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162

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE 2/9/89
IN ACCORDANCE WITH UNIFORM RULE 23



FURTHER FINANCE

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035

DATE TURNED INTO OFFICE 2/29/89

2/6/89

Mr. President:

SB 162

L&C Committee considered _____

reviving the simplified refinancing mortgage loan purchase program of the Alaska Housing Finance Corporation; efd

and recommended:

- replace with CS _____ same title
- attached amendment(s) and new title
- _____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

FISCAL NOTE(S) attached zero
 appropriation no FN attached

fiscal impact
 Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS
[Signature]
[Signature]

OTHER RECOMMENDATIONS

[Signature]
Chairman signature and recommendation

Committee backup attached

February 13, 1989

Senator Dick Eliason, Chairman
Labor and Commerce Committee
Alaska Senate
P.O. Box B
Juneau, AK 99811

Dear Senator Eliason:

I request that when your committee hears proposed SB162 on Friday, February 17, you consider amending the bill to provide services now denied to seven-hundred (700) to eight-hundred (800) Alaskans -- refinancing of AHFC rental mortgage loans from sixteen (16) to thirty (30) years, as has already been provided to HOAP mortgage holders. If this is not done, rental mortgage holders likely represent the next category of AHFC foreclosures.

Between 1982 and July 1987, AHFC required that all AFHC mortgage holders reside in the home. If not, in order legally to rent the home to another party, the mortgage holder had to apply for and be granted a waiver, which was difficult to obtain, or refinance the loan from a flat interest rate into a no-cap interest rate.

Numerous realtors informed me in 1987 that many AHFC mortgage holders were simply moving out of their homes and renting the homes to other persons, without waivers and without refinancing. I did not do this. Instead, I complied with the rules and refinanced my AHFC home in Anchorage into a rental when I bought other property near my job in Eagle River in October 1987. The bank which did the paperwork on both loans had not been informed in October 1987 that the requirement for such refinancing had been withdrawn two months previously, so the house was refinanced into a rental with a no-cap interest rate.

My present status is that I rent the Anchorage property to an individual, and I use the rental check plus over two-hundred dollars (\$200) from my own income to keep the Anchorage mortgage payments current. My Eagle River mortgage payment effective February 1, 1989 was increased almost \$100 because of an increase in interest rates. Next year, when my Eagle River mortgage payment again increases, I will be unable to subsidize the AHFC property any longer. It will be foreclosed on.

In the meantime, Ron Lehr, Director of AHFC, informed me in a public meeting on January 26, 1989 that AHFC refuses to consider refinancing rental mortgage loans because within five (5) years the homes will be sold, the mortgages rolled over and the problem will no longer exist. I asked him who plans to purchase my AHFC-financed Anchorage property bearing a \$30,000 negative equity.

He failed to respond to that inquiry, but he did state that AHFC will think about putting a lid on rental mortgage payment increases. I replied that to do so would be a step in the right direction, however, unless AHFC can control the

national inflation rate, the increases in the mortgage where I reside will prevent me in 1990 from subsidizing the AHFC loan.

At this same time, if what the realtors told me was accurate, is it possible that Alaskans who simply moved away from their AHFC property and rented it to others without refinancing are now being rewarded, in effect, because AHFC is refinancing loans from sixteen (16) to thirty (30) years? Had I simply moved and rented the property out, would I now find myself eligible for refinancing to thirty (30) years?

The Ombudsman learned, when I requested his assistance, that in 1988 when AHFC began its refinancing to thirty (30) years program, apparently a computer error resulted in some rental mortgage holders being sent applications for refinancing. Approximately a half-dozen were actually processed and refinanced before the mistake was discovered. The rest of us remain unrefinanced.

