

H B

2 6 6

Original sponsor: Ulmer

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 266 (Judiciary)

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 recording of documents."

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

8 * Section 1. LEGISLATIVE FINDINGS. The legislature finds that the

9 (1) recording of legal documents of the kind customarily re-
10 corded throughout the United States is an essential state function;

11 (2) time and place of the recording of a document can be more
12 important than the underlying legal sufficiency of the document;

13 (3) recording offices exist primarily for the benefit and conve-
14 nience of the general public;

15 (4) business community, commercial institutions including banks,
16 and private individuals cannot function effectively without the public
17 notice protection afforded by recording their documents; and

18 (5) policy of the state is to maintain a convenient means of
19 regularly recording legal documents relating to property and obtaining
20 information concerning existing recorded documents.

21 * Sec. 2. AS 34.15 is amended by adding a new section to read:

22 Sec. 34.15.343. RECORDING CRITERIA. When determining whether a
23 document may be recorded, the recorder

24 (1) may not consider whether the contents of the document
25 are legally sufficient to achieve the purposes of the document;

26 (2) may not reject a document because the document

27 (A) does not satisfy the current requirements for
28 recording, if the document satisfied the requirements for record-
29 ing that existed at the time the document was executed;

1 (B) serves more than one purpose;

2 (C) does not state the name of the recording district,
3 if the name is given to the recorder at the time the document is
4 offered for recording, or if the name is contained in a cover
5 letter accompanying the document;

6 (D) references an attached exhibit that is not la-
7 belled;

8 (E) is a certified copy of an official document that
9 creates an interest in real property and that is from a govern-
10 mental office in this or another state; or

11 (3) may not require that a document that serves more than
12 one purpose be recorded separately for each of the purposes; this
13 paragraph does not prevent the multiple recording of the document if
14 the person offering the document requests that the document be re-
15 corded for more than one of its purposes.

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17 (a) The Department of Natural Resources shall adopt regulations
18 [,] establishing, modifying, or discontinuing recording districts or
19 precincts and prescribing the records to be maintained and the instru-
20 ments to be recorded. A regulation may not impose a restriction on
21 document recording unless the restriction is required by statute or
22 further a legitimate administrative need of the recorder; a "legiti-
23 mate administrative need" includes ensuring the legibility of the
24 documents and identifying the parties, the capacity of each party, and
25 the affected property.

WHILE IN SESSION
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3704



REPRESENTATIVE JOHNNY ELLIS

M E M O R A N D U M

TO: The Honorable Jalmar Kertulla
Chair, Senate Judiciary Committee

FROM: Rep. Johnny Ellis *J.E.*

RE: HB 491; "Statutory Form Power of Attorney"

DATE: May 2, 1988

MAY 2 1988

I respectfully request that you schedule a hearing on HB 491 as soon as possible.

This bill creates a power of attorney form and sets into statute the description of powers authorized. My staff developed the legislation with the assistance of the Older Alaskans Commission, the probate section of the Alaska Bar Association, and Alaska Legal Services.

The need for this legislation is based upon problems associated with the broadness of Alaska's existing power of attorney statutes. Because the existing statute is so broad, powers of attorney drafted by its authority lack uniformity. This is confusing to the people who need a power of attorney and to the third party who is supposed to honor the power.

A critical secondary need for this legislation is based upon the necessity of an increasing number of Alaskan Seniors to designate in advance the people they wish to manage their affairs should a temporary or permanent disability occur. The form created by this statute contains a check off section for designating the effectiveness of the power in case of incapacitation.

I have enclosed some back up for your convenience and would be more than happy to supply more information at your request.

Thank you for considering this request.

enclosures

JUNEAU REPORT

Power of attorney bill: 'Senior-friendly'

by Rebecca Goodman
 A "much improved" durable power of attorney bill — CS HB3491 — emerged from the House Health, Education and Social Services committee in late April following some technical changes suggested by the Older Alaskans Commission and several health/legal specialists.

