizen;

20 (2) must, within 15 years before appointment to office,
21 have had a minimum of five years management experience with a finan-
22 cial institution or as an employee of a state or federal agency that
23 supervises financial institutions;

24 (3) may not, within five years before appointment to of-
25 fice, have served as an officer or director of a financial institution
26 that was subject to a disciplinary order issued by the division of
27 banking, securities, and corporations, or a federal agency or agency
28 of another state that supervises financial institutions, during the
29 five-year period.

1 * Sec. 5. AS 44.88.080 is amended by adding a new paragraph to read:

2 (25) to convey real property in the state or loans secured
3 by real property in the state to, acquire a beneficial interest in,
4 and participate in the management of, a real property liquidating
5 organization established under AS 06.50 if

6 (A) state corporations and agencies are granted pri-
7 ority to the assets of the organization over other grantors; and

8 (B) the corporation will realize a rate of return of
9 at least five percent in its total investment in the organiza-
10 tion.

11 * Sec. 6. AS 06.50.010, 06.50.020, 06.50.030, 06.50.040, 06.50.050,
12 06.50.060, 06.50.100; AS 18.56.090(29); and AS 44.88.080(25) are repealed.

13 * Sec. 7. Sections 1 - 5 of this Act take effect June 1, 1988.

14 * Sec. 8. Section 6 of this Act takes effect June 1, 1993.

RH: 7/30/88
RU: v - y
FZ: Ob; B, S
XB&A Q y.
w/d

5/4/88



#1

ADOPTED
*Am 3, 8

Original sponsors: Kelly and Sturgulewski

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 408 (Finance)

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 the division of banking, secu-
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15 federally chartered financial institutions and one bank consolidation by
16 the Federal Deposit Insurance Corporation under 12 U.S.C. 1823(c);

17 (2) these financial institutions as well as other businesses and
18 state and federal agencies currently hold large portfolios of distressed
19 real estate loans and real property;

20 (3) these businesses and government agencies need to be permit-
21 ted to cooperate in administering these loans and properties to avoid fur-
22 ther adverse effects on the state's real estate markets and to stabilize
23 the state's banking system; and

24 (4) the maintenance of stable and orderly markets for the pur-
25 chase and sale of commercial and residential real estate in the state is
26 essential to the economy of the state and the welfare of its citizens, as
27 is the stability of the state's banking system.

28 (b) The legislature intends to ensure the stability of the state's
29 banking system and real estate markets and prevent a precipitous decline in

1 real estate prices by displacing competition with government regulation in
2 matters relating to the administration, management, and disposition of real
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10 the organization will be fully immunized against potential liability under
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17 property liquidating program is established in the division of bank-
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19 administer this chapter.

20 (b) By February 1 of each year the director shall submit a
21 report to the legislature summarizing activities of the division under
22 this chapter during the previous year.

23 Sec. 06.50.020. FORMATION. (a) Three or more grantors may
24 create a real property liquidating organization by filing the orga-
25 nizational documents with the director. The director and the governor
26 shall review the documents and may approve them if they comply with
27 (c) of this section and are consistent with the purposes of this
28 chapter. Conveyance of assets to or disposition of real property or
29 other assets by an organization is not effective until the

1 organizational documents have been reviewed and approved by the direc-
2 tor and the governor.

3 (b) At the time organizational documents are filed with the
4 director under (a) of this section, a copy shall be made available by
5 the grantors to the legislative auditor. The legislative auditor
6 shall review the documents and report to the Legislative Budget and
7 Audit Committee. The committee may recommend approval or disapproval
8 of the documents to the governor.

9 (c) The organizational documents must

10 (1) state the purpose of the organization;

11 (2) identify all grantors who have subscribed to the orga-
12 nization and all persons who will possess an interest in the orga-
13 nization upon its formation;

14 (3) describe the manner in which the organization will be
15 managed;

16 (4) prescribe the method under which distributions to the
17 grantors and other beneficiaries will be made;

18 (5) provide for the conveyance to the organization of all
19 or part of the grantors' portfolios of commercial and residential real
20 property in the state and real estate loans secured by real property
21 in the state;

22 (6) provide for the transfer to the organization of other
23 assets of the grantors, including cash ^{PF: Adopted} ~~and consumer loans~~ ^{DELETE *}, to assist
24 the organization in fulfilling the purposes of this chapter;

25 (7) ensure that all assets transferred to the organization
26 are appraised at fair market value at the time of the transfer;

27 (8) provide for the orderly disposition of the property and
28 loans of the organization at prices to be determined by the orga-
29 nization under regulations adopted by the director;

1 (9) provide for expenditures to manage organization assets,
2 including expenditures to preserve or enhance the value of the orga-
3 nization's properties;

4 (10) establish terms for the dissolution of an organiza-
5 tion; and

6 (11) provide for the establishment of other terms and con-
7 ditions relating to the sale or other disposition of assets that the
8 grantors consider necessary or appropriate to ensure that the orga-
9 nization will be operated in a manner that will provide for orderly
10 disposition of the organization's assets and promote stable real
11 estate markets and a stable banking system in the state.

12 Sec. 06.50.030. AUDITS AND REPORTS. (a) In addition to the
13 record keeping requirements specified in regulations adopted by the
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16 the director on or before April 1 an audited balance sheet, income
17 statement, statement of principal, statement of changes in financial
18 position, schedule of all dispositions of real property, real estate
19 loans, and other assets made by the organization during the previous
20 calendar year, and letters

21 (1) certifying that all dispositions of real property, real
22 estate loans, and other assets, and all distributions during the year
23 were made in accordance with the provisions of the organizational
24 documents and this chapter, or identifying any variance; and

25 (2) with respect to the internal financial controls and
26 practices of the organization, providing recommendations the accoun-
27 tant considers appropriate.

28 (b) The organization shall prepare and file with the director
29 and the legislative auditor, on a quarterly basis, a report containing

1 the following:

2 (1) a schedule of all real property, real estate loans, and
3 other assets held by the organization;

4 (2) the sale price and all other significant terms of sale
5 for real property sold by the organization and amount of proceeds
6 received by the organization from real estate loans and other assets
7 since the date of the previous report; and

8 (3) a proposed operating plan for the next quarterly period
9 that conforms with regulations adopted under this chapter.

10 Sec. 06.50.040. REVIEW AND APPROVAL. (a) The director shall
11 review each report filed under AS 06.50.030(b) and approve or disap-
12 prove the proposed operating plan within 20 days after filing. In
13 reviewing each report and operating plan, the director shall consider
14 current market conditions. The director ^{may} approve an operating plan
15 if the director finds that the report and plan

16 (1) comply with the purposes of this chapter;

17 (2) ensure all provisions of trust agreements and agree-
18 ments between state entities and organizations are adhered to;

19 (3) provide policies that meet the requirements of law and
20 regulations, establish sound fiscal practices, and ensure proper
21 management; and

22 (4) ensure state investments will not be adversely affected
23 by poor management or policies, including payment of excess compen-
24 sation or benefits to officers and employees of the organization.

25 (b) If a proposed operating plan is approved by the director, it
26 shall be submitted for approval or disapproval by the governor. The
27 legislative auditor shall review the operating plan and report to the
28 Legislative Budget and Audit Committee. The committee may recommend
29 approval or disapproval of the plan to the governor.

1 (c) Within five days after the director notifies an organization
2 of its intention to inspect business records, all business records
3 maintained by the organization shall be available for review and
4 examination by the division of banking, securities, and corporations
5 at the organization's principal place of business, during regular
6 business hours. The director shall examine the business records of an
7 organization on a regular basis at least twice each calendar year to
8 determine whether they demonstrate

- 9 (1) proper endorsements of loans and agreements;
10 (2) perfection of interests in collateral;
11 (3) proper appraisals and other determinations of value;
12 (4) proper assessment of the financial position of gran-
13 tors, investors, or borrowers; and
14 (5) other matters the director considers necessary.

15 (d) If the governor or director disapproves a proposed operating
16 plan or the director concludes, after an inspection of business re-
17 cords, that the organization is being administered materially contrary
18 to statute, regulation, or a previously approved operating plan, the
19 director shall notify the organization and all grantors in writing,
20 specifying all deficiencies and prescribing appropriate remedies. If
21 the organization fails to remedy deficiencies in accordance with the
22 director's prescriptions within 60 days after receipt of the notice,
23 the director may commence proceedings under AS 06.01.030. A revised
24 operating plan is also subject to approval by the director and the
25 governor and shall be made available for review by the legislative
26 auditor.

27 (e) The expenses of the division of banking, securities, and
28 corporations reasonably incurred in reviewing and approving a proposed
29 operating plan or inspecting business records under this section shall

1 be charged to and paid by the organization. Receipts shall be depos-
2 ited into the general fund and may be appropriated to the Department
3 of Commerce and Economic Development for costs of administering this
4 chapter.

5 Sec. 06.50.050. LEGISLATIVE AUDITS. (a) The legislative audi-
6 tor shall audit each organization at least once each year. The legis-
7 lative audit division has free access to all books and papers of an
8 organization that relate to its business and books and papers kept by
9 a director, officer, or employee relating to or upon which a record of
10 its business is kept, and may summon witnesses and administer oaths or
11 affirmations in the examination of the directors, officers, or employ-
12 ees of the organization or any person in relation to its affairs,
13 transactions, and conditions, and may require and compel the produc-
14 tion of records, books, papers, contracts, or other documents by court
15 order if not voluntarily produced.

16 (b) The legislative auditor and the auditor's employees may not
17 disclose information acquired by them in the course of an audit of an
18 organization concerning the particulars of the business or affairs of
19 a person unless the information is required to be disclosed by law or
20 under a court order. However, the legislative auditor shall prepare a
21 report summarizing findings of an audit conducted under this section
22 for the president of the senate, the speaker of the house of represen-
23 tatives, and the Legislative Budget and Audit Committee. Upon ap-
24 proval of the Legislative Budget and Audit Committee, a report pre-
25 pared under this section shall be made public.

26 Sec. 06.50.060. EXEMPTION. (a) If the director determines that
27 the exemption is necessary to carry out the purposes of this chapter,
28 the Department of Commerce and Economic Development may by regulation
29 exempt transactions under this chapter by organizations from any fee,

1 authorization, permit, filing, or registration requirement of or
2 administered by the department.

3 (b) Each organization is exempt from AS 45.50.562 - 45.50.592.
4 Activities in connection with an organization of a person or entity
5 that subscribes or grants assets to, contributes funds or services to,
6 obtains a beneficial interest in, or participates in the management of
7 the organization are exempt from AS 45.50.562 - 45.50.592.

8 Sec. 06.50.100. DEFINITIONS. In this chapter

9 (1) "director" means the director of the division of bank-
10 ing, securities, and corporations;

11 (2) "grantor" means a federally or state chartered finan-
12 cial institution, federal or state agency, licensed insurer, or fi-
13 nancing company that conveys real property in the state, loans secured
14 by real property in the state, ^{DELETE} [or [other assets]*] to, and thereby obtains
15 a beneficial interest in and the right to participate in the manage-
16 ment of, a real property liquidating organization;

17 (3) "real property liquidating organization" or "organiza-
18 tion" means a corporation, trust, fund, partnership, joint venture, or
19 other entity created to acquire, maintain, manage, market, administer
20 and sell, liquidate, or otherwise dispose of real property in the
21 state or loans secured by real property in the state and to distribute
22 the proceeds to its beneficiaries, in accordance with organizational
23 its documents.

24 * Sec. 3. AS 18.50.090 is amended by adding a new paragraph to read:

25 (29) convey real property in the state, loans secured by
26 real property in the state, ^{INSERT: RA: up to \$15M in cash} and ^{Adopted} [other assets]* ^{DELETE} to, acquire a beneficial
27 interest in, and participate in the management of a real property
28 liquidating organization established under AS 06.50 if

29 ^{Deletion} (A) state corporations and agencies are granted

1 priority to the assets of the organization over other grantors;
2 and

3 (B) the corporation will realize a rate of return of
4 at least five percent in its total investment in the organiza-
5 tion.

6 * Sec. 4. AS 44.33 is amended by adding a new section to read:

7 Sec. 44.33.027. DIVISION OF BANKING, SECURITIES, AND CORPORA-
8 TIONS. The division of banking, securities, and corporations is
9 established in the department. The director of the division of bank-
10 ing, securities, and corporations shall be appointed by the governor
11 and serve a four-year term or until a successor is appointed. The
12 director serves at the pleasure of the governor. The director

13 (1) must be a United States citizen;

14 (2) must, within 15 years before appointment to office,
15 have had a minimum of five years management experience with a finan-
16 cial institution or as an employee of a state or federal agency that
17 supervises financial institutions;

18 (3) may not, within five years before appointment to of-
19 fice, have served as an officer or director of a financial institution
20 that was subject to a disciplinary order issued by the division of
21 banking, securities, and corporations, or a federal agency or agency
22 of another state that supervises financial institutions, during the
23 five-year period.

24 * Sec. 5. AS 44.88.080 is amended by adding a new paragraph to read:

25 (25) to convey real property in the state, loans secured by
26 real property in the state, ^{and} ~~and other assets~~*, to acquire a beneficial
27 interest in, and participate in the management of a real property
28 liquidating organization established under AS 06.50 if

29 (A) state corporations and agencies are granted

1 priority to the assets of the organization over other grantors;
2 and

3 (B) the corporation will realize ^{JB: an annual} rate of return of
4 at least five percent in its total investment in the organiza-
5 tion.

6 * Sec. 6. AS 06.50.010, 06.50.020, 06.50.030, 06.50.040, 06.50.050,
7 06.50.060, 06.50.100; AS 18.56.090(29); and AS 44.88.080(25) are repealed.

8 * Sec. 7. Sections 1 - 5 of this Act take effect June 1, 1988.

9 * Sec. 8. Section 6 of this Act takes effect June 1, 1993.

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Cook

Sec. 45.50.572. EXEMPTIONS.

(a) AS 45.50.562 - 45.50.596 do not forbid the existence or operation of labor, agricultural or horticultural organizations created for the purpose of mutual help, and not conducted for profit, or forbid or restrain members of those organizations from lawfully carrying out the legitimate objectives of them; nor are these organizations or members illegal combinations or conspiracies in restraint of trade under the provisions of AS 45.50.562 - 45.50.596.

(b) AS 45.50.562 - 45.50.596 do not forbid actions or arrangements authorized or regulated under the laws of the United States which exempt these actions or arrangements from application of the antitrust laws of the United States or under the following statutes of this state:

- (1) AS 06.05.235;
- (2) AS 10.15; and
- (3) AS 31.05.110.

(c) AS 45.50.562 - 45.50.596 do not forbid persons engaged in the fishing industry as fishermen, catching or collecting aquatic products, from acting together in associations for the purpose of catching, collecting, or preparing for market their product.

(d) AS 45.50.562 - 45.50.596 do not apply to public utilities which have been issued a certificate of public convenience and necessity under AS 42.05.

5/4/88
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(e) ~~Repealed, sec. 68 ch 21 SLA 1985.~~

(f) ~~Repealed, sec. 10 ch 75 SLA 1982.~~

(g) AS 45.50.562 - 45.50.596 do not forbid activities expressly required by a regulatory agency of the state. Activities permitted by a regulatory agency of the state are not forbidden by this chapter if the regulatory agency has given due consideration to the possible anticompetitive effects before permitting the activities, and enforcement of the provisions of AS 45.50.562 - 45.50.596 would be disruptive of the regulatory scheme.

(h) AS 45.50.562 - 45.50.596 do not forbid actions or arrangements necessary to carry out the provisions of the Alaska Native Claims Settlement Act.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

May 2, 1988

Honorable John Binkley
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: CSSSSB 408(Fin)

Dear Senator Binkley:

Your request to Assistant Attorney General Jeffrey W. Bush for a written comment on whether CSSSSB 408(Fin) would survive scrutiny under the federal antitrust laws has been referred to me for response.

Generally speaking, active state supervision of an anticompetitive activity, when the activity is taken in furtherance of a clearly articulated state policy, will exempt those undertaking the activity from liability under the federal antitrust laws. Parker v. Brown, 317 U.S. 341 (1943).


The bill before your committee proposes to displace the free market system in Alaska real estate. The bill authorizes the creation of organizations of competitors which will be allowed to fix prices and manipulate the availability of real property on the market. This is clearly anticompetitive activity.

The bill is supported by legislative findings which articulate state policies in support of the proposed anticompetitive activity. Coupled with the proposed system of regulation by the state, the bill is probably adequate to exempt the participants in these organizations from federal antitrust liability.

Sincerely yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By:



Richard D. Monkman
Assistant Attorney General

RDM:nb

5/4/88

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

#2

5-1863M
Cook
5/2/88

Original sponsors: Kelly and Sturgulewski

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 408 (Finance)

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 the division of banking, secu-
7 rities, and corporations; establishing the real prop-
8 erty liquidating program within the division; au-
9 thorizing certain public corporations to participate
10 in the program; and providing for an effective date."

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

12 * Section 1. LEGISLATIVE FINDINGS AND INTENT. (a) The legislature
13 finds that

14 (1) there have been in the state several failures of state and
15 federally chartered financial institutions and one bank consolidation by
16 the Federal Deposit Insurance Corporation under 12 U.S.C. 1823(c);

17 (2) these financial institutions as well as other businesses and
18 state and federal agencies currently hold large portfolios of distressed
19 real estate loans and real property;

20 (3) these businesses and government agencies need to be permit-
21 ted to cooperate in administering these loans and properties to avoid fur-
22 ther adverse effects on the state's real estate markets and to stabilize
23 the state's banking system; and

24 (4) the maintenance of stable and orderly markets for the pur-
25 chase and sale of commercial and residential real estate in the state is
26 essential to the economy of the state and the welfare of its citizens, as
27 is the stability of the state's banking system.

28 (b) The legislature intends to ensure the stability of the state's
29 banking system and real estate markets and prevent a precipitous decline in

1 real estate prices by displacing competition with government regulation in
2 matters relating to the administration, management, and disposition of real
3 property in the state and loans secured by the property held by financial
4 institutions, other businesses, and state and federal agencies. By au-
5 thORIZING the creation of real property liquidating organizations and
6 mandating active state supervision of these organizations, the legislature
7 intends that each real property liquidating organization and all persons
8 and entities who subscribe or grant assets to, contribute funds or services
9 to, obtain a beneficial interest in, or participate in the management of
10 the organization will be fully immunized against potential liability under
11 federal antitrust laws and state antitrust, competition, and trade prac-
12 tices laws arising from the operation of the organization or the activities
13 of any person or entity performed in connection with the organization.

14 * Sec. 2. AS 06 is amended by adding a new chapter to read:

15 CHAPTER 50. REAL PROPERTY LIQUIDATING PROGRAM.

16 Sec. 06.50.010. RESPONSIBILITY OF DIRECTOR. (a) The real
17 property liquidating program is established in the division of bank-
18 ing, securities, and corporations. The director of the division shall
19 administer this chapter.

20 (b) By February 1 of each year the director shall submit a
21 report to the legislature summarizing activities of the division under
22 this chapter during the previous year.