I stated at the January 26, 1989 public meeting that it is incomprehensible to me how AHFC is permitted to operate by applying statutory law in a manner that all Alaskans are not handled the same. There is case law on this subject:

When the state distributes benefits equally, distinctions it makes are subject to scrutiny under equal protection, 14th Amendment.
Zobel v. Williams, 102 S.Ct. 2309

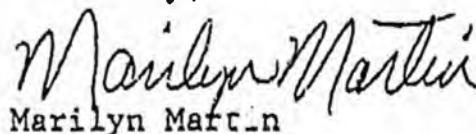
A statute fair on its face which is discriminatory in its application or its effect is repugnant to the Constitution.
State v. Norene, 457 P.2d 926

I, and hundreds of other Alaskans, will appreciate your introducing an amendment which will require AHFC to re-finance rental mortgages to thirty (30) year loans. I am not requesting financial subsidy, as provided to HOAP loan holders, only the same length mortgage for which they are eligible.

Should you have any questions, I may be reached at 276-3363 (work) or at 694-3303 (home).

Thank you for your consideration.

Sincerely,


Marilyn Martin

cc: Senator Rick Halford
Senator Tim Kelley
Representative Sam Cotten
Representative Randy Phillips



520 East 34th St.
Anchorage, AK 99503
(907) 561-1900

P.O. Box 101020
Anchorage, AK 99510

January 5, 1989

Duncan C. Fowler
Ombudsman
P. O. Box WO
Juneau, AK 99811-3000

Re: Ombudsman Complaint A88-1103 and A88-1141

Dear Mr. ~~Fowler~~ *Duncan*

I am in receipt of your final analysis and recommendations regarding A88-1103 and A88-1141 concerning the Home Owners' Assistance Program and Rental Refinance Program.

While I understand that no response is specifically required of AHFC, however, I wished to express my concurrence with your recommendation that AHFC make every effort to notify borrowers and servicers of changes before they occur. We have tried to do so in the past and will continue do our best to notify servicers and the public of any changes in as far advance as possible.

Sincerely,

A handwritten signature in cursive script that reads 'Ron Lehr'.

Dr. Ronald D. Lehr
Executive Director

MN:ec



State of Alaska ombudsman

Duncan C. Fowler

Reply to:

P.O. Box 102636
Anchorage, AK 99510-2636
(907) 583-3673
(800) 478-2824

P.O. Box WO
Juneau, AK 99811-3000
(907) 465-4970
(800) 478-4970

P.O. Box 74358
Fairbanks, AK 99707
(907) 452-4001
(800) 478-3257

December 16, 1988

**ALASKA
HOUSING**
DEC 20 1988

**FINANCE
CORP.
RECEIVED**

Ron Lehr, Executive Director
Alaska Housing Finance Corporation
Post Office Box 101020
Anchorage, Alaska 99510

RE: Ombudsman Complaint A88-1103 and A88-1141

Dear Dr. Lehr:

My Anchorage office received two related complaints against the Alaska Housing Finance Corporation (AHFC). These complaints allege that the agency acted arbitrarily by:

- (1) initially requiring borrowers who wanted to rent out their homes to participate in the Rental Refinancing Program (RRP), and then, a year later, allowing borrowers to rent out their home, without the RRP requirement;
- (2) refusing to allow RRP participants to apply for the agency's Home Owner Assistance Program (HOAP);
- (3) sending HOAP applications to RRP participants, but only allowing select RRP participants to participate in HOAP, and;
- (4) changing the guidelines for the type of loan it would accept for purchase after it indicated to the borrower's lender the borrower's loan would be accepted for purchase.

Assistant Ombudsman Penelope Horter investigated these complaints. Her investigation is complete and her report, along with my findings and recommendations are incorporated in this letter.

INVESTIGATION

In investigating the complaint, Ms. Horter spoke with the complainants; Betty Cook, Mortgage Director; Margaret Nelson, Public Information Officer; and received documentation from both AHFC staff and the complainant. A senior administrator at a major lending institution, who wishes to remain anonymous, was also interviewed during the investigation.