At *Senior Voice* press time the bill also had passed House Judiciary and was poised for a House floor vote April 26 or 27.

The bill, co-sponsored by Reps. Johnny Ellis (D-Anchorage) and Max Gruenberg (D-Anchorage), would clarify existing statutes and provide an approved form for consumers to use in drawing

up a durable power of attorney.
 A durable power of attorney permits an individual to give another individual the authority to act on their behalf to do a variety of everyday legal matters.

Unlike the simple power of attorney which becomes ineffective upon incapacitation of the individual, a "durable" power of attorney becomes effective either at the start of a disability of the individual, or it starts prior to the disability and remains in effect throughout it.

"This bill is much improved," Ellis told committee members. "It clears up language in key sections and addresses concerns with reference to seniors' benefits and

with reference to the existing Living Will statutes."

Ellis said the bill shortens the time required and reduces the expenses involved in putting

A durable power of attorney permits to give another individual the authority to act on their behalf to do a variety of everyday legal matters.

ing a power of attorney into place.

Connie Sipe, executive director of the Older Alaskans Commission, told lawmakers, "we're very supportive of this bill."

The new streamlined form in the measure would make the creation of a power of attorney more understandable to consumers, yet not affect their legal rights in any way, Sipe said. A recent workshop on guardianship issues illustrated the need for clearer statutes on powers of attorney, she added. Most of the nearly 100

health/legal specialists who attended the Anchorage workshop agreed durable power of attorney could help seniors avoid wasting their time and money in planning "advance directives," or measures that spell out an individual's wishes in the event of incapacitation.

Most health care providers strongly support this legislation as a means to avoid the turmoil of court-appointed guardianships, Sipe said.

Rep. Bill Hudson (R-Juneau) said he could see the logic behind the bill.

"Having a mother-in-law who is now widowed and 75 years old, I can really see the

need to have these forms available and in terms people can understand.

"It seems a good idea to distribute this information around to the various senior centers so seniors could make these choices," Hudson suggested.

The amended version of the bill is now in House Judiciary. Aides to Ellis said although "time's running out" for the bill this session, the "groundwork for a good piece of legislation" had been established for introduction in a new legislative session.

"If it doesn't pass this time around, it doesn't mean we've lost the issue," one aide noted.

SENIOR BILL DIGEST

SCSCS HB 36 — Grussendorf (D-Sitka). Car insurance rate break for seniors.

Allows reduced auto insurance rates for persons 55 and older who undergo approved driver training courses. Governor signed into law March 1988. Chapter 9 SLA 88.

HB 159 — Governor by Request. Income-based senior property tax exemption.

Would tie senior homeowners' and disabled veterans' property tax exemptions to income level on sliding-scale basis. Bill "shelved" February 10, 1988, by House Community and Regional Affairs Committee.

SSH B 346 — Adams (D-Kotzebue). Fishing areas for seniors.

Would authorize Board of Fisheries to establish

ALASKA LEGAL SERVICES CORPORATION

Legal services for seniors (60 and older)

Assistance available with

- housing
- health care
- government benefits
- wills
- other legal problems

This OAC - funded service is available in:

Come Celebrate!

OPAG's 20th birthday party is planned for May 19.

JUNEAU REPORT

Bill redefines power of attorney laws

by Rebecca Goodman
When Louise Black's 80-year-old mother had a massive, debilitating stroke in Anchorage last year, the last thing Black expected she'd have to do was go to court to gain financial control of her mother's assets just so she could pay for her mother's expensive and necessary nursing care.

The process was not simple. Black said she spent "several exhausting weeks" and "several thousand dollars on attorney and court fees" trying to arrange to have herself appointed conservator of her mother's assets.

"Mother does have a will and I figured that would take care of all the legal details we'd ever run into," Black said. "I never dreamed she'd end up like this unable to run her own affairs."

If Black and her mother had known about a legal device

known as a durable power of attorney, they might have been able to save themselves some expense and delay.

A durable power of attorney should not be confused with a general, nondurable power of attorney.