23 Sec. 06.50.020. FORMATION. (a) Three or more grantors may
24 create a real property liquidating organization by filing the orga-
25 nizational documents with the director. The director and the governor
26 shall review the documents and may approve them if they comply with
27 (c) of this section and are consistent with the purposes of this
28 chapter. Conveyance of assets to or disposition of real property or
29 other assets by an organization is not effective until the

1 organizational documents have been reviewed and approved by the direc-
2 tor and the governor.

3 (b) At the time organizational documents are filed with the
4 director under (a) of this section, a copy shall be made available by
5 the grantors to the legislative auditor. The legislative auditor
6 shall review the documents and report to the Legislative Budget and
7 Audit Committee. The committee may recommend approval or disapproval
8 of the documents to the governor.

9 (c) The organizational documents must

10 (1) state the purpose of the organization;

11 (2) identify all grantors who have subscribed to the orga-
12 nization and all persons who will possess an interest in the orga-
13 nization upon its formation;

14 (3) describe the manner in which the organization will be
15 managed;

16 (4) prescribe the method under which distributions to the
17 grantors and other beneficiaries will be made;

18 (5) provide for the conveyance to the organization of all
19 or part of the grantors' portfolios of commercial and residential real
20 property in the state and real estate loans secured by real property
21 in the state;

22 (6) provide for the transfer to the organization of other
23 assets of the grantors, including cash and consumer loans, to assist
24 the organization in fulfilling the purposes of this chapter;

25 (7) ensure that all assets transferred to the organization
26 are appraised at fair market value at the time of the transfer;

27 (8) provide for the orderly disposition of the property and
28 loans of the organization at prices to be determined by the orga-
29 nization under regulations adopted by the director;

1 (9) provide for expenditures to manage organization assets,
2 including expenditures to preserve or enhance the value of the orga-
3 nization's properties;

4 (10) establish terms for the dissolution of an organiza-
5 tion; and

6 (11) provide for the establishment of other terms and con-
7 ditions relating to the sale or other disposition of assets that the
8 grantors consider necessary or appropriate to ensure that the orga-
9 nization will be operated in a manner that will provide for orderly
10 disposition of the organization's assets and promote stable real
11 estate markets and a stable banking system in the state.

12 Sec. 06.50.030. AUDITS AND REPORTS. (a) In addition to the
13 record keeping requirements specified in regulations adopted by the
14 director or in the organizational documents, the organization shall
15 retain a certified public accountant to annually prepare and submit to
16 the director on or before April 1 an audited balance sheet, income
17 statement, statement of principal, statement of changes in financial
18 position, schedule of all dispositions of real property, real estate
19 loans, and other assets made by the organization during the previous
20 calendar year, and letters

21 (1) certifying that all dispositions of real property, real
22 estate loans, and other assets, and all distributions during the year
23 were made in accordance with the provisions of the organizational
24 documents and this chapter, or identifying any variance; and

25 (2) with respect to the internal financial controls and
26 practices of the organization, providing recommendations the accoun-
27 tant considers appropriate.

28 (b) The organization shall prepare and file with the director,
29 on a quarterly basis, a report containing the following:

1 (1) a schedule of all real property, real estate loans, and
2 other assets held by the organization;

3 (2) the sale price and all other significant terms of sale
4 for real property sold by the organization and amount of proceeds
5 received by the organization from real estate loans and other assets
6 since the date of the previous report; and

7 (3) a proposed operating plan for the next quarterly period
8 that conforms with regulations adopted under this chapter.

9 Sec. 06.50.040. REVIEW AND APPROVAL. (a) The director shall
10 review each report filed under AS 06.50.030(b) and approve or disap-
11 prove the proposed operating plan within 20 days after filing. In
12 reviewing each report and operating plan, the director shall consider
13 current market conditions. The director may approve an operating plan
14 if the director finds that the report and plan

15 (1) comply with the purposes of this chapter;

16 (2) ensure all provisions of trust agreements and agree-
17 ments between state entities and organizations are adhered to;

18 (3) provide policies that meet the requirements of law and
19 regulations, establish sound fiscal practices, and ensure proper
20 management; and

21 (4) ensure state investments will not be adversely affected
22 by poor management or policies, including payment of excess compen-
23 sation or benefits to officers and employees of the organization.

24 (b) If a proposed operating plan is approved by the director, it
25 shall be submitted for approval or disapproval by the governor.

26 (c) Within five days after the director notifies an organization
27 of its intention to inspect business records, all business records
28 maintained by the organization shall be available for review and
29 examination by the division of banking, securities, and corporations

1 at the organization's principal place of business, during regular
2 business hours. The director shall examine the business records of an
3 organization on a regular basis at least twice each calendar year to
4 determine whether they demonstrate

- 5 (1) proper endorsements of loans and agreements;
6 (2) perfection of interests in collateral;
7 (3) proper appraisals and other determinations of value;
8 (4) proper assessment of the financial position of gran-
9 tors, investors, or borrowers; and
10 (5) other matters the director considers necessary.

11 (d) If the governor or director disapproves a proposed operating
12 plan or the director concludes, after an inspection of business re-
13 cords, that the organization is being administered materially contrary
14 to statute, regulation, or a previously approved operating plan, the
15 director shall notify the organization and all grantors in writing,
16 specifying all deficiencies and prescribing appropriate remedies. If
17 the organization fails to remedy deficiencies in accordance with the
18 director's prescriptions within 60 days after receipt of the notice,
19 the director may commence proceedings under AS 06.01.030. A revised
20 operating plan is also subject to approval by the director and the
21 governor.

22 (e) The expenses of the division of banking, securities, and
23 corporations reasonably incurred in reviewing and approving a proposed
24 operating plan or inspecting business records under this section shall
25 be charged to and paid by the organization. Receipts shall be depos-
26 ited into the general fund and may be appropriated to the Department
27 of Commerce and Economic Development for costs of administering this
28 chapter.

29 Sec. 06.50.050. LEGISLATIVE AUDITS. (a) The legislative

1 auditor shall audit each organization at least once each year. The
2 legislative audit division has free access to all books and papers of
3 an organization that relate to its business and books and papers kept
4 by a director, officer, or employee relating to or upon which a record
5 of its business is kept, and may summon witnesses and administer oaths
6 or affirmations in the examination of the directors, officers, or
7 employees of the organization or any person in relation to its
8 affairs, transactions, and conditions, and may require and compel the
9 production of records, books, papers, contracts, or other documents by
10 court order if not voluntarily produced.

11 (b) The legislative auditor and the auditor's employees may not
12 disclose information acquired by them in the course of an audit of an
13 organization concerning the particulars of the business or affairs of
14 a person unless the information is required to be disclosed by law or
15 under a court order. However, the legislative auditor shall prepare a
16 report summarizing findings of an audit conducted under this section
17 for the president of the senate, the speaker of the house of represen-
18 tatives, and the Legislative Budget and Audit Committee. Upon ap-
19 proval of the Legislative Budget and Audit Committee, a report pre-
20 pared under this section shall be made public.

21 Sec. 06.50.060. EXEMPTION. (a) If the director determines that
22 the exemption is necessary to carry out the purposes of this chapter,
23 the Department of Commerce and Economic Development may by regulation
24 exempt transactions under this chapter by organizations from any fee,
25 authorization, permit, filing, or registration requirement of or
26 administered by the department.

27 (b) Each organization is exempt from AS 45.50.562 - 45.50.592.
28 Activities in connection with an organization of a person or entity
29 that subscribes or grants assets to, contributes funds or services to,

1 obtains a beneficial interest in, or participates in the management of
2 the organization are exempt from AS 45.50.562 - 45.50.592.

3 Sec. 06.50.100. DEFINITIONS. In this chapter

4 (1) "director" means the director of the division of bank-
5 ing, securities, and corporations;

6 (2) "grantor" means a federally or state chartered finan-
7 cial institution, federal or state agency, licensed insurer, or fi-
8 nancing company that conveys real property in the state, loans secured
9 by real property in the state, or other assets to, and thereby obtains
10 a beneficial interest in and the right to participate in the manage-
11 ment of, a real property liquidating organization;

12 (3) "real property liquidating organization" or "organiza-
13 tion" means a corporation, trust, fund, partnership, joint venture, or
14 other entity created to acquire, maintain, manage, market, administer
15 and sell, liquidate, or otherwise dispose of real property in the
16 state or loans secured by real property in the state and to distribute
17 the proceeds to its beneficiaries, in accordance with organizational
18 its documents.

19 * Sec. 3. AS 18.56.090 is amended by adding a new paragraph to read:

20 (29) convey real property in the state, loans secured by
21 real property in the state, and other assets to, acquire a beneficial
22 interest in, and participate in the management of a real property
23 liquidating organization established under AS 06.50 if

24 (A) state corporations and agencies are granted pri-
25 ority to the assets of the organization over other grantors; and

26 (B) the corporation will realize a rate of return of
27 at least five percent in its total investment in the organiza-
28 tion.

29 * Sec. 4. AS 44.33 is amended by adding a new section to read:

1 Sec. 44.33.027. DIVISION OF BANKING, SECURITIES, AND CORPORA-
2 TIONS. The division of banking, securities, and corporations is
3 established in the department. The director of the division of bank-
4 ing, securities, and corporations shall be appointed by the governor
5 and serve a four-year term or until a successor is appointed. The
6 director serves at the pleasure of the governor. The director

7 (1) must be a United States citizen;

8 (2) must, within 15 years before appointment to office,
9 have had a minimum of five years management experience with a finan-
10 cial institution or as an employee of a state or federal agency that
11 supervises financial institutions;

12 (3) may not, within five years before appointment to of-
13 fice, have served as an officer or director of a financial institution
14 that was subject to a disciplinary order issued by the division of
15 banking, securities, and corporations, or a federal agency or agency
16 of another state that supervises financial institutions, during the
17 five-year period.

18 * Sec. 5. AS 44.88.080 is amended by adding a new paragraph to read:

19 (25) to convey real property in the state, loans secured by
20 real property in the state, and other assets to, acquire a beneficial
21 interest in, and participate in the management of a real property
22 liquidating organization established under AS 06.50 if

23 (A) state corporations and agencies are granted pri-
24 ority to the assets of the organization over other grantors; and

25 (B) the corporation will realize a rate of return of
26 at least five percent in its total investment in the organiza-
27 tion.

28 * Sec. 6. AS 06.50.010, 06.50.020, 06.50.030, 06.50.040, 06.50.050,
29 06.50.060, 06.50.100; AS 18.56.090(29); and AS 44.88.080(25) are repealed.

- 1 * Sec. 7. Sections 1 - 5 of this Act take effect June 1, 1988.
- 2 * Sec. 8. Section 6 of this Act takes effect June 1, 1993.

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(#1 Draft + Amendments)

5-186.12

Cook
5/2/88

5/4/88

Sen. Helford

Original sponsors: Kelly and Sturgulewski

#3

1 IN THE SENATE BY THE FINANCE COMMITTEE
 2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 408 (Finance)
 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 the division of banking, secu-
 7 rities, and corporations; establishing the real prop-
 8 erty liquidating program within the division; au-
 9 thorizing certain public corporations to participate
 10 in the program; and providing for an effective date."

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

12 * Section 1. LEGISLATIVE FINDINGS AND INTENT. (a) The legislature
13 finds that

14 (1) there have been in the state several failures of state and
15 federally chartered financial institutions and one bank consolidation by
16 the Federal Deposit Insurance Corporation under 12 U.S.C. 1823(c);

17 (2) these financial institutions as well as other businesses and
18 state and federal agencies currently hold large portfolios of distressed
19 real estate loans and real property;

20 (3) these businesses and government agencies need to be permit-
21 ted to cooperate in administering these loans and properties to avoid fur-
22 ther adverse effects on the state's real estate markets and to stabilize
23 the state's banking system; and

24 (4) the maintenance of stable and orderly markets for the pur-
25 chase and sale of commercial and residential real estate in the state is
26 essential to the economy of the state and the welfare of its citizens, as
27 is the stability of the state's banking system.

28 (b) The legislature intends to ensure the stability of the state's
29 banking system and real estate markets and prevent a precipitous decline in

1 real estate prices by displacing competition with government regulation in
2 matters relating to the administration, management, and disposition of real
3 property in the state and loans secured by the property held by financial
4 institutions, other businesses, and state and federal agencies. By au-
5 thORIZING the creation of real property liquidating organizations and
6 mandating active state supervision of these organizations, the legislature
7 intends that each real property liquidating organization and all persons
8 and entities who subscribe or grant assets to, contribute funds or services
9 to, obtain a beneficial interest in, or participate in the management of
10 the organization will be fully immunized against potential liability under
11 federal antitrust laws and state antitrust, competition, and trade prac-
12 tices laws arising from the operation of the organization or the activities
13 of any person or entity performed in connection with the organization.

14 * Sec. 2. AS 06 is amended by adding a new chapter to read:

15 CHAPTER 50. REAL PROPERTY LIQUIDATING PROGRAM.

16 Sec. 06.50.010. RESPONSIBILITY OF DIRECTOR. (a) The real
17 property liquidating program is established in the division of bank-
18 ing, securities, and corporations. The director of the division shall
19 administer this chapter.

20 (b) By February 1 of each year the director shall submit a
21 report to the legislature summarizing activities of the division under
22 this chapter during the previous year.

23 Sec. 06.50.020. FORMATION. (a) Three or more grantors may
24 create a real property liquidating organization by filing the orga-
25 nizational documents with the director. The director and the governor
26 shall review the documents and may approve them if they comply with
27 (c) of this section and are consistent with the purposes of this
28 chapter. Conveyance of assets to or disposition of ~~real property or~~
29 ~~other~~ assets by an organization is not effective until the

1 organizational documents have been reviewed and approved by the direc-
2 tor and the governor.

3 (b) At the time organizational documents are filed with the
4 director under (a) of this section, a copy shall be made available by
5 the grantors to the legislative auditor. The legislative auditor
6 shall review the documents and report to the Legislative Budget and
7 Audit Committee. The committee may recommend approval or disapproval
8 of the documents to the governor.

Adopted
WH: 4/1/06

9 (c) The organizational documents must

(by a grantor to all other than real property in the state, loans secured by real property in the state, or cash)

- 10 (1) state the purpose of the organization;
- 11 (2) identify all grantors who have subscribed to the orga-
12 nization and all persons who will possess an interest in the orga-
13 nization upon its formation;
- 14 (3) describe the manner in which the organization will be
15 managed;
- 16 (4) prescribe the method under which distributions to the
17 grantors and other beneficiaries will be made;
- 18 (5) provide for the conveyance to the organization of all
19 or part of the grantors' portfolios of commercial and residential real
20 property in the state and real estate loans secured by real property
21 in the state;

22 (6) provide for the transfer to the organization of ~~other~~
23 ~~assets of the grantors, including cash, and consumer loans, to assist~~
24 ~~the organization in fulfilling the purposes of this chapter;~~
in sufficient amounts to
enable the organization to operate;

Adopted
RU: 4/1/06

25 INSERT NEW (7)
26 (7) ensure that all ~~assets~~ *real property and real estate loans* transferred to the organization
27 are appraised at fair market value at the time of the transfer;

Adopted
WH: 4/1/06

28 *real estate* (8) provide for the orderly disposition of the *real* property and
29 loans of the organization at prices to be determined by the orga-
nization under regulations adopted by the director;

NEW (7) ensure that each grantor contributes a reasonable amount of cash to use for the operation of the organization;

1 ¹⁰
 2 (9) provide for expenditures to manage organization assets,
 3 including expenditures to preserve or enhance the value of the orga-
 4 nization's properties;

5 ¹¹
 6 (10) establish terms for the dissolution of an organiza-
 7 tion; and

8 ¹²
 9 (11) provide for the establishment of other terms and con-
 10 ditions relating to the sale or other disposition of assets that the
 11 grantors consider necessary or appropriate to ensure that the orga-
 12 nization will be operated in a manner that will provide for orderly
 13 disposition of the organization's assets and promote stable real
 14 estate markets and a stable banking system in the state.

15 Sec. 06.50.030. AUDITS AND REPORTS. (a) In addition to the
 16 record keeping requirements specified in regulations adopted by the
 17 director or in the organizational documents, the organization shall
 18 retain a certified public accountant to annually prepare and submit to
 19 the director on or before April 1 an audited balance sheet, income
 20 statement, statement of principal, statement of changes in financial
 21 position, schedule of all dispositions of real property, real estate
 22 loans, and other assets made by the organization during the previous
 23 calendar year, and letters

24 (1) certifying that all dispositions of real property, real
 25 estate loans, and other assets, and all distributions during the year
 26 were made in accordance with the provisions of the organizational
 27 documents and this chapter, or identifying any variance; and

28 (2) with respect to the internal financial controls and
 29 practices of the organization, providing recommendations the accoun-
 30 tant considers appropriate.

31 (b) The organization shall prepare and file with the director
 32 and the legislative auditor, on a quarterly basis, a report containing

1 the following:

- 2 (1) a schedule of all real property, real estate loans, and
3 other assets held by the organization;
4 (2) the sale price and all other significant terms of sale
5 for real property sold by the organization and amount of proceeds
6 received by the organization from real estate loans and other assets
7 since the date of the previous report; and
8 (3) a proposed operating plan for the next quarterly period
9 that conforms with regulations adopted under this chapter.

10 Sec. 06.50.040. REVIEW AND APPROVAL. (a) The director shall
11 review each report filed under AS 06.50.030(b) and approve or disap-
12 prove the proposed operating plan within 20 days after filing. In
13 reviewing each report and operating plan, the director shall consider
14 current market conditions. The director may approve an operating plan
15 if the director finds that the report and plan

- 16 (1) comply with the purposes of this chapter;
17 (2) ensure all provisions of trust agreements and agree-
18 ments between state entities and organizations are adhered to;
19 (3) provide policies that meet the requirements of law and
20 regulations, establish sound fiscal practices, and ensure proper
21 management; and
22 (4) ensure state investments will not be adversely affected
23 by poor management or policies, including payment of excess compen-
24 sation or benefits to officers and employees of the organization, and
25 (5) ensure that the organization will have the amount of cash
26 RU: -y, -w ob (b) If a proposed operating plan is approved by the director, it
27 shall be submitted for approval or disapproval by the governor. The
28 legislative auditor shall review the operating plan and report to the
29 Legislative Budget and Audit Committee. The committee may recommend
approval or disapproval of the plan to the governor.

1 (c) Within five days after the director notifies an organization
2 of its intention to inspect business records, all business records
3 maintained by the organization shall be available for review and
4 examination by the division of banking, securities, and corporations
5 at the organization's principal place of business, during regular
6 business hours. The director shall examine the business records of an
7 organization on a regular basis at least twice each calendar year to
8 determine whether they demonstrate

- 9 (1) proper endorsements of loans and agreements;
10 (2) perfection of interests in collateral;
11 (3) proper appraisals and other determinations of value;
12 (4) proper assessment of the financial position of gran-
13 tors, investors, or borrowers; and
14 (5) other matters the director considers necessary.