Ron Lehr

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History

AHFC implemented the RRP to provide a simple refinancing program to home owners who wanted to convert their homes into rentals. AHFC loans which closed between 1982 and 1987 included a rider, to the deed of trust, which required the home be continually owner-occupied during the life of the loan. This rider was required by AHFC because bond requirements stated that loans sold on homes must be owner-occupied. At times, AHFC waived the rider and allowed some borrowers to rent their homes, however, waiver requirements were strict.

The RRP was developed by AHFC in 1986 so that people could rent out their homes and avoid foreclosure. The RRP required AHFC to self-insure loans under this program, as they no longer met bond requirements. In August 1987, AHFC's Board of Directors decided to allow borrowers to rent out their homes without going through the RRP. To continue to meet bond requirements, conversion to rental was allowed if the borrower had occupied the home for at least twelve months and they informed their servicer of their intent to rent their home.

The HOAP program was implemented by AHFC in December 1987 to provide financial assistance to eligible homeowners who were experiencing serious, on-going, financial difficulties. The HOAP application specifically stated that people who currently had a RRP loan were not eligible for the HOAP program.

Mortgage Guarantee Insurance Corporation (MGIC) administered the HOAP program for AHFC. Applications for the current phase of the HOAP program (HOAP II) were accepted by MGIC until October 31, 1988. Sometime after December 23, 1987, AHFC sent MGIC the list of all current AHFC borrowers to whom HOAP applications should be mailed. RRP borrowers were included on that list. Approximately six RRP borrowers completed and returned the HOAP applications and were approved by MGIC to close. All subsequent applications received by MGIC from RRP borrowers were returned to the borrowers.

RRP provides an adjustable rate mortgage with no subsidies by AHFC to the borrower. It is a fifteen year loan, with increasing loan payments after the fourth year of the loan. The HOAP program offers a fixed interest mortgage, payable over a thirty year period with monthly subsidies to home owners. HOAP also advances funds to home owners to bring a loan current. All subsidies to home owners under HOAP, are recovered in additional loan payments.

Complaints

Our complainants had financed the purchases of their primary residences through AHFC. They were restricted from converting their homes into rentals under the terms of the mortgage. Both complainants understood that to legally rent out their homes, they were required to participate in the Renters Refinancing Program (RRP). Neither borrower was informed that s/he would not be eligible for future AHFC programs if s/he applied for RRP. (The HOAP program, which began in 1988, offered AHFC subsidies and a longer repayment term.) Both complainants believed they were unfairly disadvantaged by this disparate treatment.

One complainant learned HOAP applications had been routinely mailed to RRP participants, and several RRP borrowers were allowed into the HOAP program.

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In addition, Marilyn Martin's RRP loan see-sawed back and forth between the lender and AHFC for months because AHFC kept changing guidelines for loan acceptance.

In a letter to Ms. Cook from Ms. Martin's lender, Key Pacific Mortgage, dated October 10, 1988, Key Pacific states:

["Finally, we submitted the loan on July 25 with what we determined to be the exact documents AHFC wanted. According to the August 3 DNP memo, we succeeded in that respect. The crowning glory, however, was AHFC's decision not to purchase the loan simply because AHFC staff wanted to change the fire sale procedures, and until that was done, no loans would be accepted for purchase. This particularly frustrated us because we had received specific instructions permitting us to ship this loan from the very people that were not declining it (Ross Risvold and Debbie Sims).

We received the loan back from AHFC on August 5, and our Shipping Supervisor was bluntly told by Ross Risvold on August 8 that not only would AHFC not purchase the loan due to impending procedural changes, but the fact that it was a rental-refinance loan precluded it from ever being purchased. At no time to this point had we been notified, either in general seller/servicer memo form or a memo specific to Key Pacific, stating that AHFC would no longer accept these loans for purchase.

Our concern is that the lack of proper notification of not only the fire sale procedural changes (memo 88-10 dated September 8), but also the decision not to buy any rental-refinance loans caused us to lose the opportunity to sell the Martin loan. This was especially frustrating because we were given specific instructions by AHFC staff who never hinted at the possibility of future changes."]