A general, nondurable power of attorney permits an individual (such as Black's mother) to give another person (such as Black) the authority to act on their behalf to do things such as receive and deposit assets; sign contracts; spend income from trusts; and act on a variety of everyday legal matters.

This kind of power of attorney is limited because it's effective only as long as the person who gave the power of attorney, the "principal," remains mentally competent.

For Black's mother, disabled by stroke, a general, nondurable power of attorney would have become ineffective

just at the moment when she most needed someone such as her daughter to act in her behalf.

A durable power of attorney goes beyond a general power

'Mother does have a will and I figured that would take care of all the legal details . . . I never dreamed she'd end up like this unable to run her own affairs.'

-Louise Black

of attorney in that it becomes effective either at the start of the disability of the "principal," or it starts prior to the disability and remains in effect throughout it.

Durable power of attorney authorizations can save time, money and frustrations. So why don't more Alaskans take advantage of them?

The problem, said Rep. Johnny Ellis (D-Anchorage),

is in Alaska's existing statutes.

"The first concern is the vagueness of the existing statutes. Because the existing statute does not explicitly describe the powers which the principal may delegate, many institutions (such as banks, health facilities, etc.) do not honor powers of attorney drafted under the statute," Ellis said.

To clear up the problem, Ellis has sponsored HB 491 to set into statute the actual form an individual may use in the event of disability.

Among other things, HB 491 would:

- spell out in detail the specific powers which may be exercised under a power of attorney;
- provide for a simple method to determine "disability," without requiring a judicial determination; and
- provide an approved form for use to save time and expense in the drawing up of a power of attorney.

During a mid-March teleconference on HB 491 in the House Health, Education and Social Services Committee, several attorneys and seniors signaled their support for the measure.

Speaking for the Older Alas-

kans Commission, project coordinator Fran Toland told lawmakers the commission "strongly supports" the bill but would like to see some minor amendments.

One of the suggested amendments would tie together the power of attorney measure and the Living Will statute which went into effect two years ago.

Toland and others said the health care provisions in the power of attorney measure should dovetail with the Living Will statutes to prevent conflicts.

Alaska Legal Services attorney Colleen DuFour echoed those suggestions.

"We need clarifications on what an attorney could do. If a person executes a separate Living Will, that individual should be able to empower their legal agent to see that the will is carried out. We need clear signals to enforce a validly executed Living Will form," DuFour said.

Ellis said suggested amendments to streamline and clarify HB 491 would be addressed soon.

At *Senior Voice* press time another hearing on the measure was expected.

ALASKA STATE HOUSE

OFFICE OF MAJORITY WHIP



REPRESENTATIVE JOHNNY ELLIS

HB 491: CREATING A STATUTORY FORM POWER OF ATTORNEY

1) IS THERE A NEED FOR THIS LEGISLATION?

Yes. There is a need because the existing power of attorney statute is too broad. The broadness of the existing statute results in a lack of uniformity which is confusing to the people who need a power of attorney and to the third party who is supposed to honor the power. The current process for drafting a power of attorney is time-consuming and expensive.

2) WHO WILL BENEFIT BY THIS LEGISLATION?

All Alaskans interested in creating a power of attorney in any form will benefit by passage of this bill because the statutory form:

- a. will require less attorney time and, as a result will be less costly to produce
- b. carries with it an enforcement provision warning third parties of possible penalties for refusing to honor the powers granted
- c. will increase awareness of the ability and need to designate an agent before incapacitation
- d. contains provisions which will allow family members to take care of an individual who is no longer able to make rational decisions

3) HOW DOES THE "DURABILITY CLAUSE" WORK?

If an individual chooses the durability option set out on page 3 of the form, that individual will have the advantage of choosing ahead of time the person who will manage his or her affairs in the event of a disabling illness or accident.

HB 491: CREATING A STATUTORY FORM POWER OF ATTORNEY
(CONT'D.)

4) WHY IS THIS BILL SO LONG?