15 (d) If the governor or director disapproves a proposed operating
16 plan or the director concludes, after an inspection of business re-
17 cords, that the organization is being administered materially contrary
18 to statute, regulation, or a previously approved operating plan, the
19 director shall notify the organization and all grantors in writing,
20 specifying all deficiencies and prescribing appropriate remedies. If
21 the organization fails to remedy deficiencies in accordance with the
22 director's prescriptions within 60 days after receipt of the notice,
23 the director may commence proceedings under AS 06.01.030. A revised
24 operating plan is also subject to approval by the director and the
25 governor and shall be made available for review by the legislative
26 auditor.

27 (e) The expenses of the division of banking, securities, and
28 corporations reasonably incurred in reviewing and approving a proposed
29 operating plan or inspecting business records under this section shall

1 be charged to and paid by the organization. Receipts shall be depos-
2 ited into the general fund and may be appropriated to the Department
3 of Commerce and Economic Development for costs of administering this
4 chapter.

5 Sec. 06.50.050. LEGISLATIVE AUDITS. (a) The legislative audi-
6 tor shall audit each organization at least once each year. The legis-
7 lative audit division has free access to all books and papers of an
8 organization that relate to its business and books and papers kept by
9 a director, officer, or employee relating to or upon which a record of
10 its business is kept, and may summon witnesses and administer oaths or
11 affirmations in the examination of the directors, officers, or employ-
12 ees of the organization or any person in relation to its affairs,
13 transactions, and conditions, and may require and compel the produc-
14 tion of records, books, papers, contracts, or other documents by court
15 order if not voluntarily produced.

16 (b) The legislative auditor and the auditor's employees may not
17 disclose information acquired by them in the course of an audit of an
18 organization concerning the particulars of the business or affairs of
19 a person unless the information is required to be disclosed by law or
20 under a court order. However, the legislative auditor shall prepare a
21 report summarizing findings of an audit conducted under this section
22 for the president of the senate, the speaker of the house of represen-
23 tatives, and the Legislative Budget and Audit Committee. Upon ap-
24 proval of the Legislative Budget and Audit Committee, a report pre-
25 pared under this section shall be made public.

26 Sec. 06.50.060. EXEMPTION. (a) If the director determines that
27 the exemption is necessary to carry out the purposes of this chapter,
28 the Department of Commerce and Economic Development may by regulation
29 exempt transactions under this chapter by organizations from any fee,

1 authorization, permit, filing, or registration requirement of or
2 administered by the department.

3 (b) Each organization is exempt from AS 45.50.562 - ⁵⁹⁶ 45.50.592.
4 Activities in connection with an organization of a person or entity
5 that subscribes or ~~grants assets~~ ^{real property, real estate loans or} to, contributes ~~fund~~ ⁵⁹⁶ or services to,
6 obtains a beneficial interest in, or participates in the management of
7 the organization are exempt from AS 45.50.562 - 45.50.592.

8 Sec. 06.50.100. DEFINITIONS. In this chapter

9 (1) "director" means the director of the division of bank-
10 ing, securities, and corporations;

11 (2) "grantor" means a federally or state chartered finan-
12 cial institution, federal or state agency, ^{municipality,} licensed insurer, or fi-
13 nancing company that conveys real property in the state, loans secured
14 by real property in the state, or ~~other assets~~ ^{cash} to, and thereby obtains
15 a beneficial interest in and the right to participate in the manage-
16 ment of, a real property liquidating organization;

17 (3) "real property liquidating organization" or "organiza-
18 tion" means a corporation, trust, fund, partnership, joint venture, or
19 other entity created to acquire, maintain, manage, market, administer
20 and sell, liquidate, or otherwise dispose of real property in the
21 state or loans secured by real property in the state and to distribute
22 the proceeds to its beneficiaries, in accordance with organizational
23 its documents.

24 * Sec. 3. AS 18.56.090 is amended by adding a new paragraph to read:

25 (29) convey real property in the state, loans secured by
26 real property in the state, and ^{cash in an amount not to exceed \$15,000,000} ~~other assets~~ to, acquire a beneficial
27 interest in, and participate in the management of a real property
28 liquidating organization established under AS 06.50 if

29 (A) state corporations and agencies are granted

1 priority to the assets of the organization over other grantors;
2 and

3 (B) the corporation will realize a rate of return of
4 at least five percent in its total investment in the organiza-
5 tion.

6 * Sec. 4. AS 44.33 is amended by adding a new section to read:

7 Sec. 44.33.027. DIVISION OF BANKING, SECURITIES, AND CORPORA-
8 TIONS. The division of banking, securities, and corporations is
9 established in the department. The director of the division of bank-
10 ing, securities, and corporations shall be appointed by the governor
11 and serve a four-year term or until a successor is appointed. The
12 director serves at the pleasure of the governor. The director

13 (1) must be a United States citizen;

14 (2) must, within 15 years before appointment to office,
15 have had a minimum of five years management experience with a finan-
16 cial institution or as an employee of a state or federal agency that
17 supervises financial institutions;

18 (3) may not, within five years before appointment to of-
19 fice, have served as an officer or director of a financial institution
20 that was subject to a disciplinary order issued by the division of
21 banking, securities, and corporations, or a federal agency or agency
22 of another state that supervises financial institutions, during the
23 five-year period.

24 * Sec. 5. AS 44.88.080 is amended by adding a new paragraph to read:

25 (25) to convey real property in the state^{or} loans secured by
26 real property in the state, ^{to} ~~and other assets to~~ acquire a beneficial
27 interest in, and participate in the management of a real property
28 liquidating organization established under AS 06.50 if

29 (A) state corporations and agencies are granted

1 priority to the assets of the organization over other grantors;
2 and

3 (B) the corporation, will realize a rate of return of
4 at least five percent in its total investment in the organiza-
5 tion.

6 * Sec. 6. AS 06.50.010, 06.50.020, 06.50.030, 06.50.040, 06.50.050,
7 06.50.060, 06.50.100; AS 18.56.090(29); and AS 44.88.080(25) are repealed.

8 * Sec. 7. Sections 1 - 5 of this Act take effect June 1, 1988.

9 * Sec. 8. Section 6 of this Act takes effect June 1, 1993.

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§ 45.50.460

§ 45.50.470

TRADE AND COMMERCE

§ 45.50.471

Sec. 45.50.470. [Repealed, § 1 ch 246 SLA 1970.]

Sec. 45.50.471. Unlawful acts and practices. (a) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce are declared to be unlawful.

(b) The terms "unfair methods of competition" and "unfair or deceptive acts or practices" include, but are not limited to, the following acts:

(1) fraudulently conveying or transferring goods or services by representing them to be those of another;

(2) falsely representing or designating the geographic origin of goods or services;

(3) causing a likelihood of confusion or misunderstanding as to the source, sponsorship, or approval, or another person's affiliation, connection, or association with or certification of goods or services;

(4) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;

(5) representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, secondhand, or seconds;

(6) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(7) disparaging the goods, services, or business of another by false or misleading representation of fact;

(8) advertising goods or services with intent not to sell them as advertised;

(9) advertising goods or services with intent not to supply reasonable expectable public demand, unless the advertisement prominently discloses a limitation of quantity;

(10) making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

(11) engaging in any other conduct creating a likelihood of confusion or of misunderstanding and which misleads, deceives or damages a buyer or a competitor in connection with the sale or advertisement of goods or services;

(12) using or employing deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or omitting a material fact with intent that others rely upon the concealment, suppression or omission in connection with the sale or advertisement of goods or services whether or not a person has in fact been misled, deceived or damaged;

(13) failing to deliver to the customer at the time of an installment sale of goods or services, a written order, contract, or receipt setting

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out the name and address of the seller and the name and address of the organization that the seller represents, and all of the terms and conditions of the sale, including a description of the goods or services, which shall be stated in readable, clear, and unambiguous language;

(14) representing that an agreement confers or involves rights, remedies or obligations which it does not confer or involve, or which are prohibited by law;

(15) knowingly making false or misleading statements concerning the need for parts, replacement, or repair service;

(16) misrepresenting the authority of a salesman, representative or agent to negotiate the final terms of a consumer transaction;

(17) basing a charge for repair in whole or in part on a guaranty or warranty rather than on the actual value of the actual repairs made or work to be performed on the item without stating separately the charges for the work and the charge for the guaranty or warranty, if any;

(18) disconnecting, turning back or resetting the odometer of a vehicle to reduce the number of miles indicated;

(19) using a chain referral sales plan by inducing or attempting to induce a consumer to enter into a contract by offering a rebate, discount, commission, or other consideration, contingent upon the happening of a future event, on the condition that the consumer either sells, or gives information or assistance for the purpose of leading to a sale by the seller of the same or related goods;

(20) selling or offering to sell a right of participation in a chain distributor scheme;

(21) selling, falsely representing or advertising meat, fish or poultry which has been frozen as fresh food;

(22) failing to comply with AS 45.02.350;

(23) failing to comply with AS 45.45.130 — 45.45.240;

(24) counseling, consulting or arranging for future services relating to the disposition of a body upon death whereby certain personal property, not including cemetery lots and markers, will be furnished or the professional services of a funeral director or embalmer will be furnished, unless the person receiving money or property deposits the money or property, and money or property is received, within five days of its receipt, in a trust in a financial institution whose deposits are insured by an instrumentality of the federal government designating the institution as the trustee as a separate trust in the name only of the person on whose behalf the arrangements are made with a provision that the money or property may only be applied to the purchase of designated merchandise or services and should the money or property deposited and any accrued interest not be used for the purposes intended on the death of the person on whose behalf the arrangements are made, all money or property in the trust shall become part of that person's estate; upon demand by the person on whose

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§ 45.50.471

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§ 45.50.471

TRADE AND COMMERCE

§ 45.50.471

behalf the arrangements are made, all money or property in the trust including accrued interest, shall be paid to that person; this paragraph does not prohibit the charging of a separate fee for consultation, counseling or arrangement services if the fee is disclosed to the person making the arrangement; any arrangement under this paragraph which would constitute a contract of insurance under AS 21 is subject to the provisions of AS 21;

(25) failing to comply with the terms of the Alaska Gasoline Products Leasing Act (AS 45.50.800 — 45.50.850);

(26) failing to comply with AS 45.30 relating to mobile home warranties and mobile home parks;

(27) failing to comply with AS 14.48.060(b)(13);

(28) dealing in hearing aids and failing to comply with AS 08.55.

(c) The unlawful acts and practices listed in (b) of this section are in addition to and do not limit the types of unlawful acts and practices actionable at common law or under other state statutes.

(d) [Repealed, § 21 ch 166 SLA 1978.] (§ 2 ch 246 SLA 1970; am § 1 ch 53 SLA 1974; am § 1 ch 138 SLA 1974; am § 1 ch 183 SLA 1975; am § 2 ch 146 SLA 1976; am § 3 ch 197 SLA 1976; am § 3 ch 234 SLA 1976; am § 21 ch 166 SLA 1978; am § 5 ch 15 SLA 1986; am § 5 ch 64 SLA 1986; am § 12 ch 131 SLA 1986)

Revisor's notes. — Paragraph (b)(24) was enacted as (b)(23) and paragraph (b)(25) was enacted as (b)(22). Renumbered in 1976.

Paragraph (b)(28) was enacted as (b)(27). Renumbered in 1986.

Effect of amendments. — The first 1986 amendment added paragraph (26) of subsection (b).

The second 1986 amendment added paragraph (27) of subsection (b).

The third 1986 amendment added paragraph (28) of subsection (b).

Legislative history reports. — For report on ch. 246, SLA 1970 (FCCS 2d HCS CSSB 252), see 1970 House Journal Supplement 10, following p. 743 of the 1970 House Journal; for report of the conference committee, see either 1970 House Journal, p. 1546, or 1970 Senate Journal, p. 1296.

NOTES TO DECISIONS

This statute did not chill constitutionally protected speech, where the speech in question involved communications regarding alleged debts and thus fell within the rubric of commercial speech, which enjoys a lesser first amendment protection than noncommercial speech. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Subsection (a) not vague. — The words of subsection (a) of this section have a "well-defined" meaning in the area of trade regulation and are therefore not vague. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Two elements must be proved to establish a prima facie case of unfair or deceptive acts or practices under the act: (1) that the defendant is engaged in trade or commerce; and (2) that in the conduct of trade or commerce, an unfair act or practice has occurred. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

When act or practice is deceptive or unfair. — An act or practice is deceptive or unfair if it has the capacity or tendency to deceive. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Actual injury as a result of the deception is not required. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Intent to deceive need not be proved. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Testimony of consumers that they were misled is sufficient to sustain a prima facie case of unfair and deceptive practices. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Prima facie case. — In a consumer protection action, a prima facie case is presented when the plaintiff establishes that the defendant engaged in trade or commerce and in the course of that business committed an unfair act or practice. *State v. Grogan*, Sup. Ct. Op. No. 2356 (File No. 5199), 628 P.2d 570 (1981).

An act or practice need not be deceptive to be unfair. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Unfairness will be determined by a variety of factors, including: (1) whether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise — whether, in other words, it is within at least the penumbra of some common law, statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; (3) whether it causes substantial injury to consumers or competitors or other businessmen. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Similarity to federal law. — The prohibition in this section against "unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce" is substantially similar to that contained in section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1). *Matanuska Maid, Inc. v. State*, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).

Vandalizing a customer's property is an unfair trade act within the meaning of this section. *State v. Grogan*, Sup. Ct. Op. No. 2356 (File No. 5199), 628 P.2d 570 (1981).

Deceptive and unfair acts by collec-

tion agencies. — Threats by debt collection agencies of imminent legal action when no such action is actually contemplated is a deceptive act or practice. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Harassment of debtors by telephone calls to them, their relatives or their employers constitutes an unfair act or practice. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

A misrepresentation by a debt collection agency that failure to pay an alleged debt will result in impairment of one's credit rating has been held to be an unfair and deceptive act or practice. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

The use by collection agencies of simulated legal documents or collection forms labelled "Final Demand Before Legal Action" when no legal action is in fact taken constitutes a deceptive act. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Article not applicable to sale of real property.

See note under this catchline following the article analysis. *State v. First Nat'l Bank*, Sup. Ct. Op. No. 2591 (File Nos. 5006, 5107), 660 P.2d 406 (1982).

Investigation of acts violating both this article and article 4 of chapter. — Although it does not necessarily follow that an act which violates the Unfair Trade Practices and Consumer Protection Act, AS 45.50.471 — 45.50.561 would also violate the Restraint of Trade Act, AS 45.50.562 — 45.50.596, if an act does violate both statutes, an investigation pursuant to AS 45.50.495 would be appropriate. *Matanuska Maid, Inc. v. State*, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).

Since the bidding and pricing activities under investigation could have conceivably lacked some essential element of an AS 45.50.562 violation, which is Alaska's equivalent of the Sherman Act, 15 U.S.C. § 1 et seq., it was appropriate for the state to investigate as well the possible violation of this section which is Alaska's equivalent of the Federal Trade Commission Act, 15 U.S.C. § 41 et seq. *Matanuska Maid, Inc. v. State*, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).

Quoted in *S. v. Vating, Inc. v. J. Ct. Op. No. 200 1113 (1980).*

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§ 45.50.472

TRADE AND COMMERCE

§ 45.50.481

Quoted in Swenson Trucking & Exca-
vating, Inc. v. Truckweld Equip. Co., Sup.
Ct. Op. No. 2008 (File No. 4288), 604 P.2d
1113 (1980).

Cited in O'Neill Investigations, Inc. v.
Illinois Employers Ins., Sup. Ct. Op. No.
2444 (File No. 4429), 636 P.2d 1170
(1981).

Collateral references. — 32 Am. Jur.
2d, False Pretenses, § 1 et seq.; 37 Am.
Jur. 2d, Fraud and Deceit, § 41 et seq. 35
C.J.S. False Pretenses § 14; 37 C.J.S.
Fraud § 154; 37 C.J.S. Fraudulent Con-
veyances § 469.

Validity, construction, and effect of
state legislation regulating or controlling
"bait-and-switch" or "disparagement" ad-

vertising or sales practices. 50 ALR3d
1008.

Scope and exemptions of state deceptive
trade practice and consumer protection
acts. 89 ALR3d 399.

Practices forbidden by state deceptive
trade practice and consumer protection
acts. 89 ALR3d 449.

Sec. 45.50.472. Junk telephone calls. (a) Making a junk tele-
phone call without the prior written consent of the person called is
unlawful.

(b) In this section "junk telephone call" means a telephone call
made for the purpose of advertising through the use of a recorded
advertisement.

(c) The provisions of AS 45.50.481 — 45.50.561 apply to this sec-
tion. (§ 1 ch 17 SLA 1978)

Sec. 45.50.480. [Repealed, § 1 ch 246 SLA 1970.]

Sec. 45.50.481. Exemptions. Nothing in AS 45.50.471 —
45.50.561 applies to

(1) an act or transaction regulated under laws administered by the
state, by a regulatory board or commission except as provided by AS
45.50.471(b)(27), or officer acting under statutory authority of the
state or of the United States, unless the law regulating the act or
transaction does not prohibit the practices declared unlawful in AS
45.50.471;

(2) an act done by the publisher, owner, agent, or employee of a
newspaper, periodical or radio or television station in the publication
or dissemination of an advertisement, when the owner, agent or em-
ployee did not have knowledge of the false, misleading or deceptive
character of the advertisement or did not have a direct financial inter-
est in the sale or distribution of the advertised product or service;

(3) an act or transaction regulated under AS 21.36 or AS 06.05 or a
regulation adopted under the authority of those chapters. (§ 2 ch 246
SLA 1970; am §§ 2, 3 ch 53 SLA 1974; am § 6 ch 64 SLA 1986)

Effect of amendments. — The 1986
amendment in paragraph (1) substituted
"a" for "any" preceding "regulatory board"
and inserted "except as provided by AS

45.50.471(b)(27)" and in paragraph (3)
substituted "a regulation adopted" for
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serted "the" preceding "authority."

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SFC

Original sponsors: Kelly and Sturgulewski

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 408 (Finance)

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 the division of banking, secu-
7 rities, and corporations; establishing the real prop-
8 erty liquidating program within the division; au-
9 thorizing certain public corporations to participate
10 in the program; and providing for an effective date."

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

12 * Section 1. LEGISLATIVE FINDINGS AND INTENT. (a) The legislature
13 finds that

14 (1) there have been in the state several failures of state and
15 federally chartered financial institutions and one bank consolidation by
16 the Federal Deposit Insurance Corporation under 12 U.S.C. 1823(c);

17 (2) these financial institutions as well as other businesses and
18 state and federal agencies currently hold large portfolios of distressed
19 real estate loans and real property;

20 (3) these businesses and government agencies need to be permit-
21 ted to cooperate in administering these loans and properties to avoid fur-
22 ther adverse effects on the state's real estate markets and to stabilize
23 the state's banking system; and

24 (4) the maintenance of stable and orderly markets for the pur-
25 chase and sale of commercial and residential real estate in the state is
26 essential to the economy of the state and the welfare of its citizens, as
27 is the stability of the state's banking system.