Agency Response

Allegation #1: Agency initially required owners to refinance through RRP to rent out their homes, but shortly thereafter allowed other owners to rent without refinancing through RRP.

Ms. Cook said that owners who purchased homes between 1982 - 1987 could rent out their property without going through the RRP. AHFC tried to inform borrowers through advertising that they could legally rent their homes out without the RRP. However, Ms. Cook said that some borrowers may have believed that they were required to go through the RRP.

Allegation #2: Agency refuses to allow RRP participants to participate in the agency's HOAP program.

Ms. Cook said RRP loans cannot be easily sold on the bond market. The loans are self-insured by AHFC and therefore not financially attractive to a bond buyer. To sell

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such loans, interest rates on bond sales of RRP loans may be high, making it expensive for AHFC to sell the bonds. If RRP loans were included in bond sales with HOAP loans, it would raise those interest rates as well. For this reason, AHFC does not allow RRP participants in the HOAP program.

AHFC does not believe it, or the lenders, can handle the number of applications that might be received if they opened the HOAP program to RRP participants. In addition, Ms. Cook believes other AHFC borrowers should have the opportunity to refinance, as RRP participants did.

At the time the RRP was in progress, AHFC had no plans for a HOAP program. People who entered the RRP, therefore, had no prior knowledge that they might be limited from participating in other AHFC programs. AHFC did not know what terms its future programs would contain.

Ms. Cook indicated the agency hopes to include RRP loans in the HOAP program as early as January or February of 1989. On the other hand, Ms. Cook cautioned that RRP loans may never be included in the HOAP program because of the problem of selling them on the bond market and because AHFC does not view RRP participants as being detrimentally affected by the current exclusion from HOAP. Also, AHFC may not have the time to offer the HOAP program to RRP participants.

Allegation #3: Agency sent HOAP applications to RRP participants but only allowed select RRP participants into the HOAP program.

AHFC realized an error had been made after HOAP applications were sent to RRP participants, and five or six HOAP loans were closed by MGIC for RRP participants. At that time, AHFC and MGIC refused to accept any more HOAP applications from RRP program participants.

Ms. Cook assumes all RRP participants were included in the list AHFC sent to MGIC for the mailing of HOAP applications. There are 700-800 people currently in the RRP program. AHFC staff discussed the mistake and decided they should allow the five or six RRP participants who had been notified their HOAP loan had closed to stay in the program. Subsequent HOAP applications from RRP participants were not accepted. She believes this decision was not an arbitrary one by the agency. AHFC realized it had made a mistake, and corrected it.

Allegation #4: The agency acted arbitrarily in changing the guidelines for the type of loan they would accept of purchase after they indicated to the borrower's lender the borrower's loan would be accepted for purchase.

Ms. Nelson said that servicers are usually given three to four months notice that guidelines are going to change.

FINDINGS AND ANALYSIS

Allegation #1: The agency acted arbitrarily in requiring people who wanted to rent out their homes to go through the RRP and a year later allowing anyone to rent out their home without going through the RRP.

The agency developed the RRP so people could legally rent out their homes. The structure of the AHFC Board of Directors changed a year later and the new Board implemented a more lenient owner-occupied policy.

Ron Lehr

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The nature of the housing market in Alaska has changed dramatically over the past ten years. It is not unreasonable for the AHFC Board of Directors to attempt to address the fluctuating market by changing their policy toward the renting of owner-occupied homes.

I find the allegation that the agency acted arbitrarily in requiring people who wanted to rent out their homes to go through the RRP and a year later allowing anyone to rent out their home without going through the RRP to be unsupported.

Allegation #2: The agency acted arbitrarily in refusing to allow RRP participants into the HOAP program.

AHFC's refusal to allow RRP participants into the HOAP program is reasonable. AHFC is attempting to ensure that the greatest number of borrowers have an opportunity at a refinancing program. AHFC staff indicated the corporation may be able to offer HOAP to RRP participants in the future.

I find the allegation that the agency acted arbitrarily in refusing to allow RRP participants into the HOAP program to be unsupported.