The form will be enforceable only if an unambiguous interpretation of each provision is set out in the statute. This is especially important in the instance where a principal is interested in granting only some powers to an agent rather than full general power.

5) WHO SUPPORTS THIS LEGISLATION?

Senior organizations
Alaska Legal Services
Individual members of the probate section of the Alaska
Bar Association
Residential care facilities

Older Alaskans Commission

Box C
Juneau, Alaska 99811-0209
907/465-3250

POSITION PAPER -- APRIL 22, 1988

CSHB 491 (HESS)

"An Act Establishing a Statutory Form Power of Attorney"

The Older Alaskans Commission strongly supports passage of this bill. Senior citizens can best keep their own financial and personal affairs in order through the use of "advance directives" or Life Planning, by use of a Durable Power of Attorney. A previously signed Durable Power of Attorney would often eliminate the need for family or caregivers of an incapacitated senior to seek a guardianship. Petitioning the court for a guardianship takes up to four months, and is quite cumbersome and costly to both the petitioner's and the public's pocketbook.

At an OAC sponsored Workshop for Professionals on the Guardianship System in Alaska, March 31 and April 1, nearly 100 representatives from nursing homes, hospitals, social service agencies, the court system, the Offices of the Attorney General and the Public Guardian discussed the many problems surrounding the need for guardianship for people no longer competent to make decisions.

The workshop group reached a strong consensus on the need to avoid court guardianship proceedings whenever possible. They agreed that Alaska needs a statutory form Durable Power of Attorney which is easy and inexpensive to use. Once this exists, seniors should be strongly encouraged to use the forms; through a series of clinics at senior centers, hospitals, and certainly upon admission to a nursing home.

Although durable powers of attorney are currently authorized under AS 13.26.325, each person must pay a lawyer to draft the power, a job which can easily cost over \$ 500, because the lawyer must try to specify and define all sorts of contingencies about numerous types of financial and personal transactions.

The primary benefits of CSHB 491 (HESS) are that it provides a statutorily approved form Power of Attorney, and defines in detail the specific powers which an agent may exercise under the power of attorney. This will enable many individuals to enact a Durable Power of Attorney without any expense for consultation with a lawyer.

POSITION PAPER ON CSHB 491 -- PAGE 2
OLDER ALASKANS COMMISSION

In addition, CSHB 491 requires that third parties presented with a properly executed statutory Power of Attorney must honor it. The opposite frequently happens now, to even the best drafted Power of Attorney: when the agent presents it to a stock brokerage firm, bank or insurance company, the third party refuses to honor it and asks for a differently formatted Power--but if the principal is in the hospital in a coma, it is too late to get the principal's signature on a new form.

CSHB 491 might at first glance appear to be rather long, but the lengthy definitions are needed to ensure that third parties know what their obligations are to carry out the agent's instructions.

CSHB 491 makes several other improvements upon current law because it provides for a simple method to determine "disability," without requiring a judicial determination, provides a hold harmless guarantee to third parties, and ties in with the Living Will statute so that a person may appoint an agent for all health care decision-making.

In summary, the Commission strongly supports this bill in its present form. CSHB 491 (HESS) makes Alaska's current statute on powers of attorney much more beneficial and accessible for seniors and their families, friends, and caregivers who wish to plan for the senior's future.

APPROVED BY:

for Connie Labe Eves, Director
Dove Kuyll, Chair
Legislative Committee
Older Alaskans Commission

DATE: April 22, 1988

REVIEWED BY:

John M. Andrews, Commissioner
Department of Administration

DATE: 4/25/88



ALASKA STATE LEGISLATIVE COMMITTEE

CHAIRMAN
Miss Patricia Oakes
Box 30009
Central, AK 99730
(907) 520-5227

VICE CHAIRMAN
Mr. R. W. Pavitt
130 Seward Street, #205
Juneau, AK 99801
(907) 586-2066

SECRETARY
Mrs. Marian R. Triggs
475 Panorama Drive
Fairbanks, AK 99712
(907) 457-4386

MAR 25 1988

3/22/88

Representatives Niilo Koponen
and Johnny Ellis, Co-Chairmen
House HESS Committee
PO Box V
Juneau, AK 99811

Dear Representatives Koponen and Ellis:

AARP/Alaska State Legislative Committee is pleased to see legislation such as HB 491, "An Act establishing a statutory form power of attorney."