28 (b) The legislature intends to ensure the stability of the state's

1 real estate prices by displacing competition with government regulation in
2 matters relating to the administration, management, and disposition of real
3 property in the state and loans secured by the property held by financial
4 institutions, other businesses, and state and federal agencies. By au-
5 thorizing the creation of ²⁴ [real property liquidating] organizations and
6 mandating active state supervision of these organizations, the legislature
7 intends that each real property liquidating organization and all persons
8 and entities who subscribe or grant assets to, contribute funds or services
9 to, obtain a beneficial interest in, or participate in the management of
10 the organization will be fully immunized against potential liability under
11 federal antitrust laws and state antitrust, competition, and trade prac-
12 tices laws arising from the operation of the organization or the activities
13 of any person or entity performed in connection with the organization.

14 * Sec. 2. AS 06 is amended by adding a new chapter to read:

15 CHAPTER 50. REAL PROPERTY LIQUIDATING PROGRAM.

16 Sec. 06.50.010. RESPONSIBILITY OF DIRECTOR. (a) The real
17 property liquidating program is established in the division of bank-
18 ing, securities, and corporations. The director of the division shall
19 administer this chapter.

20 (b) By February 1 of each year the director shall submit a
21 report to the legislature summarizing activities of the division under
22 this chapter during the previous year.

23 Sec. 06.50.020. FORMATION. (a) Three or more grantors may
24 create a real property liquidating organization by filing the orga-
25 nizational documents with the director. The director and the governor
26 shall review the documents and approve them if they comply with (b) of
27 this section and are consistent with the purposes of this chapter.
28 Conveyance of assets to or disposition of real property or other

1 documents have been reviewed and approved by the director and the
2 governor.

3 (b) The organizational documents must

4 (1) state the purpose of the organization;

5 (2) identify all grantors who have subscribed to the orga-
6 nization and all persons who will possess an interest in the orga-
7 nization upon its formation;

8 (3) describe the manner in which the organization will be
9 managed;

10 (4) prescribe the method under which distributions to the
11 grantors and other beneficiaries will be made;

12 (5) provide for the conveyance to the organization of all
13 or part of the grantors' portfolios of commercial and residential real
14 property in the state and real estate loans secured by real property
15 in the state;

16 (6) provide for the transfer to the organization of other
17 assets of the grantors, including cash and consumer loans, to assist
18 the organization in fulfilling the purposes of this chapter;

19 (7) ensure that all assets transferred to the organization
20 are appraised at fair market value at the time of the transfer;

21 (8) provide for the orderly disposition of the property and
22 loans of the organization at prices to be determined by the orga-
23 nization under regulations adopted by the director;

24 (9) provide for expenditures to manage organization assets,
25 including expenditures to preserve or enhance the value of the orga-
26 nization's properties; and

27 (10) provide for the establishment of other terms and con-
28 ditions relating to the sale or other disposition of assets that the

1 organization will be operated in a manner that will provide for order-
2 ly disposition of the organization's assets and promote stable real
3 estate markets and a stable banking system in the state.

4 Sec. 06.50.030. AUDITS AND REPORTS. (a) In addition to the
5 record keeping requirements specified in regulations adopted by the
6 director or in the organizational documents, the organization shall
7 retain a certified public accountant to annually prepare and submit to
8 the director on or before April 1 an audited balance sheet, income
9 statement, statement of principal, statement of changes in financial
10 position, schedule of all dispositions of real property and real
11 estate loans made by the organization during the previous calendar
12 year, and letters

13 (1) certifying that all dispositions of real property and
14 real estate loans and all distributions during the year were made in
15 accordance with the provisions of the organizational documents and
16 this chapter, or identifying any variance; and

17 (2) with respect to the internal financial controls and
18 practices of the organization, providing recommendations the accoun-
19 tant considers appropriate.

20 (b) The organization shall prepare and file with the director,
21 on a quarterly basis, a report containing the following:

22 (1) a schedule of all real property and real estate loans
23 held by the organization;

24 (2) the sale price and all other significant terms of sale
25 for real property sold by the organization and amount of proceeds
26 received by the organization from real estate loans since the date of
27 the previous report; and

28 (3) a proposed operating plan, ^{RU and/or organizational plan} for the next quarterly period
29 that conforms with regulations adopted under this chapter.

1 Sec. 06.50.040. REVIEW AND APPROVAL. (a) The director shall
2 review each report filed under AS 06.50.030(b) and approve or disap-
3 prove the proposed operating plan within 20 days after filing. If the
4 proposed operating plan is approved by the director, it shall be
5 submitted for approval by the governor. In reviewing each report and
6 operating plan, the director shall consider current market conditions.
7 The director ^{pv f mmm} shall approve an operating plan if the director finds
8 that the report and plan comply with the purposes of this chapter and

9 (1) ensure all provisions of trust agreements and agree-
10 ments between state entities and organizations are adhered to;

11 (2) provide policies that meet the requirements of law and
12 regulations, establish sound fiscal practices, and ensure proper
13 management;

14 (3) assure state investments will not be adversely affected
15 by poor management or policies, including payment of excess compen-
16 sation or benefits to officers and employees of the organization.

17 (b) Within five days after the director notifies an organization
18 of its intention to inspect business records, all business records
19 maintained by the organization shall be available for review and
20 examination by the division of banking, securities, and corporations
21 at the organization's principal place of business, during regular
22 business hours. The director shall examine the business records of an
23 organization on a regular basis at least twice each calendar year to
24 determine whether they demonstrate

25 (1) proper endorsements of loans and agreements;

26 (2) perfection of interests in collateral;

27 (3) proper appraisals and other determinations of value;

28 (4) proper assessment of the financial position of
29 grantors, investors, or borrowers;

1 (5) other matters the director considers necessary.

2 (c) If the governor or director disapproves a proposed operating
3 plan or the director concludes, after an inspection of business re-
4 cords, that the organization is being administered materially contrary
5 to statute, regulation, or a previously approved operating plan, the
6 director shall notify the organization and all grantors in writing,
7 specifying all deficiencies and prescribing appropriate remedies. If
8 the organization fails to remedy deficiencies in accordance with the
9 director's prescriptions within 60 days after receipt of the notice,
10 the director may commence proceedings under AS 06.01.030. A revised
11 operating plan is also subject to approval by the director and the
12 governor.

13 (d) The expenses of the division of banking, securities, and
14 corporations reasonably incurred in reviewing and approving a proposed
15 operating plan or inspecting business records under this section shall
16 be charged to and paid by the organization. Receipts shall be depos-
17 ited into the general fund and may be appropriated to the Department
18 of Commerce and Economic Development for costs of administering this
19 chapter.

20 Sec. 06.50.050. LEGISLATIVE AUDITS. (a) The legislative audi-
21 tor shall audit each organization at least once each year. The legis-
22 lative audit division has free access to all books and papers of an
23 organization that relate to its business and books and papers kept by
24 a director, officer, or employee relating to or upon which a record of
25 its business is kept, and may summon witnesses and administer oaths or
26 affirmations in the examination of the directors, officers, or employ-
27 ees of the organization or any person in relation to its affairs,
28 transactions, and conditions, and may require and compel the produc-
29 tion of records, books, papers, contracts, or other documents by court

1 order if not voluntarily produced.

2 (b) The legislative auditor and the auditor's employees may not
3 disclose information acquired by them in the course of an audit of an
4 organization concerning the particulars of the business or affairs of
5 a person unless the information is required to be disclosed by law or
6 under a court order. However, the legislative auditor shall prepare a
7 report summarizing findings of an audit conducted under this section
8 for the president of the senate, the speaker of the house of represen-
9 tatives, and the Legislative Budget and Audit Committee. Upon ap-
10 proval of the Legislative Budget and Audit Committee, a report pre-
11 pared under this section shall be made public.

12 Sec. 06.50.060. EXEMPTION. Each organization is exempt from
13 AS 45.50.471 - 45.50.596. Activities in connection with an organi-
14 zation of a person or entity that subscribes or grants assets to,
15 contributes funds or services to, obtains a beneficial interest in, or
16 participates in the management of the organization are exempt from
17 AS 45.50.471 - 45.50.596.

18 Sec. 06.50.100. DEFINITIONS. In this chapter

19 (1) "director" means the director of the division of bank-
20 ing, securities, and corporations;

21 (2) "grantor" means a federally or state chartered finan-
22 cial institution, federal or state agency, licensed insurer, or fi-
23 nancing company that conveys real property in the state, loans secured
24 by real property in the state, or other assets to, and thereby obtains
25 a beneficial interest in and the right to participate in the manage-
26 ment of, a real property liquidating organization;

27 (3) "real property liquidating organization" or "organiza-
28 tion" means a corporation, trust, fund, partnership, joint venture, or
29 other entity created to acquire, maintain, manage, market, administer

1 and sell, liquidate, or otherwise dispose of real property in the
2 state or loans secured by real property in the state and to distribute
3 the proceeds to its beneficiaries, in accordance with organizational
4 its documents.

5 * Sec. 3. AS 18.56.090 is amended by adding a new paragraph to read:

6 (29) convey real property in the state, loans secured by
7 real property in the state, and other assets to, acquire a beneficial
8 interest in, and participate in the management of a real property
9 liquidating organization established under AS 06.50 if state corpo-
10 rations and agencies are granted priority to the assets of the orga-
11 nization over other grantors.

12 * Sec. 4. AS 44.33 is amended by adding a new section to read:

13 Sec. 44.33.027. DIVISION OF BANKING, SECURITIES, AND CORPORA-
14 TIONS. The division of banking, securities, and corporations is
15 established in the department. The director of the division of bank-
16 ing, securities, and corporations shall be appointed by the governor
17 and serve a four-year term or until a successor is appointed. The
18 director serves at the pleasure of the governor. The director

19 (1) must be a United States citizen;

20 (2) must, within 15 years before appointment to office,
21 have had a minimum of five years management experience with a finan-
22 cial institution or as an employee of a state or federal agency that
23 supervises financial institutions;

24 (3) may not, within five years before appointment to of-
25 fice, have served as an officer or director of a financial institution
26 that was subject to a disciplinary order issued by the division of
27 banking, securities, and corporations, or a federal agency or agency
28 of another state that supervises financial institutions, during the
29 five-year period.

1 * Sec. 5. AS 44.88.080 is amended by adding a new paragraph to read:

2 (25) to convey real property in the state, loans secured by
3 real property in the state, and other assets to, acquire a beneficial
4 interest in, and participate in the management of a real property
5 liquidating organization established under AS 06.50 if state corpo-
6 rations and agencies are granted priority to the assets of the orga-
7 nization over other grantors.

8 * Sec. 6. AS 06.50.010, 06.50.020, 06.50.030, 06.50.040, 06.50.050,
9 06.50.060, 06.50.100; AS 18.56.090(29); and AS 44.88.080(25) are repealed.

10 * Sec. 7. Sections 1 - 5 of this Act take effect June 1, 1988.

11 * Sec. 8. Section 6 of this Act takes effect June 1, 1993.

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5/2/88
Sackett

SENATE AMENDMENT

By _____

To: CSSS SENATE BILL No. 408 (Fin)

To: HOUSE BILL No.

PAGE: 7 LINE: 12

Insert the following after EXEMPTION.:
"(a) If the director determines that the exemption
is necessary to carry out the purposes of this chapter, the
director may by regulation exempt transactions under this
chapter by real property liquidating organizations from
any fee, authorization, permit, filing, or registration
requirement of or administered by the department.
(b) "

Renumber accordingly

SENATE AMENDMENT

By _____

To: CSSS SENATE BILL No. 400 (Fin)

To: _____ HOUSE BILL No. _____

PAGE: 7 LINE: 12

Insert the following after EXEMPTION.:

"(a) If the director determines that the exemption is necessary to carry out the purposes of this chapter, the director may by regulation exempt transactions under this chapter by real property liquidating organizations from any fee, authorization, permit, filing, or registration requirement of or administered by the department.

(b) "

Renumber accordingly

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

May 2, 1988

The Honorable Jan Faiks
President
Alaska State Senate
P.O. Box V
Juneau, Alaska 99811

Re: CSSSSB 408 (Fin)(bridge bank)

Dear Senator Faiks:

You have asked for our advice with respect to the exemption section of the proposed legislation to authorize the establishment of real estate liquidating organizations, commonly referred to as the bridge bank, CSSSSB 408 (Fin). This section was drafted by this office and the Legislative Affairs attorney, upon the advice of and after consultation with private attorneys who specialize in antitrust matters. This section is necessary to ensure that an organization formed under this chapter has the maximum possible insulation from federal and state antitrust laws.

The exemption section is broken down into two parts, each serving a different purpose. Proposed AS 06.50.050(a) ensures that the state does not have to engage in duplicative regulation of real estate liquidating organizations. The statutory framework contained in this bill is designed to require the Department of Commerce and Economic Development to comprehensively regulate these organizations under the express regulatory provisions of the chapter. This regulation is absolutely necessary to avoid antitrust problems, and includes departmental approval of quarterly operating plans, annual audits, and twice annual examinations. It is anticipated that this regulation will be done by the banking section of the Division of Banking, Securities and Corporations. However, without the exemption in subsection (a), these organizations would also be subject to regulation as issuers of securities, requiring them to file additional documents with the securities section of the same division. Such documents would be superfluous in terms of the information contained in them, and would only result in an added administrative burden and expense to both the division and the organization. In addition, without this exemption an organization that forms as a corporation would have to file its articles of incorporation with both the banking section, under this chapter, and the corporations section, under Alaska's corporations code (AS 10.05), of the same division. This exemption was drafted to prevent these examples of

RECEIVED MAY 0 2 1988

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

The Honorable Jan Faiks
President, Alaska State Senate

May 2, 1988
Page 2

duplicative regulation by the Department of Commerce and Economic Development.

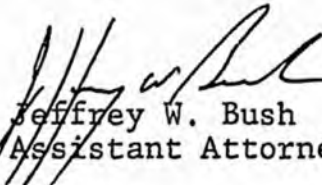
Proposed AS 06.50.050(b) is legally more important. This section expressly exempts these organizations from the state's antitrust and consumer protection laws. Without this exemption, we believe that an organization established under this chapter, designed as it would be to fix prices and control the real estate market, would be in clear violation of these laws. Since the express purpose of the bill is to avoid these antitrust problems, this subsection is necessary.

Please feel free to contact me if I can be of any further assistance.

Sincerely yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By:



Jeffrey W. Bush
Assistant Attorney General

JWB:nb

cc: Senators Halford & Binkley, Co-Chairs
Senate Finance Committee

Bob Evans
Legislative Liaison
Office of the Governor

Tony Smith
Commissioner
Department of Commerce and Economic Development

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 30, 1988

SUBJECT: Real property liquidating program
(CSSSSB 408)

TO: Senator Jan Faiks

FROM: Tamara Brandt Cook *TBC*
Director
Division of Legal Services

Here is the sectional analysis that you requested.

Section 1. This is a statement of legislative findings and intent. The legislature finds that there have been failures of state and federally chartered financial institutions, agencies currently hold portfolios of distressed real estate loans and property, financial institutions, businesses and agencies need to be permitted to cooperate in administering these properties, and maintenance of stable real estate markets and a stable banking system is essential to the economy. The legislature intends to ensure stability of the banking system and real estate markets by displacing competition with government regulation in matters relating to management and disposition of real property by authorizing creation of real property liquidating organizations under state supervision.

Section 2. This is a new chapter relating to the real property liquidating program.

Sec. 06.50.010 requires the director of banking, securities, and corporations to administer the chapter. He must report annually to the legislature.

Sec. 06.50.020 permits the formation by three or more grantors of a real property liquidating organization. Organizational documents must be reviewed and approved by the director and the governor and must meet certain itemized requirements.

5/2/88

Sec. 06.50.030 requires an organization to retain a certified public accountant to annually prepare and submit to the division an audited balance sheet containing specified information. The accountant must certify that all dispositions of real estate and loans during the year were made in accordance with the organization documents and this chapter, or identify variances, and provide recommendations with respect to internal financial controls. The organization is also required to file a report on its operations quarterly.

Sec. 06.50.040 requires the director and the governor to approve or disapprove a proposed operating plan of an organization. The director must also inspect business records of an organization on a regular basis at least twice each year. If the director concludes that the organization is being administered materially contrary to law, regulation or a previously approved operating plan, he may prescribe appropriate remedies. If the organization fails to remedy deficiencies, the director may begin proceedings to dissolve the organization. Expenses incurred in reviewing organization reports and conducting inspections shall be charged to the organization.

Sec. 06.50.050 requires the legislative auditor to audit each organization at least once a year. The auditor shall prepare a report summarizing findings for the president of the senate, speaker of the house, and Legislative Budget and Audit committee. The report is made public on approval of the committee.

Sec. 06.50.060 exempts an organization and persons involved with organizations from AS 45.50.471 - 45.50.596 (Unfair Trade Practices and Consumer Protection; Monopolies; Restraint of Trade).

Sec. 06.50.100 provides definitions of director, grantor and real property liquidating organization.

Section 3. The Alaska Housing Finance Corporation is granted broad authority to enter into agreements for cooperative management and disposal of real property and convey property to or acquire a beneficial interest in a real property liquidating organization, if state corporations and agencies are granted a priority to assets of the organization.

Section 4. The division of banking, securities, and corporations is established in the Department of Commerce

Senator Faiks
Page 3
April 30, 1988

and Economic Development. The director is appointed by the governor to a four year term. Qualifications for the director are set out.

Section 5. The Alaska Industrial Development and Export Authority is granted power to convey assets to and acquire a beneficial interest in a real property liquidating organization, if state corporations and agencies are granted a priority to assets of the organization.

Section 6. Except section 4 the foregoing substantive provisions of the bill are repealed.

Section 7. The substantive provisions take effect June 1, 1988.

Section 8. The repealer takes effect June 1, 1993, making this a five year program.

TBC:mkr
b5/079

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907.465.3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 28, 1988

SUBJECT: Stabilization of the real estate market
(CSSSSB 408(Fin))

TO: Senator Tim Kelly

FROM: Tamara Brandt Cook *TBC*
Director
Division of Legal Services

Here is the sectional analysis that you requested.

Section 1. This is a statement of legislative findings and intent. The legislature finds that there have been failures of state and federally chartered financial institutions, agencies currently hold portfolios of distressed real estate loans and property, financial institutions, businesses and agencies need to be permitted to cooperate in administering these properties, and maintenance of stable real estate markets and a stable banking system is essential to the economy. The legislature intends to ensure stability of the banking system and real estate markets by displacing competition with government regulation in matters relating to management and disposition of real property by authorizing creation of real property liquidating organizations under state supervision.

Section 2. This is a new chapter relating to real property liquidating organizations.

Sec. 06.50.010 requires the Commissioner of Commerce and Economic Development to administer the chapter and adopt regulations. He must report annually to the legislature.

Sec. 06.50.020 permits the formation by three or more grantors of a real property liquidating organization. Organizational documents must be reviewed and approved by the commissioner and must meet certain itemized requirements.

Sec. 06.50.030 requires an organization to retain a certified public accountant to annually prepare and submit to the Department of Commerce and Economic Development an audited balance sheet containing specified information. The accountant must certify that all dispositions of real estate and loans during the year were made in accordance with the organization documents and this chapter, or identify variances, and provide recommendations with respect to internal financial controls. The organization is also required to file a report on its operations quarterly.