Allegation #3: The agency acted arbitrarily in sending HOAP applications to RRP participants, but only allowing select RRP participants to participate in the HOAP program.

AHFC erred in sending a list to MGIC which included the names of RRP participants. RRP participants were informed on the HOAP application that they were not eligible for the HOAP program. Several RRP participants were approved for closing in the HOAP program before the error was detected. The agency subsequently refused to allow other RRP participants into HOAP, because to do so would have been extremely expensive for AHFC. AHFC staff indicated this type of mistake was not likely to occur again.

AHFC believed that it should honor the loans MGIC had closed under the HOAP program to RRP participants, because these people had already received notice of approval. This was a reasonable approach to take in correcting an error, although it could appear to those RRP participants who were unable to qualify for HOAP, as an arbitrary act by the agency.

I find the allegation that the agency acted arbitrarily in allowing only a few RRP participants into the HOAP program to be unsupported.

Allegation #4: The agency acted arbitrarily in changing the guidelines for the type of loan they would accept, after indicating to the borrower's lender they would purchase the borrower's loan.

Agency staff stated that servicers are ordinarily notified of changing guidelines three or four months before the change occurs. The agency regularly sends policy statements to servicers. The complainant's servicer, however, said the agency did not notify them of fire sale procedure changes or the agency's decision not to buy any RRP loans. My staff cannot ascertain whether or not the servicer was notified of changes in guidelines.

Ron Lehr

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I find the allegation that the agency acted arbitrarily in changing the guidelines for the type of loan they would accept, after indicating to the borrower's lender they would purchase the borrower's loan, to be indeterminate.

My finding of record is that the complaints are unsupported, based on the agency's changing response to a fluctuating real estate market and the facts of the investigation.

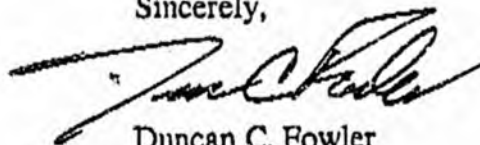
RECOMMENDATIONS

I recommend the agency make every effort to notify borrowers and servicers of changes in guidelines before those changes occur. I understand the agency sends out policy statements to servicers, and I urge the agency to make it's staff aware of the importance of notifying borrowers and servicers of changes in agency policy.

CLOSING

Ms. Horter asked me to thank your staff for their cooperation during this investigation. I am closing this complaint. If you have any questions concerning this letter, please contact me in Juneau at 800-478-4970 or Rosa Garner, Deputy Ombudsman in Anchorage at 277-8848.

Sincerely,



Duncan C. Fowler
Ombudsman

PWH:pjc

ALASKA MORTGAGE BANKERS ASSOCIATION

P.O. BOX 9-2691 / ANCHORAGE, ALASKA 99509-2691

February 17, 1989

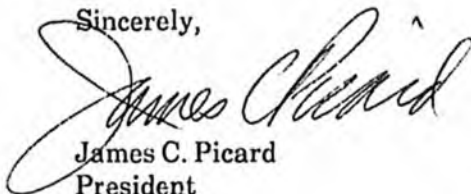
Senator Richard I. Eliason
Chairman, Labor and Commerce Committee
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Dear Senator Eliason:

The Alaska Mortgage Bankers Association supports passage of Senate Bill No. 162 which will give the Alaska Housing Finance Corporation authority to continue the simplified refinance of their existing mortgages.

Alaska continues to be in the grip of challenging times economically. While a large number of Alaskans were able to reduce their mortgage loan payments because of the original simplified refinance legislation, a majority of AHFC homeowner's still are carrying loans at artificially high rates or with unnecessary scheduled ABE increases. Giving AHFC ongoing authority to lower homeowner costs will benefit everyone and assist in a quicker economic recovery. Finally, we do not advocate the use of an adjustable interest rate by AHFC. If the corporation refinances an ARM loan, the new loan should be at a fixed rate, minimizing future payment increases.

Sincerely,



James C. Picard
President