We feel such legislation is vital to clearly defining for Alaskans both general and durable powers of attorney. Such clarification is important not only to those who deal with complex legal issues through attorneys or who can afford to have attorneys draw up their powers of attorney, but also to those whose lower incomes cause them to rely on pre-printed forms for these matters.

Because low-income elderly persons are often unknowing victims of unclear or scattered statutes, bringing together these materials into a clear package seems especially important.

We urge your committee's support of this legislation and hope that it will include protection of "living wills" and state benefits.

Sincerely yours,

A handwritten signature in cursive script that reads "Patricia Oakes". The signature is written in dark ink and is positioned above the typed name and title.

Miss Patricia Oakes, Chairman
AARP/Alaska State Legislative Committee

CARTA

Central Alaska Retired Teachers Association

Advocate for Retired and Pre-Retired Educators

1620 Crescent Drive
Anchorage, AK 99504
April 15, 1988

Representative Johnny Ellis
Alaska State Legislature
PO Box V (MS 3100)
Juneau, AK 99811

APR 20 1988

Dear Representative Ellis:

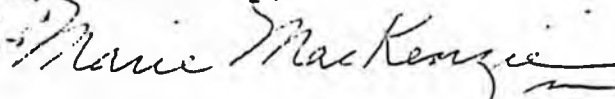
The Legislative Committee of the Central Alaska Retired Teachers Association (CARTA) has studied and considered a number of proposed bills this past year. We recently sent you a report of our activities that led to making our decisions. As we near the end of the session, we strongly urge passage of the following bills:

1. House Substitute for SB56 - Annuity Bill (First Priority)
2. SB67 - Mental Health Insurance Bill
3. HB491 - Establishing a Statutory Form Power of Attorney
4. SB442 - Relating to the Older Alaskan Commission and the protection of elderly persons, establishing the office of Older Alaskan Ombudsman
5. HB306 - Anatomical gifts

CARTA also strongly supports funding the recommendations of the Governor's Commission on Children and Youth.

We appreciate your attention and time for our concerns.

Sincerely,



Marie MacKenzie, Chairman
Legislative Committee

cc: Vera Gazaway, President, CARTA
Joan McKinnon, President, Alaska State Retired Teachers Assn
Patricia Oakes, Chairman, AARP State Legislative Committee
Anchorage Senior Citizens Advisory Committee

Anchorage, Alaska
March 18, 1988

MAR 24 1988

TO: REPRESENTATIVE JOHNNY ELLIS
REPRESENTATIVE MAX GRUENBERG, Jr.

FROM: Thelma P. Langdon - 2363 Capt. Cook Drive - Anchorage 99517

RE: HB NO. 491 - "An Act establishing a statutory form power of attorney"

I am in strong support of this bill. As one of the organizers of the Alzheimer's Disease Family Support Group, I know what a great help it would be to the families of victims of Alzheimer's Disease and Related Disorders.

My own father has a severe and progressive dementia and my sister and I need to have the kind of authority and protection this bill addresses. In carrying out our responsibility we need to have the authority to make decisions he cannot or will not make.

Thank you for introducing this bill.

Thelma P. Langdon
MSP
consult

5-0521L
Bannister
5/3/88

MAY 3 1988

Original sponsor: Ulmer

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
 2 SENATE CS FOR CS FOR HOUSE BILL NO. 266 (Judiciary)
 3 IN THE LEGISLATURE OF THE STATE OF ALASKA
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22 furtheres a legitimate administrative need of the recorder; a "legiti-
23 mate administrative need" includes ensuring the legibility of the
24 documents and identifying the parties, the capacity of each party, and
25 the affected property.