Sec. 06.50.040 requires the commissioner to approve or disapprove a proposed operating plan of an organization. He must also inspect business records of an organization on a regular basis at least twice each year. If the commissioner concludes that the organization is being administered materially contrary to law, regulation or a previously approved operating plan, he may prescribe appropriate remedies. If the organization fails to remedy deficiencies, the commissioner may begin proceedings to dissolve the organization. Expenses incurred in reviewing organization reports and conducting inspections shall be charged to the organization.

Sec. 06.50.050 permits the commissioner, by regulation, to exempt transactions of organizations from fees, authorizations, permits or registration requirements of the department if he determines the exemption is necessary to carry out the purposes of the chapter. An organization and persons involved with organizations are exempt from AS 45.50.471 - 45.50.396 (Unfair Trade Practices and Consumer Protection; Monopolies; Restraint of Trade).

Section 3. The Alaska Housing Finance Corporation is granted broad authority to take action to stabilize the market price of and demand for residential housing. The corporation may enter into agreements for cooperative management and disposal of real property and convey property to or acquire a beneficial interest in a real property liquidating organization.

Section 4. The Alaska Industrial Development and Export Authority is granted power to convey assets to and acquire a beneficial interest in a real property liquidating organization.

Section 5. The foregoing substantive provisions of the bill are repealed.

for Tim Kelly
3
April 28, 1988

Section 6. The substantive provisions take effect June 1, 1988.

Section 7. The repealer takes effect June 1, 1993, making this a five year program.

TBC:gc
WKG3:047

5-1863P
Cook
4/28/88

Original sponsors: Kelly and Sturgulewski

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 408 (Finance)

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 stabilization of the state's real
7 estate markets and banking system; authorizing the
8 establishment of real property liquidating organiza-
9 tions under active state supervision; and providing
10 for an effective date."

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

12 * Section 1. LEGISLATIVE FINDINGS AND INTENT. (a) The legislature
13 finds that

14 (1) there have been in the state several failures of state and
15 federally chartered financial institutions and one bank consolidation by
16 the Federal Deposit Insurance Corporation under 12 U.S.C. 1823(c);

17 (2) these financial institutions as well as other businesses and
18 state and federal agencies currently hold large portfolios of distressed
19 real estate loans and real property;

20 (3) these businesses and government agencies need to be permit-
21 ted to cooperate in administering these loans and properties to avoid fur-
22 ther adverse effects on the state's real estate markets and to stabilize
23 the state's banking system; and

24 (4) the maintenance of stable and orderly markets for the pur-
25 chase and sale of commercial and residential real estate in the state is
26 essential to the economy of the state and the welfare of its citizens, as
27 is the stability of the state's banking system.

28 (b) The legislature intends to ensure the stability of the state's
29 banking system and real estate markets and prevent a precipitous decline in

1 real estate prices by displacing competition with government regulation in
2 matters relating to the administration, management, and disposition of real
3 property in the state and loans secured by the property held by financial
4 institutions, other businesses, and state and federal agencies. By au-
5 thORIZING the creation of real property liquidating organizations and
6 mandating active state supervision of these organizations, the legislature
7 intends that each real property liquidating organization and all persons
8 and entities who subscribe or grant assets to, contribute funds or services
9 to, obtain a beneficial interest in, or participate in the management of
10 the organization will be fully immunized against potential liability under
11 federal antitrust laws and state antitrust, competition, and trade prac-
12 tices laws arising from the operation of the organization or the activities
13 of any person or entity performed in connection with the organization.

14 * Sec. 2. AS 06 is amended by adding a new chapter to read:

15 CHAPTER 50. REAL PROPERTY LIQUIDATING ORGANIZATIONS.

16 Sec. 06.50.010. RESPONSIBILITY OF COMMISSIONER. (a) The com-
17 missioner shall administer this chapter and adopt regulations to carry
18 out the purposes of this chapter.

19 (b) By February 1 of each year the commissioner shall submit a
20 report to the legislature summarizing activities of the department
21 under this chapter during the previous year.

22 Sec. 06.50.020. FORMATION. (a) Three or more grantors may
23 create a real property liquidating organization by filing the orga-
24 nizational documents with the commissioner. The commissioner shall
25 review the documents and approve them if they comply with (b) of this
26 section and are consistent with the purposes of this chapter. Convey-
27 ance of assets to or disposition of real property or other assets by
28 an organization is not effective until the organizational documents
29 have been reviewed and approved by the commissioner.

1 (b) The organizational documents must

2 (1) state the purpose of the organization;

3 (2) identify all grantors who have subscribed to the orga-
4 nization and all persons who will possess an interest in the orga-
5 nization upon its formation;

6 (3) describe the manner in which the organization will be
7 managed;

8 (4) prescribe the method under which distributions to the
9 grantors and other beneficiaries will be made;

10 (5) provide for the conveyance to the organization of all
11 or part of the grantors' portfolios of commercial and residential real
12 property in the state and real estate loans secured by real property
13 in the state;

14 (6) provide for the transfer to the organization of other
15 assets of the grantors, including cash and consumer loans, to assist
16 the organization in fulfilling the purposes of this chapter;

17 (7) provide for the orderly disposition of the property and
18 loans of the organization at prices to be determined by the orga-
19 nization under regulations adopted by the commissioner;

20 (8) provide for expenditures to manage organization assets,
21 including expenditures to preserve or enhance the value of the orga-
22 nization's properties; and

23 (9) provide for the establishment of other terms and con-
24 ditions relating to the sale or other disposition of assets that the
25 grantors consider necessary or appropriate to ensure that the orga-
26 nization will be operated in a manner that will provide for orderly
27 disposition of the organization's assets and promote stable real
28 estate markets and a stable banking system in the state.

29 Sec. 06.50.030. AUDITS AND REPORTS. (a) In addition to the

1 record keeping requirements specified in regulations adopted by the
2 commissioner or in the organizational documents, the organization
3 shall retain a certified public accountant to annually prepare and
4 submit to the department on or before April 1 an audited balance
5 sheet, income statement, statement of principal, statement of changes
6 in financial position, schedule of all dispositions of real property
7 and real estate loans made by the organization during the previous
8 calendar year, and letters

9 (1) certifying that all dispositions of real property and
10 real estate loans and all distributions during the year were made in
11 accordance with the provisions of the organizational documents and
12 this chapter, or identifying any variance; and

13 (2) with respect to the internal financial controls and
14 practices of the organization, providing recommendations the accoun-
15 tant considers appropriate.

16 (b) The organization shall prepare and file with the commission-
17 er, on a quarterly basis, a report containing the following:

18 (1) a schedule of all real property and real estate loans
19 held by the organization;

20 (2) the sale price and all other significant terms of sale
21 for real property sold by the organization and amount of proceeds
22 received by the organization from real estate loans since the date of
23 the previous report; and

24 (3) a proposed operating plan for the next quarterly period
25 that conforms with regulations adopted by the commissioner.

26 Sec. 06.50.040. REVIEW AND APPROVAL BY COMMISSIONER. (a) The
27 commissioner shall review each report filed under AS 06.50.030(b) and
28 approve or disapprove the proposed operating plan within 20 days after
29 filing. In reviewing each report and operating plan, the commissioner

1 shall consider current market conditions. The commissioner shall
2 approve an operating plan if the commissioner finds that the report
3 and plan comply with the purposes of this chapter.

4 (b) Within five days after the department notifies an organiza-
5 tion of its intention to inspect business records, all business re-
6 cords maintained by the organization shall be available for review and
7 examination by the department at the organization's principal place of
8 business, during regular business hours. The commissioner shall
9 examine the business records of an organization on a regular basis at
10 least twice each calendar year.

11 (c) If the commissioner disapproves a proposed operating plan or
12 concludes, after examination, that the organization is being admin-
13 istered materially contrary to statute, regulation, or a previously
14 approved operating plan, the commissioner shall notify the organiza-
15 tion and all grantors in writing, specifying all deficiencies and
16 prescribing appropriate remedies. If the organization fails to remedy
17 deficiencies in accordance with the commissioner's prescriptions
18 within 60 days after receipt of the notice, the commissioner may
19 commence proceedings under AS 06.01.030.

20 (d) The expenses of the department reasonably incurred in re-
21 viewing and approving a proposed operating plan or conducting an
22 examination under this section shall be charged to and paid by the
23 organization.

24 Sec. 06.50.050. EXEMPTION. (a) If the commissioner determines
25 that the exemption is necessary to carry out the purposes of this
26 chapter, the commissioner may by regulation exempt transactions under
27 this chapter by real property liquidating organizations from any fee,
28 authorization, permit, filing, or registration requirement of or
29 administered by the department.

1 (b) Each organization is exempt from AS 45.50.471 - 45.50.396.
2 Activities in connection with an organization of a person or entity
3 that subscribes or grants assets to, contributes funds or services to,
4 obtains a beneficial interest in, or participates in the management of
5 the organization are exempt from AS 45.50.471 - 45.50.596.

6 Sec. 06.50.100. DEFINITIONS. In this chapter

7 (1) "commissioner" means the commissioner of commerce and
8 economic development;

9 (2) "department" means the Department of Commerce and
10 Economic Development;

11 (3) "grantor" means a federally or state chartered finan-
12 cial institution, federal or state agency, licensed insurer, or fi-
13 nancing company that conveys real property in the state, loans secured
14 by real property in the state, or other assets to, and thereby obtains
15 a beneficial interest in and the right to participate in the manage-
16 ment of, a real property liquidating organization;

17 (4) "real property liquidating organization" or "organiza-
18 tion" means a corporation, trust, fund, partnership, joint venture, or
19 other entity created to acquire, maintain, manage, market, administer
20 and sell, liquidate, or otherwise dispose of real property in the
21 state or loans secured by real property in the state and to distribute
22 the proceeds to its beneficiaries, in accordance with organizational
23 its documents.

24 * Sec. 3. AS 18.56 is amended by adding a new section to read:

25 Sec. 18.56.210. MARKET STABILIZATION POWERS. The corporation
26 may take appropriate action to stabilize the market price of, and the
27 supply and demand for, residential housing in the state. To accom-
28 plish the purposes of this section, the corporation may

29 (1) enter into agreements with state and federally

1 chartered financial institutions, state or federal agencies, insurers,
 2 and financing companies for the cooperative management, administra-
 3 tion, and disposition of their real property in the state and loans
 4 secured by their real property in the state; and

5 (2) convey real property in the state, loans secured by
 6 real property in the state, and other assets to, acquire a beneficial
 7 interest in, and participate in the management of a real property
 8 liquidating organization established under AS 06.50.

9 * Sec. 4. AS 44.88.080 is amended by adding a new paragraph to read:

10 (25) to convey real property in the state, loans secured by
 11 real property in the state, and other assets to, acquire a beneficial
 12 interest in, and participate in the management of a real property
 13 liquidating organization established under AS 06.50.

14 * Sec. 5. AS 06.50.010, 06.50.020, 06.50.030, 06.50.040, 06.50.050;
 15 AS 18.56.210; and AS 44.88.080(25) are repealed.

16 * Sec. 6. Sections 1 - 4 of this Act take effect June 1, 1988.

17 * Sec. 7. Section 5 of this Act takes effect June 1, 1993.

5-1863P
Cook
4/28/88

Original sponsors: Kelly and Sturgulewski

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 408 (Finance)

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 stabilization of the state's real
7 estate markets and banking system; authorizing the
8 establishment of real property liquidating organiza-
9 tions under active state supervision; and providing
10 for an effective date."

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

12 * Section 1. LEGISLATIVE FINDINGS AND INTENT. (a) The legislature
13 finds that

14 (1) there have been in the state several failures of state and
15 federally chartered financial institutions and one bank consolidation by
16 the Federal Deposit Insurance Corporation under 12 U.S.C. 1823(c);

17 (2) these financial institutions as well as other businesses and
18 state and federal agencies currently hold large portfolios of distressed
19 real estate loans and real property;

20 (3) these businesses and government agencies need to be permit-
21 ted to cooperate in administering these loans and properties to avoid fur-
22 ther adverse effects on the state's real estate markets and to stabilize
23 the state's banking system; and

24 (4) the maintenance of stable and orderly markets for the pur-
25 chase and sale of commercial and residential real estate in the state is
26 essential to the economy of the state and the welfare of its citizens, as
27 is the stability of the state's banking system.

28 (b) The legislature intends to ensure the stability of the state's
29 banking system and real estate markets and prevent a precipitous decline in

1 real estate prices by displacing competition with government regulation in
2 matters relating to the administration, management, and disposition of real
3 property in the state and loans secured by the property held by financial
4 institutions, other businesses, and state and federal agencies. By au-
5 thorizing the creation of real property liquidating organizations and
6 mandating active state supervision of these organizations, the legislature
7 intends that each real property liquidating organization and all persons
8 and entities who subscribe or grant assets to, contribute funds or services
9 to, obtain a beneficial interest in, or participate in the management of
10 the organization will be fully immunized against potential liability under
11 federal antitrust laws and state antitrust, competition, and trade prac-
12 tices laws arising from the operation of the organization or the activities
13 of any person or entity performed in connection with the organization.

14 * Sec. 2. AS 06 is amended by adding a new chapter to read:

15 CHAPTER 50. REAL PROPERTY LIQUIDATING ORGANIZATIONS.

16 Sec. 06.50.010. RESPONSIBILITY OF COMMISSIONER. (a) The com-
17 missioner shall administer this chapter and adopt regulations to carry
18 out the purposes of this chapter.

19 (b) By February 1 of each year the commissioner shall submit a
20 report to the legislature summarizing activities of the department
21 under this chapter during the previous year.

22 Sec. 06.50.020. FORMATION. (a) Three or more grantors may
23 create a real property liquidating organization by filing the orga-
24 nizational documents with the commissioner. The commissioner shall
25 review the documents and approve them if they comply with (b) of this
26 section and are consistent with the purposes of this chapter. Convey-
27 ance of assets to or disposition of real property or other assets by
28 an organization is not effective until the organizational documents
29 have been reviewed and approved by the commissioner.

- 1 (b) The organizational documents must
- 2 (1) state the purpose of the organization;
- 3 (2) identify all grantors who have subscribed to the orga-
- 4 nization and all persons who will possess an interest in the orga-
- 5 nization upon its formation;
- 6 (3) describe the manner in which the organization will be
- 7 managed;
- 8 (4) prescribe the method under which distributions to the
- 9 grantors and other beneficiaries will be made;
- 10 (5) provide for the conveyance to the organization of all
- 11 or part of the grantors' portfolios of commercial and residential real
- 12 property in the state and real estate loans secured by real property
- 13 in the state;
- 14 (6) provide for the transfer to the organization of other
- 15 assets of the grantors, including cash and consumer loans, to assist
- 16 the organization in fulfilling the purposes of this chapter;
- 17 (7) provide for the orderly disposition of the property and
- 18 loans of the organization at prices to be determined by the orga-
- 19 nization under regulations adopted by the commissioner;
- 20 (8) provide for expenditures to manage organization assets,
- 21 including expenditures to preserve or enhance the value of the orga-
- 22 nization's properties; and
- 23 (9) provide for the establishment of other terms and con-
- 24 ditions relating to the sale or other disposition of assets that the
- 25 grantors consider necessary or appropriate to ensure that the orga-
- 26 nization will be operated in a manner that will provide for orderly
- 27 disposition of the organization's assets and promote stable real
- 28 estate markets and a stable banking system in the state.

29 Sec. 06.50.030. AUDITS AND REPORTS. (a) In addition to the

1 record keeping requirements specified in regulations adopted by the
2 commissioner or in the organizational documents, the organization
3 shall retain a certified public accountant to annually prepare and
4 submit to the department on or before April 1 an audited balance
5 sheet, income statement, statement of principal, statement of changes
6 in financial position, schedule of all dispositions of real property
7 and real estate loans made by the organization during the previous
8 calendar year, and letters

9 (1) certifying that all dispositions of real property and
10 real estate loans and all distributions during the year were made in
11 accordance with the provisions of the organizational documents and
12 this chapter, or identifying any variance; and

13 (2) with respect to the internal financial controls and
14 practices of the organization, providing recommendations the accoun-
15 tant considers appropriate.

16 (b) The organization shall prepare and file with the commission-
17 er, on a quarterly basis, a report containing the following:

18 (1) a schedule of all real property and real estate loans
19 held by the organization;

20 (2) the sale price and all other significant terms of sale
21 for real property sold by the organization and amount of proceeds
22 received by the organization from real estate loans since the date of
23 the previous report; and

24 (3) a proposed operating plan for the next quarterly period
25 that conforms with regulations adopted by the commissioner.

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27 commissioner shall review each report filed under AS 06.50.030(b) and
28 approve or disapprove the proposed operating plan within 20 days after
29 filing. In reviewing each report and operating plan, the commissioner

1 shall consider current market conditions. The commissioner shall
2 approve an operating plan if the commissioner finds that the report
3 and plan comply with the purposes of this chapter.

4 (b) Within five days after the department notifies an organiza-
5 tion of its intention to inspect business records, all business re-
6 cords maintained by the organization shall be available for review and
7 examination by the department at the organization's principal place of
8 business, during regular business hours. The commissioner shall
9 examine the business records of an organization on a regular basis at
10 least twice each calendar year.

11 (c) If the commissioner disapproves a proposed operating plan or
12 concludes, after examination, that the organization is being admin-
13 istered materially contrary to statute, regulation, or a previously
14 approved operating plan, the commissioner shall notify the organiza-
15 tion and all grantors in writing, specifying all deficiencies and
16 prescribing appropriate remedies. If the organization fails to remedy
17 deficiencies in accordance with the commissioner's prescriptions
18 within 60 days after receipt of the notice, the commissioner may
19 commence proceedings under AS 06.01.030.

20 (d) The expenses of the department reasonably incurred in re-
21 viewing and approving a proposed operating plan or conducting an
22 examination under this section shall be charged to and paid by the
23 organization.

24 Sec. 06.50.050. EXEMPTION. (a) If the commissioner determines
25 that the exemption is necessary to carry out the purposes of this
26 chapter, the commissioner may by regulation exempt transactions under
27 this chapter by real property liquidating organizations from any fee,
28 authorization, permit, filing, or registration requirement of or
29 administered by the department.

1 (b) Each organization is exempt from AS 45.50.471 - 45.50.396.
2 Activities in connection with an organization of a person or entity
3 that subscribes or grants assets to, contributes funds or services to,
4 obtains a beneficial interest in, or participates in the management of
5 the organization are exempt from AS 45.50.471 - 45.50.596.

6 Sec. 06.50.100. DEFINITIONS. In this chapter

7 (1) "commissioner" means the commissioner of commerce and
8 economic development;

9 (2) "department" means the Department of Commerce and
10 Economic Development;

11 (3) "grantor" means a federally or state chartered finan-
12 cial institution, federal or state agency, licensed insurer, or fi-
13 nancing company that conveys real property in the state, loans secured
14 by real property in the state, or other assets to, and thereby obtains
15 a beneficial interest in and the right to participate in the manage-
16 ment of, a real property liquidating organization;

17 (4) "real property liquidating organization" or "organiza-
18 tion" means a corporation, trust, fund, partnership, joint venture, or
19 other entity created to acquire, maintain, manage, market, administer
20 and sell, liquidate, or otherwise dispose of real property in the
21 state or loans secured by real property in the state and to distribute
22 the proceeds to its beneficiaries, in accordance with organizational
23 its documents.

24 * Sec. 3. AS 18.56 is amended by adding a new section to read:

25 Sec. 18.56.210. MARKET STABILIZATION POWERS. The corporation
26 may take appropriate action to stabilize the market price of, and the
27 supply and demand for, residential housing in the state. To accom-
28 plish the purposes of this section, the corporation may

29 (1) enter into agreements with state and federally

1 chartered financial institutions, state or federal agencies, insurers,
 2 and financing companies for the cooperative management, administra-
 3 tion, and disposition of their real property in the state and loans
 4 secured by their real property in the state; and

5 (2) convey real property in the state, loans secured by
 6 real property in the state, and other assets to, acquire a beneficial
 7 interest in, and participate in the management of a real property
 8 liquidating organization established under AS 06.50.

9 * Sec. 4. AS 44.88.080 is amended by adding a new paragraph to read:

10 (25) to convey real property in the state, loans secured by
 11 real property in the state, and other assets to, acquire a beneficial
 12 interest in, and participate in the management of a real property
 13 liquidating organization established under AS 06.50.

14 * Sec. 5. AS 06.50.010, 06.50.020, 06.50.030, 06.50.040, 06.50.050;
 15 AS 18.56.210; and AS 44.88.080(25) are repealed.

16 * Sec. 6. Sections 1 - 4 of this Act take effect June 1, 1988.

17 * Sec. 7. Section 5 of this Act takes effect June 1, 1993.

5-1863N ✓
Cook
4/21/88

Original sponsors: Kelly and Sturgulewski

1 IN THE SENATE BY THE FINANCE COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 408 (Finance)

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 stabilization of the real estate
7 market; authorizing the establishment of real prop-
8 erty liquidating organizations; and providing for an
9 effective date."

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

11 * Section 1. LEGISLATIVE FINDINGS AND INTENT. (a) The legislature
12 finds that

13 (1) there have been in the state several failures of state and
14 federally chartered financial institutions and one bank consolidation by
15 the Federal Deposit Insurance Corporation under 12 U.S.C. 1823(c);

16 (2) state and federal agencies currently hold large portfolios
17 of distressed real estate loans and real property;

18 (3) these financial institutions and government agencies need to
19 be permitted to cooperate in administering these properties to avoid fur-
20 ther adverse effects on the state's real estate markets and to stabilize
21 the state's banking system; and

22 (4) the maintenance of stable and orderly markets for the pur-
23 chase and sale of commercial and residential real estate in the state is
24 essential to the economy of the state and the welfare of its citizens.

25 (b) The legislature intends to ensure the stability of the state's
26 real estate markets and prevent a precipitous decline in real estate prices
27 by displacing competition with government regulation in matters relating to
28 the sale and disposition of real property held by financial institutions
29 and state and federal agencies as a result of foreclosure actions. By

1 authorizing the creation of real property liquidating organizations under
2 state supervision, the legislature intends to grant authority to the com-
3 missioner of commerce and economic development to provide by regulation
4 that persons and entities who subscribe or grant assets to, contribute
5 funds or services to, obtain a beneficial interest in, or participate in
6 the management of a real property liquidating organization will be immu-
7 nized as necessary possible against potential liability under federal
8 antitrust laws and state antitrust, competition, and trade practices laws
9 arising from the operation of the organizations.

10 * Sec. 2. AS 06 is amended by adding a new chapter to read:

11 CHAPTER 50. REAL PROPERTY LIQUIDATING ORGANIZATIONS.

12 Sec. 06.50.010. RESPONSIBILITY OF COMMISSIONER. The commis-
13 sioner shall administer this chapter and adopt regulations to carry
14 out the purposes of this chapter.

15 Sec. 06.50.020. FORMATION. (a) Three or more grantors may
16 create a real property liquidating organization by filing the orga-
17 nizational documents with the commissioner. The commissioner shall
18 review the documents and approve them if they comply with (b) of this
19 section and are consistent with the purposes of this chapter. Convey-
20 ance of assets to or disposition of real property or other assets by
21 an organization is not valid until the organizational documents have
22 been reviewed and approved by the commissioner.

23 (b) The organizational documents must

24 (1) state the purpose of the organization;

25 (2) identify all grantors who will subscribe to the orga-
26 nization and all persons who will possess an interest in the orga-
27 nization;

28 (3) describe the manner in which the organization will be
29 managed;

1 (4) prescribe the method under which distributions to the
2 grantors and other beneficiaries will be made;

3 (5) provide for the conveyance to the organization of all
4 or part of the grantors' portfolios of commercial and residential real
5 properties in the state or other assets;

6 (6) provide for the orderly disposition of property of the
7 organization at prices to be established in accordance with the orga-
8 nizational documents;

9 (7) provide for the expenditure of assets to manage orga-
10 nization property, including expenditures to preserve or enhance the
11 value of properties; and

12 (8) provide for the establishment of other terms and con-
13 ditions relating to the sale or other disposition of assets that the
14 grantors consider necessary or appropriate to ensure that the orga-
15 nization will be operated in a manner that will provide for orderly
16 disposition of property and promote a stable real estate market and
17 economy.

18 Sec. 06.50.030. AUDITS AND REPORTS. (a) In addition to the
19 record keeping requirements specified in regulations adopted by the
20 commissioner or in the organizational documents, the organization
21 shall retain a certified public accountant to annually prepare and
22 submit to the department on or before April 1 of each calendar year an
23 audited balance sheet, income statement, statement of principal,
24 statement of changes in financial position, and schedule of all dispo-
25 sitions of real estate assets made by the organization during the
26 year. In connection with the preparation of the financial documents,
27 the accountant shall issue letters

28 (1) certifying that all sales of real estate assets and all
29 distributions during the year were made in accordance with the

1 provisions of the organization documents and this chapter, or identi-
2 fying any variance; and

3 (2) with respect to the internal financial controls and
4 practices of the organization, providing recommendations the accoun-
5 tant considers appropriate.

6 (b) The organization shall prepare and file with the commission-
7 er, on a quarterly basis, a report containing the following:

8 (1) a schedule of all real property held by the organiza-
9 tion;

10 (2) the sale price and all other significant terms of sale
11 for real property sold since the date of the previous report; and

12 (3) a proposed operating plan for the next quarterly period
13 that conforms with regulations adopted by the commissioner.

14 Sec. 06.50.040. REVIEW AND APPROVAL BY COMMISSIONER. (a) The
15 commissioner shall review each report filed under (b) of this section
16 and approve or disapprove the proposed operating plan within 20 days
17 after filing. In reviewing the operating plan, the commissioner shall
18 consider current market conditions. Before approving the plan, the
19 commissioner must find that the plan complies with the purpose of this
20 chapter.

21 (b) Within five days after the department notifies an organiza-
22 tion of its intention to inspect business records, all business re-
23 cords maintained by the organization shall be available for review and
24 examination by the department at the organization's principal place of
25 business, during regular business hours. The commissioner shall
26 examine the business records of an organization on a regular basis at
27 least twice each calendar year.

28 (c) If the commissioner disapproves the proposed operating plan
29 or concludes, after examination, that the organization is being

1 administered contrary to statute or regulation, the commissioner shall
2 notify the organization and all grantors in writing, specifying all
3 deficiencies and prescribing appropriate remedies. If the organiza-
4 tion fails to remedy deficiencies in accordance with the commission-
5 er's prescriptions within 60 days after receipt of the notice, the
6 commissioner may commence proceedings under AS 06.01.030.

7 (d) The expenses of the department reasonably incurred in re-
8 viewing and approving a proposed operating plan or conducting an
9 examination under this section shall be charged to and paid by the
10 organization in accordance with AS 06.01.010.

11 Sec. 06.50.050. PREEMPTION. If the commissioner determines that
12 the exemption is necessary to carry out the purposes of this chapter,
13 the commissioner may by regulation exempt transactions under this
14 chapter by real property liquidating organizations from any fee,
15 authorization, permit, filing, or registration requirement of or
16 administered by the department.

17 Sec. 06.50.100. DEFINITIONS. In this chapter

18 (1) "commissioner" means the commissioner of commerce and
19 economic development;

20 (2) "department" means the Department of Commerce and
21 Economic Development;

22 (3) "grantor" means a federally or state chartered finan-
23 cial institution, federal or state agency, licensed insurer, or fi-
24 nancing company that conveys assets to, and thereby obtains a benefi-
25 cial interest in and the right to participate in the management of, a
26 real property liquidating organization;

27 (4) "real property liquidating organization" or "organiza-
28 tion" means a corporation, trust, fund, partnership, joint venture, or
29 other legal entity created to acquire, maintain, manage, market, sell,

1 or otherwise dispose of real property in the state and to distribute
 2 to the beneficiaries, in accordance with the provisions of the orga-
 3 nization documents, the proceeds derived from the sale or disposition
 4 of the property.

5 * Sec. 3. AS 18.56 is amended by adding a new section to read:

6 Sec. 18.56.210. MARKET STABILIZATION POWERS. The corporation
 7 may take appropriate action to stabilize the market price of and
 8 demand for residential housing in the state. To accomplish the pur-
 9 poses of this section, the corporation may

10 (1) enter into agreements with state and federally char-
 11 tered financial institutions, state or federal agencies, insurers, and
 12 financing companies for the cooperative management and disposal of
 13 real property owned by the corporation, financial institutions, agen-
 14 cies, or other contracting parties; and

15 (2) convey real property and other assets to, and acquire a
 16 beneficial interest in, a real property liquidating organization
 17 established under AS 06.50.

18 * Sec. 4. AS 44.88.080 is amended by adding a new paragraph to read:

19 (25) to convey real property and other assets to, and ac-
 20 quire a beneficial interest in, a real property liquidating orga-
 21 nization established under AS 06.50.

22 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).
 23
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FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: An Act relating to the Alaska Sta-
bilization Assistance Program
 Sponsor: Kelly and Sturgulewski
 Requestor: _____
 Alaska Industrial Development
 Agency Affected: and Export Authority
 BRU: _____
 Components: _____

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		zero(0)	zero(0)	zero(0)	zero(0)	

CAPITAL		\$15.0 Mil	zero(0)	zero(0)	zero (0)	
---------	--	------------	---------	---------	----------	--

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		\$15.0 Mil				

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

**Funds will be appropriated from the Railbelt energy fund to the Alaska Stabilization Assistance fund established in the Alaska Industrial Development and Export Authority per SB 408.

Costs of administering the Alaska Stabilization Assistance Program will be absorbed by the Alaska Industrial Development and Export Authority

Prepared by: Bertram I. Wagon, Executive Director Phone: 274-1651

Division: Alaska Industrial Development & Export Authority Date: February 22, 1988

Approved by Commissioner: J. Anthony Smith Date: 2/29/88
 Agency: Commerce and Economic Development

Distribution (by preparer):

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

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSSSSB 408 (Jud)
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Econ. Dev.
Title: Stabilization of the real estate
market, establishing real property
liquidating organizations BRU: _____
Sponsor: _____ Components: Banking, Securities &
Requester: Kelly and Sturgulewski Corporations

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		46.0	46.0	46.0	46.0	46.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT		3.2	--	--	--	--
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	49.2	46.0	46.0	46.0	46.0

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

REVENUE		46.0	46.0	46.0	46.0	46.0
---------	--	------	------	------	------	------

FUNDING: (Thousands of dollars)

GENERAL FUND		3.2	0	0	0	0
FEDERAL FUNDS						
OTHER (Pgm. Rects.)		46.0	46.0	46.0	46.0	46.0
TOTAL	0	49.2	46.0	46.0	46.0	46.0

POSITIONS:

FULLTIME	0	1	1	1	1	1
PARTTIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Revenue has been calculated on the assumption that limited scope examinations would be conducted on these organizations. To comply with the examination schedule as stated, at least twice each calendar year, an additional examiner position would be needed as well as computer equipment and software for examination tools.

Prepared by: Willis F. Kirkpatrick Phone: 465-2521
Division: Banking, Securities & Corporations Date: 5-2-88

Approved by Commissioner: J. Anthony Smith Date: 5-2-88
Agency: Department of Commerce & Economic Development

Distribution (by preparer):

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

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LEGISLATIVE FINANCE

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Econ. Dev.
 Title: Stabilization of the real estate BRU: _____
market, establishing real property
 Sponsor: liquidating organizations Components: Banking, Securities &
 Requester: Kelly and Sturqulewski Corporations

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		46.0	46.0	46.0	46.0	46.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT		3.2	--	--	--	--
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	49.2	46.0	46.0	46.0	46.0

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

REVENUE		28.0	28.0	28.0	28.0	28.0
----------------	--	------	------	------	------	------

FUNDING: (Thousands of dollars)

GENERAL FUND		21.2	18.0	18.0	18.0	18.0
FEDERAL FUNDS						
OTHER (Pgm. Rects.)		28.0	28.0	28.0	28.0	28.0
TOTAL	0	49.2	46.0	46.0	46.0	46.0

POSITIONS:

FULL-TIME	0	1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Revenue has been calculated on the assumption that limited scope examinations would be conducted on these organizations. To comply with the examination schedule as stated, at least twice each calendar year, an additional examiner position would be needed as well as computer equipment and software for examination tools.

Prepared by: Willis E. Kirkpatrick Phone: 465-2521
 Division: Banking, Securities & Corporations Date: 4-20-88
 Approved by Commissioner: J. Anthony Smith Date: 4-20-88
 Agency: Department of Commerce & Economic Development

Distribution (by preparer):

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

MEMORANDUM

State of Alaska

TO: Fiscal Note - SB 408


DATE: April 22, 1988

FILE NO:

TELEPHONE NO:

THRU:

SUBJECT: AS 06.01.010 - Limit
on Amount Chargeable
for an Examination.

FROM: Willis F. Kirkpatrick, Director 
Division of Banking, Securities and
Corporations
Department of Commerce and Economic
Development

It is the intent of the division to collect from "real property liquidating organizations" provided for in SB 408 the necessary funds to cover the cost of examining these organizations.

In order to accomplish this, the limit on the maximum amount that can be charged (\$7,500) must be addressed. This limitation can be avoided in one of two ways:

- a. Passage of HB 263 (now in conference) which will allow the establishment of fees by regulations; or
- b. Amend Sec. 06.50.040(d) [page 5, line 10, of work draft 4/16/88] by adding a sentence after "AS 06.01.010" to read, "The limits of AS 06.01.010 do not apply to this section."

WFK/sa4148s
42288b

Jim Cairns

4/29/88 Jim
SB 408
Alliance Bank

PROPOSAL FOR THE ESTABLISHMENT OF THE HALLWOOD ALASKAN
REAL ESTATE STABILIZATION TRUST

Propose of Alaska

A liquidating trust formed to liquidate on an orderly basis at stable appraised prices in the best interests of the Beneficiary Institutions, the supply of distressed real estate properties and loans currently overhanging the Alaskan market.

15
Background

As a result of the current severe recession in the Alaskan economy which followed a period of strong economic growth in the commercial and residential real estate market, Alaskan lending institutions and certain state and government agencies who have assumed the obligations of failed institutions, are today burdened with an unprecedented holding of "bad" real estate loans, some of which have been foreclosed and all of which are at least partially non-performing. Real estate values have been declining monthly. Although the decline in real estate values has been slow and the recession is seen to be bottoming out, the recovery is extremely fragile and prices could be precipitously collapsed if the overhanging real estate were offered back into the market at distressed prices for forced sale.

Alliance Bancorporation ("Alliance") was recently formed by the merger of Alaska Mutual Bank, United Bank Alaska and United Bank Alaska Southeastern and was recently recapitalized by the Hallwood Group Incorporated ("Hallwood") and the FDIC. Alliance currently holds some \$300 million of bad real estate loans of which about \$80 million has already been foreclosed and the balance being in the form of classified and non and partly performing real estate loans. The FDIC, as Receiver of the failed First Interstate Bank of the North, holds about \$200 million of "bad" loans of which at least half are property related. Additionally, Fannie Mae, the Federal Home Loan Bank Board, Alaska Housing Finance, MGIC, New York Life and other Alaskan lending institutions all hold similar "bad" loan portfolios.

If any of the above institutions^(s) were to "dump" their real estate holdings into the local market they would collapse the fragile price structure and ensure the continuation of the current recession to the detriment of not only themselves individually and as a group, but all Alaskan citizens and property owners.

The objective of "The Hallwood Alaskan Real Estate Stabilization Trust" is to prevent a further decline in real estate values by allowing the Trustee of the Trust to manage the liquidation of the trust assets so as to prevent an oversupply of property in the local marketplace such as would cause further declines in the price of residential or commercial properties.

The Proposal

In order to maintain a stable market and to encourage a recovery, Hallwood proposes the establishment of "The Hallwood Alaskan Real Estate Stabilization Trust" (the "Trust") to be formed as a liquidating trust with the purpose of liquidating trust property by sale or other disposition as promptly as shall be economically feasible in the best interests of the Beneficiary Institutions and to distribute the distributable proceeds to the Facilitating Beneficiary Institutions solely and exclusively in accordance with the provisions of a Distribution Agreement.

The Board of Alliance Bank has already agreed to subscribe its distressed portfolio of real estate assets to the Trust and we intend to invite the FDIC and the other concerned institutions mentioned above to become subscribers to the Trust prior to its formation date of March 31, 1988. Following subscription of assets to the Trust, ~~beneficiary~~ institutions will own an undivided interest in the Trust. WJH

Contributable

We anticipate that the transferred assets will consist of single family homes, condominium projects, apartment buildings, a few

office buildings and other commercial structures, shopping centers and parcels of raw and improved land. We also anticipate receiving non-performing or partly performing mortgage loans secured by real estate.

It is our intention that all transferred assets will be recorded in the Trust's books at fair market value as of March 31, 1988. The fair market value of real estate properties will be based upon current independent appraisals, ~~except for those assets where a sale was pending and subsequently closed.~~ In those cases, the proposed selling price will be considered as a more accurate indication of fair market value. Fair market value of real estate loans will be based upon current independent appraisals. All appraisals will be carried out in accordance with accepted appraisal methods by a qualified independent appraiser who is a member of the American Institute of Real Estate Appraisers and who regularly performs appraisal services for major financial institutions. Credit will be given in the appraisal process for any income flowing from any transferred asset.

It is intended that Hallwood will act as the Trustee for the Trust which would be established for a ten-year period expiring in March 1998. If all of the Trust assets have not been sold off by this time, then the Trust will come to an end unless a new five-year liquidating trust is established by the Beneficiary Institutions.