Alaska State Legislature

Committees:

Chair-State Affairs
V. Chair-Judiciary
Telecommunications
Special Ethics
Legislative Council
Finance Subcommittee
for the University of Alaska
Joint Committee
on Economic Recovery



APR 22 1988

P.O. Box V
Juneau, Alaska 99811
(907) 465-4947

REPRESENTATIVE FRAN ULMER

MEMORANDUM

A handwritten signature in cursive, likely of Representative Fran Ulmer, written in dark ink.

April 21, 1988

TO: Senator Jalmar Kerttula, Chairman
and Members of the Senate Judiciary Committee

FROM: Representative Fran Ulmer

SUBJECT: House Bill 266

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

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

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

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

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

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

Thank you for your support of HB 266.

District 4B — Juneau



ALASKA MINERS ASSOCIATION, INC.

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

April 17, 1987

RECEIVED 4/22/87

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

Re: House Bill No. 266

Dear Rep. Ulmer:

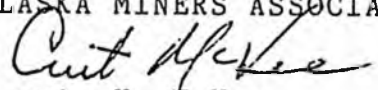
The Alaska Miners Association supports House Bill No. 266 and its passage this session of the legislature.

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

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

Sincerely,

ALASKA MINERS ASSOCIATION


Curtis V. McVee
Executive Director

TIA TITLE
INSURANCE
AGENCY

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

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

April 17, 1987

Representative Fran Ulmer
Pouch V
Juneau, AK 99811

Dear Fran:

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

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

Sincerely,



Glen A. Prince
Executive Vice President

GAP:bjk

RECEIVED APR 21 1987

RECEIVED
RECEIVED APR 6 1987

DORIS LOENNIG
A PROFESSIONAL CORPORATION
ATTORNEY AT LAW

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

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

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

Dear Mrs. Ulmer:

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

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

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

Mrs. Fran Ulmer
Re: Recording of Documents

April 1, 1987
Page two

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

Very truly yours,

DORIS LOENNIG, P.C.

By:



DORIS LOENNIG

DL:dcm

HUGHES THORSNESS GANTZ POWELL & BRUNDIN

ATTORNEYS AT LAW

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 BRIAN J. BRUNDIN
 MARCUS R. CLAPP
 KENNETH R. JACOBUS
 GARY W. GANTZ
 JERRY E. MELCHER
 JOE M. HULLLESTON
 SIGURD E. MURPHY
 CARL J. O. BAUMAN
 FRED B. ARVIDSON
 DENNIS M. BUMP
 MARY K. HUGHES
 FRANK A. RIFFNER
 RALPH R. BEISTLINE

GORDON J. TANS
 R. CRAIG HESSER
 ROBERT L. MANLEY
 JAMES M. GORSKI
 TIMOTHY R. BYRNES
 JAMES M. SEEDORF
 RONALD E. NOEL
 FREDERICK J. OUSEN
 MICHAEL L. LESSMEIER
 STEVEN S. TERVOOREN
 MATTHEW K. PETERSON
 JOSEPH R. O. LOESCHER
 KENNETH D. LOUGEE
 EARL M. SUTHERLAND
 JOHN B. THORSNESS

GREGORY W. LESSMEIER
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 DONNA R. WALKER
 WILLIAM M. WALKER
 DANIEL M. WOLD
 DAVID S. CARTER
 MARILYN MAY
 JOHN G. FRANK
 ANN S. BROWN
 BRIAN D. BJORKQUIST
 JAMES N. BARKELEY
 THOMAS R. LUCAS
 TIMOTHY R. RECFORD
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OF COUNSEL
 JOHN C. HUGHES
 RICHARD O. GANTZ

March 10, 1987

REPLY TO ANCHORAGE

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

Dear Representative Ulmer:

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

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

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

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

Honorable Fran Ulmer
March 10, 1987
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offices more than any other single group of people. They do so for a very good reason: they must annually file documents with recording offices to preserve their possessory rights, upon pain of losing the claims to rival claimants or the government.