It is intended that a Procedures Agreement would be drafted to establish a minimum sales price for each of the Transferred Assets. Minimum sales prices will be based upon appraised values. The Procedures Agreement will also establish restrictions on financing by the Trust although it is intended that the Trust will offer financing to purchasers to assist in the sell-out (see "Marketing"). The requirement of the Procedures Agreement will assure the Beneficiary Institutions

that no asset will be sold for less than a certain fixed amount and that the deferred portion of any sales price will be properly secured and payable over a limited period of time. The Trustee's powers and duties would be governed by a Trust Agreement which will generally authorize the Trustee to preserve and manage but not to develop the Trust assets. Accordingly the Trustee has discretion, for the purpose of marketing, to obtain necessary appraisals, feasibility studies, engineering studies or marketing surveys. The Trust cannot undertake to develop unimproved properties to the extent of commencement of any sort of major construction.

Generally the Trustee will limit expenses to any necessary management costs such as taxes, insurance and maintenance and to its own office budget and outside professional fees. Additionally, the Trust may expend sums necessary to preserve its properties or prevent the enforcement of liens superior to the Trust's mortgage loan assets.

As to borrowing funds, the Trust Agreement will provide that borrowings shall not exceed an aggregate of 10% of total Trust assets at appraised value and further that borrowings may only be made from the State of Alaska, secured on any future profit which may be realized from future sales of Trust Assets. Under such borrowings we would expect the State to roll over interest payments to the extent that such payments were not available out of Trust cash flow. It is not anticipated that the Trust will need to avail itself of this borrowing facility and it is anticipated that the cash flow from the prospective sale of Trust assets together with the \$15 million cash contribution which will be contributed by the State of Alaska (see "Assistance from the State of Alaska") will be sufficient to fund all ongoing operations of the Trust.

Under the terms of the Distribution Agreement, the Trustee will

first satisfy itself that sufficient working capital is available to the Trustee to operate the Trust and will then distribute

a) To the Beneficiary Institutions such sum as represents a proportional return of appraised value and any profit achieved thereon unless some drawdown shall have been made by the Trustee under the standby credit facility from the State of Alaska more particularly mentioned hereafter.

b) If such drawdown shall have been made, then any such profit shall first be applied to repay with interest any advance made by the State.

The Trustee will be empowered to sell off blocks of property to other trusts or corporations dedicated to a long term holding period such as that currently proposed by the Commissioner for the Department of Commerce and Economic Development for the State of Alaska and Sealaska Corporation.

As to the tax consequences of the Trust to the Beneficiary Institutions, the Trust will be treated as a "Grantor Trust" for federal income tax purposes and, as such, all tax trust consequences flow through the Trust to its beneficiaries in accordance with their respective interests. The Trust beneficiaries are fully insulated, on the other hand, from any liability which might arise out of the various Trust Assets.

To ensure that the Trust will distribute all distributable proceeds in a timely manner and in accordance with the proper percentages to the Beneficiary Institutions, the Trust Agreement will require that the Trust's financial statements will be examined by a firm of independent certified public accountants. Following each examination, the accountants will issue a letter to the Beneficiary Institutions stating whether all distributions have been made in accordance with the Trust Agreement and the Distribution Agreement.

The Trust Agreement will also require the Trustee to furnish the following reports to beneficiary banks:

- a) A monthly statement of cash receipts and cash disbursements with a detailed description of all sales or dispositions of trust property and of any modifications, amendments or extensions of obligations owing the Trust.
- b) A quarterly unaudited balance sheet, income statement, statement of Trust principal, statement of changes in financial position and a schedule of all distributions made during such quarter.
- c) A semi-annual summary of the status of each Transferred Asset and a description of any negotiations then in progress concerning the sale or other disposition of such Transferred Assets.
- d) An annual audited balance sheet, income statement, statement of Trust principal, statement of changes in financial position and a schedule of all dispositions made during the year.
- e) In connection with the examination of the annual reports and financial statements, the independent certified public accountants must issue letters stating:
 - i. that the sales and distributions made during the preceding year were in accordance with the terms of the Trust Agreement, Procedures Agreement and Distribution Agreement, and;

- ii. with respect to the internal financial controls and practices of the Trust, setting forth such recommendations as the independent certified public accountants may consider appropriate.

Assistance from the State of Alaska

In order to ensure that the Trust is funded with sufficient working capital, we shall request the State of Alaska, ~~through~~ one or more of its agencies, to appropriate and subscribe the sum of \$15 million in cash to the Trust for which the State shall receive a beneficial interest in the Trust, in proportion to its subscription.

We anticipate that this \$15 million plus the proceeds of sale of Trust Assets will be sufficient to ensure the continuity of the Trust and the payment of all marketing and general and administrative costs and expenses of the Trustee, for at least one year. At the end of the year if the Trust requires further funding from the State, we shall report our then position and request a further sum of up to \$15 million for the next current year in the form of a loan from the State to be secured by a first lien on any profit that may be realized by the Trustee from future sales of Trust Assets, such loan to bear interest at current market rates. The Trust shall have the power to roll over interest payments until sufficient cash flow becomes available from profits generated from Trust operations to make

settlement. Repayment of interest and principal upon such loans drawn down during the life of the Trust shall have priority to any distributions of any profit which shall be made to Beneficiary Institutions.

Marketing

Immediately following the establishment of the Trust, the Trustee shall prepare a cash flow projection to determine how quickly the Beneficiary Institutions can reasonably expect the transferred assets to be sold and to what extent their interests could be converted into cash. At the outset the Trustee will review all of the non-performing real estate loans and real estate owned to identify essential problem areas. Problems involving construction, design, budgets, cash flow, management location, competition, marketing techniques and various other factors must be analyzed to determine the causes of non-performance or under-performance for each specific asset. Independent appraisals will have to be obtained to arrive at a minimum selling price for each real estate property and further, an initial status report must be prepared for the real estate unit for each asset containing the description of the asset, the loan history, net book value, current status, pending litigation.

For real estate owned, professional quality sales packages will need to be prepared for each real estate property. Each package will contain a full description of the property site and

improvements, income and expense information, lease abstracts, information on available utilities, zoning, taxes, etc.

Regarding loan workouts, the Trustee will evaluate the financial condition of the debtor and the prospect for recovery and will evaluate existing collateral and the prospect for obtaining additional collateral in addition to various types of loan modification, intervention in management or leasing, increased monitoring and control of collateral and possible turnaround methods may also be considered.

Both real estate owned and real estate loans deemed appropriate for foreclosure, i.e., future real estate owned, will be marketed for sale although particular care will be taken with regard to the amount and pricing of real estate offered for sale in the local Alaskan marketplace. The major marketing effort will be made to foreign, i.e., non-American, prospective purchasers through Hallwood's international network around the world.

Hallwood is a public company listed on the New York and London Stock Exchange, specializing in the financial services industry and owned by approximately 35,000 shareholders and institutional investors. Prominent amongst these are the Fidelity Group of Boston, one of the largest fund managers in the United States, with offices in London, Hong Kong, Singapore, and various other countries. Fidelity owns approximately 11.2% of Hallwood's

equity. Another major shareholder is M&G, one of the largest fund managers in the United Kingdom, controlled by Kleinwort Benson, an international merchant bank with a major presence around the world. Hallwood has considerable expertise in the liquidation and management of distressed real estate. In 1979, Hallwood restructured First Pennsylvania Mortgage Trust, a New York Stock Exchange listed real estate investment trust, owning a major portfolio of distressed real estate and mortgage loans located throughout the United States.

In 1981 Hallwood restructured the Umet Trust, a New York Stock Exchange listed real estate investment trust formed by Union Bank of California, again holding a major portfolio of distressed real estate and real estate loans.

In 1983 Hallwood restructured the Institutional Investors Trust, yet another New York Stock Exchange listed real estate investment trust, this time formed by Donaldson, Lufkin, Jenrette, the New York investment bank, again holding a portfolio of poor quality distressed real estate. Finally, in 1984, Hallwood acquired the assets of The Twenty Seven Trust which was formed to liquidate the assets of the bankrupt Chase Manhattan Mortgage and Realty Trust for the beneficiaries of 26 creditor banks and the FDIC. This current proposal is based upon the arrangements entered into by the creditor banks and the FDIC for the liquidation of The Twenty Seven Trust's assets.

Over the years, Hallwood has liquidated the assets of all of the above through its Cleveland-based Property Liquidation Division and has performed several similar functions in the United Kingdom where we have liquidated the assets of Bank and Commercial Holdings Limited acquired in 1978, West Kent Estates Limited acquired in 1980, Redfern and Rankpert Limited acquired in 1981 and the Globe Group of Companies acquired in 1985.

The total value of real estate properties and loans liquidated over the last five years is in excess of \$300 million.

Hallwood intends to offer the Alaskan real estate assets to investors in Japan, Hong Kong, Taiwan, Australia, New Zealand, Malaysia, Singapore, the Philippines, Korea, Canada, South America, Germany, Switzerland, Holland, the United Kingdom, France, Scandinavia and also in the U.S. Sales brochures will stress the current Alaskan economic climate and the cyclical nature of the economy and likelihood of early recovery. Foreign investors will be offered a speculative real estate investment on a highly leveraged, non-recourse basis. For the payment of a 20% deposit, buyers will be speculating on the dollar, the oil price and the Alaskan economic recovery with the benefit of an attractive loan package. In short, anywhere where there is a local investment market and no exchange controls, Hallwood will find and motivate an experienced local agent to offer Alaskan

real estate investment properties, both residential and commercial. Buyers will also be offered a management service where our local managers will, for a small fee, manage local investment properties on behalf of non-resident investors, seek new tenants and advise as to prospects for resale. We believe that marketing to foreign investors in this way will not pose a threat to the stability of the local market as an investor buying from Hallwood will be buying on a long term hold with a view to a large capital gain some years in the future.

Hallwood will also be organizing regular marketing trips to Alaska by foreign investors, many of whom may also be interested in other Alaskan commercial investment projects.

Management

OK
The Trustee will enter into agreement with Alliance whereby Alliance will provide the Trust with management services on a non-profit, recovery of costs only, basis, utilizing the services of Gordon Willhite and his 50-strong workout staff. The Trust will be administered from offices in Anchorage and the Trustee will employ and/or retain employees, real estate consultants, real estate brokers, real estate management and leasing agents, appraisers, architects, engineers, mortgage correspondents, mortgage servicing agents, escrow agents, attorneys, accountants and any other such persons as the Trustee may deem necessary to assist it in fulfilling the purpose of the Trust.

In order to facilitate the sale of Trust Assets, the Trustee may grant a loan to purchasers to facilitate such sale as follows:

1. Subject to receiving a cash deposit of 20% of the purchase price, the Trust may grant a non-recourse loan secured by a valid first mortgage lien on the asset sold for a term of not more than twenty years on an amortizing basis at a variable rate of interest floating not less than one point above Alliance Bank minimum lending rates as posted from time to time.
2. Should an asset be sold with less than 20% deposit, then the Trustee may sell the asset with a twenty year amortizing loan as described above but with recourse to the credit of the purchaser.
3. If the deposit of 25% or more is received, then the Trustee may lend up to twenty years on an interest only basis as described above.
4. Under no circumstances may the Trustee sell with less than a 5% deposit.

Upon the formation of the Trust, each of the Beneficiary Institutions shall be entitled to nominate a committee member to

the Trust Committee. The Trust Committee shall have the power to remove the Trustee and appoint a successor Trustee in the event of any breach of the Trust Agreement, Procedures Agreement or Distribution Agreement.

Fees to the Trustees

Hallwood as Trustee will not receive any fee in respect of its services hereunder as it is acting to preserve its own financial interests as 85% shareholder of Alliance. In effect, Hallwood will be receiving an indirect fee in that Alliance staff costs in its workout department will be partially reduced by the formation of the Trust.

In the event that Hallwood exercises its put to the FDIC and is thereafter no longer a major shareholder of Alliance, Hallwood's services as manager and Trustee will still be available to the Trust on a fee basis should Beneficiary Institutions request Hallwood to continue its Trusteeship.

The Trustee will expect to be reimbursed for all its necessary expenses expended in connection with the Trust's business.

March 17, 1988

The Hallwood Group Incorporated

767 Third Avenue

New York, NY 10017

Tel: 212-319-2360

Jerry

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ALASKA HOUSING FINANCE CORPORATION
 BOARD OF DIRECTORS
 REGULAR MEETING

APRIL 15, 1988

4/22/88 em

Tape C-8399
700

P R O C E E D I N G S

1
2 MR. SMITH: Maybe so the Board gets the full
3 flavor of what's out there Jay Schmidt would comment insofar as
4 he feels it's appropriate to do so on the exchange program that
5 he's discussed with you, Ron, and with myself.

6 MR. SCHMIDT: Thank you, Mr. Chairman. We have
7 had discussions, as I said. I'd like to just point out that
8 over the last year we, along with the cooperation of Alaska
9 Housing have taken -- undertaken a major marketing effort
10 targeted specifically at the condominium market. About two years
11 ago when we first started looking at this at becoming most
12 sensitive to the severity of the problem we made an initial
13 decision to try to maximize return on the property, to stabilize
14 the market, to protect the market to whatever extent we could,
15 and to do so by the traditional aggressive marketing.

16 The results of the program that we ran last year
17 and are continuing to run were encouraging. We sold more
18 condominiums in the last year than we ever had before. But, one
19 of the things that we learned was that there is a significant
20 segment of the condominium market which we cannot sell.
21 Primarily, we cannot sell the properties because of their
22 location, the type of product, and we're faced with a situation
23 where we have little alternative right now other than to look
24 at programs that will take these units off the market to cut the
25 risk, to cut the loss. And the concept that Ron was speaking

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-3-

1 about regarding clearing out units, targeting the viable units,
2 strengthening those units is one that -- one that we agreed is
3 a legitimate strategy.

4 The exchange program is also a concept which we
5 think has much merit as a tool to Number (1) assist us in
6 consolidating ownership in viable projects; and Number (2) in
7 assisting homeowners who are trapped in their unit that cannot
8 move because those people can realistically only afford to hang
9 on for so long and when they are ultimately trapped in their
10 units and they cannot move both AHFC, MGIC and the State suffer.
11 So the need to provide for some (indiscernible) to allow people
12 to move to units, to homes that they are more comfortable in is
13 an important goal for us to achieve.

14 The mechanics, the specific mechanics of a
15 program of this sort, I'm not certain if we want to get into
16 those -- into those specific issues because, as Ron can
17 understand, they are rather complicated when we talk about how
18 we -- how the insurance actually works. But, in essence, what
19 we're talking about for purposes for the MGIC/AHFC relationship
20 is, is that the trade of a unit to a borrower in an existing unit
21 will be considered to be a sale of the property as required under
22 the pool policy and will result in a claim payment being made to
23 Alaska Housing. We pay the loss that we are obligated to pay on
24 a current basis, and Alaska Housing is -- has a -- they're still
25 in the position of owning a good asset, that mortgage, with the

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1 borrower who is continuing to make his payments. And we are
2 left in the insurance relationship as we were previously. We
3 paid a claim and we have a good borrower. But, that does require
4 that somebody hold onto that property and figure out what to do
5 with the trade of property.

6 Now, you know, in terms of our settlement and the
7 issue that Ron alluded to of their positive and negative, we
8 have not gotten to the point of where we have been able to agree
9 as to what the specific formula will be, but we have always
10 talked about the fact that for purposes of the settlement we will
11 use realistic (indiscernible) values that we both can agree upon.
12 And I'm confident that we'll be able to work a program of this
13 sort out. It's just that we're not there right now. We're in
14 very con- -- rather conceptual stages.

15 MR. SMITH: Jay, if I could ask you a few
16 questions, and I may have this transcribed for some legislators
17 because we have -- we have many economists that like to argue
18 about Alaska from a theoretical context, and MGIC -- if I
19 understand it correctly is active in all 50 states, aren't you?

20 MR. SCHMIDT: Yes, sir.

21 MR. SMITH: And you have, as I understand it, in
22 Alaska tested the waters from auctioning to aggressively
23 marketing and analyzed all your options before you decided that
24 market stabilization makes some sense up here, haven't you?

25 MR. SCHMIDT: Well, we have not auctioned property

1 in Alaska. We have auctioned properties in other states.

2 MR. SMITH: Okay.

3 MR. SCHMIDT: But, yes, we have done a lot of
4 work reviewing the markets and the specific problems. So we
5 haven't reached this conclusion in a hasty fashion.

6 MR. SMITH: Well, I think -- 'cause one of the
7 arguments that we -- that Ron and I hear a lot in Juneau is that
8 you cannot effectively engage in market stabilization and that
9 isn't an appropriate role. And what I hear MGIC saying is you've
10 looked at the situation up here and that a market stabilization
11 program in this particular market does make sense from MGIC's
12 perspective.

13 MR. SCHMIDT: Yes, without a doubt.

14 MR. SMITH: Can you explain why you got there?

15 MR. SCHMIDT: Well, there are a couple of unique
16 factors that we have at play in Alaska. Probably the most
17 significant factor is the overwhelming position that AHFC holds
18 over the market in general and the fact that by having one player
19 to work with we can -- we can devise their attitude to make
20 relatively -- not relatively, very complex strategy work where we
21 have two or three parties, whereas in other parts of the country
22 where interests are more diverse it's extremely difficult,
23 impossible to try to achieve the same goal.

24 So the fact that we have Alaska Housing and
25 Fannie Mae and MGIC, all of whom have significant and

1 concentrated exposure and all of whom have a willingness and a
2 desire to work together is a major benefit.

3 The other factors that are unique in Alaska are
4 the relative concentration of the problem within a rather small
5 geographic area. You know, we can do a lot of good in the City
6 of Anchorage and in Fairbanks and in other cities, primarily in
7 Anchorage, because the effect of our actions are multiplied on a
8 much greater and to a much greater extent in Alaska than they
9 would be if, for example, we were working in Houston. Taking
10 150 or 300 or 500 units off a market in Houston doesn't have the
11 same overall effect as it does in the City of Anchorage.

12 THE OPERATOR: Excuse me. This is the conference
13 operator and I show that John Moore is not on the line any
14 longer. Was he cut off or did he hang up voluntarily?

15 MR. SMITH: He may have hung up voluntarily,
16 Operator.

17 THE OPERATOR: Oh, okay. I'm sorry to interrupt.
18 Thank you.

19 MR. SMITH: Go ahead, Jay.

20 MR. SCHMIDT: No. I think those are the two
21 major factors that come to play in Alaska that lead us to the
22 conclusion that a strategy of this sort can be successful.

23 MR. SMITH: The one other area that I think's
24 important, has your analysis indicated what effect this type of
25 strategy will have on those people who are presently in their

-7-

1 condos who may be delinquent -- that are the HOF program type of
2 people. Do you -- have you analyzed whether this'll help those
3 people's equity situation and help them, in fact, stay in the
4 market?

5 MR. SCHMIDT: Well, we haven't done a specific
6 analysis of that nature, Mr. Chairman. But, common sense tells
7 you that if you are able to move an individual from a unit which
8 cannot be sold in the first instance in which you have a
9 significant negative equity position into another unit which is
10 more desirable, which will respond sooner to changes in the --
11 in the improvement in the economy and a unit that more
12 adequately suits that individual's needs that you've enhanced
13 your possibility and probability that that person will be
14 satisfied to remain in that unit significantly. But,
15 (indiscernible) right now, no, we haven't because there are
16 issues that have to be, you know, resolved. How -- you know,
17 what are the specific terms of the trade or the exchange and it's
18 really a subjective qualitative sort of analysis that we've done,
19 and common sense.