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

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

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

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

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

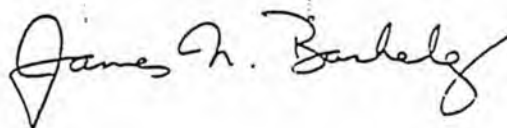
Thus, assuming a reasonable definition of "wrongful refusal to record" could be arrived at, I respectfully submit that penalties should be provided for under those circumstances--which penalties should include all losses proximately caused by the wrongful refusal--e.g., the loss of mining claims or other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

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

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

Very truly yours,

HUGHES, THORSNESS, GANTZ,
POWELL & BRUNDIN



By: James N. Barkeley

JNB/mt
2793i

cc: Linda Nordstrand, Alaska Bar Association
CLE Director

DOUGLAS L. GREGG, Esq.

A PROFESSIONAL CORPORATION
ATTORNEY-AT-LAW
130 SEWARD STREET, SUITE 417
JUNEAU, ALASKA 99901

March 4, 1987

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

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

Dear Representative Ulmer:

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

Very truly yours,

D. L. Gregg
DOUGLAS L. GREGG

DLG

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

DOUGLAS L. GREGG, Esq.

A PROFESSIONAL CORPORATION

ATTORNEY-AT-LAW

130 SEWARD STREET, SUITE 417.

JUNEAU, ALASKA 99801

January 28, 1987

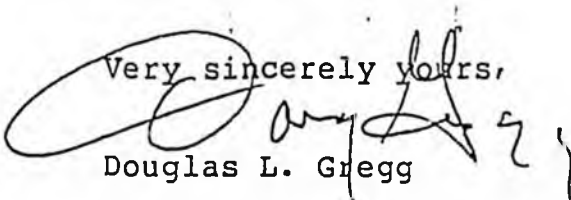
Honorable Fran Ulmer
State Representative
State Capitol
P.O. Box V
Juneau, Alaska 99811

Re: Amendments to AS 44.37.025 (Recording Documents);

Dear Fran:

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

Very sincerely yours,


Douglas L. Gregg

ENCLS:

cc:James E. Fisher, President
Juneau Bar Association

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

6645 N. Douglas Highway
Juneau, Alaska

January 7, 1987

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

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

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

Re: Amendments to AS 44.37.025 (Recording Documents);

Dear Juneau Legislative Delegation:

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

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

if they meet certain minimum requirements.

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

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

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

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

Very sincerely yours,

J E F

James E. Fisher, President
Juneau Bar Association

ENCL

COPY

REPORT OF COMMITTEE ON OFFICE OF THE RECORDER

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

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

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

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

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

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

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

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

PREAMBLE. The Legislature recognizes and therefore finds as follows:

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

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

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

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

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

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

CONCLUSION

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

DATED: December 5, 1986.

Respectfully submitted,

Douglas L. Gregg

Larry Weeks

Fred J. Baxter

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

YES NO

17 15 Contains no "return to" address.

30 4 Lacks trustee name on deed of trust.

29 8 Lacks real property description.

15 17 Lacks a title reflecting its overall content.

26 10 Document not executed entirely in English.

26 9 Lacks the recording information of the original document being amended, corrected, extended, modified, or released.

16 13 Document is larger than 8 1/2 by 14 inches.

29 9 Document must state in what capacity the signatory executed the document; individually, as attorney-in-fact, partner, corporate officer, executor, administrator, guardian or trustee.

22 11 Lacks the name of the recording district in which it is to be recorded.

16 14 Lacks reference to attached exhibit/Exhibit not clearly labeled.

26 5 Lacks attached exhibit when reference is made to such.

5 27 An original, recordable document may not be accepted as an attachment to another document.

3 32 The document serves more than one purpose. Recording fee is charged separately for each purpose.

19 14 Does not name person against whom assessment is placed.

3 29 Document is valid instrument executed prior to effective date of regulations but does not conform to current regulations.

282 217

COMMENTS:

499 RESPONSES

APPROX 35 INDIVIDUAL RESPONSES