20 MR. SMITH: Okay. Jay -- yeah. Jay, just for
21 the record because I'm going to have this transcribed and give
22 it to the Senate and the House who are considering these kinds
23 of questions and including the authority to do these kinds of
24 things. You're a vice-president of MGIC, right?

25 MR. SCHMIDT: Right.

1 MR. SMITH: How long and what's your job there,
2 have you worked in all the states?

3 MR. SCHMIDT: I've been with MGIC for
4 approximately six years. I'm a vice-president working in the
5 claims department and I have specific responsibility for
6 special projects. We work closely with housing agencies in --
7 all throughout the country, special loss, mitigation loss
8 situations, general involvement with our REO activities as well.

9 MR. SMITH: So that the things that you've just
10 been discussing with the Board are the things that you do in your
11 normal course of business and that's your responsibility for
12 MGIC?

13 MR. SCHMIDT: Yes, sir.

14 MR. SMITH: Thank you very much, Jay. I think
15 it's been very helpful.

16 MR. SCHMIDT: Appreciate the opportunity.

17 MR. SMITH: Any questions from any other Board
18 members?

19 1035

20 (END OF REQUESTED PORTION)

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22
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24
25

STATE OF ALASKA THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 30, 1988

SUBJECT: Real property liquidating program
(CSSSSB 408)

TO: Senator Jan Faiks

FROM: Tamara Brandt Cook *TBC*
Director
Division of Legal Services

Here is the sectional analysis that you requested.

Section 1. This is a statement of legislative findings and intent. The legislature finds that there have been failures of state and federally chartered financial institutions, agencies currently hold portfolios of distressed real estate loans and property, financial institutions, businesses and agencies need to be permitted to cooperate in administering these properties, and maintenance of stable real estate markets and a stable banking system is essential to the economy. The legislature intends to ensure stability of the banking system and real estate markets by displacing competition with government regulation in matters relating to management and disposition of real property by authorizing creation of real property liquidating organizations under state supervision.

Section 2. This is a new chapter relating to the real property liquidating program.

Sec. 06.50.010 requires the director of banking, securities, and corporations to administer the chapter. He must report annually to the legislature.

Sec. 06.50.020 permits the formation by three or more grantors of a real property liquidating organization. Organizational documents must be reviewed and approved by the director and the governor and must meet certain itemized requirements.

Sec. 06.50.030 requires an organization to retain a certified public accountant to annually prepare and submit to the division an audited balance sheet containing specified information. The accountant must certify that all dispositions of real estate and loans during the year were made in accordance with the organization documents and this chapter, or identify variances, and provide recommendations with respect to internal financial controls. The organization is also required to file a report on its operations quarterly.

Sec. 06.50.040 requires the director and the governor to approve or disapprove a proposed operating plan of an organization. The director must also inspect business records of an organization on a regular basis at least twice each year. If the director concludes that the organization is being administered materially contrary to law, regulation or a previously approved operating plan, he may prescribe appropriate remedies. If the organization fails to remedy deficiencies, the director may begin proceedings to dissolve the organization. Expenses incurred in reviewing organization reports and conducting inspections shall be charged to the organization.

Sec. 06.50.050 requires the legislative auditor to audit each organization at least once a year. The auditor shall prepare a report summarizing findings for the president of the senate, speaker of the house, and Legislative Budget and Audit committee. The report is made public on approval of the committee.

Sec. 06.50.060 exempts an organization and persons involved with organizations from AS 45.50.471 - 45.50.596 (Unfair Trade Practices and Consumer Protection; Monopolies; Restraint of Trade).

Sec. 06.50.100 provides definitions of director, grantor and real property liquidating organization.

Section 3. The Alaska Housing Finance Corporation is granted broad authority to enter into agreements for cooperative management and disposal of real property and convey property to or acquire a beneficial interest in a real property liquidating organization, if state corporations and agencies are granted a priority to assets of the organization.

Section 4. The division of banking, securities, and corporations is established in the Department of Commerce

Senator Faiks
Page 3
April 30, 1988

and Economic Development. The director is appointed by the governor to a four year term. Qualifications for the director are set out.

Section 5. The Alaska Industrial Development and Export Authority is granted power to convey assets to and acquire a beneficial interest in a real property liquidating organization, if state corporations and agencies are granted a priority to assets of the organization.

Section 6. Except section 4 the foregoing substantive provisions of the bill are repealed.

Section 7. The substantive provisions take effect June 1, 1988.

Section 8. The repealer takes effect June 1, 1993, making this a five year program.

TBC:mkr
b5/079

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 20, 1988

SUBJECT: Stabilization of the real estate market
(SSSB 408)

TO: Senator Tim Kelly

FROM: Tamara Brandt Cook *TBC*
Director
Division of Legal Services

Here is the sectional analysis that you requested.

Section 1. This is a statement of legislative findings and intent. The legislature finds that there have been failures of state and federally chartered financial institutions, agencies currently hold portfolios of distressed real estate loans and foreclosed property, financial institutions and agencies need to be permitted to cooperate in administering these properties, and maintenance of stable real estate markets is essential to the economy. The legislature intends to ensure stability of real estate markets by displacing competition with government regulation in matters relating to disposition of foreclosed real property by authorizing creation of real property liquidating organizations under state supervision.

Section 2. This is a new chapter relating to real property liquidating organizations.

Sec. 06.50.010 requires the Commissioner of Commerce and Economic Development to administer the chapter and adopt regulations.

Sec. 06.50.020 permits the formation by three or more grantors of a real property liquidating organization. Organizational documents must be reviewed and approved by the commissioner and must meet certain itemized requirements.

Sec. 06.50.030 requires an organization to retain a certified public accountant to annually prepare and submit to the Department of Commerce and Economic Development an audited balance sheet containing specified information. The accountant must certify that all sales of real estate during the year were made in accordance with the organization documents and this chapter, or identify variances, and provide recommendations with respect to internal financial controls. The organization is also required to file a report on its operations quarterly.

Sec. 06.50.040 requires the commissioner to approve or disapprove a proposed operating plan of an organization. He must also inspect business records of an organization on a regular basis at least twice each year. If the commissioner concludes that the organization is being administered contrary to law or regulation, he may prescribe appropriate remedies. If the organization fails to remedy deficiencies, the commissioner may begin proceedings to dissolve the organization. Expenses incurred in reviewing organization reports and conducting inspections shall be charged to the organization.

Sec. 06.50.050 permits the commissioner, by regulation, to exempt organization from other state laws and regulations if he determines the exemption is necessary to carry out the purposes of the chapter.

Section 3. The Alaska Housing Finance Corporation is granted broad authority to take action to stabilize the market price of and demand for residential housing. The corporation may enter into agreements for cooperative management and disposal of real property and convey property to or acquire a beneficial interest in a real property liquidating organization.

Section 4. The Alaska Industrial Development and Export Authority is granted power to convey assets to and acquire a beneficial interest in a real property liquidating organization.

Section 5. The bill takes effect immediately.

TBC:bb
b5/022

A few kinks need to be worked out in 'bridge bank'

The "bridge bank" proposed to help the real estate market has been endorsed by the governor and is receiving serious attention in the legislature.

Bridge in this context means a temporary arrangement. It also has been referred to as a "stabilization bank."

Dave Rose, executive director of the Alaska Permanent Fund, suggested the idea. He disapproves of the state getting involved in the real estate market but thinks this proposal is least objectionable.

The basic premise for such a bank is that with so many foreclosed properties, commercial banks are competing against each other and individual owners to the extent that it destabilizes the market. Antitrust laws prohibit their coordinating policies to dispose of the property. The bridge bank, however, would enable them to coordinate without legal problems.

Here's how the bank would work. The new organization would be created with about \$15 million of state money. Banks and government agencies that owned foreclosed proper-



chris stephens

ties would turn them over to the bridge bank. In exchange they would receive shares of stock proportional to the amount of property they put in.

The banks and other lenders then would own the bridge bank and control its operations. They could coordinate disposition of the foreclosed properties with minimum disruption to the market.

Theoretically, the startup money provided by the state and revenue from sales would

enable the bridge bank to operate independently. It could keep properties off the market until the market could absorb them and maintain them during that holiday period. The participants would receive a higher return than marketing the properties independently.

One of the major problems in other depressed markets, like Houston, has been uncoordinated policies by various government agencies for disposing property. This has been of great concern in our market as well.

The effect of the bridge bank on the commercial market is difficult to predict. Many fewer commercial properties are in for foreclosure compared to residential. Also, unlike housing, most foreclosed commercial properties are held by banks, not government agencies.

Alaska banks are so heavily invested in our local economy that they cannot afford to undermine the market by dumping properties at below-market rates. Outside banks have tended to hold properties to avoid taking a loss.

How the various lending institutions and government agencies would be encouraged to participate is not clear. They would exchange real property for stock in an untested organization that might or might not be profitable.

Each participant would have to evaluate how such a move would affect its financial statement. Each would have to be willing to give up individual control of its foreclosed properties for the common good.

Finally, how many organizations would have to participate for the critical mass to be achieved that would have a significant effect on the market?

No one knows whether the legislature will create and fund the bridge bank. Time is short and competing demands for money are numerous. The bridge bank is a fascinating idea to solve a problem. But the practical and political realities will have to be addressed.

□ Chris Stephens, CCIM, is a local associate broker specializing in investment and commercial real estate.

SB 408

1 IN THE SENATE

BY KELLY AND STURGULEWSKI

2

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 408

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 stabilization of the real estate

7

market; authorizing the establishment of real prop-

8

erty liquidating organizations; and providing for an

9

effective date."

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

11 * Section 1. LEGISLATIVE FINDINGS AND INTENT. (a) The legislature
12 finds that

13 (1) there have been in the state several failures of state and
14 federally chartered financial institutions and one bank consolidation by
15 the Federal Deposit Insurance Corporation under 12 U.S.C. 1823(c);

16 (2) state and federal agencies currently hold large portfolios
17 of distressed real estate loans and real property;

18 (3) these financial institutions and government agencies need to
19 be permitted to cooperate in administering these properties to avoid fur-
20 ther adverse effects on the state's real estate markets and to stabilize
21 the state's banking system; and

22 (4) the maintenance of stable and orderly markets for the pur-
23 chase and sale of commercial and residential real estate in the state is
24 essential to the economy of the state and the welfare of its citizens.

25 (b) The legislature intends to ensure the stability of the state's
26 real estate markets and prevent a precipitous decline in real estate prices
27 by displacing competition with government regulation in matters relating to
28 the sale and disposition of real property held by financial institutions
29 and state and federal agencies as a result of foreclosure actions. By

1 authorizing the creation of real property liquidating organizations under
2 state supervision, the legislature intends to grant authority to the com-
3 missioner of commerce and economic development to provide by regulation
4 that persons and entities who subscribe or grant assets to, contribute
5 funds or services to, obtain a beneficial interest in, or participate in
6 the management of a real property liquidating organization will be immu-
7 nized as necessary possible against potential liability under federal
8 antitrust laws and state antitrust, competition, and trade practices laws
9 arising from the operation of the organizations.

10 * Sec. 2. AS 06 is amended by adding a new chapter to read:

11 CHAPTER 50. REAL PROPERTY LIQUIDATING ORGANIZATIONS.

12 Sec. 06.50.010. RESPONSIBILITY OF COMMISSIONER. The commis-
13 sioner shall administer this chapter and adopt regulations to carry
14 out the purposes of this chapter.

15 Sec. 06.50.020. FORMATION. (a) Three or more grantors may
16 create a real property liquidating organization by filing the orga-
17 nizational documents with the commissioner. The commissioner shall
18 review the documents and approve them if they comply with (b) of this
19 section and are consistent with the purposes of this chapter. Convey-
20 ance of assets to or disposition of real property or other assets by
21 an organization is not valid until the organizational documents have
22 been reviewed and approved by the commissioner.

23 (b) The organizational documents must

24 (1) state the purpose of the organization;

25 (2) identify all grantors who will subscribe to the orga-
26 nization and all persons who will possess an interest in the orga-
27 nization;

28 (3) describe the manner in which the organization will be
29 managed;

1 (4) prescribe the method under which distributions to the
2 grantors and other beneficiaries will be made;

3 (5) provide for the conveyance to the organization of all
4 or part of the grantors' portfolios of commercial and residential real
5 properties in the state or other assets;

6 (6) provide for the orderly disposition of property of the
7 organization at prices to be established in accordance with the orga-
8 nizational documents;

9 (7) provide for the expenditure of assets to manage orga-
10 nization property, including expenditures to preserve or enhance the
11 value of properties; and

12 (8) provide for the establishment of other terms and con-
13 ditions relating to the sale or other disposition of assets that the
14 grantors consider necessary or appropriate to ensure that the orga-
15 nization will be operated in a manner that will provide for orderly
16 disposition of property and promote a stable real estate market and
17 economy.

18 Sec. 06.50.030. AUDITS AND REPORTS. (a) In addition to the
19 record keeping requirements specified in regulations adopted by the
20 commissioner or in the organizational documents, the organization
21 shall retain a certified public accountant to annually prepare and
22 submit to the department on or before April 1 of each calendar year an
23 audited balance sheet, income statement, statement of principal,
24 statement of changes in financial position, and schedule of all dispo-
25 sitions of real estate assets made by the organization during the
26 year. In connection with the preparation of the financial documents,
27 the accountant shall issue letters

28 (1) certifying that all sales of real estate assets and all
29 distributions during the year were made in accordance with the

1 provisions of the organization documents and this chapter, or identi-
2 fying any variance; and

3 (2) with respect to the internal financial controls and
4 practices of the organization, providing recommendations the accoun-
5 tant considers appropriate.

6 (b) The organization shall prepare and file with the commission-
7 er, on a quarterly basis, a report containing the following:

8 (1) a schedule of all real property held by the organiza-
9 tion;

10 (2) the sale price and all other significant terms of sale
11 for real property sold since the date of the previous report; and

12 (3) a proposed operating plan for the next quarterly period
13 that conforms with regulations adopted by the commissioner.

14 Sec. 06.50.040. REVIEW AND APPROVAL BY COMMISSIONER. (a) The
15 commissioner shall review each report filed under (b) of this section
16 and approve or disapprove the proposed operating plan within 20 days
17 after filing. In reviewing the operating plan, the commissioner shall
18 consider current market conditions. Before approving the plan, the
19 commissioner must find that the plan complies with the purpose of this
20 chapter.

21 (b) Within five days after the department notifies an organiza-
22 tion of its intention to inspect business records, all business re-
23 cords maintained by the organization shall be available for review and
24 examination by the department at the organization's principal place of
25 business, during regular business hours. The commissioner shall
26 examine the business records of an organization on a regular basis at
27 least twice each calendar year.

28 (c) If the commissioner disapproves the proposed operating plan
29 or concludes, after examination, that the organization is being

1 administered contrary to statute or regulation, the commissioner shall
2 notify the organization and all grantors in writing, specifying all
3 deficiencies and prescribing appropriate remedies. If the organiza-
4 tion fails to remedy deficiencies in accordance with the commission-
5 er's prescriptions within 60 days after receipt of the notice, the
6 commissioner may commence proceedings under AS 06.01.030.

7 (d) The expenses of the department reasonably incurred in re-
8 viewing and approving a proposed operating plan or conducting an
9 examination under this section shall be charged to and paid by the
10 organization in accordance with AS 06.01.010.

11 Sec. 06.50.050. PREEMPTION. If the commissioner determines that
12 the exemption is necessary to carry out the purposes of this chapter,
13 the commissioner may by regulation exempt real property liquidating
14 organizations from any state law other than this chapter or from any
15 regulation other than one adopted under this chapter.

16 Sec. 06.50.100. DEFINITIONS. In this chapter,

17 (1) "commissioner" means the commissioner of commerce and
18 economic development;

19 (2) "department" means the Department of Commerce and
20 Economic Development;

21 (3) "grantor" means a federally or state chartered finan-
22 cial institution, federal or state agency, licensed insurer, or fi-
23 nancing company that conveys assets to, and thereby obtains a benefi-
24 cial interest in and the right to participate in the management of, a
25 real property liquidating organization;

26 (4) "real property liquidating organization" or "organiza-
27 tion" means a corporation, trust, fund, partnership, joint venture, or
28 other legal entity created to acquire, maintain, manage, market, sell,
29 or otherwise dispose of real property in the state and to distribute

1 to the beneficiaries, in accordance with the provisions of the orga-
2 nization documents, the proceeds derived from the sale or disposition
3 of the property.

4 * Sec. 3. AS 18.56 is amended by adding a new section to read:

5 Sec. 18.56.210. MARKET STABILIZATION POWERS. The corporation
6 may take appropriate action to stabilize the market price of and
7 demand for residential housing in the state. To accomplish the pur-
8 poses of this section, the corporation may

9 (1) enter into agreements with state and federally char-
10 tered financial institutions, state or federal agencies, insurers, and
11 financing companies for the cooperative management and disposal of
12 real property owned by the corporation, financial institutions, agen-
13 cies, or other contracting parties; and

14 (2) convey real property and other assets to, and acquire a
15 beneficial interest in, a real property liquidating organization
16 established under AS 06.50.

17 * Sec. 4. AS 44.88.080 is amended by adding a new paragraph to read:

18 (25) to convey real property and other assets to, and ac-
19 quire a beneficial interest in, a real property liquidating orga-
20 nization established under AS 06.50.

21 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

*Sponsor Substitute
repealed 4/19/88*

1 IN THE SENATE

BY KELLY AND STURGULEWSKI

2

SENATE BILL NO. 408

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 the Alaska stabilization assis-
7 tance program; and providing for an effective date."

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

9 * Section 1. ALASKA STABILIZATION ASSISTANCE PROGRAM. (a) The purpose
10 of the Alaska stabilization assistance program is to promote the stabi-
11 lization of real property values in the state.

12 (b) The Alaska stabilization assistance fund is established in the
13 Alaska Industrial Development and Export Authority. The authority may use
14 money appropriated to the fund to carry out the purposes of this section.
15 An appropriation to the Alaska stabilization assistance fund lapses to the
16 fund from which it was appropriated July 1, 1992, unless specified other-
17 wise in the appropriation act. Other receipts shall be separately
18 accounted for and deposited into the general fund. Each year the authority
19 shall notify the legislature of the amount of these receipts and the legis-
20 lature may appropriate that amount into the Railbelt energy fund
21 established under AS 37.05.153.

22 (c) To encourage lenders not to attempt to dispose of real property
23 in the state that has been foreclosed upon or otherwise acquired through
24 actions taken on defaulted loans until the real estate market in the state
25 becomes more stable, the authority may enter into contracts to provide for
26 the management of the property. However, the authority may provide for the
27 management of property only through June 30, 1992.

28 * Sec. 2. This Act is repealed July 1, 1992.

29 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

1 IN THE SENATE

BY KELLY AND STURGULEWSKI

2

SENATE BILL NO. 408

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

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27 management of property only through June 30, 1992.

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